

MINUTES OF SEPTEMBER 9, 2002

The regular meeting of the Sussex County Board of Adjustment was held Monday evening September 9, 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. 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 4 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of August 19, 2002. 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. 7912 – Doris Gonzalas – east of Road 318, west of Stockley Center.

A special use exception to expand an existing day care center.

Mr. Oates presented the case. Doris Gonzalas was sworn in and testified requesting to expand an existing day care center to care for 70 children; that the increase will be 35 to 70 children ages 0 to 5; that the State has approved the increase; and that the hours of operation will be Monday through Friday, 6:00 a.m. to 3:30 p.m.

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

Case No. 7913 – John and Alison Kraft – south of Road 351, east of Bird Haven Road, Lot 25, within Rogers Haven Subdivision.

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

Mr. Oates presented the case. Alison Kraft was sworn in and testified requesting a 7.3-foot variance from the required 30-foot front yard setback requirement for an existing second story addition and a 3.4-foot variance from the required 10-foot side yard setback for an existing second floor deck; that the deck was built even with the non-conforming

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dwelling; that for the addition to be built a new septic system had to be installed; and that pictures were submitted.

Agnes Michael was sworn in and testified in opposition to the application; that she had concern that the air conditioning unit is too close to the property line; and that the screen porch is being used as a storage area.

In rebuttal, Alison Kraft stated that the storage in the screen porch is only temporary and she has plans of doing away with the porch in the near future.

Mr. Oates read a letter from Ann and Gary Scott in favor of the application.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the variances be **granted with the stipulation that a letter be sent to the builder and that the air conditioning unit setbacks be checked by an inspector**. Vote carried 4 – 0.

Case No. 7914 – John Argo – north of Shore Drive, 275 feet east of Carey Street, Lot 4, within Thomas Jones Subdivision.

A variance from the side yard setback requirement.

No one appeared on behalf of the application.

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

Case No. 7915 – David E. King – southwest of Road 350, 200 feet west of Road 349, Lot 12D, within Banks Acres Subdivision.

A variance from the front yard setback requirement.

Mr. Oates presented the case. David E. King, III was sworn in and testified requesting 12.6-foot variance from the required 40-foot front yard setback requirement for a proposed 14x60 manufactured home; that due to the location of the existing septic system it creates a hardship to place the unit and meet the required setbacks; and that the irregular shape of the lot create the need for a variance.

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 4 – 0.

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Case No. 7916 – Sussex County Habitat For Humanity – north of Road 285, 1,000 feet west of Route 9.

A variance from the east and west side yard setback requirements.

No one appeared on behalf of the application.

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

Case No. 7917 – M.L.J. Enterprises, Inc. – east of U.S. Route 13, 200 feet south of Road 462.

A special use exception to replace an existing billboard.

Mr. Oates presented the case. Donald Collins was sworn in and testified requesting a special use exception to replace an existing billboard; that the existing billboard is 200-square feet and 20-feet high; that there will be no structural changes made and that they will only be replacing panels and casings around existing pilings; 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. Hudson, and carried unanimously that the special use exception be **granted with the stipulation that no structural changes will be made to the sign**. Vote carried 4 – 0.

Case No. 7918 – Donald L. Carmine – north of Road 548.

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

Mr. Oates presented the case. Donald L. Carmine was sworn in and testified requesting a special use exception to retain a manufactured home for storage purposes only; that the unit has been stripped of all interior rooms; that the unit will be used for storage of yard sale items; that the unit is not visible from the road; 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. Hudson, and carried unanimously that the special use exception be **granted**. Vote carried 4 – 0.

Case No. 7919 – W. Kenneth and Judith Hull – east of Piney Point Road, Lot 3, within Whites Creek Piney Point Subdivision.

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

Mr. Oates presented the case. Greg A. Hastings was sworn in and testified requesting a 1.2-foot variance from the required 10-foot west side yard setback requirement for a proposed second story addition and a 7.3-foot variance from the required 10-foot north east side yard setback requirement for a proposed gable roof and a 18.4-foot variance from the required 30-foot front yard setback requirement for a proposed gable roof; that the proposed addition will follow the same footprint as the existing non-conforming dwelling; that a gable roof will be added to the existing carport to substantially improve its appearance; and that the proposed addition has no impact on the existing septic system.

Mr. Oates read a letter from Joe Ann L. Kuhn, in opposition to the application.

Yvonne Collins was sworn in and testified in support of the application; and that she lives 51-feet from Hull's property.

Richard Knotts was sworn in and testified in opposition to the application; that he owns Lot 2, which is adjacent to the Hull's property; and that he has concern about losing the trees on his property due to the construction and loss of privacy when he builds a dwelling.

In rebuttal, Mr. Hastings, stated that no digging is required to construct the second floor addition and that no harm should come to the trees.

W. Kenneth Hull was sworn in and testified that the Knotts' plan to build their dwelling to the rear of their property and by doing so he feels there will be no loss of privacy; and that an existing fence along with the trees blocks any view to the neighbors property.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the application be **tabled until September 23, 2002**. Vote carried 4 – 0.

Case No. 7920 – William F. and Edna L. Melvin – west of Road 453, 1,500 feet south of Road 454.

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

Mr. Oates presented the case. William Melvin was sworn in and testified requesting a 15-foot variance from the required 20-foot rear yard setback requirement and a 10-foot variance from the required 15-foot north side yard setback requirement for a proposed detached garage; that the proposed garage will be 30'x40' and will replace an existing garage; and that the existing garage is only 14-inches from the property line.

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

Case No. 7921 – Colonial East – east of Route One, west side of Spinning Wheel Lane, Lot 35, within Colonial East Mobile Home Park.

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

Mr. Oates presented the case. John Starck was sworn in and testified requesting a 10-foot variance from the required 20-foot separation between units in a mobile home park; that a variance was approved on this lot in 2001 and the existing shed was missed and not added to that application; and that similar variances have been granted in the same park.

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. 7922 – Bethany Marina, Inc. – south of Road 358, east of White Creek, within Bethany Marina Townhouses Phase II.

A variance from the separation requirement between units for multi-family structures.

Mr. Oates presented the case. Daniel McCann was sworn in and testified requesting a 2.5-foot variance from the required 40-foot setback requirement between units 81 & 80 and a 6.7-foot variance from the required 40-foot setback requirement between units 89 & 90; that the steps are encroaching and his interpretation of the

ordinance was that only the building had to meet the required 40-foot setback requirement; that the 40-foot requirement needed to be met for the Fire Marshal's approval; that if they were to change the design of the steps they would stand out and add a whole different look from the other units; that parking is a problem in the development and that no one should be parking in front of the steps; and that pictures were submitted.

By a show of hands, 23 parties were in opposition to the application.

Bradford Early was sworn in and testified in opposition to the application; that he was not against the variance for units 80 & 81, but he was against the variance for units 89 & 90 which have not yet been constructed; that he has great concern for safety issues since there is no room for emergency vehicles to get down the street the way the parking spaces and steps are laid out; and that pictures were submitted.

James Spring was sworn in and testified in opposition to the application; that he contacted the Planning & Zoning office in June 2001, in reference to the violation and spoke with Don Hastings, and was told that staircases don't apply and no one ever came out to the site; that in June 2002 he wrote a letter to Mr. Lank in reference to the parking problem stating that when everyone is in their assigned parking spaces it only leaves 8.9-foot clearance to get down the street; and that he is not opposed to the variance for units 81 & 80.

Stuart Sklut was sworn in and testified in opposition to the application; that his certificate of occupancy was held up due to the violation of the steps on units 80 & 81; that in June 1999 the developer was aware that steps are included in the 40-foot setback requirement; that the original site plan was approved not showing steps; and that he also has no opposition to the variance for units 80 & 81.

In rebuttal, Daniel McCann, stated that parking is not the issue at hand and that the original site plan did not show the steps because they believed they did not count when measuring for setback requirements.

In rebuttal, Stuart Sklut, stated that in 1999 the developer knew that steps were included.

Mr. Oates read a letter from Bradford E. Early in opposition to the application.

Mr. Oates read a petition signed by 18 parties in opposition to the application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the application be **tabled until September 23, 2002**. Vote carried 4 – 0.

The Board called a 10-minute recess.

Case No. 7923 – Jeffery C. and Patricia L. Wells – west of Route 5, 1 mile north of Route 9.

A special use exception to operate a family health resource center.

Mr. Oates presented the case. Jeffery and Patricia Wells were sworn in with Norman Barnett, Attorney, on behalf of the application, requesting a special use exception for a family health resource center to house 8 mental health patients under 24-hour supervision; that they have looked into all available avenues on how to utilize the large farm house and that renting to Fellowship Health Resources is the best way; that the home will be used to house residents that have been released from a mental institution and need a home to make the transition back to society; that improvements to the dwelling will be made to bring it up to code by adding sprinkler systems and alarm systems with motion sensors; that staff is on site 24-hours a day to care for the residents; that she has spoken at length with the State to ease her own concerns for safety with her mother living near the home; that she notified neighbors of the plan and asked them to sign a petition if they were in favor of the home; and that the property will remain an active farm.

Roseanne Faust was sworn in and testified in support of the application; that she is the Director of Fellowship Health Resources; that Delaware has run operated this type of home since 1990; that 3 homes are in Sussex County; that the 8 residents that will live here presently live in a home in Georgetown, Delaware; that strict screening is done to determine who can live in this type of housing and if rules are broken they get sent back to the institution; that a nurse is on duty daily; that the residents see a psychiatrist weekly; and that no less than 2 staff members are on duty at all times.

Mary Lou Blades was sworn in and testified in support of the application; that she is the director of the existing home; that since the opening of the group home there have been no major incidents with the residents; that the residents have adjusted well to the group home living arrangements and currently live next door to a family with children; and that the residents that leave the group home unsupervised are residents with special privileges that they must earn.

Dr. Weis was sworn in and testified in support of the application; that he sees the residents on a weekly basis; that he also has a private practice and three other group homes in which he sees patients; and that he has had to change little medication for the residents.

Virginia Harmon was sworn in and testified in support of the application; that she has worked with the Fellowship Health Resources for 11 years; that she testifies to the accuracy of the previous testimony; and that the Applicant's farm will provide room for the group home to grow and provide more office space for the staff.

Barbara Lloyd was sworn in and testified in opposition to the application; that the group home is considered a high risk working environment with minimum staff on hand; and that she is concerned for safety due to the location of the group home.

Karen Kirshaw was sworn in and testified in opposition to the application; that she is the owner of an equestrian center and has concern for her riders mostly young females safety; and that the residents have been diagnosed as having chronic illnesses and they will never be fully recovered.

Michele Huff was sworn in and testified in opposition to the application; that she is the rental agent for Dean Sherman; and that the group home will make his rental property undesirable to present and future residents.

David Young was sworn in and testified in opposition to the application; that he currently rents a home from Mr. Sherman and will not renew his lease if the group home is approved; and that he works shift work and has concern for his family living near this type of home.

Joan Lofland was sworn in and testified in opposition to the application; that she lived across from this type of home in Milford and that a resident became disoriented and came into her home mistaking it for his group home; and that she has concern due to the location of the proposed group home.

Bill Prettyman was sworn in and testified in opposition to the application; that he owns a family campground nearby and is concerned for the campers safety; and that due to the growth of the area he suggests that the Applicant's sell the property to a prospective homeowner.

Dean Sherman was sworn in and testified in opposition to the application; that he is the owner of an equestrian center across the road from the proposed group home; that he is concerned for the safety of his young female riders and family; that he visited the current group home and found that the residents seem to be free to come and go from the house without supervision; that due to the location of the proposed group home the residents on site will not have access to the same resources that they enjoy by living in town; that current boarders will remove their horses if the application is approved; that due to the size of the new location they are planning on having picnics and meetings with

other group homes in the County which raises more concern; and that there is also a concern for the residents themselves if they got into the arena or stables with the horses and not understanding how to conduct themselves around the horses.

Margaret Sherman was sworn in and testified in opposition to the application; that she also has concerns for the boarders safety; that boarders spend time alone riding on trails and tending to the horses during the middle of the night; that financially the farm could see a tremendous loss; that the alarm on the group home is only on after 11:00 p.m. and the residents are sometimes allowed outside the home if they have trouble sleeping; and that she submitted pictures and articles.

Regina Willoughby was sworn in and testified in opposition to the application; that she is the process of buying a horse and boarding it on the Sherman farm; and that she has worked with the mentally ill for 20 years and believes it would be difficult to maintain proper care for these residents in the proposed setting.

Jim Griffin, Attorney, representing the Sherman farm expressed legal concerns; that this type of home does not meet the definition of the ordinance for special use exceptions; that there will be no hardship to the existing home if the application is not approved; that there are several homes in the current location that could very well provide the extra space desired; that the Applicant did not meet the standards for granting of special use exception; and that a memorandum of opposition was submitted.

In rebuttal, Dr. Weis, stated that the medication the residents are taking keep their illnesses in control; that there have been no problems with residents since April; and that if a resident does not maintain the ability to function in this environment they are removed immediately and sent back to an institution.

In summary, Mr. Barnett, stated that people in recovery fit the definition of the special use exception and that the fear the opposition has expressed is due to a lack of knowledge on the illnesses.

In summary, Mr. Griffin, stated that one of the criteria's for a resident is to not have committed a felony within the last 5 to 10 years, and that if the resident has been institutionalized for that period of time it seems to create an easy access to a group home.

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

By a show of hands, 41 parties appeared in opposition to the application.

Norman Oates stated that the office had received letters in favor and opposition to the application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the application be **tabled until September 23, 2002**. Vote carried 4 – 0.

Case No. 7924 – Carol and Edward Kelly – north of Route 18, south of Nottingham Drive, Lot A31, within Sussex Ease Mobile Home Park.

A variance from the maximum allowable lot coverage in a mobile home park.

Mr. Oates presented the case. Edward Kelly was sworn in and testified requesting an 8% variance from the required 35% allowable lot coverage to add a deck and garage; and acknowledged that they do not meet the requirements for approval of the requested variance and that their testimony does not support the variance.

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 **denied**. Vote carried 4 – 0.

Case No. 7925 – Tom and Joanne Rees – south of Route One, 170 feet northwest of Road 271, Lot E34, within Sea Air Mobile City Mobile Home Park.

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

Mr. Oates presented the case. Victor Davis was sworn in and testified requesting a 10-foot variance from the required 20-foot between units in a mobile home park for a proposed screen porch; that other porches have been built within the required setback; and that similar variances have been granted throughout the park.

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. 7926 – Robert Jones – south of Route 5, 1.7 miles south of Route 24, Lots 5 and 6, within Orchard Manor Subdivision.

A variance from the front yard setback requirement.

Mr. Oates presented the case. Robert Jones was sworn in and testified requesting a 4.75-foot variance from the required 40-foot front yard setback requirement for an

enclosed porch on an existing deck; that when the deck was built it encroached the allowable 5-foot; and that with adding the enclosed porch it changes the setback for the existing deck creating the need for a variance.

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.

OLD BUSINESS

Case No. 7899 – Alan and Michelle Todd – west of Route 22, west of Woodcrest Road, Lot 41, within Pot Nets Bayside Mobile Home Park.

A variance from the maximum allowable lot coverage.

The Board discussed the case.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the application be **tabled until September 23, 2002**. Vote carried 4 – 0.

Case 7907 – Daniel and Tiffany Wright – south of Route 18, 360 feet west of Road 532.

A special use exception to place a manufactured home on less than $\frac{3}{4}$ acre.

The Board discussed the case.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted due to the uniqueness of surrounding properties**. Vote carried 4 – 0.

OTHER BUSINESS

Case No. 7061 – Jane Errett Vincenti and Martin Kappel – northeast of Road 364-B, 405 feet southeast of Jan-Mar Lane in Pleasant Meadows.

A special use exception to operate a bed and breakfast.
Request for time extension.

The Board discussed the case.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the request be **denied, and that the Board would not object to the applicant submitting a new application.** Vote carried 4 – 0.

Case No. 7369 – Royal Builders – south of Route One, west of South Street, Lots 3 and 4, within Maston Heights Subdivision.

A variance from the side yard setback requirement and a variance from the square footage per unit requirement and a variance from the square footage per unit requirement. Request for time extension.

The Board discussed the case.

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously that the request for a time extension be **granted for 1 year.** Vote carried 4 – 0.

Meeting Adjourned 11:50 p.m.