



Board of Adjustment

Agendas & Minutes

MINUTES OF MAY 17, 2004

The regular meeting of the Sussex County Board of Adjustment was held Monday evening May 17, 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 Mills, seconded by Mr. Hudson, and carried unanimously to approve the Revised Agenda as circulated. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously to approve the Minutes of May 3, 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. 8631 – David and Wadeen Glaze – north of Route 54, east of Canvasback Road, being Lot 23-D, Block D within Swann Keys Subdivision.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. David and Wadeen Glaze and Darryl Green were sworn in and testified requesting a 5-foot variance from the required 10-foot side yard setback requirement for an attached shed; that Mr. Green, the builder, obtained the building permit; that he was not aware the setback requirements were on the permit application; and that he submitted letters and pictures.

Mr. Rickard stated that there were 4 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. 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. 8632 – Mark Whaley – north of Road 480, 5,100 feet west of Road 474.

A variance from the minimum lot size requirement to place an on-farm manufactured home.

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Mr. Rickard presented the case. Mark Whaley was sworn in and testified requesting a 0.17-acre variance from the required 10-acre requirement for an on-farm manufactured home; that the 1994 unit measures 14' x 70'; that his son will reside in the unit; that there are poultry houses on the parcel; and that the unit will be removed when his son no longer lives in the unit.

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 single-wide manufactured home, not older than 1994, and that the owner must remove the unit when the son no longer lives in the unit since it will have no adverse effect on the neighborhood.** Vote carried 5 – 0.

Case No. 8633 – Karl and Evelyn Allgauer – east of Road 492, west of Holly Branch Drive, being Lot 61 within Broad Creek Estates Development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Karl and Evelyn Allgauer were sworn in and testified requesting a 6.1-foot variance from the required 15-foot side yard setback requirement for a detached garage; that their builder obtained the building permit; that the development requires a 10-foot setback; that they thought the encroachment would have been discovered with the footer inspection; that the Homeowner's Association is in support of the application; and that they submitted pictures.

Michael Hughes was sworn in and testified in opposition to the application and stated that he is a member of the Homeowner's Association; that he has never seen the letter of support from the Association; that he objects to the variance process; that a proposed site plan should be required prior to building; that a builder should know the required setbacks; and that the current process puts neighbors at odds.

In rebuttal, Karl Allgauer, stated that the detached garage has been built to compliment the dwelling and the community; and that it would be a great expense to correct.

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

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variance be **granted since it will not alter the character of the neighborhood and that a letter be sent to the builder.** Vote carried 5 – 0.

Case No. 8634 – Rebecca Brunner – west of Road 290, northeast of East Meadowview Drive, being Lot 4 within Coolspring Farms Development.

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

No one appeared on behalf of the application.

Sue Bailey was sworn in and testified in opposition and stated that she owns adjacent property; that the Applicant has already moved the second unit on the property without proper permits; that the units create an eyesore; and that she submitted a letter with 27 signatures in opposition to the application.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the special use exception be **denied due to lack of record of support and since it will substantially effect the neighborhood.** Vote carried 5 – 0.

Case No. 8635 – Phillip and Linda Freund – southwest of Road 388, northwest of West Whitetail Drive, being Lot 11 within Deer Run Acres Development.

Mr. Rickard presented the case. Phillip Freund was sworn in and testified requesting a 2.6-foot variance from the required 30-foot front yard setback for an enclosed porch; that he measured from the footers underneath the manufactured home; that he obtained the building permit; and that he was not aware of the setback encroachment until receiving a letter from the Zoning Inspector.

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. 8638 – Gemcraft Homes – north of Road 227, west of Bay Ridge Lane, being Lot 37 within Bay Ridge Woods Development.

A variance from the side yard setback requirement.

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Mr. Rickard presented the case. Lit Dryden and Richard Martin were sworn in and testified requesting a 0.4-foot variance from the required 15-foot side yard setback requirement for a dwelling; that there was an engineering mistake; that the survey done for settlement showed the violation; and that they have made corrections to prevent further problems in the future.

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. 8637 – Donna F. Milligan and Tara D. Thoroughgood – northeast of Road 413, 801 feet southeast of Road 415.

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

Mr. Rickard presented the case. Donna Milligan and Tara Thoroughgood were sworn in and testified requesting a 91.74-foot variance from the required 150-foot lot width requirement for a parcel; that the mother currently lives on the property; that the proposed parcel will be for the daughter; that the daughter plans to place a modular home on the property; that there is an existing culvert for a driveway; that the family owns the adjacent property; and that they submitted a survey.

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

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

Case No. 8638 – George Coverdale and Pauline Temple – north of Road 270A, 30 feet northeast of Route One.

A variance from the maximum square footage requirement for a sign and a variance from the side yard setback requirements.

Mr. Rickard presented the case. Darlene Matthes was sworn in and testified requesting a 552-square-foot variance from the required 600-square-foot maximum requirement for a sign and a 50-foot variance from the required 50-foot side yard setback for a sign; that the proposed billboard will be a steel mono-pole, 2-sided structure; that

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the proposed billboard will not exceed the size of the existing two (2) billboards; and that the proposed billboard will meet all other 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. Workman, 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. Hudson, and carried unanimously to incorporate testimony from Case No. 8556 tabled since March 15, 2004. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variances and special use exception be **granted for Case No. 8639 and Case No. 8556 since it will not alter the character of the neighborhood.** Vote carried 5 – 0.

Case No. 8639 – Bruce W. King and Carl P. King, Jr. – intersection of Route One and Tulip Drive.

A variance from the maximum square footage requirement for a sign and a variance from the side yard setback requirement.

Mr. Rickard presented the case. Darlene Matthes was sworn in and testified requesting a 552-square-foot variance from the required 600-foot square-foot requirement for a sign and a 50-foot variance from the required 50-foot side yard setback requirement for a sign; that the proposed billboard will be a steel mono-pole, 2-sided structure; and that the proposed billboard will meet all other 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. Workman, 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. Hudson, and carried unanimously to incorporate the testimony from Case No. 8557 which has been tabled since March 15, 2004. Vote carried 5 – 0.

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Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the variances and special use exception be **granted for Case No. 8639 and Case No. 8556 since it will not alter the character of the neighborhood.** Vote carried 5 – 0.

Case No. 8640 – Elmer and Pearl Lehoe – north of Road 341, northwest of Poole Court, being Lot 232 within Dogwood Acres Development.

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

Mr. Rickard presented the case. Robert Kauffman was sworn in and testified requesting a 6.4-foot variance from the required 30-foot front yard setback requirement and a 4.1-foot variance from the required 10-foot side yard setback requirement for a dwelling; that he is an agent for Sea Coast Realty; that the Applicant purchased the property in 1996; that a survey prepared for settlement showed the encroachment; and that a Certificate of Compliance was never issued on the dwelling.

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 variances be **granted since it will not alter the character of the neighborhood and the dwelling has been on the lot for many years.** Vote carried 5 – 0.

Case No. 8641 – Stephen and Candice Finkbiner – southeast of Road 468, 1,114.09 feet southwest of U.S. Route 13.

A variance from the rear yard setback requirement.

Mr. Rickard presented the case. Stephen and Candice Finkbiner were sworn in and testified requesting a 15-foot variance from the required 20-foot rear yard setback requirement for a proposed detached garage; that the proposed detached garage will measure 30' x 30'; that the location of the septic system and the existing dwelling do not allow room for the garage to meet the required setback requirements; and that the rear of the property is adjacent to a parking lot.

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 the limited space on the property**. Vote carried 5 – 0.

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Case No. 8642 – Elizabeth A. and Preston E. Cooley – south of Road 275A, northeast of Ocean Breeze Drive, being Lot 7, Block B within Rehoboth Shores Estates Development.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. Preston Cooley was sworn in with Daniel Myers, Attorney, on behalf of the application, and testified requesting a 0.6-foot variance from the required 30-foot front yard setback requirement for a dwelling; that they have a disagreement between two surveyors; that the first surveyor is no longer around to question his findings; that the second surveyor found the encroachment; that the second surveyor has checked the distance numerous times; that the encroachment happened when the dwelling was built; and that it is a minimum variance request and will not alter the character of the neighborhood.

Albert Gennett was sworn in and testified in support of the application and stated that he is the neighbor and the encroachment is so minor you can not tell by looking at the property.

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 is a minimum variance and was not created by the Applicant**. Vote carried 5 – 0.

Case No. 8643 – Robert J. and Sharon Lewis – northeast of Road 279, northeast of Pine Road, being Lot 41 within Eugene D. Bookhammer Development.

A variance from the rear yard setback requirement.

Mr. Rickard presented the case. Marsha D Garrett was sworn in with Daniel Myers, Attorney, on behalf of the application and testified requesting a 2.4-foot variance from the required 5-foot rear yard setback for two sheds; that the sheds have been on the

lot since the 1970's; that the sheds are on a permanent foundation; that a manufactured home has been made into one of the sheds; that the unit is completely for storage use only; and that the sheds do not effect the property value.

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. 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. 8644 – Patricia Ann and Curtis Perdue – north of Road 64, 518.80 feet southeast of Road 455B.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. Curtis Perdue was sworn in and testified requesting a 6-foot variance from the required 40-foot front yard setback requirement for a dwelling; that he obtained the building permits; that he built the dwelling; that the dwelling replaced a manufactured home; that the unit had been on the lot since the 1960's; and that he built the dwelling in the same location as the unit.

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 the dwelling is in the same location as the previous manufactured home.**
Vote carried 5 – 0.

Case No. 8645 – Christian Brandt – intersection west of Road 591 and north of Road 594.

A special use exception to place a mobile unit type structure as a business, commercial or industrial use.

Mr. Rickard presented the case. Chris and Charles Brandt were sworn in and testified requesting a special use exception to place a mobile unit type structure as a business, commercial or industrial use; that he uses the mobile unit for his veterinary business; that he sees clients by appointment only; that he takes the unit to the clients residence or the clients come to his primary location; that due to the small size of the mobile unit he is limited to the type of care he can provide; that the unit is licensed as a

commercial trailer by the Department of Motor Vehicle; that the Board of Regulations of Veterinary Medicine has approve the mobile unit; and that he would also like to set his mobile unit up in different locations throughout the County on different days of the week.

Bruce Hunziker was sworn in and testified in opposition to the application and stated; that he owns the adjacent property; that the mobile unit creates a lot of traffic to and from the property; that the traffic has increased the noise of the dogs in the existing

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commercial dog kennel; and that he thought the unit was just to be parked on the property.

Mahlon Baker was sworn in and testified in opposition to the application and stated that he is concerned with the disposal of the medical waste and bandages.

Victoria Hunziker was sworn in and testified in opposition to the application and stated; that due to the increased noise she can not open windows in her dwelling; and that she is concerned for the increased traffic.

In rebuttal, Chris Brandt, stated that he is bound both legally and medically to dispose of the waste and supplies; that he has all the necessary containers to use for proper disposal; that he was unaware of the noise problem; that two days a week he does not have clients coming to the property; and that he is currently looking for a permanent location to have his clinic.

In rebuttal, Charles Brandt, stated that he is the owner of the commercial dog kennel; that he can move the dogs to a different location on the property so the dogs can not see the incoming and outgoing traffic.

Mr. Mills asked the opposition if they would support the application if the dogs are relocated to reduce noise and only a temporary use and time period is granted.

The opposition stated that they would agree to that on a trial basis.

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until June 7, 2004**. Vote carried 5 – 0.

OLD BUSINESS

Case No. 8556 – George Coverdale and Pauline Temple – north of Road 270-A, 30 feet northeast of Route One.

A special use exception to replace an existing billboard as a two-sided billboard.

See Case No. 8638 for details of the decision on this case.

Case No. 8557 – Bruce W. King and Carl P. King, Jr. – north of Route One, west corner of Tulip Drive.

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A special use exception to replace an existing billboard.

See Case No. 8639 for details of the decision on this case.

Case No. 8604 – John and Patsy Wary – north of Route 54, east of Laws Point Road, being Lot 26, Block E within Swann Keys Development.

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

The Board discussed the case.

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously that the variances be **granted except for the rear yard setback variance for the enclosed porch**. Vote carried 5 – 0.

Case No. 8628 – Timothy Miller – north of Road 524, 3,350 feet east of Road 516.

A variance from the minimum lot width requirement for a parcel, a variance from the side yard setback requirement and a special use exception to retain a manufactured home on a parcel.

The Board discussed the case.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted for the road frontage lot width requirement for a parcel and that the special use exception be denied**. Vote carried 5 – 0.

Meeting Adjourned 9:52 p.m.