

## MINUTES OF JANUARY 28, 2002

The regular meeting of the Sussex County Board of Adjustment was held Monday evening January 28, 2002, 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. Oates – Planning and Zoning Inspector, and Ms. Jackson – Recording Secretary.

Motion by Mr. McCabe, seconded by Mr. Wheatley, and carried unanimously to approve the Revised Agenda with the correction to hear Case No. 7678, R. Carl and Brenda Benna and Other Business at the beginning of the public hearings; and that Case No. 7676, Fellowship Health Resources has been reschedule for March 4, 2002. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously to approve the Minutes of January 7, 2002 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. 7678 – R. Carl and Brenda Benna** – east of Route One, northwest corner of Hall Avenue, Lot 5, within The Chancellery Subdivision.

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

Mr. Oates presented the case. R. Carl Benna, Ronald Moore of JA Moore & Sons, and Kevin Callahan, project manager, were sworn in with John Sergovic, Attorney, on behalf of the application, requesting a 1.6-foot variance from the required 30-foot front yard setback requirement for an existing deck, a 1.53-foot variance from the required 10-foot west side yard setback requirement for an existing box window, and a 1.57-foot variance from the required 10-foot rear yard setback requirement for an existing deck; that 2 years ago the home burned down; that JA Moore & Sons, has built 4 to 5 thousand homes in Sussex County over a 35 year period and has never had any violation problems; that he has been contracted to rebuild the home; that Soule' & Associates staked out the home; that they submitted pictures, a survey, an as-built survey, a plot plan, and 5 letters in favor of the application; that the property lines are not parallel to each other; that the property is a corner lot; that the property is on a cul-de-sac; that the 3<sup>rd</sup> floor deck cantilevers out 18-inches; that the living space is located on the upper level of the home; that they sent letters to their neighbors and the Homeowner's Association and that they are in favor of the application; and that the violations were found when an as-built survey was prepared.

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 variances be **granted**. Vote carried 5 – 0.

#### **OTHER BUSINESS**

1. Matter of Michael A. Ross – Case No. 7610

**No one appeared on behalf of the discussion.**

**Case No. 7666 – Della M. Hitchens and Richard H. McCabe** – north of Road 405, 4,450 feet east of Road 407.

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

Mr. Oates presented the case. Richard McCabe was sworn in and testified requesting a special use exception to retain a single wide on a 3.68 acre parcel; that the unit was placed 28 years ago; that the unit was legally placed as an on-farm manufactured home; that his mother's aunt lived in the unit until she passed away; that other family members also lived in the unit over the years; that his father bought the farm in 1938; that no one lives in the dwelling and manufactured home at the present time; that the property is being sold; that his mother passed away in May 2001; and that the manufactured home is livable, but needs a little work done to it.

By a show of hands, 2 parties were 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 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. McCabe, seconded by Mr. Mills, and carried unanimously that the special use exception be **tabled until February 11, 2002**. Vote carried 5 – 0.

**Case No. 7667 – Kimberly A. Edwards** – south of Road 388, corner west Whitetail Drive and Fawn Drive, Lot 58, within Deer Run Subdivision.

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

Mr. Oates presented the case. Kimberly Edwards was sworn in and testified requesting an 8.4-foot variance from the required 30-foot front yard setback requirement and a 1.7-foot variance from the 15-foot corner side yard setback requirement for a manufactured home; that she bought the home from Oakwood Homes; that Oakwood Homes obtained the permit; that she asked them to move the home in compliance and they told her that it wasn't their responsibility; that violations were found when a survey was prepared; and that a certificate of compliance was issued.

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

Motion by Mr. Wheatley, 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 Chairman referred back to this case. Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variances be **granted and that Mr. Berl write a letter to Oakwood Homes, in reference to the violation.** Vote carried 5 – 0.

**Case No. 7668 – Martha J. Hickman** – west of Route 5, 90 feet north of Road 293.

A variance from the front yard setback requirement.

Mr. Oates presented the case. Martha J. Hickman was sworn in and testified requesting an 11-foot variance from the required 40-foot front yard setback requirement for a porch; that the home has been on the property for 40 years; that the home is non-conforming; that the home was given to her in 1977; that she measured the setback requirement for the porch from the edge of the road; and that she does not have property markers.

Mr. Mills recommended to the applicant that she may want to get a survey prepared.

Robert Lawson, neighbor, was sworn in and testified that he is in favor of the application; that he has lived in the area all of his life; and that her property markers are located at the edge of the road.

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.** Vote carried 5 – 0.

**Case No. 7669 – Indian River School District** – north of Road 519, 850 feet east of Road 520.

A variance from the front yard setback requirement and a variance from the maximum square footage requirement for a sign.

Mr. Oates presented the case. Steven Botchie was sworn in and testified requesting a 25-foot variance from the required 25-foot front yard setback requirement and a 18-square foot variance per side for an informational sign; that the size of the sign is a 5'x10'; and that the sign does not present any traffic hazards.

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 variances be **granted**. Vote carried 5 – 0.

**Case No. 7670 – John R. Jones** – east of Road 273-A, north of First Street, Unit 1.

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

Mr. Oates presented the case. John R. Jones were sworn in and testified requesting a 5-foot variance from the required 20-foot rear yard setback requirement and a 2-foot variance from the required 10-foot side yard setback requirement for a dwelling; and that he submitted plans and a survey.

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 variance be **granted due to the odd shape of the lot**. Vote carried 5 – 0.

**Case No. 7671 – Scott Hutton** – east of Bay Front Road, 120 feet east of Bay Shore Drive, Lot 23.

A variance from the front yard setback requirement.

Mr. Oates presented the case. Scott Hutton was sworn in and testified requesting a 22-foot variance from the required 30-foot front yard setback requirement for a dwelling; that he is under contract to purchase the property pending the approval of this

application; that he has met with Jennifer Wheatley with Department of Natural Resources and Environmental Control (DNREC) concerning the DNREC building setback line; and that he can only located his home as required by DNREC.

Bob Lawson, neighbor, was sworn in and questions if the deck is open or enclosed.

Scott Hutton stated that it is an open deck.

The Board found that no parties appeared 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. 7672 – Eric C. Sugrue** – east of Route One, 50 feet south of F. Benson Street, Lot 1, within Dodds Addition Subdivision.

A variance from the minimum square footage requirement for a multi-family dwelling.

Mr. Oates presented the case. Eric C. Sugrue was sworn in and testified requesting a 2,260-square foot variance from the required 7,260-square foot requirement for a multi-family dwelling; that he would like to add an additional dwelling over an existing structure; that the properties around his property are multi-family structures; that the Board approved the same request in May 1999, but he could not do the project at the time because of financial reasons.

Mr. Berl stated to the applicant that he would have to have 6 parking spaces and that if he wants less than 6 spaces then he would have to apply for another variance because it was included in the advertisement.

Mr. Sugrue stated that he is in favor of having 6 parking spaces.

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**. Vote carried 5 – 0.

**Case No. 7673 – Larsen Ent. Inc.** – west of Hassell Avenue, 60 feet southeast of Todd Drive, Lot 42, within Bay View Park Subdivision.

A variance from the minimum lot size requirement for a parcel and a variance from the minimum lot depth requirement.

Mr. Oates presented the case. Beth Webb was sworn in and testified requesting a 2,336-square foot variance and a 3,052-square foot variance from the minimum lot size requirement of 10,000-square foot and a 9.59-foot variance from the required 100-foot minimum lot depth requirement; that she would like to divide a parcel to make 2 parcels; that the lots will be larger than what exists in the Subdivision; and that she petitioned her neighbors and they are in favor of the application.

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 variances be **granted**. Vote carried 5 – 0.

**Case No. 7674 – Robert and Mary Vansickler** – west of Road 348, north side of Colony Road, Lot 11, within Bay Colony Subdivision.

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

Mr. Oates presented the case. Jean and David Hessler were sworn in with Ray Tomasetti, Attorney, on behalf of the application, requesting a 0.4-foot variance from the required 10-foot east side yard setback requirement and a 0.3-foot variance from the required 10-foot west side yard setback requirement for a dwelling; that a certificate of compliance was issued in 1983; that the Hessler's are under contract to purchase the property pending the approval of the application; that the violations were discovered after a survey was prepared; that the Vansickler's were unaware of the violations; that the home was built in 1983; and that the neighbors are in favor of the application.

Mr. Oates read a letter from Jack Hickman in favor of the application.

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

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

**Case No. 7675 – Acken Signs, Inc.** – east of U.S. Route 13, corner southwest side of Route 404.

A variance from the maximum square footage requirement for a sign.

Mr. Oates presented the case. Gary Gearheart, representing Food Lion, was sworn in and testified requesting a 130-square foot variance from the required 100-square foot requirement for a wall sign; that the sign will read Food Lion and Extra Low Prices; and that Food Lion's goal is to identify the building.

The Board found that no parties appeared in support of or 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 variance be **granted and that the wall sign be considered as one (1) sign.** Vote carried 5 – 0.

**Case No. 7676 – Fellowship Health Resources** – south of Road 38, 1,250 feet south of Road 228-A, Lot 3, within M.A. Hearne Subdivision.

A special use exception to operate a convalescent center.

**This case has been rescheduled for March 4, 2002.**

**Case No. 7677 – Pine Acres, Inc.** – north of Road 260, east of Virginia Street, Lot C-14, within Leisure Point Mobile Home Park.

A variance from the side yard setback requirement.

Mr. Oates presented the case. George Harrison, Jr., President, was sworn in and testified requesting a 4-foot variance from the required 10-foot side yard setback requirement for a 14'x68' manufactured home; that he has never had any problems with setback requirements in 30 years; that it would be a hardship to move the unit; and that he submitted a picture.

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 variance be **granted.** Vote carried 5 – 0.

**Case No. 7679 – Elizabeth M. Davis** – north of Road 535, intersection southwest of Road 46.

A special use exception to operate a day care facility.

Mr. Oates presented the case. Elizabeth Davis was sworn in and testified requesting a special use exception to operate a day care facility; that her hours of operation will be 7:00 A.M. to 5:00 P.M., Monday thru Friday; that she will care for 9 children; that the ages of the children will range from 1 year old to 13 years old; that she has a fenced in area for the children to play; that she has her Business License and State of Delaware License; that she will not care for all 9 children at one time; and that she has adequate parking.

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

Mr. Oates read a letter from Kenneth Fisher, neighbor, in opposition to the application.

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

**Case No. 7680 – Richard Wright** – northwest of Road 362, intersection of Balsa Street and Sally's Drive, Lot 27, within Quaint Acres Subdivision.

A variance from the front yard setback requirement for a through lot and a variance from the minimum fence height requirement for a swimming pool.

Mr. Oates presented the case. Luella Wright was sworn in and testified requesting a 28-foot variance from the required 30-foot front yard setback requirement for an inground swimming pool and a 2-foot variance from the minimum fence height requirement; that the lot is a through lot; that the size of the pool is 14'x29'; that she submitted pictures and a drawing; that she does not have any other options for placing the pool; and that her neighbors are in favor of the application.

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

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the

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variances be **granted**. Vote carried 5 – 0.

**Meeting Adjourned 9:15 P.M.**