



Board of Adjustment

Agendas & Minutes

MINUTES OF MAY 16, 2005

The regular meeting of the Sussex County Board of Adjustment was held on May 16, 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, 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 May 2, 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. 9051 – Cheryl M. and Charles F. Woodward, III – east of Road 298, south of Creek Drive, being Lot A-8 within Winding Creek Village development.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. Barbara O’Leary, Attorney, on behalf of the application testified requesting a 0.4-foot variance from the 15-foot side yard setback requirement and a 0.3-foot variance from the required 15-foot side yard setback requirement for an existing dwelling; that the Applicant purchased the property from an estate; that the survey done for settlement showed the encroachment; that the dwelling was built in 1984; that the shape of the lot is irregular; 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. Mills, seconded by Mr. Hudson, and carried unanimously that the variances be **granted since it meets the standards for granting a variance.** Vote carried 5 – 0.

Case No. 9052 – Robert L. and Wendi s. Curatola – southeast of Road 277, south of Holly Way West, being Lot 41, Block L, Section 2 within Angola-By-The-Bay development.

A variance from the side yard setback requirement.

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Ms. Hudson presented the case. Robert Curatola was sworn in with Barbara O’Leary, Attorney, on behalf of the application, and testified requesting a 0.8-foot variance from the required 10-foot side yard setback requirement for an existing deck; that the deck was built with the dwelling 15-years ago; that the Homeowner’s Association is in support of the application; that the survey done for settlement showed the encroachment; that the deck is 21-inches high; that the shape of the lot is unique; that the deck is in the rear of the property which is adjacent to a common area; that it will not alter the character of the neighborhood; that it was not created by the Applicant; and that the shed has been removed.

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 variance be **granted since it meets the standards for granting a variance.**
Vote carried 5 – 0.

Case No. 9053 – Betty A. and George P. Elias, Jr. – northwest of Road 437-A, 1,839 feet west of Road 62.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. Betty and George Elias, Jr. were sworn in with Barbara O’Leary, Attorney, on behalf of the application, and testified requesting a 2.2-foot variance from the required 15-foot side yard setback requirement for an existing detached garage; that the Applicant’s purchased the property one year ago; that a survey done for settlement showed the encroachment; that the detached garage was built in 1987; that the shape of the lot is unique; that the hardship was not created by the Applicant; that it will not alter the character of the neighborhood; and that there has not been a Certificate of Compliance issued for the detached garage.

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 and was not created by the Applicant and since the lot is unique in size.**
Vote carried 5 – 0.

Case No. 9054 – Richard and Teresa Caruso – Route 16, northeast of Bayshore Drive, being Lot 4, Block A, Section 1 within Broadkill Beach.

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A variance from the front yard setback requirement.

Ms. Hudson presented the case. Richard Caruso was sworn in and testified requesting an 8-foot variance from the required 30-foot front yard setback requirement for an existing attached workshop; that he purchased the property 2-years ago; that he was not aware of any encroachments until he had a survey done for the present sale; that the workshop was built in 1988 along with the dwelling; that he never made any alterations to the property; that it will not alter the character of the neighborhood; that there have numerous variances granted in the area; that the size of the lot is unique; that a temporary Certificate of Compliance has been issued; and that he submitted pictures.

By a show of hands 1 party 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. McCabe, and carried unanimously that the variance be **granted since it meets the standards of granting a variance.**
Vote carried 5 – 0.

Case No. 9055 – Buchanan Developers, Inc. – south of Route 54 service road, 100 feet north of Van Buren Avenue, being Lots 1 thru 10 within Cape Windsor development.

A variance from the front yard setback requirement and a variance from the minimum square footage requirement for a parcel.

Ms. Hudson presented the case. Bill Buchanan, Will Esham and Charles Adams were sworn in with Tim Willard, Attorney, on behalf of the application and testified requesting a 15-foot variance from the required 40-foot front yard setback requirement for lots 1 through 10, a 14,781-square-foot variance from the required 20,000-square-foot lot size requirement for Lot 9, a 14,571-square-foot variance from the required 20,000-square-foot lot size requirement for Lot 5, a 15,440-square-foot variance from the required 20,000-square-foot lot size requirement for Lot 4, a 16,131-square-foot variance from the required 20,000-square-foot lot size requirement for Lot 3, and a 14,253-square-foot variance from the required 20,000-square-foot lot size requirement for Lot 2; that the

existing 10-lots are non-conforming; that the property is unique due to the opening of the new Route 54; that the new Route 54 created a dead end road to access these lots; that the State of Delaware took a portion of these lots for the right of way; that the lots were originally plotted in 1966; that they plan to move the existing property line between Lots 9 and 10 to increase the lot size for Lot 10; that they plan to combine Lots 1 and 2; that the front yard variance request is to create a more aesthetically pleasing street line; that all the lots have sewer and water connections; and that they submitted pictures and the existing plot plan.

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Barbara Hearn was sworn in and testified in opposition to the application and stated that they have concern for the increase of density; that she read the petition she submitted; that she is concerned for the environmental impact building on these lots will have to the area; and that she submitted pictures.

Mr. Mills explained to the opposition that the lots can be built on without any variances.

In rebuttal, Tim Willard, stated that the Applicant's plan to install rip rap on the properties; that they plan to build 2-story single family dwellings on the lots; and that their plans will improve the area.

Mark McGrellis was sworn in and testified in opposition to the application and stated that there is no significant reason to building the dwelling; that they are destroying the wetlands; and that the residents enjoy the quiet road.

The Board found that 7 parties appeared in opposition to the application.

Motion by Mr. Mills, seconded by Mr. Workman, 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. Workman, and carried unanimously that the variances be **granted since it meets the standards for granting a variance.** Vote carried 5 – 0.

Case No. 9056 – JKJ Properties LLC – west side of intersection of U.S. Route 13 and U.S. Route 13-A.

A variance from the front yard setback requirement for sales display.

Ms. Hudson presented the case. Jim Weller was sworn in and testified requesting a 60-foot variance from the required 60-foot front yard setback requirement for sales display; that the request is to display utility trailers; that the utility trailers have been

displayed this way for the last 5-years; that the trailers are 20-foot from the road; that his neighbors have no objection to the application; and that he was granted a similar variance on another property.

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

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

Case No. 9057 – Jerry and Kim Elliott – north of Route 54, across from Melson Road (State of Maryland).

A special use exception for a nursery and commercial greenhouses on less than five (5) acres.

Ms. Hudson presented the case. Kim Elliott was sworn in with Tim Willard, Attorney, on behalf of the application and testified requesting a special use exception for a nursery and commercial greenhouse on less than 5-acres; that the Applicant came to the County in September 2004 to begin the procedures for their business; that they started the process to file for a conditional use; that shortly after filing the Service Level request they discovered they needed to only apply for a special use exception; that there are numerous mixed uses in the neighborhood; that adjacent property is Sussex Hydraulics; that there is a repair business and a sign business nearby also; that the greenhouse measures 40' x 44'; that the greenhouse will be 15-foot high; that there will be adequate parking; that there will be a separate sales display on the site; that the public cannot enter the greenhouse at this time; that they have no objection to any conditions needed to help make the property as attractive and safe to the neighborhood; and that the business will be run from March through October.

Earl Maddox was sworn in and testified in support of the application and stated that he works with small farmers; that he has helped the Applicant to help build her business; that this will be a good business for the community; and that this is extension of her business that exists in Maryland.

Edward Thompson was sworn in and testified in support of the application and stated that he owns Sussex Hydraulics; and that he has no objection to the application pending all the requirements and regulations for the greenhouse are met.

Joseph Sobczak was sworn in and testified in opposition to the application and stated that he owns the adjacent property; that he believes the greenhouse is 42-foot high; that the neighborhood is mainly residential; that he is not convinced there will be no adverse impact to his property; that he concerned for security and pollution problems; and that he believes the special use exception is being used to get around that conditional use process.

Elizabeth Sobczak was sworn in and testified in opposition to the application and stated that the Applicants have come to their house on numerous occasions to ask for

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their approval; that the greenhouse totally blocks her view; that she is not in favor of the business being run from dawn until dusk; that the greenhouse is only 35-foot from her property line; that she feels the greenhouse could have been placed on the property differently to maintain her view; and that she is concerned for the safety of their potential customers who will have to back out onto the busy road.

In rebuttal, Tim Willard, stated that the greenhouse is more than 45-foot from the neighbors property line; that there will be room for customers to turn around; and that DelDOT will not allow traffic to back out on the road.

The Board found that 2 parties appeared in support of the application.

The Board found that 2 parties appeared in opposition to the application.

Motion by Mr. Mills, seconded by Mr. McCabe, 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. Workman, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until June 6, 2005**. Vote carried 5 – 0.

Case No. 9058 – Gene Fullerton – east of Route 23, southeast of Shop Avenue, being Lot E-76 within Pot Nets Bayside Mobile Home Park.

A variance from the side yard setback requirement and a variance from the separation requirement between units in a mobile home park.

Ms. Hudson presented the case. Gene Fullerton was sworn in and testified requesting a 5-foot variance from the required 10-foot side yard setback requirement and a 3-foot variance from the required 20-foot separation requirement between units in a mobile home park for a proposed awning; that the awning will measure 12'x 40'; that the awning is necessary to keep the sun and weather off that side of the unit; that there will be no decking under the awning; that it will not alter the character of the neighborhood;

that the units next to him are vacant; and that the awning needs to be 12-foot wide to gain the proper use the awning will provide.

The Board found that no parties appeared in support 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.** Vote carried 5 – 0.

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The Board recessed for 10-minutes.

Case No. 9059 – Todd Mason – northwest of Route 24, northeast of Wandring Lane, being Lot 33 within Fox Hollow development.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. Todd Mason was sworn in and testified requesting a 0.1-foot variance from the required 10-foot side yard setback requirement for a proposed addition; that the proposed addition will measure 15' x 30'; that the marshland and driveway make the property unique; that the lot next to his according to his neighbor cannot be built on; that he has tried to contact the property owner to purchase the lot; that he keeps the grass cut on the adjacent property to keep it from growing out of control; and that the addition is needed for his growing family.

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. 9060 – Robert and Mary Bryan – north of Road 494, 4,000 feet east of Road 498.

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

Ms. Hudson presented the case. Mary Bryan was sworn in and testified requesting a special use exception to place a manufactured home on a medical hardship basis; that the unit will measure 14' x 70'; that her mother will reside in the unit; that a manufactured home was on the property 9-years ago for a medical hardship for her aunt

and uncle; that they will connect this unit to the existing septic system; and that the neighbors have no objection to the application.

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

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted for a period of two (2) years since it will have no adverse effect to the neighborhood.** Vote carried 5 – 0.

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Case No. 9061 – Norma Hastings – east of Route 82, 715 feet south of Road 326-A.

A variance from the front yard setback requirement.

Ms. Hudson presented the case. Norma Hastings and Robert Zeck were sworn in and testified requesting a 6-foot variance from the required 40-foot front yard setback requirement for a detached carport; that the lot is pie shaped; that they removed the existing dwelling; that the trees on the lot also prevent the carport to be placed elsewhere on the property; that it will not alter the character of the neighborhood; that it is the minimum variance to afford relief; that it will enable reasonable use of the property; and that the neighbors are in support of the application.

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

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the variance be **granted.** Vote carried 5 – 0.

Case No. 9062 – Jack Vulgaris – east of Route 54, east of Cleveland Avenue, being Lot 14, Block 4 within Cape Windsor development.

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

Ms. Hudson presented the case. Jack Vulgaris was sworn in and testified requesting a 5-foot variance from the required 20-foot rear yard setback requirement and a 3.7-foot variance from the required 10-foot side yard setback requirement for a proposed covered deck; that the deck will be L-shaped; and that the Homeowner's Association has approved the proposed deck.

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

The Board found that no parties appeared 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 and since there have been numerous variances granted in the development.**
Vote carried 5 – 0.

Case No. 9063 – Kent D. Gosnell – east of Road 457, 685 feet south of Road 64.

A variance from the front yard setback requirement.

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Ms. Hudson presented the case. Kent Gosnell was sworn in and testified requesting an 8-foot variance from the required 40-foot front yard setback requirement for an existing pole barn; that in January he called the Planning and Zoning department for the requirements for building a pole shed; that he was told to measure 40-foot from the center of the road for his setback; that he thought he built the pole shed way within the setback requirement; and that the hardship was not created by him.

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 variance be **granted since it was not created by the Applicant.** Vote carried 5 – 0.

Case No. 9064 – Silver Lake Ventures – northeast of Route One, southeast of Fisher Street, being Lots 23 and 24, Block B within Dodd's Addition development.

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

Ms. Hudson presented the case. Carl Kruelle was sworn in and testified requesting a 7.2-foot variance from the required 10-foot rear yard side yard setback requirement and a 10.4-foot variance from the required 15-foot side yard setback requirement; that the dwelling and detached garage exist; that he wants to add a second story on the detached garage; the detached garage and dwelling are non-conforming; that the addition will be within the existing footprint of the garage; that his neighbor is in support of the application; that there are numerous variances and non-conforming structures in the area; that there will not be a kitchen in the addition; that the addition is for additional living space and a second bath; and that he submitted pictures.

Ms. Hudson read 1 letter of opposition to 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. Mills, and carried unanimously that the case be **tabled until June 6, 2005 to allow the Attorney to research whether the use is permitted.** Vote carried 5 – 0.

Case No. 9065 – Lorraine Zalewski – north of Road 363, northeast of Virginia Drive, being Lot 104, Section 2 within Plantation Park development.

A variance from the side yard setback requirement.

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Ms. Hudson presented the case. Lorraine Zalewski and Charles Lynch were sworn in and testified requesting a 4-foot variance from the required 10-foot side yard setback requirement for a proposed dwelling; that the proposed dwelling will be 28-foot wide; that there is no entrance or exit from the rear of the dwelling; that they plan to erect a fence along the rear property line; and that the lot to the rear of their property is vacant.

Ms. Hudson read 1 letter of opposition to 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. Hudson, and carried unanimously that the variance be **granted since it will not alter the character of the neighborhood and is the minimum variance to afford relief.** Vote carried 5 – 0.

OLD BUSINESS

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 side yard, front yard, and rear yard setback requirements.

The Board discussed the case which has been tabled since May 2, 2005.

Motion by Mr. McCabe, seconded by Mr. Workman, and carried unanimously that the variances 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.

The Board discussed the case which has been tabled since May 2, 2005.

Motion by Mr. Workman, seconded by Mr. McCabe, and carried unanimously that the case be **tabled until June 6, 2005**. Vote carried 4 – 0.

Meeting Adjourned 10:28 p.m.