

MINUTES OF JUNE 2, 2003

The regular meeting of the Sussex County Board of Adjustment was held Monday evening June 2, 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 and Mrs. Heffelfinger – Zoning Inspectors II, and Mrs. Norwood – Recording Secretary.

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously to approve the Revised Agenda, with the correction that Case No. 8209 and Case No. 8210 were withdrawn on May 28, 2003. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of May 19, 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. 8205 – John D. and Dennard R. Ward – north of Road 496, 850 feet west of Road 493.

A variance from the side yard setback requirement for a stable.

Mr. Oates presented the case. Brian Shirey, Attorney, present on behalf of the application testified requesting an 8.7-foot variance from the required 15-foot side yard setback requirement for an existing stable; that the Applicant purchased the property in December 2002; that the stable is not currently being used as a stable; that the structure is used for storage only; that the stable is over 200-foot from the nearest neighbors dwelling; and that he submitted a letter from the surveyor.

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 and that the structure be used for storage only**.
Vote carried 5 – 0.

Case No. 8206 – Keith M. Owens and Janet L. Lowe – south of Road 493, 284 feet east of Road 485.

A variance from the rear yard setback requirement.

Mr. Oates presented the case. Brian Shirey, Attorney, present on behalf of the application testified requesting a 2-foot variance from the required 20-foot rear yard setback requirement for an existing detached garage; that the Applicant purchased the property in 1999; that a building permit was never obtained; that the property has been conveyed twice before with the existing garage in violation; and that the location has no adverse affect on the neighborhood.

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. 8207 – Susan D. Burley – southeast of Road 446, 1,378 feet west of Road 447, being Lot 12 within Shiloh Farms Subdivision.

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

Mr. Oates presented the case. Brian Shirey, Attorney, present on behalf of the application testified requesting a 7-foot variance from the required 15-foot side yard setback requirement for an existing detached shed and a 7-foot variance from the required 20-foot rear yard setback requirement for an existing detached carport; that the Applicant purchased the property in November 2002; that the previous owners purchase the property in November 1999 and a recorded survey showed the improvements in the same location; that the structures did not appear on a 1994 recorded survey; and that he submitted copies of previous deeds.

Susan D. Burley, was sworn in and testified in favor of the application and stated that the structures are surrounded by trees and are not visible to the neighbors.

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. 8208 – D. Blake Thompson – north of Shady ridge Drive, 900 feet west of Road 270A, being Lots 25, 26 and 27 within Shady Ridge Subdivision.

A variance from the front yard setback requirement.

Mr. Oates presented the case. David Blake Thompson was sworn in and testified requesting a 10-foot variance from the required 30-foot front yard setback requirement

for a proposed dwelling; that he has owned the lot for 25 years; that the property drops drastically from the road side; that the rear of the property is in the 404 Wetlands; that Lot 28 has had a similar variance granted; and that he submitted pictures.

John Barwick, was sworn in and testified in favor of the application; that the Applicant has applied for a Nationwide 18 permit that allows the building to encroach into the 404 Wetland Line; and that this type of permission is routine in Sussex County.

Kenneth Walls, was sworn in and testified in opposition to the application; that the Association held a meeting on May 24, 2003 and discussed the proposed variance; that it is unclear to him if the request is for a 20-foot variance or a 10-foot variance; that he is concerned for the appearance and safety of the neighborhood; and that the dwelling on Lot 28 does not appear that close to the road.

In rebuttal, D. Blake Thompson, stated that the dwelling cannot be built to the rear of the property due to the wetlands and that it will not be any closer than 20-foot from the road due to the drop off.

In rebuttal, John Barwick, stated that the hatched line on the submitted survey shows how far the building may encroach into the 404 Wetlands.

In rebuttal, Kenneth Walls, stated that the Association never received any correspondence in reference to the variance on Lot 28.

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

By a show of hands, 3 parties appeared in opposition to the application.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the case be **tabled until June 16, 2003**. Vote carried 5 – 0.

Case No. 8196 – Patrick J. and Shari Tell – south of Road 312, 75 feet west of Road 297.

A variance from the side yard setback requirement.

Mr. Oates presented the case. Michael Brady was sworn and testified requesting an 8-foot variance from the required 10-foot side yard setback requirement for a set of new steps; that the dwelling was elevated by a federal grant from FEMA; that the dwelling is non-conforming; that the stairs were built to gain access to the dwelling; that there are two dwellings on this parcel; that the deck was built by the home owner; and that pictures were submitted.

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. Workman, and carried unanimously that the case be **tabled until June 16, 2003**. Vote carried 5 – 0.

Case No. 8197 – Dorothy F. Seier – southeast of private road, 100 feet south of Indian River Bay, within West Beach.

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

Mr. Oates presented the case. Michael Brady was sworn in and testified requesting a 22-foot variance from the required 30-foot front yard setback requirement and a 9-foot variance from the 15-foot side yard setback requirement for a set of new steps; that the dwelling was elevated by a federal grant from FEMA; that the dwelling is non-conforming; that the steps were built to gain access to the dwelling; and that pictures were submitted.

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 **tabled until June 16, 2003 and a new survey can be submitted**. Vote carried 5 – 0.

Case No. 8198 – James F. and Vicki L. Sadowski – north of Road 279B, south of Hunt Club Road, being Lots 43, 49 and 55 within Joy Beach Subdivision.

A variance from the rear yard setback requirement.

Mr. Oates presented the case. Michael Brady was sworn in and testified requesting an 8-foot variance from the required 20-foot rear yard setback requirement for a set of steps; that the dwelling was elevated by a federal grant from FEMA; that the deck was lifted with the dwelling; that the steps are required to gain access to the home; that the property line is straight across and does not jut in with the existing bulkhead; that he does not know of a previous variance for the existing deck; and that pictures were submitted.

Mr. Oates stated that the office received 1 letter 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 June 16, 2003 and the office will check if a variance was issued on the deck.** Vote carried 5 – 0.

Case No. 8199 – Linda J. Wagner – northeast of Road 297, east of Mercer Avenue, being Lot 7 within Addition to Oak Orchard Subdivision.

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

Mr. Oates presented the case. Michael Brady was sworn in and testified requesting a 29.5-foot variance from the required 30-foot front yard setback requirement, a 9-foot variance from the required 10-foot side yard setback requirement, a 1-foot variance from the required 10-foot side yard setback requirement, and a 8-foot variance from the 10-foot side yard setback requirement for new steps; that the dwelling was elevated by a federal grant from FEMA; that the dwelling is non-conforming; that with this case and all the previous cases due to the size of dwellings and lots it made meeting the required setbacks impossible; and that this entire project is a first for the County.

Charles A. Purnell, was sworn in and testified in opposition to the application; that he owns Lot 7; that in order to use the steps the Applicant has to step on his property; and that he believes the submitted survey is incorrect.

In rebuttal, Michael Brady, stated that the steps cannot be moved to the opposite side due to the landing.

In rebuttal, Charles Purnell, stated that the stake that marks his property line is visible.

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

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

Mr. Oates stated that the office received 1 letter in opposition to the application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until June 16, 2003 and a new survey requested by the Board.** Vote carried 5 – 0.

Case No. 8200 – Michael V. and Susan M. Masciandaro – south of Road 312, 480 feet west of Road 297.

A variance from the side yard setback requirement.

Mr. Oates presented the case. Michael Brady was sworn in and testified requesting a 2-foot variance from the required 10-foot side yard requirement for a set of steps; that the dwelling was elevated by a federal grant by FEMA; that the dwelling is non-conforming; that the deck was raised with the dwelling; that the steps were built to gain access to the existing entrance; and that pictures were submitted.

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 **tabled until June 16, 2003**. Vote carried 5 – 0.

Case No. 8201 – John C. and Patricia E. Rudy – north of Road 297, south of River View Avenue, being Lots 21 and 22 within Addition to Oak Orchard Subdivision.

A variance from the front yard setback requirement.

Mr. Oates presented the case. Michael Brady was sworn in and testified requesting a 24-foot variance from the required 30-foot front yard setback requirement; that the dwelling was elevated by a federal grant for FEMA; that old set of steps were located further into the setback than the new steps; and that pictures were submitted.

By a show of hands, 4 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. Mills, and carried unanimously that the case be **re-opened to allow testimony from the property owner**. Vote carried 5 – 0.

John Rudy, was sworn in and testified in favor of the application; that his survey shows that the new steps do not project into the setback as much as the previous set of steps.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the case be **tabled until June 16, 2003**. Vote carried 5 – 0.

Case No. 8202 – Paul E. and Rosene Wagner – northeast of Road 297, east of Mercer Avenue, being Lots 9, 10, 11, 19 and 20 within Addition to Oak Orchard Subdivision.

A variance from the front yard setback requirement.

215 Mr. Oates presented the case. Michael Brady was sworn in and testified requesting a 0.5-foot variance from the required 30-foot front yard setback requirement for new steps; that the dwelling was elevated by a federal grant from FEMA; that the new steps do not encroach as far as the previous steps; that Charles Purnell granted the Applicants permission to encroach into his easement; and that pictures were submitted.

Mr. Lank was sworn in and stated that the entire process involving all the cases referencing the FEMA project began over 3 years ago; and that the variances requested were based on the old interpretation of the ordinance that allowed a non-conforming structure to be raised straight up and that a variance was not required.

Mr. Charles Purnell, was sworn in and testified in opposition to the application; that he never signed the approval for the encroachment into his easement;

Mr. Berl, stated that the Board could not get into the use of the easement.

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

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

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the case be **tabled until June 16, 2003**. Vote carried 5 – 0.

Case No. 8203 – Patricia E. Vassallo – northeast of Road 297, south of River View Avenue, being Lots 25 and part of 26 within Addition to Oak Orchard Subdivision.

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

Mr. Oates presented the case. Michael Brady was sworn in and testified requesting a 16-foot variance from the required 30-foot front yard setback requirement, a 9.5-foot variance from the required 10-foot side yard setback requirement, and a 6-foot variance from the required 10-foot side yard setback requirement for a set of new steps; that the dwelling was elevated by a federal grant by FEMA; that the dwelling is non-conforming; that the Applicant owns the adjacent Lot 24; that the measurements on the survey were taken by the County staff; and that pictures were submitted.

Patricia Vasaallo, was sworn in and testified in favor of the application; that she owns the adjacent lots surrounding this property and is only encroaching on herself; that the Board is unaware of what a nightmare the project has been from the beginning; and that 4-years ago when this began they were told that by going straight up a variance would not be required.

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

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the case be **tabled until June 16, 2003**. Vote carried 5 – 0.

Case No. 8204 – Linda J. Wagner – northeast of Road 297, east of Mercer Avenue, being Lot 8 within Addition to Oak Orchard Subdivision.

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

Mr. Oates presented the case. Michael Brady was sworn in and testified requesting 29-foot variance from the required 30-foot front yard setback requirement, a 5-foot variance from the required 10-foot side yard setback requirement, a 9-foot variance from the required 10-foot side yard setback requirement, and a 7-foot variance from the required 10-foot side yard side yard setback requirement for a set of new steps; that this case is the same as the previous 8 cases.

Charles Purnell, was sworn in and testified that he was not opposed to the application as long as she did not encroach on his road; and that he did not see anything wrong with Lot 8.

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

Mr. Oates stated that the office received 1 letter of opposition to the application.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the case be **tabled until June 16, 2003**. Vote carried 5 – 0.

OLD BUSINESS

Case No. 8188 – Gerald A. Nocks – south of Road 331, east of Third Street, being Lots 17 and 19, within Riverview Subdivision.

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

The Board discussed the case.

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

Meeting Adjourned 9:08 p.m.