



## *Board of Adjustment*

Agendas & Minutes

### **MINUTES OF MAY 2, 2005**

The regular meeting of the Sussex County Board of Adjustment was held on May 2, 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. Workman and Mr. Hudson, with Mr. Berl – Assistant County Attorney, Ms. Hudson – Zoning Inspector II, 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 4 – 0.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously to approve the Minutes of April 18, 2005 as circulated. Vote carried 4 – 0.

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

**Case No. 9036 – Estate of Viola M. Shockley** – east of Road 375 (Shockley Town Road), 900 feet north of Road 92.

A special use exception from the provisions and requirements to retain a manufactured home on a parcel.

Ms. Hudson presented the case. William Shockley was sworn in and testified requesting a special use exception from the provisions and requirements to retain a manufactured home on a parcel; that there has been a manufactured home on this property for 25-years; that his brother lives in the unit and works on the farm; that this unit has been on the property for 10-years; that they plan to give this parcel to his brother as his share of the estate; and that the unit is in good condition.

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 special use exception be **granted since there will be no adverse effect to the neighborhood and since it will not impair future development of the property.**

Vote carried 4 – 0.

**Case No. 9037 – Gemcraft Homes, Inc.** – north of Route 9, southwest of North Village Main Boulevard, being Lot 89 within Villages at Five Points development.

A variance from the side yard setback requirement.

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Ms. Hudson presented the case. Phil Plack and Gary Styles were sworn in and testified requesting a 2-foot variance from the required 20-foot side yard setback requirements for townhouse units 89 and 96, units 63 and 70, units 41 and 48, for attached utility sheds; that the sheds house the electrical boxes for the units; that the sheds met the setback requirements during the planning stages; that the final location surveys showed the encroachment; that the sheds measure 2'x 12'; that the HOA requires that mechanics be enclosed; and that this is the minimum variance to afford relief.

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

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the case be taken under advisement. Vote carried 4 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Motion by Mr. McCabe, seconded by Mr. Workman, and carried unanimously that the variances be **granted for the above referenced units since it will not alter the character of the neighborhood and is the minimum variance**. Vote carried 4 – 0.

**Case No. 9038 – Sally A. Fields** – south of Route 18, 1,000 feet west of Road 46.

A variance from the side yard setback requirement and a variance from the minimum lot width requirement for a parcel.

Ms. Hudson presented the case. Brian Shannon was sworn in and testified requesting a 7-foot variance from the required 15-foot side yard setback requirement for a detached garage, a 14.97-foot variance from the required 150-foot lot width requirement for a parcel and a 3.7-foot variance from the required 15-foot side yard setback requirement for a detached garage; that the proposed property line will run between the two existing detached garages; that the proposed property line increases the lot width on the existing parcel; that he plans to build a dwelling on the larger parcel; and that all the existing improvements have been on the property for many years.

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 it will not alter the character of the neighborhood and since the variance increases the existing road frontage**. Vote carried 4 – 0.

**Case No. 9039 – Rose Littleton** – west of Road 453, 5,271 feet north of Route 54.

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

Ms. Hudson presented the case. Rose Littleton was sworn in and testified requesting a 43-foot variance from the required 150-foot lot width requirement for a parcel; that she currently owns a 16-acres poultry farm; that she wants to build a new dwelling on the proposed lot; that she wants to keep the existing dwelling for her daughter; that they will have a shared driveway; that the existing right-of-way is used by two other property owners; that there will be no changes made to the existing right-of-way; and that they have no intentions of selling any of the property.

Deosarran Singh was sworn in and testified in opposition to the application and stated that he questioned whether or not the access to his property would be affected; and that he has no objection to the application now that he knows there will be no adverse effect to his property.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the case be **left open to allow the Applicant to submit entrance approval from DelDOT**. Vote carried 4 – 0.

**Case No. 9040 – Dennis and Linda Morena** – north of Route 54, 863 feet west of Route One, being Lot 2 within Delores Gray Savage development.

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

Ms. Hudson presented the case. Dennis Morena was sworn in and testified requesting a 2.6-foot variance from the required 15-foot side yard setback requirement, a 17-foot variance from the required 40-foot front yard setback requirement, a 5-foot variance from the required 5-foot side yard setback requirement and a 5-foot variance from the required 5-foot rear yard setback requirement; that he was granted a previous variance for the dwelling and stairs; that when building the stairs they changed the original design; that he called the County and was told stairs could encroach into a setback requirement 5-foot; that he did not state to the County he had already been approved for a variance; that the 5-foot encroachment is not permitted after a variance is granted; that he plans to build the shed; that the lot is small and does not leave much

room for the shed; that he can change his plan for the shed to better accommodate his neighbors; and that he submitted pictures.

Doug Liberman was sworn in and testified in opposition to the application and stated that he has no issue with the variance for the stairs; that he would like the shed to be at least 3-foot off the property line adjacent to his property; and that he would have no objection to the shed as long as it is not placed directly on the property line.

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In rebuttal, Dennis Morena, stated that the adjacent property owner that sent a letter of opposition has his dwelling only 6-foot from the property line adjacent to Route 54.

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

Ms. Hudson stated that the office received 1 letter in opposition to the application.

Motion by Mr. McCabe, seconded by Mr. Workman, and carried unanimously that the case be **tabled until May 16, 2005**. Vote carried 4 – 0.

**Case No. 9041 – Michael and Hope Orhelein** – east of Road 357, north of Orlando Avenue, being Lot 10 within Murray Estates development.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. Michael Orhelein was sworn in and testified requesting a 1.1-foot variance from the required 10-foot side yard setback requirement for an existing dwelling; that in 2001 they were granted a variance through their Homeowner's Association; that the covenants required a 15-foot side yard setback requirement; that they had a survey done when they refinanced their dwelling; that the encroachment was discovered when they put the dwelling up for sale; that there will be no adverse effect to the neighborhood; and that a Certificate of Compliance was issued.

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 variance be **granted since it was not created by the Applicant, since it is a minimum variance, and since it will have no substantial effect to the neighborhood**. Vote carried 4 – 0.

**Case No. 9042 – Beach Homes, Inc.** – east of Road 279, north of Cherry Walk Drive, being Lot 7 within Cherry Walk development.

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

Ms. Hudson presented the case. Bill McMahon was sworn in and testified requesting a 9.10-foot variance from the required 30-foot front yard setback requirement and a 3.5-foot variance from the required 10-foot rear yard setback requirement; that he purchased the property in October 2004; that Certificate of Compliances have been issued

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on the additions; that he was not aware that a variance was needed until he put the property up for sale; and that he would obtain a building permit for the deck.

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 with the stipulation that a building permit be obtained for the deck and since it was not created by the Applicant.** Vote carried 4 – 0.

**Case No. 9043 – Ricot Exantus** – east of Road 469, 835 feet south of Road 62.

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

The Board found that no one was present on behalf of this case.

Mr. Callaway stated that the case would be carried over until the end of the public hearings.

At the conclusion of the public hearings, Mr. Callaway again asked if any one was present on behalf of this case.

The Board again found that no one was present on behalf of this case.

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the case be **denied due to lack of representation.** Vote carried 4 – 0.

**Case No. 9044 – Touse Homes, Inc. DBA Gilligan Homes** – southeast of Road 265, intersection of Route 9 within The Reserves at Lewes Landing development.

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

Ms. Hudson presented the case. Jay Hauck was sworn in with Daniel Myers, Attorney, on behalf of the application and testified requesting a special use exception to place a manufactured home type structure as a sales office; that they will only need the unit for approximately one year; that the unit will be removed once a model home is complete; that the unit measures 12' x 50'; that there is adequate parking and the area around the unit will be landscaped; and that there will be no adverse effect to the neighborhood.

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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 special use exception be **granted for a period of one (1) year**.  
Vote carried 4 – 0.

**Case No. 9045 – Touse Homes, Inc. DBA Gilligan Homes** – north of Road 224, 500 feet south of Road 224A, being Lot 1 within Argo Glade development.

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

Ms. Hudson presented the case. Jay Hauck was sworn in with Daniel Myers, Attorney, on behalf of the application and testified requesting a special use exception to place a manufactured home type structure as a sales office; that the unit measures 12' x 50'; that the unit will not be needed more than one year; that the unit will be removed once the model dwelling is complete; and that there will be adequate parking and landscaping.

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

Motion by Mr. Hudson, seconded by Mr. McCabe, and carried unanimously that the special use exception be **granted for a period of one (1) year**. Vote carried 4 – 0.

**Case No. 9046 – Carl and Carol Widen** – south of Road 329, 1,347 feet east of Widen Way, being Parcel C.

A variance from the side yard setback requirement for a poultry house.

Ms. Hudson presented the case. Carl and Carol Widen and Jeff and Mary Legg were sworn in and testified requesting a 20-foot variance from the required 50-foot

setback requirement for a poultry house; that he plans to build two poultry houses; that he has left room for a third poultry house; that the side the variance is requested for is adjacent to their neighbor who also has poultry houses; that the Board just approved a variance for the neighbors in April 2005; that the poultry houses will meet the 200-foot setback requirement from the neighboring dwellings; that there are several poultry houses in the area; and that they submitted a survey.

Jerry and Blanche Foskey were sworn in and testified in opposition to the application and stated that her parents own the adjacent parcel; that they own the parcel

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next to her parents; that they are concerned for their parents health; that the traffic in and out of the farm will be very disruptive to her family; that she is also concerned about her property value; that she pays taxes on the road and she wants to know who will help maintain the road; and that she is opposed to poultry houses all together.

In rebuttal, Carl Widen, stated that he also pays taxes on the road.

By a show of hands, 2 parties appeared in support of the application.

By a show of hands, 2 parties appeared in opposition to the application.

Ms. Hudson stated that the office received 1 letter in opposition to the application.

Motion by Mr. Workman, seconded by Mr. Hudson, and carried unanimously that the case be taken under advisement. Vote carried 4 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the variance be **granted since it will not alter the character of the neighborhood.** Vote carried 4 – 0.

**Case No. 9047 – Fresh Cut** – north of Road 346, 410 feet west of Road 348.

A special use exception for determination of existence of a borrow pit.

Ms. Hudson presented the case. Chris and Todd Glenn, and Harvey Justice were sworn in with Tim Willard, Attorney, on behalf of the application, and testified requesting a special use exception for determination of existence of a borrow pit; that Harvey Justice purchased the property in January 1968; that October 15, 1968 the County addressed borrow pits and the expected intensification of the existing pits; that Mr. Justice has hauled dirt from the pit since 1967; that he sold the property in January 2005; that he hauled dirt from the site right up within a few weeks of the sale of the property; that in 1975 a County Councilman suggested that Mr. Justice apply for a Conditional Use

for the borrow pit; that he later realized a conditional use was not necessary due the pit pre-existing the zoning ordinance; that he can provide invoices to the Board; that Chris Glenn confirmed the testimony; that he has the understands that the entire property can be dug; that the existing dwelling is being removed; that the pit has been idol for approximately one month pending the outcome of this hearing; that they are currently serving two major projects; that they have filed for a conditional use with Planning & Zoning; that the fee was waived due to the existence of the pit; and that they are waiting for DNREC approval for the pumping of the water.

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Dr. Donald Hattier was sworn in and testified in opposition to the application and stated that he owns the adjacent property; that the recent digging is creating a safety hazard to his children and other children in the area; that they have dug within 10-foot of his property line; that a significant unsafe slope has been created; that there is stagnant water in another pit; that this water will produce a mosquito problem; that he has never seen this much truck traffic in his 10-years on the property; that the trucks create a major dust factor; that the water needs to be pumped out; and that the aerial photos show the property has not been used as a borrow pit.

Ted Stevens was sworn in and testified in opposition to the application and stated that he lives in Gander Woods; that he has worked with Harvey Justice in previous years; that he only recalls Harvey Justice providing some grading on a Carl Freeman project with soil directly from the project site; that Mr. Justice mainly moved trash to and from the site; that the Conditional Use approved in 1975 had a condition that a fence be erected; that this fence has never been erected; that the use was only good for a 2.3-acre section of the existing 3.57-acre parcel; that they have exceeded the approved area; that the present property owners have been asked by the County to stop all digging; that they only stopped for a day or two; that on a Saturday the present owners were digging and he submitted a police report to the Board; that the permit they applied for through DNREC has been rejected due to insufficient information; and that he submitted reports and copies of aerials.

Jonathan Griffith was sworn in and testified in opposition to the application and stated that he has lived in the area since 1999; and that he does not recall any traffic from the borrow pit until the last three months.

Greg Meredith was sworn in and testified in opposition to the application and stated that he has lived in the area since 1994; and that he has not seen any dirt hauling prior to the last few months.

Kathy DeSabatino was sworn in and testified in opposition to the application and stated that she has lived in the area for 14-years; that she has never seen any dirt hauled



previously to the last few months; and that she believed the property had chicken houses and dumpsters stored on the property.

Wade Porter was sworn in and testified in opposition to the application and stated that he has been a local contractor in the area since 1987; that he worked on the project of Gander Woods; that the dirt hauled to the sites were from the Hickman property and not the Justice property; and that the equipment on this site is in poor condition.

John Coulbourne was sworn in and testified in opposition to the application and stated that he owns property adjacent to Fresh Cut; that for the past six-years there has

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been minimal use of the pit; that the hauling has increased since Fresh Cut has purchased the property; and that he has no reason to doubt Harvey Justices' testimony.

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

By a show of hands 10 parties appeared in opposition to the application.

Motion by Mr. McCabe, seconded by Mr. Workman, and carried unanimously that the case be **tabled until May 16, 2005**. Vote carried 4 – 0.

The Board recessed for 5-minutes.

**Case No. 9049 - Christopher M. Corrado** – north of Route One, 335 feet southeast of Road 271, being Parcel C.

A special use exception to replace an existing billboard and a variance from the maximum allowable square footage for a sign, a variance from the front yard and side yard setback requirements, and a variance from the maximum height allowance for a sign.

Ms. Hudson presented the case. Christopher Corrado and Darlene Matthes were sworn in and testified requesting a special use exception to replace an existing billboard, a 552-foot variance from the required 600-foot maximum allowable square footage, a 38-foot variance from the required 50-foot side yard setback requirement, a 15-foot variance from the required 25-foot front yard setback requirement, and a 15-foot variance from the required 25-foot maximum height requirement; that they plan to replace the wooden billboard with a steel monopole structure; that the size of the billboard will have 4 facings measuring 12' x 48'; that the structure will be v-shaped; that the proposed billboard will be less intrusive than the existing billboard; that the height variance is to increase clearance under the sign for safety; and that the billboard is in character with the neighborhood.

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

Motion by Mr. Workman, seconded by Mr. Hudson, and carried unanimously that the special use exception and variances be **granted as requested**. Vote carried 4 – 0.

**Case No. 9049 – Christopher M. Corrado** – north of Route One, southeast corner of Road 271, being Parcel A.

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A special use exception to replace an existing billboard and a variance from the maximum allowable square footage for a sign, a variance from the front yard and side yard setback requirements, and a variance from the maximum height allowance for a sign.

Ms. Hudson presented the case. Christopher Corrado and Darlene Matthes were sworn in and testified requesting a special use exception to replace an existing billboard, a 600-foot variance from the required 600-square-foot maximum allowable square footage, a 28-foot variance from the required 50-foot side yard setback requirement, a 11-foot variance from the required 25-foot front yard setback requirement and a 15-foot variance from the 25-foot maximum allowable height requirement for a billboard; that they plan to replace the existing wooden structure with a steel mono-pole structure; that the billboard will have 4 facings measuring 12' x 25'; that they will be side by side and back to back in a v-shape; that due to the widening of the highway the billboard will not meet the required setback requirements; that the proposed location will allow for additional parking; and that the height will allow more clearance for safety reasons.

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

Motion by Mr. Hudson, seconded by Mr. McCabe, and carried unanimously that the special use exception and variances be **granted since it will have no adverse effect to the neighborhood**. Vote carried 4 – 0.

**Case No. 9050 – ABC Properties, LLC** – north of Route 9, 100 feet northeast of an unnamed road, being Lot 1, Block 3.

A special use exception to place a billboard and a variance from the side yard setback requirement.

Ms. Hudson presented the case. Darlene Matthes was sworn in and testified requesting a special use exception to place a billboard and a 50-foot variance from the

required 50-foot side yard setback requirement for a billboard; that the proposed billboard will be a steel mono-pole structure; that the billboard will be a 2-sided and measure 10' x 30'; that the property is zoned C-1; that it is a very narrow lot; that the existing dwelling will be torn down; that the proposed location is to allow for future development on the property; that there are numerous billboards in the area; and that it will not alter the character of the neighborhood.

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

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Motion by Mr. McCabe, seconded by Mr. Workman, and carried unanimously that the special use exception and variance be **granted since it will have no adverse effect to the neighborhood**. Vote carried 4 – 0.

### **OLD BUSINESS**

**Case No. 8909 – Jeremy Murdick** – west of Road 432, 2,000 feet north of Road 329, being Lot A.

A variance from the rear yard setback requirement.

The Board discussed the case which has been tabled since January 3, 2005.

Motion by Mr. McCabe, seconded by Mr. Workman, and carried unanimously that the variance be **granted for a 7.9-foot variance since it will not alter the character of the neighborhood**. Vote carried 4 – 0.

**Case No. 8991 – Thelma Harmon** – south of Road 280, 2,860 feet west of Road 285.

A special use exception to place a manufactured home on a medical hardship basis.

The Board discussed the case which has been tabled since March 21, 2005.

Motion by Mr. Hudson, seconded by Mr. McCabe, and carried unanimously that the special use exception be **granted with the stipulation that the Applicant must bring the property violations into compliance and that all travel trailers be removed**. Vote carried 4 – 0.

**Case No. 9023 – Town of Dewey Beach** – northeast of Route One, southeast of Hebron Street (Road 273), being Lot 14 within Stockley Subdivision.

A variance from the front yard setback requirement.

The Board discussed the case which has been tabled since April 18, 2005.

Motion by Mr. Workman, seconded by Mr. McCabe, and carried unanimously that the variance be **granted with the stipulation that the Applicant must erect a fence and have landscaping done since it will not alter the character of the neighborhood.** Vote carried 4 – 0.

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**Case No. 9024 – Gilbert and Betsy Voight** – north of Road 27A, west of Shady Ridge Drive, being Lot 39, Section 1 within Shady Ridge development.

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

The Board discussed the case which has been tabled since April 18, 2005.

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the variances be **denied since it is out of character with the neighborhood.** Vote carried 4 – 0.

**Case No. 9028 – L.T.L. Acres L.P.** – east of U.S. route 13, 700 feet north of Road 462.

A special use exception to place a billboard.

The Board discussed the case which has been tabled since April 18, 2005.

Motion by Mr. Workman, seconded by Mr. McCabe, and carried unanimously that the special use exception be **granted with the stipulation that the business on the property does not advertise on the billboard.** Vote carried 4 – 0.

**Case No. 9029 – L.T. L. Acres L. P.** – north of Road 462, 620 feet east of U.S. Route 13.

A variance from the maximum allowable square footage requirement for a billboard.

The Board discussed the case which has been tabled since April 18, 2005.

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the variance be **granted with the stipulation that the billboard will be a steel mono-pole structure.** Vote carried 4 – 0.

**Case No. 9030 – Gabriel and Francine Dominelli** – north of Road 298, west of Canal Drive, being Lot 54 within Short Hills development.

A variance from the side yard setback requirement.

The Board discussed the case which has been tabled since April 18, 2005.

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Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the variance be **denied since it does meet the standards for granting a variance**.  
Vote carried 4 – 0.

#### **OTHER BUSINESS**

**Case No. 8138 – Willard J. Hayes** – east of U.S. Route 13, 4,345 feet north of Route 54.

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

Ms. Hudson read a letter from the Applicant requesting a time extension on his special use exception.

Mr. Berl stated that a time extension could not be granted, that the Applicant must re-apply.

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

**Case No. 8530 – George Panarello** – southeast of Road 14A, 454 feet north of Route One.

A variance from the front yard setback requirement.

Ms. Hudson read a letter from the Applicant requesting a time extension on his variance.

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the request for the time extension be **granted for a period of one (1) year**.  
Vote carried 4 – 0.

**Meeting Adjourned 10:55 p.m.**