

MINUTES OF JANUARY 8, 2001

The regular meeting of the Sussex County Board of Adjustment was held Monday evening January 8, 2001, 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. Wheatley, Mr. Hudson, Mr. Mills, with Mr. Berl - Assistant County Attorney, Mr. Rickard - Chief Zoning Inspector, and Mr. Lank - Director, acting as Recording Secretary.

Motion by Mr. McCabe, seconded by Mr. Wheatley, and carried unanimously to approve the revised agenda as circulated with the addition that Case No. 7327, the application of George Coverdale, be discussed at the end of the agenda. Vote carried 5 - 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of December 18, 2000 as corrected to show the correct case number for Case No. 7325. Vote carried 5 - 0.

Mr. Berl read a statement explaining how the Board of Adjustment meeting is conducted and procedures for hearing the cases.

Case No. 7328 -- Rehoboth Mall Limited Partnership - southeast of Route 24, 900-foot southwest of Route One.

A special use exception for reduction of required parking for a commercial shopping center.

Mr. Rickard advised the Board that this application was **withdrawn** by the applicant on January 4, 2001.

Case No. 7329 -- Douglas C. and Allison L. Hedley - north of Phillips Branch Road, west of Schell Road.

A variance from the lot width requirement for a parcel.

Mr. Rickard presented the case. Allison Hedley, Douglas Hedley, and Kevin Burdette of McCrone, Inc. were sworn in and testified requesting a 97.43-foot variance from the required 150-foot lot width requirement to create frontage for an interior parcel; that they propose to divide 1.646 acres into 2 lots; that access is not permitted to Schell Road, a private subdivision street; and that they propose to create a joint access drive for lots 1A and 2A; that the variance creates a 52.57-foot frontage; and that the access to Schell Road will be closed.

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

Charles W. Stafford was sworn in and testified that he is in opposition to the application and expressed concerns that the area is zoned residential; that a barn will remain on the rear lot with no home planned at this time; that he is concerned about water quality; that he is concerned about drainage; and that he is concerned about additional lots.

In rebuttal, Allison Hedley stated that they might build on the rear lot in the future.

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 Board discussed this application.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the variance be **granted with the stipulation that a shared driveway be provided serving both lots 1A and 2A from Phillips Branch Road, and that the Schell Road driveway be closed.** Motion carried 5 - 0.

Case No. 7330 -- George Keefe -- east of Route 54, south of Lincoln Drive, Lot 1, within Cape Windsor Subdivision.

A variance from north side yard setback requirement.

Mr. Rickard presented the case. Gil Alexander Fleming of Oakwood Homes was sworn in and testified that he was present on behalf of the applicant requesting a 0.4-foot variance from the required 15-foot corner side on Lincoln Drive; that the home was originally set at 15-feet plus; that a block foundation was installed; and that when the final survey was completed it was found that the home was 14.6-feet from Lincoln Drive.

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

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously that the variance be **granted.** Vote carried 5 - 0.

Case No. 7331 -- William B. and Mildred Hudson -- east of Road 386, 700 feet north of Route 54.

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

Mr. Rickard presented the case. Charles L. Coffman II, surveyor, and William Hudson were sworn in and testified that they propose to retain a manufactured home on a 1.01 acre parcel; that the manufactured home was placed on the parcel approximately 4 years ago with an on-farm permit; that they propose to create a 1.01 acre lot and to convey the lot and manufactured home to a daughter; that the parcel originally contained 6.59 acres; and that the shed on the front of the parcel is non-conforming, in poor condition, and may be removed in the future.

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

Motion by Mr. McCabe, seconded by Mr. Wheatley, and carried unanimously that the special use exception be **granted**. Vote carried 5 - 0.

Case No. 7332 -- James Thompson -- north of Route 54, east of Laws Point Road, Lot 54, within Swann Keys Subdivision.

A variance from the north side yard setback requirement.

Mr. Rickard presented the case. James Thompson was sworn in and testified requesting a 3-foot variance from the required 10-foot side yard setback requirement for a porch in line with the existing manufactured home; that the manufactured home has existed on the site since 1979; and that he inherited the home from a relative.

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

John Grauer, a member of the Board of Directors of the Swann Keys Homeowners Association, was sworn in and testified in opposition to the application and stated that several notices were sent to the applicant voicing objections to the addition; that the applicant originally filed a site plan for a deck; that the applicant put a roof over the deck; that the addition is in violation of Swann Keys setbacks; and that the manufactured home is permitted and conforms to regulations.

Mr. Rickard referenced letters on file from Ed Lewis, Chairman of the Planning and Zoning Committee for the Swann Keys Civic Association, dated May 19, 2000 and November 16, 2000 addressed to the applicant and voicing opposition to the construction. It was noted that the file also included a letter to Mr. Rickard from Mr. Lewis dated December 8, 2000.

In rebuttal, James Thompson presented 12 photographs of the improvements, and added that he received a permit from the County and built similar improvements to other

home additions in Swann Keys; that if he conformed to the 10-foot setback a wall would be in the center of a window; and that Darin McGraft was the contractor that built the addition.

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously that the case be taken under advisement. Vote carried 5 - 0.

At the conclusion of the public hearings, the Board discussed this application. Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the case be **Tabled until a decision is rendered by the Delaware Superior Court on the Schuchman appeal.** Vote carried 5 - 0.

Case No. 7333 -- Vaughn and Bonnie Harrigan -- south of Road 270-A, southeast side of Sylvan Drive Extended, Lot 4, within Sylvan View Subdivision.

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

Mr. Rickard presented the case. Kim Harrigen Rice was sworn in and testified that her father is disabled and needs additional care.

Mr. Rickard summarized a letter from N.O. Biasollo, D.O. referencing the need for Mr. Harrigan's care.

Mr. Rickard read a letter from John M. Fox in opposition and expressing concerns due to the power line that crosses the lot.

Kim Rice continued that she and her family are permanent residents on the site and that the manufactured home will provide a home for her mother and father; that his mother also has multiple medical problems, is totally disabled and is unable to work.

Mr. Berl referenced that the file includes a letter from L. Dedhia, M.D. referencing Mrs. Harrigan's health condition.

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

Allene Fox and Barbara Walters were sworn in and testified in opposition to this application and expressed safety concerns about the power line crossing the lot; the limited area for placement of an additional home on the lot; that the subdivision was approved for 4 home sites, not 5 sites; that a rumor has been circulated that the property is jointly owned with another party and that the occupants may have to move out during summer months; and that depreciation of property values may occur.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be taken under advisement. Vote carried 5 - 0.

At the conclusion of the public hearings, the Board discussed this application. It was noted that the placement of a manufactured home at this location will not change the character of the area, and that the use is temporary in nature. Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously that the special use exception be **granted for a period of two years**. Vote carried 5 - 0.

Case No. 7334 -- Victor Michalski -- north of Route 54, south of Swann Drive, Lot 12, within Swann Keys Subdivision.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. Victor Michalski was sworn in and testified that he added an addition to his manufactured home on lot 12 within Swann Point; that Swann Point restrictions require 20-foot front yard setbacks; that construction started in May 2000; that the shed does not encroach on any neighbors space; that if his shed is in violation of the setbacks then numerous other violations exists within the subdivision; that he has no other space on his lot to place the shed due to setbacks; that he received a violation notice from Mr. Milligan, Zoning Inspector III, on November 1, 2000; that an adjoining property has a shed that encroaches setbacks; that Shed City placed the shed on the lot in 1991; that John Sutter, the contractor, moved the shed while building the addition to the manufactured home; and that the shed could be moved closer to the manufactured home, but would still require a variance.

Mr. Michalski submitted a picture of the shed and manufactured home, and two conceptual sketches showing how he could relocate the shed.

Michael Schuchman was sworn in and testified that he was in support of the application; that he lives across the street from the lot; that there is no place on the lot to move the shed; and that he sees no reason to object to the application.

Mr. Rickard read a letter from Ed Lewis, Chairman of the Planning and Zoning Committee of the Swann Keys Board of Directors in opposition to the application.

John Grauer, previously sworn in, testified that Swann Keys has had several shed violations along their streets.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that this case be taken under advisement. Vote carried 5 - 0.

At the conclusion of the public hearings, the Board discussed this application. Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the case be **tabled until a decision is rendered by the Delaware Superior Court on the Schuchman appeal**. Vote carried 5 - 0.

Case No. 7335 -- Arthur J. and Esther M. Wolfe -- north of Route 9, west of Coventry Lane, Lot E-15, within Sussex East Mobile Home Park.

A variance from the gross area allowable for occupancy on a lot within a mobile home park.

Mr. Rickard presented the case. Arthur and Esther Wolfe were sworn in and testified that they were requesting a variance of 6% from the 35% allowable lot area usage for existing improvements; that they are not aware of any objections from the developers; and that they applied for the variance as soon as they realized that they had exceeded the 35% requirement.

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

Motion by Mr. McCabe, seconded by Mr. Wheatley, and carried unanimously that the variance be **granted**. Vote carried 5 - 0.

Case No. 7336 -- David P. Grobinski -- northwest of Road 623, 1,500 feet east of Road 42, Lot 13, within Drake Farms Subdivision.

A variance from the east side yard setback requirement.

Mr. Rickard presented the case. David Grobinski was sworn in and testified that he is changing his requested variance from 8.7-feet to 4.7-feet from the 15-foot side yard setback requirement; and that the septic location and above ground swimming pool on the site restrict the addition.

The Board found that Mr. Grobinski submitted a revised drawing showing the change in setback proposed from 6.3-feet to 10.3-feet.

Austin Nadeau, the adjoining property owner, was sworn in and testified that he has no objections to the 4.7-foot variance from the 15-foot setback requirement.

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 with a 10.3-foot setback, a 4-7-foot variance**. Vote carried 5 - 0.

Case No. 7337 -- Michael Schuchman -- north of Route 54, west side of Swann Drive, Lot 42, within Swann Keys Subdivision.

A variance from the north side yard setback requirement.

Mr. Berl stated that the Delaware Superior Court is reviewing an appeal on the original Schuchman case; that a decision has not been rendered on the appeal; that he has spoken to John Sergovic, Attorney, who represents Mr. Schuchman, and agrees that the application should be heard by the Board, and that no action should be taken on the application until the Court renders it's decision on the appeal.

Mr. Rickard presented the case. John Sergovic, Attorney, was present with Michael Schuchman, previously sworn in, and Tricia Schuchman who was sworn in and testified that they were requesting a 2.5-foot variance from the required 10-foot side yard setback requirement for an enclosed porch.

Mr. Sergovic advised the Board that the Delaware Code provides for a conjunctive test when considering variances and that the test includes: unique circumstances of a lot - that Swann Keys is an older development with lot sizes as small as 40-feet by 100-feet; that the narrowness of the lot establishes the uniqueness; that physical conditions of the lot provide that a variance is needed to make use of the lot; that the owners rebuilt the home to retain setbacks; that the variance requested, if authorized, will not impact the community; that the variance requested is the minimum variance to afford relief; and that letters in opposition from the Swann Keys Civic Association voiced no reason of objections to the two previously heard cases in Swann Keys.

Mr. Schuchman stated that they purchased the lot in June 1994 with an older mobile home; that the seller owned the adjoining lot; that the improvements included a deck addition on the side; and that when they purchased the lot the amended restrictions for Swann Keys were not yet adopted.

Mr. Sergovic submitted a copy of the deed to the property, a copy of a certification by Swann Keys Civic Association, Inc. pertaining to adoption of additional rules and regulations applicable to Swann Keys; a copy of the original restrictions; a copy of the tax map for the general area of the subdivision; and a drawing of the improvement.

Mrs. Schuchman stated that they proposed to improve the site in March 1996 and that Mr. Rickard approved the proposal as long as no encroachment was built into the 7.5-foot setback and that the Swann Keys Board of Directors approved the request.

Mr. Schuchman stated that they were not aware of any objections to their proposed improvements until Mr. Milligan, Zoning Inspector III, informed them that a variance was needed due to the encroachments into the setback.

Mr. Schuchman described and submitted eight (8) photographs of their home and other improvements in the area that encroach the setbacks.

Mr. Schuchman added that a variance was requested to allow construction with a truss roof, and that improvements on the neighboring lot were constructed at a 10-foot setback caused an impact on the 20-foot spacing between units.

Mr. Sergovic stated that the State Fire Marshal regulations allow 10-foot spacing between units, and submitted a copy of Electrical/Life Safety and Fire Safety regulations.

Mrs. Schuchman stated that numerous homes in Swann Keys maintain 7-foot setbacks; that there will be no change in the neighborhood by granting the variance; that they live on the site year round; that the addition provides a den and a living room area; and that the home, with addition, contains approximately 1,200 square feet of living space.

Mr. Schuchman added that if they had known, prior to construction, that a variance was necessary they would have applied for the variance before starting construction.

Richard Taylor was sworn in and testified that he has no objection to the improvements made by the applicants, and that the improvements are similar to other improvements within Swann Keys.

Mr. Sergovic added that a neighboring property owner purchased their lot in 2000 and that no impact on property values must have been found based on the price of the purchase; that the Board of Directors do not abide by the own restrictions; that the applicants are innocent victims of a contractors mistake; that there is sufficient evidence on the record to justify approval of the variance since compliance with the regulations would be too broad on this size parcel.

James Thompson, previously sworn in, testified that he has no objection to the application.

Victor Michalski, previously sworn in, testified that he has no objection to the application.

Mr. Rickard read a letter from Ed Lewis, Chairperson for the Planning and Zoning Committee for Swann Keys Board of Directors, voicing their opposition to the application.

John Grauer, previously sworn in, testified in opposition to the application and stated that the Board of Directors are not in opposition to aesthetics, they are just trying to be consistent with regulations, and added that the 7-foot rule existed prior to the 10-foot setback requirement.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that this application should be **tabled until a decision is rendered by the Delaware Superior Court on the original Schuchman appeal**. Vote carried 5 - 0.

Case No. 7338 -- Robert Smith -- west of Road 26, 325 feet south of Road 424.

A special use exception from the provisions and requirements to retain a manufactured home on a parcel; a variance from the side yard and rear yard setback requirement for a poultry house; a variance from the side yard setback requirement for composting; a variance from the side yard and rear yard setback requirements for a hog feed lot and structure; a variance from the side yard setback requirement for an accessory structure.

Mr. Rickard presented the case. Robert W. Smith was sworn in. Mr. Rickard exhibited a large survey and described the location of the variances. Mr. Smith testified that the special use exception allows retention of the existing mobile home; that his mother lives in the mobile home; that they propose to sell a parcel with the poultry houses; that he must get out of the poultry business due to his health; that a saw mill is located on an adjoining parcel; that he has spoken to some of his neighbors and heard no objections; that the buyer plans on improving the poultry houses; and that the variances are needed due to the proposed subdivision of the land for the purpose of creation of the lot for the mobile home.

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 and variances be **granted**. Vote carried 5 - 0.

Case No. 7339 -- Creekwood Project, L.L.C. -- northeast of Route One, 1/4 mile north of Road 270-A.

A special use exception from the parking space requirements for multifamily dwellings.

Mr. Rickard presented the case. Justin Healy and Craig Hudson were sworn in and testified that they are requesting a 0.65% variance from the required 3 parking spaces per unit; that they propose to develop 120 units with 282 parking spaces, rather than 360 parking spaces; that providing the additional parking spaces would require the removal of additional trees and could cause more drainage into wetlands; that similar parking schemes exists in Eagles Landing, Spring Lake, and Beachaven; that more parking is proposed than in several projects in the area; that they propose to keep the area as pristine as possible without impacting the natural areas; that all units are two bedroom with two baths, not large units; that there should be no need for the additional parking for this unit size; and that they are trying to avoid the appearance of a large parking lot.

The Board found that Mr. Healey submitted three letters in support from Wendy O. Baker of Property Management Professionals, Mann & Moore Associates, Inc., and Fred Hertrich, IV and an aerial photograph of the area.

The Board found that Mr. Healey submitted two letters referencing environmental benefits through the variances from Roger Gross, Vice President and Director of Engineering, with Meridian Consulting Engineers, L.L.C. and Laf P. Erickson, Soil Scientist, with Atlantic Resource Management, Inc.

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

Mr. Rickard read a letter from the Citizens Coalition, Inc. in opposition to this application.

Agnes Stevenson and Joan Deaver were sworn in and testified in opposition to the application and advised the Board that the parcel also proposes 32 multifamily units to the rear based on a Conditional Use recently approved by the County Council; that the site is within the beach area where additional parking is always needed; and that group rental should be a concern.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be taken under advisement. Vote carried 5 - 0.

At the conclusion of the public hearings, the Commission discussed the application. Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until the next regular meeting**. Vote carried 5 - 0.

Case No. 7340 -- William C. Jones, Sr. -- south of Route 26, 400 feet east of Road 17.

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

Mr. Rickard presented the case. William C. Jones, Sr. was sworn in and testified that he would like to temporarily place an 8-foot by 24-foot office trailer on the Hocker property for an office for his accounting business; that a two story building on the Hocker property is being renovated for office space and that he anticipates moving into the renovated building in late spring; that he proposes temporary use of the office trailer; and that the Hocker property is zoned General Commercial.

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

Motion by Mr. Wheatley, seconded by Mr. McCabe, and carried unanimously that the special use exception be **granted for a period no exceeding one (1) year**. Vote carried 5 - 0.

Case No. 7341 -- Mary LeCates -- west of U.S. Route 13-A, 525 feet south of Road 493.

A variance from the north side yard setback requirement.

Mr. Rickard presented the case. Danny LeCates was sworn in and testified that his wife is selling the property to settle an estate; that the carport was built several years ago and that when the survey was completed for settlement it was found that a 5.2-foot variance is needed for the carport and a 0.3-foot variance is needed for the shed.

By a show of hands, the Board found that one person was present in support of the application.

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

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the variances be **granted**. Vote carried 5 - 0.

OLD BUSINESS

Case No. 7318 -- Janet L. and Melvin Ware, Jr. -- southwest of Road 527, 1,200 feet west of U.S. Route 113.

A variance from the east side yard setback requirement.

The Board discussed this application that was tabled on December 18, 2000 for an additional site inspection.

Motion by Mr. Wheatley, seconded by Mr. Mills, and carried unanimously that this application be **granted**. Vote carried 5 - 0.

Case No. 7320 -- Timothy and Kara Short -- west of Road 462, 292 feet south of U.S. Route 13.

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

The Board discussed this application that was tabled on December 18, 2000 for survey information. Mr. Rickard advised the Board that a revised survey has been received and that the garage is 12.3-feet from the easterly side property line and that three adjoining landowners have signed a petition voicing no objection to the variance requests.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variances be **granted**. Vote carried 5 - 0.

Case No. 7325 -- Norvell Pausch -- north of Road 341, west of East Lagoon Road, Lot 5, within Dogwood Acres Subdivision.

A variance from the front yard setback requirement.

The Board discussed this application that was tabled on December 18, 2000. Mr. Rickard advised the Board that Mr. Milligan, Zoning Inspector III, had again inspected the site and found that the setback appears to be 1-foot from the front property line.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the variance be **granted with a 29-foot variance from the required 30-foot setback**. Vote carried 5 - 0.

ADDITIONAL BUSINESS

Case No. 7327 -- George Coverdale -- northeast of Route One, 637 feet north of Road 270-A.

A variance from the rear yard setback requirement.

Mr. Rickard advised the Board that Mr. Coverdale was not aware of his public hearing date on December 18, 2000; that Mr. Coverdale is asking for reconsideration and permission to reschedule for a public hearing; and that Mr. Coverdale has advised the office that he will be present or will have someone present on his behalf whenever the hearing is scheduled.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that Mr. Coverdale be allowed to resubmit for an application for the variance, with the understanding that all appropriate fees shall have to be paid with the application. Vote carried 5 - 0.

Meeting adjourned at 10:20 P.M.