

## MINUTES OF OCTOBER 21, 2002

The regular meeting of the Sussex County Board of Adjustment was held Monday evening October 21, 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, Mr. Hudson and Mr. Workman, 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 addition of Other Business by Mr. Mills. Vote carried 5 – 0.

Motion by Mr. Hudson, seconded by Mr. McCabe, and carried unanimously to approve the Minutes of October 7, 2002. 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 7957 – CVS Pharmacy** – northeast of Route One, 953.75 feet southeast of Road 271 (Glade Road) and across from road 273 (Country Club Road), Lot 1.

A variance for a second wall sign.

Mr. Oates presented the case. Larry Holding was sworn in and testified requesting a variance for a second wall sign; that the store is located on a corner lot; and that the new sign will be identical to the 99-square foot existing sign.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until November 4, 2002**. Vote carried 5 – 0.

**Case No. 7958 – Daniel and Dorothy Darden** – south of Route 18, west of Buck Run, Lot B-11, within Deerwood Subdivision.

A variance from the side yard setback requirement.

Mr. Oates presented the case. Daniel Darden was sworn in and testified requesting a 10-foot variance from the 15-foot required side yard setback requirement for a proposed 670-square foot addition; that the existing dwelling meets the required setbacks; and that he has spoken to his neighbors and they have voiced no objection to the application.

Mr. Oates stated that a letter in favor of the application was received by the office.

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

**Case No. 7959 – Callaway, Farnell & Moore, Inc.** – west of U.S. Route 13, 293 feet south of Route 13-A.

A variance from the maximum square footage requirement for a ground sign.

Mr. Oates presented the case. Katherine Farnell was sworn in and testified requesting a 150-square foot variance from the required 150-square foot requirement for a ground sign; that the sign will be 1-sided, 10'x30' and 25-foot in height; that the sign is needed to attract southbound traffic; and that this will be a second ground sign on-premises.

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 with the stipulation that the fee be waived for the variance needed for a second ground sign**. Vote carried 5 – 0.

**Case No. 7960 – Jodi A. and Clinton C. Lewis, Sr.** – east of Road 600, 3,131 feet southeast of Road 599, Lot 11, within JB & AL Ltd. Lands Subdivision.

A variance from the side yard setback requirement.

Mr. Oates presented the case. Jodi Lewis was sworn in and testified requesting a 8-foot variance from the required 15-foot side yard setback requirement for an existing garage; that the measurements were taken from an old stake believed to be the marker for the property line; that the neighbor is in favor of the application; and that she submitted pictures and a survey.

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.

**Case No. 7961 – Nicola and Josephine Rosato** – south of Route 54, east of Maple Lane, Lot 25, within Keen-Wik Subdivision.

A variance from the side yard setback requirement.

Mr. Oates presented the case. Nicola and Josephine Rosato were sworn in and testified requesting a 4.8-foot variance from the required 10-foot side yard setback requirement for an existing attached shed; that the shed is used for tools and a lawnmower; that the Homeowner's Association does not allow detached accessory buildings; that the builder obtained the building permit; and that pictures were submitted.

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

**Case No. 7962 – James G. and Carolyn M. Fox** – east of Road 255, 915 feet northeast of Road 248, Lots 10 and 11, within Davidson-Moore Land Co. Subdivision.

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

Mr. Oates presented the case. James and Carolyn Fox was sworn in and testified requesting a special use exception to operate a bed and breakfast facility; that the existing dwelling is 3800-square feet and was designed with this use in mind; that they want to have 2 rooms available for guests and each room has its own entrance; that they have permission from the developer; that they also have horses on the property; and that they submitted a map showing the other small businesses in the area and a petition with 14 signatures in favor of the application.

Joseph Richardson Bishop was sworn in and testified that he is in opposition to the application; that he has owned his property since 1988; that the Applicant's have complained of barking dogs and cars racing up and down the road and he feels that the complaints will increase due to having guests to please; that the reason for the request is to please a prospective buyer; and that he does not want strangers and traffic in the neighborhood at all hours of the day.

Sharon Bishop was sworn in and testified that she is in opposition to the application; that she does not feel that a rural area is suitable for a bed and breakfast; that the signatures on the petition are of property owners who have their land up for sale; and that the request is desired for the sale of the property only.

Elaine Taiman was sworn in and testified that she is in favor of the application; that she does not see where the bed and breakfast will adversely affect the area; and that the Applicant's home is in plain view from her property.

Kenneth Hudson was sworn in and testified that he is in opposition to the application; that he has no objection to the use for the Applicant's; and that he does not want the approval to extend to the new owners.

Mrs. McBlain was sworn in and testified that she is in opposition to the application; that she has concerns of a future mini-mall; and that the Applicant's should have to run the bed and breakfast for a year.

In rebuttal, Carolyn Fox stated that she is also the realtor for the property and has never had an offer pending upon approval of this request; that she turned down an offer from a church and was told by Planning & Zoning that a church is never turned down in an AR-1 zoning; that she cannot believe the opposition to the bed and breakfast with all the other small businesses in the area; and that she did have a prospective buyer interested in a bed and breakfast when she applied.

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

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted with the stipulation that upon the sale of the property the new owner must re-apply for a special use exception.** Vote carried 5 – 0.

**Case No. 7963 – Goodwin H. Taylor** – west of Route One, south of Indian River Inlet, Lot 21, within The Cove Subdivision.

A variance from the south side yard setback requirement.

Mr. Oates presented the case. Goodwin H. Taylor was sworn in and testified requesting a 0.7-foot variance from the required 10-foot side yard setback requirement for an elevated deck; that the framing contractor measured from the piling incorrectly; that he obtained the building permit; and that there is open space to the rear of the property.

The Board found that no parties appeared 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. 7964 – Ocean Atlantic Assoc., III** – north of Road 15-A, 150 feet west of Road 273 (Hebron Road).

A variance from the side yard setback requirement.

Mr. Oates presented the case. Jessica Nichols and Justin Healy were sworn in and testified requesting a 4.5-foot variance from required 5-foot side yard setback requirement; that they plan to expand the existing self-storage facility and they want to dedicate 20-feet to the State of Delaware for a proposed bike path; that the proposed storage buildings would meet the required setbacks if the application is denied; and that a survey was submitted.

Arnold Twyman was sworn in and testified that he is in opposition to the application; that he was confused as to what the hearing was about; and that once Mr. Healy explained their proposal he has no objection 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 by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted**. Vote carried 5 – 0.

**Case No. 7965 – McKinney & Sons** – southwest of Route One, 900 feet north of road 271.

A special use exception to replace a billboard.

Mr. Oates presented the case. Larry Holding was sworn in and testified requesting a special use exception to replace a billboard; that the new billboard will be 2-sided with lighting, 300-square foot in size, and will be a mono-pole steel construction; and that it will meet all required setbacks.

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. 7966 – Danny R. Wilson and Lisa L. Brown** – east of Road 270-A, south of Beaver Dam Reach, Lot 31, within Woods At Seaside Subdivision.

A variance from the rear yard setback requirement.

Mr. Oates presented the case. Danny Wilson was sworn in and testified requesting a 10-foot variance from the required 10-foot rear yard setback requirement for a proposed deck; that the deck will be level with the finished first floor of the existing dwelling; that pictures were submitted; and that the Applicant will check the exact measurement the proposed deck will be from the property line.

Mr. Oates stated that the office has received 3 letters 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 case be **left open until the next meeting on November 4, 2002 so that the Applicant can get the exact measurement from the property line.** Vote carried 5 – 0.

**Case No. Robert and Carol Nocella** – south of Route 54, west of Tyler Drive, Lot 44, within Cape Windsor Subdivision.

A variance from the side and rear yard setback requirements.

Mr. Oates presented the case. Robert Nocella was sworn in and testified requesting a 10-foot variance from the required 10-foot side yard setback requirement for a deck, and a 1-foot variance from the required 10-foot side yard setback requirement for a dwelling, and a 15-foot variance from the required 20-foot rear yard setback requirement for a deck; that he received a violation for the deck and he thought a ground level deck could go to the property line; that a previous variance was granted on the property for the dwelling and a deck; and that he submitted pictures.

Clyde Schaffer and Brendon Bowman were sworn in and testified that they are in opposition to the application; that they are Board members on the Homeowner's Association and they feel the ordinance is always changing in reference to decks; that they made the Applicant aware of the violation and he seemed unconcerned; that the County always approves the variances brought before them and they ask the Board to deny this Application to show homeowner's that they must comply; that the Association does not deny any proposed improvements if the proper channels are followed; and that they submitted pictures and a copy of the permit the Association issues.

In rebuttal, Robert Nocella stated that the pictures submitted show that his deck is the same as neighbors.

Motion by Mr. McCabe, seconded by Mr. Mills, 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. McCabe, and carried unanimously that the case **remain open until the next meeting on November 4, 2002 to check the first and second level decks.** Vote carried 5 – 0.

**Case No. 7968 – Ann Marie’s Seafood & Italian** – west of Route One, 280 feet northwest of Route 24.

A variance for a second wall sign.

Mr. Oates presented the case. Larry Holding was sworn in and testified requesting a variance for a second wall sign; that the second wall sign will be identical to the existing wall sign; and that the sign will face traffic heading south on Route One.

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. 7969 – James R. and Joan B. Martin** – south of Road 269, 622 feet west fo Road 268.

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

Mr. Oates presented the case. James Martin was sworn in and testified requesting a variance from the minimum lot size requirement for a parcel; that he would like to create 2 parcels for his daughters; that each lot will be 13,000-square foot in size with a 50-foot right of way and 2 right of ways for central sewer; that he would like to combine the remaining land with the parcel his house is currently on; and that the cottage that exists on the lot will be removed.

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 case be **tabled until November 4, 2002.** Vote carried 5 – 0.

**Case No. 7970 – Silas and Carol Bush** – south of Route 22-C, east of Pontoon Point, Lot M-13, within Pot Nets Bayside Mobile Home Park.

A variance from the west side yard setback requirement.

Mr. Oates presented the case. Rita Baker and Ronald Wetherstein were sworn in and testified requesting a 1.8-foot variance from the required 5-foot side yard setback for an existing 9'x12' shed; that the shed has been located for easier access from the home; that the shed is 20-foot from the neighbors home; and that pictures were submitted.

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. 7971 – New Dimension Homes** – south of Route 22-C, west of Pontoon Point, Lot M-12, within Pot Nets Bayside Mobile Home Park.

A variance from the east side yard setback requirement.

Mr. Oates presented the case. Rita Baker and Ronald Wetherstein were sworn in and testified requesting a 2.8-foot variance from the required 5-foot side yard setback requirement for an existing 9'x12' shed; that the shed has been located for easier access from the home; that the shed is 20-foot from the neighbors home; and that pictures were submitted.

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

#### **OLD BUSINESS**

**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. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until November 4, 2002**. Vote carried 5 – 0.

**Case No. 7943 – Gail Mullin** – east of Road 274, north of Jake Drive, Lot 35 within Rehoboth Bay Mobile Home Park.

A variance from the front yard setback requirement.

The Board discussed the case.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **denied and a letter sent to Hudson Homes**. Vote carried 5 – 0.

**Case No. 7944 – Henry Johnson, Jr. & Son** – east of Road 389; south of Road 382; southwest corner of Road 382 and Road 391; northwest corner of Route 54 and Road 381; northwest corner of Route 54 and Road 389.

A variance from the front yard setback requirement and a variance from the maximum square footage requirement for directional signs.

The Board discussed the case.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variances be **granted and to notify Applicant of the variance needed for the distance from a dwelling**. Vote carried 5 – 0.

**Case No. 7945 – Stanley Allenby** – north of Route One, east of William F Street, Lot 16, Block D, within Dodd's Addition Subdivision.

A variance from the east side yard and rear 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 5 – 0.

#### **OTHER BUSINESS**

**Case No. 7641 – P & A Co., Inc.** – north of U.S. Route 13, 2098 feet east of Road 452.

A special use exception for asphalt products or central asphalt mixing or batching.

The Board suggested that the Applicant wait until closer to the expiration date of the approval and Mr. Berl will write a letter to the Applicant.

Mr. Mills stated that he would like to see an additional meeting with the Planning & Zoning staff to discuss Board of Adjustment issues.

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**Meeting Adjourned 10:17 p.m.**