

MINUTES OF DECEMBER 16, 2002

The regular meeting of the Sussex County Board of Adjustment was held Monday evening December 16, 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, Mrs. Heffelfinger – Zoning Inspector, and Mrs. Norwood – Recording Secretary.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously to approve the Revised Agenda, with Old Business Case No. 7923 – Jeffery C. and Patricia L. Wells, moved to the beginning of the hearings. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of December 9, 2002 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. 7923 – Jeffery C. and Patricia L. Wells – west of Route 5, 1 mile north of Route 9.

A special use exception to operate a family health resource center. This application has been tabled since November 4, 2002.

Chairman Callaway addressed the Board and asked if they were ready to vote.

Mr. McCabe voted to deny the special use exception, stating that the use would adversely affect the neighborhood and that its not the best use for the property.

Mr. Mills voted to deny the special use exception, stating that there is not ample security, location does not provide easy access to any activities and there is no hardship to the residents if the use is denied.

Mr. Hudson voted to deny the special use exception, stating that he agreed with the other members and he feels that it is not in the best interest to the community.

Mr. Callaway voted to deny the special use exception, stating that if residents miss their medication they could be dangerous to the community and there is no evidence that to deny the use creates a hardship to the existing home.

Mr. Workman abstained from voting.

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously that the special use exception be **denied**. Vote carried 4 – 0.

Case No. 8031 – Stanley C. and Denise H. Kirn – west of Route One, north of Bay Road Extended, Lots 3 and 4, within Rehoboth Manor Subdivision.

A variance from the front yard setback requirement.

Mrs. Heffelfinger presented the case. Stanley Kirn was sworn in and testified requesting a 12-foot variance from the required 30-foot front yard setback requirement for a proposed addition; that the existing dwelling sits is on an angle; that the proposed addition will not encroach further than the existing porch; that the existing dwelling and proposed addition is on line with other dwellings on the street; and that he purchased the lot 5 years ago and has added a pole shed that does not show on the survey.

Brendon McGuire, was sworn in and testified in opposition to the application; that he owns the Lot 5; that when the Applicant built a pole shed and changed the grade it created a run off onto his property; and that he is concerned that the addition will create a greater problem.

In rebuttal, Stanley Kirn, stated that he has no plans to elevate the grade to build the proposed addition; and that he had all the proper permits to build his pole shed.

Mrs. Heffelfinger stated that the office had received 3 letters in support of the application and 1 letter in opposition to the application.

By a show of hands, 2 parties were in favor of the application.

By a show of hands, 2 parties were 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. 8032 – Michael Makowski – intersection of Nassau Road and New Road.

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

Mrs. Heffelfinger presented the case. Mike Makowski was sworn in and testified requesting a 30.9-foot variance from the required 40-foot front yard setback requirement, a 12.4-foot variance from the required 15-foot corner side yard setback requirement, a 2-foot variance from the required 5-foot rear yard setback requirement, a 5-foot variance from the required 5-foot side yard setback requirement for a proposed building; that the

proposed building will be built in the same footprint as the existing building; that due to the lot configuration to build in the same footprint is the best way to utilize the lot; that the property is zoned C-1 as are the adjacent properties; and that they also own the adjacent lot that they will use for parking.

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. Hudson, and carried unanimously that the case be **tabled until December 23, 2002**. Vote carried 5 – 0.

Case No. Norman Falkowski – northwest of Road 362, south of Maple Street, Lot 16, Section 1, within Shady Dell Park Subdivision.

A variance from the front and rear yard setback requirements.

Mrs. Heffelfinger presented the case. Norman Falkowski was sworn in and testified requesting a 14-foot variance from the required 30-foot front yard setback requirement and a 2-foot variance from the required 10-foot side yard setback requirement for a proposed manufactured home; that the unit will measure 16'x 72'; that due to the location of the well and septic system the unit cannot be placed to meet the required setbacks; and that they have also allowed room to add a screen porch.

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

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

Case No. 8034 – Tunnell Companies, LP – south of Route 22, Pot-Nets Bayside Mobile Home Park.

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

See Case No. 8039 for details.

Case No. 8035 – Tunnell Companies, LP – north of Route 22, Pot-Nets Dockside Mobile Home Park.

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

See Case No. 8039 for details.

Case No. 8036 – Tunnell Companies, LP – south of Route 22, Pot-Nets Seaside Mobile Home Park.

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

See Case No. 8039 for details.

Case No. 8037 – Tunnell Companies, LP – north and south of Route 22, Pot-Nets Creekside Mobile Home Park.

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

See Case No. 8039 for details.

Case No. 8038 – Tunnell Companies, LP – north of Route 22, Pot-Nets Coveside Mobile Home park.

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

See Case No. 8039 for details.

Case No. 8039 – Tunnell Companies, LP – northeast of Route 22, Pot-Nets Lakeside Mobile Home Park.

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

Mrs. Heffelfinger presented the cases and they were heard as one. Robert Tunnell and Donald Sellers were sworn in with John Sergovic, Attorney, on behalf of the applications, requesting a variance of 5-feet from the required 20-foot separation requirement between units; that an ordinance of the same request was granted to

Mariner's Cove Mobile Home Park; that due to the lot sizes in the older mobile home parks it creates a hardship to meet the required separation requirement between units; that the lots are irregular and pre-exist zoning; that by approving this variance request it would eliminate the need for numerous variances in the future when an older unit is replaced by a new larger unit; that the Fire Marshall requires a minimum of 10-foot separation between units; and that the request for Case No. 8037 and Case No. 8038 is no longer needed.

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. Mills, seconded by Mr. McCabe, and carried unanimously to **deny Case No. 8037 and Case No. 8038** and to take Case No. 8034, 8035, 8036, and 8039 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 to **table Case No. 8034, 8035, 8036, and 8039 until December 23, 2002**. Vote carried 5 – 0.

Case No. 8040 – Baywood, LLC – north of Route 22, 2,200 feet east of Route 5 and Route 24, Lot 3293, within Baywood Mobile Home Park.

A variance from the maximum allowable lot coverage in a mobile home park.

Mrs. Heffelfiner presented the case. Jim Latangi was sworn in and testified requesting a 60-square foot variance from the 35% maximum allowable lot coverage; and that they wish to build a screen porch.

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

The Board found that no parties appeared 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. 8041 – Baywood, LLC – north of Route 22, 2,200 feet east of Route 5 and Route 24, Lot 3289, within Baywood Mobile Home Park.

A variance from the south side yard setback requirement in a mobile home park.

Mrs. Heffelfinger presented the case. Jim Latangi, who was sworn in on the previous case, testified that the request was no longer needed.

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 **denied**. Vote carried 5 – 0.

Case No. 8042 – Edward and Susan King – north of Route 22, 2,200 feet east of Route 5 and Route 24, Long Spoon Way, Lot 3288, within Baywood Mobile Home Park.

A variance from the rear yard and east side yard setback requirement.

Mrs. Heffelfinger presented the case. Edward King was sworn in and testified requesting a 2-foot variance from the required 10-foot rear yard setback requirement for a proposed enclosed porch and a 0.7-foot variance from the required 10-foot side yard setback requirement for an existing porch; that the proposed porch will measure 9'x 31'; that the unit was issued a certificate of occupancy; and that the neighbors have no objection to the application.

By a show of hands, 3 parties appeared in favor of the application.

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

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

Case No. 8043 – Evelyn Clifton – south of Route One, Atlantic Street, Lot F-83, within Sea Air Mobile Home Park.

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

Mrs. Heffelfinger presented the case. Evelyn Clifton was sworn in and testified requesting a 5.4-foot variance from the required 20-foot separation requirement between units and a 10.4-foot variance from the required 20-foot separation requirement between units in a mobile home park; that the addition was built in 1982; that the unit was transferred to the Applicant from her parents; and that there have been numerous variances in the mobile home park.

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

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

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

Case No. 8044 – Michael B. and Tina M. Hills – south of Road 225-D, 292.50 feet east of Road 225, Lot 9, within Linwood Subdivision.

A variance from the east side yard setback requirement.

Mrs. Heffelfinger presented the case. Michael Hills was sworn in and testified requesting a 4-foot variance from the required 15-foot east side yard setback requirement for a proposed addition and attached garage; that the family is growing and they need more bedrooms; that the laundry room is currently in the basement and that they would like it moved to the first floor for health reasons; and that the proposed garage will measure 24'x 28'.

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. 8045 – Charles and Diane Donohue – south of Route One, 176 feet south of Road 276.

A variance from the front yard setback requirement.

Mrs. Heffelfinger presented the case. Charles Donohue was sworn in and testified requesting a 26.1-foot variance from the required 60-foot front yard setback requirement for a proposed porch roof; that there is an existing deck and he just wants to build a roof over it; and that a previous variance was granted on this property for an existing office on the opposite side of the property.

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. 8046 – Gemcraft Homes – intersection of Route 113 and Road 432.

A special use exception for a ground sign.

Mrs. Heffelfinger presented the case. Peter Styles was sworn in and testified requesting a special use exception for a ground sign; that the sign would be an off-premise sign and will measure 17'x 10'; that the sign will be single-sided; that they currently have a sign on the opposite side of Route 113, and that the State has told them that it has to moved back and will not be seen from the road; that if this request is approved they will remove the existing sign; and that they will make the sign 150-square foot to comply with the ordinance.

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 with the stipulation that the sign will be no greater than 150-square foot**. Vote carried 5 – 0.

Case No. 8047 – Thomas E. Lewis – south of Road 365, across from Road 368.

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

Mrs. Heffelfinger presented the case. Thomas C. Lewis, Robert Lewis, and Maxwell Morris was sworn in and testified requesting a special use exception to retain manufactured homes on less than 10 acres; that the land has been subdivided to settle the Estate of Thomas Lewis; that the units were replaced on the lots prior to 1997; that the new property lines were created to comply with the current setback requirements; and that the units are located on Parcel B and D.

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. 8048 – Ocean Walk LLC – southeast of Rogers Avenue, 100 feet southwest of Route One, Lot 5, within Ann Acres Subdivision.

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

Mrs. Heffelfinger presented the case. Carl Williams was sworn in with Jim Fuqua, Attorney, on behalf of the application requesting a 17.9-foot variance from the required 30-foot front yard setback requirement, a 4.2-foot variance from the required 10-foot east side yard setback requirement, a 5.3-foot variance from the required 10-foot west side

yard setback requirement, a 5.9-foot variance from the required 10-foot rear yard setback requirement for an expansion upward from existing non-conforming structure, and a 3.2-foot variance from the required 5-foot west side yard setback requirement for a set of steps; that they wish to add a second floor on an existing non-conforming multi-family structures; that the addition will continue with the character of the neighborhood; and that parking already exists.

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 variances be **granted**. Vote carried 5 – 0.

Case No. 8049 – Sam and Rena Schrader – west of Swann Drive, Lot 7, Block A, within Swann Keys Subdivision.

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

Mrs. Heffelfinger presented the case. Rena Schrader and Edward McCauslin were sworn in and testified requesting a 1-foot variance from the required 10-foot side yard setback requirement for an existing addition, a 8-foot variance from the required 10-foot side yard setback requirement for an existing deck, and a 3-foot variance from the required side yard setback requirement for an existing deck; that they would like to add a screen porch to the existing deck and to extend the roof over an existing addition to help keep the weather out; that they submitted pictures; and that the Association will approve if the Board does.

By a show of hands, 3 parties appeared in favor 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 variances be **granted**. Vote carried 5 – 0.

OLD BUSINESS

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. This application has been tabled since December 9, 2002.

Mrs. Heffelfinger presented the case. Lee Johnson and Eugene Tracton were sworn in and testified that the existing sign is only 95-foot from the nearest dwelling and is not on when the bank is closed; and that they submitted drawings to show the percentage of the wall sign with the side of the building.

Mrs. Heffelfinger stated that due to the size of the sign for the entrance it is considered a directional sign not a ground sign and does not have to meet the 100-foot setback requirement from the nearest dwelling.

The Board found that no parties 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**. 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. This application has been tabled since December 9, 2002.

The Board discussed the case.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted**. 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. This application has been tabled since December 9, 2002.

The Board discussed the case.

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the case be **tabled until December 23, 2002**. 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. This application has been tabled since December 9, 2002.

The Board discussed the case.

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

OTHER BUSINESS

Case No. 8000 – Paul Daisey – east of Route One, 255 feet north of Virginia Avenue and 205 feet south of Virginia Avenue.

A variance from the minimum square footage requirement for multi-family structures.

Mr. Mills made a motion to add the case on the Agenda for December 23, 2002, seconded by Mr. McCabe, and carried unanimously to **add to the Agenda on December 23, 2002**. Vote carried 5 – 0.

2003 Hearing Schedule – The Board discussed that the meetings scheduled for March and December be changed to the first and third Monday's of the month unless changed due to holidays.

Meeting Adjourned 9:06 p.m.