



Board of Adjustment

Agendas & Minutes

MINUTES OF JULY 11, 2005

The regular meeting of the Sussex County Board of Adjustment was held on July 11, 2005, at 7:00 p.m. in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:05 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 June 27, 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. 9128 – Dominic and Angela Ryan – east of Road 387, 1,093 feet south of Road 392.

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

Ms. Hudson presented the case. Dominic and Angela Ryan were sworn in and testified requesting a 5-foot variance from the required 150-foot lot width requirement for a parcel; that the tax map shows the road frontage to be 300-foot; that they had a survey done and discovered that they only had 295-foot of road frontage; that they want to build a new dwelling on the proposed parcel; that a good friend is going to purchase their existing dwelling; that their neighbors are in support of the application; that his neighbor's pool encroaches onto his property; and that the existing building will remain.

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 with the stipulation that the neighbors pool be moved into compliance and since it will not alter the character of the neighborhood.**

Vote carried 5 – 0.

Case No. 9129 – Daniel and Karen Healy – north of Road 305, south of Nanticoke Court, being Lot 27 within Indian Meadows development.

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

Minutes

July 11, 2005

Page 2

Ms. Hudson presented the case. Daniel Healy was sworn in and testified requesting a 20-foot variance from the required 40-foot front yard setback requirement for a shed; that the setbacks on his building permit were wrong; that he had verbal permission to construct the shed from the Homeowner's Association; that he obtained the building permit in March 2005; that the County advised him of the encroachment in May 2005; that the shed is being built on a concrete slab; that in order to comply with the required setbacks would put the shed right up to his bedroom window; 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. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted since it meets all the standards for granting a variance.**

Vote carried 5 – 0.

Case No. 9130 – Lonnie Donohue – northwest of intersection of Road 545 and Road 594.

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

Ms. Hudson presented the case. Lonnie Donohue was sworn in and testified requesting a 5-foot variance from the required 15-foot side yard setback requirement and a 10-foot variance from the required 20-foot rear yard setback requirement for a proposed detached garage; that the proposed detached garage will measure 30' x 40'; that the proposed location was chosen to allow easy access to the garage; that he has no access to his property from Road 545; and that the garage will be in line with his existing driveway.

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. Workman, 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. Mills, seconded by Mr. Workman, and carried unanimously that the variances be **denied since it does not meet the standards for granting a variance**. Vote carried 5 – 0.

Minutes
July 11, 2005
Page 3

Case No. 9131 – Sarah S. Parker – north of Road 329, 1,260 feet east of Road 431.

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

Ms. Hudson presented the case. Alton Scott and Sarah Parker were sworn in and testified requesting a special use exception to retain a manufactured home on a medical hardship basis; that his 91-year old mother lives in the unit; that the special exception expired due to an oversight on their part; and that they apologize to the Board for allowing the special exception to lapse.

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 for a period of two (2) years since it will have no substantial effect to the neighborhood**. Vote carried 5 – 0.

Case No. 9132 – Earl Orth, IV – south of Road 238, 1,500 feet west of Route 16.

A variance from the rear yard setback requirement.

Ms. Hudson presented the case. Earl Orth, IV was sworn in and testified requesting a 3.3-foot variance from the required 20-foot rear yard setback requirement for an existing dwelling; that when he purchased the property he had several dirt piles along the property line; that he believes an accurate measurement could not be made due to the dirt piles; that the unit has been on the lot since 1996; that the unit is now classified as a C-Grade home with the Assessment Department; and that Ron's Mobile Homes set the unit on the property.

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**.
Vote carried 5 – 0.

Case No. 9133 – Roberts Oxygen Company, Inc. – east of U.S. Route 13, 505 feet north of Road 584.

A special use exception to place manufactured home type structures for storage.

Minutes

July 11, 2005

Page 4

Ms. Hudson presented the case. Michael Kitzinger and David Carr were sworn in and testified requesting a special use exception to place manufactured home type structures for storage; that they must relocate their business; that they are moving the business to the Bridgeville Industrial Park; that the trailers are used to store cylinders tanks; that there will be 5-storage trailers; that they meet all Fire Marshall requirements and have building code approval; that the company has been in business for 31-years and has 31-locations; that they supply Nanticoke Hospital, nursing homes and local restaurants; that they have first right of refusal on an adjacent property owned by the industrial park; that they plan to purchase property to construct a permanent structure; and that they submitted pictures.

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

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the special use exception be **granted for a period of four (4) years**. Vote carried 5 – 0.

Case No. 9134 – Edna G. Tucker – north of Road 32, across from Road 590.

A variance from the minimum square footage requirement for parcels and a special use exception from the provisions and requirements to retain a manufactured home on a parcel.

Ms. Hudson presented the case. Edna G. Tucker and Tommy Tucker were sworn in and testified requesting a 13,670-square-foot variance from the required 32,670-square-foot lot size requirement for a parcel and a special use exception to retain a manufactured home on a parcel less than five (5) acres; that they own a 1-acre parcel; that they want to subdivide the parcel in half for their daughters; that one daughter currently lives on the front portion of the property in a manufactured home; that the other daughter plans to build a dwelling on her portion of the land; that there is a 30-foot right-of-way on their parcel adjacent to the 1-acre parcel; that they plan to extend the right-of-way 20-foot

to allow access to the proposed parcels; and that the State of Delaware owns the adjacent property.

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

Minutes
July 11, 2005
Page 5

Case No. 9135 – Darwin and Dorothy McCormick – northeast of Road 211, northwest of West Saratoga Road, being Lot F-15 within Shawnee Acres development.

A variance from the front yard setback requirement.

Ms. Hudson presented the case. Darwin McCormick was sworn in and testified requesting a 6-foot variance from the required 30-foot front yard setback requirement for an existing dwelling; that the dwelling was built in 1988; that he hired Trivits Construction to build the shell of the dwelling; that he advised the builder of the required setbacks; that he completed the interior of the dwelling; that a Certificate of Compliance has been issued; that he recently noticed the encroachment when he was reviewing his survey; that he immediately applied to the Board to correct the situation; and that he submitted pictures.

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted since it was not created by the Applicant, since it will not alter the character of the neighborhood since it is the minimum variance to afford relief, and that a letter be sent to the builder**. Vote carried 5 – 0.

Case No. 9136 – Gemcraft Homes, Inc. – north of Savannah Road (Route 9), northeast of Chatham Street, being Lots 49-56, 1-8, 21-28, 97-104 within Village of Five Points development.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. Phil Plack was sworn in and testified requesting a 2-foot variance from the required 10-foot side yard setback requirement for concealment closets; that the Board granted similar variance in May 2005; that this request will

complete the remaining buildings; that the concealment closets are 2'x 12'; that they house the electrical and water meters for the buildings; that they have not modified the buildings to comply due to the great expense to revise the plan and some units have already been sold; that the Homeowner's Association and the developer have created the problem by insisting the utilities be enclosed; and that he has advised the corporation of the Board's feelings.

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

Minutes
July 11, 2005
Page 6

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

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

Case No. 9137 – Briarwood MHP, LLC – north of Road 462, north of Hickman Drive, being Lot A-34 within Briarwood Manor Mobile Home Park.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. Robert Bryan was sworn in and testified requesting a 1-foot variance from the required 5-foot side yard setback requirement for an existing manufactured home; that there is an 8'x 42" tip-out on the unit; that the tip-out is 22-foot from the adjacent unit; and that the variance is needed to enable reasonable use of the property.

Rebecca Jarvis was sworn in and testified in support of the application and stated that she is the owner of the manufactured home; that she showed the park manager a picture of the unit; that the park marked the lot for the placement of the unit; that her husband measured and discovered the unit would not meet the required setbacks; that they advised the park that the unit would not meet the setbacks; and that the adjacent neighbor has no objection to the application.

Leonard Sears was sworn in and testified and stated that the current park owner does not have a metal detector to locate the property markers; that the property markers are 18-inch steel rods buried in the ground; that the lots are 40'x 90'; and that he was involved in 1996 when the park worked to bring the entire park into compliance.

In rebuttal, Robert Bryan, stated that he was unaware that metal rods were placed in the ground to mark the property lines; that they have been using the existing footprints of previous units in the park to measure for setbacks; and that they always make sure they have 20-foot between units.

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.

Minutes
July 11, 2005
Page 7

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

Case No. 9138 – DKR LLC – east of Route 24, south of Steele Drive, being Lot 76 within Sherwood Forest development.

A variance from the front yard setback requirement.

Ms. Hudson presented the case. Doug Ritter was sworn in and testified requesting a 5-foot variance from the required 30-foot front yard setback requirement for a roof over a stoop; that he wants to construct a gable roof over the existing stoop; that the dwellings were built so close to the front yard setback requirement due to the septic systems in the rear yard; that he purchased the lots with the dwellings already constructed; 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. 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. 9139 – DKR LLC – east of Route 24, south of Steele Drive, being Lot 77 within Sherwood Forest development.

A variance from the front yard setback requirement.

See Case No. 9138 for details.

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 will not alter the character of the neighborhood**.
Vote carried 5 – 0.

The Board took a 10-minute recess.

Case No. 9140 – William Willey, Sr. – east of Road 494, 1,476 feet west of Road 497.

Minutes

July 11, 2005

Page 8

A variance from the rear yard setback requirement.

Ms. Hudson presented the case. William Willey, Sr. was sworn in and testified requesting a 15-foot variance from the required 20-foot rear yard setback requirement for a proposed detached garage; that the proposed detached garage will measure 30'x32'; that due to the existing drain field for his septic system he cannot meet the required rear yard setback requirement; that the property adjacent to the rear yard is an open field; that the garage will be used for storage and a shop; and that his adjacent neighbor has 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. 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. Mills, seconded by Mr. Workman, and carried unanimously that the variance be **denied since it does not meet the standards for granting a variance**.
Vote carried 5 – 0.

Case No. 9141 – Stephen and Carol Elzey – southwest of U.S. Route 113, 1,500 feet southeast of Road 432.

A variance for an additional wall signs.

Ms. Hudson presented the case. Stephen Elzey was sworn in and testified requesting a variance for additional wall signs; that the signs have existed for years; that the building has always had multiple signage; that he has only replaced what has been on the building; that he has 8 wall signs; that there is one ground sign; that he never obtained any building permits; that the signs are provided from the beer companies; that he was

not aware of sign regulations for the County; and that he has owned the business for 11-years.

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 case be **left open to allow the Applicant to submit to the Board the square-footage of all the signs and the walls.** Vote carried 5 – 0.

Minutes
July 11, 2005
Page 9

Case No. 9142 – Don and Louanne Zook – south of Donovan Street, 228 feet east of Oak Street, being Lot 4 within Donovan development.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. Don Zook was sworn in and testified requesting a 2.3-foot variance from the required 10-foot side yard setback requirement for an existing detached garage; that he purchased the property in September 2002; that the existing garage measured 24'x 24'; that in January 2005 he obtained a building permit to build a 14'x 18' attached shed; that due to the increase in square-footage on the entire detached structure the setback requirement increases; that he was not made aware of this requirement at the time he obtained the building permit; that he was not aware of the problem until he applied for his Certificate of Compliance; and that he submitted pictures and a copy of his building permit.

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 will not alter the character of the neighborhood.** Vote carried 5 – 0.

Case No. 9143 – Joseph E. Miro – south of Bay Road, corner intersection west of Ocean Road, being Lots 20 and 30 within Tower Shores development.

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

Ms. Hudson presented the case. Joseph Miro was sworn in and testified requesting a 11.1-foot variance from the required 30-foot front yard setback requirement from Bay Road and Admiral Road and a 1.0-foot variance from the required 15-foot corner side

yard setback requirement from Ocean Road; that he wants to build another floor to the existing structure; that the existing structure is non-conforming; that the addition will not exceed the existing footprint; and that the addition will not exceed the maximum allowable 42-foot height requirement.

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**.
Vote carried 5 – 0.

Minutes
July 11, 2005
Page 10

OLD BUSINESS

Case No. 8992 – Samuel Slabaugh – north of Road 419, 142 feet west of Road 453.

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

Ms. Hudson advised the Board that she has not been able to obtain the desired survey from the Applicant.

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

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the variance be **denied since it does not meet the standards for granting a variance**.
Vote carried 5 – 0.

Case No. 9098 – Robert W. Lukowski, Sr. – south of Route 54, west of Monroe Avenue, being Lot 16 within Edgewater Acres development.

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

The Board discussed the case which has been tabled since June 20, 2005.

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

Case No. 9101 – Cingular Pennsylvania, LLC – west side of intersection of Road 365 and Road 363.

A special use exception to place a telecommunications tower.

Ms. Hudson read a letter from the Applicant stating the property owner does not want to change the proposed location of the tower.

The Board discussed the case which has been tabled since June 20, 2005.

Motion by Mr. Mills to approve the special use exception.

Motion failed due to lack of a second.

Due to lack of a motion the Chairman tabled the case until further notice.

Minutes
July 11, 2005
Page 11

Case No. 9112 – Robin Guinta – south of Road 548, 359 feet west of Road 552, being Lot 8.

A variance from the side yard setback requirement.

The Board discussed the case which has been tabled since June 27, 2005.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **denied since it does not meet the standards for granting a variance**.
Vote carried 5 – 0.

Case No. 9119 – Kim Jones – north of Road 565, 1,546 feet west of road 638.

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

The Board discussed the case which has been tabled since June 27, 2005.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **denied since it will substantially effect the character of the neighborhood**. Vote carried 5 – 0.

Case No. 9124 – Cingular Wireless, LLC – south of road 78, 190 feet northwest of Road 490A.

A special use exception to place a telecommunications tower.

Ms. Hudson read a letter from the Applicant requesting that the case be tabled until further notice.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until further notice from the Applicant**. Vote carried 5 – 0.

OTHER BUSINESS

Ms. Hudson opened the nominations for Chairman.

Motion was made by Mr. Hudson and seconded by Mr. McCabe to nominate Mr. Callaway as Chairman.

There as a consensus that the nominations for Chairman be closed.

Minutes
July 11, 2005
Page 12

Nominations for Chairman were closed.

Motion was adopted to nominate Mr. Callaway as Chairman; 5 yea

Vote by roll call:

Mr. McCabe	-	yea
Mr. Workman	-	yea
Mr. Hudson	-	yea
Mr. Mills	-	yea
Mr. Callaway	-	yea

Ms. Hudson opened the nominations for Vice Chairman.

Motion by Mr. Workman and seconded by Mr. Hudson to nominate Mr. McCabe for Vice Chairman.

There as a consensus that the nominations for Chairman be closed.

Motion was adopted to nominate Mr. McCabe as Vice Chairman; 5 yea

Vote by roll call:

Mr. Hudson	-	yea
Mr. Mills	-	yea
Mr. Callaway	-	yea
Mr. Workman	-	yea
Mr. McCabe	-	yea

The meeting was turned over to Mr. Callaway, the new Chairman.

Motion was made by Mr. McCabe and seconded by Mr. Mills to appoint Ms. Hudson as Secretary to the Board. Vote carried 5 – 0.

Meeting Adjourned 10:08 p.m.