

MINUTES OF NOVEMBER 17, 2003

The regular meeting of the Sussex County Board of Adjustment was held Monday evening November 17, 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. McCabe, Mr. Mills, Mr. Workman and Mr. Hudson, with Mr. Berl – Assistant County Attorney, Mr. Rickard – Secretary to the Board, Mrs. Heffelfinger – Zoning Inspector II, and Mrs. Norwood – Recording Secretary.

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously to approve the Revised Agenda as circulated. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of November 3, 2003 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. 8407 – Russell M. Dadds – south of Route 18, Valley Run, being Lot 203 within Clearbrooke Estates Development.

A variance from the side yard setback requirement.

Mrs. Heffelfinger presented the case. Brian Shirey, Attorney, on behalf of the application, requesting a .75-foot variance from the required 15-foot side yard setback requirement for a dwelling; that the Applicant built the dwelling; that the survey done for settlement showed the encroachment; that a Certificate of Occupancy was issued; that a number of dwellings in the development encroach property lines; and that the Homeowner's Association has no objection to 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. Workman, and carried unanimously that the variance be **granted due to the minimum variance request and since the variance will not alter the character of the neighborhood**. Vote carried 5 – 0.

Case No. 8408 – Donald G. D'Aquila – north of Road 46, 1,322 feet east of U.S. Route 13, being Lot 14 within Marathon Village Development.

A special use exception from the provisions and requirements to retain a manufactured home on a parcel.

Mrs. Heffelfinger presented the case. Donald G. D'Aquila and Robert Kelly were sworn in and testified requesting a special use exception from the provisions and requirements to retain a manufactured home on a parcel; that the units were placed on 5-acre parcels in 1990; that the units are on permanent foundations and have porches and additions; that each parcel has a detached garage; that the subdivision was approved by the Planning and Zoning Commission in 2002; that the approved subdivision will not allow any manufactured homes; that the approved subdivision plan included the 3-lots with the manufactured homes; and that all the existing improvements will meet the required county setback requirements.

Dave Spiker was sworn in and testified in opposition to the application; that he feels the units adversely effect the surrounding property values; that he is concerned the restrictions for the subdivision will change to allow more manufactured homes; and that he would have no objection to the application provided that the approved subdivision restrictions do not change.

In rebuttal, Donald D'Aquila, stated that the restrictions will not be altered in any way; and that he has no objection to that being a stipulation.

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

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously to hear Case No. 8408, Case No. 8409, and Case No. 8410 at one time. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted since the Zoning Ordinance allows manufactured homes in this zoning district, and with the stipulation that the adjacent development be developed as planned or the special use exception will be rescinded.**

Voted carried 5 – 0.

Case No. 8409 – Donald G. D'Aquila – north of Road 46, 1,322 feet east of U.S. Route 13, being Lot 13, being Lot 13 within Marathon Village Development.

A special use exception from the provisions and requirements to retain a manufactured home on a parcel.

See Case No. 8408 for details.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted since the Zoning Ordinance allows manufactured homes in this zoning district, and with the stipulation that the adjacent development be developed as planned or the special use exception will be rescinded.**

Voted carried 5 – 0.

Case No. 8410 – Donald G. D'Aquila – north of Road 46, 1,322 feet east of U.S. Route 13, being Lot 15 within Mararthon Village Development.

A special use exception from the provisions and requirements to retain a manufactured home on a parcel.

See Case No. 8408 for details.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted since the Zoning Ordinance allows manufactured homes in this zoning district, and with the stipulation that the adjacent development be developed as planned or the special use exception will be rescinded.**

Voted carried 5 – 0.

Case No. 8411 – George D. Moore – east of Route 22, south of Dogwood, being Lot 559 within Pot Nets Bayside Mobile Home Park.

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

Mrs. Heffelfinger presented the case. Louise and George Moore were sworn in and testified requesting a 4-foot variance from the required 5-foot side yard setback requirement and a 4-foot variance from the required 5-foot rear yard setback requirement for an addition to a shed; that the shed is underneath an existing carport; and that they need to enlarge the shed for more storage.

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. Amos S. Hostetter, III – south of Road 277, east of Dogwood Drive being Lot 7 within Angola By The Bay Development.

A variance from the side yard setback requirement.

Mrs. Heffelfinger presented the case. Amos Hostetter, III was sworn in and testified requesting a 0.9-foot variance from the 15-foot required side yard setback requirement; that he missed a point number on the original survey when staking out the dwelling; that he did not take the slight indentation of the property line into

consideration; that he was granted a previous variance in July 2003 prior to any construction; that his contractor is present to answer any questions from the Board; and that the Homeowner's Association does not object to 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. Workman, and carried unanimously that the variance be **granted due to the unusual size of the lot, since the variance will not alter the character of the neighborhood and that the variance requested is minimal.** Vote carried 5 – 0.

Case No. 8413 – Theresa J. Hayes – west of Route One, west of Atlantic Avenue, being Lot E-58 within Sea Air Mobile City Mobile Home Park.

A variance from the side yard setback requirement.

Mrs. Heffelfinger was sworn in and testified requesting a 5-foot variance from the required 5-foot side yard setback requirement for an addition; that the addition will measure 10' x 22'; that the Zoning inspector made her aware of the need for the variance; that she meets the 20-foot separation requirement between units; and that the park is in support of the application.

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

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

Case No. 8414 – Kenneth Early – south of Road 531, 65 feet west of Fox glen Drive being Lot 5 within Fox Glen Development.

A variance from the side yard setback requirement.

Mrs. Heffelfinger presented the case. Kenneth Early was sworn in and testified requesting a 2.2-foot variance from the required 15-foot side yard setback requirement; that he built the dwelling; that he used some old survey stakes to place the dwelling; and that a new survey showed that the dwelling encroached into the required 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 since it will not alter the character of the neighborhood**.
Vote carried 5 – 0.

Case No. 8415 – John G. and Roberta J. Swinehart – northwest of Route 5, south of Dania Drive, being Lot 8 within Savannah Acres Development.

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

Mrs. Heffelfinger presented the case. John Swinehart was sworn in and testified requesting a 2-foot variance from the 5-foot side yard setback requirement and a 2-foot variance from the required 5-foot rear yard setback requirement for a proposed shed; that the shed will measure 14' x 14'; that he is replacing an old metal shed; that the shed will be on an existing concrete pad; and that the shed cannot be seen from the road.

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 since it will not alter the character of the neighborhood and since a minimum variance is requested**. Vote carried 5 – 0.

Case No. Wayne F. Carter – northeast of Route 30, 1,350 feet southeast of Road 554.

A special use exception from the provisions and requirements to place a manufactured home on a parcel.

Mrs. Heffelfinger presented the case. Wayne Carter was sworn in and testified requesting a .76-acre variance from the required 10-acre requirement for a manufactured home on a parcel; that the manufactured home is needed for farm help; that there are numerous manufactured homes in the area; that the unit cannot be seen from the road; and that the existing manufactured home 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. Hudson, and carried unanimously that the variance be **granted since it will not adversely affect the neighborhood and with the stipulation that the manufactured home be removed when the Applicant no longer needs farm help**. Vote carried 5 – 0.

Case No. 8417 – Albert and Janice Powell – south of Route 54, west of Flood Street, within Cuelen Acres Development.

A variance from the side yard setback requirement.

Mrs. Heffelfinger presented the case. Albert and Janice Powell were sworn in and testified requesting a 1.6-foot variance from the required 10-foot side yard setback requirement for an attached garage; that the garage was built in 1996; that the contractor obtained the building permit; that a Certificate of Occupancy was issued in 1997; and that he did not check the distance from his property line.

Curtis Flood and Virginia Cordrey were sworn in and testified in opposition to the application; that he owns the adjacent property; that he feels the garage is so close to the property line it will create a problem in the future; that he wants the Applicant to put up a fence; and that he has considered selling a portion of his property to give the Applicant more room.

By a show of hands, 2 parties appeared in opposition to the application.

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the variance be **granted, and noting that the Board of Adjustment cannot order the Applicant to erect a fence.**

Vote carried 5 – 0.

Case No. 8148 – Dorothy DiRusso – south of Route 22, west of River Road, being Lot 151 within Pot Nets Bayside Mobile Home Park.

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

Mrs. Heffelfinger presented the case. Mark DiRusso was sworn in and testified requesting a 5-foot variance from the required 20-foot separation requirement between units in a mobile home park; that he wants to replace his single-wide unit with a double-wide unit; that he will be too close to his neighbors shed; and that his neighbor has received a variance for their unit from his shed.

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 due to the uniqueness of the lot, since the minimum variance**

has been requested and since the variance will not alter the character of the neighborhood.

Vote carried 5 – 0.

Case No. 8419 – John J. and Martha A. O'Donnell – east of Road 279, north of Holly Drive, being Lot F-35 within West Bay Park Mobile Home Park.

A variance from the side yard setback requirement and a variance from the separation requirement between units in a mobile home park.

Mrs. Heffelfinger presented the case. John O'Donnell was sworn in and testified requesting a 4.2-foot variance from the required 5-foot side yard setback requirement and a 4.1-foot variance from the required 20-foot separation requirement between units in a mobile home park; that the ramp and steps were built larger to give his mother-in-law easier access for her walker; and that there have been numerous variances granted in the mobile home park.

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 since it will not alter the character of the neighborhood and due to the uniqueness of the lot.** Vote carried 5 – 0.

Case No. 8420 – Tommie Scott Adams and Barry Lee Kehler, Sr. – west of Road 345, north of Dover Road Extended, being Lots 13 and 14 within Indian River Acres Development.

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

Mrs. Heffelfinger presented the case. Tommie Scott Adams and Barry Lee Kehler, Sr. were sworn in and testified requesting a 14.9-foot variance from the required 30-foot front yard setback requirement, a 24-foot variance from the required 30-foot front yard setback requirement, a 13-foot variance from the required 15-foot side yard setback requirement, a 7.5-foot variance from the required 20-foot rear yard setback requirement, a 10.5-foot variance from the required 20-foot rear yard setback requirement and a 19.3-foot variance from the required 30-foot front yard setback requirement; that Certificates of Occupancy were issued for all the existing additions; that the proposed addition will measure 21' x 33'; that they purchased the property in the 1990's with all the existing additions; and that they submitted pictures.

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 record be **left open for the Applicant to confirm the amount of variance needed for the proposed addition**. Vote carried 5 – 0.

Case No. 8421 – Elizabeth Waples – north of Road 285A, ½ mile east of Road 285.

A variance from the front yard setback requirement.

Mrs. Heffelfinger presented the case. Elizabeth Waples and Tracy Jones were sworn in and testified requesting a 20-foot variance from the required 40-foot front yard setback requirement for a proposed manufactured home; that they want to tear down the existing dwelling; that they will have to install a new septic system; that the proposed septic system will take up a large portion of the back of the property; and that the proposed location for the manufactured home is in line with the other homes on the street.

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 record be **left open for the Planning and Zoning Department to perform an average of the setbacks from the street**. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **re-opened**. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted for a 20-foot variance due to the uniqueness of the lot and since it will not alter the character of the neighborhood**. Vote carried 5 – 0.

OLD BUSINESS

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.

The Board discussed the case.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variances be **granted since the request meets all the requirements to grant a variance**. Vote carried 4 – 1.

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.

The Board discussed the case.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the variance be **granted with the stipulation that there will be no parking in the front yard**. Vote carried 5 – 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.

The Board discussed the case.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that variance be **granted with the stipulation that there will be no parking in the front yard**. Vote carried 5 – 0.

Meeting Adjourned 9:20 p.m.