



Board of Adjustment

Agendas & Minutes

MINUTES OF JUNE 6, 2005

The regular meeting of the Sussex County Board of Adjustment was held on Monday evening June 6, 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. Hudson, Mr. McCabe, Mr. Mills, and Mr. Workman, with Mr. Berl – Assistant County Attorney, Mr. Richard – Secretary to the Board, Ms. Hudson – Zoning Inspector II and Mr. Lank – Director of Planning and Zoning.

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 23, 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.

PUBLIC HEARINGS

Case No. 9081 – Barry B. and Sarah E. Connors – north of Route 20, north of Cedar Lane, being Lot 9 within Nanticoke Acres development.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. Barry Connors was sworn in and testified that he purchased the lot; that the lot is long and narrow; that he does not have a garage; that he needs access through the lot to get to the waterfront and to clear trees; that his immediate neighbor is not opposed to the variance requested; that he is requesting to be 2-feet from the property line; that the proposed garage measures 30' by 32'; that the existing carport attached to the dwelling is proposed to be converted into a sun-room; that moving the garage further back may place the garage in a flood area; that he proposes to place a home office for his wife on the second floor of the garage; that the garage will not hinder the neighbors; and that some of the lots in the development are larger.

The Board found that there were no parties present in support of or in opposition to this application.

Motion by Mr. Workman, seconded by Mr. McCabe and carried with 4 votes that the variance be **granted since the lot is unique in size and since the variance does not impact the character of the neighborhood.** Motion carried 4 – 1 with Mr. Mills opposing the motion.

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Case No. 9082 – Andrew Oudheusden – east of Louisiana Avenue, north of Bay Shore Drive, being Lot K-C within North Shores development.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. Andrew Oudheusden was sworn in and testified that the dwelling was built in 1997; that the location of the septic system impacts the lot; that he originally planned on using the dwelling as a vacation home; that he has now moved to Delaware permanently and needs additional room; that the only location on the site to add on is the side due to the location of the septic system and driveway; that he proposes to add a 10' foot wide addition the length of the dwelling; that the lot is a corner lot with an irregular shape; and that a 5' variance is requested from the 10' side yard setback requirement.

The Board found that there were no parties present in support of the application.

The Board found that there were 3 parties present in opposition to the application.

Geraldine Butkus, an adjacent property owner, was sworn in and testified in opposition and stated that the addition will change the neighborhood; that County regulations should be maintained; that she will lose some of her privacy; that the addition may cause a fire hazard due to the closeness to her home; and that all homes in the area are single family detached dwellings with adequate spacing between them.

Jeanette Lindsay was sworn in and testified that every block in Broadkill Beach seems to have an application posted for public hearings; that the lots are small; that houses are getting bigger; and that the variance will impact the neighbors.

Ms. Hudson advised the Board that 2 letters have been received in opposition and are a part of the record for this application.

Mr. Oudheusden, in rebuttal, stated that he proposes to build the addition similar to the existing dwelling; that the existing dwelling contains approximately 1,500 square

feet; that the proposed 2 story addition will measure approximately 10' by 28'; and that the septic system is to the rear of the dwelling near the existing deck.

Motion by Mr. McCabe, seconded by Mr. Workman and carried unanimously to **table this application until the next regular meeting to allow the Board time to review the site.** Motion carried 5 – 0.

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Case No. 9083 – Orville Bailey – intersection of U.S. Route 113 and Road 405.

A special use exception to retain a manufactured home for security purposes.

Ms. Hudson presented the case. Orville Bailey was sworn in and testified that he is requesting to retain an existing manufactured home for security purposes; that he did not know that the permit had run out; that he has not had any security problems since placing the manufactured home on the site; that he lives in the manufactured home; that he owns the seafood business on the adjacent property; and that the business is open 7 days per week year round, except for Christmas Day.

Mr. Bailey provided 4 photographs of the site and the manufactured home.

The Board found that there were no parties present in support of or in opposition to this application.

Motion by Mr. McCabe, seconded by Mr. Workman and carried unanimously that the special use exception be **granted for a period of five (5) years since the use has not impacted the neighborhood and since the use has remedied past security problems.** Motion carried 5 – 0.

Case No. 9084 – Thomas O. Morley – northwest of Road 258, southwest of Hudson Street, being Lot 25 within Creek Falls Farm Extended.

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

Ms. Hudson presented the case. Thomas Morley was sworn in and testified that he owns a 32' long fifth wheel camper; that the camper presently is parked next to the driveway; that a 402 square foot garage exists to the rear of the property; that he proposes to add a 20' by 35' addition to the garage to store the camper and needs a variance to do so; that he purchased the property 2 years ago; that the existing garage was built 5' from the side and rear property lines; that he proposed to build the addition as an extension of the existing building; that he is requesting a 15' variance from the 20' rear yard setback

and a 10' variance from the required 15' side yard setback; and that the variances are necessary since the square footage of the building will exceed 600 square feet.

Mr. Morley submitted a photograph of the dwelling and lot, a photograph of the existing garage, and a photograph of the existing garage superimposed with a sketch of the proposed addition.

The Board found that there were no parties present in support of or in opposition to this application.

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Motion by Mr. Mills, seconded by Mr. McCabe and carried unanimously to **leave the record open to allow the applicant to supply a copy of a survey of the property with the improvements.** Motion carried 5 – 0.

Case No. 9085 – Bruce Sentman – southeast of Road 305, northwest of Justice Lane, being Lot 8 within Davis Estates development.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. Bruce Sentman was sworn in and testified that he is requesting to a 5' variance from the side yard setback to allow the construction of a shed roof off of the rear of his garage to store lumber; that the roof will be supported by post and will remain unenclosed; that his immediate neighbor has voiced no objections; that he proposes to add the addition on the back so that it will not be seen from the road; and that only a portion of the addition will encroach into the setback.

Ms. Hudson advised the Board that a letter was received from the neighbor in support of the application.

The Board found that there were no parties present in support of or in opposition to this application.

Motion by Mr. McCabe, seconded by Mr. Hudson and carried unanimously that the variance be **granted since it is a minimum variance to afford relief and since the use will not substantially alter the neighborhood.** Motion carried 5 – 0.

Case No. 9086 – James Foster – east of Route 16C, 350 feet south of Route 16.

A special use exception for a commercial dog kennel and a variance from the front yard, side yard, and rear yard setback requirements.

Ms. Hudson presented the case. James Preston Foster, Jr. was sworn in and testified that he is present requesting a special use exception to use the property to raise

dogs; that the dogs are Pit Bull Terriers; that he started with 8 or 10 dogs and kept the litters; that he has had up to 46 dogs on the site; that he presently has 21 dogs; that the dogs are secured and well maintained; that he has never received a citation from dog control; that his parents live next door; that the shortest dog chain is 8 or 12 feet in length; that he breeds and shows some of the dogs; that he does not breed the dogs for fighting; that he picks up and bags the dog fecal litter and hauls it to the landfill; that some wooden dog boxes and some plastic drums are used to house the dogs; that the drums are partially buried in the ground; that he does not have any kennel runs for the dogs; that all of the dogs are chained; that he has obtained a permit to fence the property;

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that the SPCA has been on the site and inspected the site; that some of the dogs have been sold to breeders and some of the dogs have been sold to families for pets.

The Board found that there were no parties present in support of the application.

The Board found that there were 13 parties present in opposition to the application.

Sara Dewey was sworn in, submitted a letter, and testified that she is not opposed to dog kennels, but is concerned that the site is close to a licensed day care facility and that she has concerns about the children's safety at the facility.

Lt. Jerry Linkerhof of the SPCA was sworn in, submitted a VCR tape of the site and described the site, and testified that the liability may be great; that the site is just outside of Greenwood; that the dogs are scattered across the property; that the SPCA is concerned about the site and the use; that all of the dogs are pit bulls; and that the SPCA has not cited the applicant with any violations.

Bill Reed was sworn in, submitted 7 photographs of the site, and testified that he took the pictures from his back porch; that one dog appears to be dead; that the plastic drums are loose and not secured down; and that one water trough contains green water.

Brent Gehman was sworn in and testified that his wife is the day care provider at the day care facility; that they are concerned about the safety of the children and the loss of business; that some of the children's parents are concerned; that they have not seen any interaction between the dogs and humans on the site; and that there are gaps in the fencing.

Art Lindsay was sworn in and testified that he lives across the road from the site; that he is concerned about depreciation of his property values; and that the dogs bark night and day.

Larry Cannon was sworn in and testified that the site is not as pretty a picture as the applicant describes and that he objects to the continuous noise from dogs barking.

Ormand Porter was sworn in and testified that he objects to the noise and is concerned about the possibility of the pit bulls attacking humans.

David Hall was sworn in and testified that he is concerned about his granddaughter's safety.

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James Hatfield was sworn in and testified that he is concerned for the safety of the children in the area; the number of dogs on one site that close to a day care facility; and that the site is not an appropriate location for dog kennels.

Mr. Foster in rebuttal and in response to questions raised by the Board stated that he does not have a copy of the standards for granting a variance; that the dogs have been stereotyped because of the media; that the dogs are not aggressive; that his children are 19 months old, 4 and ½ years and 7 years old; that he was not aware that one of his dogs had died until Mr. Reed reported it; and that he is willing to install kennels and runs if required.

Ms. Hudson advised the Board that 3 letters had been received in opposition to this application.

Motion by Mr. Workman, seconded by Mr. Hudson and carried unanimously to take this application under advisement.

At the conclusion of the public hearings, the Board discussed this application. Motion by Mr. Mills, seconded by Mr. Workman and carried unanimously to **deny the special use exception and the requested variances since the use could substantially effect the use of neighboring properties and since the applicant could not address the standards for granting a variance.** Motion carried 5 – 0.

Case No. 9087 – 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.

Ms. Hudson presented the case. John Weinhold was sworn in and testified that he is requesting a 9.8' variance from the front yard setback for a through lot in Keenwick Sound; that he and his wife moved to the site in October of 2004; that the lot is a through lot; that he is applying for a bedroom addition; that the Homeowners Association of

Keenwick Sound have voiced no objections; that similar variances have been granted in this development; and that the use will not detract from the character of the neighborhood.

Mr. Weinhold submitted photographs of the site and improvements and a letter from the Keenwick Sound Homeowners Association.

The Board found that there were no parties present in support of or in opposition to this application.

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Motion by Mr. McCabe, seconded by Mr. Hudson and carried unanimously to **grant the requested variance since the use will not alter the character of the neighborhood and since several variances have been granted in this development.** Motion carried 5 – 0.

Case No. 9088 – Evalene Wright – north of Road 232B, east of Penn Central Drive.

A variance from the front yard setback requirement.

Ms. Hudson presented the case. Evalene Wright was sworn in and testified that she purchased her double wide manufactured home in 1997; that the home was set 32' from the front property line; that she is requesting an 8' variance from the required 40' front yard setback requirement; that her sister also lives on the site in a single wide mobile home that was placed through a hardship; that the permit for the single wide was issued as an on-farm permit; that the site is not a farm; that whoever issued the permit granted the hardship; and that a certificate of compliance has been issued for the home.

The Board found that one person was present in support of the application and that two parties were present in opposition.

Kanika Joy Green Georges was sworn in and testified in opposition and stated that she is the niece of James Harmon, the adjacent property owner; that the applicant has not met the standards for granting a variance; that the unit is too close to the road; that the applicant operates a day care facility on the site and that the setbacks should be met for the protection of the children.

Motion by Mr. Mills, seconded by Mr. Hudson and carried unanimously that **record be left open until the next regular meeting to allow the office to report on the activities on the site.** Motion carried 5 – 0.

Case No. 9089 – Lori L. Dotterrer – east of Route 23, west of Pear Street, being Lot 209 within Bay City Mobile Home Park.

A variance from the separation requirement between units in a mobile home park.

Ms. Hudson presented the case. Samuel D. Mangor was sworn in and testified that the home was placed on the property in February 2005; that they were advised by the developer to place the unit 10' from the property line; that the existing garage on the neighboring lot is 6" from the property line; that they have received written approval from the Park; that they were not aware that 15' separation was required between units;

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that they are requesting the variance of 2.4' from the required 15' separation requirement to reasonably use the premises; and that they can meet all the standards for granting a variance.

The Board found that there were no parties present in support of or in opposition to this application.

Motion by Mr. Mills, seconded by Mr. Hudson and carried unanimously that the variance be **granted since the applicant has shown that he can meet the standards for granting a variance.** Motion carried 5 – 0.

Case No. 9090 – Robino-Cottagedale, LLC – northeast of Route 275, 1,100 feet southwest of Road 276, within Arbors At Cottagedale development.

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

Ms. Hudson presented the case. Dorothy Rose Novak of Robino Companies was sworn in and testified that they are requesting a special use exception to use a manufactured home type structure for a sales office to be used while the company is clearing up debris on the site; that the site was formerly used as a dump and landfill; that they are requesting approval for no more than 2 years; that they will meet all setbacks; that a gravel parking lot exists; that landscaping will be installed; and that the unit will be used as a sales office only.

Glenden Jackson was sworn in and testified that he lives across the road from the existing sales office; that the office has been on the site for approximately 8 months; that a porta-toilet is used; that he has been watching the use of the site since the County Council meeting last year on the multi-family project proposed to be built on the site; that he has a fear that when backing out of his driveway he may back into the handicap ramp

on the sales office since it is close to the road; that the porta-toilet is unsightly; and that the roadway needs to be maintained.

Ms. Novak, in rebuttal, stated that the porta-toilet is temporary and can be screened.

Mr. Lank advised the Board that the existing sales office is the proposed unit being considered for this special use exception.

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Motion by Mr. Mills, seconded by Mr. Hudson and carried unanimously that the **record be left open until the next regular meeting to allow Ms. Novak to supply the Board with the type of unit proposed to be installed and how she can assure Mr. Jackson concerns.** Motion carried 5 – 0.

Case No. 9091 – M. Michael Massumi – southeast of Road 357, 688 feet south of Road 360.

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

Ms. Hudson presented the case. Dr. M. Michael Massumi and Chip Cirillo were sworn in and testified that a need exists for medical facilities in the area; that the site is zoned B-1 Neighborhood Business; that his architect suggested that he erect a small modular unit for a doctors office since the home and garage on the site are not designed appropriately for office space; that he will live in the home temporarily; that the previous use was an office for a HVAC contractor; that the unit will be placed to meet all setback requirements; that it may take up to 2 years to determine the design and build a new facility and that the site is appropriate to serve the general area.

The Board found that there were no parties present in support of the application.

The Board found that there were 3 parties present in opposition.

Marge Hudson was sworn in and testified that the Hudson family has lived in this neighborhood forever; that the site is not zoned for mobile home type structures; that they are concerned about additional traffic; that the site is small and already improved by a home and garage; that parking is questionable; and that she request that landscaping be provided along her property line if the use is approved.

John Hudson was sworn in and testified questioning why place a mobile home type structure when the home or garage could be converted into office space.

Robert Dern was sworn in and testified questioning sewer connection; expressed concerns about additional traffic; and added that the site is not zoned for mobile homes.

Bernard J. Dern was sworn in and testified questioning site plan requirements.

Dr. Massumi stated in rebuttal that he does not intend to cause problems for the neighborhood; that he will erect a fence and plant landscaping and trees; that they thought about converting the home and/or the garage into offices; and that it would require major changes in the structures.

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The Hudsons stated that they have no objections if landscaping is provided.

Motion by Mr. McCabe, seconded by Mr. Mills and carried unanimously to **grant the special use exception for a period of 2 years with the condition that Leyland Cypress be planted to shield the mobile home type structure from the Hudson property.** Motion carried 5 – 0.

Case No. 9092 – Michael Riccitelli – east of Canal Court, 150 feet north of Eleanor Lee Lane, being Lot 16 within Canal Corkran development.

A variance from the rear yard setback requirement.

Ms. Hudson presented the case. Michael Riccitelli was sworn in and testified that the location of the home was designed on a computer; that the site was stacked out incorrectly; that the Canal Corkran Homeowners Association has no objections to the requested variance of 1' from the required 10' rear yard setback requirement; that William Lingo, owner of the 10' open space buffer strip behind the lot has no objections to the variance request; that the lot is unique since it is located on a cul-de-sac with minimal depth; that the variance requested is appropriate and the minimum variance that will afford relief; that the hardship was not created by the owner; and that the variance will not alter the character of the neighborhood.

The Board found that there were no parties present in support of or in opposition to this application.

Motion by Mr. McCabe, seconded by Mr. Workman and carried unanimously that the variance be **granted since the applicant has established that he can meet all the standards for granting a variance and since the use will not negatively impact the neighborhood.** Motion carried 5 – 0.

Case No. 9093 – Creative Concepts of Bethany Beach, Inc. – west of U.S. Route 113,
151 feet north of Road 401.

A special use exception to place a billboard and a variance from the maximum allowable square footage for a wall sign.

Ms. Hudson presented the case. Kim Diehl and Scott Lednum were sworn in and testified that they are requesting a special use exception for a billboard and a variance of 108 square feet from the maximum of 100 square feet for a wall sign on the warehouse; that they propose to erect a mono-pole billboard on the site; that the billboard will meet all setbacks and the height limitation; that the warehouse measures approximately 80' by 120'; and that they hired a sign company to design and install the wall sign.

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Ms. Hudson advised the Board that a permit was not obtained for the wall sign.

Mr. Mills stated that the sign covers approximately 8% of the wall area.

The Board found that there were no parties present in support of the application.

Robert Witsil, Jr., Esquire, testified on behalf of his client Peter Stack and presented a petition in opposition to the billboard and stated that there are 2 separate issues, a billboard and a wall sign; that the petition includes several families that are concerned about the visual impact on a cemetery in the area; that the opposition is opposed to the billboard and the variance for the wall sign; that the cemetery owners are impacted by having to look at the billboard; that too many signs exist along Route 113; that it has been reported that the billboard will be used for on-premise advertising which will be a violation since the billboard is larger than the permitted square footage for an on-premise sign; that the applicant can only obtain a permit for up to 150 square feet for an on-premise sign; that the truck parked along the front of the site is parked in violation since it is parked for the purpose of advertising; that the applicant has not met the standards for granting a special use exception or a variance; that no hardship exists; that the use will alter the character of the neighborhood as exhibited by the petition in opposition; and requested that the special use exception and the variance be denied.

Peter Stack was sworn in and testified that Mr. Witsil has correctly represented him; that all of the neighbors that he spoke to are opposed to the use; and that the Town of Frankford does not permit billboards.

Ms. Hudson advised the Board that one of the people that signed the petition in opposition has written a letter removing her name from the petition.

Mr. Lednum stated in rebuttal that he has been on the site during all of the construction and has not seen anyone on the property where the cemetery is located except for the farmer.

Motion by Mr. Mills, seconded by Mr. McCabe and carried unanimously to take this application under advisement. Motion carried 5 – 0.

At the conclusion of the public hearings, the Board discussed this application. There was a consensus of the Board that there was no need to grant a special use exception for the billboard and that the wall sign was not totally out of character. Motion by Mr. Mills, seconded by Mr. Hudson and carried unanimously to **deny the special use exception for the billboard and that the word “warehouse” be removed from the wall sign.** Motion carried 5 – 0.

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Case No. 9094 – Quality Homes – south of Route 22, West Harbor Drive, being Lot W-78 within White House Beach Mobile Home Park.

A special use exception to place a dwelling in a mobile home park.

Ms. Hudson presented the case. Robert Charles Scott was sworn in and Sheila Leager of Quality Homes affirmed and they testified that they are requesting a special use exception to permit placement of a modular home in the White House Beach Mobile Home Park; that the unit measures 20’ by 64’ with a 28’ by 12’ addition and replaces a 12’ by 60’ mobile home with a 29’ by 12’ addition; that the unit will meet all setbacks and separations; that the lot measures 60’ by 115’; that there are no adjacent improvements to the front or the back; that a survey and elevation certificate will be provided prior to requesting a certificate of compliance; and that a letter of no objection has been received from the Park owners.

The Board found that there were no parties present in support of or in opposition to this application.

Motion by Mr. Mills, seconded by Mr. Hudson and carried unanimously to **grant the special use exception since there will be no significant impact on the neighborhood.** Motion carried 5 – 0.

Case No. 9095 – David and Carolyn Smith – southeast of Road 279A, east of Phillips Road, within Oak Orchard.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. David Smith and Carolyn Smith were sworn in and testified that they recently purchased the property; that the home is in disrepair, partially built on slab and partially with a wood frame floor; that the site does occasionally flood; that they propose to move the home and then build on basically the same footprint; that the existing home is an eyesore; that they realize that the home could be repaired one wall at a time; that they want to raise the home to conform to the flood zone requirements; that the width of the lot is unique; that the site cannot be developed otherwise; that they did not create the hardship; that the improvements will not be a detriment to the neighborhood; and that they are requesting the minimum variance to afford relief.

The Board found that there were no parties present in support of or in opposition to this application.

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Motion by Mr. Mills, seconded by Mr. Hudson and carried unanimously to **grant the requested variance since the applicant has provided that he can meet the standards for the granting of a variance.** Motion carried 5 – 0.

OLD BUSINESS

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.

Mr. Mills stated that he would not be participating in the discussion or voting since he was not present during the public hearing.

The Board discussed this application which has been tabled since May 2, 2005.

Mr. McCabe stated that there is no evidence that a borrow pit has existed on the site prior to the 1970's.

Mr. Workman stated that there was no evidence submitted that indicated that there has been continuous activity on this portion of the site.

Mr. Hudson stated that there was not enough physical evidence presented.

Motion by Mr. Hudson, seconded by Mr. Workman and carried with 3 votes to **deny the special use exception for the determination of existence of a borrow pit.** Motion carried 3 – 0. Mr. McCabe was not voting. Mr. Mills did not participate or vote.

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.

The Board discussed this application which has been tabled since May 16, 2005.

Motion by Mr. Hudson, seconded by Mr. Mills and carried unanimously to **grant the special use exception with the condition that a solid fence shall be erected to the maximum height allowed (7') on the westerly side of the property 40' from the front property line and shall run 75' back along the property line and that a natural landscaping buffer shall be established.** Motion carried 5 – 0.

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

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

The Board discussed this application which has been tabled since May 16, 2005.

Mr. Berl advised the Board that a garage apartment can be permitted.

Motion by Mr. Workman, seconded by Mr. McCabe and carried unanimously that the requested variances be **granted**. Motion carried 5 – 0.

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.

The Board discussed this application which has been tabled since May 23, 2005.

Ms. Hudson advised the Board that the average setback along the street is 22' and that the existing dwelling is setback 19.8'.

Motion by Mr. McCabe, seconded by Mr. Workman and carried unanimously to **grant approval of the requested variances since they will not alter the character of the neighborhood.**

Meeting adjourned at 11:09 p.m.