



## *Board of Adjustment*

### Agendas & Minutes

### **MINUTES OF MAY 23, 2005**

The regular meeting of the Sussex County Board of Adjustment was held on May 23, 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. Mills, and carried unanimously to approve the Revised Agenda as circulated. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of May 16, 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. 9066 – Wyoming Concrete LLC** – south of Road 380, 600 feet east of Route 113.

A special use exception to operate a concrete batch plant and concrete masonry supply yard.

Ms. Hudson presented the case. William DiMondi, Attorney, on behalf of the application, testified requesting a special use exception to operate a concrete batch plant and concrete masonry supply yard; that the Board granted a special use exception in 2000; that the same Finding of Facts are in place; that the 16-conditions implemented by the Board are in place; that the hours of operation remain the same; that the plant and supply yard have passed all environmental regulations; and that there have been no complaints from the neighbors.

The Board found that the parties appeared in support of or in opposition to the application.

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

**Case No. 9067 – Earl Warren** – northwest of Road 271, 0.7 miles northeast of Route One.

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A special use exception to place a manufactured home for storage purposes and a special use exception to place two (2) on farm manufactured homes.

Ms. Hudson presented the case. Earl Warren was sworn in and testified requesting a 4.34-acre variance from the required 10-acre requirement to place a manufactured home for farm help, a special use exception to place a manufactured home for storage purposes and a special use exception to place two (2) on farm manufactured homes; that the family has run the dairy farm since 1934; that the unit they plan to use for storage is already on the lot; that they plan to store pesticides in the unit; that the proposed units will be for his son and one employee; that his mother-in-law lives in the existing dwelling; that his current employee has to travel from Laurel; that by providing housing for his employee it will greatly improve the operations of the farm; and that the adjacent properties are owned by the State Park and family members.

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 and special use exceptions for three (3) manufactured homes be **granted since it will not alter the character of the neighborhood and has been an active farm for years.**

Vote carried 5 – 0.

**Case No. 9068 – Deborah Brittingham** – north of Road 78A (Sailor Road), southwest of Juniper Street, being Lots 13, 12, and part of 11, Block G, Parcel A and B within Woodland Heights development.

A variance from the minimum lot width and lot size requirements for a parcel.

Ms. Hudson presented the case. Timothy Ramey was sworn in and testified requesting a 15.65-foot variance from the required 150-foot lot width requirement for a parcel and a 13,971-square-foot variance from the required 32,670-square-foot requirement for Lots 1 and 2; that the lots are currently two separate parcels; that they

plan to reconfigure the lot lines to better accommodate two single-family dwellings; that this will enhance the character of the neighborhood; that the lots on the original plot plan for this development were only 50-foot wide; that the proposed lots will allow for an attached garage to be added later; and that this is the minimum variance to afford relief.

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

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. Hudson, and carried unanimously that the variances be **granted since it will improve the neighborhood and since it is the minimum variance to afford relief**. Vote carried 5 – 0.

**Case No. 9069 – Kyle Hamilton** – south of Road 277, east of Edwards Way, being Lot 1 within Morning View development.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. Kyle Hamilton was sworn in and testified requesting a 5-foot variance from the required 15-foot side yard setback requirement for a proposed workshop; that the workshop will measure 24' x 27'; that there will be a basement under the workshop for storage; that above the workshop there will be extra living space; that the existing septic system covers the rear yard; that the building cannot be built on the opposite side due to Road 277; that there are numerous accessory structures in the development only 10-foot from the property lines; that the Homeowner's Association has granted preliminary approval of the workshop; that there will be no cooking facility in the living space; that the construction of the basement will not allow them to build any closer to the existing dwelling; and that the workshop cannot be built any smaller and still have room for the extra living space.

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

**Case No. 9070 – Eugene Petrillo** – south of Road 39, southwest of Bayshore Drive, being Lot 68 within Joseph D. Short 4<sup>th</sup> Addition development.

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

Ms. Hudson presented the case. Eugene Petrillo was sworn in and testified requesting a 0.7-foot variance from the required 10-foot side yard setback requirement, a 6-foot variance from the required 10-foot side yard setback requirement and a 13.3-foot variance from the required 30-foot front yard setback requirement; that his builder obtained the building permits; that the dwelling was completed in 1987; that he extended the porch in 1988 or 1989; that the Certificate of Compliance was issued in 1987 for the

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dwelling and deck; that he had a survey done in 1990 and was not made aware of any encroachments; that he became aware of the encroachments when a survey was done in March 2005; and that this is the minimum variance to afford relief.

The Board members 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 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. Hudson, and carried unanimously that the variances be **granted since the shape of the lot is unique, that it is necessary to enable reasonable use of the property, and that it is the minimum variance to afford relief.** Vote carried 5 – 0.

**Case No. 9072 – Louis and Helen Burton** – east of Route 24, north of Road 49 (Sloan Road), being Lot 2 within Burton Hall Estates development.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. Louis Burton was sworn in and testified requesting a 1.3-foot variance from the required 15-foot side yard setback requirement for an existing attached garage; that he discovered the encroachment from a recent survey; that the garage was built in 1988; that the existing dwelling is over 100-years old; and that the building permit was obtained by his builder.

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 since it is the minimum variance to afford relief.** Vote carried 5 – 0.

**Case No. 9073 – Keith Biel** – south of Road 277, west of Linden Lane, being Lot 21, Block Q, Section 3 within Angola By The Bay development.

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

Ms. Hudson presented the case. Keith Biel was sworn in and testified requesting an 8-foot variance from the required 30-foot front yard setback requirement and a 1.4-foot variance from the required 5-foot side yard setback requirement; that he is no longer

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seeking the front yard setback; that the Homeowner's Association will not allow him to encroach into the front yard setback; that the Homeowner's Association is in favor of the side yard setback variance; that the only access in and out from the dwelling is through the garage underneath the dwelling; that the proposed steps will provide a second entrance and exit from the dwelling; and that the septic system is in the rear of the property preventing construction of the steps to the rear of the dwelling.

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 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. McCabe, and carried unanimously that the variance be **granted since it meets all the standards for granting a variance.** Vote carried 5 – 0.

**Case No. 9074 – Cingular Wireless** – east of Road 562, 1,850 feet south of Road 563.

A special use exception to place a communication tower and a variance from the maximum allowable height requirement.

Ms. Hudson presented the case. Andrew Peterson, Dan McNery, and Phillip Burtner were sworn in with Pam Scott, Attorney, on behalf of the application and testified requesting a special use exception for a communications tower and a 40-foot variance from the required 150-foot maximum allowable height requirement; that the tower is proposed to be 190-foot in height; that the proposed site is a 56-acre parcel zoned AR1; that the tower is needed to fill a gap in service between Routes 404 and 18; that the proposed tower will meet all the required setback requirements; that there will be an 11' x 20' equipment shelter on site; that the site will be enclosed with a 7-foot high fence approximately 60' x 60' area; that the tower will have the required lighting per the County regulations; that the height of the tower will service the entire proposed area; that

without that height they would need to seek another location for another tower in the same general area; that there is no available tower site to collocate from; that the proposed location on this property was governed mainly by the land owner; that there will be trees surrounding the tower site; that there are numerous towers in the County that exceed 190-foot; and that they displayed exhibits and submitted pictures.

Carol Campbell was sworn in and testified in opposition to the application and stated that she owns the property across the road from the proposed site; that 80% of the surrounding property owners are opposed to the tower; that she was also approached by

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the Applicant to use her property as a possible site for the tower; that she feels the tower should be moved further back on the property; that she is concerned for the local crop dusters and safety of the neighborhood; that if the tower is no longer used who will govern the removal of the tower; that the site has already been staked out; and that she is strongly opposed to a tower on the proposed site.

Robert Glading was sworn in and testified in opposition to the application and stated that he owns property near the proposed site; that he feels the Applicant has spent money for elaborate advertisements which has created a greater need for the tower; that he views this as money versus small people; that the Applicant has little regard for the community and its safety; that the setback requirement of 1/3 of the height of the tower is not a sufficient setback; and that if the tower were to fall there is nothing preventing it from tearing down the existing power lines.

William Hill was sworn in and testified in opposition to the application and stated that he has concerns for his current cell phone reception and television reception; that his cell phone supplier does not need a tower; and that whenever you go near a tower you lose your service.

Martin Shuey was sworn in and testified in opposition to the application and stated that he has seen towers in other states that have been disguised to look like a tree; that he sees no reason why the tower cannot be placed further back on the property; that the property is a tree farm and once the trees are harvested the tower will be in plain view; and that he has Cingular service and has never had any problems in the area with his service.

John Ray was sworn in and testified in opposition to the application and stated that he is a tax ditch manager; that he wanted to know if there were going to be any guide wires; that if there are no guide wires he has no objection to the application.

In rebuttal, Andrew Peterson, stated that the maintenance on the tower is a diagnostic check every other month; that the tower is monitored 24/7 and is fully

alarmed; that there is not interference with television or other cellular companies; and that the tower is fully grounded to control any lightning damage.

In rebuttal, Phillip Burtner, stated that the tower is designed to sustain up to 85-mph winds; that the lighting they use is generally a red beacon that switches on and off softly; and that the only stakes that have been placed on the site are to show the proposed site to the numerous other agencies that need to approve the tower.

By a show of hands 9 parties appeared in opposition to the application.

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Ms. Hudson stated that the office received a petition with 113 signatures 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. McCabe, seconded by Mr. Workman, and carried unanimously that the case be **left open to allow the Applicant to confer with the property owner on a possible new location for the tower on the proposed parcel in written form.** Vote carried 5 – 0.

The Board recessed for 10-minutes.

**Case No. 9075 – Bob Lukowski** – south of Route 54, west of Jefferson Avenue, being Lot 5, Block 2 within Edgewater Acres development.

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

Ms. Hudson presented the case. Dana Costello was sworn in and testified requesting a 10-foot variance from the required 30-foot front yard setback requirement and a 2.5-foot variance from the required 10-foot side yard setback requirement for both sides; that they want the proposed dwelling to be in line with the existing dwelling on the street; that the existing dwelling has been torn down; that there will be adequate parking in front of the dwelling; that the side yard variances are to help increase the curb appeal; that it will not alter the character of the neighborhood; that the neighbor in opposition has obtained variances in the past; and that she submitted pictures.

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

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

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case be **tabled until June 6, 2005 for the Planning and Zoning Inspector to determine an average for the front yard setback.** Vote carried 5 – 0.

**Case No. 9076 – Timothy J. McDorman** – east of U.S. Route 113, 2,400 feet north of Road 244.

A special use exception to place a manufactured home type structure for office and storage purposes.

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Ms. Hudson presented the case. Timothy McDorman was sworn in and testified requesting a special use exception to place a manufactured home type structure for office and storage purposes; that the proposed unit is 12' x 50'; that the unit will be used for the church office and storage of the church's music equipment; that the unit will be placed to the rear of the church; and that he would need the unit for approximately 2-years.

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 two (2) years and since it will have no adverse effect to the neighborhood.** Vote carried 5 – 0.

**Case No. 9077 – Dale McCallister** – southwest of Route One, 1,350 feet southeast of Road 274.

A variance for an additional ground sign and a variance from the maximum allowable square footage for a sign.

Ms. Hudson presented the case. Dale McCallister was sworn in and testified requesting a variance for a second ground sign and a 72-square-foot variance from the required 150-square-foot maximum allowable square footage for a sign; that the proposed second ground sign is a freestanding sign for the gas station; that it will only advertise the gas prices and type of gas available; that the main ground sign will be 222-square-foot in size; that the sign will service all the retail stores in the center; that the signs will be made of brick; that there will be no adverse effect the neighborhood; and that they would have no objection to removing the gas station sign if the gas station no longer existed.

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 with the stipulation that the gas station sign will be removed if the gas station no longer exists and since it meets all the standards for granting a variance.** Vote carried 5 – 0.

**Case No. 9078 – Dale McCallister** – north intersection of Route 24 and Road 297.

A variance for an additional ground sign.

Ms. Hudson presented the case. Dale McCallister was sworn in and testified requesting a variance for a second ground sign; that the sign is already in place; that the

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owner was certain he had all the proper permits; that the only permits the owner had were with the State of Delaware; that the sign is in the same location as a previous sign; that it will not alter the character of the neighborhood; that there are multiple signs in the area; that the sign is located in a shopping center; and that it does not block any parking spaces.

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 since there has been a sign in that location before.** Vote carried 5 – 0.

**Case No. 9079 – Robin Wright** – southeast of Road 285, 1,900 feet south of Road 287.

A special use exception to operate a day care facility.

Ms. Hudson presented the case. Robin Wright was sworn in and testified requesting a special use exception to operate a day care facility; that the day care exists now; that she wants to increase to a large family day care facility; that she will care for 12 to 14 children, ages infant to 12-years old; that the hours of operation are 6:00 a.m. to 5:30 p.m., Monday through Friday; that there is adequate parking; and that there is a playground area in the rear yard.

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 special use exception be **granted since there will be no adverse effect to the neighborhood.** Vote carried 5 – 0.

**Case No. 9080 – James R. Chrobot and John T. Flournoy, Jr.** – north of Route 5, south of East Fairfax Court, being Lot 62 within Captains Grant development.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. James Chrobot and Pat Campbell White were sworn in with Dan Myers, Attorney, on behalf of the application and testified requesting a 0.3-foot variance from the required 10-foot side yard setback requirement; that the survey showed the encroachment; that only the rear corner of the attached garage is encroaching; that there will be no adverse effect to the neighborhood; that it will create an extreme difficulty to the Applicant to change the garage to comply with the setback requirements; and that they will provide the name and address of the builder to the Board.

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Ms. Hudson stated that the office received 11 letters in support of the application.

By a show of hands 2 parties 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. Mills, and carried unanimously that the variance be **granted with the stipulation that a letter be sent to the builder and since it meets the standards for granting a variance.** Vote carried 5 – 0.

### **OTHER BUSINESS**

**Case No. 7811 – Wilmer A. Jenkins** – east of Road 531, south of Bradford Street, Lot 2 within Middleford Acres.

A variance from the side yard setback requirement for a corner lot.

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the second request for a time extension be **denied with the understanding that the Applicant may re-apply to the Board.** Vote carried 5 – 0.

**Meeting Adjourned 10:08 p.m.**