

MINUTES OF SEPTEMBER 24, 2001

The regular meeting of the Sussex County Board of Adjustment was held Monday evening September 24, 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 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 Mr. Mills, seconded by Mr. McCabe, and carried unanimously to approve the Revised Agenda as circulated. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously to approve the Minutes of September 10, 2001 as circulated. Vote carried 5 – 0.

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

Case No. 7547 – Peninsula Oil Co., Inc. – east of U.S. Route 13, corner of Route 404.

A variance from the side yard setback requirement for an on-premise sign.

Mr. Rickard presented the case. Earl Batthaser was sworn in and testified requesting a 15-foot variance from the required 20-foot side yard setback requirement for an on-premise sign; that he is relocating an existing sign to the main entrance due to reestablished construction patterns; and that the new sign will be the same size as the existing sign.

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

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

Case No. 7548 – Everett C. and Connie Lathbury – west of Road 342, 1,100 feet north of Road 341-A.

A variance from the side yard setback requirement for a poultry house and a variance from the setback requirement from a dwelling.

Mr. Rickard presented the case. Everett Lathbury was sworn in and testified requesting a 10-foot variance from the 50-foot south side yard setback requirement and a 105-foot variance from the 200-foot south side yard setback requirement from a dwelling for a poultry house, instead of a 126-foot variance; and that he wants to tear down the

existing chicken houses and replace them with new chicken houses.

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

Case No. 7549 – James Roe – south of Route 26, east side of Ogre Drive, Lot 3, within Ocean Way Estates Subdivision.

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

Mr. Rickard presented the case. James Roe was sworn in and testified requesting an 8.5 inch variance from the required 10-foot southeast side yard setback requirement for an 18'x26' garage, and a 0.3-foot variance from the required 10-foot northeast side yard setback requirement for an existing dwelling; that an addition was added on in 1998, which is the reason for the home being in violation; that ESB Builders built the addition and obtained a permit; that he purchased the home 13 years ago; that he was made aware of not having a certificate of compliance by the Planning and Zoning Office; and that he submitted plans to the Board.

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 and that a letter be sent to the Builder**. Vote carried 5 – 0.

Case No. 7550 – Paul and Betty Phillips – south of Carolina Avenue, 245 feet east of Route One, Lot 18.

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

Mr. Rickard presented the case. Paul Phillips and Phillip Craig were sworn in and testified requesting a 2.5-foot variance from the required 10-foot west side yard setback requirement, instead of a 1.11-foot variance and a 2.5-foot variance from the required 10-foot east side yard setback requirement, instead of a 2-foot variance for an addition; that he submitted 8 signatures of his neighbors in favor of the application; that he needs more living space; and that he owns a Gardens and Home Business that is located next to him.

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 variances be **granted since there have been several variances granted in the area.** Vote carried 5 – 0.

Case No. 7551 – 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 and a variance from the gross area allowable for occupancy.

Mr. Rickard presented the case. John Starke was sworn in and testified requesting a 4-foot variance from the required 20-foot separation requirement between units in a mobile home park and a 477-square foot variance from the gross area allowable for occupancy; that the existing singlewide was demolished and that he would like to replace it with a new doublewide with a porch.

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 5 – 0.

Case No. 7552 – Wm. R. Hudson – northeast of Route 22, .68 mile southeast of Road 298.

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

Mr. Rickard presented the case. William Hudson II was sworn in and testified requesting a special use exception to place a manufactured home as a temporary sales office for a period of 3 years; that the property is located in a C-1 General Commercial District; that he owns Pontoon Express that is located on Route 5; that he would like to locate a second site on Long Neck Road near Leisure Point; that he leases the property from John Willey; and that it will have sewer.

Mr. Mills noted to Mr. Hudson that he needs to keep in mind that the sales office is temporary and that he would need to build a permanent structure.

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 for a period of 3 years**. Vote carried 5 – 0.

Case No. 7553 – Charles and Paulette Romano – northeast of Route 54, west of Blue Teal Road, Lot 28, within Swann Keys Subdivision.

A variance from the east side yard setback requirement.

Mr. Rickard presented the case. Charles Romano was sworn in and testified requesting a 0.5-foot variance from the required 10-foot east side yard setback requirement for a fireplace extension, instead of a 0.6-foot variance.

The Board found that a variance was unnecessary.

Case No. 7554 – Shawn M. and William A. Musgrove, Jr. – west of Route 9, east side of Dove Drive, Lot 61, within Covey Creek Subdivision.

A variance from the southeast side yard setback requirement.

Mr. Rickard presented the case. Russell Evans was sworn in with Larry Fifer, Attorney, on behalf of the application, requesting a 0.3-foot variance from the required 10-foot southeast side yard setback requirement for an existing dwelling; that Mr. Evans sold the home to Shawn and William Musgrove, Jr. on May 14, 2001; that he had a survey prepared for settlement and found that the home was in violation; and that Mr. Evans bought the home in 1991.

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

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

Case No. 7555 – Daniel W. and Cassandra N. Wells – east of Road 273-A, east side of Bay View Road, Lots 14 and 15, within Bay Vista Subdivision, First Additions.

A variance from the southeast side yard setback requirement.

Mr. Rickard presented the case. Daniel Wells was sworn in with William Schab, Attorney, on behalf of the application, requesting a 2.6-foot variance from the required

5-foot southeast side yard setback requirement for an existing shed; that the permit that was obtained stated a 10'x10' shed, but the size of the shed is a 10'x20' shed; that Daniel just recently purchased the home from Mr. & Mrs. Feltman, who purchased it in 1998; that the shed was built in the 1970's; that they would like the letter that was submitted with the application be made part of the record; that the property is in a flood zone; that it would be an extreme hardship to correct the encroachment; that the encroachment is minimal; and that it does not adversely affect the neighborhood.

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

Case No. 7556 – John C. and Elizabeth F. Webb – east of Road 274, south side of Landing Drive, Lot 87, within The Landing Subdivision.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Elizabeth Webb was sworn in with William Schab, Attorney, on behalf of the application, requesting a 0.6-foot variance from the required 15-foot side yard setback requirement for an attached garage; that she purchased the home in 1987; that in 1990 the garage was added on; that she has a survey prepared when they refinanced the property and found that the home was in violation; that the Homeowner's Association was in favor of the application; that they would like the letter that was submitted with the application be made part of the record; that it would be an extreme hardship to correct the encroachment; that the encroachment is minimal; and that it does the adversely affect the neighborhood.

Mr. Rickard read a letter from William Lytle, Secretary of the Homeowner's Association, in favor of the application.

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

Case No. 7557 – Suzanne D. and F. Rogers Jones, Jr. – west of 265, west side of Mills Ridge Road, Lot 23, within Mallard Point Subdivision.

A variance from the north side yard setback requirement.

Mr. Rickard presented the case. F. Rogers Jones, Jr. was sworn with William

Schab, Attorney, on behalf of the application, requesting a 0.5-foot variance from the required 15-foot north side yard setback requirement for an existing attached garage; that they would like the letter that was submitted with the application be made part of the record; that the violation was discovered when the home was being built in 1986; and that the Homeowner's Association is in favor of the application.

Mr. Rickard read a letter from John Smith, President of the Homeowner's Association, in favor of the application.

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

Case No. 7558 – April and Donald Lott – south of Road 620, 735 feet east of Route 36.

A special use exception to operate a commercial dog kennel and a variance from the front, side, and rear yard setback requirements.

Mr. Rickard presented the case. Donald Lott was sworn in and testified requesting a special use exception for a commercial dog kennel and a 185-foot, 190-foot, 180-foot, and a 125-foot variance from the required 200-foot setback requirement for a commercial dog kennel; that he does not breed or board dogs; that his dogs have been spayed, neutered, and have had all of their shots; that he has 6 dogs; that they are family pets; that the dogs ages range from 6 to 9 years old; that he keeps them kenneled; that he has obtained a kennel business license; that he received a violation notice from Tina Rafail, Planning and Zoning Inspector III; and that the dogs are harmless.

Janet Wilkins and Naomi Maile were sworn in and testified that they are in opposition to the application; that they are neighbors; that the dogs have gotten loose and that they are terrified of the dogs; that the SPCA has taken pictures of the dogs; that there is an odor from the kennels; and that they submitted pictures to the Board.

In rebuttal, Donald Lott stated that the dogs have not gotten out of their kennels for 3 months; that he has fixed the kennels; and that an odor does not come from his kennels, but from a horse pasture.

Mr. Rickard read 3 letters from Steven and Janice Clowes, Watha Hostetler, Joseph and Shirley Urash, and a letter with 24 signatures in opposition to the application.

Mr. Mills asked Mr. Lott what the distances were from the kennel to property lines. Mr. Lott stated that he was not sure, but will check the distances.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the case be **left open until October 1, 2001 until Mr. Lott provides them with the exact measurements that are needed for the distances from his kennel to the property lines.** Vote carried 5 – 0.

Case No. 7559 – Janey and Dustin Berlinger – northeast of Route 22, north of Starboard Court, Lot J25, within Rehoboth Shores Mobile Home Park.

A variance from the rear yard setback requirement.

Mr. Rickard presented the case. Nadine Jefferson, Manager, was sworn in and testified requesting a 5-foot variance from the required 10-foot rear yard setback requirement for an existing manufactured home; that the applicants have been living there for 2 to 3 years; that the applicants received a violation from Dawn Heffelfinger, Planning and Zoning Inspector I; and that there are approximately 60 lots in the new section.

Mr. Hudson noted that Rehoboth Shores needs to be more careful when they place units in the park.

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 5 – 0.

Case No. 7560 – Linda B. Ward – northeast of Road 261, 250 feet southeast of Jerry Street, Lot B, within Carsyljan Acres Subdivision.

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

Mr. Rickard presented the case. Linda Ward was sworn in and testified requesting a special use exception to connect two manufactured homes to make one unit; that she needs more living space; that her daughter and son-in-law moved in with her; and that she applied for a medical hardship, Case No. 7378, but it was denied.

Mr. Rickard read a letter from Steven and Debra Gerhart and David and Cecelia Ruhl in favor of the application.

Thomas Baker was sworn in with concerns of the access to the property.

Mr. Berl stated to Mr. Baker that the Board cannot enforce access to properties.

Motion by Mr. Mills, seconded by Mr. Wheatley, 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.**

Vote carried 5 – 0.

Case No. 7561 – Edwin H. Higgins – east of Road 533, 35 feet north of Road 535-A, Lot 40, within North Shores Subdivision.

A variance from the east side yard setback requirement.

Mr. Rickard presented the case. Edwin Higgins was sworn in and testified requesting a 5-foot variance from the required 15-foot east side yard setback requirement to build a new garage; that the garage that existed on the property was removed; and that he has extended the east side yard 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 variance be **granted**. Vote carried 5 – 0.

OLD BUSINESS

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

A variance from the front yard setback requirement.

Mr. Rickard stated to the Board that he received a letter from Mr. Berl stating that the deed does note that the property line goes to the middle of the street. Mr. Berl stated to the Board that they should see this policy written on paper before making a decision.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **tabled until October 1, 2001**. Vote carried 5 – 0.

Meeting Adjourned 8:50 P.M.