

MINUTES OF JULY 1, 2002

The regular meeting of the Sussex County Board of Adjustment was held Monday evening July 1, 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. Mills and Mr. Hudson, with Mr. Schrader – Assistant County Attorney, Mr. Oates – Planning and Zoning Inspector, and Mrs. Norwood – Recording Secretary.

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously to approve the Revised Agenda with the correction to discuss Case No. 7847, Donald L. Carmine under other business. Vote carried 4 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson and carried unanimously to approve the Minutes of June 24, 2002. Vote carried 4 – 0.

Mr. Schrader read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing the cases.

Case No. 7858 – Juvenal and Olivia Fernandez – east of Route 17, 839 feet north of Road 382.

A special use exception to place a manufactured home for storage purposes.

Mr. Oates presented the case. Juvenal and Olivia Fernandez were sworn in with Tina Navarrate, to translate, and testified that they are requesting a special use exception to use an existing 28'x56' manufactured home for storage; that one building exists for storage of a tractor; and that the unit does not have a kitchen, bathroom or electric.

James Mershon was sworn in and testified that he is in opposition to the application; that he submitted pictures; and that the unit has been on the lot for 3 to 6 months without a permit.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be take under advisement. Vote carried 4 – 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 special use exception be **denied due to the effect on neighboring properties**. Vote carried 4 – 0.

Case No. 7859 – Wojciech and Sharon Klusek – north of Road 381-A, 378 feet east of Road 382.

A variance from the east side yard setback requirement.

Mr. Oates presented the case. Wojciech Klusek was sworn in and testified requesting a 10-foot variance from the required 15-foot side yard setback requirement; that the existing dwelling is 3 years old; that the adjacent lot is vacant; that the building will line up with the existing driveway; and that the garage cannot be located in the rear of the property due to the placement of the septic.

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 4 – 0.

Case No. 7860 – Dolores Russell – south of Road 527, 1754 feet northeast of Route 18.

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

Mr. Oates presented the case. Dolores Russell was sworn in and testified requesting a special use exception to place a manufactured home on a medical hardship basis for Ms. Russell's sister; that a letter was submitted from Kenneth R. Smith, M.D.; that the size of the unit is 14'x76'; that her daughter will live in the unit to care for her sister; and that a previous hardship was granted to care for her parents and sister.

Robert Williamson was sworn in and testified to the home being used for the applicant's daughter; that the sister is picked up daily by a transportation service to be looked after during the day; and that the applicant's ex-husband lived in the previous unit before the unit was removed.

Elton Garraway was sworn in and testified to that he never received notice of the request for the special use hearing; and that he is concerned about his property value.

Franklin Williams was sworn in and testified that he never received notice of the request for the special use hearing; and that he does not understand the hardship.

Mr. Schrader read him the ordinance.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be taken under advisement. Vote carried 4 – 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 special use exception be granted for a period of 2 years and reference that the sister was part of the initial approval in the previous case. Vote carried 4 – 0.

Case No. 7861 – John and Carmela Coleman – east of Road 274, southeast side of White Oak Road, Lot 94, within The Landing Subdivision.

A variance from the northwest side yard setback requirement.

Mr. Oates presented the case. John and Carmela Coleman were sworn in and testified requesting a 4-foot variance from the required 5-foot northwest side yard setback requirement for an existing shed; that they purchased dwelling in 1990 and that they made it their permanent residence in 1999; that they first proposed an addition to the existing dwelling that the Homeowner's Association denied; that in order to comply with the required setbacks they would have to cut down trees; that they submitted pictures; and that the builder obtained proper building permit.

By a show of hands, 2 parties were in favor of the application.

Thomas Negran was sworn in and testified that he is in opposition to the application; that he is the President of the Homeowner's Association; that the Coleman's did not submit drawings of the shed to the Association and that the Association does not allow any detached structures in the development; that the Association suggested that the Coleman's move the shed to the other side of the property, attach the shed to the existing dwelling, apply for the variance, and that the Association would approve the request; that a Board member of the Association contacted the builder that the shed was in violation of the covenants.

Larry Mayo was sworn in and testified that he obtained the building permit and that he was not familiar with the setback requirements; that he built the shed and that in order to move the shed to comply they would have to tear the shed down and rebuild; and that the shed is blocked from view with the existing trees.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be taken under advisement. Vote carried 4 – 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 **tabled until July 15, 2002**. Vote carried 4 – 0.

Case No. 7862 – Mark and Laurie Baker – west of Route 30, 3,950 feet south of Road 231.

A special use exception to operate a commercial dog kennel on less than five (5) acres and a variance from the setback requirements for a commercial dog kennel.

Mr. Oates presented the case. Mark and Laurie Baker were sworn in and testified requesting a special use exception to operate a dog kennel and a variance from the required 200-foot setback requirements; that she owns 10 dogs and has 4 foster dogs that she rescued and tries to find new homes for the dogs; that she also shows the dogs for public education and pet exhibits; and that she will have no more than 14 dogs at a time.

Mr. Oates read a letter from Marcia Tokson in favor of the application.

William and Joyce Stout were sworn in and testified in opposition to the application; that the barking was a constant annoyance; that they had been in touch with the SPCA; and that they live only 100-feet or so away.

Crystal Shear was sworn in and testified in opposition of the application; that her concern is for the dogs themselves; that she has seen the dogs fight each other and dig out the fence in the yard; and that the dogs don't have proper shelter and there has been as many as 19 dogs on the property at a time.

Carl Schirmer was sworn in and testified in opposition of the application; that he was concerned for his children; that he feels there is not adequate shelter for the number of dogs; and that he would like to know the proper criteria for a dog kennel.

John Stout was sworn in and testified in opposition to the application; that he has had problems with the applicant in previous years; and that he sold property to create additional space between them.

In rebuttal, Laurie Baker stated that 9 dogs live in the house and that the barking is caused from the neighbors riding ATV's nearby.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be taken under advisement. Vote carried 4 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until July 15, 2002**. Vote carried 4 – 0.

Case No. 7863 – Shirley M. West – west of Road 274, Arnell Road, Lot 42, within Old Landing Subdivision.

A variance from the south side yard setback requirement.

Mr. Oates presented the case. Robert Kellam and Philip Norton were sworn in and testified requesting a 1.8-foot variance from the required 5-foot south side yard setback requirement for an existing gazebo; that Shirley West is the previous owner of the property and that Philip Norton is the current owner; that until the survey was prepared the previous owner was unaware of the violation; that the existing gazebo is on an existing concrete slab; and that 4 letters in favor of the application and pictures were submitted.

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 4 – 0.

Case No. 7864 – Winford Harmon – north of Road 302, 3,815 feet west of Road 302-A.

A variance from the front yard setback requirement.

Mr. Oates presented the case. Winford and Douglas Harmon were sworn in and testified requesting a 4-foot variance from the required 40-foot front yard setback requirement for an existing detached garage; that the garage was built in 1999; that the builder obtained the permit; and that they tried to get in touch with the builder when they were made aware of the violation.

Thomas Harmon was sworn in and testified that he was in favor of the application; that he has no problem with the minimal variance needed that was caused by the builder; and that immediate family members own the surrounding properties.

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 4 – 0.

Case No. 7865 – Leslie O. and Teresa Givens – west of Road 479, 350 feet southwest of Route 20.

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

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Mr. Oates presented the case. Teresa Givens was sworn in and testified requesting a 46-foot variance from the required 150-foot lot width requirement; that she owns the adjacent farm; that she wants to square up the lot size; and that the existing mobile home will be removed.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted**. Vote carried 4 – 0.

Case No. 7866 – David and Janet Twining – north of Carolina Avenue, Lot 9, within L.P. Faucett, Inc. and Frederick Worth Lots.

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

Mr. Oates presented the case. David Twining was sworn in and testified requesting an 8.6-foot variance from the required 30-foot front yard setback requirement for a proposed second story deck; that the dwelling next door blocks the view of the street; and that the average setback on the street is 21.34-feet per his surveyor.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted**. Vote carried 4 – 0.

Case No. 7867 – Alisa Johnson – south of Route 17, 250 feet north of Route 54.

A special use exception for a day care facility.

Mr. Oates presented the case. Alisa and James R. Johnson were sworn in and testified requesting a special use exception to operate a day care facility in the Apostolic Church Hall; that her hours of operation will be 6:30 a.m. to 11:00 p.m., Monday thru Friday; that she will have 2 shifts and will care for 32 children per shift; and that she cares for children aged 6 weeks old to 14 years old.

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously that the special use exception be **granted**. Vote carried 4 – 0.

Case No. 7868 – Michael Gamba – south of Route 18, 250 feet east of Road 561.

A variance from the minimum lot width requirement for a parcel and a variance from the side yard setback requirement.

Mr. Oates presented the case. Michael Gamba was sworn in and testified requesting a 3-foot variance from the required 15-foot side yard setback, a 50-foot variance from the required 150-foot required lot width requirement, and a 100-foot variance from the 150-foot required lot width requirement; that he would like a second driveway to have access to the rear of his property; and that he has future plans of building a dwelling for his parents.

Owen Ramsey was sworn in and testified in opposition to the application; that he has reason to believe the owner plans for the parcel to be developed; and that he was speaking in behalf of 16 other property owners in the area.

Niley Ramsey was sworn in and testified in opposition to the application; that Mr. Gamba does not live in the dwelling he lives in New Jersey; and that he has no plans of building a dwelling for his parents.

Peggy Shipley and William Shipley were sworn in and testified in opposition to the application; that they have lived next door for 4 years and that no one has lived in the existing dwelling during that time; and that they oppose the building of a road so close to their home.

In rebuttal, Mr. Gamba stated he had no objections to sharing a driveway.

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be taken under advisement. Vote carried 4 – 0.

Motion by Mr. Hudson, seconded by Mr. McCabe, and carried unanimously that the case be tabled until July 15, 2002. Vote carried 4 – 0.

Case No. 7869 – Ryan Homes – east of Road 288, west of Amberwood Way, Lot 53, within Chapel Green Subdivision.

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

Mr. Oates presented the case. Elton Murray of Land Tech was sworn in and testified requesting a 10-foot variance from the required 40-foot rear yard setback requirement; that a 26'x36' dwelling is being built with a proposed 8'x20' morning room; and that due to the unusual shaped lot they cannot meet the required setbacks.

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 4 – 0.

Case No. 7870 – Grotto Pizza, Inc. – south of Route 22, 1,525 feet east of Road 298.

A special use exception for an outdoor tent for special purposes.

Mr. Oates presented the case. John Hoenen was sworn in and testified requesting to withdraw the application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **denied for lack of a record of support**. Vote carried 4 – 0.

OLD BUSINESS

Case No. 7846 – John J. and Penny Alloway – east of private road, 700 feet southwest of Road 531.

A variance from the rear yard setback requirement.

The Board discussed the case.

Motion by Mr. Hudson, seconded by Mr. McCabe, and carried unanimously that the variance be **granted**. Vote carried 4 – 0.

Case No. 7849 – Nora Balducci – south of Road 259, east of South Lake Drive, Lot 50, within Lazy Lake Subdivision.

A variance from the west side yard setback requirement.

The Board discussed the case.

Motion by Mr. Hudson, seconded by Mr. McCabe, and carried unanimously that the variance be **granted**. Vote carried 4 – 0.

OTHER BUSINESS

Case No. 7847 – Donald L. Carmine – north of Road 548

A special use exception for a manufactured home type structure for storage.

The Board discussed the case.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that a new application shall be required with appropriate fees and a public hearing scheduled.

ELECTION OF OFFICERS

Mr. Oates, Planning and Zoning Inspector, came into the meeting to supervise the Election.

Mr. Oates opened the nominations for Chairman.

Motion was made by Mr. Mills and seconded by Mr. McCabe to nominate Mr. Callaway as Chairman.

There was a consensus that the nominations for Chairman be closed.

Nominations for Chairman were closed.

Motion was adopted to nominate Mr. Callaway as Chairman; 4 yea

Vote by roll call:

Mr. McCabe	- yea
Mr. Hudson	- yea
Mr. Mills	- yea
Mr. Callaway	- yea

Mr. Oates opened nominations for Vice Chairman.

Motion was made by Mr. Hudson and seconded by Mr. Mills to nominate Mr. McCabe for Vice Chairman.

There was a consensus that the nominations for Vice Chairman be closed.

Motion was adopted to nominate Mr. McCabe as Vice Chairman; 4 yea

Vote by roll call:

Mr. Hudson	- yea
Mr. Mills	- yea
Mr. Callaway	- yea
Mr. McCabe	- yea

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The meeting was turned over to Mr. Callaway, the new Chairman.

Motion was made by Mr. McCabe and seconded by Mr. Mills to appoint Mr. Rickard as secretary. Vote carried 4 – 0.

Meeting Adjourned 9:41 P.M.