

## MINUTES OF OCTOBER 1, 2001

The regular meeting of the Sussex County Board of Adjustment was held Monday evening October 1, 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. McCabe, seconded by Mr. Wheatley, and carried unanimously to approve the Revised Agenda with the correction to hear Case No. 7544, Stephen and Mary Youtz, under old business. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of September 24, 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. 7562 – John W. Shew** – north of Road 351, 71.44 feet east of Road 349, Lot 47, within Banks Acres Subdivision.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. John Shew was sworn in and testified requesting a 22-foot variance from the required 40-foot front yard setback requirement for a screen porch and dwelling, instead of a 20-foot variance; that a Homeowner's Association does not exist; that Luv Homes obtained the permit and placed the home in June 2000; and that the unit does not obstruct anyone's view.

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 and that a letter be sent to Luv Homes**. Vote carried 5 – 0.

**Case No. 7563 – Mike Scanland** – north of Route 54, west side of Blue Teal Road, Lot 31, within Swann Keys Subdivision.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Mike Scanland was sworn in and testified requesting a 16-inch variance from the required 5-foot side yard setback requirement for an existing shed; that the shed measures 6'x8'; that the shed was placed in July

2001; that the Homeowner's Association is in favor of the application.

Richard Bilinski and Judith Megee, neighbors, were sworn in and testified that they are in opposition to the application; that the shed is only 1.5-foot from their screen porch; that the doors of the shed opens onto their property; that the shed blocks their views; and that it decreases their property values.

In rebuttal, Mr. Scanland stated that he does not have to go onto Mr. Bilinski and Ms. Megee's property to get into the shed and that if he placed the shed in the rear of the property it would block everyone's view to the canal.

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously that the variance be **tabled until October 15, 2001 so that Mr. McCabe can go and look at the property**. Vote carried 5 – 0.

**Case No. 7564 – Henry Clark** – southeast of Route One, south side of Beachfield Drive, Lot 15, within Beachfield Subdivision.

A variance from the east side yard setback requirement.

Mr. Rickard presented the case. Henry Clark was sworn in and testified requesting a 2-foot variance from the required 10-foot east side yard setback requirement for a proposed attached garage; that the Homeowner's Association is in favor of the application; that his surveyor made him aware that the garage would not meet the required setbacks.

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

Henry Macturk, neighbor, was sworn in and testified that he is in favor of the application.

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

**Case No. 7565 – Lyle Andrews and Henry Schlabach** – southeast of Route 54, north side of Ashwood Drive, Lots 28 and 29, within Angola By The Bay.

A variance from the rear yard setback requirement.

Mr. Rickard presented the case. Lyle Andrews was sworn and testified requesting a 1.1-foot variance from the required 20-foot rear yard setback requirement for an

existing screen porch; that his home sits on two lots; that he laid out the foundation himself; that he had an as-built survey prepared and found that he was in violation; that there are wetlands located behind his property; that his property backs up to 70-foot of common ground; and that the Homeowner's Association is in favor of the application.

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

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

**Case No. 7566 – Wayne Eisenhardt** – southwest of Road 314, 3,000 feet south of Road 317.

A variance from the maximum age requirement for a multisectional manufactured home.

Mr. Rickard presented the case. Wayne Eisenhardt was sworn in and testified requesting a variance from the maximum age requirement for a multisectional manufactured home; that the age of the unit is a 1995; that he bought the home in 1997; that he intends to install a block foundation and make it a Class C Home; and that he submitted pictures to the Board.

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

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

**Case No. 7567 – Donald and Ruth Smythe** – east of Route 24, south of Mariners Way, Lot 27, within Herring Creek Estates Subdivision.

A variance from the east side yard setback requirement.

Mr. Rickard presented the case. Donald Smythe was sworn in and testified requesting a 1.4-foot variance from the required 15-foot east side yard setback requirement for an existing deck with a roof; that a certificate of compliance was issued on March 17, 1992; that he had a survey prepared and found that the deck was in violation; that he built the home 10 years ago; and that he is located in a flood zone.

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. 7568 – Ronald W. and Jennifer Morgan** – south of Road 625, 1,500 feet east of U.S. Route 113.

A determination of existence of non-conforming use.

Mr. Rickard presented the case. Norman Oates, Planning and Zoning Inspector II, was sworn in and testified that he received a complaint over the telephone; that he sent the applicant a violation notice on July 2000; that he submitted pictures; that he had looked at the site; that he notified Mr. Lank, Planning and Zoning Director, of the violation; that Mr. Oates, Planning and Zoning Inspector II, Mr. Lank, Planning and Zoning Director, and Mr. Betts, Constable, all visited the site; that Mr. Rickard was also notified of the violation; and that Mr. Morgan was sent a letter from Mr. Lank, Planning and Zoning Director, on July 31, 2001 referencing that junk is not permitted in an AR1-Agricultural Residential District.

Ronald W. Morgan was sworn in with David Rutt, Attorney, present on behalf of the application, requesting a determination of existence of non-conforming use for a trucking operation, storage of trailers, storage of trailer parts in trailers, and storage of farm equipment; that all of his vehicles are tagged; that the trailers are tagged from the State of Maine; that Vaughn Morgan is in opposition because of who Ron bought his farm equipment from; that a Trucking Business exists on the property; that the property is a 44 acre farm; that his grandmother has lived on the property since the 1940's; that he lives on the same parcel; that he farms a total of 182 acres and plans to till more land; that he purchased his farm equipment for Craig Hitch; that all of his farm equipment is used and operational; that he repairs the equipment himself; that he will be removing a couple trucks and a house trailer from the property; that all the parts stored in the trailer bodies are all useable; that he does not consider anything on his property junk because it is all useable; that he started his trucking business in 1989; that his grandfather started a trucking business in the 1940's; that his grandfather passed away in 1989; that his operation is similar to what his grandfather operated; that he does not do any loading, unloading or fueling on the property; that a repair shop exist on the property; that the repair shop was replaced in 1989 when it was blown down; that he is willing to plant trees to block the view from his neighbors; that he showed the Board an aerial photograph; that he is trying to start his own business; that he realizes that his equipment does not look new, but it all works; that he cannot afford to build a building at the moment to store his equipment; that they submitted 9 signatures in favor of the

application; that they submitted a packet containing a tax map of the site, copies of deeds, pictures of the site, a bill of sale from Craig Hitch, documentation of Trucking and Farming Equipment since February 9, 1962, a copy of a Certificate of Incorporation, Minutes of Meeting of Incorporation, dated February 18, 1962, for Morgan Trucking, Inc., a Certificate of Incorporation of Morgan Produce, Inc., a Certificate of Incorporation of Morgan Charolais Farms, Inc., a Certificate of Incorporation of Morgan Transportation Services, Inc., a Certificate of Incorporation of Morgan Potato Service, Inc., a Lease Agreement, dated February 3, 1967, between Morgan Trucking, Inc. and William B. Morgan, Jr. and Marciel E. Morgan, a Waiver of notice of meeting of Board of Directors and Minutes for Morgan Trucking, Inc., dated March 19, 1969, a copy of a Lease Agreement being ceased on June 8, 1973, and a Contract, Lease and Operation Agreement, dated January 1, 1970.

Marceil Morgan, grandmother, was sworn in and testified that she is in favor of the application; that she moved on the property in 1944; that her husband started a trucking business in 1946; that he operated the business from their property; that in 1962 she and her husband incorporated Morgan Trucking, Inc.; that at one time they moved the business across the road, but still fueled the trucks on their property; that Ronald J. Morgan, son, and Ronald W. Morgan, grandson, both worked for the business; that her husband operated the business from 1946 to 1989; and that her husband passed away in 1989.

Ronald J. Morgan, father, was sworn in and testified that he is in favor of the application; that he was involved with the trucking business since 1977; and that he stopped working in 1989.

Bradley Morgan Johnson was sworn in and testified that he is in favor of the application; that he drove a truck for Morgan Trucking, Inc.; that the home base of the operation was from Marceil's home; that the trucks were parked on the property; that he stopped working for Morgan Trucking, Inc. in March 2001; and that he recalls trucks always operating from the property.

Jennifer Stubbs Morgan, wife of Ronald W. Morgan, was sworn in and testified that she is in favor of the application; and that they are trying to keep the farming operation in the family.

Annette Brittingham was sworn in and testified that she is in favor of the application; that she has known Ronald for 5 to 6 years; that he has always wanted to walk in his grandfather's shoes; that he is a good person and a hard worker.

John Sapp was sworn in and testified that he is in favor of the application; that he knows that the business has operated for a least 15 years; and that he has used the farm

equipment.

Michael Chalmers was sworn in and testified that he is in favor of the application; that he is a friend of Ronald; that he helps repair the farm equipment; and that the parts stored in the trailers are always needed.

Vaughn Morgan was sworn in and testified that he is in opposition to the application; that he submitted pictures and a packet containing 8 signatures in opposition to the application, and 5 signatures in opposition to Craig Hitch's junk being stored on Ronald W. Morgan's property; that he is being teased about the property looking like a junk yard; that he has a problem with Craig Hitch storing junk on the property; that Ronald did not purchase the equipment from Craig Hitch and that Ronald is letting Craig Hitch store his equipment on the property; that he does not oppose Ronald's trucking business; that it is decreasing his property values; that every property owner that borders Ronald's property is effected and are in opposition; and that the trucking business has not always existed.

Dale Ann Morgan was sworn in and testified that she is in opposition to the application; that her home is located next to Ronald's property; that she bought the home to retire in; and that when she bought her home there was no junk located on the property.

Harvey Kenton, Jr. was sworn in and testified that he is in opposition to the application; that he is a licensed Realtor and Appraiser; that he was asked to evaluate the property and does not remember any junk being on the property; that he does not recall any operations being operated on the property; and that Vaughn and Dale Ann Morgan has spent a lot of money to improve the property, but by the looks of it now they have wasted their money.

William H. Morgan was sworn in and testified that he is in opposition to the application; that trucks were very seldom operated on the property; that Morgan Trucking, Inc. was incorporated in 1962; that Morgan Trucking, Inc. went out of business in 1972; that he showed the Board aerial photographs; that he does not oppose the trucking business; and that he does not see a need for the storage trailers.

Robbie Warren was sworn in and testified that he is in opposition to the application; that he has been married to William Morgans' daughter for 7 years; that he lives across the street; that Ronald needs to do his work in the daytime instead of nighttime; and that he has never seen any trucks being operated on the property until 1 year ago.

In rebuttal, David Rutt, Attorney, stated that comments were made not opposing the trucking business; and that the whole issue is about Craig Hitch, which does not

pertain to the hearing.

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously that the determination of existence of non-conforming use be **tabled until October 15, 2001**.  
Vote carried 5 – 0.

**Case No. 7569 – Charles and Mary Callender** – north of Route 54, east side of Pintail Drive, Lot 21, within Swann Keys Subdivision.

A variance from the north side yard setback requirement.

Mr. Rickard presented the case. Charles Callender was sworn in and testified requesting a 3-foot variance from the required 10-foot north side yard setback requirement to enclose an existing deck into a 14'x18' screen porch and wheelchair ramp while maintaining the existing roof line from the dwelling; that he submitted a plot plan, pictures and a drawing of the screen porch to the Board; and that he questioned if a property line can be located in a canal.

Mr. Rickard stated to Mr. Callender that his property line could be part of the canal; and that he would need to look at his deed.

Mr. Rickard read 2 letter from Jakie Didiwick and Ellen Yates 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. 7570 – Maria Matos** – north of Route 18, 3,100 feet west of Road 546.

A special use exception to operate a daycare facility.

Mr. Rickard presented the case. Maria Matos was sworn in and testified requesting a special use exception to operate a daycare facility; that she will have 10 to 11 children; that the hours of operation will be from 6:00 A.M. to 5:00 P.M., Monday thru Friday; that the ages of the children will be newborns to 9 years old; that a fence will be installed; and that she will have adequate parking.

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

**Case No. 7571 – Gordon F. Blizard, Jr.** – south of Route 22, northwest of Grove Circle, Lot 8, within White House Beach Mobile Home Park.

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

Mr. Rickard presented the case. Gordon Blizard, Jr. was sworn in and testified requesting a 9-foot variance from the required 20-foot right side yard separation requirement between units in a manufactured home park and a 6-foot variance from the required 20-foot rear yard separation requirement between units in a manufactured home park; that the unit is 25 years old; that he is located in a flood zone; and that he is raising the unit and building additions to meet the flood zone requirements.

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**. Vote carried 5 – 0.

**Case No. 7572 – Mark E. Mariner** – south of Road 70, 764 feet south of Road 72, Lot C.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. Mark E. Mariner was sworn in and testified requesting a 10-foot variance from the required 40-foot front yard setback requirement for an addition on a non-conforming dwelling; that the home was built in 1951; that he built the addition and obtained the permit.

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 5 – 0.

**Case No. 7573 – Rodney L. Workman** – south of Road 534, 213 feet east of Lake Street, within Charles C. Friedel Lands Subdivision.

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

Mr. Rickard presented the case. Rodney Workman was sworn in and testified requesting a 2.1-foot variance from the required 5-foot east side yard setback requirement and a 1.4-foot variance from the required 5-foot rear yard setback requirement for existing sheds; that he sold his home in August; that he had a survey prepared and found that the sheds were in violation; that the sheds existed when he purchased the property in 1994; and that his neighbor on the east side of the property is 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. Mills, seconded by Mr. Hudson, and carried unanimously that the variances be **granted**. Vote carried 5 – 0.

**Case No. 7574 – Elizabeth C. Mumford** – south of Road 322, 2,525 feet east of Road 321.

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

Mr. Rickard presented the case and read a letter from Joseph F. Karnish, D.O. Mr. McCabe, the applicant's son, was sworn in and testified requesting a special use exception to place a manufactured home on a medical hardship basis; that he and his wife would like to place a manufactured home on his mother's property to take care of her; and that he has gotten approval from DNREC.

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 special use exception be **granted for a period of 2 years**. Vote carried 5 – 0.

**Case No. 7575 – Mary Carty** – south of Route 24, Diver Duck Drive, Lot 3, within Pot Nets Seaside Mobile Home Park.

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

Mr. Rickard presented the case. Carol Faucett, Builder, was sworn in and testified requesting a 4-foot variance from the required 20-foot separation requirement between units in a mobile home park for an existing deck; that the Tenant's Association and neighbor are in favor of the application.

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.

**Case No. 7576 – Gerald T. Landy** – southeast of Road 17, .44 mile northeast of Road 365.

A special use exception to operate a riding academy.

Mr. Rickard presented the case. Gerald T. Landy was sworn in and testified requesting an indoor riding arena; that lessons will be given; that the site contains 36 acres; that 11.16 acres is zoned AR-1 Agricultural Residential District and the remainder is zoned MR – Medium Residential District; that most of the land is wooded; that it would be an improvement to the area; that he submitted a survey to the Board; and that the neighbors are in favor of the application.

By a show of hands, 3 parties were in favor of the application.

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 special use exception be **granted for a period of 5 years**. Vote carried 5 – 0.

#### **OLD BUSINESS**

**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 stated to the Board that he had received a letter from Stephen and Mary Youtz requesting a 1-foot variance from the required 10-foot side yard setback requirement for an enclosed porch.

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

**Meeting Adjourned 10:00 P.M.**