



Board of Adjustment

Agendas & Minutes

MINUTES OF JANUARY 10, 2005

The regular meeting of the Sussex County Board of Adjustment was held on Monday evening, January 10, 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 January 3, 2005 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. 8915 – Carolyn and Ronald Cagle – south of Route 54, east of Bay Berry Road, being Lot 26, Block H within Keen Wik Development.

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

Mr. Rickard presented the case. Carolyn and Ronald Cagle were sworn in and testified requesting a 2.3-foot variance from the required 10-foot side yard setback requirement, a 2-foot variance from the required 10-foot side yard setback requirement, a 3.7-foot variance from the required 10-foot side yard setback requirement, and a 4.4-foot variance from the required 30-foot front yard setback requirement; that they want to enclose the existing decks; that the dwelling was built in 1967; that the neighbors are in support of the application; and that the Homeowner's Association is in support of 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 variances be **granted**. Vote carried 5 – 0.

Case No. 8916 – Allen Raczkowski – south of Route 22, west of Sharks tooth Drive, being Lot 5 within Pot Nets Seaside Mobile Home Park.

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

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Mr. Rickard presented the case. Allen and Michael Raczkowski were sworn in and testified requesting a 3.3-foot variance from the 20-foot separation requirement between units in a mobile home park; that they built an 18'x 27' addition to the rear of the unit; that they wish to extend the existing 10'x 10' deck down the side of the unit and meet with the addition; that they believe the unit was placed wrong; that the neighbor needed a similar variance for his deck; and that they submitted a drawing.

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 a 3.3-foot variance between units and check the neighbor for a variance**. Vote carried 5 – 0.

Case No. 8917 – Scott and Joni Knoll and Ray and Kathy Wolownik – south of Route 22, north of River Road, being Lot 10 within Pot Nets Bayside Mobile Home Park.

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

Mr. Rickard presented the case. Joni and Scott Knoll were sworn in and testified requesting a 10.7-foot variance from the 20-foot separation requirement between units in a mobile home park; that the original location they planned for the shed, blocked the neighbors view; that the shed would comply with the setback requirements in the original location; that the variance is needed for the proposed location; and that the neighbor is in support of the application.

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

Case No. 8918 – Ray B. Sisk – intersection of Poplar Street and Sailor Road, being Lot 4.

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

Mr. Rickard presented the case. Ray and Patty Sisk were sworn in and testified requesting a 16-foot variance from the required 20-foot rear yard setback requirement for a detached pole building; that he purchased the property 2-years ago; that the shed

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already existed; that they were not aware of any encroachments at the time of settlement; and that the smaller shed has been removed.

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 due to the unique size of the lot and was not created by the Applicant and since it will not alter the character of the neighborhood and is a minimum variance request.** Vote carried 5 – 0.

Case No. 8919 – Anderson Homes – south of Route 23, east of Blue Mist Drive, being Fairfield At Long Neck Development.

A variance from the separation requirement between townhouse units.

Mr. Rickard presented the case. Michael Morgan and Ramesh Batta were sworn in with Jim Fuqua, Attorney, on behalf of the application, and testified requesting a 4.8-foot variance from the required 40-foot separation requirement between townhouse units, a 8.6-foot variance from the required 40-foot separation requirement for buildings 1 and 4 and the fire room, a 3-foot variance from the required 40-foot separation requirement between townhouse units for buildings 6 and 7, a 3.8-foot variance from the required 40-foot separation requirement between townhouse units for buildings 6 and 8, a 3.6-foot variance from the required 40-foot separation requirement between units for building 7 and 10 fire room, an 8.6-foot variance from the required 40-foot separation requirement between townhouse units for buildings 9 and 11 fire room, a 0.2-foot variance from the required 40-foot separation requirement between townhouse units for buildings 9 and 5, a 0.2-foot variance from the required 40-foot separation requirement between townhouse units for buildings 5 and 3, and a 8.6-foot variance from the required 40-foot separation requirement between townhouse units for buildings 5 and 3 fire room; the Fairfield at Long Neck is a new development; that the development consists of 164-units in 24-buildings; that the property is zoned C-1 which permits multi-family structures; that the

original site plan showed the 40-foot separation requirement; that the Fire Marshall requested that a small utility type structure be built to house fire safety equipment; that the surveyor hired by the Applicant made an error when staking the property; that the error went unnoticed until the Applicant requested a Certificate of Compliance; that the buildings meet the requirements for the Fire Marshall Department; that the surveyor has never been before the Board of Adjustment in his 21-years of service in Sussex County; that to move the buildings in compliance would be a great hardship; that several settlements have been postponed; and that they submitted pictures.

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Ramesh Batta, stated that the employees responsible for the errors have resigned; that the rest of the development will be staked correctly; and that the variances will not alter the character of the neighborhood.

Jerry Gill was sworn in and testified in support of the application and stated that she is a prospective buyer of one of the units; that her settlement has been postponed since Thanksgiving; that she agrees that there have been gross multiple errors made; and that she and other buyers have been displaced waiting for the variances to be granted.

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 **granted since they will not alter the character of the neighborhood.**
Vote carried 5 – 0.

Case No. 8921 – Bayside Homes – north of Road 270, east of Colonial Lane, being Lot 40 within Colonial East Mobile Home Park.

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

Mr. Rickard presented the case. Este Class and Ryan Class were sworn in and testified requesting a 3-foot variance from the required 20-foot separation requirement between units in a mobile home park; that the proposed unit will measure 16'x 66'; that the proposed shed will measure 8'x 10'; that the shed will be placed to the side of the unit; and that they submitted a new drawing.

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 for a 3-foot variance.** Vote carried 5 – 0.

Case No. 8922 – Bayside Homes – north of Road 270, east of Spinning Wheel Lane, being Lot 52 within Colonial East Mobile Home Park.

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

Mr. Rickard presented the case. Este Class and Ryan Class were sworn in and testified requesting a 6-foot variance from the required 20-foot separation requirement between units in a mobile home park; that they submitted a new sketch; that the steps were taken into consideration at the time the application was submitted; that further

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review has determined a variance will not be needed; and that shed 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 variance be **denied as unnecessary**. Vote carried 5 – 0.

Case No. 8923 – Janki Ramnath – northwest of Road 485, east of U.S. Route 13A.

A variance from the separation requirement between a neighboring dwelling and a poultry manure composting structure.

Mr. Rickard presented the case. Janki Ramnath was sworn in and testified requesting a 30-foot variance from the required 200-foot separation requirement between a neighboring dwelling and a poultry manure composting structure; that the proposed structure will measure 40' x 88'; that the DNREC office recommended the location of the proposed structure; that due to existing tax ditches on the property keep him from locating the structure on the other side of the existing poultry houses; that a tree lined buffer will also be implemented; that currently the manure is stored on a concrete pad until the farmer can remove the manure; that the shed will keep the manure dry and odor free; and that he submitted paperwork.

Cecil Parker was sworn in and testified in opposition to the application and stated that there is already 3 or 4 chicken houses behind his dwelling; that all the rainwater runs down from the chicken houses and into the ditches; and that his dwelling is one of the dwellings effected by the variance.

Ralph Bolton was sworn in and testified in opposition to the application and stated that he cannot breathe due to the existing poultry houses; that everyone knows that

chicken @&*#! stinks; and that he does not know why the shed cannot be placed across the ditch.

Betty Bolton was sworn in and testified in opposition to the application and stated that the odor from the chicken houses is unbearable; that due to the chicken houses she cannot open a “winder” on a nice day; that when the new chicken houses were built she said “Wow Lordy!” more odor; and that when she received notice on the manure shed she said “Wow Lordy!”

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Jane McQuaide was sworn in and testified in opposition to the application and stated that she lives across the street; that there is an awful smell from the farm; and that she has owned her property for about a 1-1/2-years.

Linda Martin was sworn in and testified in opposition to the application and stated that she lives in the second dwelling effected by the variance request; that she never received a notice for the hearing; and that she feels the Applicant should have approached her personally.

In rebuttal, Janki Ramnath, stated that he purchased the property in 1993; that one chicken house is 60-years old; that another chicken house is 40-years old; that he is trying to contain the odor by erecting a manure shed and the tree line buffer; and that he was not aware of the neighbors concerns.

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

Case No. 8924 – Randall Nowell – southwest of Road 395, south of Captains Lane, being Lot 45, Block 1 within Bayview Estates Development.

A variance from the side yard setback requirement.

The Board found that no one was present on behalf of this case.

Mr. Callaway stated that the case would be carried until the end of the public hearings.

At the conclusion of the public hearings, Mr. Callaway again asked if any one was present on behalf of this case.

The Board again found that no one was present on behalf of this case.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **denied due to lack of representation**. Vote carried 5 – 0.

Case No. 8925 – Francis and Susan Barnes – south of Route One, south of Prince Street, being Lot 214 within Camelot Mobile Home Park.

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

Mr. Rickard presented the case. Frank and Susan Barnes and Frank Joseph were sworn in and testified requesting a 2.5-foot variance from the required 20-foot separation

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requirement between units in a mobile home park; that the variance was discovered during the hearing for maximum allowable lot coverage variance; that they are extending a sunroom; and that the mobile home park is in support of the application.

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 that the variance be **granted since it will not alter the character of the neighborhood**. Vote carried 5 – 0.

Case No. 8926 – Russell and Jane Scala – east of Road 493, 976 feet south of Road 496.

A variance from the setback requirement for a poultry house and a variance from the separation requirement between a neighboring dwelling and a poultry house.

Mr. Rickard presented the case. Jane Scala and Mona Wright and Brian Page were sworn in and testified requesting a 25-foot variance from the required 50-foot setback requirement for a poultry house and a 60-foot variance from the required 200-foot separation requirement between a dwelling and a poultry house; that Brian Page, stated strongly recommends the Board to table the case, until an archaeological investigation can be undertaken; that the State of Delaware Historic Preservation Office notified him on January 5, 2005; and that he submitted a letter on January 10, 2005 for the Board's review.

Mona Wright, stated that they contacted George Collins in reference to the cemetery and he has no recollection of the cemetery; that another long time resident has no recollection of the cemetery; that the dwelling effected by the variance the Applicant owns; that within one square mile area there are 27-chicken houses; that the third chicken

house is needed to make the farm financially sound; that the farm is well run and maintained; and that a potential buyer is approved pending the approval of this variance.

Brian Page, stated that there are 2 conflicting sets of deeds in reference to the cemetery; that there are no mandated setbacks from a cemetery; that the Applicant cannot build on top of a cemetery; that the State could penalize the property owners and the County if the proper procedures are not followed; and that he has only had a few days to investigate the information he has obtained.

Ronald Gerald was sworn in and testified in support of the application and stated that he is the potential buyer of the property; that he will be raising Cornish hens; that

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there is only day time traffic when raising Cornish hens; that the mortality rate is 45% less per day than the Rooster program; that concrete loading pads will be at the end of each poultry house; that a tree buffer will be implemented; that the manure shed will need to be enlarged to handle the third poultry house; and that he will also be involved with the Perdue Agri-Manure program which removes the manure from the farm to be made into a pellet form.

Bill Brown was sworn in and testified in support of the application and stated that the farm will be enrolled in a dry manure plan; that the center of the poultry houses are cleaned out annually; that the rest of the poultry houses are cleaned out bi-annually; that the manure is removed by a device from inside the poultry houses; that the manure is then loaded into a covered truck; that the large tunnel fans will be placed on the end of the poultry houses to keep the noise and dust down for the neighbors.

Kenny Bounds was sworn in and testified in support of the application and stated that he is with Mid-Atlantic Farm Credit; that there are conditions in the loan to help with keeping the farm environment and neighbor friendly; that there will be no further expansion to the farm; and that he lives in the area.

Robin Jones was sworn in and testified in opposition to the application and stated that she has been the Applicant's neighbor for 23-years; that there were wooden markers on the property to indicate the area of the cemetery; that she submitted copies of deeds that reference the cemetery; that the church burnt down somewhere between the years of 1967 and 1970; that she has tried to bring the problem with the cemetery before the County in 1984 and again in 1999; and that she is opposed to the proposed chicken house being within 200-foot of her property.

Mr. Mills stated that he will abstain from voting on this case, due to the fact that he is related to the opposition.

Howard Anger was sworn in and testified in opposition to the application and stated that he has been a resident to the area since 1970; that a neighbor has been approached and questioned on what happened to the old church and cemetery; and that they submitted letters.

By a show of hands 6 parties appeared in support of the application.

By a show of hands 7 parties appeared in opposition to the application.

Mr. Rickard stated that the office received 27 letters in opposition to the application.

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Motion by Mr. Workman, seconded by Mr. Hudson, and carried unanimously that the case be **tabled and left open to for submission of the archaeological report within ninety (90) days**. Vote carried 4 – 0 – 1 with Mr. Mills not voting since he stated he had a relative involved with the case.

Case No. 8927 – Wayne Hitchens and Patricia Ann Jenkins – northeast of U.S. Route 113, 2,022 feet northwest of Road 377.

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

Mr. Rickard presented the case. Wayne Hitchens and Bryan Hitchens were sworn in and testified requesting a 22.15-foot variance from the required 150-foot lot width requirement for a parcel; that he wants to subdivide a 1.88-acre parcel for his daughter; that the remaining 9-acre parcel will remain in his name; that they have no plans of further subdivision; and that they plan to remove one of the existing driveways.

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

Case No. 8928 – Linda Westerside – south of Route 54, south of Breakwater Run, being Lot 195 within Keenwick Sound Phase II Development.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. Ken Westerside and Troy Wheatley were sworn in and testified requesting a 4-foot variance from the required 30-foot front yard setback requirement for a covered entry porch; that the covered porch will create a new entrance

for the dwelling; that a new addition has been built on the front of the dwelling; that covered entry will provide shelter from the weather; and that the neighbors are in support of the application.

Mr. Rickard stated that the office received 8 letters in support of the application.

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

Motion by Mr. Hudson, seconded by Mr. McCabe, and carried unanimously that the variance be **granted since it will not alter the character of the neighborhood.**

Vote carried 5 – 0.

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Case No. 8929 – Mark Hardesty – west of Road 553A, 3,837 feet north of Road 553.

A special use exception for determination of existence of a storage building.

Mr. Rickard presented the case. Mark Hardesty and David Smith were sworn in and testified requesting a special use exception for determination of existence of a storage building; that they purchased the property in July 2004; that the existing building measures 37'x 445'; that the previous owners seemed to use the old chicken house strictly for storage; that there is a concrete floor throughout the building; that they would like to continue to use the building for storage; that they plan to make repairs to the existing building; and that they plan to make more improvements to the property.

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

OLD BUSINESS

Case No. 8850 – Francis and Susan Barnes – south of Route One, south of Prince Street, being Lot 214 within Camelot Mobile Home Park.

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

The Board discussed the case which has been tabled since November 15, 2004.

Motion by Mr. Mills, seconded Mr. McCabe, and carried unanimously that the variance be **granted since it will not alter the character of the neighborhood.**

Vote carried 5 – 0.

Case No. 8782 – White House Beach, Inc. – southeast of Route 22, south of West Harbor Drive, being Lot 612 within White House Beach Mobile Home Park.

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

Mr. Rickard read a letter to the Board from the Applicant stating they no longer wanted to precede with the hearing.

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Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the case be **denied since it does not meet the standards for granting a special use exception**. Vote carried 5 – 0.

Case No. 8875 – Raymond E. Townsend, Jr., Inc. – west of Road 340, 850 feet north of Road 382.

A special use exception to determine existence for the establishment of an existing borrow pit operation.

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

Mr. Mills stated that some of the oppositions testimony assisted with the determination of the borrow pits existence.

Mr. Mills stated that he received information pertaining to this case after the public hearing and this information was disregarded.

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

Meeting Adjourned 10:04 p.m.