



Board of Adjustment

Agendas & Minutes

MINUTES OF JULY 12, 2004

The regular meeting of the Sussex County Board of Adjustment was held Monday evening July 12, 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, Mr. Rickard – Secretary to the Board, and Mrs. Norwood – Recording Secretary.

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously to approved 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 June 21, 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. 8691 – Michael R. Emmett, Sr. – east of Route One, south of Dune Road, being Unit A-3 within Tower Shores Development.

A variance from the minimum square footage requirement for multi-family structures and a variance from the front yard setback requirement for a through lot.

Mr. Rickard presented the case. Michael R. Emmett, Sr. was sworn in with Fred Townsend, Attorney, and testified requesting a 330-square-foot variance from the required 39,930-square-foot requirement for a unit, a 5-foot variance from the required 30-foot front yard setback requirement from Cove Road, and a 13-foot variance from the required 30-foot front yard setback requirement from Dune Road; that the proposed units will have the appearance of single-family dwellings; that the existing structures are non-conforming; that the proposed structures are in keeping with the character of the neighborhood; and that the Homeowner's Association is in support of the application.

Mr. Mills asked the Applicant if the proposed structures would meet the height requirement.

Mr. Michael Emmett, stated that the proposed structures would meet the required height requirement; that the proposed structures will have no further encroachments than the existing structures; and that there will be six (6) new structures total.

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. 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. 8692 – Raymond and Kendall Conaway – northwest of Road 610, 1.2 miles northwest of Road 42.

A special use exception from the provisions and requirements to retain a manufactured home on a parcel.

Mr. Rickard presented the case. Cathy Conaway was sworn in and testified requesting a special use exception to retain a manufactured home on less than five (5) acres; that the 1969 unit measures 12' x 60'; that the unit has been on the lot for fifteen (15) years; that her brother-in-law is purchasing the surrounding property; and that the parcel will be 3.7-acres.

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.** Vote carried 5 – 0.

Case No. 8693 – Leonard and Barbara Hatch – southwest of Road 289, 420 feet east of Route 24, being Lot 8.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Leonard and Barbara Hatch and David Green were sworn in and testified requesting a 10.9-foot variance from the required 15-foot side yard requirement for a dwelling; that Mr. Green was the general contractor; that he does not know when the mistake occurred; that there were poor soil conditions when the construction began; that the mistake went unnoticed until the septic was being installed; and that the irregular shape of the property may have created the encroachment.

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 due to the unique shape of the lot.** Vote carried 5 – 0.

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Case No. 8694 – Kenneth R. Christenbury – intersection of Road 545 and U.S. Route 13.

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

Mr. Rickard presented the case. Kenneth Christenbury and Marty Collier were sworn in and testified requesting a special use exception to place a manufactured home type structure as a sales office; that the unit will be used for sales for a new subdivision; that the unit will be placed on leased land near the subdivision; that the property is zoned C-1; that the proposed location provides better exposure for potential buyers; that the unit measures 24' x56'; and that there will be adequate parking; and that the site will be landscaped.

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 special use exception be **granted for a period of two (2) years since it will not alter the character of the neighborhood.** Vote carried 5 – 0.

Case No. 8695 – Susan and Glenn L. Gensler – south of Road 349, north of Old Mill Court, being Lot 42 within Mill Run Acres Development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Susan and Glenn Gensler were sworn in and testified requesting a 1-foot variance from the required 10-foot side yard setback requirement and a 1-foot variance from the required 10-foot side yard setback requirement for a proposed dwelling; that due to the size of the proposed dwelling and the size of the lot it will be virtually impossible to comply with the required setbacks; that the dwelling will be centered on the lot; that they come within inches of meeting the required setbacks; and that they have already reduced the size of the dwelling to try to comply with the required setbacks.

Peter Sambogna, was sworn in and testified in opposition to the application; that he wanted to verify the exact location of the dwelling; and that the Applicant should have realized the lot was not large enough to accommodate the proposed dwelling.

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

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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. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted with the stipulation that they not exceed the 1-foot request; that no further encroachments will be permitted; that the Applicant provide a location survey due to the unique shape of the lot; and since the application is a minimum variance request and will not alter the character of the neighborhood.** Vote carried 5 – 0.

Case No. 8696 – Joyce M. Rantz – east of Road 501, 1,267 feet south of Road 515.

A special use exception for a daycare facility.

Mr. Rickard presented the case. Joyce and Gary Rantz were sworn in and testified requesting a special use exception to operate a daycare facility; that she plans to care for 36 children; that the children will range from ages 3-years old and up; that the hours of operation will be 5:30 a.m. to 6:00 p.m., Monday through Friday; and that there will be adequate parking provided.

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 special use exception be **granted with stipulations that there be no more than 36-children and the hours of operation be 5:30 a.m. to 6:00 p.m., Monday through Friday, since it will have no adverse effect to the neighborhood.** Vote carried 5 – 0.

Case No. 8697 – Shelley P. Hastings – west of Route One, southeast of Andrew Avenue, being Lot 4, Block E within Ann Acres Development.

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

Mr. Rickard presented the case. Shelley Hastings was sworn in with Daniel Myers, Attorney, and testified requesting a 1-foot variance from the required 30-foot front yard setback requirement and a 0.4-foot variance from the required 10-foot rear yard setback requirement; that a previous variance was granted in 1995; that the dwelling was built within the footprint of the location survey; that a second survey shows the encroachment; that the lot is irregular in shape and size; that the encroachment was not created by the Applicant; and that he submitted surveys and original plot plan.

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By a show of hand, 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 variances be **granted since it will not alter the character of the neighborhood and is a minimum variance request**. Vote carried 5 – 0.

Case No. 8698 – Fred West – west of Road 344, 616 feet south of Route 26.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. Fred West was sworn in and testified requesting a 17-foot variance from the required 40-foot front yard setback requirement for a proposed addition; that the existing dwelling is non-conforming; that there is a slight curve to the property line which creates the encroachment for the proposed addition; and that the proposed addition will measure 22' x 26'.

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. 8699 – Steve Cullen and Jo Brown – east of Road 52-B, 500 feet north of private road.

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

Mr. Rickard presented the case. Steve Cullen and Jo Brown were sworn in and testified requesting a 38.88-foot variance from the required 150-foot lot width requirement and a 10,890-square-foot variance from the required 32,670-square-foot lot

size requirement for a parcel; that they wish to subdivide the parcel into two half-acre parcels; that the Town of Selbyville will be providing water and sewer to the parcels; that Lot B will remain vacant until the water and sewer is available; that the shed is going to be removed; and that both lots will share a driveway.

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 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 that the variances be **granted with the stipulation that the lots share a driveway and that the shed be removed within sixty (60) days after the finding of facts.** Vote carried 5 – 0.

Case No. 8700 – June Riggin – east of Route One, south of Robinson Drive, being Lot 14 within Dodd's Addition Development.

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

Mr. Rickard presented the case. Charlotte Gagney and June Riggin were sworn in and testified requesting a 2.2-foot variance from the required 5-foot side yard setback requirement for a deck, a 4.92-foot variance from the required 5-foot side yard setback requirement and a 3.6-foot variance from the required 5-foot rear yard setback requirement for a shed; that the deck was built over an existing concrete pad; that the shed is used for storage of garden tools; that their contractor told them incorrect setback requirements; that the neighbor adjacent to the rear yard property line has no objection to the application; and that they submitted a letter and pictures.

Robert Lapan was sworn in and testified in opposition to the application and stated that he owns Lot 16; that he just wanted clarification of the variance request; and that after understanding the variance was for existing structures he had no objection to the application.

Mr. Rickard stated that the office had received 1 letter in support of the application and 1 letter 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.** Vote carried 5 – 0.

Case No. 8701 – John and Mary Vittek – north of Route 20, southwest of Egret Road, being Lot 10 within Swann Estates Development.

A variance from the rear yard setback requirement.

Mr. Rickard presented the case. John and Mary Vittek were sworn in and testified requesting a 11.6-foot variance from the required 20-foot rear yard setback requirement for an addition and a 3.3-foot variance from the required 5-foot rear yard setback

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requirement for a shed; that a variance was granted for the addition in 1996; that the variance request in 1996 was for a 4-foot variance; that the builder created the encroachment; that they had numerous problems with the builder; that the septic system is in front of the shed; and that they submitted letters in support of the application.

Charles Jarvis was sworn in and testified in opposition to the application and stated; that he is the builder for Lot 9; that the Applicant complained to him that he was building the dwelling too close to his property; that he tried to accommodate by rearranging the proposed location of the dwelling and septic; that he had a survey done to prove the dwelling was within the required setback requirements; that the survey showed that the Applicant was in violation of the setback requirements; that he feels the shed could be moved to comply; and that his customers do not want to even move into their new dwelling.

Kent Harris was sworn in and testified in opposition to the application and stated; that he is the Chairman for the Architect Association for the development; that the Applicant chose to encroach on their neighbors; and that in 1996 the owners of Lot 9 were in support of the application.

Elizabeth White was sworn in and testified in opposition to the application and stated; that she owns property across the street from the Applicant; that she feels the Applicant should have been aware of the setback requirements and seen that the requirements were met; and that the builder should not be held accountable.

Patty Burns were sworn in and testified in opposition to the application and stated that she is concerned that the shed is on her property; that she does not know how the Board can allow the shed to go on her property without her permission; and that she would like to know what can and cannot be done on her property.

Mr. Mills stated that the Board cannot enforce deed restrictions of covenants.

Mr. Rickard stated that the Board can only approve a structure to built up to the property line not over the property line; that once a structure crosses over the property line it becomes a civil matter.

In rebuttal, John Vittek, stated that he has lived in the development for 14-years; that the builder for Lot 9 cut down some of their trees; that they notified the Architecture Board of the builder erecting a barrier to prevent debris from leaving the building lot; that the builder refused to erect a barrier; and that they had to clean up debris from their lot.

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

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By a show of hands 20 parties appeared in opposition to the application.

Motion by Mr. McCabe, seconded by Mr. Workman, and carried unanimously that the case be **tabled until August 2, 2004**. Vote carried 5 – 0.

Case No. 8702 – Steven Smith – south of Route 54, within Americana Bayside Development.

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

Mr. Rickard presented the case. Steven Smith was sworn in with Jim Fuqua, Attorney, and testified requesting a 1500-square-foot variance from the required 7,500-square-foot lot size requirement for a parcel; that the Planning and Zoning Commission approved the development in February 2001; that the development was approved for 1,700 residential units; that the request is to reduce the lot size of 127 lots; that the request is not to gain density; that the variance will allow the proposed dwellings to be evenly spaced throughout the community; that the request will have no adverse effect to the community; and that they submitted a drawing.

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, due to the unique design of the RPC, and since it is a minimum variance request**. Vote carried 5 – 0.

Case No. 8704 – David C. Ludema and Kent Sign Co. – northeast intersection of U.S. Route 13A and Road 642, being Lot 1 within C. Leon Cannon Development.

A special use exception to place a billboard.

Mr. Rickard presented the case. David Ludema and Kimberly Deal were sworn in and testified requesting a special use exception for a billboard; that the proposed

billboard will be a two-sided steel mono-pole structure; that the billboard will measure 10' x 30'; and that the billboard will meet all the required setback requirements.

Mr. Rickard read a letter of opposition from the Town of Bridgeville.

In rebuttal, Dave Ludema, stated that the proposed billboard is not out of character with the neighborhood; that there is a doctors office and a gas station adjacent

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to the property; that the Bridgeville Lions Club stores their trailer on the lot free of charge; and that he feels the billboard would be an asset to the community.

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 case be **tabled until August 2, 2004**. Vote carried 5 – 0.

Case No. 8705 – Robert O. and Karen W. Rockwood and J. Paul and Darlene S. Williamson – north of Route One, north of Sea Del Road, being Lot 16 within Sea Del Estates Development.

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

Mr. Rickard presented the case. John Tarburton, Attorney, on behalf of the application, testified requesting a 0.3-foot variance from the required 10-foot side yard setback requirement a 0.6-foot variance from the required 10-foot side yard setback requirement and a 2-foot variance from the required 30-foot front yard setback requirement for a dwelling; that the dwelling was built in 1979; that a Certificate of Occupancy was issued in 1981; that the lot is unique in shape due to the cul-de-sac; that the violation was not created by the Applicant; that they believe the decks were built at the same time as the dwelling according to the Assessment Property Record Card; and that it would create a hardship to the Applicant to remove the decks.

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

OTHER BUSINESS

Case No. 8681 – William M. Collins, Jr. – north of Route 54, east of Laws Point Road, being Lot 22, Block E within Swann Keys Development.

A variance from the side yard setback requirement.

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

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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 9:45 p.m.