



Board of Adjustment
Agendas & Minutes

MINUTES OF APRIL 19, 2004

The regular meeting of the Sussex County Board of Adjustment was held Monday evening April 19, 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, 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 April 5, 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. 8586 – Jon R. and Kathleen A. Nuffer – south of Route 54, west of Salty Way East, being Lot 84 within Keenwick West Development.

A variance from the side yard setback requirement.

Mrs. Heffelfinger presented the case. Jon and Kathleen Nuffer were sworn in and testified requesting a 1.79-foot variance from the required 10-foot side yard setback requirement for a proposed garage addition and a 0.6-foot variance from the required 10-foot side yard setback requirement for an existing dwelling; that they purchased the property 1-year ago; that the Planning & Zoning Department made him aware of the encroachment of the dwelling; that he wants to extend the existing garage 10-foot; that the proposed addition will be in line with the existing garage; and that the existing garage was granted a variance in June 1991.

Marie Somers was sworn in and testified in opposition to the application and stated that she was representing the Homeowner's Association; that the covenants for the development were amended in 2000; that she read statements from other property owners in opposition to the application; and that the Association cannot enforce the covenants when the Board approves these variances.

Fenwick Connor was sworn in and testified in opposition to the application and stated that he was concerned that the variance was to further encroach on the side; and that he had no objection to the Applicant coming forward on the property.

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Bill Morrison was sworn in and testified in opposition to the application and stated that he would like the Board to deny the application; and that he is in support of enforcing the covenants.

Marie Somers stated that they have no objection to the variance for the dwelling; and that she would be in support of the garage if they could change the plan for the proposed addition if it would comply with the side yard setback requirement.

In rebuttal, Jon Nuffer, stated that he just received the letter from the Association on March 24, 2004 stating their objection to the application; and that he feels the Association should consider variances on a case by case format.

By a show of hands 7 parties appeared 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 since a previous variance was granted**. Vote carried 3 – 1 – 1.

Case No. 8587 – Thomas and Deborah Hartman – west of Route One, corner of Davis Street and Assawoman Street, being Lot 19 within Bay View Park Development.

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

Mrs. Heffelfinger presented the case. Tom Hartman was sworn in and testified requesting a 6-foot variance from the required 30-foot front yard setback requirement for a second story addition and a 2.1-foot variance from the required 5-foot rear yard setback requirement for a shed; that the addition does not exceed the existing footprint of the existing dwelling; that he obtained the building permit and thought the permit included any required variances; that the neighbors and the Homeowner's Association were 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 variances be **granted since the existing dwelling is non-conforming and since it will not alter the character of the neighborhood**. Vote carried 5 – 0.

Case No. 8588 – Frederick J. and Judith V. Dean – east of Road 495, 200 feet north of Road 497, being Lot 2 within May's Delight Development.

A variance from the side yard setback requirement.

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Mrs. Heffelfinger presented the case. Judith Dean was sworn in and testified requesting a 2.1-foot variance from the required 15-foot side yard setback requirement for an existing dwelling; that she is in the process of purchasing the property; that she will be moving the shed to comply with the required setback requirements; and that the dwelling has been on the lot since 1995 or 1997.

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

Case No. 8589 – David and Christy Parsons – east of Road 501, north of Route 54, being Lots 4 and 5 within Sparrow Whelpton Development.

A variance from the side yard setback requirement.

Mrs. Heffelfinger presented the case. David Parsons was sworn in and testified requesting a 2.4-foot variance from the required 10-foot side yard setback requirement for a proposed detached garage; that the garage will measure 30' x 40'; that an existing sidewalk prevents him from meeting the required setback requirements; and that his neighbor 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 variance be **granted since it will not alter the character of the neighborhood**.
Vote carried 5 – 0.

Case No. 8590 – George and Jeanette Newcomb – east of Road 431, 1,210 feet south of Road 472.

A variance from the side yard setback requirement.

Mrs. Heffelfinger presented the case. Jeanette Newcomb was sworn in and testified requesting a 1.1-foot variance from the required 10-foot side yard setback requirement for an existing manufactured home; that she purchased the property in 1989; that the unit was placed in 1995; and that the manufactured home company placed the unit.

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Mark Gillespie was sworn in and testified with concerns about the septic system that encroaches on his property; and that he has no objection to the application.

By a show of hands 1 party 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. 8591 – David Hamm – north of Route 26, 225 feet east of Road 365.

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

Mrs. Heffelfinger presented the case. David Hamm and Tom Ford were sworn in and testified requesting a 30.5-foot variance from the required 60-foot front yard setback requirement and a 6.8-foot variance from the required 20-foot side yard setback requirement for a proposed service building; that the existing building sustained fire damage in October 2003; that the existing building was non-conforming; that the proposed building will be 2263-square-foot in size; that the proposed building will better enhance today's business needs; that the proposed building will be set further back on the property than the original building; that due to the unique shape of the lot the property cannot be developed as needed to comply; that the proposed building will not alter the character of the neighborhood; that the proposed building will be service bays only; and that he submitted a portfolio.

Mr. McCabe stated for the record that only a small portion of the original building was non-conforming.

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 since the proposed building will be less intrusive**. Vote carried 5 – 0.

Case No. 8592 – Kermick Trammell – south of Route 20, 3,050 feet west of Road 485.

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

Mrs. Heffelfinger presented the case. Levin Williams was sworn in and testified requesting a 38.11-foot variance from the required 150-foot lot width requirement and a

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27.54-foot variance from the required 150-foot lot width requirement for a parcel; that the parcel with 112-foot lot width will be sold by the Applicant; that the residual acreage will be retained by the Applicant; that the Applicant resides on the residual parcel; and that the request is in character of the neighborhood.

Doreen Matthes, Sarah Handy, and Crystal Dickerson were sworn in and testified in opposition to the application and stated that they own property across the street and are concerned what would be placed on the property.

Adelle Walker, Randall DuPont and Dane Martin were sworn in and testified in opposition to the application and stated that they were concerned that their property lines would be altered; and that their property values would suffer.

Mr. Mills showed the proposed subdivision and explained the Applicant's request to the opposition.

The opposition stated that they were in support of 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**.
Vote carried 5 – 0.

Case No. 8593 – Ronald Apperson – north of Route 54, north of Swan Drive, being Lot 53A within Swann Keys Development.

A variance from the side yard setback requirement.

Mrs. Heffelfinger presented the case. Ronald Apperson was sworn in and testified requesting a 4-foot variance from the required 10-foot side yard setback requirement for a proposed addition; that the lot is pie shaped; that the existing screen porch will be removed; that his neighbor is in support of the application; and that the Homeowner's Association advised him to seek a variance from the Board.

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 it will not alter the character of the neighborhood**.
Vote carried 5 – 0.

Case No. 8594 – Paul Robino (Robino-Sea Chase, LLC) – west of Road 274, north of Road 275, being Unit 35 within Estates of Sea Chase Development.

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A variance from the rear yard setback requirement.

Mrs. Heffelfinger presented the case. Roger Gross was sworn in and testified requesting a 1.3-variance from the required 10-foot rear yard setback requirement for an existing unit; that he represents Merestone Consultants, Inc.; that the original site plan and engineering was done by another consulting company; that they received the plan on a digital format; that the graphic depiction of this unit did accurately reflect the footprint of the building being built; that to avoid conflict with an existing transformer the unit was shifted another 5-foot; and that he submitted pictures.

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 is a minimum variance request and since it will not alter the character of the neighborhood**. Vote carried 5 – 0.

Case No. 8595 – P. F. Myers, Inc. – north of Road 14A, southwest of Maass Lane, being Lot 85 within Canal Corkran Development.

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

Mrs. Heffelfinger presented the case. Allen Payne was sworn in and testified requesting a 0.7-foot variance from the required 10-foot side yard setback requirement and a 1.2-foot variance from the required 20-foot rear yard setback requirement for a dwelling; that he is the Division Manager for the Applicant; that the previous manager did not follow the company's protocol for requiring foundation surveys; and that he does not know how the problem was created.

Martin Lippy was sworn in and testified in support of the application and stated that he is the owner of the dwelling; that the encroachment is a small infraction; that it does not adversely affect the neighborhood; and that it will not effect property values.

Bill Lingo was sworn in and testified in opposition to the application and stated that he is the developer of Canal Corkran; that he has received numerous complaints on the application; that he had a field crew measure prior to construction and the stakes were correct; and that if the Board does approve the application would they consider stipulating that Leland Cypress trees be planted along the rear property line and not allow a sidewalk to be built in the rear of the property.

Steve Howerton was sworn in and testified in opposition to the application and stated that he lives directly to the rear of the property; that he felt the dwelling

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was being to built to close to the rear property line; that he spoke to the surveyors and the Applicant and was assured that the 20-foot setback requirement was being met; that he feels that the encroachment severely infringes on his property; that he feels the screen porch can be modified to comply with the required setback requirements; and that 1-foot feels like 20-foot within the close quarters of this development.

Mr. Hudson asked Mr. Howerton if the stipulation stated by Mr. Lingo would make a difference; that Mr. Howerton stated only as a last resort.

In rebuttal, Martin Lippy, stated that he went to all the surrounding neighbors to inform them of the application; that he feels a fence would create more of an encroachment to his neighbor; and that a sidewalk increases the property value.

In rebuttal, Steve Howerton, stated that the Applicant never came to him about the application; that a fence would have to be approved by the development; and that the development does not even allow front sidewalks.

Motion by Mr. Mills, seconded by Mr. Hudson, 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. McCabe, seconded by Mr. Workman, and carried unanimously that the case be **tabled until April 26, 2004**. Vote carried 5 – 0.

Case No. 8596 – Kelly Crawford – northwest of Route 16, north of Reed Court, being Lot 39 within Grants Way Development.

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

Mrs. Heffelfinger presented the case. Mindy Crawford was sworn in and testified requesting a 2-foot variance from the required 5-foot side yard setback requirement and a 3-foot variance from the required 5-foot rear yard setback requirement for a shed; that the Applicant obtained a building permit for the shed; that the shed was placed on crushed

stone she had delivered; that she plans to fence in the entire backyard; that the neighbor is in support of the application; and that the Homeowner's Association suggested she seek the Board's approval.

Mrs. Heffelfinger read 2 letters in opposition to the application.

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. Hudson, and carried unanimously that the variances be **granted since it will not alter the character of the neighborhood and since the rear of the property is adjacent to a buffer zone.** Vote carried 5 – 0.

Case No. 8597 – Sea Breeze Community – south of Route One, north of Atlantic Avenue, being Lot F-19 within Sea Air Mobile City Mobile Home Park.

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

Mrs. Heffelfinger presented the case. Mitch Michaurd was sworn in and testified requesting a 3.6-foot variance from the required 20-foot separation requirement between units and a 3.6-foot variance from the required 20-foot separation requirement between units in a mobile home park; that the park is in the process of removing the older units and replacing them with new units; and that they want to place a 28-foot wide unit on Lot F-19.

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 for 3.6-foot variance.** Vote carried 5 – 0.

Case No. 8598 – Blue Hen Auto Sales – intersection of Road 207 and U.S. Route 113 North.

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

Mrs. Heffelfinger presented the case. Joe Webb was sworn in and testified requesting a special use exception to place a manufactured home type structure as a sales office; that he plans to remove the existing unit; that the proposed unit will be located to the rear of the property; that they are cleaning up the appearance of the intersection; and that they plan to build a permanent structure within five (5) years.

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 special use exception be **granted for a period of five (5) years since it will have no adverse affect on the neighborhood**. Vote carried 5 – 0.

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Case No. 8599 – Dennis E. McCrea – east of Road 279, south of South Drive, being Lot D-32 within West Bay Mobile Home Park.

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

Mrs. Heffelfinger presented the case. Dennis McCrea was sworn in and testified requesting a 10-foot variance from the required 20-foot separation requirement between units in a mobile home park; that he wants to replace an existing unit; that the proposed unit will measure 28' x 52'; and that the septic system and an existing shed will not allow the unit to be placed in compliance.

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 taken under advisement. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted since it will have no adverse effect on the neighborhood**.
Vote carried 5 – 0.

Case No. 8600 – Brant Collins – west of Road 330, north of a private road, being Lots 10, 11, and 12 within Helms Landing Development.

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

Mrs. Heffelfinger presented the case. Brant Collins was sworn in and testified requesting a 2.48-foot variance from the required 150-foot lot width requirement and a 53.35-foot variance from the required 150-foot lot width requirement for a parcel, a 19,410-square-foot variance from the required 32,670-square-foot requirement and a 21,133-square-foot variance from the required 32,670-square-foot requirement for a parcel; that he purchased the property in 1989; that the lot lines were created in 1955; that

the lots were combined into one parcel due to a unified ownership; that he wants to reestablish the original property line to create 2 parcels; that he wants to build a dwelling on Lot 10; and that he submitted letters and pictures.

Robert Herrick was sworn in and testified in opposition to the application and stated that he was concerned with what will be built on the single lot; that he wants to know where the septic would be located; and that he feels they should abide by the County Ordinance.

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

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

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until April 26, 2004**. Vote carried 5 – 0.

OLD BUSINESS

Case No. 8579 – James H. Bowen, Jr. – south of Route 9, 400 feet west of Road 290, being Lot 8.

A special use exception to place a billboard.

The Board discussed the case which has been tabled since April 5, 2004.

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted with the stipulation of no future billboards and due to the uniqueness of the lot size and low capability of any other type of improvement**. Vote carried 5 – 0.

Case No. 8581 – Kevin and Elizabeth Cooney – south of Route 54, southeast of Keen-Wik Road, being Lot 25 within Keen-Wik Subdivision.

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

The Board discussed the case which has been tabled since April 5, 2004.

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 with a letter sent to Coastal Sunrooms and to the sub-contractor**. Vote carried 5 – 0.

Meeting Adjourned 9:45 p.m.