

## Minutes of September 11, 2000

The regular meeting of the Sussex County Board of Adjustment was held Monday evening September 11, 2000, 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 present 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 Mills, seconded by Mr. McCabe, and carried unanimously to approve the Revised Agenda as circulated.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of August 28, 2000 as circulated.

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

Case No. 7230 – Doris C. Argo, Heirs, W. Ritter, E. Graham, L. Carpenter, C. Bryan, V. Reed, N. Rhue, and R. Clifton – 300 feet south of Bay Shore Drive, 1,500 feet south of Route 39.

A variance from the lot width requirement.

Mr. Rickard presented the case and submitted a plot plan to the Board. Brent Rhue was sworn in and testified requesting a 22.855-foot variance for Lot 1, a 16.27-foot variance for Lot 2, a 10.73-foot variance for Lot 3, a 4.915-foot variance for Lot 4, and a 43.16-foot variance for Lot 8 from the required 150-foot lot width requirement; that he is proposing to create 9 lots to settle a will; that the parcel is 14 acres in Prime Hook Beach; that Mrs. Clifton died in 1986; that he has 1 deed with the 9 children names and would like to give each child their own deed; that 5 lots do not meet the 150-foot lot width requirement and that 4 lots do meet the 150-feet; that the property across the street is the Primehook National Wildlife refuge; that it was previously owned by Mr. Clifton; that Theodore Jones owns land north of the property; that 1 lot will probably be sold; that there are no plans of developing the remaining lots; and that the plot plan that was submitted will be recorded if approved from the Board.

Mr. Rickard read 6 letters in opposition to the application.

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

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

Case No. 7231 – Clarence C. and Manon D. Smalley – south of Road 526-A, 1,015 feet south of Road 46, Lot 11, within Deep Pines Subdivision.

A special use exception to connect two manufactured homes to make one unit.

Mr. Rickard presented the case. Clarence Smalley was sworn in and testified requesting to connect two manufactured homes to make one unit; that the size of the existing manufactured home is 28'x64'; that the size of the new manufactured home will be 28'x56'; that the year of the existing unit is a 1999; that the year of the new unit will be a 1998; that the dealership company will be connecting the homes together for him; and that he is waiting for his mother to sell her home so that he can start the project.

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

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the special use exception be granted with the following stipulations:

1. The manufactured home shall be enclosed with a block foundation.
2. An A-Roof shall be installed.
3. There shall only be one (1) kitchen.
4. The units shall be improved with matching siding.
5. The improvements shall be completed within two (2) years.

Vote carried 5 – 0.

Case No. 7232 – Thomas Rebuck – north of Center Avenue, 250 feet east of Tanglewood, Lot C-86, within Sea Air Village Mobile Home Park.

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

Mr. Rickard presented the case. Thomas Rebuck and George Littleton, Manager, were sworn in and testified requesting a 10-foot variance from the required 20-foot between units in a mobile home park; that Mr. Rebuck would like to have an enclosed addition built on to his manufactured home; that the addition will have matching siding and skirting; and that the Tenant's Association was in favor of the application.

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 variance be granted. Vote carried 5 – 0.

Case No. 7233 – Ocean Atlantic Associates, III, L.L.C. – east of Route One, 200 feet north of Road 273.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. Darin Lockwood and Roger Gross were sworn in and testified requesting a 4-foot variance from the required C-1 General Commercial District 60-foot setback requirement for a proposed self mini storage building; that they submitted exhibits to the Board; that the Lockwood Family has been in business for 25 years; that a mistake was found on the plans, and that when they recognized the mistake they applied for a variance; that the exhibits they submitted explained the location of the site; and that access to the property is from the service road and not from Route One.

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

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

Case No. 7234 – Elizabeth and David Frederick Dolan – northwest of Anna B. Street, 300 feet west of Route One, Lot 14, Block B, within Dodds Addition.

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

No one appeared on behalf of the application, therefore there was no representation of support.

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

Case No. 7235 – Robert Bayly – east of U.S. Route 13, 720 feet south of Road 454-A.

A special use exception for a billboard.

Mr. Rickard presented the case. Charles M. Gilligan was sworn in with Bonnie Benson, Attorney, present on behalf of the applicant requesting a special use exception for a billboard; that the size of the billboard will be 12'x25'; that the height will be 25-foot; that it will be single sided; that it will meet the required setbacks; that the Planning and Zoning office received a location survey; and that it would not adversely impact the surrounding property owners.

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 case be taken under advisement. Vote carried 5 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Motion was made by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the special use exception be tabled until September 18, 2000. Vote carried 5 – 0.

Case No. 7236 – John W. and Ellen J. Hall – west of Road 225, 2,068 feet southeast of McCoy Avenue.

A variance from the square footage requirement for a parcel and a variance from the side yard setback requirement.

Mr. Rickard presented the case. Robert Nash was sworn in and testified requesting an 8,158 square foot variance from the required 32,670 square foot requirement for a parcel and a 1.8-foot variance from the required 5-foot north side yard setback requirement for a detached garage; that the septic system is over the property line of Parcel B; and that the shed that is in violation will be moved to comply.

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

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

Case No. 7237 – Oakwood Homes – intersection of U.S. Route 113 and Road 83.

A special use exception to place a manufactured home as a temporary sales office.

Mr. Rickard presented the case. Scott Bellamy, General Manager, was sworn in and testified requesting to place a manufactured home as a temporary sales office; that he will be replacing an older structure for a newer manufactured home; that the size of the existing unit is a 14'x70' with two additions; that the size of the new unit will be a 28'x66'; and that the existing structure has been there for 13 years.

Mr. Mills informed the applicant that a special use exception for a temporary sales office must be renewed every 5 years.

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

Motion by Mr. Wheatley, seconded by Mr. Mills, and carried unanimously that the special use exception be granted for a period of 5 years. Vote carried 5 – 0.

Case No. 7238 – Wilson Construction Company – southwest of Road 209, 1,750 feet northwest of Road 206, Lot 21.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Richard Wilson, Sr. and David Wilson were sworn in and testified requesting a 0.9-foot variance from the required 15-foot east side yard setback requirement for a dwelling; and that setbacks were measured from previously existing painted lines that were drawn in error.

Mr. Rickard stated that a certificate of compliance was issued.

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

Motion by Mr. McCabe, seconded by Mr. Wheatley, and carried unanimously that the variance be granted with Mr. Mills abstaining. Vote carried 4 – 0 – 1.

Case No. 7239 – Harbour Towne Associates, L.P. – west of Road 268 (Kings Highway), 800 feet north of Road 268-A and east of Route One.

A special use exception from the parking requirements for apartments and a special use exception for parking in the AR-1 District.

Mr. Rickard presented the case. Preston Dyer was sworn in and testified requesting a special use exception for 1.5 parking spaces per unit for age restricted apartments and a variance for 40 parking spaces from the required 160 spaces; that there is no need for 2 spaces per unit based upon his experience with senior apartments; that the Cheer Building will provide 160 parking spaces; that the apartments are only for 62 years of age or older persons (Restriction will be noted on Deed); that there will be 1 on-site Manager and 1 Maintenance Manager for the senior apartments; that the Cheer Building will have 64 employees; that a Change of Zone is pending upon approval from the Board; and that he submitted a survey.

Mr. Rickard read a letter from New Covenant Presbyterian Church in favor of the application.

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

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously that the special use exception and variance be granted with the stipulation that the age restriction be included in the Deed. Vote carried 5 – 0.

Case No. 7240 – Izzy Investments, L.L.C. – north of Elizabeth Avenue, 500 feet east of Dodd Avenue, Lot 20-C, within Ann Acres Subdivision.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Charles Pollard, Realtor, was sworn in with William Wright, Attorney, present on behalf of the applicant and testified requesting a 5-foot variance from the required 10-foot west side yard setback requirement for a 2<sup>nd</sup> floor deck; that they submitted pictures; that the home was moved to the property from another location; that they wanted to preserve the home; that he called the Planning and Zoning Department for setbacks; that he was told the deck could be 5-foot from the property line, but failed to tell Planning and Zoning it was a 2<sup>nd</sup> floor deck; that he obtained permits for the deck and relocating the home; that the home was once used for multi-family use and had 2 kitchens in it, but now it is a single family dwelling; that one kitchen has been taken out; that the purpose for the 2<sup>nd</sup> floor deck is to be able to travel from the kitchen to the front of the home; that the decks balance out the look of the home; that if he had known what the correct setbacks were at the point of submitting the plans for the 2<sup>nd</sup> floor deck he would have not built the decks; and that his intentions were to save the home, move the home, remodel the home and then sell the home.

Marion Malone was sworn in and testified that he is the developer and owner of the property; that he has a concrete company in Wilmington Delaware; that he did not understand that a 2<sup>nd</sup> floor deck over a 1<sup>st</sup> floor deck was considered a roof; that he had the 2<sup>nd</sup> floor deck built for safety reasons; and that the 1<sup>st</sup> floor deck is 3-foot in height.

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

By a show of hands 7 parties were in opposition to the application.

Floris Wheatley was sworn in with Jim Griffin, Attorney, present on behalf of Mrs. Wheatley and her sister, Ellen Elliott, and testified that they are in opposition to the application; that they submitted a copy of the standards for granting of variances

and went over them with the Board; that Floris and Ellen own lot 21; that she and her sister grew up in that home on Lot 21; that they use the home year round; that the home is a single family dwelling; that it meets the required setbacks and so does all other homes in the area; that the 2<sup>nd</sup> floor deck on the home in question is not needed since it has an interior stairway that goes to the 2<sup>nd</sup> floor; that the home was relocated to the lot in May; that in June of July the foundation was constructed and then the decks were added; that she was once interested in buying the home; that she has been in the home; that it would set a precedent to the area; that they submitted a petition in opposition with 27 signatures and photographs of the area; and that the home does not fit in with the character of the area.

Theodore Butler was sworn in and testified that he is in opposition to the application; that he owns Lots 24 and 26; that he purchased the lots in 1999; that it has been in his family since the 1960's; that the home in question is too large for the area; that it affects property values; and that the 2<sup>nd</sup> floor decks give the home a business look.

Diane Pringle was sworn in and testified that she is in opposition to the application; and that she does not want to see a precedent set in the area.

Michael Dycio was sworn in and testified that he is in opposition to the application; and that he has concerns with the size of the home.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be tabled until September 18, 2000. Vote carried 5 – 0.

### **Old Business**

Case No. 7211 – Paul Scott Allen – west of Road 350, southwest side of Lake View Drive, Lot 25, within Banksville Park.

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

Mr. Rickard informed the Board that Planning and Zoning has not received the requested survey yet.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the variances be tabled until September 18, 2000. Vote carried 5 – 0.

Case No. 7218 – Thomas C. Murphy – north of Road 279-B, north side of private road, Lot 42 and 48, within Joy Beach Subdivision.

A variance from the rear yard setback requirement.

The Board discussed the case.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the variance be tabled until September 18, 2000. Vote carried 5 – 0.

Case No. 7227 – James and Gwen Foehner – north of Road 279-B, (now a private road), 520 feet northeast of Mallard Drive, Lot 19 and 20, within Joy Beach Subdivision.

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

Mr. Rickard informed the Board that Planning and Zoning has not received the requested survey yet.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the variances be tabled until September 18, 2000. Vote carried 5 – 0.

Meeting Adjourned 9:15 P.M.