

MINUTES OF SEPTEMBER 8, 2003

The regular meeting of the Sussex County Board of Adjustment was held Monday evening September 8, 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 Vice-Chairman McCabe presiding. The Board members present were: Mr. McCabe, Mr. Mills, Mr. Workman and Mr. Hudson, with Mr. Berl – Assistant County Attorney, Mrs. Heffelfinger – Zoning Inspector II, Norman Rickard – Secretary to the Board, and Ms. Jackson – Recording Secretary.

Mr. Mills, Mr. McCabe, Mr. Hudson, and Mr. Berl met with legal counsel from 6:00 p.m. - 7:00 p.m. to discuss litigation.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to table Case No. 8305 and Case No. 8306 until September 22, 2003. Vote carried 4 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of August 25, 2003. Vote carried 4 – 0.

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

Case No. 8317 – E. Richard Webb, Jr. – northeast of Road 603, 1,900 feet southeast of Road 594.

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

Mr. Rickard presented the case. E. Richard Webb, Jr. was sworn in and testified requesting a special use exception to place a second on-farm manufactured home; that the 2003 unit will measure 28' x 70'; that his son will live in the existing manufactured home; that he will live in the new manufactured home; that his son helps on the farm; that his farm is 27-acres; and that he has chicken houses.

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 special use exception be **granted**. Vote carried 4 – 0.

Case No. 8318 – Cactus Café – south of Route 54, north of Bluewater Run West, being within Keenwick Sound Development.

A variance for an additional ground sign.

Mr. Rickard presented the case. Angel Manuel Puban was sworn in and testified requesting a variance for an additional ground sign; that the additional sign will measure 4' x 8'; that he received a violation from the Zoning Inspector; that the sign has been on the lot for three (3) years; and that the property owner is in favor of the application.

Mr. Rickard stated that the property owner has other violations with the Constable department.

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 with a letter sent to the property owner notifying him of the County ordinance.** Vote carried 4 – 0.

Case No. 8319 – Spring Spectrum LP – south of Route 36, across from Road 615.

A special use exception to place a communication tower and a variance from the lighting requirement for towers.

Mr. Rickard presented the case. Mr. Rickard explained to the Board the requirements of a communication tower and that the Applicant has the FAA approvals. Clement Poole, Allen Corpus, and Joseph Burkhardt, Jr. were sworn in and testified, with Pamela Scott, Attorney, on behalf of the application requesting a special use exception for a 150-foot communication tower and a variance from the lighting requirements for a tower; that they meet all the requirements for the communication tower, except for the lighting requirements; that they propose a 150-foot mono-pole tower; that there are no co-location opportunities within a 2-mile radius; that Mr. Clement is a wireless engineer; that they are under contract with Sprint; that there is a gap in coverage at this location; that they submitted drawings to the Board; that Allen Corpus stated that they are proposing a 6-foot high fence; that the proposed setbacks will be 100-foot from the front property line, 50-foot from the side property line, and 1700-foot from the rear property line; that the proposed 150-foot mono-pole tower will be located in the middle of the compound on a 12' x 23' concrete pad; that the only lighting the compound will have is for repairs; that the tower will not adversely affect surrounding area; that Joseph Burkhardt, Jr. is employed with Jeppison; that the FAA does not require lighting for the proposed tower; and that the closest airport is 5.7-miles away.

Mr. Berl stated that the Sussex County Ordinance was amended 3 years ago to include lighting requirements per FAA lighting requirements.

Mr. Burkhardt, stated that the FAA does not require lighting for a 150-foot communication tower.

Timothy Tenerovich, was sworn in and testified questioning why the Applicant is not complying with the Sussex County Ordinance, referencing the lighting on communication towers.

Lois Beck, was sworn in and testified; questioning whether the compound will have security lighting.

Robert Messick was sworn in and testified in support of the application; that the tower will be located on his property; that he needs the tower for income; that it will not have an adverse effect on his property or the surrounding area.

Mr. Rickard, stated to the Board that a petition was submitted with 56-signatures in opposition to the application.

Marvin Schelhouse, was sworn in and testified in opposition to the application; that he lives in the area; that Mr. Messick is retired from General Foods; that Mr. Messick is a farmer; that Mrs. Messick is retired from the United States Postal Service; that he questions whether Sprint has met all requirements; that all the neighbors are in opposition to the tower; that he has concerns with health factors; and that he is concerned with the location of the tower.

Christopher Annon, was sworn in and testified questioning if the tower has to be 500-feet from dwellings and why Sprint cannot use the existing tower in Greenwood that is not currently being used.

Mr. Berl stated to Mr. Annon that the tower does not have to be 500-feet from dwellings.

Mr. Burkhardt stated to Mr. Annon that the tower in Greenwood would not meet the desired coverage needed.

Mr. Workman questioned whether or not the opposition would still be in opposition if the tower was located to the rear of the property near the woods.

Raymond Gatti, was sworn in and testified in opposition to the application; that he has concerns with health factors; that he has concerns with the aspect of the lighting; and that the tower is in the flight path with the Dover Air Force Base.

Jerry Porter was sworn in and testified in opposition to the application questioning if the increased the height of the tower increases the signal strength; that he has concerns with the lighting on the tower; and that if the FAA takes in consideration the safety of crop dusters.

Twyla Veal, was sworn in and testified in opposition to the application; that she lives 1-mile away from the proposed tower; that she has concerns with the tower decreasing property values; that she just built a new dwelling; that she has concerns with the power levels that the tower will give off; and that she has concerns for her child's health and safety.

Marilyn Cosnac was sworn in and testified in opposition to the application; that she purchased her home 1-year ago; and that she has concerns with health factors.

In rebuttal, Pamela Scott, Attorney, provided a structural report on the terms of health issues; that the provider meets the FCC guidelines and that health issues are not a concern; and that she does not know of any study on towers decreasing property values.

Mr. Poole, stated that the strength of the antennas are 1800-mega-hertz; and that all carriers have similar designs.

Mr. Workman asked Mr. Poole if it would be a problem to locate the tower back near the woods.

Mr. Poole, stated that he could not make that decision for the owner.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously to take the case under advisement. Vote carried 4 – 0.

At the conclusion of the public hearings, the Vice-Chairman referred back to this case. Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case be **tabled until September 22, 2003, for clarification on the FAA lighting regulations.** Vote carried 4 – 0.

Case No. 8320 – Gerald L. and Lois M. Holler – east of Road 277, west of Dogwood Drive, being Lot K-26 within Angola By The Bay Development.

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

Mr. Rickard presented the case. Cindy Baker was sworn in with John Tarburton, Attorney, on behalf of this application and testified requesting a 0.4-foot variance from the required 30-foot front yard setback requirement for a dwelling, a 0.3-foot variance

from the required 5-foot rear yard setback requirement for a shed, and a 0.2-foot variance from the required 5-foot side yard setback requirement for a deck; that the improvements were built in 1985; that a survey was prepared for the sale of the property; and that the irregular shape of the lot creates a hardship.

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 variances be **granted**. Vote carried 4 – 0.

Case No. 8321 – John D. and Rose D. Gibson – north of Route One, 1 mile north of Cedar Creek.

A special use exception to operate a bed and breakfast facility.

Mr. Rickard presented the case. John and Rose Gibson were sworn in and testified requesting a special use exception to operate a bed and breakfast facility; that they own a 9.78-acre chicken farm; that they own a 3 bedroom dwelling; that they want to use 2 bedrooms for guests; and that the dwelling has 2 entrances.

Mr. Rickard stated that he looked at the property.

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

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

Case No. 8322 – Patricia Hastings – intersection south of Road 629 and west of Road 613.

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

Mr. Rickard presented the case. Patricia Hastings and Faith Hammond was sworn in and testified requesting a special use exception to place a manufactured home on a medical hardship basis; that the 1978 unit will measure 14' x 70'; that the existing dwelling on the property was built in 1875; that the Applicant has lived in the dwelling for 20-years; that her health does not allow her to use the upstairs; that the dwelling is not

fit to live in; that no one will live in the dwelling; and that they submitted 4 letters in support of the application.

Dene Molder was sworn in and testified in support of the application; that she comes down on weekends to help her mother; that they have cleaned up the trash on the property; that the Applicant sometimes stays in the camper; and that no one lives in a shed.

Woodrow Molder was sworn in and testified in support of the application; that he feels the dwelling should be condemned; and that she needs a manufactured home to live in.

David Wilson, Jr. was sworn in and testified in opposition to the application; that he sympathizes with the Applicant; that there is trash on the property; that the trash has attracted rats; that she has 4 vehicles in the driveway at all times; that someone lives in a camper on the property; that he is opposed to the dwelling staying on the property; that he feels the dwelling should be destroyed once the manufactured home is placed on the property; and that he is not opposed to a manufactured home being placed on the property.

Duane Kunch was sworn in and testified in opposition to the application; that he is building a new home in the area; and that he feels the same as Mr. Wilson.

Mr. Mills stated that no one can live in a camper.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to take the case under advisement. Vote carried 4 – 0.

At the conclusion of the public hearings, the Vice-Chairman referred back to this case. Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted for a period of 2 years and that the dwelling is to be torn down within 90 days of the issuance of the Certificate of Compliance for the manufactured home.** Vote carried 4 – 0.

Case No. 8323 – Dennis Jay Huffman – southeast of Route One, east of Devon Road, being Lot B-12 within Mill Pond Acres Development.

A variance from the rear yard setback requirement.

Mr. Rickard presented the case. Dennis Jay Huffman was sworn in and testified requesting a 5-foot variance from the required 20-foot rear yard setback requirement for a deck; that the existing deck measures 5.2' x 17'; that he wants to add on to the deck which will measure 12.2' x 24.2'; and that the neighbors are in support 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. Hudson, and carried unanimously that the variance be **granted**. Vote carried 4 – 0.

Case No. 8324 – Clarence and Mary Bagot – east of Road 341, west of White Oak Drive, being Lot 161, Section 3 within Dogwood Acres Development.

A variance from the side and rear yard setback requirements.

Mr. Rickard presented the case. Clarence and Mary Bagot was sworn in and testified requesting a 5.1-foot variance from the required 15-foot side yard setback requirement and a 18.6-foot variance from the required 20-foot rear yard setback requirement for a shed; that the lot is less than 20,000-square-foot; that he purchased the property in July 2001; that a survey showed the violations; and that there have been numerous variances granted in the area.

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 variances be **granted**. Vote carried 4 – 0.

Case No. 8325 – Kenneth and Anna Brandth – north of Route 54, south of Swann Drive, being Lot 9 within Swann Keys Development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Kenneth Brandth was sworn in and testified requesting a 4-foot variance from the required 5-foot side yard setback requirement for an 8' x 8' shed; that the Homeowner's Association is in favor of the application; that the neighbors are in favor of the application; and that he 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. Workman, and carried unanimously that the variance be **granted**. Vote carried 4 – 0.

Case No. 8326 – Dominic Di Guiseppe – east of Route 54, northeast of Cedar Road, east of Bay Berry Road, being Lot 11 within Keen-Wik Development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Dominic Di Guiseppe was sworn in and testified requesting a 5-foot variance from the required 5-foot side yard setback requirement for a detached shed; that the shed will measure 8' x 10'; that the shed sits 20-foot from the neighbors dwelling; that the neighbor is 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. Hudson, seconded by Mr. Mills, and carried unanimously that the variance be **granted**. Vote carried 4 – 0.

Case No. 8327 – Albert J. and Patricia A. Riedinger – east of Route One, 300 feet north of Maryland Avenue, being Lot 7, Block C.

A variance from the side and front yard setback requirements.

Mr. Rickard presented the case. John Tarburton, Attorney, present on behalf of the application, testified requesting a 7-foot variance from the required 10-foot side yard setback requirement and a 22-foot variance from the required 30-foot front yard setback requirement for raising a dwelling; that the dwelling was built in 1950; that the Applicant purchased the property in 1964; that the staircase is not covered; and that the owner did not create the hardship.

Leslie and Dominik Marra were sworn in and testified in opposition to the application; that they are opposed to the dwelling only being moved 3-foot; that the Applicant was opposed to a variance they requested in the past; that they feel the dwelling should be even with all of the dwellings on the street so that no one loses their view of the ocean; and that they are the neighbors directly effected by this variance.

In rebuttal, Mr. Tarburton, stated that the well prohibits the dwelling from being placed further back than 3-foot.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **left open to allow an average to be done for the front yard setback**.
Vote carried 4 – 0.

Case No. 8328 – Melvin A. and Gloria M. Fox – north of Road 258, 900 feet north of Road 260.

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

Mr. Rickard presented the case. Stephanie Goggle was sworn in and testified requesting a special use exception to retain a manufactured home on a medical hardship basis; that the unit has been on the property for 10-years; that her grandparents used to live in the unit; that she and her husband will live in the unit to care for her mother; and that the unit is a 1984 model.

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

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted for a period of 2 years**. Vote carried 4 – 0.

Case No. 8329 – Troy W. and Ruth E. Horne – north of Road 505, 639 feet west of Road 509.

A special use exception from the provisions and requirements to retain a manufactured home on a parcel.

No one appeared on behalf of the application.

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

Case No. 8330 – Troy W. and Ruth E. Horne – north of Road 505, 1,020 feet west of Road 509.

A special use exception from the provisions and requirements to retain a manufactured home on a parcel.

No one appeared on behalf of the application.

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

Case No. 8331 – Joyce P. and James H. Adkins, Jr. – west of Route 24, 450 feet east of Sunset Lane, being part of Lots 17 and 19.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Annette Allman and James Adkins, Jr. were sworn in and testified requesting a 7.1-foot variance from the required 10-foot side yard setback requirement for a carport; that the carport will measure 11.1' x 22.8'; that a canvas carport blew down 2 years ago; that he obtained a building permit to build the new carport; that he put the new carport in the exact footprint of the canvas carport; and that there are other property owners in the area with encroachments.

Jerry Porter was sworn in and testified in support of the application; and stated that Mr. Hayes has structures that encroach on his property.

Charles Hayes was sworn in and testified in opposition to the application; and stated that the carport is too close to his property line.

Mr. Rickard stated that the office received 7 letters in favor of the application.

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until September 22, 2003 so that a Zoning Inspector can check Mr. Hayes property.** Vote carried 4 – 0.

Case No. 8284 – Inell and Nellie P. Alexander – south of Road 227, 2,050 feet east of Route 16.

A special use exception to determine existence of non-conforming use.

The Board discussed the case.

Motion by Mr. Workman, seconded by Mr. Mills, and carried unanimously that the special use exception be **denied for lack of determination of a non-conforming structure.** Vote carried 4 – 0.

Case No. 8303 – Robert P. Morris and Christine L. Giera – east of Route 22, west of New Moon Street, being Lot C-6 within Leisure Point Mobile Home Park.

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

The Board discussed the case.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the variance be **granted for a 1'4" distance between units.** Vote carried 4 – 0.

Case No. 8314 – Marcus O. Johns – intersection of Route 36 and Road 629, being Lots 3 through 7 within James P. Mayhew Development.

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 variance be **granted for a 23-foot front yard setback requirement**. Vote carried 4 – 0.

Meeting Adjourned 11:08 p.m.