



*Board of Adjustment*  
Agendas & Minutes

**MINUTES OF DECEMBER 19, 2005**

The regular meeting of the Sussex County Board of Adjustment was held on December 19, 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 as circulated. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously to approve the Minutes of December 5, 2005 and December 12, 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. 9339 – Charles and Patricia Firestone** – southwest of Road 266, 400 feet northeast of Road 266A, being Lot 4A within Capes Cove Mobile Home Park.

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

Ms. Hudson presented the case. Patricia Firestone and Pete Antenalla were sworn in and testified requesting a 5-foot variance from the required 5-foot side yard setback requirement, a 2-foot variance from the required 20-foot separation requirement between units and a 2.3-foot variance from the required 20-foot separation requirement between units in a mobile home park; that the existing unit measures 20.5' x 48'; that the year of the existing unit is a 1968; that she wants to place a new 23'4" x 44' double-wide manufactured home; that there is a total of 13-units in the mobile home park; that there have been other variances granted in the park; that her neighbor is in support of the application; that her neighbor also has placed a double-wide unit on her lot; that all the units are on the property line; 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. Hudson, and carried unanimously to take the case under advisement. Vote carried 5 – 0.

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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 case be **tabled until January 9, 2006**. Vote carried 5 – 0.

**Case No. 9340 – Bayshore Plaza II, LLC** – south of Route 24, 1,500 feet west of Route 5 (Long Neck Road).

A special use exception for off-premise parking.

Ms. Hudson presented the case. Gary McCrea and Mark Davidson were sworn in and testified requesting a special use exception for off-premise parking; that the proposed shopping center will be located on two different parcels; that on Parcel 4 there will be 32,000-square-foot of general retail space; that on Parcel 5 there will be a 63,000-square-foot grocery store; that the required parking for the grocery store is 246-spaces; that the required parking for the general retail store is 160-spaces; that between the two parcels they have a total of 475-parking spaces; that by sharing the parking between the two parcels they will meet the parking requirements for both proposed structures; and that there will be no adverse effect to the neighborhood.

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 special use exception be **granted with the stipulation that 79-parking spaces be shared between Parcel 4 and Parcel 5**. Vote carried 5 – 0.

**Case No. 9341 – Gerald and Emily Hocker** – intersection of Road 357 and Road 358.

A special use exception for an off-premise sign.

Ms. Hudson presented the case. Darlene Gray was sworn in and testified requesting a special use exception for an off-premise sign; that the sign is to advertise a new development approximately 2-miles down from the intersection; that the existing sign was not used anymore; that they just refurbished the existing sign; that the

development consists of 84-lots; that the use of the sign is needed for approximately 2-years; that the sign will be removed when the use is no longer needed; and that she submitted a letter from the property owner and pictures.

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

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Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the case be **left open to allow the Applicant to provide the size of the sign to the Board**.  
Vote carried 5 – 0.

**Case No. 9342 – Coroc Rehoboth I LLC** – southwest of Route One, 1,050 feet southeast of Road 283.

A variance from the minimum parking space requirement.

Ms. Hudson presented the case. Amy Norgay was sworn in with Jim Fuqua, Attorney, present on behalf of the application, and testified requesting a 17-parking space variance from the required 71-parking space requirement; that the existing shopping center has been in operation for 9-years; that the parking space requirement for the center is 931-spaces; that the center has 937-parking spaces available; that the center wants to create a pad site for a proposed restaurant; that the proposed building will be approximately 5,800-square-foot with a patron area of 3,000-square-foot; that the Applicant wants to add this restaurant to the center due to customer surveys; that the main comment from these surveys has been to have a sit down restaurant within walking distance; that there will be a total of 985-parking spaces available on the entire site; that they feel patrons from the center will already be parked and walk to the restaurant; and that there will no negative effect to the community.

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**.  
Vote carried 5 – 0.

**Case No. 9343 – Dino and Lucy Rapposelli** – south of Road 277, northeast of Marina Drive, being Lots 16 and 17, Block F, Section 1 within Angola By The Bay development.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. Dino and Lucy Rapposelli were sworn in and testified requesting a 1.6-foot variance from the required 10-foot side yard setback requirement; that there is an existing 16' x 20' deck; that he wants to enclose the deck with a screen porch; that the rear property line is adjacent to a common area; and that the Homeowner's Association is in support of 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. Hudson, seconded by Mr. McCabe, 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. 9344 – Kevin and Michael Garber** – south of Route 54, west of Grant Avenue, being Lot 56, Block 6 within Cape Windsor development.

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

Ms. Hudson presented the case. Kevin Garber was sworn in and testified requesting a 5-foot variance from the required 10-foot side yard setback requirement and a 5-foot variance from the required 20-foot rear yard setback requirement for a proposed dwelling; that the lot is improved by a manufactured home with an addition and a deck and a shed; that all existing improvements will be removed; that the proposed 2-story dwelling will be approximately 2,400-square-foot in size; that the Homeowner's Association is in support of the application; that he has owned the property for 3-years; and that it will not alter the character of the neighborhood.

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 there have been numerous variances granted in the development**. Vote carried 5 – 0.

**Case No. 9345 – Anna C. Wade** – south of Route 54, south of Grant Avenue, being Lot 30, Block 6 within Cape Windsor development.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. Linda Nielson and Debra Rokicki were sworn in and testified requesting a 4-foot variance from the required 10-foot side yard setback requirement for a proposed dwelling; that the proposed dwelling will measure 26' x 52';

that the lot measures 45'x 120'; that 2-sides of the property are adjacent to the water; that the usual variance granted in the development is 5-foot; that due to the bulkhead they are requesting an extra foot; that the development is concerned that being so close will create a fire hazard; that approximately 80% of the lots have improvements that don't allow enough room for fire trucks; and that the existing deck on the property is closer to the property than the proposed dwelling will be.

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

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Ms. Hudson stated that the office received 2 letters in opposition to 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 **tabled until January 9, 2006**. Vote carried 5 – 0.

**Case No. 9346 – Tunnell Companies** – southwest of Road 298, 3,600 feet east of Route 24, being Baywood development.

A variance from the maximum height requirement.

Ms. Hudson presented the case. Robert Tunnell and Tony LeCates were sworn in and testified requesting a 17-foot variance from the required 42-foot maximum height requirement for a proposed sales center; that the structure will be approximately 23,700-square-foot in size; that the main floor will be a sales center, that the basement level will be a multi-purpose area; that the second floor will be office space; that the sales center will be needed for approximately 10 to 12 more years; that once the sales center is no longer needed they plan to expand the community center; that they have been granted variances for the existing water tower and clubhouse; that the only encroachment will be the cupola; that there is no access to the cupola, since it is strictly ornamental; 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. Hudson, and carried unanimously that the variance be **granted since it will not alter the character of the neighborhood and since it will enable reasonable use of the property**. Vote carried 5 – 0.

**Case No. 9347 – Robino Builders** – north of Road 324, 2,445 feet west of Road 321.

A special use exception for a temporary sales center.

No one appeared on behalf of the application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **denied due to a lack of record of support**. Vote carried 5 – 0.

**Case No. 9348 – Centex Homes** – northwest of Road 285, 2,327 feet east of Road 286, within The Ridings of Rehoboth development.

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

Ms. Hudson presented the case. Jim Fuqua, Attorney, present on behalf of the application, testified requesting a special use exception to place a manufactured home type structure for a sales office; that there will be 2-units on the site for sales, one for each builder; that the development was approved in August 2005 for 225-lots; that the units will be adjacent to one another; that there will be adequate parking and each unit will have landscaping; that the units will be needed until the model homes can be completed; and that they would like the use for a period of 2-years.

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

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously that the special use exception be **granted for a period of two (2) years**. Vote carried 5 – 0.

**Case No. 9349 – Kelley K. Sheridan** – east of Road 413B, 3,450 feet west of Route 26.

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

Ms. Hudson presented the case. Mary and Kelley Sheridan were sworn in and testified requesting a special use exception to place a manufactured home on a medical hardship basis; that the proposed unit will be for his parents; that the unit will measure 28'x 72'; that the parcel is 4.37-acres; and that they understand the restrictions and stipulations that come with approval of a medical hardship case.

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**. Vote carried 5 – 0.

**Case No. 9350 – William Smith** – north of Route 54, east of Blue Bill Drive, being Lot 62, Block G within Swann Keys development.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. William Smith was sworn in and testified requesting a 1-foot variance from the required 5-foot side yard setback requirement for an existing shed; that he purchased the property 3-years ago; that he purchased a small shed;

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that he obtained the building permit; that he made a mistake when measuring for the setback; and that he has placed the shed as close to the dwelling as possible.

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

**Case No. 9351 – Betty and Walter Hall, Sr.** – east of Road 312A, 319 feet north of Road 312, being Lot H3 within Isaac W. Harmon Lots development.

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

Ms. Hudson presented the case. Betty Hall was sworn in and testified requesting a special use exception to place a manufactured home on a medical hardship basis; that the unit has already been approved by the Board for a medical hardship basis; that her son lives in the unit; that he helps care for his parents; that she and her husband need their son nearby; that she apologizes to the Board for letting the special use lapse; and that she understands the restrictions and stipulations that come with approval of a medical hardship basis.

By a show of hands 3 parties appeared in support of the application.

The Board members 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 two (2) years**. Vote carried 5 – 0.

**Case No. 9352 – Monica Simpler** – north of Route 18, 1,200 feet west of Road 546.

A variance from the rear yard setback requirement.

Ms. Hudson presented the case. Shannon Carmean, Attorney, present on behalf of the application, testified requesting a 1-foot variance from the required 5-foot rear yard setback requirement for an existing pool house; that the pool and fence comply with the required setback requirements; that the encroachment was discovered at settlement; that the pool house and pool have been on the property for over 30-years; that the property is unique in shape; that the encroachment was not created by the Applicant; that

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the variance will enable reasonable use of the property; that it will not alter the character of the neighborhood; that it is the minimum variance to afford relief; and that she submitted an affidavit and copy of the survey.

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

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the variance be **granted since it meets the standards for granting a variance.**

Vote carried 5 – 0.

The Board recessed for 10-minutes.

**Case No. 9353 – Cingular Wireless, LLC** – south of Road 78, 190 feet northwest of Road 490A.

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

Ms. Hudson presented the case. Andrew Petersohn, Susan Tierney, Tom Zolna and Robert McKenna were sworn in with Pamela Scott, Attorney, present on behalf of the application, and testified requesting a special use exception to place a telecommunications tower and a 30-foot variance from the required 150-foot maximum height requirement for a tower; that the proposed tower will be 180-foot in height; that there is a significant gap in coverage surrounding the proposed location; that the tower will meet all the required setback requirements; that the parcel is 22.47-acres in size; that there will be a 60'x 60' fenced in compound area at the base of the tower; that the fence will be 7-foot in height with 1-foot of barbwire; that the proposed tower will be disguised to have the appearance of a tree; that the monopole is painted brown and branches start at approximately 105-foot high; that over 50% of all 911-calls are from mobile phone service; that there is no other structure to collocate on within a 2-mile radius of proposed site; that they submitted a report to show the affect to property values from a nearby tower site; that due to the proposed tree top tower there needs to be an adjustment in the lighting requirement; that it would be inconsistent to have lighting within the branches on

the tower; that the proposed site is adjacent to a wooded area and the proposed tree style will better adhere to neighbors concerns; and that they submitted reports and pictures.

Susanne Layton was sworn in and testified in support of the application and stated that she has recently built a new home in the area; that she has no service when she is on her property; that she is concerned with her personal safety if there is ever an emergency and cannot use her cellular phone; and that she has spoken with property owners that live near a tower and they have no problem with the nearby tower.

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Joe LeCates was sworn in and testified in support of the application and stated that he is a construction worker for the property owner of the proposed site for the tower; that he uses a cellular phone for work all the time; that the area is in great need of a tower; that the need for towers and cell phone coverage is not going away; and that he feels once the tower is up no one will even notice it after a period of time.

Danny Kovak was sworn in and testified in support of the application and stated that he travels the Woodland Ferry Road everyday; and that he once had to leave a man on the side of the road to drive to a location where he could gain coverage to use his cellular phone.

Raymond Phillips was sworn in and testified in support of the application and stated that he hunts in the area; that he cannot gain access to use his phone; and that there is no coverage within a 5-mile radius.

Byard Layton was sworn in and testified in support of the application and stated that he is the property owner of the proposed tower site; that he has moved the proposed location to an area where it should not obstruct where anyone lives; that there is a great need for coverage in this area; and that an existing poultry farm is on the proposed location.

Holly Conaway was sworn in with David Hutt, Attorney, present of behalf of the opposition, and stated that she is an adjacent property owner; that there are no visual blights to this area; that the tower is out of character with the area; that the proposed commercial use is within a strictly residential area; that an existing deed restriction on the first location prevented the tower from going on that property; that the property has been her family's for years; that they submitted a petition in opposition to the application; and that the tower will have a direct adverse effect to the historical ferry that has run since 1793.

Craig Lucasvik was sworn in and testified in opposition to the application and stated that he is with the National Historical 106 Study; that he has not been shown any plans in reference to the tower from the Applicant; that they can mitigate with the

Applicant on what is best for the area; and that they do not have the power to deny the Applicant the ability to erect a tower.

David Hutt, Attorney, stated that Preservation Delaware and Department of Natural Resources have concerns for a tower to this area; that the tower could effect the migration of birds; that lighting on the tower can cause confusion to the birds; and that he referred to letters submitted to the Board.

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Jeff Chorman was sworn in and testified in opposition to the application and stated that the proposed tower creates concern for his crop dusting business; that the FAA does not govern these type of towers; that with so many towers being erected creates a hardship for his planes; that the planes need approximately 1-mile turn around for each site they dust; that by having these towers up throughout the County creates a hardship for his pilots; that he is also concerned for the tree type tower; that a bright aluminum pole is easier for his pilots to see; that the concern for these towers is a national concern for all crop dusters; and that the pilots must make mental notes of when a tower is erected in their area.

Glenn Piper was sworn in and testified in opposition to the application and stated that he has been a Real Estate Appraiser in the area for 12-years; that it is impossible to isolate one specific reason the effect a tower will have to the surrounding property values; that his findings are from a New Zealand report; and that it is his personal opinion that there is a 20% loss in property values when a tower is visible to the site.

In rebuttal, Andrew Petersohn, stated that the reason for the height of the tower is to effectively handoff to cover the gap in coverage; that a 150-foot high tower will enable reasonable handoff to the other tower sites; that to put multiple lower towers up would create more interference with all parties for and against towers.

Russ McCabe was sworn in and testified in opposition to the application and stated that he is with the Delaware Historical State Review Board; that the Woodland Ferry was added to the National Registrar in 1973; that the Woodland Ferry has been dated as far back as the 1680's; that the ferry is one of the oldest operating ferry's in the country; and that tourism for historical sites is increasing.

Mark Allen was sworn in and testified in opposition to the application and stated that he is in Marine construction and has been a Sussex County resident his whole life; that he has Cingular service and his worse service is at his home; that he does not feel enough alternative sites have been investigated; that the area has a pure untouched skyline; and that there have been 9 Bald Eagles sighted in the area.

Christina Darby was sworn in and testified in opposition to the application and stated that she lives along the river; that she feels we lived life just fine before cellular phones; and that we should guard that type of life we have left.

Aaron Pearson was sworn in and testified in opposition to the application and stated that he was attracted to this area to live in the country; that he has Verizon Service and has no problems; that he feels the Applicant should be able to collocate on Verizon towers; and that the tower is all about money.

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Jesse Conaway was sworn in and testified in opposition to the application and stated that everyone in Sussex County knows this is the wrong site for a tower; that he feels the possibility to erect a tower is too easy; that to build most things in the area a property owner has to go through great hoops to get permission to build; and that he plans to build on his family's property in the future.

In rebuttal, Pamela Scott, stated that the Applicant always has a 106 Study done when proposing a tower site; that the 106 Study only makes recommendations to the proposed site; that the special use standard is to show no adverse effect to the community; that the Applicant has demonstrated this showing the studies done within the past 10-years in Delaware; that the New Zealand study shows varying results; that the code permits commercial uses within a residential area when approval is obtained by the Board; that the towers location has been moved to not impact the migration of the birds; and that they have submitted ample evidence to support the need of a telecommunications towers to this area.

By a show of hands 8 parties appeared in support of the application.

Ms. Hudson stated that the office received a petition with 216-signatures in support of the application.

By a show of hands 7 parties appeared in opposition to the application.

Ms. Hudson stated that the office received a petition with 117-signatures in opposition to the application.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the case be **tabled until the Board could review all the information submitted from both the Applicant and the opposition.** Vote carried 5 – 0.

### **OLD BUSINESS**

**Case No. 9310 – Cingular Wireless** – west of Road 310, 1,650 feet north of Route 24.

A special use exception for a telecommunications tower.

The Board discussed the case which has been tabled since December 5, 2005.

Motion by Mr. Workman, seconded by Mr. McCabe, and carried unanimously that the case be **tabled until January 9, 2006**. Vote carried 5 – 0.

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**Case No. 9318 – Mary Teresa Morrison** – southwest of Road 275A, north of Strawberry Way, being Lot 15 within Breezewood development.

A variance from the side yard setback requirement.

The Board discussed the case which has been tabled since December 5, 2005.

Motion by Mr. McCabe, seconded by Mr. Workman, and carried that the variance be **granted since it will not alter the character of the neighborhood**.  
Vote carried 4 – 1.

**Case No. 9319 – Chase Communities** – east of Road 274, .7 miles south of road 275, being Oak Creek development.

A variance from the front yard setback requirement.

The Board discussed the case which has been tabled since December 5, 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. 9320 – River Asphalt L.L.C.** – north of Road 333, west of Penn Central Railroad.

A special use exception for an asphalt plant.

The Board discussed the case which has been tabled since December 5, 2005.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted with the following conditions:**

1. **All required Delaware Department of Natural Resources and Environmental Control (DNREC) permits will be obtained and all operations will be in compliance with said permits.**
2. **Truck traffic shall utilize the existing access road and entrance on County Road 333. Truck traffic will enter the site using County Road 333 coming East from County Road 334. All truck traffic exiting the site will turn right (West) on County Road 333 to connect with County Road 334.**
3. **All driveways utilized by trucks shall be blacktopped to control the dust.**

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4. **Normal hours of operation shall generally be limited to 5:00 a.m. to 7:00 p.m. with the exception of “Contractual Obligations” requiring continuous operations exceeding normal hours and to notify the County of any continuous operations that will exceed 3-consecutive days of 24-hour operation.**
5. **The operation shall be in substantial conformity with the site plan prepared by the H&K Group dated September 12, 2005.**

Vote carried 5 – 0.

**Meeting Adjourned 11:30 p.m.**