

## MINUTES OF SEPTEMBER 23, 2002

The regular meeting of the Sussex County Board of Adjustment was held Monday evening September 23, 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. McCabe, seconded by Mr. Hudson, and carried unanimously to approve the Revised Agenda with the correction that Case No. 7935, Richard M. and Blanca G. Brown was withdrawn on August 23, 2002 and add on Case No. 7914, James Argo and Case No. 7913, John and Alison Kraft to Other Business. Vote carried 4 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of September 9, 2002 as circulated. 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. 7927 – Mark Caplan** – east of Route One, east of Surf Road, Lot 14, within Sussex Shores Subdivision.

A variance from the front yard setback requirement.

Mr. Oates presented the case. Mark Caplan was sworn in and testified requesting a 4-foot variance from the required 30-foot front yard setback requirement for a proposed dwelling; that he tore down the 50-year old dwelling; that the existing dwelling was set 25-foot from the property line; that Sussex Shores Association has approved the proposed dwelling; that he spoke with neighbors and they all approve the plan; and that he has approval from Building Code.

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.

**Case No. 7928 – Randall K. and Karen R. Spencer** – south of Bridgeway Court East, 83 feet northeast of Woodland, Lots 3 and 4, within Angola By The Bay Subdivision.

A variance from the rear yard setback requirement.

Mr. Oates presented the case. Randall K. Spencer was sworn in and testified requesting a 2-foot variance from the required 20-foot rear yard setback requirement for an attached porch; that when building the porch he and the builder decided to enlarge the size of the porch and forgot to check the setbacks; that the builder obtained the proper permits for the porch; that he has heard no objection from his neighbors; and that he has not received approval from the Association.

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

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

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

**Case No. 7929 – Linda Rutt and Martin Dolben** – north of Route 9, 3,150 feet west of Road 248.

A variance to place an additional ground sign.

Mr. Oates presented the case. Linda Rutt and Martin Dolben were sworn in and testified requesting a special use exception to have a second on-premise ground sign; that they would like to place the additional sign away from the store to give traffic time to stop once they know the store exists; that the existing sign is 4'x8'; that the proposed sign will be 4'x4'; and that they believe the second sign is more beneficial than just one larger sign.

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. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted with the stipulation that the second sign be used for the existing business only**. Vote carried 4 – 0.

**Case No. 7930 - James Barber** – northwest of Road 271, north of Beaver Dam Reach, Lot 49, within Woods At Seaside Subdivision, Phase II.

A variance from the rear yard setback requirement.

Mr. Oates presented the case. James Barber was sworn in and testified requesting a 10-foot variance from the required 10-foot rear yard setback requirement for a proposed 12'x16' screen porch; that the property to the rear is open space for the development

and that no homes will ever be built there; and that the developer approves the plan for the proposed screen porch.

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. 7931 – Lelah M. Crockett** – west of U.S. Route 13, south of Francis Street.

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

Mr. Oates presented the case. Lelah Crockett was sworn in and testified requesting a 8,897-square foot variance from the required 32, 670-square foot requirement; that she wants to subdivide the parcel into two lots; and that she wants to sell the parcel with the existing dwelling on it.

The Board found 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 application be **tabled until September 30, 2002**. Vote carried 4 – 0.

**Case No. 7932 – Lewin M. Deery** – west of Road 357, north end of Piney Point Road Extended.

A variance from the side yard setback requirement.

Mr. Oates presented the case. Lewin Deery and Mike McGee was sworn in and testified requesting a 2.6-foot variance from the required 10-foot setback requirement and a 2-foot variance from the required 10-foot east side yard setback requirement for a proposed storage room addition; and that he was going to build a shed on an existing deck and then decided that the shed would look better as part of the dwelling; and that the proposed addition will follow the existing line of the dwelling.

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

The Board found no opposition to the application.

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

**Case No. 7933 – Lake Placid Properties, LLC** – southwest of Route 22,  $\frac{1}{4}$  mile southeast of Route 24, Parcel A, within Bayshore Development.

A variance from the permitted maximum length for multi-family structures.

Mr. Oates presented the case. Preston Dyer was sworn in and testified requesting a 3.5-foot variance from the required 165-foot length of multi-family structure; that the original site plan was approved to include garages; that a market study showed the targeted market of active adults prefer to have garages; that there will be no affect to the density or surrounding neighborhood; and that the complex will consist of 146 units.

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. 7934 – Lake Placid Properties, LLC** – 600 feet southwest of Route 22,  $\frac{1}{4}$  mile southeast of Route 24, Lots 39 through 66, within Bayshore Development.

A variance from the minimum square footage requirement for a parcel.

Mr. Oates presented the case. Preston Dyer was sworn in and testified requesting a 3,500-square foot variance from the required lot size for lots in a AR-1 District with central sewer; that the preliminary site plan was approved for 67 single family lots; that to provide a Stormwater Management Area they need to reduce the lot sizes; that they propose 66 single family lots; that the minimum lot size will be 16,500-square foot; and that this will create more open space and have no affect on the parking.

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.

**Case No. 7936 – Juvenal and Olivia Fernandez** – east of Route 17, 839 feet north of Road 382.

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

Mr. Oates presented the case. Juvenal and Olivia Fernandez were sworn in and testified requesting a special use exception to place a 1973 24'x56' manufactured home on a medical hardship basis; that they previously applied for a special use exception to store the manufactured home on the property until renovations could be made to the home; that he has no use of his right arm and one leg was severely broken and has minimal use of it; that friends will help make the repairs to the home; and that once the farmer cuts the crops they will move the home into position and will need 6 to 7 months to make repairs.

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 **denied**. Vote carried 4 – 0.

**Case No. 7937 – Delmarva Clergy United in Social Action, Inc.** – west of Road 213, west of Northwood Acres Subdivision.

A special use exception to operate a day care facility.

Mr. Oates presented the case. Helena Gibbs and Alicia Galman were sworn in and testified requesting a special use exception to operate a day care facility; that they will use an existing church building for the day care; that they will care for 50 to 75 children from newborn to 10 years old; that the hours of operation will be 24-hours a day, Monday through Friday; that the reason for 24-hours is to help parents who work shift work and take classes provided by the Clergy; and that they have all approvals through the State.

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. 7938 – Andrew R. Bellamah** – west of Route One, north of Wilson Walk, Lots 111, 112, and 113 within Bay View Park Subdivision.

A variance from the side yard setback requirement.

Mr. Oates presented the case. Andrew R. Bellamah was sworn in and testified a 15-foot variance from the required 15-foot side yard setback requirement for an existing gazebo; that he did not realize a building permit was needed to place the gazebo on his

property; that the gazebo is screened in and provides shelter for the pool area and is behind an existing fence; and that the neighbors are in favor of the variance.

John B. Hendrickson was sworn in and testified in opposition to the application; that he is the President of the Association; that the lots in the development are small and are overcrowded; that other variances have been granted for the Applicant and he feels that this request is just a matter of convenience; and that the use is not a hardship and can be placed elsewhere on the property.

Mr. Oates stated that 14 letters were submitted in favor of the application, that 4 letters were submitted in opposition to the application, and that 1 letter was submitted with no clear opinion to the application.

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously that the application be **tabled until October 7, 2002**. Vote carried 4 – 0.

**Case No. 7939 – Robert and Ellen Smith** – east of Route 16, northwest of Virginia Avenue, Lot 5, Block E, within Broadkill Beach Development.

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

Mr. Oates presented the case. Robert Smith was sworn in and testified requesting a 7-foot variance from the required 10-foot west side yard setback requirement, and a 3-foot variance from the required 10-foot east side yard setback requirement, and a 5.1-foot variance from the required 10-foot rear yard setback requirement for an existing detached garage, and a 23-foot variance from the required 30-foot front yard requirement for a proposed deck; that all improvements have been torn down except for the existing detached garage; that he proposes to build a dwelling on the parcel and would like to keep the dwelling in line with the existing garage; and that he has the approval of his neighbors.

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

**Case No. 7940 – Frances Patterson** – south of Route 54, north of Roosevelt Avenue, Lot 14, within Cape Windsor Subdivision.

A variance from the rear yard setback requirement.

Mr. Oates presented the case. Laurie Van Hoekleven was sworn in and testified requesting a 10-foot variance from the required 5-foot rear yard setback for an existing deck; that she is the Applicant's daughter; that the deck is about a foot high; and that a new manufactured home was placed in June 2002.

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 application be **tabled until September 30, 2002**. Vote carried 4 – 0.

**Case No. 7941 – John and Eleanor Peterson** – east of Road 331-B, 400 feet north of Road 331-A, within Possum Point Subdivision.

A variance from the front yard setback requirement.

Mr. Oates presented the case. John L. Peterson was sworn in with Larry Fifer, Attorney, on behalf of the application, requesting an 8-foot variance from the required 30-foot front yard setback requirement for an existing garage; that the garage was built in 1977; that a request for a variance for the same garage was turned down in March 2002; that they have brought new evidence to show that all the proper permits and a certificate of occupancy was issued in 1977 and have believed for 25-years that the garage complied; and that to move the garage would cause unnecessary hardship.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be heard again based on the new evidence. Vote carried 4 – 0.

By a show of hands, 7 parties appeared in favor of the application.

Mr. Oates stated that 1 letter was submitted in favor of the application.

The Board found that no parties appeared 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.

#### **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.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the variance be **denied due to the fact the request is not applicable, and that the fee be waived for the request on the needed variances.** 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.

The Board discussed the case.

Motion by Mr. Mills, seconded by Mr. McCabe, 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.

The Board discussed the case.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the variance be **granted for units 80 & 81, and the variance be denied for units 89 & 90.** Vote carried 4 – 0.

**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.

The Board discussed the case.

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the application be **tabled until October 7, 2002.** Vote carried 4 – 0.

### OTHER BUSINESS

**Case No. 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.

Mr. Berl advised the Board that Case No. 7907 was approved as a special use exception and evidence supported that it should have been a variance; and that he will send a letter to the Planning & Zoning Office asking to correct this problem.

**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 front yard setback requirement.

Mr. Oates stated that the Applicant missed his hearing due to writing the wrong date for the meeting on his schedule.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the **Applicant may re-apply within 10 days of the Finding of Facts letter is sent.**  
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 advised the Board that the air conditioning unit was moved to comply with the setbacks.

**Meeting Adjourned 9:30 P.M.**