

## MINUTES OF NOVEMBER 3, 2003

The regular meeting of the Sussex County Board of Adjustment was held Monday evening November 3, 2003, 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. Mills, Mr. Workman and Mr. Hudson, with Mr. Berl – Assistant County Attorney, Mrs. Heffelfinger – Zoning Inspector II, Mr. Rickard – Secretary to the Board, and Mrs. Norwood – Recording Secretary.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Revised Agenda as circulated. Vote carried 4 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of October 20, 2003 as circulated. Vote carried 4 – 0.

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

**Case No. 8392 – Albert E. Brewington, Jr.** – north of Road 326, 300 feet east of Road 82.

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

Mr. Rickard presented the case. Albert Brewington, Jr. was sworn in and testified requesting a 6-foot variance from the required 10-foot side yard setback requirement and a 12.3-foot variance from the required 20-foot rear yard setback requirement; that he wants to renovate the existing building; that he would like to use the first level for a retail/office space and the second level for an apartment; that the Town of Millsboro may be annexing the parcel once he gets the variance approval; that the building is non-conforming; and that he feels if he tears down the existing building the parcel would not be large enough to build the type of structure he has in mind.

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 case be **left open until November 17, 2003 to gather more information for the proposed use.** Vote carried 4 – 0.

**Case No. 8393 – Franklin and Catherine Porter** – east of Route 16, northeast of New Mexico Avenue, being Lot 9 and ½ of Lot 7, Block M, Section 1, within North Shores Development.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. Franklin Porter was sworn in and testified requesting a 2-foot variance from the required 30-foot front yard setback requirement for a second story deck; that he is building a new dwelling; that the Building Code requires a minimum 3-foot wide deck; that he is requesting about a foot more than should be needed; and that he just recently had his property surveyed.

By a show of hands, 1 party appeared in support of the application.

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

Mr. Rickard stated that the office received 1 letter in opposition to the application.

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

**Case No. 8394 – G. Robert and Sieglinde Semone** – east of Road 357, north of Bayberry Court, being Lot 51 within Quillen's Point Development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Robert Semone was sworn in and testified requesting a 5.6-foot variance from the required 10-foot side yard setback requirement for an existing garage; that the garage was built 3-years ago; that he had a survey done and discovered the encroachment; that he hired a contractor to build the garage; and that he received no response from the builder since the situation has come to light.

By a show of hands, 1 party appeared in support of the application.

Mr. Rickard stated that the office received 2 letters in support 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.

**Case No. 8395 – John and Barbara Frye** – south of Road 358, east of Pine Crest Drive, being Lot 7, Section 3, within Pine Crest Terrace Development.

A variance from the front yard setback requirement.



Mr. Rickard presented the case. John Frye was sworn in and testified requesting a 20-foot variance from the required 40-foot front yard setback requirement for a proposed dwelling; that he purchased the lot 2-years ago; that the lot was advertised as 70' x 106'; that the lot measures 55' x 106' per survey; that he wants to build a 26' x 40' dwelling with a deck in the rear; that there are non-conforming dwellings next door that are only 20-foot from the front property line; that his driveway will come from Pine Crest Drive and across the rear of Lot 16; and that he submitted drawings.

Joseph Lendzioszek was sworn in and testified in opposition to the application; that the majority of the dwellings meet the required 40-foot setback requirement; that the only homes that do not meet are the non-conforming dwellings; and that he would rather see a 10-foot variance granted.

Michael McGee was sworn in and testified in support of the application; that he lives in the neighborhood; that he feels that having the driveway come out on Pine Crest Drive is a good idea to help cut down on the number of entrances off of Sandy Cove Road; and that he submitted a letter in support of the application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be taken under advisement. Vote carried 4 – 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 case be **left open for the Planning and Zoning Department to pull an average for the street.** Vote carried 4 – 0.

**Case No. 8396 – James Roe** – south of Route 26, east of Ogre Drive, being Lot 3 within Ocean Way Estates Development.

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

Mr. Rickard presented the case. James Roe was sworn in and testified requesting a 2.5-foot variance from the required 30-foot front yard setback requirement for an addition and a 2-foot variance from the required 10-foot side yard setback requirement for a fireplace addition; that the proposed addition will measure 12' x 18'; that the lot next to his is vacant; that the owner of the adjacent lot has no objection to the application; and that a previous variance was granted on this parcel.

Mr. Rickard stated that the variance for the fireplace addition was not necessary since a fireplace may encroach 2-foot into the side yard setback.

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

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

**Case No. Realty Systems, Inc.** – north of Route 22, south of Knoll Way, being Lot 519 within Mariners Cove Mobile Home Park.

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

Mr. Rickard presented the case. Jeff Leads was sworn in and testified requesting a 2-foot variance from the required 15-foot separation requirement between units in a mobile home park; that he represents the mobile home company; that they did not have a proper home placement plan in effect at the time of the placement of this unit; and that they now meet with the Zoning Inspector prior to any placements to assure that they will meet the required setback requirements.

By a show of hands, 3 parties appeared in support 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 variance be **granted**. Vote carried 4 – 0.

**Case No. 8398 – Randy J. and Kathleen J. Nosia** – south of Road 302A, north of Patterson Drive, being Lot 30 within Patterson Place Development.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. Randy Nosia was sworn in and testified requesting a 6.3-foot variance from the required 30-foot front yard setback requirement for a proposed manufactured home; that he wants to replace an existing single-wide manufactured home with a new double-wide manufactured home; that the existing septic system prevents him from moving the unit further back on the property; that the neighbors have no objection to the application; and that a Homeowner's Association is not active.

By a show of hands, 1 party appeared in support 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 for 6.3-foot**. Vote carried 4 – 0.

**Case No. 8399 – Ronald A. and Joan Christman** – south of Road 277, 500 feet east of Angola Road West, being Lot 30 and ½ Lot 29, Block N, Section 2, within Angola By The Bay Development.

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

Mr. Rickard presented the case. Richard Baker was sworn in and testified requesting a 0.6-foot variance from the required 20-foot rear yard setback requirement and a 4.2-foot variance from the required 10-foot side yard setback requirement; that the dwelling was built 30-years ago; that the original survey never showed an encroachment; that a new survey was done for settlement; that the previous owner was unaware of any encroachments; and that the original surveyor is deceased.

By a show of hands 1 party appeared in support 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 4 – 0.

**Case No. 8400 – Richard and Susan Bloch** – east of Route One, east of Dune Road, being Lot 11, Block A, within Middlesex Beach Development.

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

Mr. Rickard presented the case. Richard and Susan Bloch were sworn in with Tim Willard, Attorney, on behalf of the application, and testified requesting a 5-foot variance from the required 30-foot front yard setback requirement; that the Applicant is not seeking the requested side yard setback variance; that they wish to expand an existing bedroom over an existing deck; that they will reconfigure the existing stairway to the second level so it will be less intrusive; that by reconfiguring the stairway they can meet the required setback requirement for Middlesex Beach; that the approval of the variance will not adversely affect the neighborhood; and that he submitted a portfolio.

Mr. Robert Witsil, Attorney, testified on behalf of the opposition to the application; that he represents the Homeowner's Association for Middlesex Beach; that they were opposed to the original application; that the revisions made in the testimony this evening are acceptable to the Association; and that they would not oppose to a 5-foot variance.

Mr. Rickard stated that the office received 1 letter in support of the application and 5 letters in opposition to the application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted for 5-foot**. Vote carried 4 – 0.

**Case No. 8401 – Paul and Denise Santa Barbara** – southeast of Road 351, south of Hickman Drive, being Lot B-4, Section 1, within White's Creek Manor Development.

A variance from the rear yard setback requirement.

Mr. Rickard presented the case. Paul and Denise Santa Barbara were sworn with David Wideman, Attorney, on behalf of the application, and testified requesting a 6.6-foot variance from the required 10-foot rear yard setback requirement for a proposed sunroom; that a previous variance was granted in 1998 for the deck; that they want to construct the sunroom on the existing deck; that it will not adversely affect the neighborhood; and that they submitted a portfolio.

By a show of hands, 8 parties appeared in support of the application.

Mr. Rickard stated that the office received 12 letters in support of the application and 1 letter in opposition to the application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted for 6.6-foot**. Vote carried 4 – 0.

**Case No. 8402 – George and Edith Thompson** – south of Road 363, west of Marina Park Drive, being Lot 17 within Plantation Park Marina Development.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. Howard Winston was sworn in and testified requesting a 10.3-foot variance from the required 30-foot front yard setback requirement for a detached garage and a 10-foot variance from the required 30-foot front yard setback requirement for a dwelling; that Certificates of Occupancy were issued in 1993 and 2000; that a survey was done for settlement; and that he believes the dwelling and detached garage were built at the same time.

By a show of hands, 3 parties appeared in support of the application.

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



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

**Case No. 8403 – Albun Inc.** – southeast intersection of U.S. Route 113 and Road 321, southwest intersection of Road 325 and Road 326.

A special use exception for promotional activities.

Mr. Rickard presented the case. Bunny Williams was sworn in with Rob Witsil, Attorney, on behalf of the application, and testified requesting a special use exception for promotional activities; that the Board approved a similar special use in 1989; that the Applicant did not realize the approval was only for a 5-year period; that the use for skydiving, bull roasts, and dog shows is no longer needed; that the use they are seeking now is for car shows and charitable events; that the stock car racing is a non-conforming use; that the stock car racing has been in effect since 1949; and that the past activities have not adversely affected the neighborhood.

Lit Dryden was sworn in and testified in support of the application; that he was representing the Georgetown Chamber of Commerce; and that the speedway is a good asset to the community.

Lynn Lester was sworn in and testified in support of the application; that she was representing the Boys & Girls Club; and that she would also like to emphasize the good to the community the speedway provides.

Ed Lester was sworn in and testified in support of the application; that he has attended all of the activities held at the speedway; and that the events are very well run.

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 for a period of five (5) years**. Vote carried 4 – 0.

**Case No. 8404 – Bethany Proper Ltd. Partnership** – north of Road 361, east of Waterside Drive, being Lot 24 within Waterside Development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Barry G. Joseph was sworn in and testified requesting a 1.4-foot variance from the required 10-foot side yard setback requirement for a screen porch; that an error was made when the property was staked out; and that the adjacent property is the storm water management pond.

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

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

**Case No. 8405 – Ocean Atlantic Assoc. V, LLC** – east of Road 88, southwest of Route One, within Paynter's Mill.

A variance from the maximum height requirement for a structure.

No one appeared on behalf of the application.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case be **denied for lack of a record of support**. Vote carried 4 – 0.

**Case No. 8406 – Robert Powell** – south of Road 358, east of Pine Crest Drive, being Lot 16, Section 3, within Pine Crest Terrace Development.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. Robert Powell was sworn in and testified requesting a 20-foot variance from the required 40-foot front yard setback requirement for a proposed dwelling; that the proposed dwelling will measure 26' x 48'; that the size of his lot was misinterpreted by the realtor; that he will have a 10-foot easement across the rear of his property to use as his driveway and his neighbor's driveway; and that he and the owner of Lot 17 went together and had the lots cleared of shrubbery that they felt obstructed the view of the intersection.

Joe Lendzioszek was sworn in and testified in opposition to the application; that by his calculations he sees no reason why a 10-foot variance should leave plenty of room for the Applicant; and that he feels the dwelling will obstruct his view from the intersection.

Mr. Rickard suggested to the Board that the Planning & Zoning Department pull and average front yard setback for the street.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **left open for the Planning and Zoning Department to pull an average of the setbacks from the street**. Vote carried 4 – 0.



**Case No. 8373 – Gail Mullin** – east of Road 274, east of Jake Drive, being Lot 35 within Rehoboth Bay Mobile Home Park.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. Trent Collins was sworn in and testified requesting a 0.3-foot variance from the required 10-foot front yard setback requirement for a manufactured home; that he set the manufactured home; that a Certificate of Occupancy was issued; and that other variances have been granted in the park.

By a show of hands, 1 party appeared in support of the application.

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

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

**Case No. 8388 – Fowler & Son Contractor, Inc.** – northeast of Road 213B, southeast of Road 213.

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

The Board discussed the case.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the variance be **denied**. Vote carried 3 – 1.

**Meeting Adjourned 9:34 p.m.**