



Board of Adjustment

Agendas & Minutes

MINUTES OF JUNE 7, 2004

The regular meeting of the Sussex County Board of Adjustment was held Monday evening June 7, 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 approved the Minutes of May 24, 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. 8661 – Joseph Baggs – southwest of Route One, south of Rogers Avenue, being Lot 21, Block B within Ann Acres Development.

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

Mr. Rickard presented the case. Joseph Baggs was sworn in and testified requesting a 0.3-foot variance from the required 10-foot side yard setback requirement for a deck, a 6.6-foot variance from the required 10-foot side yard setback requirement for a deck, and a 8.9-foot variance from the required 10-foot rear yard setback requirement for an outside shower; that the decks have been on the property for 20-years; that the Board approved a variance for a deck in 1989; that the approved variance was not enough; that he did not obtain a building permit for the outside shower; and that the dwelling is 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 there have been numerous variances in the development.** Vote carried 5 – 0.

Case No. 8662 – Mervin Matter and Judith Dobbs – north of Route 54, Blue Bill Drive, being Lot 51, Block G within Swann Keys Development.

A variance from the front yard setback requirement.

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Mr. Rickard presented the case. Judy Dobbs Matter was sworn in and testified requesting a 3.6-foot variance from the required 10-foot front yard setback requirement for a manufactured home; that she wants to replace the existing manufactured home; that the proposed unit will be within the exact footprint as the existing unit; that the existing shed and a set of steps will be removed; and that the Association 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. McCabe, seconded by Mr. Hudson, and carried unanimously that the variance be **granted since the unit will be placed within the same footprint as the existing unit and since the shed will be removed.** Vote carried 5 – 0.

Case No. 8663 – Seafarers Homeowners Association – northeast of Route 23, Rudder Road within Seafarers Village Development.

A variance from the front yard setback requirement for a sign.

Mr. Rickard presented the case. Dom Santangelo was sworn in and testified requesting a 25-foot variance from the required 25-foot front yard setback requirement for a sign; that the previous sign was 21-years old; that the new sign measures 4' x 6'; that the new sign is in the exact location as the previous sign; that to meet the required front yard setback the sign would be on the neighboring parcel; and that the second subdivision sign will meet the required setbacks.

Harold Rosenthal and Robert Emory were sworn in and testified in opposition to the application and stated that the new sign is higher than the previous sign; that the new sign blocks a drivers view of the intersection; that they would like to see the sign lowered; and that they never had a problem with the previous sign.

In rebuttal, Dom Santangelo, stated that he was not aware of the height of the sign being a problem; that the previous sign was approximately 6-inches lower than the new sign; and that he would have no problem lowering the new sign.

Motion by Mr. Hudson, 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. Workman, and carried unanimously that the

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variance be **granted with the stipulation that the sign not exceed 4-foot in height from grade**. Vote carried 5 – 0.

Case No. 8664 – Luna Constr. – southwest of Road 395, southeast of Sea Gull Road, being Lot 7, Block 2 within Bayview Estates Development.

A variance from the rear yard setback requirement.

Mr. Rickard presented the case. Antonio Guglioldla was sworn in and testified requesting a 10-foot variance from the required 20-foot rear yard setback requirement for an existing dwelling with additions; that he obtained a building permit; that the dwelling was placed further back on the property to allow room for the required septic system; and that he was not aware that requesting a variance was required.

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 and since it is an undersized lot**. Vote carried 5 – 0.

Case No. 8665 – Spectrum Properties LLC – south of Route 17, west of Road 382.

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

Mr. Rickard presented the case. Charles Carmack was sworn in and testified requesting a 75.19-foot variance from the required 150-foot lot width requirement for a parcel; that he plans to renovate the existing building; that he plans to build a dwelling on the new parcel; that he has DeIDOT approval for the new entrance; and that the proposed lot is in keeping with the character of the neighborhood.

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. 8666 – Delores M. and Edward G. Buckman – north of Road 368, south of Road 361, being Lot 151 within Southampton Phase 4 Development.

A variance from the rear yard setback requirement.

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Mr. Rickard presented the case. Mark Wright was sworn in and testified requesting a 7.5-foot variance from the required 10-foot rear yard setback requirement for a proposed screen porch and deck; that the proposed porch and deck will line up with the existing bump out on the existing dwelling; and that he is the builder.

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. 8667 – Specialty Products & Insultion Co. – east of U.S. Route 13, 400 feet south of Road 544.

A variance from the maximum allowable square foot requirement for a sign.

Mr. Rickard presented the case. Robert McQuenan was sworn in and testified requesting a 100-square-foot variance from the required 100-square-foot requirement for a sign; that the wall sign measures 10'x 20'; that the building is 6400-square-foot; that the building measures 80' x 80'; that the existing building is located away from the road; that the previous sign was approximately the same size; that there are 2 small wall signs on the building; 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 with the stipulation that the 2 smaller wall signs be removed.**
Vote carried 5 – 0.

Case No. 8668 – Patricia T. and Robert L. Bailey, Sr. – east of Road 405, 791 feet north of Road 406.

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

Mr. Rickard presented the case. Robert Bailey was sworn in and testified requesting a special use exception to place a manufactured home type structure as a sales office; that the unit has been on the lot since 1981; that a conditional use was approved for his business by the Planning and Zoning Commission in 1981; and that he needs at least 5-years to build a permanent structure.

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Karen Trueting was sworn in and testified in opposition to the application; that she filed a complaint with the Planning and Zoning Department on the manufactured home; that the unit is not used as an office; that the unit is being lived in; that there is no septic system; that a neighbor informed her that the Applicant buried 50-gallon drums in the ground to use as a septic system; that she does not believe the Applicant's testimony; and that she submitted pictures.

In rebuttal, Robert Bailey, stated that he does not rent the unit; that there is no septic system on the property; that he did not obtain a permit for the unit; and that he gave the Planning and Zoning Inspector permission to enter the unit and verify the use.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case be **tabled until June 21, 2004**. Vote carried 5 – 0.

Case No. 8669 – John and Allene Fitzherbert – east of Route 16, southeast of Jackson Avenue, being Lot 11, Block 7 within Broadkiln Beach Development.

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

Mr. Rickard presented the case. Wayne Mulvin was sworn in and testified requesting a 2.2-foot variance from the required 10-foot side yard setback requirement for a deck and heat pump, a 12.1-foot variance from the required 30-foot front yard setback requirement for a landing with steps and a 12.1-foot variance from the required 30-foot front yard setback requirement for a dwelling; that he plans to build a roof over the existing deck; that the roof will not extend over the existing platform; and that an average was done for the front yard setback requirement.

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 for 8.2-foot variance for the side yard since it will not alter the character of the neighborhood**. Vote carried 5 – 0.

Case No. 8670 – Jackie Justice – north of Road 472, east of Road 432, being Lot 5 within Bush Farms Development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Jack Justice was sworn in and testified requesting a 5-foot variance from the required 10-foot side yard setback requirement for a pole barn; that the pole barn will measure 28' x 40'; and that the lot is wooded.

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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. 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. 8671 – Citifinancial Mortgage Company, Inc. – north of Road 524 (German Road), 2,120 feet east of Road 516.

A variance from the rear yard setback requirement.

Mr. Rickard presented the case. Edward Hammond, Jr. was sworn in with David Rutt, Attorney, and testified requesting a 1.5-foot variance from the required 20-foot rear yard setback requirement for a dwelling; that the Applicant acquired the property through a foreclosure; that a survey done in December 2003 showed the encroachment; that the dwelling is 25-years old; that the encroachment was not created by the Applicant; that the request is a minimum variance; and that the request does not alter the character of the neighborhood.

Robert Williams was sworn in and testified in opposition to the application; that he was the previous owner of the property; that he purchased the property in the 1990's; and that he subdivided the property.

Gwen Hammond and Scott Holt were sworn in and testified in opposition to the application and stated that there are too many rentals in the area.

Mr. Mills explained to the opposition that the encroachment was created at the time of the subdivision of the land.

In rebuttal, David Rutt, stated that the land was subdivided in 1989; that the addition was built too close to the property line; and that the encroachment was created by the previous owner.

In rebuttal, Robert Williams, stated that he did not build the addition and remained opposed to the application.

By a show of hands 5 parties appeared 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.

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At the conclusion of the public hearings, the Chairman referred back to this case. Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the variance be **granted since the variance is needed due to the subdivision of the property**. Vote carried 5 – 0.

Case No. 8672 – Lowe’s Home Centers, Inc. – intersection of Road 275 and Road 276.

A variance from the minimum parking space requirement.

Mr. Rickard presented the case. David Rutt, Attorney, present on behalf of the application, testified requesting a 41-parking space variance from the required 816-parking space requirement and a 1-foot width variance from the 10-foot width requirement for a parking space on 54 parking spaces; that the 54 parking spaces will be used by employees only; that a study was done and 9-foot wide is a national standard for employee parking spaces; that the Applicant wants to expand the garden center; that there will still be 775-parking spaces available for patrons; that the request will not alter the character of the neighborhood; and that there will be no impact on traffic.

Mr. Rickard stated that the Applicant has been violated for using the existing parking spaces for the expansion of the garden center; that the Applicant also has pallets stacked in existing parking spaces; and that the Applicant must submit a revised site plan to the Planning and Zoning Commission.

In rebuttal, David Rutt, stated that an existing appliance storage area is to be enclosed and used for some of the excess storage.

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 case be **tabled until June 21, 2004**. Vote carried 5 – 0.

Case No. 8673 – Ronald and Susan Funk – south of Road 277, south of Marina Court West, being Lots 27 and 28, Section 1 within Angola By the Bay Development.

A variance from the rear yard setback requirement.

Mr. Rickard presented the case. Ron Funk was sworn in and testified requesting a 8-foot variance from the required 20-foot rear yard setback requirement for a proposed

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sunroom; that the proposed sunroom will measure 16' x 22'; that the rear yard is adjacent to a common area; and that he must see the Homeowner's Association after the Board's decision.

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.

Case No. 8674 – Barbara and Patrick Burk – west of Route One, east of Elizabeth Avenue, being Lot 17, Block D within Ann Acres Development.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. Dan Myers, Attorney, on behalf of the application, testified requesting a 7.1-foot variance from the required 30-foot front yard setback requirement for a deck with steps; that the deck is less than 4-foot in height; that the deck and steps due not extend further than the neighboring dwellings; that the previous owners measured from the street; that there will be no adverse effect to the neighborhood; and that the encroachment was not created by the Applicant.

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. 8675 – Frank and Colleen Cochran – east of Road 365, 415 feet south of Road 353.

A variance from the minimum lot size requirement to place a manufactured home.

Mr. Rickard presented the case. Frank Cochran was sworn in and testified requesting a 2,771-square-foot variance from the required 32,670-square-foot lot size requirement to place a manufactured home; that his previous case was approved for a modular dwelling; that at the first hearing he did not realize the difference between a modular dwelling and a manufactured home; that the proposed manufactured home will be placed on a block foundation; and that he plans to convert the unit to a C-Grade dwelling with the Assessment Division.

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Mr. Rickard read the Finding of Facts letter from Case No. 8427.

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

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the variance be **granted with the stipulation that the unit be converted into a C-Grade dwelling and be placed on a block foundation since it will not alter the character of the neighborhood and is a minimum variance.** Vote carried 5 – 0.

OLD BUSINESS

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.

The Board discussed the case which has been tabled since May 17, 2004.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted with the stipulation that the hours of operation will be from 8:00 a.m. to 5:00 p.m., two (2) days a week and from 12:00 p.m. to 8:00 p.m., one (1) day a week, for a period of two (2) years, and that the dogs in the kennel be moved to the south side of the property and provide adequate parking.** Vote carried 5 – 0.

Case No. 8855 – Ralph E. and Louise Schuler – southeast of Road 298, west of Ritter Drive, being Lot 17 within William Ritter Manor Development.

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

The Board discussed the case which has been tabled since May 24, 2004.

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

OTHER BUSINESS

Case No. 7811 – Wilmer A. Jenkins – east of Road 531, south of Bradford Street, Lot 2 within Middleford Acres.

A variance from the side yard setback requirement for a corner lot.

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Mr. Rickard read the letter requesting the time extension.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the time extension be **granted for a period of one (1) year**. Vote carried 5 – 0.

Case No. 8575 – Sun Home Services, Inc. – west of Route One, intersection of Skyview Street and Golden Avenue, being Lot M-46 within Sea Air Mobile City Mobile Home Park.

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

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

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

Meeting Adjourned 9:45 p.m.