

MINUTES OF DECEMBER 17, 2001

The regular meeting of the Sussex County Board of Adjustment was held Monday evening December 17, 2001, 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. Wheatley, Mr. Mills, Mr. Hudson, with Mr. Berl – Assistant County Attorney, Mr. Rickard – Chief Zoning Inspector, and Ms. Jackson – Recording Secretary.

Motion by Mr. McCabe, seconded by Mr. Wheatley and carried unanimously to approve the Revised Agenda with the correction to hear Case No. 7641, P & A Co., Inc., at the end of the public hearings. Vote carried 4 – 0, with Mr. Mills not present.

Motion by Mr. Hudson, seconded by Mr. Wheatley, and carried unanimously to approve the Minutes of December 2, 2001 as circulated. Vote carried 4 – 0, with Mr. Mills not present.

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

Case No. 7637 – Daniel and Dorothy Lecates – north of Road 331-A, northwest side of Road 331-B, Lots 9,10, and 25, within Possum Point Subdivision.

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

Mr. Rickard presented the case. Daniel Lecates was sworn in and testified requesting a 16-foot variance from the required 30-foot front yard setback requirement and a 4-foot variance from the required 5-foot east side yard setback requirement for an existing open carport; that the carport was placed in the Spring of 2000; that his home was built in 1942; that he purchased the carport from Pine Ridge in Millsboro; that they told him that he did not need a permit; that he received a violation letter from Dawn Heffelfinger, Zoning Inspector; that after the violation letter he obtained a permit for the carport; and that he did not realize that Possum Point was considered a Subdivision.

Mr. Rickard stated to the applicant that Possum Point is recorded as a GR-General Residential Subdivision.

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

Mr. Rickard read 2 letters from Joseph Meyer and William and Elva Warrick in favor 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 that the variances be **tabled until January 9, 2002**. Vote carried 5 – 0.

Case No. 7638 – Curtis J. Leciejewski – east of Road 273-A, east side of Crazy Lane, Lots C-5,C-6,C-7,C-8, and part of C-9, within Bay Vista Subdivision.

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

Mr. Rickard presented the case. Curtis Leciejewski was sworn in and testified requesting a 3.6-foot variance from the required 30-foot front yard setback requirement for a covered porch and a 3.6-foot variance from the required 20-foot rear yard setback requirement for 2nd floor steps.

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

Case No. 7639 – Oma and Frank Motter – north of Greenley Avenue, 145 feet east of Road 213.

A variance from the lot width requirement for a parcel.

Mr. Rickard presented the case. Emmett Venett, Realtor with Century 21, was sworn in and testified requesting an 8-foot variance from the required 150-foot lot width requirement for a parcel; that the parcel is 3 acres; that they would like to divide the parcel into 3 lots; that 2 of the lots will have 150-foot of road frontage and that 1 lot will have 142-foot of road frontage; and that the Motter's own 2 parcel across the street from this parcel.

By a show of hands, 2 parties were in favor 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 other lots in the area have less than 150-foot of road frontage**. Vote carried 5 – 0.

Case No. 7640 – Kurt T. Drew – east of Road 489, east side of Park Lane, Lots 7 and 8, within Colonial Acres Subdivision.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. Kurt T. Drew was sworn in and testified requesting a 0.4-foot variance from the required 30-foot front yard setback requirement for a dwelling; that he replaced a single wide mobile home with a modular; that he put the modular in the same footprint; that Choice Homes placed the home for him; and that the violation was found when a survey was prepared.

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 that the variance be **granted and that Mr. Berl write a letter to Choice Homes in reference to the violation.** Vote carried 5 – 0.

Case No. 7642 – Peter and Mary Beaman - northeast of Route One, 300 feet southwest of Road 268.

A special use exception for a two-sided non-conforming billboard.

Mr. Rickard presented the case. Peter Beaman was sworn in and testified requesting a special use exception to use the back side of a non-conforming billboard; that the billboard has been on the property for 18 years; that he has owned the property for 18 years; that he is moving a house that has been on the property for 70 years; that he submitted pictures; that he showed the Board an exhibit; that he will not be changing the structure of the billboard; and that the billboard is over the required 25-foot height requirement.

By a show of hands, 1 party was in favor 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 special use exception be **granted.** Vote carried 5 – 0.

Case No. 7643 – Steven Buchanan, Wendy Buchanan, and Grace York – west of Road 579, $\frac{3}{4}$ mile south of Road 527.

A special use exception to connect two (2) manufactured homes to make one (1) unit.

Mr. Rickard presented the case. Steven Buchanan was sworn in and testified requesting a special use exception to connect two (2) manufactured homes to make one (1) unit; that the units measure 28'x50' and 28'x44'; that they will be connected with a covered deck; that a 14'x70' single wide unit exists on the site and will be removed; that his mother became disabled on June 19, 1999; that she will be moving in with him; that he will only have 1 kitchen; and that he will meet the setback requirements.

Mr. Rickard read a letter from the Social Security Administrative Retirement, Survivors, and Disability Insurance to the Board explaining applicant's mother's, disability.

By a show of hands, 3 parties were in favor 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 that the special use exception be **granted with stipulations**:

1. **The manufactured home shall be enclosed with a block foundation.**
2. **An A-roof shall be installed.**
3. **There shall only be one (1) kitchen.**
4. **The units shall be improved with matching siding.**

Vote carried 5 – 0.

Case No. 7644 – Elvira Diemicke – west of U.S. Route 13-A, north side of Garden Lane, Lot 48, within Green Acres Subdivision.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. James A. Diemicke, son of the applicant, was sworn in and testified requesting a 1.4-foot variance from the required 30-foot front yard setback requirement for a manufactured home; that the unit was placed in November 1990; that the violation was found when a survey was prepared; that the unit is on a permanent foundation; and that the septic is located on the rear of the property.

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

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

Case No. 7645 – Roy J. Evans & Company, Inc. – south of Route 54, north of Breakwater Drive, Lot 144, within Keenwick Sound Subdivision.

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

Mr. Rickard presented the case. Roy J. Evans was sworn in and testified requesting a 10-foot variance from the required 40-foot front yard setback requirement for a 10'x16' sunroom and a 10'x14' deck, instead of an 8-foot variance.

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**. Vote carried 5 – 0.

Case No. 7646 – Robert N. Mendehall – intersection Route 40 north and Road 213 west, Lot 49, within Riley Jefferson Subdivision.

A special use exception to use a manufactured home as a storage facility.

Mr. Rickard presented the case. Robert N. Mendehall was sworn in and testified requesting a special use exception to use a manufactured home as a storage facility; that the unit measures 10'x60'; that the unit meets the setback requirements; that the unit has been there for 20 years; that Robert Betts, Constable, told him that he needed to obtain a permit and apply for a Board of Adjustment Hearing to use the unit for storage; and that the unit does not have a kitchen.

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 that the special use exception be **granted**. Vote carried 5 – 0.

Case No. 7647 – Richard L. and Dorothy L. Rogers – west of Route 26, across from Road 413.

A variance from the south side yard setback requirement for a manure shed and poultry house.

Mr. Rickard presented the case. Richard L. Rogers was sworn in and testified requesting a 5-foot variance from the required 15-foot south side yard setback requirement for a machinery shed, instead of a 40-foot variance from the required 50-foot

south side yard setback requirement for a manure shed, a 35-foot variance from the required 50-foot south side yard setback requirement for a poultry house, a 27.2-foot variance from the required 50-foot south side yard setback requirement for a poultry house, and a 115-foot variance from the required 200-foot south side yard setback requirement from a dwelling on another property for a poultry house; that the poultry house was built in 1979 and met the setback requirements; that the machinery shed was built in 1987 and met the setback requirements; that the variances are needed due to new property lines being created; that he is giving his daughter additional lands; that the machinery shed measures 84'x40'; and that he submitted a survey.

By a show of hands, 1 party was in favor 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 variances be **granted**. Vote carried 5 – 0.

Case No. 7648 – Hugh F. and Juanita F. McDaniel – north of Road 283, north of Beech Drive, Lot 9, within Sandy Brae Subdivision.

A variance from the west side yard setback requirement.

Mr. Rickard presented the case. Hugh F. McDaniel was sworn in with Bill Schaab, Attorney, on behalf of the application, requesting a 0.4-foot variance from the required 10-foot west side yard setback requirement for a dwelling; that the home was built in 1983; that the violation was found when a survey was prepared; and that it does not adversely affect neighboring properties.

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

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

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

Case No. 7649 – Joseph and Audrey Welsh – north of Route 54, west side of Canvas Back Road, Lot 71, within Swann Keys Subdivision.

A variance from the west side yard setback requirement.

Mr. Rickard presented the case. Joseph and Audrey Welsh were sworn in and testified requesting a 4.2-foot variance from the required 5-foot west side yard setback

requirement for a shed; that they bought the property on June 29, 2001; that they submitted pictures; that they submitted a letter from David Dalton in favor of the application; that they replaced an existing shed that fell down and put it in the same footprint in July 2001; and that they received a violation letter from Don Hastings, Zoning Inspector II, on October 12, 2001.

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

Case No. 7650 – Paul Robino – east of Road 266-B, 300 feet south of Road 266.

A variance from the parking requirements for multi-family structures.

Mr. Rickard presented the case. Paul Robino was sworn in with James Fuqua, Jr., Attorney, on behalf of the application, requesting a variance from the parking space requirements for a multi-family dwelling to allow 2.35 parking spaces rather than the required 3 parking spaces, instead of 2.45 parking spaces; that they submitted a site plan, pictures, and a copy of Creekwood Project, LLC finding of facts, dated April, 3, 2001; that the site plan consists of 102 residential units, 2 large condominium buildings, with 18 units each, and 66 duplex's; that each unit is required to have 3 off street parking spaces; that the site plan shows 306 parking spaces; that they would like to reduce the 306 parking spaces to 250 parking spaces; that the majority of the homes are being used as permanent and secondary homes; that each duplex has a 1 car garage; that the driveway to each garage is not counted as parking spaces; that the Zoning Ordinance does not count driveways as parking spaces; that this application is similar to the Creekwood Project the Board heard at the beginning of this year; and that the reduction of parking spaces will result in more grass area making the site more attractive and beneficial to the area and the environment.

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

Mr. Rickard read 5 letters from Fred Hertrich, IV, Wendy Baker, Christine Strauss, Laf Erickson, and Roger Gross 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 variance be **granted**. Vote carried 5 – 0.

Case No. 7651 – Thomas Womach – south of Road 363, northwest side of dirt road, Lot 25, within Muddy Neck Subdivision.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. Thomas Womach was sworn in and testified requesting a 5-foot variance from the required 30-foot front yard setback requirement for an existing attached garage; that he submitted pictures; that the unit is a 1975 model; that he obtained a permit, but did not pay attention to the setback requirements; that he built the garage himself and built it in line with his home.

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 with the following stipulations:**

1. **The manufactured home and garage shall be enclosed with a block foundation.**
2. **An A-roof shall be installed.**
3. **The unit and garage shall be improved with matching siding.**

Vote carried 5 – 0.

Old Business

Case No. 7621 – Kerry Wertz – southwest of Route 54, south of Wilson Avenue, Lot 19, within Cape Windsor Subdivision.

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

The Board discussed the case. Mr. Rickard supplied a survey to the Board, which they requested for the exact measurements that are needed. The survey stated that the applicant needs an 8-foot variance from the required 10-foot east side yard setback requirement and a 3-foot variance from the required 10-foot west side yard setback requirement.

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

Case No. 7641 – P & A Co., Inc. – north of U.S. Route 13, 2,098 feet east of Road 452.

A special use exception for asphalt products or central asphalt mixing or batching.

Mr. Rickard presented the case. Kevin Burdette, with McCrone, Steven Pusey, President of P & A Co., Inc, Ron Clark, with CMI Terex Corporation, and Gary Smith, with the State of Delaware Economic Office, were sworn in with John Sergovic, Attorney, on behalf of the application, requesting a special use exception for asphalt products or central asphalt mixing or batching; that they submitted pictures, finding of facts, dated February 11, 1992, and a booklet that contained a layout of the plant, and explanation of how the asphalt plant is operated; that they showed 2 exhibits to the Board; that a special use exception was granted by the Board in 1992 for a crusher plant; that no re-examination of the issued permit is known to have been made the Board in March 1993, which was stated in the finding of facts, dated February 11, 1992; that the applicant has operated his concrete/asphalt recycling plant without any complaints since 1992, that the property is zoned HI – Heavy Industrial District and that the use is allowed in that zoning; that Mr. Pusey moved the business from Maryland to Delaware 12 years ago; that Mr. Pusey also has a borrow pit next to the property, which County Council approved several months ago; that he recycles 20,000 tons of material each year; that the closest resident is 2,500-foot away; and that he has a State of the Art operation. Gary Smith stated that he met Mr. Pusey 12 years ago; and that he helped Mr. Pusey to locate a site for the plant. Ron Clark stated that the plant is operated by a computer; that emissions pass through a high heat temperature zone; that the baghouse collects dust out of the air stream and returns to the drier mixer; that the equipment performs below the EPA requirements and reduces noise at the site and boundaries. Kevin Burdette stated that there are HI – Heavy Industrial, LI – Light Industrial and C1 – General Commercial Districts in the area; that the drainage area from the site will travel from the south of the property and all water will go in a stormwater infiltration basin; that the plant has a bio infiltration area to trap anything that would escape; that DNREC closely monitors these type of plants; that all transmission pipes are above ground; that the plant towers are 63-foot in height; that his reviews have found no health hazards from the site; and that he submitted an entrance permit from DelDOT.

Mr. Mills noted to the applicant if there would be a need to change the months for operation or a change in the hours. Mr. Pusey stated that he would like to extend his operation through the winter months, December through April; and that he would like the Board to consider giving him 20 days throughout the year to operate after 6:00 P.M., due to safety factors.

Mr. Hudson asked the applicant if there was a need for another asphalt plant to be located in Sussex County.

Mr. Berl stated to Mr. Hudson that the use is permitted, but that the Board needs to determine that everyone's health is safeguarded.

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 **tabled until January 7, 2001**. Vote carried 5 – 0.

Meeting Adjourned 9:45 P.M.