

MINUTES OF JANUARY 22, 2001

The regular meeting of the Sussex County Board of Adjustment was held Monday evening January 22, 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. Mills, Mr. Hudson, with Mr. Berl – Assistant County Attorney, Mr. Rickard – Chief Zoning Inspector, and Ms. Jackson – Recording Secretary.

Motion by Mr. Mills, seconded by Mr. Wheatley, and carried unanimously to approve the Revised Agenda as circulated. Vote carried 5 – 0.

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously to approve the Minutes of January 8, 2001 as circulated. 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. 7342 – David Bowden – west of Road 506, ½ mile north of Route 24, Lot 8, within Tanglewood Run Subdivision.

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

Mr. Rickard presented the case. David Bowden was sworn in and testified requesting a 5-foot variance from the required 40-foot front yard setback and a 13-foot variance from the required 15-foot side yard setback for a pole shed; that the pole shed is already built; that the pole shed is used to cover his camper and boat; that he built the pole shed himself 3 years ago; that Donna Mowbray, Planning and Zoning Inspector, made him aware of the pole shed being in violation; that he has a permit for the pole shed; that he was the first person to live in the subdivision; and that there is not a covenant for the subdivision.

Mr. Rickard read a letter from John and Kathy Ryan in opposition to 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 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**. Vote carried 5 – 0.

Case No. 7343 – Gary A. McCoy, Jr. – southwest of Route 24, east of Drexel Court, Lot 66, within Maplewood Subdivision.

A variance from the rear yard setback requirement.

Mr. Rickard presented the case. Gary McCoy, Jr. was sworn in and testified requesting an 11-foot variance from the required 20-foot rear yard setback for a proposed dwelling; that he recently purchased the lot; that the Homeowner's Association is in favor of the requested variance. William Wright, Attorney, explained to the Board that the plot plan for the subdivision is recorded as a 20-foot rear yard setback, instead of a 10-foot rear yard setback for a MR- Medium-Density Residential District.

Mr. Rickard read a letter from the Homeowner's Association in favor 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 **tabled until February 5, 2001**. Vote carried 5 – 0.

Case No. 7344 – Mid Sussex Rescue Squad – west of Route 5, 400 feet north of Route 24.

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

Mr. Rickard presented the case. Bruce Rogers, Attorney, was present on behalf of the application requesting a special use exception to place a manufactured home type structure as a temporary office to be used for emergency personnel during construction of a new station; that the size of the manufactured home is an 8'x40'; that the structure was placed there 5 months ago; that the construction of the new station should be completed by March 2001; that the structure will be removed when the new station is completed; that the manufactured home meets the required setbacks; and that he submitted a plot plan and pictures of the site.

Mr. Rickard read a letter from Fred Boglie, Jr. in favor of the application.

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

Motion by Mr. Wheatley, seconded by Mr. Mills, and carried unanimously that the special use exception be **granted for the remainder of the calendar year**. Vote carried 5 – 0.

Case No. 7345 – John McNerney – south of Route One, west of Todd Drive, Lot 21, within Bay View Park Subdivision.

A variance from the north side yard setback requirements.

Mr. Rickard presented the case. John McNerney was sworn in and testified requesting a 2-foot variance from the required 10-foot north side yard setback requirement for a proposed screen porch, instead of a 5-foot variance; that he purchased the lot 1 year ago; that it is an odd shaped lot; that water runs on 3 sides of the property; that he submitted a letter from Fifi Dawson stating that the Homeowner's Association will be taking a neutral position to the application; that a 3100-square foot home is proposed; and that he does not have adjacent property owners.

By a show of hands, 1 party was in favor of the application.

By a show of hands, 6 parties were in opposition to the application.

John and Mary Hendrickson were sworn in and testified that they were in opposition to the application; that they are immediate neighbors; that he is the President of the Homeowner's Association; that there is no proof of a hardship; that John McNerney's lot is larger than most lots in the area; that the variance is for convenience only; that all other homes on Todd Drive meet the required setbacks; and that it would set a precedent to the community if the Board would grant the variance.

Dane Feher was sworn in and testified that she is in opposition to the application; that she submitted 4 letters in opposition; that she is a member of the Homeowner's Association; and that a home can be built on the lot without needing a variance.

Mr. Rickard read a letter from Fifi Dawson in opposition to the application.

Motion by Mr. Mills, seconded by Mr. Wheatley, and carried unanimously that the variance be **tabled until February 5, 2001**. Vote carried 5 – 0.

Case No. 7346 – Michael and Laura Swartz – south of Road 331, 600 feet east of Road 334, and north of Road 336-A.

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

Mr. Rickard presented the case. Michael and Laura Swartz were sworn in and testified requesting a 2.6-foot variance from the required 5-foot east side yard setback for a shed and a 6.8-foot variance from the required 40-foot front yard setback for a garage, instead of a 5.9-foot variance for the garage; that they are selling the property to their

son; that the garage has been there since 1979; that Coastal Construction built their home; that Custom Crafts built their garage; that permits were obtained for both structures; and that their neighbors are in favor of the application.

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

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

Case No. 7347 – Colonial East Ltd. – south of Route 24, west of White Pine Drive, Lot 30, within Pines at Long Neck.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. John Starke was sworn in and testified requesting a 1-foot variance from the required 30-foot front yard setback for a dwelling; that when a survey was completed it was found that the front corner of the home was in violation; that the home was placed on the property 4 to 5 months ago; that the shed is not in compliance; that he will let the owner's know either to move the shed in compliance or that they would need to apply for a variance.

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**. Vote carried 5 – 0.

Case No. 7348 – Colonial East – east of Route One, east of Lantern Lane, Lot 20, within Colonial East Mobile Home Park.

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

Mr. Rickard presented the case. John Starke was sworn in and testified requesting a variance of 168-square feet or 4.7% over the 35% gross lot coverage in a mobile home park; that he also needs a 5-foot variance from the required 20-foot between units in a mobile home park; and that he will check the shed on the property to make sure that it complies with the setbacks.

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**. Vote carried 5 – 0.

Case No. 7349 – Carol Olen – south of Road 277, north of Linden Lane, Lot 7, within Angola By The Bay Subdivision.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. William Wright, Attorney, was present on behalf of the applicant requesting a 0.5-foot variance from the required 10-foot west side yard setback and a 1.5-foot variance from the required 15-foot east side yard setback for a dwelling; that a 2.7-foot variance for the shed is not necessary because the shed will be moved to comply; that a variance was granted in 1987 for the front of the property; that the applicant purchased the property in 1997 or 1998; and that the property is under a contract for sale.

Mr. Rickard read a letter from Helen Tusi in favor of the application.

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

Case No. 7350 – Patrick Todd Ruark – north of Road 534, corner south of Maury Avenue, Lots 32, 33, and part of 34, within Kenmore Park Subdivision.

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

Mr. Rickard presented the case. Patrick Todd Ruark was sworn in and testified requesting a 3.9-foot variance from the required 5-foot northeast side yard setback for a shed, instead of a 4-foot variance from the rear yard setback, a 1.6-foot variance from the required 5-foot northwest side yard setback for a shed, instead of a 2-foot variance, and a 7.8-foot variance from the required 40-foot front yard setback for a dwelling, instead of an 8-foot variance; that he purchased the property in October 1997 from his parents; that the home was built in 1975; that the shed existed on the property; and that he is selling the property.

By a show of hands, 1 party was in favor 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**. Vote carried 5 – 0.

Case No. 7351 – Barbara and Jay Pratt – west of Road 594, 1.5 miles north of Route 404, Lot 4, within Morningside Village Subdivision.

A special use exception for three (3) greenhouses and a variance from the front yard, side yard, and rear yard setback requirements.

Mr. Rickard presented the case. Jay Pratt was sworn in and testified requesting a special use exception for three (3) greenhouses, a 7-foot variance from the required 10-foot south side yard setback, a 6-foot variance from the required 10-foot north side yard setback, and a 4-foot variance from the required 10-foot rear yard setback for three (3) greenhouses; that he placed the greenhouses on the lot in November 2000; that he did not obtain a permit for the greenhouses; and that the greenhouses will be removed from the property on April 1, 2001.

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

Motion by Mr. Wheatley, seconded by Mr. Mills, and carried unanimously that the special use exception and variances be **granted until April 15, 2001 with the stipulation that the greenhouses are to be removed.** Vote carried 5 – 0.

Case No. 7352 – Leslie Freeman, Sr. – north of Road 227, 2, 048 feet northeast of Route 16, Lots 1, 2, and 10, within George A. Metz Subdivision.

A special use exception for a determination of existence of a nonconforming use for three manufactured homes.

Mr. Rickard presented the case. Leslie Freeman, Sr. was sworn in with William Wright, Attorney, present on his behalf stating that the manufactured homes have been on the property prior to zoning; that Mr. Freeman purchased the property in 1987 with the knowledge that the structures pre-existed; that in 1988 Mr. Freeman was violated for having too many manufactured homes on a parcel; that there are 4 lots, not 3 lots; that manufactured homes exist on Lots 1, 2, and 10; that Lot 9 is vacant; that they submitted an affidavit from Johnny Harris stating that the manufactured homes existed on the property since the late 1960's; that Mr. Freeman has gone to Court and that the Judge found him guilty; and that he has an arraignment scheduled for the Court of Common Pleas at the end of January 2001.

Mattie Waters, neighbor, stated that she has lived there for 30 years; and that the manufactured homes have been there since 1970.

Robert Miller was sworn in and stated that he has known Mr. Freeman for 4 years; that he has lived on the adjacent property for 31 years; and that the manufactured homes have been there for 30 years.

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 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 special use exception be **tabled until after the Court Hearing**. Vote carried 5 – 0.

Case No. 7353 – James D. Bennett – west of Road 290, 1,500 feet north of Road 280, Lot B.

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

Mr. Rickard presented the case and read a letter from Lourdes Aponte, M.D. James and Arlene Bennett were sworn in and testified requesting a special use exception to place a manufactured home on a medical hardship basis for Mrs. Bennett's sister.

By a show of hands, 2 parties were in favor of the application.

Roland Clifford and Mary Jean Coolahan were sworn in and stated that they had concerns with the septic and well.

Mr. Mills advised Mr. Clifford and Ms. Coolahan that Mr. Bennett would have to conform with DNREC concerning the septic and well.

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

Case No. 7354 – Jerome Cannon – east of Road 516, 1,214 feet north of Road 46, Lot 3.

A special use exception to retain a manufactured home for storage purposes.

Mr. Rickard presented the case. Jerome Cannon was sworn in and testified requesting to retain a manufactured home for storage purposes; that the size of the structure is 8'x50'; that the structure does not have a kitchen or bathroom; that the

manufactured home has been on the property since 1986; that it complies with the setback requirements; and that his neighbors are in favor of the application.

By a show of hands, 1 party was in favor 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 special use exception be **granted for storage purposes only**. Vote carried 5 – 0.

Case No. 7355 – Mary O. Rizk – east of U.S. Route 13 and north on Road 482.

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

Mr. Rickard presented the case. Mary O. Rizk and Charles Smith were sworn in and testified requesting a 40-foot variance from the required 40-foot front yard setback from U.S. Route 13 and a 35-foot variance from the required 40-foot front yard setback from Road 482 due to fire damage of an existing produce stand; that they purchased the property 2 years ago; that on November 6, 2000 it was damaged by fire; that they have been told that the structure is 40 to 50 years old; that the building is still standing; that they would like to add 10-foot of additional space to the building; and that the parcel is triangular shaped.

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**. Vote carried 5 – 0.

Case No. 7356 – Wolfe Pointe, LLC – east of Tarpin Drive, 300 feet north of Black Marlin Drive, Lot 44, within Wolfe Pointe Subdivision.

A variance from the east side yard setback requirement.

Mr. Rickard presented the case. Paul Townsend, Jim Blake, and Freddie Badda were sworn in with Doug Marshall, Attorney, on behalf of the applicants requesting a 15-foot variance from the required 15-foot east side yard setback for a structure to be built up to a well site; that they submitted a plot plan and pictures of the site; that the well site was owned by the Federal Government in the 1940's; that the State owns the well site now; that the lot is impacted by the well site; that the lot contains a temporary stormwater management pond; that most of the buildable area will be impacted by the pond; that the pond will be filled in once the water is managed; that all setbacks will be maintained

except for building by the well site; that a 3000-square foot home is proposed to be constructed on the lot; that DNREC has been notified concerning the well site; that to reasonably develop the lot, the well site needs to be moved; that it would not alter the essential characters of the neighborhood; that it would not impact property values; that it would be difficult to develop without the requested variance; that the State would control the vast majority of the well site; and that hopefully in 6 months the problems should be resolved.

By a show of hands, 1 party was in favor of the application.

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

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

OLD BUSINESS

Case No. 7339 – Creekwood Project, L.L.C. – northeast of Route One, ¼ mile north of Road 270-A.

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

The Board discussed the case.

Motion by Mr. McCabe, seconded by Mr. Wheatley, and carried unanimously that the special use exception be **tabled until February 5, 2001**. Vote carried 5 – 0.

Meeting Adjourned 9:35 P.M.