



Board of Adjustment

Agendas & Minutes

MINUTES OF MARCH 7, 2005

The regular meeting of the Sussex County Board of Adjustment was held on Monday evening, March 7, 2005, at 7:00 p.m. in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Callaway presiding. The Board members present were: Mr. Callaway, Mr. McCabe, Mr. Mills, Mr. Workman and Mr. Hudson, with Mr. Berl – Assistant County Attorney, Ms. Hudson – Zoning Inspector, II, Mr. Rickard – Secretary to the Board, and Mrs. Norwood – Recording Secretary.

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously to approve the Revised Agenda as circulated. Vote carried 5 – 0.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously to approve the Minutes of February 21, 2005 as circulated. Vote carried 5 – 0.

Mr. Berl read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing the cases.

Case No. 8976 – David Costello – south of Route 54, west of Van Buren Avenue, being Lot 22, within Edgewater Acres development.

A variance from the front yard and side yard setback requirements.

Mr. Rickard presented the case. David Costello was sworn in and testified requesting a 32-foot variance from the required 40-foot front yard setback requirement and a 4-foot variance from the required 10-foot side yard setback requirement for a dwelling; that on his previous application he was requesting 3 variances; that on this application he is only requesting 2 variances; that his adjacent neighbor is in support of the application; that the road is a dead end; that he is asking for a front yard variance to maintain his neighbors view; that the bridge creates a landlocked situation; and that parcels 1,2 and 3 cannot be developed due to the wetlands.

Charles Hueber was sworn in and testified in opposition to the application and stated that his view will be obstructed by a 3-story structure; that he is also concerned with the potential drainage problem; and that he submitted pictures.

Karen Gordan was sworn in and testified in opposition to the application and stated that she has been a full-time resident for 5-years; that she is concerned with larger homes being placed on small lots; that the larger homes are out of character with the neighborhood; and that she feels the ordinance should be followed.

By a show of hands 3 parties appeared in opposition to the application.

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Mr. Rickard stated that the office received 5-letters in opposition to the application.

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously to take the case under advisement. Vote carried 5 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the variances be **denied since it does not meet the standards for granting a variance**. Vote carried 5 – 0.

Case No. 8977 – John D. Weinhold – south of Route 54, north of Breakwater Run, being Lot 154 within Keenwick Sound Phase II development.

A variance from the front yard setback requirement for a through lot.

Mr. Rickard presented the case. John Weinhold was sworn in and testified requesting an 18-foot variance from the required 40-foot front yard setback requirement for a through lot for a shed; that the shed will measure 8' x 8'; that the shed will be used to store his lawn mower and gasoline; that he wants to move the mower and gas from his garage; that there are some dwellings closer to the property line than his shed will be; and that he submitted pictures.

The Board found that no parties appeared in support of or in opposition to the application.

Motion by Mr. McCabe, seconded by Mr. Workman, and carried unanimously that the variance be **granted since it will not alter character of the neighborhood**. Vote carried 5 – 0.

Case No. 8978 – Robert Hutton, III – northwest of Road 490, northwest of Rivershore Drive, being Lot 7 within Nanticoke Estates development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Robert Hutton was sworn in and testified requesting a 3-foot variance from the required 15-foot side yard setback requirement for an addition to an attached garage; that the existing dwelling and attached garage were built in the 1960's; that the extension to the garage will measure 10'x 21.75'; that he needs more storage space; that the previous owners moved the furnace into the garage from underneath the dwelling; and that he purchased the property 2-years ago.

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The Board found that no parties appeared in support of or in opposition to the application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted due to the unique shape of the lot since it will not alter the character of the neighborhood; and since it is a minimum variance.**

Vote carried 5 – 0.

Case No. 8979 – Beazer Homes – east of Road 362, 145 feet south of Road 368, being Lot 1.

A special use exception to place a manufactured home type structure as a sales office.

Mr. Rickard presented the case. Everett Gray was sworn in and testified requesting a special use exception to place a manufactured home type structure as a sales office; that the unit is needed for the sales office until after the models are constructed; that the unit measured 12'x56'; that the unit will be buried so that it has a ground level entry; that there will be landscaping and adequate parking; and that the use will be needed for approximately 6-months.

The Board found that no parties appeared in support of or in opposition to the application.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the special use exception be **granted for a six (6) month period with the stipulation that there be landscaping and adequate parking.** Vote carried 5 – 0.

Case No. 8981 – James Coxton – southwest of Quillen road, 180 feet southeast of Bay Road Extended, being Lots 36 and 37 within Suburban development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. James Coxton was sworn in with Tim Willard, Attorney, on behalf of the application, requesting a 2.3-foot variance from the required 10-foot side yard setback requirement; that they plan to subdivide the parcel; that the parcels will measure 45'x99.33'; that he plans to build two (2) single family dwellings on the lots; that there is currently one building on the parcel now; that the existing building consists of three (3) apartments; that the existing building was built in the 1950's; that the proposed dwellings will meet the front yard setback requirements; that the Applicant contacted all of the surrounding property owners; that the neighbors signed a petition in

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support of the application; that the proposed application reduces the density; and that they submitted pictures.

Mr. Rickard stated that the office received 7 letters in support of the application.

The Board found that no parties appeared in support of or in opposition to the application.

Motion by Mr. McCabe, seconded by Mr. Workman, and carried unanimously that the variance be **granted since it will not alter the character of the neighborhood**.
Vote carried 5 – 0.

Case No. 8982 – Marvin J. Deputy – south of Kent County Road 450, 2,000 feet east of Road 612.

A variance from the side yard setback requirement and a variance from the setback requirement for a poultry manure shed.

Mr. Rickard presented the case. Marvin Deputy was sworn in and testified requesting a 35-foot variance from the required 50-foot side yard setback requirement for a manure shed and a 36-foot variance from the required 50-foot setback requirement for a chicken house; that the previous owner subdivided the 5-acre parcel with the existing chicken houses and dwelling; that he plans to build a 40' x 40' manure shed; that the neighbor is in support of the application; that the neighbor will be using the manure on his farm; that due to the existing improvements on the property there is no other place to build the manure shed; and that he submitted a letter.

Mr. Rickard stated that the office received 1 letter in support of the application.

The Board found that no parties appeared in support of or in opposition to the application.

Motion by Mr. Workman, seconded by Mr. McCabe, and carried unanimously that the variances be **granted since it will not alter the character of the neighborhood**. Vote carried 5 – 0.

Case No. 8983 – NV Homes – east of Route One, north of Fenwick Island, being Lots 9, 11, 13, and 15 Block AA within Fenwick Shores development.

A variance from the maximum allowable height requirement and a variance from the rear yard and front yard setback requirements.

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Mr. Rickard presented the case. Clinton Bunting, John Severa and Zach Crouch were sworn in and testified requesting an 8-foot variance from the required 42-foot maximum height requirement for Buildings 1 - 6, a 6-foot variance from the required 10-foot rear yard setback requirement for a deck on Building 4, a 4-foot variance from the required 10-foot rear yard setback for a deck on Building 3, and an 8-foot variance from the required 30-foot front yard setback for decks on Buildings 1 and 6; that the 4-foot variance for Building 3 and the 6-foot variance for Building 4 are being withdrawn; that they want to withdraw those two variances to appease their neighbors; that he purchased the property 8-months ago; that the previous use on the property was a mini-golf course; that the property is zoned C-1; that they feel the proposed structures will enhance the character of the neighborhood; that the cupola is uninhabitable; that the cupola is strictly for appearance; that the 3-level decks will be on the front two structures; that the decks will provide 400-square-foot of outside living space; that the decks will be low maintenance; that the tower with the torrent is not accessible; that the decks and tower will be a focal point for the community; and that they had exhibits.

Dave Weidman, Attorney, testified on behalf of the opposition and stated; that they are currently discussing a mutual agreement between the neighbors and the Applicant on this application and the next application Case No. 8984 – Bunting Avenue, LLC.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the hearing for Case No. 8983 and Case No. 8984 be recessed until the end of the public hearings. Vote carried 5 – 0.

The Board re-opened the case at the end of the other public hearings.

At the conclusion of the public hearings, the Chairman referred back to this case. Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the case be **tabled until March 21, 2005 and left open for the parties to submit their agreement in writing**. Vote carried 5 – 0.

Case No. 8984 – Bunting Avenue, LLC – intersection of Route One and Fenwick Avenue, being Lot 17.

A variance from the front yard, side yard, and rear yard setback requirements.

Mr. Rickard presented the case. Clinton Bunting and Steven Smith were sworn in and testified requesting a 10-foot variance from the required 40-foot front yard setback requirement, a 5-foot variance from the required 15-foot side yard setback requirement, a 5-foot variance from the required 10-foot side yard setback requirement and a 5-foot variance from the required 10-foot rear yard setback requirement; that they proposed to

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build a single-family dwelling on the property; that due to the size of the lot a dwelling could not be built on the lot without variances; and that they had exhibits.

David Weidman, Attorney, testified on behalf of the opposition and stated that they were currently discussing a mutual agreement between the neighbors and the Applicant on this application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the hearing be recessed until the end of the public hearings. Vote carried 5 – 0.

The Board re-opened the case at the end of the public hearings.

At the conclusion of the public hearings, the Chairman referred back to this case. Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the case be **tabled until March 21, 2005 and left open for the parties to submit their agreement in writing**. Vote carried 5 – 0.

Case No. 8985 – Paul W. and Kathleen L. Bacon – west of Road 36, 999 feet north of Road 44.

A variance from the minimum lot width requirement for parcels.

Mr. Rickard presented the case. Paul and Kathleen Bacon and Paul Bacon, Jr. were sworn in and testified requesting a 101-foot variance from the required 150-foot lot width requirement and a 30-foot variance from the required 150-foot lot width requirement for parcels; that the property has been in the family for 60-years; that the land was previously subdivided into 3 lots; that the front lot will be for them to build a new dwelling; that the remaining portion will be for their son; and that the property is farmed.

The Board found that no parties appeared in support of or in opposition to the application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be taken under advisement. Vote carried 5 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the variances be **denied since it does not meet the standards for granting a variance**. Vote carried 5 – 0.

Case No. 8986 – Paul W. Bacon, Jr. – west of Road 36, 830 feet north of Road 44.

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A variance from the minimum lot width requirement for parcels.

Mr. Rickard presented the case. Paul Bacon, Jr. and Paul and Kathleen Bacon were sworn in and testified requesting a 101-foot variance from the required 150-foot lot width requirement and a 30-foot variance from the required 150-foot lot width requirement for parcels; that he currently lives in the existing dwelling on the parcel; that he would like to subdivide the land so that he may build a new dwelling; that he plans to keep the existing dwelling in the family; and that he has no plans of selling the property.

The Board found that no parties appeared in support of or in opposition to the application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be taken under advisement. Vote carried 5 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the variances be **denied since it does not meet the standards for granting a variance**. Vote carried 5 – 0.

Case No. 8987 – Dolores and John Vulgaris, Jr. – south of Route 54, east of Cleveland Avenue, being Lot 14, Block 4 within Cape Windsor development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Dolores and John Vulgaris, Jr. were sworn in and testified requesting a 0.2-foot variance from the required 5-foot side yard setback requirement for a shed, a 4.6-foot variance from the required 10-foot side yard setback requirement for a manufactured home and an 8-foot variance from the required 10-foot side yard setback requirement for a set of steps; that the unit was placed in 1971; that the shed was placed in 1980; and that the proposed addition will measure 12'x24'.

The Board found that no parties appeared in support of or in opposition to the application.

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the variances be **granted since there have been similar variances granted in the development**. Vote carried 5 – 0.

Case No. 8988 – Elaine Kunz – north of Road 467A, 100 feet northwest of Road 466.

A variance from the front yard setback requirement.

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Mr. Rickard presented the case. Elaine Kunz and Dee Cross were sworn in and testified requesting a 0.4-foot variance from the required 40-foot front yard setback requirement for an existing dwelling; that she purchased the property 3-years ago; that she hired a builder and surveyor to build the dwelling; that the builder was Accessible Home Builders; that a second surveyor done for settlement showed the encroachment; and that she will provide the address of the builder.

By a show of hands, 3 parties appeared in support of the application.

The Board found that no parties appeared in opposition to the application.

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the variance be **granted since it is a minimum variance request and that a letter be sent to the builder**. Vote carried 5 – 0.

Case No. 8989 – Beaver Creek LLC – north of Route 9, 1,790 feet east of Route 5.

A special use exception to place a manufactured home type structure as a sales office.

Mr. Rickard presented the case. Todd Hickman was sworn in and testified requesting a special use exception to place a manufactured home type structure for a sales office; that the unit that is on the property now is the developers construction trailer; that they plan to place 2 units for sales offices; that NV Homes and Ryan Homes will be using the units; that the units will measure 12' x 56'; that the units will be buried to obtain ground level entry; that the units will be painted and landscaping will be provided; that there will be adequate parking; and the use will not exceed 6-months.

The Board found that no parties appeared in support of or in opposition to the application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted for a period of six (6) months for two (2) new units that will have adequate parking and landscaping, and since it will not alter the character of the neighborhood.** Vote carried 5 – 0.

Case No. 8990 – Cingular Pennsylvania, LLC – south of Road 261, 300 feet east of Road 258.

A special use exception to erect a telecommunications monopole.

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Mr. Rickard presented the case. Susan Tierney, Tom Zolnar and Brock Griffle were sworn in with Pamela Scott, Attorney, on behalf of the application and testified requesting a special use exception to erect a telecommunications monopole; that the tower will be 150-foot in height; that the proposed location is a 137-acre parcel zoned AR1; that the tower will meet all the required setback requirements; that an existing farm access road will be used to gain access to the tower; that the property is farmed; that they obtained permission for the tower from the Delaware Farmland Preservation; that the Applicant could use any type of structure in the area that could hold their antennas; that a study was conducted and there are no such structures in the area where the coverage is needed; that the study done showed gaps in coverage and helped determine the best location for towers; that the proposed tower can accommodate six other carriers; that there is no adverse effect to the FAA; that the Applicant leases the land; and that they submitted maps and exhibits.

Geri Ludlam was sworn in and testified in opposition to the application and stated that the tower is going to be too close to her property; that the tower may effect her property value; that she is concerned about aircraft in the immediate area; and that she has concerns for any noise that may be generated from the tower.

George Ames was sworn in and testified in opposition to the application and stated that the area is growing; that the proposed location is at a major intersection; and that he has no trouble with his Cingular phone.

Jay Buck was sworn in and testified in opposition to the application and stated that the tower will be dangerous to the present area; that due to frequent fog it can create a hazard for small aircraft in the area; that the towers are unsightly and the proposed location is too close to residential areas; and that he has no trouble with his cellular phone.

Fran Cardaci was sworn in and testified in opposition to the application and stated that there may not be towers within a 2-mile radius; that there is a tower located

northwest of Rt. 9 and Rt. 1 that is just shy of being within the 2-mile radius; that the Applicant just received approval for a tower on Rt. 24; that the pamphlet she picked up from a Cingular dealer states that coverage is just fine in the state of Delaware; and that her cell phone works just fine.

In rebuttal, Pamela Scott, Attorney, stated that if the Applicant didn't have a need for the tower in the proposed location they would not go to the expense of erecting a new tower; that there are no residential dwellings within 400-foot of the proposed location; that a tower has no impact on property values; that the tower will meet all the County requirements and the FAA requirements; and that she does not feel there are many planes flying lower than 150-foot.

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By a show of hands 1 party appeared in support of the application.

By a show of hands 23 parties appeared in opposition to the application.

Motion by Mr. Workman, seconded by Mr. McCabe, and carried unanimously that the case be **tabled until March 21, 2005**. Vote carried 5 – 0.

OLD BUSINESS

Case No. 8961 – Resort Broadcasting Co. – 300 feet east of Road 288, 3,600 feet south of Road 287.

A special use exception for a special height exception for a 500 foot radio broadcasting tower.

The Board discussed the case which has been tabled since February 14, 2005.

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted since the Applicant reduced the height of the tower to comply with the required setback requirements**. Vote carried 4 – 0.

Case No. 8963 – North Star and Harry Jarvis – south of Route 26, 200 feet east of Road 371.

A variance for additional wall signs and a variance from the maximum allowable size for wall signs.

The Board discussed the case which has been tabled since February 14, 2005.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the variance be **denied**. Vote carried 4 – 0.

Case No. 8964 – Andrew Hammaker Custom Builder, Inc. – west of Road 273, southwest of Oranmore Avenue, being Lot 66 within Kinsale Glen development.

A variance from the front yard setback requirement.

The Board discussed the case which has been tabled since February 14, 2005.

Motion by Mr. McCabe, seconded by Mr. Workman, and carried unanimously that the variance be **granted**. Vote carried 4 – 0.

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Case No. 8969 – Charles Parsons – northeast of Road 370, 300 feet southeast of Road 370-B.

A variance from the minimum lot width requirement for a parcel.

The Board discussed the case which has been tabled since February 14, 2005.

Motion by Mr. Workman, seconded by Mr. Hudson, and carried unanimously that the variance be **denied**. Vote carried 4 – 0.

Case No. 8970 – Dr. and Mrs. Francis Palermo – Pennsylvania Street east of East Lake Drive, being Lot 6 within Lands of Irene Carpenter Draper development.

A variance from the maximum allowable height requirement for a structure.

The Board discussed the case which has been tabled since February 14, 2005.

Motion by Mr. McCabe, seconded by Mr. Workman, and carried unanimously that the variance be **granted since it will not alter the character of the neighborhood and since it is the same height as the dwelling next door**. Vote carried 4 – 0.

Case No. 8971 – Bernard Dera, Jr. – north of Road 357, 146 feet southwest of S. Penny Lane.

A variance from the minimum lot width requirement for parcels.

The Board discussed the case which has been tabled since February 14, 2005.

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the variance be **denied since it does not meet the standards for granting a variance**. Vote carried 4 – 0.

Case No. 8926 – Russell and Jane Scala – east of Road 493, 976 feet south of Road 496.

A variance from the setback requirement for a poultry house and a variance from the separation requirement between a neighboring dwelling and a poultry house.

Mr. Rickard read a letter from the Historic Preservation Planner of Sussex County.

The Board discussed the case which has been tabled since January 10, 2005.

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Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the variances be **granted since there was no cemetery found on the property**.
Vote carried 4 – 0.

Meeting Adjourned 10:40 p.m.