



Board of Adjustment
Agendas & Minutes

MINUTES OF AUGUST 29, 2005

The regular meeting of the Sussex County Board of Adjustment was held on August 29, 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 – Secretary to the Board, and Mrs. Norwood – Recording Secretary.

Motion by Mr. Mills, seconded by Mr. Hudson and carried unanimously to approve the Revised Agenda with Case No. 9101, 9174, 9175 and 9124 Cingular Wireless to be tabled until the office receives information from the State of Delaware. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to postpone the approval for the Minutes of August 15, 2005 until the next regular meeting. 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. 9189 – James Bartleson, Jr. – west of Road 329, 2,800 feet east of Road 432.

A special use exception to place a second on-farm manufactured home.

Ms. Hudson presented the case. James Bartleson, Jr. was sworn in and testified requesting a special use exception to place a second on-farm manufactured home; that he lives in the existing double-wide manufactured home; that the proposed unit will be for farm help; that the unit is on the property without a permit; that he needs help with the farm so that he can care for his sick wife; that he will be putting a fence around the pool; and that the unit will only be for farm help.

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 with the stipulation that the unit will only be for farm help and that the Applicant will bring the property into compliance since it will not adversely effect the surrounding properties.** Vote carried 5 – 0.

Case No. 9190 – Brian M. Swain – east of Road 565 (Sunnyside Road), 2,400 feet south of Road 600 (Fawn Road).

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

Minutes
August 29, 2005
Page 2

Ms. Hudson presented the case. Joe Conaway, Brian Swain and Chris Brandt were sworn in and testified requesting a 34-foot variance from the required 200-foot setback requirement and a 197-foot variance from the required 200-foot setback requirement for a commercial dog kennel; that the proposed use for the property will be a veterinary clinic; that the existing greenhouse will be used for a kennel; that the property was used as a truck farm; that the plan is to combine the two parcel to create a 6.5-acre parcel; that this size parcel allows the use of a commercial dog kennel; that the doctor will live in the existing dwelling; that Mr. Brandt's mobile veterinary business is still being used; that this property will offer a more permanent site for his practice; and that the adjacent neighbor effected by the variances is in support of the application.

Dorothy Cannon was sworn in with John Brady, Attorney, present on behalf of the opposition, and testified in opposition to the application and stated that she is also an adjacent property owner; that the greenhouse has only been on the property for a few years; that the property is only 415-foot wide; that the requested variance does not seem to be a reasonable request for that size parcel; that the variance request is to neither relieve a hardship or a necessity; and that they have concern for the noise created from the dogs.

In rebuttal, Joe Conaway, stated that the greenhouse has been on the property for 5-years; that by combining the two parcels the proposed use is permitted by the County Zoning Ordinance; that the proposed clinic will reduce the amount of traffic to the area; and that the opposition does not live on the property.

In rebuttal, Chris Brandt, stated that he will be living on the property and plans to keep the noise level down; that the greenhouse measures 50' x 100'; that the greenhouse is heated and ventilated; that the animals will only be on the property for a short period of time; that the animals will only need to stay on the property due to surgeries; that he does not breed any animals; and that he has a waste removal service.

In rebuttal, Dorothy Cannon, stated that she has spoken with three realtors; that they have all said the dog kennel will effect her property value; that she may build a dwelling and move to the area in the future; that she would also like to develop her land;

that the previous business was not a very large business as portrayed by the Applicant; and that she is strongly opposed to the application.

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

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the case be **left open for determination of the exact distance from the greenhouse and pole building from all the property lines**. Vote carried 5 – 0.

Minutes
August 29, 2005
Page 3

Case No. 9191 – James Westerberg and Jennifer Holcombe – north of Road 299, east of Route 24, being Lot 21 and 23 within Steele Land development.

A variance from the minimum square footage requirement for a parcel, a variance from the minimum lot width requirement for a parcel, and a variance from the rear yard setback requirement.

Ms. Hudson presented the case. James Westerberg was sworn in and testified requesting a 9,705-square-foot variance from the required 20,000-square-foot lot size requirement for Lot 23, an 85.3-foot variance from the required 150-foot lot width requirement for Lot 21, a 12,705-square-foot variance from the required 20,000-square-foot lot size requirement for Lot 21 and a 64.7-foot variance from the required 150-foot lot width requirement for Lot 23; that he wants to subdivide the existing parcel; that the existing dwelling will remain on an 85-foot wide lot; that the existing dwelling was a bed and breakfast; that the proposed building lot will be 65-foot wide; that the proposed dwelling will meet all the required setback requirements; and that the shed will be moved to comply with the required setback requirements.

George Lightcap and Don Whittle were sworn in and testified in opposition to the application and stated that the property has not been maintained for some time; that the grass is high and there is trash piled up; and that they have no objection as long as the property stays residential and is maintained properly.

In rebuttal, James Westerberg, stated that the dwellings will be connected to County Sewer; that the trash has been removed and he will have the grass cut; that the existing dwelling will be remodeled and sold; and that he can have the property cleaned up within 2-weeks.

By a show of hands 8 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. Mills, seconded by Mr. McCabe, and carried unanimously that the variances be **granted with the stipulation that the property will be cleaned up within 2-weeks and maintained thereafter and that the bed and breakfast will no longer be in effect, and since it meets all the standards for granting a variance.** Vote carried 5 – 0.

Case No. 9192 – Susan Arner – north of Road 404, 1,650 feet east of Road 569.

Minutes
August 29, 2005
Page 4

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

Ms. Hudson presented the case. Susan Arner, Marie Carroll and Bernice Arner were sworn in and testified requesting a special use exception to place a manufactured home on a medical hardship basis; that she cares for her father; that there is currently a 1972 unit on the property; that she would like to upgrade to a double-wide unit; and that the proposed unit will not be attached to the existing dwelling.

Rosalind Weatherby was sworn in and testified in opposition to the application and stated that she did not understand the public notice description; and that after she understood the location of the proposed unit she had no objection to the application.

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

Motion by Mr. Mills, seconded by Mr. McCabe, 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.

Case No. 9193 – Gary and Robin Short – east of Route 17, north of Field Avenue, being Lot 13 within Smithfield Acres development.

A variance from the rear yard setback requirement.

Ms. Hudson presented the case. Gary Short was sworn in and testified requesting a 3.5-foot variance from the required 5-foot rear yard setback requirement for a shed and a 0.6-foot variance from the required 5-foot rear yard setback requirement for a detached garage; that the shed was built 10-years ago; that his original property markers were removed at one time; that he drove a metal rod in the ground to mark his property lines; that he had a survey done and discovered the encroachment; and that he submitted a letter from the previous owner.

Leona Smith was sworn in and testified in opposition to the application and stated that her mother-in-law is the adjacent property owner; that her property is farmed; that her only concern is that the buildings are so close to the property line it could hinder the farm equipment; that she does not want to be responsible for any damage done to the buildings from the farm equipment; that there is a door on the side of the garage facing her property line; and that she is concerned he will have to use her property to access the door.

Minutes
August 29, 2005
Page 5

In rebuttal, Gary Short, stated that he will move the door to the side of the garage; that he will not use his neighbor's property for access to the building; and that he has had no problems with the farm equipment with his shed.

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

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 and that the Applicant will stay on his own property.** Vote carried 5 – 0.

Case No. 9194 – Robert and Sara Balint – north of Route 54, east of Blue Bill Drive, being Lot 5, Block G within Swann Keys development.

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

Ms. Hudson presented the case. Bill Houlahan was sworn in and testified requesting a 0.2-foot variance from the required 10-foot side yard setback requirement for a dwelling, a 2.4-foot variance from the required 10-foot front yard setback requirement for a dwelling, a 0.9-foot variance from the required 5-foot rear yard setback requirement for a shed and a 0.7-foot variance from the required 5-foot side yard setback requirement for a shed; that they replaced the existing unit; that a survey was done to show the proper location of the dwelling; that an error was made when placing the dwelling on the lot; that they originally thought the shed could be moved into compliance; that the shed has been on the lot for years; and that the Homeowner's Association is in support of the application.

The Board members 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 **tabled until September 12, 2005 to allow the Board members to take another look at the property.** Vote carried 5 – 0.

Case No. 9195 – Liborio LP – east of Fairfield Road, corner of Route 24.

A variance from the minimum parking space requirement for a shopping center.

Ms. Hudson presented the case. Roger Gross and Ray Holt were sworn in with Lee Ramunno, Attorney, present on behalf of the application and testified requesting a 1-parking space variance from the required 5-parking space requirement for a shopping center; that they plan to increase the store size 1,700-square-foot; that the furniture store is a separate building from the shopping center; that 70-parking spaces are required; that

Minutes

August 29, 2005

Page 6

there will be 60-parking spaces available; and that they would have no objection to the variance to only be valid for the furniture store.

Mark Grahney was sworn in and testified in support of the application and stated that there is no parking issues at the shopping center; that he is concerned about what the plan would be if the State of Delaware widens Route 24; and that a portion of his property had to be dedicated to the State of Delaware prior to his business being permitted an entrance.

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

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the variance be **granted with the stipulation the variance from parking space requirement is only for the use of this building as a furniture store.** Vote carried 5 – 0.

Case No. 9196 – Robert and Margaret Steele – east of Route One, 240 feet north of Delaware Avenue, being Lot 9, Section B.

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

Ms. Hudson presented the case. Robert and Margaret Steele were sworn in and testified requesting a 20-foot variance from the required 30-foot front yard setback requirement, a 2.2-foot variance from the required 10-foot side yard setback requirement, a 1.9-foot variance from the required 10-foot side yard setback requirement and an 8-foot variance from the required 42-foot maximum height requirement for a proposed dwelling; that the existing dwelling will be demolished to the foundation; that the proposed dwelling will be in line with the other dwellings on the street; and that the dwelling will have a peaked roof for aesthetics only.

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 variances 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. 9197 – Charles F. Wilson, Jr. – east of Road 273A, north of Seventh Street, being Units 301, 302 and 303 within Bay Vista development.

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

Minutes
August 29, 2005
Page 7

Ms. Hudson presented the case. Charles Wilson, Jr. was sworn in and testified requesting a 2.3-foot variance from the required 15-foot side yard setback requirement and a 4.4-foot variance from the required 20-foot rear yard setback requirement for a second story addition; that the existing dwelling was non-conforming; that the existing dwelling has had fire damage; that the second story addition will be new construction; and that the shed will be moved into compliance or removed altogether.

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 requirements for granting a variance**. Vote carried 5 – 0.

Case No. 9198 – AAA Storage Limited Partnership – southwest of Route One, 2,800 feet southeast of Road 265.

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

Ms. Hudson presented the case. Laura Ritter was sworn in and testified requesting a special use exception to replace an existing billboard and a 43-foot variance from the required 50-foot side yard setback requirement, a 40.5-foot variance from the required 50-foot side yard setback requirement, a 25-foot variance from the 25-foot height requirement for a billboard, a 10-foot variance from the required 25-foot height requirement, a 660-square-foot variance from the required 300-square-foot maximum allowable square foot for a billboard and an 84-square-foot variance from the 300-square-foot maximum allowable square footage for a billboard; that the existing billboards are 40-years old; that the proposed billboards will be steel mono-pole structures; that one billboard measures 12' x 32' and is 2-sided; that the other billboard measures 12' x 80'

and is only 1-sided; that the sizes of the billboard is not changing; and that she submitted a letter of support.

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. McCabe, and carried unanimously that the variances and special use exception be **granted for the determined sizes and since the structures have pre-existed and meets the standards for granting a variance.**

Minutes

August 29, 2005

Page 8

Vote carried 5 – 0.

Case No. 9199 – Leslie King – west of U.S. Route 13A, 1,540 feet south of Road 501.

A special use exception to operate a day care facility.

Ms. Hudson presented the case. Leslie King was sworn in and testified requesting a special use exception to operate a day care facility; that she has an existing day care with 9-children; that she wants to increase the number of children to 14; that she has been in business for 6-years; that her hours of operation vary due to parents that work shift work; that she cares for children ages infant to 12-years old, Monday through Friday; and that there is adequate parking.

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. Mills, and carried unanimously that the special use exception be **granted since it will have no substantial effect to the neighborhood.** Vote carried 5 – 0.

Case No. 9200 – Billie Taulbee – east of Road 31, 2,250 feet northeast of Road 30.

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

Ms. Hudson presented the case. Billie Taulbee was sworn in and testified requesting a special use exception from the provisions and requirements to place a manufactured home on a parcel; that he went to the Building Permit department prior to purchasing the unit; that he was told he could place the unit on the property; that when he came in to apply for the permit he was told the unit was too old; that the unit is a 1990; that the previous unit on the lot was a 1994 and totally trashed; that the parcel is 7-acres

in size; that the proposed unit will have vinyl siding and a shingled roof; and that he submitted pictures.

Donald Perkins was sworn in and testified in opposition to the application and stated that he is the adjacent property owner; and that he is concerned with the impact a 1990 manufactured home will have on his property.

In rebuttal, Billie Taulbee, stated that the unit will be for his own personal use; that he has cleaned the property up since he has purchased the lot; that he plans to have a

Minutes
August 29, 2005
Page 9

block foundation under the unit within the next 2-years; and that he will continue to make upgrades to the property.

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

Motion by Mr. Workman, seconded by Mr. McCabe, and carried unanimously that the special use exception be **granted with the stipulation that a block foundation be placed under the unit within 2-years, since it is an improvement to the lot, and since it will not alter the character of the neighborhood.** Vote carried 5 – 0.

Case No. 9201 – James Westerberg and Layne Thomas Builders, Inc. – south of Route 54, south of Garfield Avenue, being Lot 13, Block 2 within Edgewater Acres development.

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

Ms. Hudson presented the case. James Westerberg was sworn in and testified requesting a 0.1-foot variance from the required 30-foot front yard setback requirement and a 3.4-foot variance from the required 10-foot side yard setback requirement for a set of steps to the second floor; that he was granted a variance on November 11, 2004; that he missed the measurement; and that he apologizes to the Board for the second request.

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 variances be **granted since it will not alter the character of the neighborhood and is a minimum variance to afford relief.** Vote carried 5 – 0.

Case No. 9202 – Ryan Homes – north of Route 9, corner of Road 265, being Lots 37 and 38 within Mills Chase development.

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

Ms. Hudson presented the case. Cathy Overton was sworn in and testified requesting a special use exception to place a manufactured home type structure as a sales office; that the unit is needed until the model home can be completed; that the use will only be needed for six (6) months; that there will be landscaping around that unit; and that the unit will be skirted and have a handicap ramp.

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

Minutes

August 29, 2005

Page 10

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 special use exception be **granted for a period of six (6) months and with the condition that the area around the unit be landscaped, and since it will not alter the character of the neighborhood.** Vote carried 5 – 0.

OLD BUSINESS

Case No. 9101 – Cingular Wireless – west side of intersection of Road 365 and Road 363.

A special use exception to place a telecommunications tower.

See the motion for the Revised Agenda.

Case No. 9174 – Cingular Wireless – south of Sharptown Road (Road 24), 803.69 feet east of Branch School Road (Road 514).

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

See the motion for the Revised Agenda.

Case No. 9175 – Cingular Wireless – west of Pennsylvania Avenue, east corner of Route One.

A special use exception to place a telecommunications tower and a variance from the setback requirements.

See the motion for the Revised Agenda.

Case No. 9181 – Sheila Warrington – northwest of Route 17, 500 feet northeast of Road 52C.

An appeal of the director's decision.

The Board discussed the case which has been tabled since August 15, 2005.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously to **uphold the Director's decision since DNREC has confirmed that an emergency permit was issued, that the staff can not be held liable to question or investigate**

Minutes

August 29, 2005

Page 11

permits from other agencies, and since DNREC has issued a septic system for the site, and that a Certificate of Occupancy will not be issued until a completion report is obtained from DNREC. Vote carried 5 – 0.

Case No. 9187 – Bonnie Darden – southwest of Route One, Center Avenue, being Lot C-12 within Sea Air Mobile City Mobile Home Park.

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

Ms. Hudson reminded the Board of all the variances needed on the lot.

The Board discussed the case which has been tabled since August 15, 2005.

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

OTHER BUSINESS

Case No. 8625 – Rex Barrett – west of Road 318, north of Road 48, being Lot 10 within Davidson-Moore Development.

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

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the time extension be **granted for a period of six (6) months.** Vote carried 5 – 0.

Meeting Adjourned 10:30 p.m.