



Board of Adjustment

Agendas & Minutes

MINUTES OF MARCH 1, 2004

The regular meeting of the Sussex County Board of Adjustment was held Monday evening March 1, 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 as circulated. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of February 9, 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. 8541 – William Dean Simpson – south of Route 54, south of West Stoney Run, being Lot 298 within Keenwick Sound Development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. William Simpson was sworn in and testified requesting a 6-foot variance from the 10-foot side yard setback requirement for steps; that he built the new dwelling in the Spring of 2000; that one week prior to settlement the Zoning Inspector made him aware that the steps were encroaching into the setback; that he had to remove the steps in order to obtain a Certificate of Occupancy; that his mortgage company would not accept a temporary Certificate of Occupancy that the Planning and Zoning Department offered to issue until after the hearing; that without the steps he only has one access in and out of his dwelling; and that his neighbors are in support of the application.

Mr. Rickard stated that the office received 4 letters in support of the application.

Mr. Rickard stated that the office received 2 letters in opposition to the application.

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

Minutes
March 1, 2004
Page 2

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. 8542 – Stella V. Sperry – north of Road 410, 827 feet east of Road 433.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Stella V. Sperry was sworn in and testified requesting a 3-foot variance from the required 5-foot side yard setback requirement for an existing detached garage and a 2-foot variance from the required 5-foot side yard setback requirement for an existing shed; that she obtained a building permit for the shed; that the detached garage was there at the time she purchased the property; and that the Planning and Zoning Department issued Certificates of Occupancy.

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

Case No. 8543 – Gemcraft Homes – north of Road 277, west of Road 279, being Lot 37 within Bay Ridge woods Development.

No one appeared on behalf of the application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **denied for lack of record of support**. Vote carried 5 – 0.

Case No. 8544 – Rhonda and Joseph W. Messick, Jr. – east of Road 62, 2,589 feet north of Road 66.

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

Mr. Rickard presented the case. Rhonda Messick and Joseph Messick, Sr. were sworn in and testified requesting a special use exception to connect two (2) manufactured homes to make one (1) unit; that the existing unit measures 14' x 56'; that the second unit will measure 12' x 50'; that the units will be connected by a 4' x 20' hallway addition;

Minutes
March 1, 2004
Page 3

that the units cannot be seen from the road; that they plan to build an a-frame roof over the two units; and that the units will have the same siding and a block foundation.

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 case be taken 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. Workman, and carried unanimously that the special use exception be **granted with the stipulation that an A-roof, block foundation, siding and one (1) kitchen be completed within a two (2) year period and since it will not alter the character of the neighborhood.** Vote carried 5 – 0.

Case No. 8545 – Gerald Wayne Hartsell – south of Road 381A, 1,060 feet west of Road 370B.

A variance from the maximum height requirement for a fence.

Mr. Rickard presented the case. Gerald Wayne Hartsell was sworn in and testified requesting a 2.5-foot variance from the required 3.5-foot height requirement for a fence; that Sussex Fence erected the fence without a building permit; that he obtained the building permit after the Zoning Inspector made him aware of the violation; that his neighbor is in support of the application; 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 case be **tabled until March 8, 2004.** Vote carried 5 – 0.

Case No. 8546 – Raymond R. and Nancy S. Holmes – north of Road 333, River Bend Drive, being Lot 36 within River Bend Development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Raymond Holmes was sworn in with Dave Rutt, Attorney, on behalf of the application and testified requesting a 2.3-foot variance from the required 5-foot side yard setback requirement for an existing detached garage; that the garage was built in 1985; that the Applicant purchased the property in 2000; that a survey was done for settlement and showed the encroachment; that the neighbors have no

Minutes

March 1, 2004

Page 4

objection to the application; and that the variance will not alter 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. Hudson, 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. 8547 – Garth N. and Mary L. Huckins – north of Road 20-A, 80 feet east of Road 516.

A variance from the minimum lot size requirement.

Mr. Rickard presented the case. Douglas Annand was sworn in and testified requesting a 4,418-square-foot variance from the required 32,670-square-foot lot size requirement for a parcel; that the Applicant wishes to extend a portion of Parcel 9 to Parcel 8; that the subdivision will give Parcel 8 access to the pond; and that by subdividing the Applicant hopes to create a more desirable lot.

Glen VanFleet was sworn in and testified in opposition to the application; that he lives across the street from the property; that he is concerned about the type of dwelling that can be built on the new parcel; that the neighborhood consists mainly of dwellings 200-years old or more; that the variance will adversely affect the character of the neighborhood; and that he submitted a picture.

Mr. Rickard stated that a dwelling can be built on the parcel as it exists now.

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

The Board found that 1 party appeared in opposition to the application.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the case be taken 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. Workman, and carried unanimously that the variance be **denied since it will alter the character of the neighborhood**.
Vote carried 5 – 0.

Minutes
March 1, 2004
Page 5

Case No. 8548 – Jeffrey E. James – east of Road 318, southeast of Road 321, being Lot 27B within James Tunnell 6th Addition Development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Jeffrey James was sworn in and testified requesting a 10-foot variance from the required 15-foot side yard setback requirement for a proposed detached garage; that the proposed detached garage will measure 24' x 26'; that the proposed location will allow the garage to line up with his existing driveway; and that he would like to maintain the proposed size to allow for extra room for a workshop.

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. 8549 – George and Blanche Donato – northeast of Road 350, north of Maplewood Drive, being Lot 62 within Denton Woods Development.

Mr. Rickard presented the case. George Donato was sworn in and testified requesting a 1.1-foot variance from the required 5-foot side yard setback requirement for a gazebo and a 3-foot variance from the required 5-foot rear yard setback requirement for a shed; that he purchased the lot in 1989; that the placement of the shed was based on existing stakes set by the developer; that a new survey showed the encroachment of the shed and gazebo; that he submitted pictures; and that his neighbors are in support of the application.

By a show of hands, 3 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. Mills, and carried unanimously that the variances be **granted since it will not alter the character of the neighborhood and that a letter sent to the gazebo company**. Vote carried 5 – 0.

Case No. 8550 – Billie Ann Stevens – northeast of Road 385, 1,410 feet east of Road 17.

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

Minutes
March 1, 2004
Page 6

Mr. Rickard presented the case. Billie Ann Stephens was sworn in and testified requesting a 100-foot variance from the required 150-foot lot width requirement and a 5.74-foot variance from the required 150-foot lot width requirement for a parcel; that she wants to subdivide the parcel to build a new dwelling; that the existing dwelling will remain and be sold with the residual property; and that she has no objection to a shared driveway.

Jeff Sowinski, was sworn in and testified in opposition to the application that he owns the property across the road; that he is concerned with the type of dwelling that can be built on the two properties; that the deed restriction on surrounding properties only allows a dwelling of 1800-square-foot or more; and that he questions the reason for a 50-foot road or driveway.

Richard Weber, was sworn in and testified in opposition to the application that his main concern was for a potential water run off problem; and that his neighbors have back filled a ditch.

Harvey Black, was sworn in and testified in opposition to the application that he does not feel the Applicant has met the requirements for granting a variance; and that he is concerned that if the Board does not take deed restrictions into consideration it will ultimately result in adversely affecting the neighborhood.

In rebuttal, Billie Ann Stevens, stated that the proposed dwelling will exceed 1800-square-foot requirement the surrounding properties have had to follow.

By a show of hands, 7 parties appeared in support of the application.

By a show of hands, 4 parties appeared in opposition to the application.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the case be taken 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. Workman, and carried unanimously that the case be **tabled until March 15, 2004**. Vote carried 5 – 0.

Case No. 8551 – Joseph Baker and Janice Gohl – north of Route 54, 1,112 feet east of Road 389.

A special use exception to continue operation of a commercial dog kennel.

Minutes
March 1, 2004
Page 7

Mr. Rickard presented the case. Joseph Baker and Janice Gohl were sworn in and testified requesting a special use exception to retain a commercial dog kennel; that the kennel has been in operation for 15-years; that there are no changes from the previous special use exception that have been granted; and that they have no plans of increasing the number of dogs.

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

Case No. 8552 – Elliot and Denise Zatwarnysky – east of Road 258, north of North Lake Drive, being Lot 19 within Lazy Lake Development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Elliot and Denise Zatwarnysky were sworn in and testified requesting a 1-foot variance from the required 10-foot side yard setback requirement for a proposed manufactured home; that they are seeking the variance so the unit will face the front property line; that to meet the required setbacks the unit would have to face the side property line; that they submitted a letter in support of the application; and that Atlantis Homes let the Applicant know that a previous variance had been granted in the development.

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**. Vote carried 5 – 0.

Case No. 8553 – Valerie Chastain – east of Road 233, 843 feet northwest of Road 235.

A special use exception to place a manufactured home on a medical hardship basis and a variance from the side yard setback requirement.

Mr. Rickard presented the case. Valerie Chastain was sworn in and testified requesting a special use exception to place a manufactured home on a medical hardship basis; that the variance is not needed now; that the unit can be moved to comply with required setback requirements; and that her mother lives in the unit.

Mr. Rickard stated that the existing unit is not a manufactured home and cannot remain on the property; and that the Applicant should contact the Zoning Inspector to work out a time frame to have the unit removed.

Frank Brown and Antoinette Brown was sworn in and testified in opposition to the application that they were concerned that the manufactured home was too close to their property line; and that they were not opposed to the unit being placed elsewhere on the lot.

By a show of hands, 2 parties appeared in support of the application.

By a show of hands, 2 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 for a period of two (2) years**. Vote carried 5 – 0.

Case No. 8554 – Anthony Vincenti – northeast of Route 5, northeast Bowden Street, being Lot 23 within Bowden Acres Development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Pat Werthen was sworn in with Daniel Myers, Attorney, on behalf of the application and testified requesting a 0.6-foot variance from the required 10-foot side yard setback requirement for an existing dwelling; that the dwelling was built in 1999; that the Applicant purchased the property in 2002; that a survey done for settlement showed the violation; and that the variance will not alter 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. McCabe, 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. 8555 – Rojan, Inc. – intersection of Route One and Road 270-A.

Minutes
March 1, 2004
Page 9

A variance from the front yard setback requirement and a variance from the minimum parking space requirement.

Mr. Rickard presented the case. Bobby Arenson and Ken Christenbury were sworn in and testified requesting a 17.4-foot variance from the required 60-foot front yard setback requirement and a 29-parking space variance from the required 29-parking space requirement; that they plan to expand an existing pet supply store; that the proposed addition will be for storage use only; that the existing Food Lion is in support of the application; and that the shopping center currently has more than enough parking.

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 case be **tabled until March 8, 2004**. Vote carried 5 – 0.

OLD BUSINESS

Case No. 8492 – Stella V. Sperry – north of Road 410, 827 feet east of Road 410 and Road 433.

A variance from the rear yard setback requirement.

The Board discussed the case which has been tabled since January 12, 2004.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **denied since it was determined to be unnecessary**. Vote carried 5 – 0.

Case No. 8531 – Pat Arost – north of Road 277, west of Route 16, being Lot 2 within George A. Metz Subdivision.

A variance from the minimum square footage requirement to place a multisectional manufactured home.

The Board discussed the case which has been tabled February 9, 2004.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until March 15, 2004**. Vote carried 5 – 0.

Case No. 8532 – Jimmie Nanney – west of Route 5, 1,200 feet north of Route 9.

Minutes
March 1, 2004
Page 10

A variance from the minimum square footage requirement to place a multisectional manufactured home.

The Board discussed the case which has been tabled since February 9, 2004.

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, was not created by the Applicant, and for its uniqueness of a multisectional manufactured home**. Vote carried 5 – 0.

OTHER BUSINESS

Case No. 8000 – Paul Daisey – east of Route One, 255 feet north of Virginia Avenue and 205 feet south of Virginia Avenue.

A variance from the minimum square footage requirement for multi-family structures.

Mr. Rickard read the letter requesting a time extension.

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

Case No. 8030 – Edward G. Gallagher – east of Route One, southwest of Kittewoke Road (also known as Kittywake Road), Lot T-6, within Ocean Village Subdivision.

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

Mr. Rickard read the letter requesting a time extension.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the time extension be **granted for a period of two (2) months**. Vote carried 5 – 0.

Case No. 8388 – Fowler & Son Contractor, Inc. – northeast of Road 213B, southeast of Road 213.

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

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

Mr. Berl stated that they can reapply however they must prove there is a substantial difference from the first application.

Minutes
March 1, 2004
Page 11

Case No. 8431 – Catherine Thistle – east of Road 386, 2,055 feet south of Road 368A.

A variance from the front yard setback requirement.

Mr. Rickard read the letter requesting permission to re-apply.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the Applicant be **allowed to reapply and pay the filing fee**. Vote carried 5 – 0.

Meeting adjourned 9:55 p.m.