

## MINUTES OF APRIL 7, 2003

The regular meeting of the Sussex County Board of Adjustment was held Monday evening April 7, 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. McCabe, seconded by Mr. Mills, and carried unanimously to approve the Revised Agenda with the addition of Case No. 7705, Robert D. Hayden, Jr. under other business. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of March 17, 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. 8136 – Robert A. Hicken, Jr., Joseph Amato, III and Robert Wheeler** – east of Road 27A, corner of Field Lane and Scenic Drive, being Lot 37, within Kyrie Estates Subdivision.

A variance from the side yard setback requirement.

Mr. Oates presented the case. Robert Wheeler was sworn in with Daniel Myers, Attorney, on behalf of the application and testified requesting a 1.2-foot variance from the required 15-foot side yard setback requirement for an existing attached garage; that a building permit was obtained; that the setbacks on the permit were not clear; that the Applicant was not aware of the encroachment until a survey was done at settlement; and that they submitted pictures and a copy of the building permit.

Jacquelyn A. Rams, was sworn in and testified in favor of the application; that she is a licensed realtor and appraiser; and that the encroachment would not effect property values.

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. 8137 – Capano Homes, Inc.** – west of Route One, west of Bayard Avenue, within Ann's Acres Subdivision.

A variance from the maximum allowable height requirement.

Mr. Oates presented the case. William Davis was sworn in and testified requesting a 6.1-foot variance from the required 42-foot maximum allowable height requirement; that he built the 4-story townhouse; that the County notified him of the encroachment; that to meet the required 42-foot maximum height requirement the roof would need to be re-configured and would have to cut 6-foot off the roof; that to prevent future encroachments they have made adjustments to the plan for any new townhouses; and that the neighbors are in favor of the application.

Mr. Oates stated that the office received one letter of opposition to the application.

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 hearings, the Chairman referred back to this case. Motion by Mr. McCabe, seconded by Mills, and carried unanimously that the variance be granted. Vote carried 5 – 0.

**Case No. 8138 – Willard J. Hayes** – east of U.S. Route 13, 4,345 feet north of Route 54.

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

Mr. Oates presented the case. Willard J. Hayes was sworn in and testified requesting a special use exception to place a manufactured home type structure for use as a sales office; that he purchased the property in 1998; that he has all of his agency approvals to have the car dealership; that the County sent him a violation notice for the manufactured home sales office; that he was unaware that a permit and a hearing was required; that he plans to build a permanent sales office; that he placed the unit on the lot in January 2003; and that the unit will be skirted and have landscaping around it.

Kelly Lee Hales, was sworn in and testified in opposition to the application; that she currently shares a driveway with the Applicant; that he moved the unit on the property in November 2002; that the unit is placed to close to the property line; that it could not be moved due to a flat tire and that she offered the Applicant a tire so that he could move the unit, however he refused; that the customers use her share of the driveway to turn cars around; and that she is in favor of the use as long as it is only temporary.

Ray Lezinski, was sworn in and testified in opposition to the application; that he wants to be assured that the use is only temporary; that the property should be graded so that it has proper drainage; and that the unit should face the cars on the Applicant's lot and not his dwelling.

In rebuttal, Mr. Hayes, stated that the unit does meet the required setbacks; that he has complied with Soil Conservation; that the location of the unit best suited the layout of the lot; and that he can see all of his cars on the lot from the unit.

By a show of hands, 2 parties appeared in opposition to the application.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously to take the case under advisement. Vote carried 5 – 0.

At the conclusion of the hearings, the Chairman referred back to this case. Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously to **table the case until April 21, 2003**. Vote carried 5 – 0.

**Case No. 8139 – Abundant Life Church, Inc.** – north of Road 243, 600 feet east of Road 114.

A variance from the front yard setback requirement.

Mr. Oates presented the case. Harold John Betts was sworn in and testified requesting a 4-foot variance from the required 40-foot front yard setback requirement for a proposed addition; that a survey showed the existing church and proposed addition do meet the required setbacks; that the church was built in 1981; and that they purchased the lot in 1987.

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 to **leave the case open until April 21, 2003 to have a survey done to show the exact variance needed**. Vote carried 5 – 0.

**Case No. 8140 – Jacquelyn A. Rams** – north of Road 297, north of Myrtle Avenue, being Lots 33, 38, and 39, within Bookhammer's Addition to Oak Orchard Subdivision.

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

Mr. Oates presented the case. Jacquelyn A. Rams was sworn in with Daniel Myers, Attorney, on behalf of the application, testified requesting a 0.2-foot variance from the required 30-foot front yard setback requirement for a dwelling, a 0.3-foot variance from the required 5-foot side yard setback and a 24.8-foot variance from the required 30-foot rear yard setback requirement for a shed; that the Old County Road shown on the survey has never been used as a road; that the deed does not make any reference to the road; that she purchased the property with the improvement; that she placed a fence even with the neighbors fence; and that she submitted pictures.

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

**Case No. 8141 – Missie H. and Howard M. Schaefer, Jr.** – east of Road 362, west of Berkshire Lane, being Unit 166, within Villas of South Hampton.

A variance from the rear yard setback requirement.

Mr. Oates presented the case. Howard Schaefer, Jr. was sworn in and testified requesting a 10-foot variance from the required 10-foot rear yard setback requirement for a deck; that the rear of his property faces a pond; that he cannot see the dwellings next door to him and is 70-yards from the dwellings across the pond; that his lot is on a cul-de-sac which creates a smaller lot; and that the variance will not adversely affect the neighborhood.

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. 8142 – John M. Carter** – east of Route 54, southeast of Canvas Back Road, being Lot 1, Block D, within Swann Keys Subdivision.

A variance from the side yard setback requirement.

Mr. Oates presented the case. Jan Lubiniecki was sworn in and testified requesting a 6-foot variance from the required 15-foot side yard setback requirement; that he was there on behalf of the Applicant due to medical reasons; that the shed has been on

the lot since 1995; that the lot adjacent to his lot has also received a variance for their shed; and that the shed is on a concrete pad.

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**. Vote carried 5 – 0.

**Case No. 8143 – Eric Nelson** – west of Road 315, 4,849 feet north of Road 48.

A variance from the side yard setback requirement.

Mr. Oates presented the case. Eric Nelson was sworn in and testified requesting a 13-foot variance from the required 15-foot side yard setback requirement for a proposed detached garage; that due to his existing septic system and the size of the lot there is a limited area to place the garage; that he is 150-feet from the nearest building not on his property; and that he wants to replace a smaller shed for a more permanent structure.

Harry Glasgow, was sworn in and testified in opposition to the application; that he read a statement stating the deed restrictions; that his property surrounds the Applicant's; that he had to install a fence to keep the Applicant's trash from blowing onto his property; that the Applicant uses the buildings for his commercial business; and that he submitted pictures.

Susan and Thomas W. Lynch, II, were sworn in and testified in opposition to the application; that they have lived in the area for 17-years; that the Applicant does not maintain the property; that they are concerned the property values in the area will be effected; and that the proposed garage is too large for the property and that the requested variance is too close to the property line.

By a show of hands, 4 parties appeared in opposition to the application.

Motion by Mr. Hudson, seconded by Mr. McCabe, and carried unanimously to take the case under advisement. Vote carried 5 – 0.

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

**Case No. 8144 – Robert J. Stenger** – south of Road 238, ½ mile west of Route 16.

A variance from the side yard setback requirement.

Mr. Oates presented the case. Robert Stenger was sworn in and testified requesting a 5.6-foot variance from the required 15-foot side yard setback requirement; that the building was originally a garage and was converted into a cottage for farm help; that he acquired the property from his father in 1997; that the variance is requested so that he may subdivide the parcel; and that he has a letter of non-objection from DelDot to use the existing entrance.

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

**Case No. 8145 – Frank and Eileen Baratko** – north of Route 54, west of Swann Drive, being Lot 50-A, within Swann Keys Subdivision.

A variance from the side yard setback requirement.

Mr. Oates presented the case. Edward McCauslin was sworn in and testified requesting a 4-foot variance from the required 10-foot side yard setback requirement for a proposed porch; that the porch will be added to an existing deck; that the Association approves of the application as long as the existing deck does not increase in size; 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. Mills, and carried unanimously that the variance be **granted and to use the existing footprint of the deck**. Vote carried 5 – 0.

**Case No. 8146 – John Lucas** – southeast of Road 352, 975 feet north of Road 353.

A variance from the side yard setback requirement.

Mr. Oates presented the case. John Lucas was sworn in and testified requesting a 7-foot variance from the required 15-foot side yard setback requirement for a proposed 1,104-square-foot garage; that the placement of the garage is due to the existing driveway and septic system; and that it will meet required setbacks on the rest of the property.

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. 8147 – Lawrence A. Brown** – intersection of Route One and Road 272B.

A variance from the front yard setback requirement for a through lot and a variance from the minimum parking space requirement.

Mr. Oates presented the case. Lawrence Brown, Mike <sup>Wheeler</sup>Wigley, Randy Duplechain were sworn in and testified requesting a 47.7-foot variance from the required 60-foot front yard setback requirement, a 20-foot variance from the required 30-foot rear yard setback requirement, and a 0.67-foot variance from the required 10-foot side yard setback requirement for a proposed building; that the existing buildings are beyond repairs; that due to the triangular shape of the property they wish to build a new building within the same setbacks as the existing buildings; that the first floor of the building will be for retail and the second floor will be for five (5) apartments; that they will be closing off three of the existing entrances on Route One and will only have access from Old Bay Road; that the proposed building is in keeping with the character of the neighborhood; that the building will meet the maximum height requirement; that the retail will be allotted 10-parking spaces; that the 5-units are smaller than most multi-family units and they feel that 2-parking spaces will be sufficient; and that they showed the proposed building plans to the Board.

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. 8148 – Gene and Susan Lambert** – north of Road 395, west of North Star Circle, being Lot 6, Block 5, within Bayview Estates Subdivision.

A variance from the rear yard setback requirement.

Mr. Oates presented the case. Gene Lambert was sworn in and testified requesting a 1.2-foot variance from the required 20-foot rear yard setback requirement for a proposed addition; that the proposed addition will measure 16'x18'; that he submitted 2-letters in favor of the application; and that the Homeowner's 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. McCabe, seconded by Mr. Hudson, and carried unanimously that the variance be **granted**. Vote carried 5 – 0.

**Case No. 8149 – Frank and Lois Lathbury** – south of Road 370, 1,450 feet east of Road 370B.

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

Mr. Oates presented the case. Frank Lathbury was sworn in and testified requesting a 41.52-foot variance from the required 150-foot lot width requirement; that he wants to subdivide a lot for his stepson; that the property will remain a working farm; and that there are no future plans of subdivision.

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**. Vote carried 5 – 0.

**Case No. 8150 – Julia and Charles Truitt, Jr.** – south of Road 331, 1,405 feet east of Road 370B.

A special use exception to connect two (2) manufactured homes to make one (1) unit.

Mr. Oates presented the case. Charles Truitt, Jr. was sworn in and testified requesting a special use exception to connect two (2) manufactured homes to make one (1) unit; that the two units were connected in 1986 by his father and grandfather; that he inherited the property 5-years ago; that he was unaware of the violation until he received notice from the Planning & Zoning Department; that there is only one (1) kitchen; that he is in the process of putting vinyl siding and an A-roof on the units; and that he will need about six (6) months to complete the improvements.

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 special use exception be **granted with the following stipulations:**

1. **The manufactured home shall be enclosed with a block foundation.**
2. **An A-roof shall be installed.**
3. **There shall only be one (1) kitchen.**
4. **The units shall be improved with matching siding.**
5. **The improvement shall be completed within six (6) months.**

Vote carried 5 – 0.

### **OLD BUSINESS**

**Case No. 8124 – Virginia M. Smith** – east of Road 516, 200 feet southeast of Road 525.

A special use exception from the provisions and requirements to place a multisectional manufactured home.

The Board discussed the case.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted with the stipulation that the unit meets all requirements under the Ordinance Section 115-20 (A)**. Vote carried 5 – 0.

**Case No. 8125 – Wayne A. White** – north of Road 565, 600 feet west of Road 239.

A variance from the minimum square footage requirement for a parcel and a variance from the side yard setback requirements.

The Board discussed the case.

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

**Case No. 8133 – Richard W. Burris, Sr.** south of Route 54, east of Cleveland Avenue, being Lot 3, within Cape Windsor Subdivision.

A variance from the side yard setback requirement.

The Board discussed the case.

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

### **OTHER BUSINESS**

**Case No. 7705 – Robert D. Hayden, Jr.** – west of Road 225, 1, 923 feet southeast of McCoy Avenue, Lot A.

A variance from the south side yard setback requirement.

Mr. Oates stated that the Applicant sent a letter requesting a one (1) year extension .

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously that the request be **granted for a period of one (1) year**. Vote carried 5 – 0.

**Meeting Adjourned 9:35 p.m.**