

MINUTES OF DECEMBER 9, 2002

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, December 9, 2002, 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. Workman, Mr. Mills and Mr. Hudson, with Mr. Berl – Assistant County Attorney, Mr. Oates – Zoning Inspector, and Mrs. Norwood – Recording Secretary.

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously to approve the Revised Agenda, with the correction that Case No. 7951, Patricia and Michael Harrigan, be considered under Other Business. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of November 25, 2002. Vote carried 5 – 0.

Mr. Berl read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing cases.

Case No. 8016 – Donald and Donna Roseberry – east of Road 17, north of Lucinda Drive, Lot 3, within Townsend Acres Subdivision.

A variance from the front yard setback requirement.

Mr. Oates presented the case. Donald Roseberry was sworn in and testified requesting a 1-foot variance from the required 40-foot front yard setback requirement for an existing detached garage; that due to the angle of the lot and where he measured from it created the violation; and that he submitted a survey and his copies of his building permit applications.

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. 8017 – Kenneth W. Morris – south of Road 234-B, east of Ash Street, Lot 11, within Waples Pond Acres Subdivision.

A variance from the east side yard setback requirement.

Mr. Oates presented the case. Kenneth Morris was sworn in and testified requesting a 1.5-foot variance from the required 5-foot side yard setback requirement for a proposed detached garage; that an existing garage measures 15'x 17' and is currently only 3.5-foot off the property line; that the existing garage would require extensive repairs and he would like to replace it with a 19'x 28' detached garage; that he would like to place the proposed garage the same distance from the property line; and that he will meet all other setback requirements.

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. 8018 – Rick Benda and George Douglas – east of Road 270-A, east of Beaver Dam Reach, Lot 41, within The Woods At Seaside Subdivision.

A variance from the rear yard setback requirement.

Mr. Oates presented the case. Rick Benda and George Douglas were sworn in and testified requesting a 5-foot variance from the required 10-foot rear yard setback requirement for a proposed deck; that they wish to build the deck directly to the property line; that the deck will be approximately 15-inches high; that the Development owns the property directly behind their property; that the builder of the development approves of the proposed deck; and that the 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**. Vote carried 5 – 0.

Case No. 8019 – Jane Errett Vincent and Martin Kappel – northeast of Road 364-B, 405 feet southeast of Jan-Mar Lane, adjacent to Pleasant Meadows Subdivision.

A special use exception to operate a bed and breakfast facility.

Mr. Oates presented the case. Jane Errett Vincent and Martin Kappel were sworn in and testified requesting a special use exception to operate a bed and breakfast facility; that they were granted a special use exception on January 24, 2000; that due to a car accident the work has not been completed as planned; that the dwelling is 5,000-square feet and is on a 5-acre tract of land; that they will have 6 guest rooms; that the property is adjacent with a wildlife preserve; 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 special use exception be **granted**. Vote carried 5 – 0.

Case No. 8020 – Brenda D. Rodgers – west of Route 50, north of Blackstone Avenue, Lot 4, within Silver Lake Manor Subdivision.

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

Mr. Oates presented the case. Brenda Rodgers was sworn in and testified requesting a 12-foot variance from the required 30-foot front yard requirement for a proposed addition and deck; that the addition will measure 17'x 18' and the deck will measure 5'x 18'; that previous variances have been granted for this parcel; and that the deck will be less than 4-foot in height.

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

Case No. 8022 – First Shore Federal Savings & Loan – south of Route 26, 350 feet east of Road 349-A.

A special use exception for additional wall signs and ground signs.

Mr. Oates presented the case. Lee Johnson and Eugene Tracton were sworn in and testified requesting a special use exception for 2 additional wall signs and 2 additional ground signs; that the ground signs will measure 2'x3'; that the existing wall sign cannot be seen due to surrounding buildings; that an additional wall sign is needed to show the entrance for their mortgage customers; and that they submitted revised 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 case be **left open until December 16, 2002 for the Applicant to provide the square foot of the wall sign and the wall of the building and to measure the distance from a dwelling to the ground sign**. Vote carried 5 – 0.

Case No. 8023 – Allen T. Handy – west of U.S. Route 13, 1,900 feet north of Road 534.

A special use exception for a billboard.

Mr. Oates presented the case. Allen T. Handy was sworn in and testified requesting a special use exception to move an existing billboard to a different location on the same property and to replace it, and to make it 2-sided; that the billboard is currently in the middle of a 3-acre parcel and he would like to move it to the northern most side of the property; that the existing sign is larger than the current ordinance permits and, if possible, he would like to replace it with the same size; that the new billboard will be a steel monopole structure and if he has to comply with the current ordinance for the size he will; and that the new sign will meet the 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 special use exception be **granted for 300-square feet**. Vote carried 5 – 0.

Case No. 8024 – Allen T. Handy – west of U.S. Route 13, 2,110 feet south of Route 18.

A special use exception for a billboard.

Mr. Oates presented the case. Allen T. Handy was sworn in on the previous case and now testifies requesting a special use exception to place a 2-sided 12'x25' billboard; that he owns a 10-acre tract of land that he wants to place a billboard on his property to advertise his business; that the property is zoned C-1 as are the adjacent properties; that the Department of Highways has approved 2 entrances; and that the billboard will meet the 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 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. McCabe, and carried unanimously that the special use exception be **denied**. Vote carried 5 – 0.

Case No. 8025 – John R. and Ellen Kimmel Hamilton – north of Atlanta Circle, 730 feet east of Road 30 (Atlanta Road), Lot 49, within Atlanta Estates Subdivision.

A variance from the side yard setback requirement.

Mr. Oates presented the case. Brian Shirey, Attorney, on behalf of the Applicant testified requesting a 4.5-foot variance from the required 10-foot side yard setback requirement for an existing detached garage; that the property has been sold and a survey showed the encroachment; that the contractor obtained the building permit; that a certificate of occupancy was never issued; that an existing detached shed was moved to comply with the setbacks; that to move the detached garage would be costly; and that the garage is lined up with an existing paved 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 variance be **granted**. Vote carried 5 – 0.

Case No. 8026 – Charles E. and Evelyn R. Short – north of Maple Drive, 800 feet north of Road 532, Lot 20, within Bryan Park Subdivision.

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

Mr. Oates presented the case. Charles E. Short was sworn in with Brian Shirey, Attorney, on behalf of the application, requesting a 1.1-foot variance from the required 30-foot front yard setback requirement for a wood frame building; that the Applicant obtained the building permit in 1988; that a certificate of compliance was issued in 1989; and that it would create a hardship to have to move the building.

Carl Muchane, Jr. was sworn in and testified in opposition to the application, and stated that the building does not meet the Association's covenants.

Mr. Berl explained that the Board cannot enforce the covenants for the Association.

In rebuttal, Charles Short, stated that the property is maintained and the building has never created a problem until the survey was done for settlement.

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

Case No. 8027 –Country Life Homes, Inc. – north of Road 363, southwest of Neptune Drive, within Ocean Farms Subdivision.

A variance from the minimum square footage requirement for a parcel.

Mr. Oates presented the case. Elmer Fannin was sworn in with Jim Griffin, Attorney, on behalf of the application, requesting a 1,416-square foot variance from the required 10,000-square foot lot size requirement for a lot; that the lot was dedicated to the County for a future pump station site; that the County wrote a letter stating that the County would not need the use of the lot after all; that the proposed dwelling will meet the required setbacks and the required square-foot requirements; that a sign is currently on the parcel and it will be re-designed and turned over to the Association to maintain; that the driveway will be on the farthest side from the entrance to the development; that letters were submitted; and that the proposed dwelling will not adversely affect the neighborhood.

Samuel G. Wilson was sworn in and testified in opposition to the application; that the lot is very small that he objects to another rental dwelling in the development; and that the sign is on a fence and feels that with some minor repairs it could remain as is.

Ron Wilkins was sworn in and testified in opposition to the application; that he owns Lot 1, the adjacent lot and he has concern for drainage; that the dwelling would adversely affect his lot; that the driveway due to the existing utilities would have to be placed closer to Road 368; and that he feels the property should be looked over carefully before any decision is made.

In rebuttal, Jim Griffin, stated that the driveway will not have to be placed towards Road 368 and that Mr. Wilkins rents the dwelling on Lot 1.

In rebuttal, Ron Wilkins, stated that the driveway will take 3-foot out of the existing turning lane to the development.

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. McCabe, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until December 16, 2002**. Vote carried 5 – 0.

Case No. 8028 – J & G Services LLC – northeast of Route One, 1,162 feet southeast of Road 268.

A variance from the maximum allowable square footage requirement for a sign.

Mr. Oates presented the case. Phillip Howard and Joe Johnson were sworn in and testified requesting a 276-square foot variance from the required 300-square foot requirement for a ground sign; that they would like to replace the existing sign; that they want the sign larger to help locate the businesses; and that the sign will only advertise the existing businesses.

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. Hudson, seconded by Mr. McCabe, and carried unanimously that the case be **tabled until December 16, 2002**. Vote carried 5 – 0.

Case No. 8029 – John Argo – north of Shore Drive, 275 feet east of Carey Street, Lot 4, within Thomas Jones Subdivision.

A variance from the side yard setback requirement.

Mr. Oates presented the case. John Argo was sworn in and testified requesting a 4.6-foot variance from the required 10-foot side yard setback requirement for a walkway; that the walkway will connect two second-level decks; that the Department of Natural Resources and Environmental Control has approved the request; and that previous variances have been approved on this lot.

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. 8030 – Edward G. Gallagher – east of Route One, southwest of Kittewoke Road (also known as Kittywake Road), Lot T-6, within Ocean Village Subdivision.

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

Mr. Oates presented the case. Edward Gallagher was sworn in with David Rutt, Attorney, on behalf of the application, requesting a 20.62-foot variance from the required 40-foot setback requirement; that the subdivision was recorded in 1969; that the odd shape of the lot creates the hardship to build; that the variance is requested for the rear of the property which faces Route One; that by the average that was done by the surveyor the home actually sits farther back on the lot than the adjacent dwelling; and that sale of the property is pending the decision of this hearing.

John Harbor, Attorney, stated on behalf of the neighboring property owners that if a variance that great is approved any new structure built will adversely affect the neighborhood.

William B. Peir, was sworn in and testified in opposition to the application, that he was representing the Association and they were only in opposition if the variance request was from the Kittywake Road side; and that they have no objection to the variance from the Route One side.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the case be **tabled until December 16, 2002**. Vote carried 5 – 0.

OLD BUSINESS

Case No. 8006 – Elizabeth R. Toland – east of Route 54, east of Taylor Avenue, Lot 20, within Cape Windsor Subdivision.

A variance from the north side yard setback requirement and a variance from the side yard setback requirement for an accessory structure.

The Board discussed this application which has been tabled since November 25, 2002.

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

Case No. 8009 – Thompson Homes – east of Road 271, west of Eleanor Lee Lane, within Canal Corkran Townhouses.

A variance from the separation requirement between units for multi-family structures.

The Board discussed this application which has been tabled since November 25, 2002.

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

OTHER BUSINESS

Case No. 7951 – Patricia A. and Michael J. Harrigan – west of Road 258, west of East Lake Drive, Lot 15, within Lazy Lake Subdivision.

A variance from the front yard setback requirement.

Mr. Oates read a letter from the Applicant requesting that the case be re-heard.

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously that the request be **approved and that the Applicant may re-apply and pay an additional fee.** Vote carried 5 – 0.

2003 Hearing Schedule - The Board discussed the schedule for the 2003 hearings and request that the meetings February through December be changed to the first and third Monday's.

Meeting Adjourned 9:36 p.m.