

MINUTES OF OCTOBER 20, 2008

The regular meeting of the Sussex County Board of Adjustment was held on Monday October 20, 2008, 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. John Mills, Mr. Brent Workman and Mr. Jeff Hudson, with Mr. Richard Berl – Assistant County Attorney and staff members, Mr. Norman Rickard and Mrs. Kelly Passwaters – Recording Secretary.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously to approve the Revised Agenda as circulated. Vote carried 4 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of August 18, 2008 meeting as circulated. Vote carried 4 – 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. 10273 – Kenneth Mills- north of Road 361, 500 feet north of Road 363, being Unit 7 within Bahamas Beach Cottages.

A variance from the separation requirement between multi-family structures.

Mr. Rickard presented the case. Kenneth Mills was sworn in and testified requesting a 9-foot variance from the required 40-foot separation requirement between buildings; that the condo was built in 1993; that he purchased the unit in 1995; that he would like to construct a deck and sunroom; that his neighbor has a deck on the back of his unit; that he received approval from the Homeowners Association; and that other variances have been granted in the area.

The Board found that 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. Hudson, and carried unanimously that the variance be **granted since it is the minimum variance to afford relief and since it will not alter the essential character of the neighborhood.** Vote carried 4 – 0.

Case No. 10274 – Raymond S. Smethurst, Jr.- south of Old Country Road and Ann Avenue.

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

Mr. Rickard presented the case. Raymond Smethurst, Jr., Attorney, testified requesting a 34-foot variance from the required 75-foot lot width requirement for a parcel; that he would like to subdivide the parcel to create one (1) lot; that the existing farmhouse will be removed in the future; that the property is accessed from Ann Avenue; and that he would like to create the remaining three (3) lots in the future.

Jane Patchell, Attorney, testified on behalf of the opposition and stated that a portion of Rogers Avenue is not paved; that her client purchased the property with the understanding that it was a dead end; that the applicant created the lot that needs the variances; that there is safety and traffic concerns; and that her client would like to see the parcel remain undeveloped. **Revised 11/07/2008.**

Barbara Tower was sworn in and testified in opposition to the application and stated that there is noise problems with Lot 4 within Country Manor, which is owned by a family member of the applicant.

In Rebuttal, Mr. Smethurst stated the property was subdivide in the 1950's by his parents; that the opposition received a setback variance for their property; and that Rogers Avenue will be eventually paved.

The Board found that 4 parties appeared in opposition to the application.

Mr. Rickard stated the office received 3 letters in opposition to the application.

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until the November 3, 2008 meeting for the office staff to report on variances for adjacent properties.** Vote carried 4 – 0.

Case No. 10275 – David Carey- west of Route 26, 653 feet south of Road 424.

A variance from the minimum acreage requirement to retain a manufactured home and a variance from the side yard setback requirement.

Mr. Rickard presented the case. David Carey was sworn in and testified requesting to retain a manufactured home on less than 10 acres and a 0.4-foot variance from the required 15-foot side yard setback requirement; that the property will be subdivided; that his great grandmother resides in a manufactured home on the parcel that is residual lands; that she has life time rights to that property; that the applicant

would like to place a new home on the parcel; and that the manufactured home will be removed once it is no longer needed for his grandmother.

The Board found that 3 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. Hudson, and carried unanimously that the variances be **granted with the stipulation that once the manufactured home is removed it will not be replaced.** Vote carried 4 – 0.

Case No. 10276 – Christopher M. Holmon- south of Route 54, north of Bayberry Lane, being Lot 16, Block H, Subdivision 3 within Keen-Wik development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Christopher Holmon, Attorney, testified requesting a 1.7-foot variance from the required 10-foot side yard setback requirement; that the dwelling and staircase was built in 1985; that a certificate of occupancy was not issued; and that it would cause a hardship to removed the stairway that allows access to the 2nd floor deck.

Mr. Rickard read a letter into the record from Dean Malloy, Zoning Inspector.

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

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case be taken under advisement. Vote carried 4 – 0.

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 the November 3, 2008 meeting for a staff report.** Vote carried 4 – 0.

The Board took a 5-minute Recess

Case No. 10277 – Todd Wynn and Michael Bowden- south of Old Landing Road, Bay Drive, being Lot 12 within Rehoboth Bay Mobile Home Park.

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

Mr. Rickard presented the case. Gary Wilson was sworn in and testified on behalf of the applicant and requested a 2.2-foot variance from the required 20-foot separation requirement between units; that he would like to construct a porch on the manufactured home; that the manufactured home faces the water; and that many variances have been granted in the area.

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 meets the standards for granting a variance**. Vote carried 4 – 0.

Case No. 10278 – Stephen Hopkins and Ralph Cherry- north of Road 298, 1,978 feet northeast of Big Oak Drive.

A variance from the rear yard setback requirement.

Mr. Rickard presented the case. Stephen Hopkins and Ralph Cherry were sworn in and testified requesting a 20-foot variance from the required 20-foot rear yard setback requirement; that they would like to construct a deck; that the lot size presents exceptional and practical difficulties due to the setback of the septic system; that the deck will measure 20' x 20'; that the existing manufactured home will be removed and a new home will be placed; and that the new home will meet setback requirements.

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 variance be **granted since it meets the standards for granting a variance**. Vote carried 4 – 0.

Case No. 10279 – Robert and Diana Lawson- southeast of Route 18, east corner of Road 321.

A variance for additional ground signs and wall signs.

Mr. Rickard presented the case. Robert Lawson was sworn in and testified requesting a variance for two (2) additional ground signs and three (3) additional wall

signs; that he has owned the business for 4 ½ years; that he received a violation notice for the signs; that the business is located on the corner of two (2) major roads; and that his nephew owns a flag business in front of the service area.

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 meets the standards for granting a variance**. Vote carried 4 – 0.

Case No. 10280 – John Winkler- north of Road 465, west of Manchester Lane, being Lot 5 within Manchester Manor development.

A special use exception to place a windmill.

Mr. Rickard presented the case. John Winkler and Greg Menoche were sworn in and testified requesting a special use exception to place a windmill; that it will be on a single monopole; that it will be placed on the existing 7' x 7' concrete slab; that it will increase property value; that it is rated at 45 decibels; and that it will measure 12-foot in diameter.

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 special use exception be **granted since it will not substantially affect adversely the uses of adjacent and neighboring properties**. Vote carried 4 – 0.

Case No. 10281 – Harry and Penny Boley- east of Road 341B, south of South Dogwood Drive, being Lot 243 within Dogwood Acres development.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. Harry Boley and Beverly Jones were sworn in and testified requesting a 16-foot variance from the required 30-foot front yard setback requirement; that the existing home will be removed; and that due to the septic location the front yard setback requirement cannot be met.

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 4 – 0.

Case No. 10282 – Jack and Rebecca Orr- north of Road 361, east of Freeport Boulevard, being Unit 38 within Bahamas Beach Cottages.

A variance from the separation requirement between multi-family units.

Mr. Rickard presented the case. Rebecca Orr and David Elechko were sworn in and testified requesting a 10.7-foot variance from the required 40-foot separation requirement between units; that they would like to construct a deck and screen porch; that 10 units do not meet the separation requirement; and that they received approval from the Homeowners Association.

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 is unique and since it is the minimum to afford relief**. Vote carried 4 – 0.

Case No. 10283 – East Coast Bldg. Projects- east of Route One, south of Heather Lane, being Lot 24 within Bahamas Beach Cottages.

A variance from the rear yard setback requirement.

The application was withdrawn on October 6, 2008.

OLD BUSINESS

Case No. 10247 – Julie K. Harris- north of Featherbed Road, being Lot 8.

A special use exception to retain a manufactured home for storage and a special use exception for an apartment over accessory structure.

The Board discussed the case, which has been tabled since September 22, 2008.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception and variance be **granted with the stipulations that the apartment be no larger than 800-square feet and that manufactured home can only be used for storage and must be removed once an accessory structure is constructed**. Vote carried 4 – 0.

Case No. 10264 – Joseph Maggio- northeast intersection of Route 16 and Route 30.

A special use exception for an additional ground sign and wall signs.

The Board discussed the case, which has been tabled since October 6, 2008.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted for one (1) ground sign only and two (2) wall signs only**. Vote carried 4 – 0.

Case No. 10265 – Abraham Lincoln Jones- east of Route One, south of Norwood Street, being Lots 64 and 80 within West Rehoboth development.

A special use exception to place a manufactured home on a financial hardship basis and a variance from the minimum square footage requirement for a parcel.

The Board discussed the case, which has been tabled since October 6, 2008.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **denied since it does not meet the standards for granting a variance**. Vote carried 4 – 0.

OTHER BUSINESS

Case No. 9958 – Gregory and Rita Stevens- southwest of East Lane, 1,850 feet northwest of Mulberry Knoll Road, being Lots 6, 7, 8, and 9 within Bay Shore development.

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

This is a request for a time extension.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the request for a time extension be **granted for a period of six (6) months**. Vote carried 4 – 0.

Case No. 9988 – Travis S. Martin (Delmarva Land Co.)- northeast of U.S. Route 113, corner of Route 54A.

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

This is a request for a time extension.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the request for a time extension be **granted for a period of one (1) year**. Vote carried 4 – 0.

Meeting Adjourned @ 9:25 P.M.