

MINUTES OF DECEMBER 8, 2003

The regular meeting of the Sussex County Board of Adjustment was held Monday evening December 8, 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 as circulated. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of December 1, 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. 8437 – Dolores A. Stafford and Melissa A. Flynn – east of Road 273, north of Black Pool Drive, being Lot 30 within Rehoboth Beach Yacht & Country Club.

A variance from the front yard setback requirement and a variance from the maximum height requirement for a fence.

Mr. Rickard presented the case. Dolores Stafford was sworn in and testified requesting a 10-foot variance from the required 30-foot front yard setback requirement for an in-ground pool and a 1.5-foot variance from the required 3.5-foot height requirement for a fence; that she wants to erect a 5-foot fence around the pool; that the lot is an irregular shape; that the lot has an extended front yard setback requirement; that there is no side yard setback requirement for the side she wants to place the in-ground pool; that it will not alter the character of the neighborhood; and that she submitted 6 letters in support of the application.

Mr. Rickard stated that the fence will not obstruct any vision of 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. McCabe, and carried unanimously that the variances be **granted due to the uniqueness of the lot and since it will not alter the character of the neighborhood**. Vote carried 5 – 0.

Case No. 8348 – Sea Air Village – west of Route One, south of Sea Air Avenue, being Lot B95 within Sea Air Mobile city 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.

Mr. Rickard presented the case. John Hensley was sworn in and testified requesting a 4.2-foot variance from the required 20-foot separation requirement between units in a mobile home park for a manufactured home, a 13.1-foot variance from the 20-foot separation requirement between units in a mobile home park for a carport and a 5-foot variance from the required 5-foot side yard setback requirement for a carport; that he was the regional manager at the time the manufactured home was placed; that the unit was placed as a model; that they did not obtain a placement permit; that the proposed carport will be to the rear of the unit adjacent to this lot; and that he submitted pictures.

Allen Bickling was sworn in and testified in support of the application and stated; that he is the current owner of the unit; that the proposed carport will be over an existing concrete pad; that he currently parks his vehicles on the existing concrete pad; and that the carport is needed to provide shelter he will need in the future due to his health problems.

Mr. Rickard read a letter in opposition.

In rebuttal, John Hensley, stated that Sea Air has an unusual license which allows them to sell manufactured homes within their community; that permits are not needed to place model homes; and that not obtaining permit after the sale was an oversight on the new management.

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.

Ben Mendel, was sworn in and testified in opposition to the application and stated; that he has been a resident of Sea Air for 15-years; that he does not object to the variance for the manufactured home; that he strongly objects to the carport; that the proposed carport will be too close to his lot; and that he feels the carport will be a safety hazard and will block sunlight.

Douglas Payne, was sworn in and testified in opposition to the application and stated; that with the carport so close to the rear of his father-in-law's unit it will be virtually impossible to maintain the utilities behind their unit; that he believes no one knows exactly where the lot lines are; and that he submitted pictures.

Motion by Mr. McCabe, seconded by Mr. Workman, and carried unanimously that the case be **tabled until December 15, 2003**. Vote carried 5 – 0.

Case No. 8439 – Deborah Miller – southwest of road 318, southwest of Road 321, being Lot 37A, 6th Addition, James M. Tunnells Development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Deborah Miller was sworn in and testified requesting a 5.7-foot variance from the required 15-foot side yard setback requirement for a proposed addition; that the proposed addition will measure 15' x 26'; that the addition will be a handicap accessible bathroom and a sitting room for her ill mother; that her mother needs 24-hour care due to her health; that she and her husband have re-scheduled their lives so that they can provide the care she needs; and that due to the septic and other improvements on the property the proposed location is the only option.

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. Hudson, and carried unanimously that the variance be granted since it will not alter the character of the neighborhood**. Vote carried 5 – 0.

Case No. 8440 – Geraldine and Rodney Wilson, Sr. – northwest of Road 249, 616.20 feet north of Road 253.

A special use exception for a commercial dog kennel and a variance from the side yard setback requirements.

Mr. Rickard presented the case. Geraldine Wilson was sworn in and testified requesting a special use exception for a commercial dog kennel, a 3.61-acre variance from the required 5-acre requirement for a commercial dog kennel, a 100-foot variance from the required 200-foot setback requirement, a 102-foot variance from the required 200-foot setback requirement, a 14-foot variance from the required 200-foot setback requirement and a 117-foot variance from the required 200-foot setback requirement for a commercial dog kennel; that the original parcel was a large farm; that the family has subdivided the land for family members; that they have had the dogs for years; that they do not have any plans of increasing the number of dogs; that she has been violated by the constables office for old farm machinery and old junk on the property; that they hope to have the property cleaned up by March; and that no one has ever complained about the dogs.

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 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 special use exception and variances be **granted for both Case No. 8306 and Case No. 8440 for only the existing dogs and the Applicant must provide License numbers to the Board of all the existing dogs.** Vote carried 5 – 0.

Case No. 8441 – Jerry Davis – southwest of Road 462, 720 feet east of U.S. Route 13.

A variance for an additional ground sign and a variance from the maximum square footage requirement for a sign.

Mr. Rickard presented the case. Jerry Davis was sworn in and testified requesting a variance for an additional ground sign and a 138-square-foot variance from the required 150-square-foot requirement for a ground sign; that the proposed sign will measure 12' x 24' and be 2-sided; that the sign is desired to attract business from Route 13; that the existing ground sign faces the adjacent road; and that the proposed sign will meet all required setback requirements.

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

Case No. 8442 – James G. Hazzard – north of Road 215, 2,181 feet west of Road 215A, being Lot 1.

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

Mr. Rickard presented the case. James Hazzard was sworn in and testified requesting a 100-foot variance from the required 150-foot lot width requirement and a 1.28-foot variance from the required 150-foot lot width requirement for a parcel; that he plans to build a dwelling on parcel 1A; that his mother is going to build a dwelling on parcel 1B; and that they will share a driveway.

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 variances be **granted since the surrounding parcels have similar lot widths**. Vote carried 5 – 0.

Case No. 8443 – Ronald G. Hamm, Jr. – east of Route 24, east of Long Neck Circle, being Lot 183 within Pines At Long Neck Development.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. Ronald Hamm was sworn in with Bill Annos, Attorney, on behalf of the application and testified requesting a 4.9-foot variance from the required 30-foot front yard setback requirement for an existing dwelling; that the Applicant purchased the property in December 2002; that the permit was obtained by the previous owners in October 2002; that the Certificate of Compliance was issued December 2002; that the existing porch that is encroaching was manufactured as part of the manufactured home; that there are numerous units in the development with similar porches; that it will not alter the character of the neighborhood; that it would create a substantial hardship to the Applicant to move the unit; and that the neighbors are 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 variance be **granted since the Applicant did not create the hardship and since it will not alter the character of the neighborhood**. Vote carried 5 – 0.

Case No. 8444 – Kenneth Hughes – south of Route 16, 40 feet west of Road 233.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Kenneth Hughes was sworn in and testified requesting a 6-foot variance from the required 20-foot side yard setback requirement for a proposed pole building; that the proposed building will measure 20' x 50'; that he was originally told his east side setback requirement would be 5-foot from the side yard; that due to an existing easement that is zoned AR-1 his setback is 20-foot; that the easement is used by Lockwood Design; that the proposed building will be for personal use; that the desired variance is to allow adequate turning area for vehicles; and that he submitted pictures.

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 due to the size of the lot**. Vote carried 5 – 0.

Case No. 8445 – Jakes Seafood House – east of Road 274, 668.3 feet southwest of Route One.

A special use exception to place a tent for special events.

Mr. Rickard presented the case. William Cowoski and Justin Pitchard were sworn in and testified requesting a special use exception for a tent for special events; that the tent will only be used during the NFL Football Season; that the tent will be set up on Sunday mornings and taken back down on Monday by 2 p.m.; that they hope to create a tailgating atmosphere and attract business; that they will have the proper licensing and permits required; that they have obtained approval from Planning and Zoning for 3 previous Sundays; and that the tent will measure 20' x 40'.

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 for a period of five (5) years and used during the NFL Football season only since it will not have an adverse affect to the neighborhood**. Vote carried 5 – 0.

Case No. 8446 – First State Signs – southeast of Road 276, 300 feet south of Route 14.

A variance from the maximum height requirement for a ground sign.

Mr. Rickard presented the case. Dale McCalister was sworn in and testified requesting a 10-foot variance from the required 25-foot height requirement for a ground sign; that the sign is to advertise a new mini-storage facility; that due to the unique location and depth of the property they feel they need to exceed the height requirement; that the property is 2 to 3-feet lower than the road; that an adjacent billboard is 35-foot tall; that the sign will not alter the character of the neighborhood; and that the sign will meet all other required setback requirements.

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

Case No. 8447 – Charles R. Burton – northeast of Route One, east of F. Benson Street, being Lots 21 and 22, Block B, within Dodds Addition Development.

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

Mr. Rickard presented the case. Joann Burton was sworn in and testified requesting a 11.8-foot variance from the required 30-foot front yard setback requirement and a 9.2-foot variance from the required 10-foot rear yard setback requirement for a proposed second floor addition; that the existing dwelling was built in 1960; that the existing dwelling is non-conforming; that the second floor addition will follow the same footprint as the existing dwelling; that a second floor deck will extend 3-foot from the addition; that a small second floor deck will cover existing steps; and that the property was subdivided in March 2003.

Mr. Rickard stated that due to the subdivision of this property the front yard now faces Fisher Street.

Mr. Rickard stated that the variance request did not include a side yard setback variance request and the case must be re-advertised.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the case be **tabled to allow the Applicant to re-apply for the side yard variances and to waive the filing fee**. Vote carried 5 – 0.

Case No. 8448 – Curtis Hayes – east of Road 589, 850 feet south of Road 589A.

A special use exception to replace a nonconforming manufactured home.

Mr. Rickard presented the case. Joyce Hayes was sworn in and testified requesting a special use exception to replace a nonconforming manufactured home; that the existing manufactured home burnt down; that the manufactured home will be used for her sister; that her sister has a medical condition that requires her to be near a family member; and that she submitted a letter referencing her sister's medical condition.

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

Mr. Berl stated that the Applicant needed to submit a current medical care certificate from the doctor.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the special use exception be **tabled to allow the Applicant to submit a current medical certificate**. Vote carried 5 – 0.

Case No. 8449 – Ronald Milligan – south of Road 302A, west of Avalon Drive, being Lot 19, Block B, within Avalon Park Development.

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

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 5 – 0.

Case No. 8450 – County Development Associates – north of Route One, 1,099 feet east of Road 270A.

A variance from the maximum height requirement for a structure.

Mr. Rickard presented the case. Preston Dyer was sworn in and testified requesting a 8-foot variance from the required 42-foot maximum height requirement for a structure; that the request is for the Lighthouse Plaza Phase 4; that the structure is 41-foot in height; that the variance request is for the parapet and the elevator shaft; that there is no living area above the maximum height requirement; and that there should be no negative impact on the surrounding neighborhood.

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 specifically for the parapet and elevator shaft only and since it will not alter the character of the neighborhood and is a minimum variance request**. Vote carried 5 – 0.

Case No. 8451 – Frank Miranda – west of Road 357A, 424 feet north of Quillens Point Road, being Lot 3.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. Frank Miranda was sworn in and testified requesting a 23.5-foot variance from the required 40-foot front yard setback requirement for a proposed dwelling; that the lot is too narrow to allow a dwelling to meet the required setbacks; that the hardship was created prior to his ownership of the lot; that the variance request will not alter the character of the neighborhood; that the surrounding properties are similar in size; that the adjacent dwellings are all about 16-foot from the front yard property line; and that he submitted surveys of the surrounding lots.

Mr. Rickard stated that the office received 1 letter in support of the application.

Mr. Rickard read a letter in opposition 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. McCabe, and carried unanimously that the variance be **granted since it meets all the standards for granting variances**.
Vote carried 5 – 0.

OLD BUSINESS

Case No. 8306 – Geraldine E. and Rodney E. Wilson, Sr. – northwest of Road 249, 616.20 feet north of Road 253.

A special use exception to operate a commercial dog kennel and a variance from the setback requirements for a commercial dog kennel.

See Case No. 8440 for details.

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.

The Board discussed the case.

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 that they use a shared driveway**. 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.

The Board discussed the case.

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously that the variance 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.

The Board discussed the case.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variances be **granted since it will not alter the character of the neighborhood and was not created by the Applicant and with the stipulation that no manufactured home may be placed on the property**. Vote carried 5 – 0.

Meeting Adjourned 9:43 p.m.