

MINUTES OF NOVEMBER 5, 2001

The regular meeting of the Sussex County Board of Adjustment was held Monday evening November 5, 2001, at 7:00 P.M. in the Council Chamber, 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and carried unanimously to approve the Revised Agenda with the correction that Case No. 7602, Randy G. Towers, was withdrawn on November 1, 2001; that the problems with towers and Camelot Mobile Home Park pending cases need to be discussed; and that the Board of Adjustment Meeting Schedule for 2002 needs to be voted upon. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously to approve the Minutes of October 15, 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.

Mr. Rickard stated to the Board that he has gotten literature on cellular towers effecting the 800-megahertz safety system; and that a special meeting needs to be scheduled with an EOC for towers. Mr. Mills stated that the County Council Members also need to be at the meeting. The Board voted on a special meeting to be scheduled for December 5, 2001 to clean up the pending cases on Camelot Mobile Home Park; and that the Board of Adjustment Meeting Schedule for 2002 be approved. Vote carried 5 – 0.

Case No. 7592 – Lavessa Dennis – south of Road 416, 550 feet east of Road 413.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Lavessa Dennis was sworn in and testified requesting a 2.5-foot variance from the required 5-foot west side yard setback requirement for a detached garage; that a certificate of compliance was issued in 1983; that she is in the process of selling her property; that the garage existed when she bought the property in 1982; and that the violation was discovered when a survey was prepared.

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. 7593 – John W. and Gail C. Schmidt – west of Road 265, southeast side on Melloy Drive, Lot 10, within Shady Side Subdivision.

A variance from the front yard setback requirement for a through lot.

No one appeared on behalf of the application.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the case be **denied for lack of a record of support**. Vote carried 5 – 0.

Case No. 7594 – Richard L. Ashley – east of Road 225, north side of Evans Drive, Lot 45, within Eastman Heights.

A variance from the east side yard setback requirement.

Mr. Rickard presented the case. Frank Cinque, Jr. was sworn in and testified requesting an 8-foot variance from the required 15-foot east side yard setback requirement for an attached garage; and that Mr. Rust, a neighbor, 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. Wheatley, seconded by Mr. Mills, and carried unanimously that the variance be **granted**. Vote carried 5 – 0.

Case No. 7595 – Stephen R. Cline – north of Road 467, 600 feet east of Route 9.

A variance from the east side yard setback requirement.

No one appeared on behalf of the application.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the variance be **denied for lack of a record of support**. Vote carried 5 – 0.

Case No. 7596 – Janet Simonson – north of Route 22, south side of private road, Lot 55, within Bay City Mobile Home Park.

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

Mr. Rickard presented the case. Ronald Simonson was sworn in and testified requesting a 9.5-foot variance from the required 20-foot separation requirement between units in a mobile home park, instead of an 8.5-foot variance; that he obtained a permit; and that the park manager told him the setback requirement was 15-foot between units, not 20-foot.

Mr. Mills advised Mr. Simonson to contact the Planning and Zoning Office and provide them the name of the park manager so that a letter could be sent to the park manager.

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. 7597 – Elsie Reynolds – west of Road 607, 2,100 feet south of U.S. Route 113.

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

Mr. Rickard presented the case and read a letter from Frederic Samsel, M.D. Elsie Reynolds was sworn in and testified requesting a special use exception to retain a manufactured home on a medical hardship basis for her son, James Reynolds; and that a 1963 unit exists and that she would like to replace it with a 1973.

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 for a period of two (2) years and that she can replace the existing unit with a newer unit**. Vote carried 5 – 0.

Case No. 7598 – Peninsula Oil Co., Inc. – intersection of U.S. Route 13 North and Road 404 east.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. Earl Balthaser was sworn in and testified requesting a 12-foot variance from the required 60-foot front yard setback requirement for a canopy.

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. 7599 – Richard Robinson – east of Road 273-A, north side of Fifth Street, Units 230, 231V, and 232, within Bay Vista.

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

Mr. Rickard presented the case. Richard Robinson was sworn in and testified requesting an 11-foot variance from the required 30-foot front yard setback requirement for a covered porch, and a 2.3-foot variance from the required 5-foot rear year yard setback requirement for a shed; that the shed existed when he purchased the property; that he built the covered porch himself; that he obtained a permit and it stated the correct setbacks; that the dwelling was built in 1975 and was in violation; and that he received a violation notice from Franklin Bunting, Planning and Zoning Inspector III.

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. 7600 – Alberto and Regina Bento – east of Road 39, west side of Front Street, Lots 37 and 38, within Joseph D. Short Development.

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

Mr. Rickard presented the case. Eric McGinness was sworn in and testified requesting a 14.7-foot variance from the required 30-foot front yard setback for a proposed dwelling, a 3-foot variance from the required 15-foot east side yard setback requirement for a proposed dwelling, a 3.7-foot variance from the required 15-foot rear yard setback requirement for an existing shed, a 3.9-foot variance from the required 5-foot west side yard setback requirement for an existing shed, and an 8.9-foot variance from the required 10-foot rear yard setback requirement for a garage; and that they are removing an existing dwelling and replacing it with a new dwelling.

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. 7601 – Patricia Hoffert – north of Route 54, west of Teal Road, Lot 40, within Swann Keys Subdivision.

A variance from the north and south side yard setback requirements.

No one appeared on behalf of the application.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the variances be **denied for lack of a record of support**. Vote carried 5 – 0.

Case No. 7602 – Randy G. Towers – north of Route 20, east side of Vista Drive, Lot 23, within River Vista Subdivision.

A variance from the south side yard setback requirement.

This case was withdrawn.

Case No. 7603 – William T. Gibbs – east of Road 529, 580 feet north of Road 46.

A special use exception to use a manufactured home for storage facility.

Mr. Rickard presented the case. William T. Gibbs was sworn in and testified requesting a special use exception to use a manufactured home for storage facility for emergency food; that the unit will no have water and no cooking facilities; that the unit will have electric; that the unit will meet the setback requirements; and that the use of the emergency food is for his church program.

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

Case No. 7604 – Scott and Carolyn Kolb – northeast of Route 20, 1,000 feet northwest of Route 9, Lot 2, within Elmer and Dorothy Atkins Subdivision.

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

Mr. Rickard presented the case. Scott and Carolyn Kolb were sworn in with Jim Yori, Attorney, on behalf of the application, requesting a variance from the maximum age requirement for placement of a multisectional manufactured home; that the unit is currently located on rented land in Oak Orchard and that they would like to move the unit to the proposed property; that they submitted pictures of the unit; that the year is a 1991; that the size is a 28'x60'; that the unit will be placed on a block foundation; that they plan to convert the unit to a Class C; that they showed the Board an exhibit showing pictures of other homes in the area; that it would not alter the character of the neighborhood; and that they submitted a letter with 7 signatures in favor of the application.

By a show of hands, 6 parties were 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 variance be **granted**. Vote carried 5 – 0.

Case No. 7605 – Charles W. Semmeles, IV – east of Road 277, west side of Holly Way West, Lot 31, within Angola By The Bay Subdivision.

A variance from the south side yard setback requirement.

Mr. Rickard presented the case. Vince Robinson, Attorney, was present on behalf of the application requesting a 10-foot variance from the required 10-foot south side yard setback requirement for an existing deck and hot tub and a 2-foot variance from the required 5-foot south side yard setback requirement for an open deck; that the violations were found when a survey was prepared; that it does not adversely effect the neighborhood; that the neighbors on Lot 30 are in favor of the application; and that the dog pen has been removed.

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

Case No. 7606 – Richard Culley – east of U.S. Route 13-A, 750 feet south of Road 451.

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

Mr. Rickard presented the case. Richard Culley was sworn in and testified requesting a 91.65-foot variance from the required 150-foot lot width requirement for a

parcel; that he will be leaving a 60-foot right of way for access to the rear of the property; and that in the future he may subdivide more land.

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 **tabled until November 19, 2001 so that the Board members can go look at the site.** Vote carried 5 – 0.

OLD BUSINESS

Case No. 7521 – American Cellular Network Company, LLC – southeast of Laurel, 300 feet of Lone Cypress Road.

A variance from the maximum height requirement for a communication tower.

The Board discussed the case. Mr. Rickard noted to the Board that they have met all of the criteria's from the FAA and that he has a letter from the FAA.

Motion by Mr. McCabe, seconded by Mr. Wheatley, and carried unanimously that the variance be **granted with the following stipulations:**

1. **That a letter from the FAA must be submitted.**
2. **That a letter from a Professional Engineer verifying the height must be submitted within 5 days after the completion of the tower.**
3. **That lights must be installed every 50-foot of the tower.**

Vote carried 4 – 0, with Mr. Mills not present.

Case No. 7522 – American Cellular Network Company, LLC – south side of Route 16, 500 feet west of Road 600.

A variance from the maximum height requirement for a communication tower.

The Board discussed the case. Mr. Callaway stated that he does not see a need for two (2) towers to be located in the same area. Mr. Berl noted to the Board that he is going to suggest to the applicant to ask their competitor to take down their tower and for them to use the applicants tower.

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the variance be **denied and that Mr. Berl should send the applicant a letter with the suggestion that he made above, and to reapply if needed.** Vote carried 4 – 0, with Mr. Mills not present.

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

A variance from the front yard setback requirement.

The Board discussed the case. Mr. Berl noted to the Board that he has gotten 2 other opinions from County Attorney's stating that setbacks are from the property line and not from an easement; and that he has consulted with Mr. Lank, Director of Planning and Zoning, to ask the County Council to suggest an amendment to the Ordinance so that it is clear where it relates to easements.

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the variance be **dismissed since a variance is not needed.** Vote carried 4 – 0, with Mr. Mills not present.

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.

The Board discussed the case. Mr. Rickard noted that he received a survey from the applicants stating that they need a 188-foot variance from the required 200-foot rear yard setback requirement for a commercial dog kennel and a 181-foot variance from the required 200-foot west side yard setback requirement for a commercial dog kennel.

Motion by Mr. McCabe, seconded by Mr. Wheatley, and carried unanimously that the special use exception and variances be **denied since the use is inappropriate for the area.** Vote carried 4 – 0, with Mr. Mills not present.

Case No. 7568 – Ronald and Jennifer Morgan – south of Road 625, 1,500 feet east of U.S. Route 113.

A determination of existence of non-conforming use.

The Board discussed the case. Mr. Callaway and Mr. McCabe stated that there is too much equipment located on the property. Mr. Hudson stated that he understands the need for spare parts and equipment needed for farming; and that he referenced an exhibit

that was submitted, a letter dated in 1973, stating that the trucking business was not needed anymore. Mr. Wheatley stated that there are too many trailers located on the property.

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the determination of existence of non-conforming use be **denied**. Vote carried 4 – 0, with Mr. Mills not present.

Meeting Adjourned 8:58 P.M.