

MINUTES OF FEBRUARY 11, 2002

The regular meeting of the Sussex County Board of Adjustment was held Monday evening February 11, 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. Rickard – Chief Zoning Inspector, and Ms. Jackson – Recording Secretary.

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

Motion by Mr. Mills, seconded by Mr. Wheatley, and carried unanimously to approve the Minutes of January 28, 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. 7681 – Mark Hudson – north of Road 270, 100 feet south of Indian River Bay.

A variance from the east side yard setback requirement.

Mr. Rickard presented the case. Mark Hudson was sworn in and testified requesting a 6.8-foot variance from the required 10-foot east side yard setback requirement for an existing open deck; that he purchased the property 1 ½ years ago; that the deck was built in the 1970's; that he remodeled the deck, but did not change the footprint; that he is in the process of selling his home contingent to approval from the Board; and that his surveyor thought that since the deck was open it could encroach into the setback requirement.

Mr. Rickard read a letter from Elizabeth Tolson 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 variance be **granted**. Vote carried 5 – 0.

Case No. 7682 – Thomas A. and Janyce C. Coates – northeast of Road 270-A, northwest of Shady Ridge Drive, Lot 28, within Shady Ridge Subdivision.

A variance from the front yard setback requirement.

Mr. Rickard presented the case and submitted pictures to the Board. Heidi Balliet, Attorney, was present on behalf of the application requesting a 15-foot variance from the required 30-foot front yard setback for a proposed dwelling; that the applicants are in the process of selling the property; that the property has a steep slope; that if the application was granted it would have a positive impact to the area; that manufactured homes exist in the area; and that the reason for the variance request is for safety concerns.

Henry McKay was sworn in and testified that he is in favor of the application; that because of the curvature of the road the home would look better if it were built closer to the road; and that the slope starts 4' to 5' from the edge of the road.

Thomas Coates was sworn in and stated that he would like to thank the Board for considering approval of the application.

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

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

Case No. 7683 – Richard W. Burris, Sr. – south of Route 54, east of Cleveland Avenue, Lot 3, within Cape Windsor Subdivision.

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

Mr. Rickard presented the case. Richard W. Burris, Sr. was sworn in and testified requesting a 5-foot variance from the required 10-foot north side yard setback requirement and a 5-foot variance from the required 20-foot rear yard setback requirement for a proposed 2 story dwelling; that a manufactured home has been removed from the site; that the dwelling would meet the height and flood zone requirements; that the home next to him is similar to what he will be building; and that the size of the home will be 66'x32'.

Mr. Rickard stated that variances have been granted in the area.

Mr. Rickard read a letter from Cape Windsor Community Association in favor of the application.

By a show of hands, 5 parties were present in favor of the application.

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

Case No. 7684 – Charles and Betty Whaley – south of Road 472, east corner of Road 62 and Road 437.

A special use exception to place a second on-farm manufactured home.

Mr. Rickard presented the case. Elizabeth Sisk was sworn in and testified requesting a special use exception to place a second on-farm manufactured home; that she is married to the applicants grandson; that they will be living in the unit; that Charles and Betty Whaley are in poor health and need to be cared for; that there is a total of 46.3 acres; that the Whaley's live in a manufactured home; and that the land is tilled.

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

Case No. 7685 – Juergen Trager – north of Route 54, north side of Laws Point Road, Lot 43F, within Swann Keys Subdivision.

A variance from the south side yard setback requirement.

Mr. Rickard presented the case. Juergen Trager was sworn in and testified requesting a 4-foot variance from the required 5-foot south side yard setback requirement for an existing shed; that he purchased the property in 1989; that in 1991 he became a full time resident; that a shed existed when he purchased the property; that the shed was falling apart and that he built a new shed 7 years ago; that he removed a manufactured home from the property and placed a 28'x64' modular home; that he received a violation 2 years ago from Mike Milligan, Planning and Zoning Inspector; that Mr. Milligan held the violation until Swann Keys resolved some problems they were having with the understanding of their Ordinance versus the County Ordinance; that 6 months ago he received a violation from Don Hastings, Planning and Zoning Inspector.

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

Mr. Rickard read 3 letters from James and Carol Thompson, J. Fritz and Deborah Heimer, and Donald and Norma Chapman in favor of the application.

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. 7686 – Fenwick James Street LLC – west side of Bunting Avenue, east of Route One, $\frac{1}{2}$ of Lot 6 and 8.

A variance from the north and south side yard setback requirement and a variance from the minimum square footage requirement for a duplex.

Mr. Rickard presented the case. Charles Zonko, Builder, was sworn in with James A. Fuqua, Jr., Attorney, present on behalf of the application, requesting a 2-foot variance from the required 10-foot north and south side yard setback requirements and a 2,270-square foot variance from the required 7,260-square foot requirement for a duplex; that they showed the Board a plot plan; that they submitted drawings; that the size of the lot is 50'x100'; that they will meet the parking requirements; that the entire area is zoned C-1 General Commercial; that 6 variances for duplex's have been granted in the area; that the application would not create a burden to other home owner's in the area; that a home existed and was demolished; that it would not alter the character of the neighborhood; and that they submitted a packet containing a plot plan, and a copy of the 6 variance cases that were granted in the area.

Mr. Rickard read 2 letter from W. James and Lucy Jane Conley and Robert Smith in opposition to the application.

Marcia Smith was sworn in and testified that she is in opposition to the application; that she lives across the street; that the community is growing rapidly; and that they should abide by the setback requirements.

Cynthia Mather was sworn in and testified that she is in opposition to the application; that she has owned a home in Fenwick Island for 18 years; that she just recently purchased a home next door to this application; that it will set a precedent; that she is concerned with the density of the area; that she has concerns with safety issues; that the variances that have been granted are on the ocean front; and that the community would be better served in a single family area.

In rebuttal, Mr. Fuqua stated that the trend of the area is multi-family.

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

Case No. 7687 – Colonial East Ltd. – Road 270, east of Lantern Lane, Lot 35, within Colonial East Mobile Home Park.

A variance from the separation requirement between units in a mobile home park and a variance from the maximum allowable lot coverage.

Mr. Rickard presented the case. John Stark was sworn in and testified requesting a 4-foot variance from the required 20-foot separation requirement between units in a mobile home park on the south side yard setback requirement, a 2-foot variance from the required 20-foot separation requirement between units in a mobile home park on the north side yard setback requirement, and a 5% variance from the required 35% maximum allowable lot coverage requirement; that he replaced an existing unit with a newer unit; and that an 8'x10' shed exists on the site.

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

Case No. 7688 – Richard W. Baker – west of Road 431, 1,600 feet south of Road 325.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. Richard W. Baker was sworn in and testified requesting an 11.6-foot variance from the required 40-foot front yard setback requirement for a 28'x36' garage; that the existing garage has been there since 1984; that a certificate of compliance was not issued; that he submitted pictures; that he purchased the property in 1988; that for 10 years he has been operating a business from the garage; that he needs the proposed garage for more space; that a survey was prepared when he purchased the property, but a violation was never found; and that the violation was found when he applied for a permit for the proposed garage.

By a show of hands, 1 party was present 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 variance be **granted for both garages**. Vote carried 5 – 0.

Case No. 7689 – Rt. 54 Hook & Slice Golf Driving Range – south of Route 54, 1,950 feet west of Road 389.

A special use exception to operate a golf driving range.

Mr. Rickard presented the case. Richard Tucker was sworn in and testified requesting a special use exception to operate a golf driving range; that the Board of Adjustment approved Case No. 4918 on October 5, 1997; that it was approved for a 5 year period; and that he was unaware that he had to reapply every 5 years.

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

Case No. 7690 – Martin Morris – north of Road 287, 1,995 feet east of Road 285, Lot 1.

A variance from the minimum lot width requirement.

Mr. Rickard presented the case. Martin Morris and Harvey Morris were sworn in and testified requesting a 24.34-foot variance from the required 150-foot lot width requirement and a 99.66-foot variance from the required 150-foot lot width requirement; that Martin Morris is in poor health; that he submitted a letter from his doctor stating his health problems; that he lives behind Lowe's; that he cannot get any rest because of the area he lives in; that he would like to move to this area because it is quiet; and that he would like to have his own driveway.

By a show of hands, 3 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 variances be **granted**. Vote carried 5 – 0.

Case No. 7691 – Elizabeth Forero – north of Road 312, west of Road 420, Lot 36, within Satterfield Mobile Home Park.

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

Mr. Rickard presented the case. Elvin Erickson was sworn in and testified requesting a 9-foot variance from the required 20-foot between units in a mobile home park for a screen porch; and that other 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. McCabe, seconded by Mr. Hudson, and carried unanimously that the variance be **granted since other variances have been granted in the area.** Vote carried 5 – 0.

Case No. 7692 – Lloyd E. Elling and Atlantic Coast Special Educational Services – northeast of Road 305, 495 feet west of Route 17.

A special use exception to operate a convalescent home and a special use exception to place three (3) manufactured homes.

This case has been withdrawn.

Case No. 7693 – Gordon and Alverta Forbush – southwest of Route 22, east of Breakers Street, Lot E-829, within Pot Nets Mobile Home Park.

A variance from the east side yard setback requirement.

Mr. Rickard presented the case. Gordon Forbush and Blaine Markel were sworn in and testified requesting a 3-foot variance from the required 10-foot east side yard setback requirement to replace a shed roof with a peak roof; that they submitted pictures and a drawing; that the structure is in the same footprint, but protrudes out further than what existed.

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

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

Case No. 7694 – Denise Jones – west side of Route 30, 1,200 feet north of Road 216.

A variance from the minimum lot width requirement.

Mr. Rickard presented the case. Denise Jones and Gloria Daniels, her Mother, were sworn in and testified requesting a 100-foot variance from the required 150-foot lot width requirement for Track No. 1 and a 98.5-foot variance from the required 150-foot lot width requirement for Track No. 2; that Gloria is giving Denise 2 acres; that she is placing a 24'x56' manufactured home on the 2 acres; and that they are sharing a driveway.

Mr. Mills stated to Gloria Daniels that if she wants to subdivide anymore of the land that she will have to apply for a major subdivision.

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

Mr. Rickard read 4 letters from Esther Groves, Rosalie Macklin, Mary Burton, and Edna Burton 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 with the stipulation that a driveway be shared**.
Vote carried 5 – 0.

Case No. 7695 – Naomi and Anthony Popolo – south of Route 54, southwest side of Bluewater Run West, Lot 270, within Keenwick Sound Subdivision.

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

Mr. Rickard presented the case. Naomi and Anthony Popolo were sworn in and testified requesting a 4-foot variance from the required 5-foot southeast side yard and rear yard setback requirements for an 8'x10' shed; that their neighbor was granted a variance for a shed; that they would like to place their shed next to their neighbors shed; and that they submitted 3 signatures 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 variance be **granted**. Vote carried 5 – 0.

OLD BUSINESS

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.

The Board discussed the case. Mr. Mills stated that the applicant is in the process of selling the property and that there is no need for the manufactured home to stay on the property.

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

OTHER BUSINESS

Case No. 7061 – Jane Errett Vincenti and Martin Kappel – northeast of Road 364-B, 405 feet southeast of Jan-Mar Lane in Pleasant Meadows.

A special use exception to operate a bed and breakfast.

Mr. Rickard read a letter from the applicant requesting a 90-day time extension starting from February 28, 2002.

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously to **approve the request for a 90-day time extension**. Vote carried 5 – 0.

Meeting adjourned 9:15 P.M.