

MINUTES OF FEBRUARY 24, 2003

The regular meeting of the Sussex County Board of Adjustment was held Monday evening February 24, 2003, 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. Mills, Mr. Workman and Mr. Hudson, with Mr. Berl – Assistant County Attorney, Mr. Oates – Zoning Inspector II, and Mrs. Norwood – Recording Secretary.

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of February 3, 2003. 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. 8097 – Richard and Barbara Sabia – east of Road 274, north of M Street, being Lot M-22, within Rehoboth Bay Mobile Home Park.

A variance from the rear yard setback requirement for an accessory structure.

Mr. Oates presented the case. Richard Sabia was sworn in and testified requesting a 3-foot variance from the required 5-foot rear yard setback requirement for a proposed shed; that the shed will measure 8'x 14'; that the lot size measures 60'x 100'; and that the rear of the lot is adjacent to a sanctuary and the wetlands.

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

Mr. Oates stated that the office had received one (1) letter in favor of the application.

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

Case No. 8098 – Patricia and John J. Peacock, III – east of Road 279, southwest of Oak Drive, being Lots 1 and 2, within Eugene Bookhammer Subdivision.

A variance from the side yard and rear yard setback requirements for an accessory structure.

Mr. Oates presented the case. John Peacock, III was sworn in with David Rutt, Attorney, on behalf of the application, requesting a 4-foot variance from the required 10-foot side yard setback requirement and a 2.1-foot variance from the required 10-foot rear yard setback requirement for an existing garage; that the Applicant inherited the property from his Aunt; that a survey showed the garage was in violation; that the garage was built in 1982; and that the garage is on a concrete slab.

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

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

Case No. 8099 – Mr. And Mrs. Nicholas R. Pettoruto – south of Road 277, west of Boat Dock Drive East, being Lot 16 and ½ of Lot 17, within Angola By The Bay Subdivision.

A variance from the side yard and rear yard setback requirements for an accessory structure.

Mr. Oates presented the case. Carolyn Pettoruto was sworn in and testified requesting a 2.5-foot variance from the required 5-foot side yard setback requirement and a 2.5-foot variance from the required 5-foot rear yard setback requirement for a proposed garage; that the proposed garage will measure 12'x22'; that the lot measures 75'x100'; that there is a common area to the rear of the property; and that the Association is in favor of the application.

By a show of hands, 2 parties appeared 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. 8100 – Sherry and Kenneth Sutton, III – south of Road 383, 250 feet east of Road 382.

A variance from the front yard setback requirement.

Mr. Oates presented the case. Gregory Hastings was sworn in and testified requesting a 9.3-foot variance from the required 40-foot front yard setback requirement for an existing addition; that the error was made by the architect; that this is the first

project they have done in a rural area that calls for the greater setback requirement; and that the addition does not impede vision.

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

The Board found that no parties appeared 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. 8101 – Delmarva Christian Schools, Inc. – east of Road 319, 1,100 feet south of Route 9.

A variance from the maximum fence height requirement.

Mr. Oates presented the case. Robin James was sworn in and testified requesting a 3-foot variance from the required 3.5-foot maximum height requirement; that the school removed an existing hedgerow of trees to create access for a passing lane onto the school property; that the fence was put up to give the neighbor her privacy that she is accustomed to and to help block lights and noise coming from the school; that the fence was put up without a building permit; and that when they came to apply for the permit they were told they would need a variance.

By a show of hands, 2 parties appeared 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**. Vote carried 5 – 0.

Case No. 8102 – Tracey Chester Matthews – south of Road 13A, east corner of Penn Street and Juniper Street, being Lots 16 and 17, within Woodland Heights Subdivision.

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

Mr. Oates presented the case. Donald E. Dukes and Tracey Chester Matthews were sworn in and testified requesting a 50-foot variance from the required 150-foot minimum lot width requirement for Parcel B and a 0.3843-square-foot variance for Parcel A, a 0.463-square-foot variance for Parcel B, and a 0.454-square-foot variance for Parcel C from the required 32,670-square-foot minimum square foot requirement; that 3 lots already exist; that they want to re-configure the size of the lots to better accommodate the

type of dwellings they plan to construct; that the lots have entrance approvals and septic approvals; and that Parcel A will remain the same.

George Hughes, was sworn in and testified in opposition to the application; that he lives across the road; that he feels that only 2 lots should be approved.

The Board explained that the property was previously subdivided into 3 lots.

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

By a show of hands, 1 party appeared in opposition to the application.

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

Case No. 8103 – Gary and Theresa Lahman – north of Road 538, 900 feet west of Road 537.

A variance from the side yard setback requirement for an accessory structure.

Mr. Oates presented the case. Gary Lahman was sworn in and testified requesting a 7-foot variance from the required 15-foot side yard setback requirement for a proposed 30'x30' garage; that the lot grows more narrow toward the rear of the property; that he wants the garage to line up with the existing drive; that he has offered to purchase the neighbor's property and received no response; and that he has filed complaints on his neighbor's property for vehicles, boats, and no running water or septic.

Mr. Mills stated that the Planning & Zoning Office will send an inspector to the property for further investigation.

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

Case No. 8104 – Ellwood and Eileen Frey – north of Route 22, southeast of private street, being Unit 69, within Long Neck Village Condo.

A variance from the rear yard setback requirement for an accessory structure.

Mr. Oates presented the case. Ellwood Frey was sworn in and testified requesting a 1.1-foot variance from the required 5-foot rear yard setback requirement of an existing garage; that he purchased the home in 1994; that a survey was done when converting the manufactured home to a C-Grade dwelling and the encroachment was discovered; and that the Association is 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. Workman, and carried unanimously that the case be **tabled until March 3, 2003**. Vote carried 5 – 0.

Case No. 8105 – Gem Craft Homes – north of Route 9, west corner of Road 269A, Villages of Five Points.

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

Mr. Oates presented the case. Peter Stiles was sworn in and testified requesting a special use exception to place a manufactured home type structure for use as a sales office; that the unit will be a double-wide; that the unit will be used for sales and an information center for the development; that the site will be landscaped; that the unit will meet required setbacks; and that the use will be needed for approximately 2 years.

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 special use exception be **granted for a period of 2 years**. Vote carried 5 – 0.

Case No. 8106 – Donnie R. and Elaine Fannin – south of Route 36, east corner of Catherine Drive, being Lot 19, within Freeman Horner Subdivision.

A variance from the front yard setback requirement.

Mr. Oates presented the case. Elaine Fannin was sworn in and testified requesting a 1.5-foot variance from the required 30-foot front yard setback requirement for an existing manufactured home; that a survey was done at settlement; that the road created the encroachment; that a placement permit was obtained in 1992; and that the Certificate of Occupancy was issued by the Planning & Zoning Department.

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

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

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

Case No. 8107 – Joseph E. Young – north of Route 16, southeast intersection of Bay Shore Drive and Truman Avenue, being Lot 8, Block 7, within Broadkilm Beach Subdivision.

A variance from the front yard setback requirement.

Mr. Oates presented the case. Joseph E. Young was sworn in and testified requesting a 7.3-foot variance from the required 30-foot front yard setback requirement for an existing deck; that he replaced an existing deck staying the same distance from the property line; that he obtained the building permit; that his neighbor's deck is closer to the property line; and that he submitted pictures.

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

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

Case No. 8108 – Gilbert A. and Betsy A. Voight – north of Road 270A, west of Shady Ridge Drive, being Lot 39, within Shady Ridge Estates Subdivision.

A variance from the front yard setback requirement.

Mr. Oates presented the case. Gilbert and Betsy Voight were sworn in and testified requesting a 20-foot variance from the required 30-foot front yard setback requirement for a proposed garage; that they want to replace the existing unit; that the lot, being on a corner, makes meeting the required setbacks difficult; that they are leaving a buffer area between the unit on Lot 40; and that the Association has the same setback requirements as the County.

Mr. Oates stated that the office received 4 letters in favor of the application.

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. 8109 – Wright Parker – Route One, south of Hackney Circle, being Lot 46, within Cedar Creek Landing Subdivision.

A variance from the side yard setback requirement.

Mr. Oates presented the case. Wright Parker was sworn in and testified requesting a 1.9-foot variance from the required 15-foot side yard setback requirement for a dwelling; that an error was made by the surveyors; that the same type of variance was approved on the adjacent property; and that he had signatures from 80% of the property owners in the subdivision.

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**. Vote carried 5 – 0.

Case No. 8110 – Jeffery and Robin Parker – west corner of Road 432 and Road 322.

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

Mr. Oates presented the case. Robin Parker was sworn in and testified requesting a special use exception to retain a manufactured home on a medical hardship basis; that her mother has lived in the unit since 1997; that she will need to help her mother for the rest of her life; and that she has a letter from her mother's doctor.

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

The Board found that no party 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 a period of 2 years**. Vote carried 5 – 0.

Case No. 8111 – Rite Lite Signs, Inc. – north of Route 9, west corner of Road 269A.

A variance from the maximum allowable square footage for a wall sign.

Mr. Oates presented the case. Kimberly Deal was sworn in and testified requesting a variance from the required 100-square-foot requirement for a wall sign; that the store has a specific logo that is used on all stores through out the country; that the sign is in proportion to the building; that this will be the only wall sign on the building; and that the wall sign will cover 5%.

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 variance be **granted for a 318.5-square-foot wall sign**. Vote carried 5 – 0.

Case No. 8112 – James Baeurle – west of Route One, north of Beach Avenue, being Lot 16, within Indian Beach Subdivision.

A variance from the front yard setback requirement.

Mr. Oates presented the case. James Baeurle was sworn in and testified requesting a 20-foot variance from the required 30-foot front yard setback requirement for a second floor addition to a non-conforming dwelling; that the dwelling was built in 1955; that they want to build an addition to create a second floor; and that the County notified them that a variance would be required.

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.

OLD BUSINESS

Case No. 8069 – Backbay Liquor Warehouse – intersection of Route 24 and Road 299, being Lot 2, within Backbay Shopping Center.

A variance for an additional wall sign.

The Board discussed the case.

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

Case No. 8084 – Bayside Builders – west of Road 273, east corner Stable Court, being Lot 24, within Stable Farm Subdivision.

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

See Case No. 8086 for details.

Case No. 8085 – Bayside Builders – west of Road 273, south of Saddle Court, being Lot 7, within Stable Farm Subdivision.

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

See Case No. 8086 for details.

Case No. 8086 – Bayside Builders – west of Road 273, east of Stable Court, being Lot 23, within Stable Farm Subdivision.

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

The Board discussed the case.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the variances for Case numbers 8084, 8085, and 8086 be **denied; that Stable Farm is a new subdivision, in which no previous variances have been granted; that the developer presumably knew of setbacks and the limited buildable area when lots were originally configured; that when the subdivision was being created, the builder could have taken into account limited space created by cul-de-sacs, in order to make construction of dwellings easier; that the Applicant, Bayside Builders, purchased the lots with knowledge of the setbacks and the limited building area; that granting variances for these applications would create a precedent for the subdivision and would likely result in other property owners seeking variances to build larger dwellings; and that the Applicant failed to submit evidence sufficient to meet the legal requirements for a variance, in particular, there was no evidence that the lots could not be developed without a variance.** Vote carried 5 – 0.

Case No. 8087 – Toll Brothers – east of Road 357, west of May Drive, being Lot 53, within Bethany Lakes Subdivision.

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

See Case No. 8091 for details.

Case No. 8088 – Toll Brothers – east of Road 357, west of May Drive, being Lot 52, within Bethany Lakes Subdivision.

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

See Case No. 8091 for details.

Case No. 8089 – Toll Brothers – east of Road 35, west of May Drive, being Lot 54, within Bethany Lakes Subdivision.

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

See Case No. 8091 for details.

Case No. 8090 – Toll Brothers – east of Road 357, west of May Drive, being Lot 55, within Bethany Lakes Subdivision.

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

See Case No. 8091 for details.

Case No. 8091 – Toll Brothers – east of Road 357, west corner of May Drive and Virginia Drive, being Lot 51, within Bethany Lakes Subdivision.

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

The Board discussed the case.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variances for Case numbers 8087, 8088, 8089, 8090, and 8091 be **denied; that Bethany Lakes is a new subdivision, in which no previous variances have been granted; that the Applicant, Toll Brothers, purchased the entire subdivision, and is therefore presumed to have knowledge of limitations in terms of building dwellings; that variances in this instance are being requested by the developer, and not by the ultimate consumer; that the Applicant admitted that houses could be built on the lots without variances; that the Applicant wishes to build houses in excess of 3,000-square-feet, and a smaller house could certainly be built on the lot, without a variance; and that granting variances for these lots may result in other property owners seeking variances and utilizing these cases as precedent, and the Board does not wish to create a precedent in this new subdivision.**

Vote carried 5 – 0.

Meeting Adjourned 8:35 p.m.