

MINUTES OF JANUARY 3, 2005

The regular meeting of the Sussex County Board of Adjustment was held on Monday evening, January 3, 2005, 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, Ms. Hudson – 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 20, 2004 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. 8900 – Michele and Rebecca L. DiGiovanni – east of Road 533A, 3,300 feet south of Road 557.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Charles Grim was sworn with John Tarburton, Attorney, on behalf of the application, and testified requesting a 1.5-foot variance from the required 5-foot side yard setback requirement for a shed; that the shed measured 8'x 8'; that the shed is on a concrete pad; that the encroachment was discovered by a survey done for settlement; that the shed was on the lot when the Applicant's purchased the property; that the shed does not alter the character of the neighborhood; that the encroachment was not created by the Applicant; and that the variance is a minimum variance request.

The Board members 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 since it will not alter the character of the neighborhood and was not created by the Applicant**. Vote carried 5 – 0.

Case No. 8901 – John Hamstead – north of Route 16, 1,700 feet west of Road 602.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. John Hamstead was sworn in and testified requesting a 3.2-foot variance from the required 15-foot side yard setback requirement for an existing greenhouse; that he purchased the property 8-years ago; that the greenhouse has existed for approximately 30-years; that by subdividing the encroachment was created; 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. Workman, seconded by Mr. McCabe, and carried unanimously that the variance be **granted since it was not created by the Applicant**.
Vote carried 5 – 0.

Case No. 8902 – Louis Zambanini – east of Road 357, south of Ewing Road, being Lot 19 within Bayside Hamlet Development.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. Louis Zambanini was sworn in and testified requesting a 3-foot variance from the required 30-foot front yard setback requirement for an existing dwelling; that his builder handled the placement of the dwelling; that the builder obtained the building permit; that the builder left the job without obtaining a Certificate of Compliance; that he cannot get any cooperation from the builder; that the Planning and Zoning Inspector made him aware of the encroachment; and that he can provide the name and address of the builder.

Mr. Rickard stated that the office received 1 letter in opposition to the application.

The Board members 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 since it will not alter the character of the neighborhood**.
Vote carried 5 – 0.

Case No. 8903 – James and Betty Lynn LeBrun – north of Route 54, 113 feet north of Wood Duck Way within Swann Cove.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. James LeBrun was sworn in and testified requesting a 2.5-foot variance from the required 10-foot side yard setback requirement

for an addition; that the existing dwelling was built in the 1950's; that he wants to build an addition on the dwelling; that he will move the shed to comply with setback requirements; and he will obtain the necessary permits.

James Allison was sworn in and testified in support of the application and stated that he is the builder for the addition; and that the request for the 2.5-foot variance includes the overhang on the addition.

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 variance be **granted for a 2.5-foot variance since it will not alter the character of the neighborhood**. Vote carried 5 – 0.

Case No. 8904 – James Joyce, Jr. – northwest of road 39, east of Shore Drive, being Lot 111 within Joseph D. Short 4th Addition Development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Michael Hornberger was sworn in and testified requesting a 2.5-foot variance from the required 10-foot side yard setback requirement and a 6.8-foot variance from the required 10-foot side yard setback requirement; that he is the President of Prime Hook Beach Association; that he is representing the Applicant; that the Applicant wants to build a stairway with a landing; that the stairway is needed for fire safety; that a survey was done in 1996; that the fence has been removed; and that the deck was built in 1980.

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 unique shape of the lot and since it will not alter the character of the neighborhood**. Vote carried 5 – 0.

Case No. 8905 – Charles and Harold Valentine – east of Road 376, 825 feet south of Road 376A.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. H. Richard Valentine was sworn in and testified requesting an 11.1-foot variance from the required 40-foot front yard setback requirement for an addition on a manufactured home and a 4.5-foot variance from the required 40-foot

front yard setback requirement for a detached pole building; that he purchased the property a few years ago; that he added the enclosed porch on the front of the manufactured home; that the detached pole building measures 24'x 32'; that he and his builder assumed the property line was farther out than it actually is; that he can provide the builders address to the Board; and that he submitted pictures.

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 variances be **granted since it will not alter the character of the neighborhood and that a letter be sent to the builder**. Vote carried 5 – 0.

Case No. 8906 – Shila Hayden and Mary McLaughlin – southeast of Route 16, northeast of Bay Shore Drive, being Lot 1 and north ½ Lot 2, Block 12 within Broadkilm Beach Development.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. Shila Hayden and Terrence Babbie were sworn in and testified requesting an 18-foot variance from the required 30-foot front yard setback requirement for a proposed dwelling; that the existing manufactured home has been on the property for 60-years; that the proposed dwelling will measure 32' x 46'; that the existing unit impedes on the DNREC building line; that he met with Jennifer Wheatley, from the DNREC office, on site to go over the proposed plan; that DNREC is in support of the application; that the proposed structure will help with recreating the dune; that the proposed dwelling will meet all the required flood zone requirements; that similar variances have been granted in the area; that the Applicants plan to retire to the area; that parking will be underneath the dwelling; and that pending the septic design they may need to shift the proposed location and would need a side yard variance.

Mr. Rickard stated that the office received 1 letter 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 that the variance be **granted since it will not alter the character of the neighborhood and since the lot is unique in size and there have been other variances granted in the area**. Vote carried 5 – 0.

Case No. 8907 – Salvatore Charles Grasso, Sr. – south of Road 364, east of Pin Oak Street, being Lot 29 within Oak Acres Development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Salvatore C. Grasso, Sr. was sworn in and testified requesting a 1-foot variance from the required 10-foot side yard setback requirement for each side; that the lot measures 80'x 125'; that the proposed unit measures 28'x 60'; that the unit will just meet the setback requirements; that the request is to give a comfort zone when placing the unit; that the shed existed when he purchased the property; and that the backhoe was needed to remove some trees.

Mr. Rickard stated that the office received 1 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. Hudson, and carried unanimously that the variances be **granted since it will not alter the character of the neighborhood and due to the unique size of the lot**. Vote carried 5 – 0.

Case No. 8908 – Can Bentley – east of Route One, east of West Isaacs Drive, being Lot 13 within Midway Park Development.

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

Mr. Rickard presented the case. Della Willey was sworn in and testified requesting a 26.5-foot variance from the required 30-foot front yard setback requirement and a 3.5-foot variance from the required 10-foot side yard setback requirement for an existing carport; that she is representing the Applicant; that he purchased the carport from Callaway Furniture; that the Applicant obtained the building permit; that Callaway Furniture installed the carport; and that she submitted pictures.

Betsy Schmidt was sworn in and testified in opposition to the application and stated that she is the Vice-President of the Homeowner's Association; that they feel the carport should meet the required setback requirements; and that the Applicant did not follow the proper procedure to make certain the carport would meet the requirements.

Irene Fox was sworn in and testified in opposition to the application and stated that she lives next door to the Applicant; that the carport obstructs her view when trying to exit her driveway; and that she feels the carport takes away from her property value.

Mr. Rickard stated that the office received 1 letter in opposition to the application.

By a show of hands 3 parties appeared in opposition to the application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **left open for the Applicant to provide a survey to the Board and that a letter be sent to Callaway Furniture**. Vote carried 5 – 0.

Case No. 8909 – Jeremy Murdick – west of Road 432, 2,000 feet north of Road 329, being Lot A.

A variance from the rear yard setback requirement.

Mr. Rickard presented the case. Jeremy Murdick and Gary Hughes were sworn in and testified requesting a 5-foot variance from the required 20-foot rear yard setback requirement; that the property owner staked out where the dwelling was to be located; that the original plan did not include the wrap-around porch; that the final survey showed the encroachment; and that the final survey does not show the finished porch.

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 case be **left open for the Applicant to provide a survey to the Board**.
Vote carried 5 – 0.

Case No. 8910 – Diane L. and Brian D. Walter – north of Route 16 and Bay Shore Drive, south of Virginia Avenue, being Lot 10, Block C within Broadkill Beach Development.

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

Mr. Rickard presented the case. Harry Wooding was sworn in and testified requesting a 3.9-foot variance from the required 5-foot side yard setback requirement and a 2.5-foot variance from the required 5-foot rear yard setback requirement for an existing shed; that the Applicant purchased the property in 1999; that the shed was placed on the property in 2001; that the shed company that placed the shed no longer exists; that the encroachment was discovered at settlement; that there is no building permit for the shed; that the existing dwelling and detached garage were built in the 1950's; that there is a mound septic system on the property; that there is no other location on the property for the shed to be placed; and that DNREC 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. Hudson, and carried unanimously that the variances be **granted since it will not alter the character of the neighborhood and due to the unique size of the lot and the mound septic system**. Vote carried 5 – 0.

Case No. 8911 – Candice Clough – south of Road 273A, north of 6th Street, being Units 266, 267, and 268 within Bay Vista Development.

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

Mr. Rickard presented the case. Candice Clough was sworn in and testified requesting a 17.2-foot variance from the required 20-foot rear yard setback requirement and a 7-foot variance from the required 10-foot side yard setback requirement; that she purchased the property 3-years ago; that the existing garage is non-conforming; that she wants to build a second floor addition and a second floor deck; and that there have been numerous variances granted in the development.

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 since it will not alter the character of the neighborhood and there have been numerous variances granted in the development**. Vote carried 5 – 0.

Case No. 8912 – Dean Alfano – east of Road 277, south of Bridgeway Drive West, being Lot 21, Block W, Section 5 within Angola By The Bay Development.

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

Mr. Rickard presented the case. Dean Alfano was sworn in and testified requesting a 5.4-foot variance from the required 10-foot side yard setback requirement for a proposed attached carport and a 7.9-foot variance from the required 20-foot rear yard setback requirement for a proposed addition; that they plan to make this their permanent residence; that the proposed carport will be in line with the existing driveway; that the shed will be moved into compliance with the setbacks; and that he submitted a drawing.

The Board members 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 variances be **granted since it will not alter the character of the neighborhood and due to the unique shape of the lot**. Vote carried 5 – 0.

Case No. 8913 – Gary Zahn – east of Route 22, west of Dinghy Road, being Lot 7E within White House Beach Mobile Home Park.

A variance from the rear yard setback requirement and a variance from the separation requirement between units in a mobile home park.

Mr. Rickard presented the case. Gary Zahn was sworn in and testified requesting a 3-foot variance from the required 5-foot rear yard setback requirement and a 0.5-foot variance from the required 20-foot separation requirement between units in a mobile home park; that the unit was placed a few months ago; that Ron's Mobile Homes placed the unit; that he wants to build a deck on the end of the unit; and that the units along that street are on an angle.

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

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

Case No. 8914 – New Dimension Home – east of Route 23, east of Caddies Way, being Unit 3320 within Baywood LLC Mobile Home Park.

A variance from the rear yard setback requirement and a variance from the separation requirement between units in a mobile home park.

Mr. Rickard presented the case. Tom Morris was sworn in and testified requesting a 0.8-foot variance from the required 10-foot rear yard setback requirement for a modular dwelling; that he staked the property; that in order to save some trees the property line was adjusted; that he was not aware of the adjustment of the property line; and that he has made some adjustments to prevent this from happening again.

The Board members 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 since it will not alter the character of the neighborhood**. Vote carried 5 – 0.

OLD BUSINESS

Case No. 8870 – Paul and Kathleen Bacon – west of Route 36, 999 feet north of Road 44.

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

The Board discussed the case which has been tabled since December 6, 2004.

The Board suggested that the Applicant create a parcel with a minimum of a 30-foot lot width and to reapply and ask for two variances from lot width.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case be **denied with the stipulation that the Applicant re-apply to request two (2) variances and that the fee be waived**. Vote carried 5 – 0.

Case No. 8871 – Paul Walter Bacon, Jr. – west of Route 36, 830 feet north of Road 44.

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

The Board discussed the case which has been tabled since December 6, 2004.

The Board suggested that the Applicant create a parcel with a minimum of a 30-foot lot width and to reapply and ask for two variances from lot width.

Motion by Mr. Hudson, seconded by Mr. McCabe, and carried that the variance be denied **with the stipulation that the Applicant re-apply to request two (2) variances and that the fee be waived**. Vote carried 3 – 2 with Mr. Callaway and Mr. Mills opposing the motion.

Case No. 8872 – Frank and Marianna Arness – east of Road 357, northwest of Bayfront Drive, being Lot 15 within Quillen's Point Development.

A variance from the side yard setback requirement.

The Board discussed the case which has been tabled since December 6, 2004.

Motion by Mr. McCabe, seconded by Mr. Workman, and carried unanimously that the variance be **granted since it will not alter the character of the neighborhood and has been on the lot since 1998**. Vote carried 5 – 0.

Case No. 8890 – Charles R. Burton – northeast of Route One, southeast of James A Street, being Lot 16, Block C within Dodds Addition Development.

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

The Board discussed the case which has been tabled since December 20, 2004.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variances be **granted with the stipulation that a site plan showing the required parking be submitted and approved by the Planning and Zoning Commission and since it will not alter the character of the neighborhood.** Vote carried 5 – 0.

Case No. 8897 – Robert Jay Reed – south of Route 88, 254 feet west of private road.

A variance from the front yard and rear yard setback requirements, and a special use exception from the provisions and requirements to retain a manufactured home on a parcel.

The Board discussed the case which has been tabled since December 20, 2004.

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until January 24, 2005.** Vote carried 5 – 0.

OTHER BUSINESS

Case No. 8833 – Fox Glen Limited Liability Company – south of Road 531, west of Fox Glen Drive, being Lot 8 within Fox Glen Development.

A variance from the side yard setback requirement.

A request to reapply.

Mr. Rickard read a letter from the Applicant requesting to the Board to allow them to reapply.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously to **grant permission for the application to reapply with the stipulation that the filing fee be paid prior to rescheduling.** Vote carried 5 – 0.

Case No. 8351 – A. Onedia Purnell – east of Road 485, 250 feet south of Route 20.

A special use exception for a day care facility.

A request for a time extension.

Mr. Rickard read the letter from the Applicant asking the Board for a time extension.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to **grant the Applicant a time extension for a period of six (6) months.** Vote carried 5 – 0.

Meeting Adjourned 10:30 p.m.