

MINUTES OF SEPTEMBER 10, 2001

The regular meeting of the Sussex County Board of Adjustment was held Monday evening September 10, 2001, at 7:00 P.M. in the 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 were: Mr. Callaway, Mr. McCabe, Mr. Wheatley, Mr. Mills, Mr. Hudson, with Mr. Berl – Assistant County Attorney, Mr. Rickard – Chief Zoning Inspector, and Ms. Jackson – Recording Secretary.

Motion by Mr. McCabe, seconded by Mr. Wheatley, and carried unanimously to approve the Revised Agenda with the removal of Case No. 7532, application of Clear Channel Outdoor, which was withdrawn on September 7, 2001. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of August 27, 2001. Vote carried 5 – 0.

Case No. 7524 – BPG Prop, LLC – southwest of Route One, 1,500 feet southwest of Road 270.

A special use exception to place a billboard, a variance from the maximum sign height requirement, a variance from the side yard setback requirement, and a variance from the setback requirement from a dwelling.

Mr. Rickard presented the case and read a letter from James A. Fuqua, Jr., Attorney, stating that the applicant would like to withdraw the requested height variance, but are still asking for the Boards approval for the other requested variances. Mr. Rickard read letters from Evan Griffiths, owner of Burger King, Dan Celia, President of Maplewood Homeowners Association, and Michael Meoli, owner and operator of McDonald's and Hampton Inn in favor of the application.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the variances be **granted, except for the height variance; that the applicant may use a monopole type sign; and that there was no reflection from the community.** Vote carried 5 – 0.

Case No. 7532 – Clear Channel Outdoor – east of U.S. Route 13, 1,770 feet north of Road 488, Lots 3,4, and 5.

A special use exception to replace a billboard and a variance from the height requirement and a variance from the square footage requirement.

This case was withdrawn.

Case No. 7533 – David Reynolds – south side of Road 277, west side of Bridgeway Drive, Lot 12, within Angola By The Bay.

A variance from the rear yard setback requirement.

Mr. Rickard presented the case. David Reynolds was sworn in and testified requesting a 3-foot variance from the required 20-foot rear yard setback requirement for an addition, instead of a 2-foot variance; that the home has been there since 1981; and that the lot is undersized.

The Board found that no parties appeared in favor 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 5 – 0.

Case No. 7534 – Hubert C. and Veronica I. Galati – northeast of Route One, north side of Sabrina Drive, Lot 25, within Midway Estates Subdivision.

A variance from the northeast side and west side yard setback requirement.

Mr. Rickard presented the case. Hubert and Veronica Galati were sworn with Daniel Myers, Attorney, on behalf of the application, requesting a 4-inch variance from the required 10-foot northeast side yard setback requirement and a 5-inch variance from the required 10-foot southwest side yard setback requirement for a dwelling; that the home was built in 1974; that a certificate of compliance was issued; that the violation was discovered when a survey was prepared; that it would create a practical difficulty if the dwelling had to be removed; and that the neighbors are in favor of the application.

Mr. Rickard noted that he had looked at the site.

The Board found that no parties appeared in favor 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. 7535 – James and Vera Stivers – west of Road 345, east side of New Castle Road, Lots 15 & 16, within Indian River Acres Subdivision.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. James and Vera Stivers were sworn in with Doug Marshall, Attorney, on behalf of the application, requesting a 7.2-foot variance from the required 10-foot north side yard setback requirement for an existing dwelling; that the 8'x8' and 10'x16' sheds were moved in compliance; that they were not aware of any violations when they purchased the property in 1997; that the lot is undersized; that an amendment has been done with the covenant; that in 1983 a garage was constructed by the previous owners and would create a hardship if it had to be removed; that the dwelling fits in with the neighborhood; and that they submitted a letter from Donald and Elizabeth Pluta in favor of the application.

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

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

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

Case No. 7536 – Abbott & Abbott Const – south of Road 46, east side of Shore Drive, Lot 19.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. Benjamin Abbott was sworn in with Jim Yori, Attorney, on behalf of the application, requesting a 2.6-foot variance from the required 30-foot front yard setback requirement for an existing 1 story dwelling; that the lot is undersized; that the property is currently under contract; that Howard Abbott, Benjamin's son, had the dwelling moved onto the property 1 year ago by Robert Davidson; that Howard has passed away; and that it does not alter the character of the neighborhood.

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

James Russell was sworn in and testified that he is in opposition to the application; that he had concerns with the parking problems; and that a driveway does not exist.

Mr. Berl stated to Mr. Russell that the Board cannot enforce driveway problems.

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

Case No. 7537 – Lafayette E. and Loretta J. Moore – south of Route 54, west side of Jefferson Avenue, Lots 3 and 4, within Edgewater Acres Subdivision.

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

Mr. Rickard presented the case. Lafayette Moore was sworn in and testified requesting a 0.2-foot variance from the required 10-foot northeast side yard setback requirement for an existing dwelling, a 17-foot variance from the required 20-foot rear yard setback requirement for a deck, a 0.6-foot variance from the required 10-foot west side yard setback requirement for an existing dwelling, and a 15.6-foot variance from the required 30-foot front yard setback requirement for a porch; that a survey was prepared and that he went to settlement in 1987; that he applied for a permit in July 2001 for the deck addition and found that the dwelling was in violation; that he obtained a permit for a 24'x24' florida room 1 year ago and is still under construction; that he received a violation letter from Don Hastings, Planning and Zoning Inspector, for the deck and stopped construction; and that he submitted a letter from the Homeowner's Association in favor, a copy of the permit, and pictures of the site.

Mr. Rickard noted to the Board that other variances have been granted in the area.

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

Motion by Mr. McCabe, seconded by Mr. Wheatley, and carried unanimously that the case be taken under advisement. Vote carried 5 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously that the variances be **granted**. Vote carried 5 – 0.

Case No. 7538 – John and Georgeanna Wootten – east of U.S. Route 113, ¼ mile north of Road 207.

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

Mr. Rickard presented the case and submitted pictures to the Board. John and Georgeanna Wootten were sworn in and testified requesting a special use exception to operate a bed and breakfast facility; that the facility will contain 3 bedrooms and will not have any cooking facilities; and that they are trying to make a better living for themselves.

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 special use exception be **granted**. Vote carried 5 – 0.

Case No. 7539 – Dukes Boat Sales Inc. – south of Route 22, 50 feet northeast of Boathouse Pond.

A special use exception to retain a manufactured home type structure as sales office.

Mr. Rickard presented the case. Orlando Dukes, Jr. was sworn in with Bill Chasnov, Attorney, on behalf of the application, requesting a special use exception to retain a manufactured home type structures as a sales office; that the unit was placed in 1988; that Mr. Dukes thought that he would be notified by the Planning and Zoning Office when his 5 years were up; that he did not realize that the unit was temporary until a permanent structure was erected; that he does not have the funds to build a permanent structure; and that they submitted pictures.

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

Motion by Mr. Mills, seconded by Mr. Wheatley, and carried unanimously that the case be taken under advisement. Vote carried 5 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Motion by Mr. Mills, seconded by Mr. Wheatley, and carried unanimously that the special use exception be **granted for a period of 2 years and that a letter be sent to the applicant notifying him that he can not apply for a special use exception again**. Vote carried 5 – 0.

Case No. 7540 – Gumboro Fellowship Church – east of Route 26, 2,400 feet north of Route 54.

A special use exception to operate a daycare center/education building.

Mr. Rickard presented the case. Danny Tice was sworn in and testified requesting a special use exception to operate a daycare center/education building; that he is proposing to build a 10,000 square foot building because he needs more space for a nursery and daycare center; that the Board has already approved a childcare center on April 17, 2000, Case No. 7124; that 80 to 90 children are proposed to go to the facility; that he does not want to have a daycare in the current facility; and that he submitted a site plan.

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

Motion by Mr. Mills, seconded by Mr. Wheatley, and carried unanimously that the special use exception be **granted**. Vote carried 5 – 0.

Case No. 7541 – James and Sara Carlson – west of Road 357, north side of River Road, Lots 10 and 11, within Newton's Acres Subdivision.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. Greg Hastings, James Carlson and Sara Carlson were sworn in and testified requesting a 2-foot variance from the required 30-foot front yard setback requirement for a screen porch; that Greg is an Architect and is designing the home; that they want to take advantage of the view; that they would not block anyone's view to the river; that the grade of the lot slopes towards the river; that they are dealing with a 12-foot easement that exists on the property; that they own the easement with the understanding that they are to maintain it; and that the neighbors on the east side are in favor.

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

Mr. Rickard read a letter from Joseph and Linda Mitchell in opposition to the application.

Mary Bergstrom was sworn in and testified that she is in opposition to the application; that she has lived in the subdivision since 1971; that a hardship does not exist; that the Carlson's do not own the easement; that 18 homes exist in the subdivision; that over the years homeowner's have enlarged their homes, but still were able to meet the setback requirements; that it would block the view to the river; and that she submitted pictures and a survey.

Jim Mook was sworn in and testified that he is in opposition to the application; that a hardship does not exist; that if the variance were to be granted it would set a precedent; that enlarging the home would block the view to the river; and he submitted a petition with 14 signatures in opposition to the application.

Mr. Rickard noted that variances have not been granted in the area.

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously that the variance be **left open until September 24, 2001 stating that they would like a copy of the deed.** Vote carried 5 – 0.

Case No. 7542 – Michael A. Lombardi – north of Road 405, ¾ mile east of Road 405-A, Lot 4.

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

Mr. Rickard presented the case. Michael Lombardi was sworn in and testified requesting a 3.9-foot variance from the required 10-foot side yard setback requirement for a dwelling, and a 2.6-foot variance from the required 5-foot rear yard setback requirement for a garage; that he inherited the property from his parents in 1992; that he is in the process of selling the property; that the shed has been moved into compliance; that the dwelling was built in 1991; that the garage was built in 1992; and that he had a survey prepared and found that the structures were in violation.

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

Case No. 7543 – Scott E. Hilligoss – southeast of Route 16-A, ¼ mile east of Adams Avenue, Lot 8.

A variance from the rear yard setback requirement.

Mr. Rickard presented the case. Scott Hilligoss was sworn in and testified requesting a 1.4-foot variance from the required 5-foot rear yard setback requirement for a shed, instead of a 0 setback; that he submitted a drawing to the Board; that the shed was there when he purchased the property 30 years ago; that over the years, he has installed new siding and fixed the roof of the shed; that he received a violation from Norman Oates, Planning and Zoning Inspector; and that he commented on why he was being picked on when he knows that other structures in the area are in violation.

Laura Taylor was sworn in and testified that she is in favor of the application.

Gary Blose was sworn in and testified that he has concerns with the shed sitting too close to his property.

Mr. Rickard noted that there are other violations in the area and that he is sending Norman Oates, Planning and Zoning Inspector, to clean up the area.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the variance be taken under advisement. Vote carried 4 – 0 – 1, with Mr. Callaway abstaining.

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 variance be **granted**. Vote carried 4 – 0 – 1, with Mr. Callaway abstaining.

Case No. 7544 – Stephen and Mary Youtz – south of Route 24, Woodland Circle, Lot 29.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Stephen and Mary Youtz were sworn in and testified requesting a 0.5-foot variance from the required 10-foot southeast side yard setback requirement for a proposed addition; that their home is small; that they need more living space; that they submitted a picture and drawing; and that they are not sure what exact variance is needed and that they will know at the end of September.

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 left open until the applicants contact the Planning and Zoning Office with the correct variance needed**. Vote carried 5 – 0.

Case No. 7545 – Donald J. Green – east of Road 224, ¾ mile south of Road 594, Lot 8, within Homeland Acres II Subdivision.

A special use exception to place a multisectional manufactured home on a parcel.

Mr. Rickard presented the case. Donald J. Green was sworn in and testified requesting a special use exception to place a multisectional manufactured home on less than ¾ of an acre; that in 1919 his grandparent's bought the land; that the land has been subdivided; that other manufactured homes have been placed on the lots; that the size of the unit is 26'x44'; and that he has a sales contract on the lot, but will need the Board's approval first.

Grere Stayton was sworn in and testified that he is in opposition to the application; and that if a home was placed on the property it would block the view of traffic.

Mr. Mills stated concerns with granting the special use exception, that it would set a precedent.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the special use exception be **denied**. Vote carried 5 – 0.

Case No. 7546 – O’Neal’s Antiques – northwest of Road 466, east corner of U.S. Route 13.

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

Mr. Rickard presented the case. Lois O’Neal was sworn in and testified requesting a 1-foot variance from the required 30-foot rear yard setback and a 10-foot variance from the required 20-foot north side yard setback requirement for a addition; that he would like to expand his business; and that the property around him is zoned AR-1 Agriculture Residential District.

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 5 – 0.

OLD BUSINESS

Case No. 7507 – Cellco Partnership D/B/A Verizon Wireless – west of U.S. Route 13, ½ mile south of Road 454-A.

A variance from the maximum height requirement for a communication tower.

The Board discussed the case. Mr. Callaway noted that he had gone to look at the site and does not see a need for towers to be over 150 foot in height; and that he has concerns with crop dusters. Mr. Mills stated that the taller a tower is will mean lesser towers to be erected; and that they would like for an unbiased professional to give them more information about towers.

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

Case No. 7521 – American Cellular Network Company, LLC – southeast of Laurel, 300 feet of Lone Cypress Road.

A variance from the maximum height requirement for a communication tower.

The Board discussed the case and stated that they would like to incorporate their discussion with Case No. 7507 into this case.

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

Case No. 7522 – American Cellular Network Company, LLC – south side of Route 16, 500 feet west of Road 600.

A variance from the maximum height requirement for a communication tower.

The Board discussed the case and stated that they would like to incorporate their discussion with Case No. 7507 into this case.

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

Meeting Adjourned 9:40 P.M.