



Board of Adjustment

Agendas & Minutes

MINUTES OF JANUARY 5, 2004

The regular meeting of the Sussex County Board of Adjustment was held Monday evening January 5, 2004, 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. McCabe, seconded by Mr. Mills, and carried unanimously to approve the Revised Agenda with Case No. 8468 – Jim Lee, Inc. and Delmar Homes, Inc. withdrawn on December 1, 2003. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of December 15, 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. 8467 – Cloverland Farms Dairy, Inc. – intersection of U.S. Route 13 South and Road 20.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. John Kemp and Zach Crouch were sworn in and testified requesting a 32-foot variance from the required 60-foot front yard setback for a canopy; that the Planning and Zoning Commission has granted preliminary approval for a proposed Royal Farms store; that the proposed store and gas pumps will meet the required setback requirements; that the request is only for one proposed canopy that is parallel to U.S. Route 13; and that the proposed use is in keeping with the character of the neighborhood.

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 for 32-foot due to the uniqueness of the property and since it will not alter the character of the neighborhood**. Vote carried 5 – 0.

Case No. 8469 – Clyde Stephen Miller – west of Road 553A, 300 feet south of Road 57.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. Clyde Stephen Miller was sworn in and testified requesting a 12-foot variance from the required 40-foot front yard setback requirement for an addition; that the foundation for the addition is completed; that he moved to the area in 1997; that he obtained the building permit in 1999; that he did not know where to measure for the setback requirement; that his architect told him to measure from the center of the road; that after he completed the foundation a friend had him inquire about the required setbacks; that all other improvements to the property meet the required setbacks; and that he submitted drawings and his permit application.

Mr. Rickard stated that the office received 1 letter in support of 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 will not alter the character of the neighborhood and due to the unique size of the lot**. Vote carried 5 – 0.

Case No. 8470 – John Panico – northwest of road 490, 1,662 feet north of Road 490A.

A variance from the minimum lot width requirement.

Mr. Rickard presented the case. John Panico was sworn in and testified requesting a 59.37-foot variance from the required 150-foot lot width requirement for a parcel and a 59.38-foot variance from the required 150-foot lot width requirement for a parcel; that he wants to subdivide to create a parcel for his in-laws; that he plans to build a dwelling on one portion of the lot; and that he has no objection to having a shared driveway.

Daniel Stoner was sworn in and testified in opposition to the application and stated; that he has lived in the area since 1987; that all of the lots in the area have the required 150-foot lot width; that he is concerned that by granting this variance it may set a precedent for future subdivision; and that the request is not within the character of the neighborhood.

In rebuttal, John Panico, stated that his neighbors adjacent to his property have no objection to the application; that he would also have no objection to adding deed restrictions to prohibit further subdivision; and that the dwellings will be built to the rear of the property.

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

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously to take the case 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 variance be **denied since the request does not meet the standards for granting variances**. Vote carried 5 – 0.

Case No. 8471 – Jacquelyn M. and John F. Taylor, Jr. – south of Route 54, east of Wilson Avenue, being Lot 8 within Cape Windsor Development.

A variance from the rear yard setback requirement.

Mr. Rickard presented the case. John F. Taylor, Jr. was sworn in and testified requesting a 3-foot variance from the required 20-foot rear yard setback requirement for an existing deck; that his father-in-law owned the property when the deck was constructed; that the deck was built over 2-years ago; that the Planning and Zoning Office notified him of the encroachment; and that his neighbors are in support of the application.

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

Mr. Rickard stated that the office received 1 letter in opposition to the application from the Homeowner's Association.

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.

Case No. 8472 – Blue Hen Auto Sales – north at the intersection of Road 207 and U.S. Route 113 North.

A special use exception to place a manufactured home type structure for a sales office.

No one appeared on behalf of the application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **denied due to lack of record of support**. Vote carried 5 – 0.

Case No. 8473 – Frank and Susan Hunt – south of Route 54, east of Maple Lane, being Lot 13, Subdivision 5, within Keen Wik Development.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. Frank Hunt was sworn in and testified requesting a 14-foot variance from the required 30-foot front yard setback requirement for a proposed addition; that the proposed addition will measure 14' x 28'; that the addition will match the exterior of the existing dwelling; that the addition will be used for extra living space; 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. Mills, seconded by Mr. McCabe, and carried unanimously that the variance be **granted since it will not alter the character of the neighborhood and the unique shape of the lot**. Vote carried 5 – 0.

Case No. 8474 – Hong Nguyen – west of Road 554, 330 feet south of Road 30, being Parcel A.

A special use exception to place a third on-farm manufactured home.

Mr. Rickard presented the case. Hong Nguyen and Mandy O'Donnell were sworn in and testified requesting a special use exception to place a third on-farm manufactured home; that he purchased the property with the existing 2 manufactured homes; that he currently lives in one of the manufactured homes; that the other manufactured home is used for farm help; that the proposed manufactured home will be for him; that the existing units will be used for seasonal farm help; and that he has about 4 employees.

Shirley Mereider was sworn in and testified in opposition to the application and stated; that she lives across from the applicant; that she does not want to see a third manufactured home on the property; that the Applicant does not take care of the manufactured homes that exist on the property; and that numerous people come and go from the farm.

Mr. Rickard stated that the manufactured home currently used for farm help does not appear to be in good living condition.

Motion by Mr. Workman, seconded by Mr. McCabe, and carried unanimously that the case be **tabled until January 12, 2004**. Vote carried 5 – 0.

Case No. 8475 – Jay and Jackie Blocker – west of Road 479, south of Hitch Pond Circle, being Lot 116 within Cool Branch Mobile Home Park.

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

Mr. Rickard presented the case. Jay and Jackie Blocker were sworn in and testified requesting a 9.6-foot variance from the required 20-foot separation requirement

between units in a mobile home park for a shed; that the shed was placed in 2001; that he asked the park manager what size shed was allowed in the park; that the manager marked where the shed was to be placed; that the encroachment was discovered due to a plan to sell the manufactured home and shed; and that they have run electric to the shed.

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

Case No. 8476 – Ludmila Raskova – south of Road 361A, 750 feet west of Route One, being Lot 11 within George M. Coleman Lands Development.

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

Mr. Rickard presented the case. Zdenek Rasca was sworn in and testified requesting a 5.9-foot variance from the required 40-foot front yard setback requirement, a 5-foot variance from the required 10-foot side yard setback requirement, a 1-foot variance from the required 10-foot rear yard setback requirement, and a 1.5-foot variance from the required 10-foot side yard setback requirement for a proposed dwelling; that the proposed dwelling will have an overhang within the required setback on the rear and side yard setback; that the proposed outside shower will encroach on the side yard setback requirement; and that the front porch will encroach into the front yard setback requirement.

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

Mr. Rickard stated that the office received 2 letters in support of the application.

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously that the variances be **granted since other variances have been granted in the area and it will not alter the character of the neighborhood**. Vote carried 5 – 0.

Case No. 8477 – Crystal and Brian Lynch – north of Road 382, 30 feet east of Road 388.

A variance from the minimum lot width requirement.

Mr. Rickard presented the case. Brian and Crystal Lynch were sworn in and testified requesting a 24.33-foot variance from the required 150-foot lot width requirement for a parcel; that her parents are going to convey the parcel to them; that they plan to build a dwelling on the proposed parcel; that the manufactured home will be

removed once the dwelling is completed; and that her parents plan to build a dwelling on the remaining parcel.

By a show of hands, 2 parties 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. 8478 – Advance Construction Co. of Delaware – intersection of Bay Shore Drive and Harrison Avenue, being Lots 1, 2, 40 and 41, Block 10, within Broadkilm Beach Development.

A variance from the front and side yard setback requirements.

Mr. Rickard presented the case. Troy Sylvester was sworn in and testified requesting a 0.6-foot variance from the required 10-foot front yard setback requirement and a 4.3-foot variance from the required 15-foot side yard setback requirement; that the land was surveyed to determine whether or not they could build a dwelling; that another survey was done to determine the placement of the dwelling; that the dwelling encroached into the front yard setback requirement in order to keep the dwelling level; that he was unclear about the 15-foot side yard setback requirement; that they have been issued a temporary Certificate of Occupancy; and that he submitted pictures.

Eulalia Mihalik was sworn in and testified in opposition to the application and stated; that she sold the property to the current owners; that she owns the adjacent property; that she is unclear about the variance request on the side yard; that she is concerned the improvement will extend into the existing street; and that after hearing from the Board she is in support of 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 the uniqueness of the parcel**. Vote carried 5 – 0.

Case No. 8479 – Michael and Ethan Rhodes – east of Route One, east of Pierce Avenue, being Lots 17 and 19 within Indian Beach Surf Club Lots.

A variance from the rear yard setback requirement.

Mr. Rickard presented the case. Ethan Rhodes was sworn in with James P. Tyler, III, Attorney, on behalf of the application, and testified requesting a 10-foot variance from the required 10-foot rear yard setback requirement for a proposed dwelling; that they the existing dwelling will be removed; that they want to build the proposed dwelling as far back on the parcel as possible; that building the dwelling as far rear as possible will

allow for a beach dune to be constructed; that the street the dwelling will be built up to is a paper street; that the street is not used for traffic; that the Department of Natural Resource Beach Preservation Department is in support of the application; that the requested variance is in keeping with the character of the neighborhood; that the dwellings in the community are as close as twenty-foot from each other; that the hardship is not created by the Applicant; and that a beach dune will enhance the community.

Bob Casmarsile, was sworn in and testified in support of the application and stated that the Applicant realizes the importance of beach preservation; that the request is in the best interest to the community; that the street in question is only used by foot traffic; and that the community is in the process of taking over ownership of the streets.

Michael Mann and Lynn Mann were sworn in with Rob Witsil, Attorney, and testified in opposition to the application; that this request is very aggressive; that the request will totally eliminate any setback; that the street is used for emergency vehicles and traffic to the beach; that the Mann's live adjacent to the property; that they have concern for their privacy and safety; that the Department of Natural Resources letter approves the proposed plan as far west as the County will allow; that there is concern for the type of dwelling that will be built since the Applicant has not submitted any plans; that the State of Delaware will pay for the beach replenishment; that the beach replenishment will be a windfall for the Applicant; and that the Mann's have made a substantial offer to the Applicant for the property.

Mr. Mann, confirmed Mr. Witsil's testimony and that if he was able to purchase the property from the Applicant he would leave the property vacant and allow the community to use the property.

In rebuttal, Ethan Rhodes stated that the opposition was granted a variance for their dwelling; that the proposed offer on the property is well under the appraised value; and that the opposition purchased their property believing that once the existing dwelling was lost to the ocean another dwelling could never be built on the property again.

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

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

Motion by Mr. McCabe, seconded by Mr. Workman, and carried unanimously that the case be **tabled until January 12, 2004**. Vote carried 5 – 0.

Case No. 8480 – Tunnell Companies L.P., T/A Pot Nets Seaside – south of Route 22, northeast of Sandpiper Road, within Pot-Nets Seaside Mobile Home Park.

A variance from the maximum height requirement.

Mr. Rickard presented the case. Rob Tunnell was sworn in and testified requesting a 18-foot variance from the required 42-foot maximum height requirement for

a Community Center building; that the center will have a Bait and Tackle store and a Grill; and the second and third floors will be for community use; that the crow's nest is at a height that will allow residents to view the ocean and the bay; that the closest structures to the building are approximately 300-foot away; and that they feel the center will create a landmark and be a unique addition to the community.

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 since it will not alter the character of the neighborhood and it will be an asset to the community**. Vote carried 5 – 0.

Case No. 8481 – Dennis R. and Juanita J. Whaley – west of U.S. Route 13, west of Windsor Street, being Lots 24, 25, and part of Lot 23 within Lloyd's Subdivision.

A variance from the side and rear yard setback requirements.

Mr. Rickard presented the case. Dennis and Juanita Whaley were sworn in and testified requesting a 9-foot variance from the required 20-foot rear yard setback requirement and a 3-foot variance from the required 10-foot side yard setback requirement for a proposed detached garage; that they plan to remove an existing garage; that the proposed garage will be placed the same distance from the property line as the existing garage; that by building the proposed garage within the required setbacks the garage will protrude into the existing driveway; and that they have obtained a building permit.

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

OLD BUSINESS

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.

The Board discussed the case.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted for the front yard setback since the hardship was not created by the Applicant and due to the uniqueness of the lot**. 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.

Mr. Rickard read a letter from the Applicant explaining why they missed their hearing and that they would like to re-apply.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the Applicant **may re-apply for the next available date and to pay the filing fee.**
Vote carried 5 – 0.

Meeting Adjourned 9:38 p.m.