



# BOARD OF ADJUSTMENT

## AGENDAS & MINUTES

### MINUTES OF APRIL 18, 2011

The regular meeting of the Sussex County Board of Adjustment was held on April 18, 2011, 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. Dale Callaway, Mr. Ronald McCabe, Mr. John Mills, Mr. Brent Workman and Mr. Jeff Hudson, with Mr. Richard Berl – Assistant County Attorney, and staff members, Mrs. Susan Isaacs – Chief Zoning Inspector and Mrs. Jennifer Norwood – Recording Secretary.

Motion by Mr. McCabe, seconded by Mr. Workman, 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 April 4, 2011 meeting 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. 10779 – Horace L. Walker** – south of Road 362 corner of Florida Circle and Florida Drive, being Lot 3 within Plantation Park development.

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

Mrs. Isaacs presented the case. Horace Walker and Gil Fleming were sworn in and testified requesting a 5.6-foot variance from the required 30-foot front yard setback requirement for a through lot; that the proposed unit will measure 26.7' x 64'; that the existing unit measured 14' x 70' with a 10' x 19' enclosed patio; that the proposed unit will not encroach as much as the existing unit does; that he plans to move the sheds into compliance; that the lot is unique since it is a through lot; that the proposed unit will not alter the character of the neighborhood; that the lot was not created by the Applicant; and that this is the minimum variance to afford relief.

The Board found 2 parties 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 variance be **granted for the proposed unit only since it meets the standards for granting a variance**. Vote carried 5 – 0.

Minutes  
April 18, 2011  
Page 2

**Case No. 10789 – Robert F. Wright** – south of Route 1 (Coastal Highway) corner West of Road 207 (Johnson Road).

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Joseph McCallahan was sworn in and testified requesting a 20-foot variance from the required 50-foot rear yard setback requirement for a horse stable; that he wants to use an existing pole building to stable a horse; that he discovered the setback requirement when obtaining a building permit for the fence; that the property is unique in the fact that it is completely isolated; that it will not alter the character of the neighborhood; that the nearest dwelling is about 300-foot away; that it will enable reasonable use of the property; that it was not created by the Applicant because when the building was constructed he had no plans of using it for a horse; and that it is the minimum variance to afford relief.

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

Motion by Mr. Workman, seconded by Mr. Hudson, and carried unanimously that the variance be **granted since it will not alter the character of the neighborhood and since it is the minimum variance to afford relief**. Vote carried 5 – 0.

**Case No. 10790 – Christopher C. Brasure** – south of Zion Church Road, 300 feet East of Gum Road.

A special use exception for a billboard, variance from the setback requirements, maximum square footage and height requirements.

Mrs. Isaacs presented the case. Chris Brasure was sworn in and testified requesting a 600-square-foot variance from the required 300-square-foot maximum square-foot requirement for a billboard, a 4-foot variance from the required 25-foot maximum height requirement for a billboard, a 167.60-foot variance from the required 300-foot setback requirement from a dwelling, a 125.50-foot variance from the required 300-foot setback requirement from a dwelling, a 120.9- variance from the required 300-foot setback requirement from a dwelling, and a 167.20-foot variance from the required 300-foot setback requirement from a dwelling for a billboard; that the proposed billboard

will be a 29-foot high double-stacked billboard; that the property is zoned commercial; that the property is the future site for the Applicant's existing business; that there are several businesses in the area; that the family owns most of the surrounding properties; and that he submitted 3 letters in support of the application.

Minutes  
April 18, 2011  
Page 3

Carol Buchler was sworn in and testified in opposition to the application and stated that the existing billboard in the area drastically alters the character of the neighborhood; that they did not realize exactly what was being proposed when the hearing was held for the existing billboard in the area and did not appear in opposition; that since the billboard has been erected in the area it is a complete eyesore; that there are other businesses in the area, however all have small existing signage; that the proposed billboard is approximately ¼ to ½ mile from the existing billboard; that they are strongly opposed to multiple billboards in this area; that they are not opposed to the business moving on the property and having a sign for the business; that they submitted pictures; and that she feels the approval of another billboard will set a precedent and destroy the character of the neighborhood.

Dale Yost was sworn in and testified in opposition to the application and stated that he signed a petition in support of the application not realizing the Applicant was proposing a billboard; and that he was under the impression it was for a smaller sign for the Applicant's business.

James Harrington was sworn in and testified in opposition to the application and stated that he also signed a petition in support of the application; and that he feels the billboard will create a traffic hazard.

The Board found that 1 party appeared in support of the application.

The Board found that 10 parties appeared in opposition to the application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until May 2, 2011**. Vote carried 5 – 0.

**Case No. 10791 – Alvin Mast** – west of Road 613 (Memory Road) approximately 2,300 feet north of County Road 629 (Staytonville Road).

A variance from the rear yard setback requirement.

Mrs. Isaacs presented the case. Alvin Mast was sworn in with James Fuqua, Attorney, and testified requesting a 5.8-foot variance from the required 20-foot rear yard setback requirement for an existing dwelling; that the property is located in Kent County

and Sussex County; that the proposed rear yard property line will run with the existing boundary lines for the Counties; that the property is unique due the fact it is in two different Counties; that the variance will enable reasonable use of the property; that the family owns the adjacent properties; that the deed for the property was recorded in Kent County; that the Sussex County portion of the property is taxed with another parcel

Minutes  
April 18, 2011  
Page 4

owned by the family; and that the variance will help clarify records for both Counties, and give this portion of land its own parcel number.

The Board found that 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 the standards for granting a variance.**

Vote carried 5 – 0.

**Case No. 10792 – Edward Myszak, Jr.** – south of Route 54, east of Roosevelt Avenue, being Lot 11 within Cape Windsor Development.

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Corey Anderson was sworn in and testified requesting a 3.5-foot variance from the required 10-foot side yard setback requirement for steps to a second floor screen porch; that there are unique setback requirements in the development; that when he obtained the building permit he was not aware that steps to a second level porch could not encroach; that the steps for the second level porch do not encroach any further than the existing steps; that the platform and steps are required by Building Code; that there is no other location for the steps due to the existing garage and floor plan of the existing dwelling; that it cannot be otherwise developed; and that he submitted pictures.

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 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. 10793 – Dana Weller** – northwest of Route 485, 2,375 feet, east of Route 13.

A special use exception to operate a day care facility.

Mrs. Isaacs presented the case. Dana Weller was sworn in and testified requesting a special use exception to operate a day care facility; that she has had a family day care for 12-years; that she wants to expand her daycare to care for up to 12-children; that her hours are Monday through Friday from 6:00 a.m. to 5:00 p.m.; that the children's ages will be 6-weeks old to 6-years old; that she will need 1 employee if she has over 9-

Minutes

April 18, 2011

Page 5

children; that there is ample room for parking and parents to turn around in the driveway; and that she plans to fence in the back yard for a play area for the children.

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

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the special use exception be **granted since it will have no adverse effect to the neighborhood**. Vote carried 5 – 0.

**Case No. 10783 – Joseph Angle** – south of Route 54 (Lighthouse Road), northwest of Sunflower Blvd, being Lot 226 Phase 8 within Americana Bayside Development.

Mrs. Isaacs presented the case. Joseph Angle was sworn in and testified requesting a 4.8-foot variance from the required 10-foot rear yard setback requirement for proposed screen porch on an existing deck; that the Architect Review Board approved the proposed screen porch; that the proposed porch will measure 8'x 14'; that there is no uniqueness to the property; that there is no practical difficulty; that it is created by the Applicant; that it will not alter the character of the neighborhood; that it is the minimum variance to afford relief; and that the rear yard of the property is adjacent to an existing buffer zone.

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 **denied since it does not meet the standards for granting a variance**. Vote carried 5 – 0.

**Case No. 10784 – Thomas J. Howard** – southeast intersection of Holland Glade Road and Hebron road, northeast of Worcester Drive, being Lot 230 within Canal Point Development.

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

Mrs. Isaacs presented the case. Thomas J. Howard was sworn in and testified requesting a 1-foot variance from the required 10-foot side yard setback requirement for a proposed outside shower and a 2.5-foot variance from the required 10-foot rear yard setback requirement for a proposed deck and porch; that the first plan of the proposed dwelling showed the proposed dwelling 14-foot from the property line; that after construction of the dwelling there was only 11-foot from the property line; that due to this difference it no longer left him enough room to build the proposed deck and porch;

Minutes

April 18, 2011

Page 6

that the proposed porch will be 12'x 18'; that the rear property line is adjacent to the Stormwater Management Pond; that the lots on either side of his are currently vacant; that the variance will enable reasonable use of the property; that it was not created by the Applicant since the first proposed location of the dwelling left him 14-foot; that it will not alter the character of the neighborhood; that it is the minimum variance to afford relief; and that he submitted 2 plot drawings.

Jane Patchell, Attorney, testified in opposition to the application and stated that she represented Canal Point; that the variance request does not meet the standards for granting a variance; that the lot is not unique in size; that there is no unnecessary hardship to the Applicant; that it is created by the Applicant in his desire to have a larger porch that will not comply with required setback requirements; that there are no other variances in the development; that the Applicant has not presented his plan to the Board of Review; that the Developer does not want a precedent set; that the approval of this variance will have a negative impact to the neighborhood; and that she submitted plot and deed restrictions.

The Board found that 1 party appeared in support of the application.

The Board found that 1 party appeared 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. McCabe, and carried unanimously that the variances be **granted since it meets the standards for granting a variance**. Vote carried 5 – 0.

### **OLD BUSINESS**

**Case No. 10778 – AT&T** – east of Route One, 100 feet north of Jefferson Bridge Road.

A special use exception for a telecommunication tower.

The Board discussed the case which has been tabled since March 21, 2011.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the special use exception be denied since it will have an adverse effect to the neighborhood. The vote by roll call: Mr. McCabe – yea, Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills-yea, and Mr. Callaway-yea. Vote carried 5 – 0.

Minutes  
April 18, 2011  
Page 7

**Case No. 10786 – George & Penelope Hackmann, Jr.** – north of Road 58B (Bayville Road), northwest of Bayview Circle West, being Lot 201 within Bayview Landing Development.

A variance from the rear yard setback requirement.

The Board discussed the case which has been tabled since April 4, 2011.

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

**Meeting Adjourned 9:15 p.m.**