

MINUTES OF DECEMBER 1, 2003

The regular meeting of the Sussex County Board of Adjustment was held Monday evening December 1, 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. Mills, seconded by Mr. McCabe, and carried unanimously to approve the Revised Agenda with the correction of Case No. 8405, Ocean Atlantic Assoc. V, LLC under Other Business. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of November 17, 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. 8422 – Vines Creek Investments LLC – south of Road 341, 718.5 feet south of Route 26.

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

Mr. Rickard presented the case. Jason Rifken was sworn in and testified requesting a 15.93-foot variance from the required 150-foot lot width requirement for a parcel, a 15.88-foot variance from the required 150-foot lot width requirement for a parcel and a 15.84-foot variance from the required 150-foot lot width requirement for a parcel; that they have DelDot approval for the entrances; that Lots 1 & 2 will share a driveway; that Lot 3 will have its own entrance; that the proposed dwellings will meet all the required setbacks; and that a surveyor prepared the wetland lines on the survey.

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 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. Workman, and carried unanimously that the variances be **denied since the request does not meet the standards for granting variances**. Vote carried 5 – 0.

Case No. 8423 – Rollin Miller, Jr. – north of Road 291, west of Shady Rest Lane, being Lot 5 within Shady Rest Park Development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Rollin Miller, Jr. was sworn in and testified requesting a 7-foot variance from the required 15-foot side yard setback requirement for a proposed detached garage; that the proposed detached garage will measure 30' x 40'; that the garage will be used for personal use only; that he was violated for having material related to his occupation in the yard; and that he has cleaned up the property.

Louis Capano, was sworn in and testified in opposition to the application; that he feels the detached garage will be used for the Applicant's business; that he has approached the Applicant about work trucks coming in and out of the development; and that the Applicant has cleaned up the property.

Dominic Di Patre was sworn in and testified in opposition to the application; that he owns the adjacent property; that he plans to build a dwelling on his lot; and that he does not object to a garage for personal use; and that he is concerned that due to the size of the garage that the Applicant may use it for his business.

In rebuttal, Rollin Miller, Jr., stated that he purchased his property 2 years ago; that Mr. Capano also has a large garage that he uses for his construction business; and that he submitted a letter from his roofing supplier.

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

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

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously to take the case 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. Workman, and carried unanimously that the variance be **granted with the stipulation the building cannot be used for the Applicant's business, since the variance will not alter the character of the neighborhood.** Vote carried 5 – 0.

Case No. 8424 – Carolyn and Robert Aberbach – intersection of Dune Road and Bayberry Road, being Lot 9, Block F, within Middlesex Beach.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Carolyn and Robert Aberbach were sworn in and testified requesting a 4.8-foot variance from the required 15-foot corner side yard setback requirement for a proposed addition; that a previous variance was granted for the dwelling in 1999; that the requested variance for the addition is the same as the dwelling; that the Association is in support of the application; and that they submitted an information packet.

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

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

Case No. 8425 – Cheryl Schleigh – south of Route 54, east of Grant Avenue, being Lot 25, Block 6, within Cape Windsor Development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Cheryl Schleigh was sworn in and testified requesting a 4-foot variance from the required 10-foot side yard setback requirement for a proposed dwelling; that she wants to replace her manufactured home with a modular dwelling; that the reason the dwelling will be placed to one side is to create more of a yard; and that the neighbor is in support of the application.

Mr. Rickard stated that the office received a letter in support of the application from the Homeowner's Association.

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 since it will not alter the character of the neighborhood and since numerous variances have been granted in the development**. Vote carried 5 – 0.

Case No. 8426 – Robert and Catherine Marler – south of Road 259, east of West Lake Drive, being Lot 28 within Lazy Lake Development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Lois Passwaters was sworn in and testified requesting a 9.6-foot variance from the required 10-foot side yard setback requirement for an existing manufactured home; that she is a representative for Atlantis Homes; that a

temporary Certificate of Occupancy was issued pending the decision of this hearing; that a survey was done prior to the placement of the unit; that an error was made when setting the unit; and that the encroachment was discovered when a second survey was done after the placement of the unit.

Mr. Berl stated that the General Contractor is responsible for placing the units correctly, that Atlantis Homes has been granted a previous variance after other violations and the Board of Adjustment will need to take further action.

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 since it is a minimum variance request and that the Board made the Applicant aware that this will not be tolerated.** Vote carried 5 – 0.

Case No. 8427 – Frank H. and Colleen L. Cochran – east of Road 365, 415 feet south of Road 353.

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

Mr. Rickard presented the case. Frank Cochran was sworn in and testified requesting a 4.38-foot variance from the required 150-foot lot width requirement, a 4.37-foot variance from the required 150-foot lot width requirement and a 2,771-square-foot variance from the required 32,670-square-foot requirement for a parcel; that he plans to place a modular dwelling on the new lot; that he plans to sell the parcel with the existing manufactured home; and that he has no objection to having a shared driveway.

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 to take the case under advisement. Vote carried 5 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Motion by Mr. McCabe to approve, motion failed for lack of a second. Motion by Mr. Hudson, seconded by Mr. McCabe, and carried unanimously that the case be **tabled until December 8, 2003.** Vote carried 5 – 0.

Case No. 8428 – Joseph and Theresa Pyskaty – southeast of Road 353, 400 feet southwest of Road 374.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Joseph and Theresa Pyskaty were sworn in and testified requesting a 3.4-foot variance from the required 15-foot side yard setback requirement for a detached pole building; that the building will measure 30' x 40'; that he replaced an existing shed that was falling down; that the pole building sits within the same footprint as the previous shed; that he thought there was a 10-foot side yard setback requirement; and that the neighbors have no objection to 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. Hudson, and carried unanimously that the variance be **granted**. Vote carried 5 – 0.

Case No. 8429 – Troy and Ruth Horne – north of Road 353, 400 feet southwest of Road 374.

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

Mr. Rickard presented the case. Randall Handy was sworn in and testified requesting a special use exception to retain a manufactured home on a parcel; that the Applicant's need to sell their property due to some health problems; that the manufactured homes were originally placed on the property for farm help; and that there is an old dwelling on the property that is in poor condition.

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 special use exception be **granted since it will not alter the character of the neighborhood**. Vote carried 5 – 0.

Case No. 8430 – Troy and Ruth Horne – north of Road 505, 639 feet west of Road 509.

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

See Case No. 8429 for details.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted since it will not alter the character of the neighborhood**. Vote carried 5 – 0.

Case No. 8431 – Catherine Thistle – east of Road 386, 2,055 feet south of Road 368A.

A variance from the front yard setback requirement.

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 record of support**. Vote carried 5 – 0.

Case No. 8432 – Rosie Hall and Edward Hall – southeast corner of Road 92 and 375, 2,245 feet northeast of Road 392.

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

Mr. Rickard presented the case. Rosie and Edward Hall were sworn in and testified requesting a special use exception to place a manufactured home on a medical hardship basis; that the unit will be for their son; that the unit is a 1984, 14' x 70'; and that they have a note from their son's doctor.

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

Case No. 8433 – Mabel C. Jedlicka – north of Melson Road, west of East Isaacs Drive, being Lot 24 within Midway Park Development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Sharon Jedlicka was sworn in and testified requesting a 2-foot variance from the required 10-foot side yard setback requirement for a proposed addition; that the addition will measure 10' x 18'; that the addition is needed for her handicapped mother; that the addition will be a handicapped accessible bed and bath; and that she lives with her mother to help with her care.

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

Case No. 8434 – Elizabeth E. Taylor – south of Route 54, east of Tyler Avenue, being Lot 5, Block 5, within Cape Windsor Development.

A variance from the rear yard setback requirement.

Mr. Rickard presented the case. Mark Winterling was sworn in and testified requesting a 6-foot variance from the required 20-foot rear yard setback for a covered porch; that he built the porch; that he was not aware of the rear yard setback requirement; that he had the Homeowner's Association's permission and thought that was all he needed; and that he submitted a letter from the Homeowner's Association.

Mr. Rickard stated the office received a letter in opposition to the application and that the Applicant submitted a new letter with the Association in support 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. Hudson, and carried unanimously that the case be **tabled until December 8, 2003**. Vote carried 5 – 0.

Case No. 8435 – Angel and Lichell Malabet – southeast intersection of Road 269 and Route 12, being Lot A within Marsh's Estates Development.

A special use exception to operate a day care facility.

Mr. Rickard presented the case. Lichell Malabet was sworn in and testified requesting a special use exception to operate a day care facility; that she will care for approximately 60 children; that her hours of operation will be from 6:00 a.m. to 6:00 p.m.; that she may extend her evening care to 12:00 a.m. to accommodate local hospital staff that work later shifts; that she will be open Monday through Friday; and that there is ample parking for the day care.

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 special use exception be **granted since it will not alter the character of the neighborhood**. Vote carried 5 – 0.

Case No. 8436 – Marie Hitchens and Greg Sizemore – east of U.S. Route 13, 3,883 feet south of Road 545.

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

Mr. Rickard presented the case. Marie Hitchens and Greg Sizemore were sworn and testified requesting a 30-foot variance from the required 150-foot lot width requirement and a 9,468-square-foot variance from the required 32,670-square-foot lot size requirement; that the parcel existed as two parcels years ago; that through some research it is undetermined as to when the lots were combined; that there are deed restrictions that prevent any manufactured homes and that they plan to maintain those restrictions; and that they submitted surveys, deeds, and pictures.

Angela Pester was sworn in and testified in opposition to the application; that she feels that the small lot size will have a negative impact on the value of her property.

Barbara Chaloupka was sworn in and testified in opposition to the application; that she wanted to know if a manufactured home could be placed on the property.

In rebuttal, Greg Sizemore stated that the existing deed restrictions will not allow any manufactured homes.

George Chaloupka was sworn in and testified in opposition to the application; that he is confused as to what type of variance is being applied for; and that he is concerned that a manufactured home would be placed on the property.

Jerry Koble was sworn in and testified in support of the application; that she is the daughter of the deceased property owner; that any adverse affect to the surrounding properties would also effect her; that the existing deed restrictions are also protecting her property; that she believes her father may have had the lots combined in the late 1980's to reduce his property taxes; and that due to his poor health she is not quite sure if he followed all the proper procedures.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case be **left open for the Planning and Zoning Department to do research on the property to determine when the property was combined**. Vote carried 5 – 0.

OLD BUSINESS

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.

The Board discussed the case.

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously that the variances be **granted since it is the last dwelling on the street and will not alter the character of the neighborhood.** Vote carried 5 – 0.

OTHER BUSINESS

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.

Mr. Rickard read a letter from the Applicant requesting permission to re-apply.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the Applicant **may re-apply for the next available date and to pay the filing fee.** Vote carried 5 – 0.

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously to move into executive session. Vote carried 5 – 0.

Mr. Berl discussed with the Board the details of the decision from the court on Case No. 7923 – Jeffrey and Patricia Wells; that the legislature has passed a law that allows the type of home they were seeking without having to go before the Board of Adjustment.

Mr. Berl submitted to the Board copies of the courts decision on Case No. 7727 - Clear Channel Outdoor.

Mr. Berl also advised the Board members that they need to give reasons why they are granting or denying cases.

Meeting Adjourned 9:23 p.m.