

MINUTES OF DECEMBER 3, 2001

The meeting of the Sussex County Board of Adjustment was held Monday evening December 3, 2001, at 7:00 P.M. in the 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. Wheatley, Mr. Mills, Mr. Hudson, with Mr. Berl – Assistant County Attorney, Mr. Rickard – Chief Zoning Inspector, and Ms. Mowbray – Acting Recording Secretary.

Motion by Mr. McCabe, seconded by Mr. Wheatley, and carried unanimously to approve the Agenda as circulated. Vote 5-0.

Motion by Mr. Mills, seconded by Mr. Wheatley, and carried unanimously to approve the minutes of November 19, 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 the hearing of cases.

Case No. 7622 Thomas and Barbara Zadorzany – north of Road 331-A, north of Road 331-B, within Possum Point Subdivision.

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

Mr. Rickard presented the case. Thomas and Barbara Zadorzany were sworn in and testified requesting a 3 inch variance from the required 5- foot setback on the north side, a 9- inch variance from the required 5- foot setback on the south side and a 3- inch variance from the required 5- foot rear yard setback for an existing detached screen porch was requested.

The Board found no parties appeared in support of the application, however Mr. Rickard advised a letter from William Warrick had been received in support of the variances. There were no parties present in opposition to the application.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously to take the variance under advisement. Vote carried 5-0.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously to table the variance and have the request placed on the January 9, 2002, agenda. Vote carried 5-0.

Case 7623 – Providence Land Ltd – southwest of Road 361, 217 feet northwest of Road 362.

A special use exception to place a manufactured home type structure as a sales office.

Mr. Rickard presented the case. Todd Robertson, representing Ryan Homes, was sworn in and testified that his Company wishes to place an approximately 12 x 45 mobile sales office complete with landscaping, awnings, deck with steps and parking until a model home could be built in 2002. Mr. Robertson thought the model home could be completed within six (6) months, however requested a period of one (1) year due to possible delays in construction.

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

Motion by Mr. Wheatley, seconded by Mr. McCabe, and carried unanimously that the special exception be **granted for a period of one (1) year**. Vote carried 5-0.

Case 7624 – James Farrall – north of Road 331-A, south of Road 331-B, Lot 1, within Possum Point Subdivision.

A variance from the front yard setback requirements.

Mr. Rickard presented the case. James and Leona Farrall were sworn in and testified that they moved the existing carport from a neighbor's property onto theirs and that they didn't obtain a permit. They advised that they have now obtained a permit for the carport. They are requesting a variance of 19 foot from the 30- foot required front yard setback for a detached carport. Mr. Farrall stated that the carport would best serve his wife and himself if it was allowed to remain in the present location.

The Board found that no parties appeared in support, however Mr. Rickard advised that a letter of support had been received from William Warrick. There were no parties present in opposition to the application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that this matter be taken under advisement. Vote carried 5-0.

Motion by Mr. Mills, second by Mr. McCabe and carried unanimously to table the variance and have the request placed on the January 9, 2002, agenda. Vote carried 5-0.

Case 7625 – James and Shirley Brittingham – west of road 331-B, north of Road 331-A, Lot 4 within Possum Point Subdivision.

A variance from the north side yard setback requirement.

Mr. Rickard presented the case. James and Shirley Brittingham were sworn in and testified that they purchased a portable shed approximately 12 years ago and were told by the shed company that a building permit was not required. Mr. Brittingham stated that the shed was placed facing his paved driveway and that he keeps his lawnmowers and motorcycle in the shed. Mr. Brittingham requested a variance of 3- foot from the required 5- foot required setback on the north side. Mr. Brittingham stated that relocating the shed on the lot would create a hardship.

The Board found one party present in support and no opposition to the application.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that this matter be taken under advisement. Vote carried 5-0.

Motion by Mr. Mills, seconded by Mr. McCabe and carried unanimously to table the variance and have the request placed on the January 9, 2002, agenda. Vote carried 5-0.

Case 7626 – James and Shirley Brittingham – intersection of Road 331-A north and Road 331-B south, within Possum Point Subdivision.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. James and Shirley Brittingham were previously sworn in and testified that they had received a Certificate of Compliance in 1986, for building permit 86895, signed by Jack Layfield. Mr. Brittingham stated that the shed has been placed on a cement pad and that relocating the shed on the property would cause a hardship. Mr. and Mrs. Brittingham requested a 6- foot variance from the required 30-foot front yard setback for an existing shed.

The Board found by a show of hands that three parties were present in support with no opposition to the application.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that this matter be taken under advisement. Vote carried 5-0.

Motion by Mr. Mills, seconded by Mr. McCabe and carried unanimously to table the variance and have the request placed on the January 9, 2002, agenda. Vote carried 5-0.

Case 7627 – William Brittingham – north of Road 331-A, east of Road 331-B, within Possum Point Subdivision.

A variance from the south side yard setback requirement.

Mr. Rickard presented the case. William Brittingham was sworn in and testified that he is the son of the parties previously appearing before the Board. He stated that his shed was placed beside his parents shed and that the property had been split creating a variance request of 2- foot from the required 5- foot south side yard for an existing shed. Mr. Brittingham stated that his shed has been there for approximately 12 years and that he was advised by the Company that the shed was purchased a building permit was not required.

The Board found by a show of hands that ten parties were present in support with no opposition to the application.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that this matter be taken under advisement. Vote carried 5-0.

Motion by Mr. Mills, second by Mr. McCabe and carried unanimously to table the variance and have the request placed on the January 9, 2002, agenda. Vote carried 5-0.

Case 7628 – Kenneth L. & Elda S. Layton – northwest of Route 36, 2,400 feet northeast of Road 613.

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

Mr. Rickard presented the case. Kenneth L. Layton was sworn in and testified that his mother, Beulah Layton, had previously been granted a variance for a manufactured home on a medical hardship case. A letter from Frederick K. Samsel, M.D. was received advising Ms. Layton's condition warrants the continued supervision of her family. Mr. Layton stated that it was in the best interest of his mother to continue to have her on his property for proper supervision of her medical problems and requested that the Board grant the variance request.

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

Motion by Mr. Wheatley, seconded by Mr. McCabe, and carried unanimously to **approve** a special use exception to retain a manufactured home on a medical hardship basis for a period of **two (2) years**. Vote carried 5-0.

Case 7629 – John L. and Eleanor S. Peterson – east of Road 331-B, 400 feet north of Road 331-A, within Possum Point Subdivision.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. John L. and Eleanor S. Peterson were sworn in and testified that they were requesting an 8- foot variance from the required 30- foot front yard setback for a garage. Mr. Peterson stated that the building was made of cinder block and was built in the same location as a previous footprint of an 1958 garage that was destroyed. Mr. Peterson said that he did not obtain a building permit, but has since obtained one.

The Board found by a show of hands that 12 parties were present in support, and that a letter from William Warrick was received in support and that no parties were present in opposition to the application.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that this matter be taken under advisement. Vote carried 5-0.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously to table the variance and have the request placed on the January 9, 2002, agenda. Vote carried 5-0.

Case 7630 – Jennifer L. Pepper – intersection of Road 421 and Route 24, Lot 6-A, within Tim-Bur Manor Subdivision.

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

Mr. Rickard presented the case. Jennifer L. Pepper and Wayne S. Lynch were sworn in with John Sergovic, Esquire, present on behalf of Jennifer L. Pepper. Mr. Sergovic stated the need of a 6'3" variance from the required 40-foot front yard setback for a two story garage and an 1'1" variance from the required 15- foot west side setback for a two story garage, and that the building error was discovered during a routine property transfer. Mr. Lynch testified that he sited the garage based on the size and shape of the lot. Mr. Lynch further stated that he thought the building was correct based on a conversation with 1st State Inspections and that a correct building permit was issued, but a Certificate of Compliance has not be issued.

The Board found by a show of hands that 3 parties were present in support with no parties in opposition to the application.

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

Case 7631 – Catherine E. Powell - intersection of Route 331-B west and Road 331-A north, within Possum Point Subdivision.

A variance from the front yard setback requirement.

Mr. Richard presented the case. Catherine E. Powell was sworn in and testified the need for a 19'6" variance from the required 30-foot yard for a shed. Ms. Powell stated that she was confused as to the front and side of the property as she owns a corner lot. Ms. Powell stated that a hardship would be created if the shed had to be relocated on the lot.

The Board found by a show of hands that 12 parties were present in support with no parties in opposition to the application.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that this matter be taken under advisement. Vote 5-0.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously to table this variance and have the request placed on the January 9, 2002, agenda. Vote 5-0.

Case 7632 – Richard L. and Carolyn O. Burgard – south of Road 23, northeast of Lookout Road, Lot W-29, within White House Beach Mobile Home Park.

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

Mr. Richard presented the case. Richard L and Carolyn O. Burgard were sworn in and testified requesting a variance of 3.2" from the required 5-foot rear yard setback. Mr. Burgard stated that an existing 10x24 shed had been placed on the lot 8 years ago by previous owners and that relocating the shed would create a hardship.

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

Motion made by Mr. McCabe, seconded by Mr. Wheatley, and carried unanimously that the variance be **granted**. Vote 5-0.

Case 7633 – Michael Schuchman – Route 54, west of Swann Drive, Lot 42, within Swann Keys Subdivision.

An extension of a non-conforming structure.

Mr. Richard presented the case. Michael and Patricia Schuchman were sworn in. John Sergovic, Esquire, representing the applicants, stated that they are requesting a variance to allow an expansion of a non-conforming deck located 7'5" from the side yard in the air space above the deck and requesting to enclose same. A variance to allow the improvement within 7'5" of the sideline was approved by the Board of Adjustment in Case # 6940, which was reversed on appeal by the Superior Court in C.A. No. 99A-12-004.

In the application for a side yard setback variance in Case #7337, the Board of Adjustment denied the application for a side yard variance of 2'5" due to opposition by the Swann Keys Civic Association. The decision is on appeal to the Superior Court in C.A. No. 01A-04-007.

Swann Keys Civic Association has rescinded its resolution to oppose all variances as stated in a letter received by the Board of Adjustment from Ed Lewis, Chairperson, Swann Keys Planning & Zoning Committee, dated April 30, 2001.

Michael Schuchman testified that his Contractor was given the approved building permit with the correct setbacks and failed to complete the construction according to those setbacks. He stated that his variance is based upon a limitation of expanding a non-conforming use in the air space above an existing non-conforming structure, ie a deck elevated above 3'5".

Margaret Haine and Richard Taylor were sworn in and testified on behalf of the Schuchman's.

The Board found by a show of hands that 7 parties were present in support with and no opposition to the application.

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

Case 7634 - Ray and Geraldine Wharton – east of Road 331-A, west of Road 331-B, within Possum Point Subdivision.

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

Mr. Rickard presented the case. Ray and Geraldine Wharton were sworn in and requested a 3-foot variance from the required 5-foot side yard requirement on the southwest side and a 3-foot variance from the required 5-foot side yard on south side yard for an existing shed. Mr. Wharton stated he purchased the shed in 1988 and did not obtain a building permit and that he has now obtained a building permit. Mr. Wharton further stated that the relocation of the shed on the property would create a hardship as his well is in front of the shed and his water pump is located inside the shed.

The Board found by a show of hands that 6 parties were present in support with no opposition to the application.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that this matter be taken under advisement. Vote 5-0.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously to table the variance and have the request placed on the January 9, 2002, agenda. Vote 5-0.

Case 7635 - Peninsula Community Church – south of Route 54, 3,000 feet west of Road 377.

A special use exception to operate a day care facility.

Mr. Rickard presented the case. Dr. Fred Brouner and Richard Polk were sworn in and testified on behalf of Peninsula Community Church and stated that the Church is currently in the planning stage only, that the day care could accommodate 90 children; that they have been advised by the State that a day care is needed in the area; and Dr. Brouner and Mr. Polk were aware of the building permit and site plan process.

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 5-0.

Case 7636 – Millard and Jo Daugherty – north of Road 404, 1,200 feet east of Road 569.

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

Mr. Rickard presented the case. Lee Steven Daugherty, son of the applicants, was sworn in and testified that the medical hardship still exists. Mr. Rickard read a letter from Dr. John A. Appiott, stating that Mr. Daugherty suffers from chronic asthmatic bronchitis and that supervision of his family is essential, and that the Board previously approved the placement of a manufactured home for a medical hardship, and that the application is a renewal request.

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

Motion by Mr. Wheatley, seconded by Mr. McCabe, and carried unanimously that the special use exception be **granted for a period of 2 years.** Vote 5-0.

Meeting Adjourned 8:50 P.M.