



Board of Adjustment
Agendas & Minutes

MINUTES OF JANUARY 24, 2005

The regular meeting of the Sussex County Board of Adjustment was held on Monday evening, January 24, 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, Ms. Hudson – Zoning Inspector, II, Mr. Rickard – Secretary to the Board, 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 10, 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. 8930 – Backwater Builders, Inc. – east of intersection of road 364B and road 364A.

A variance from the minimum square footage requirement for a parcel.

Mr. Rickard presented the case. Edward Fallon was sworn in and testified requesting a 10,555-square-foot variance from the required 32,670-square-foot minimum for a parcel; that he and his business partner own the property; that they are dissolving the partnership; that they wish to subdivide the parcel; that they plan to build their own dwellings on the parcels; and that the dwellings 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. 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. 8931 – David A. Truitt – east of Road 413, 350 feet south of Road 415.

A variance from the rear yard setback requirement.

Mr. Rickard presented the case. David Truitt was sworn in and testified requesting a 3.4-foot variance from the required 5-foot rear yard setback requirement for an existing

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shed; that the shed measures 8' x 10'; that the shed was a kit he purchased from Home Depot; that he was not aware a building permit was required; that the neighbor that owns the adjacent property has no objection to the application; and that he may purchase a portion of the property behind 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 it will not alter the character of the neighborhood and that the Applicant obtain a building permit**. Vote carried 5 – 0.

Case No. 8932 – Bunting Gray, LLC – north of Route 54, west of Leisure Drive, being Lot 107 within The Refuge at Dirickson Creek development.

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

Mr. Rickard presented the case. Mike Cicada was sworn in with John Sergovic, Attorney, on behalf of the application, and testified requesting a 0.5-foot variance from the required 10-foot side yard setback requirement and a 0.3-foot variance from the 30-foot front yard setback requirement for an existing covered porch; that a Certificate of Occupancy was issued; that the encroachment was discovered on a survey done for settlement; that they believe the curve in the road may have contributed to the error; and that they submitted a survey for the neighbors dwelling.

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

Case No. 8933 – Robert Green – west of Manor Drive, northeast of Newport Circle, being Lot 58 within Country Manor, Pine Bay Section development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Cindy Feitelson was sworn in with James Hall, Attorney, on behalf of the application, and testified requesting a 0.4-foot variance from the required 10-foot side yard setback requirement for an existing dwelling; that the dwelling was built in 1992; that a Certificate of Occupancy was issued in 1992; that a survey done for settlement showed the encroachment; that the previous owner was not

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aware of any encroachment; that the Homeowner's Association is in support of the application; and that the wetlands may have contributed to the error.

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 shape of the lot.** Vote carried 5 – 0.

Case No. 8934 – Estate of Phyllis L. Dampman – west of Beaver Dam Road (Road 285), 850 feet north of Road 287.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Barbara O'Leary, Attorney, on behalf of the application, testified requesting a 1-foot variance from the required 5-foot side yard setback requirement for an existing detached garage; that a Certificate of Occupancy was issued on the garage; that they combined two parcels so that the other shed would meet the setback requirements; and that the encroachment was not discovered until settlement.

Carol Mahelsik was sworn in and asked a few questions pertaining to the variance request; that she owns the adjacent property; and that she wanted to know if the variance request was for the existing garage only.

The Board stated that the variance request was only for the existing garage not applicable for any further improvements.

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

Case No. 8935 – David Bohenic – south of Route 22, East River Drive, being Lot C-13 within White House Beach Mobile Home Park.

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

Mr. Rickard presented the case. David Bohenic was sworn in and testified requesting a 5-foot variance from the required 20-foot separation requirement between units in a mobile home park; that he wants to place a 32'x 54' manufactured home; that the existing shed will be removed; that the variance request is from his neighbors deck on Lot 12D; and that there has been a variance issued for Lot 12D.

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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 for a 5-foot variance since it will not alter the character of the neighborhood and there have been numerous variances granted in the mobile home park.** Vote carried 5 – 0.

Case No. 8936 – Carl Williams and Robert Derrickson – southwest of Route One, south of Rogers Avenue, being Lot 15, Block B within Ann Acres development.

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

Mr. Rickard presented the case. Barbara O'Leary, Attorney, on behalf of the application and testified requesting a 1.4-foot variance from the required 10-foot side yard setback requirement and a 0.3-foot variance from the required 30-foot front yard setback requirement; that the builder did not meet the setback requirements; that the encroachment was discovered by a survey done for settlement; that this dwelling conforms to the setback requirements better than other dwellings in the development; that the Certificate of Occupancy was issued in May 2004; and that she 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. Workman, and carried unanimously that the variances be **granted since it will not alter the character of the neighborhood and it is a minimum variance request.** Vote carried 5 – 0.

Case No. 8937 – Centex Homes – 200 feet west of Road 346B, 0.9 mile north of Road 346 and northwest of Park View Drive, within Ellis Point development.

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

Mr. Rickard presented the case. Josh Mestrangelo was sworn in with Jim Fuqua, Attorney, on behalf of the application, and testified requesting a special use exception to place a manufactured home type structure as a sales office; that the unit will measure 24'x 50'; that the unit will be needed for approximately 18-months; that the unit will have landscaping and adequate parking; that they are requesting the use for 3-years; and that they submitted pictures and a site plan.

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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 special use exception be **granted for a period of three (3) years**.
Vote carried 5 – 0.

Case No. 8938 – JBS Construction LLC – east of Road 288A, east of Holly Oak Drive, being Lot 16 within Holly Oaks development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Bruce Wardwell was sworn in and testified requesting a 1.1-foot variance from the required 15-foot side yard setback requirement for an existing dwelling; that an error was made when the dwelling was built; that he is the builder; and that he was quite surprised when the encroachment was discovered.

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.

The case was **tabled until February 7, 2005** due to lack of a motion from the Board.

Case No. 8939 – Ronald E. Hudson – northeast of Road 318, 348 feet southeast of Road 318A, being Lots 4 and 5 within James M. Tunnell Sr. 5th Addition development.

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

Mr. Rickard presented the case. Ronald Hudson was sworn in and testified requesting a 14.4-foot variance from the required 20-foot rear yard setback requirement and a 5-foot variance from the required 10-foot side yard setback requirement for an existing detached garage; that the detached garage was built approximately 20-years ago; that he hired an out of state contractor to construct the garage; and that the encroachment was discovered by a survey done for settlement.

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

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Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the variances be **granted since the garage has been on the lot for 20-years**.
Vote carried 5 – 0.

Case No. 8940 – George and Donna Welford – north of Road 358, northeast of Dove Road, being Lot 38 within Bayshore Mobile Home Park.

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

Mr. Rickard presented the case. Donna Welford was sworn in and testified requesting a 7-foot variance from the required 20-foot separation requirement between units in a mobile home park; that the shed measures 6'x 8'; that there is no other location on the lot for the shed; that the park is in support of the application; and that a Certificate of Occupancy was issued, but for the wrong shed.

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**.
Vote carried 5 – 0.

Case No. 8941 – Kenneth Durgin – southeast of Route 22, north of Bay Berry road, being Lot 86 within Pot Nets Bayside Mobile Home Park.

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

Mr. Rickard presented the case. Kenneth Durgin was sworn in and testified requesting a 2-foot variance from the required 20-foot separation requirement between

units in a mobile home park, a 4-foot variance from the required 20-foot separation requirement between units in a mobile home park and a 3-foot variance from the required 5-foot rear yard setback requirement; that he wants to square off the existing carport; that he wants to build an a-roof over the existing deck; and that the a-roof will extend over the entire structure.

Mr. Mills stated that the Applicant might be over the 35% allowable lot coverage requirement.

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

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Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case be **tabled until the Planning and Zoning Department can determine the total lot coverage for the Applicant**. Vote carried 5 – 0.

Case No. 8942 – Donald A. Wagner, Jr. – west of Road 290, 1,520 feet southeast of Road 292, being Lot 2.

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

Mr. Rickard presented the case. Donald Wagner, Jr. was sworn in and testified requesting a 98.21-foot variance from the required 150-foot lot width requirement for a parcel; that he wants to subdivide a parcel for his daughter; that he has approved entrances from DelDOT; and that he plans to build a new dwelling on the parcel.

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 since the lot is for a family member and they have DelDOT approval**. Vote carried 5 – 0.

Case No. 8943 – Chris Wareing – south of Road 277, 100 feet west of Sycamore Drive, within Holly Oak Acres Condo.

A special use exception for a pond on less than five (5) acres.

Mr. Rickard presented the case. Chris Wareing was sworn in and testified requesting a special use exception for a pond on less than five (5) acres; that the pond will go in the same location as the in-ground pool; that a pond will better serve the

environment; that he still needs to go over the requirements with Soil Conservation; that he plans to have fish in the pond; and that his neighbor is in support of the application.

Mr. Rickard stated that the office received 1 letter in support of the application.

Mr. Rickard stated that the office received 1 letter in opposition to the application and read the letter into record.

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

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Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously that the special use exception be **granted since it will not alter the character of the neighborhood and since Natural Resources Conservation Service will establish requirements for the pond**. Vote carried 5 – 0.

Case No. 8944 – John Husband, Jr. – northwest of Route 54, south of Cedar Road, east of Keenwik Road, being Lot 18, Subdivision 3, Block G within Keenwik On The Bay development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Al Niger was sworn in and testified requesting a 5-foot variance from the required 10-foot side yard setback requirement for existing attached sheds; that they obtained a building permit for the sheds; that they canvassed the neighborhood and established how the neighbors sheds were constructed; that the Homeowner's Association is in support of the application; that they purchased the dwelling in January 2004; and that they submitted pictures.

Mr. Rickard stated that the office received 2 letters of opposition to the application and read the letters into record.

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 there have been similar variances granted in the development**. Vote carried 5 – 0.

OLD BUSINESS

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

A variance from the minimum square footage requirement for a parcel, 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 January 3, 2005.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the variances and special use exception be **granted since it will not alter the character of the neighborhood**. Vote carried 5 – 0.

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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.

The Board discussed the case, which has been tabled since January 10, 2005.

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

Meeting Adjourned 8:34 p.m.