



*Board of Adjustment*  
Agendas & Minutes

**MINUTES OF SEPTEMBER 13, 2004**

The regular meeting of the Sussex County Board of Adjustment was held Monday evening September 13, 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, Ms. Hudson – 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 August 16, 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. 8750 – Rose Mumford** – east of Road 298, north of Ritter Drive, being Lot 19 within William Ritter Manor Development.

A variance from the front yard setback requirement.

Ms. Hudson presented the case. Rose Mumford was sworn in and testified requesting a 20-foot variance from the required 30-foot front yard setback requirement for a shed; that the shed was placed in 1983; that she purchased the property in 1988; that the shed was placed prior to Ritter Road being constructed; and that a Certificate of Compliance was issued for the shed.

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 variance be **granted since it will not alter the character of the neighborhood and since the shed has been on the lot since 1983 and a Certificate of Compliance had been issued**. Vote carried 5 – 0.

**Case No. 8751 – Carmen Balascio** – west of Route One, north of Atlantic Avenue, being Lot E-16 within Sea Air Mobile City Mobile Home Park.

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

Ms. Hudson presented the case. Carmen Balascio was sworn in and testified requesting a 9.6-foot variance from the required 20-foot separation requirement between

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units in a mobile home park for a deck; that he obtained a building permit in May 2004; that the building permit did not have the required 20-foot separation requirement noted on the application; and that he was not aware of the requirement until after the deck was completed.

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 since there have been numerous variances granted in the mobile home park.**

Vote carried 5 – 0.

**Case No. 8752 – James and Carol Barbour** – north of Road 297A, east of Charles Street, being Lots 37 and 38 within Oyster Farm Development.

A variance from the front yard setback requirement.

Ms. Hudson presented the case. James Barbour was sworn in and testified requesting a 10-foot variance from the required 40-foot front yard setback requirement for a proposed dwelling; that the proposed dwelling will measure 46' x 63'; that the proposed location is the best location for meeting most of the required setbacks; and that the neighbors and the Homeowner's Association are in support of the application.

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

**Case No. 8753 – Don Jesse, Jr.** – north of Bay Shore Drive, northeast of Texas Avenue, being Lot 11, Block L, Section I within North Shores Development.

A variance from the rear yard setback requirement.

Ms. Hudson presented the case. Don Jesse, Jr. was sworn in and testified requesting a 4-foot variance from the required 10-foot rear yard setback requirement for a second floor stairway; that the proposed stairway is needed to gain access to the dwelling; that there is only one other entrance to the dwelling; that the lot measures 50' x 100'; and that he is the builder and was not involved in the design of the dwelling.

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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 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. Hudson, seconded by Mr. Mills, and carried unanimously that the variance be **granted since it will not alter the character of the neighborhood**. Vote carried 5 – 0.

**Case No. 8754 – Richard Tingle** – south of Route 54, west of Van Buren Avenue, being Lot 20, Block 4 within Edgewater Acres Development.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. Richard Tingle was sworn in and testified requesting a 5-foot variance from the required 10-foot side yard setback requirement and a 1.24-foot variance from the required 10-foot side yard setback requirement for a deck; that he relocated the dwelling from a lot that measured 50' x 100'; that this lot is larger than the previous location and believed the dwelling would fit; that he never considered whether the decks would comply; that the only entrance to the dwelling is from the decks; and that he submitted pictures and letters of support from the neighbors.

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 and that numerous variances have been granted in the development**. Vote carried 5 – 0.

**Case No. 8755 – Colleen Osburn and Bonny Harbinger** – southeast of Route 16, intersection of Bay Shore Drive and Truman Avenue, being Lots 13, 14, 15, and 16, Block 7 within Broadkilm Beach Extended.

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

Ms. Hudson presented the case. Bonny Harbinger was sworn in and testified requesting a 21-foot variance from the required 30-foot front yard setback requirement, a 7.2-foot variance from the required 15-foot side yard setback requirement for a deck, and a 3-foot variance from the required 15-foot side yard setback requirement for a dwelling; that she believes the decks have been there since the 1970's; that she purchased the

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property in 2000; that the deck is the only access into the dwelling; and that she submitted pictures.

Ms. Hudson stated that the dwelling is non-conforming.

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

Ms. Hudson stated that the office received 1 letter 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 variances be **granted**. Vote carried 5 – 0.

**Case No. 8756 – Ronald and Tina Cooper** – east of Road 341, north of West Lagoon Drive, being Lot 97 within Dogwood Acres Development.

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

Ms. Hudson presented the case. Ronald and Tina Cooper were sworn in and testified requesting a 5-foot variance from the required 10-foot side yard setback requirement, a 15-foot variance from the required 30-foot front yard setback requirement and a 5-foot variance from the required 10-foot rear yard setback requirement for a proposed dwelling; that they plan to build the dwelling up to the bulkhead; that a proposed roof will go over the existing bulkhead; that their architect suggested they request a variance; that the proposed location allows for the septic system; and that they 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 variances be **granted due to the unique size of the lot and since it will not alter the character of the neighborhood**. Vote carried 5 – 0.

**Case No. 8757 – Highway I Limited Partnership** – west of Route One and Bayard Avenue, east of Elizabeth Avenue, being Lot 1, Block D within Ann Acres Development.

A variance from the front yard setback requirement.

Ms. Hudson presented the case. Harry Wilson was sworn in with Steven Spencer, Attorney, on behalf of the application, and testified requesting a 11-foot variance from

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the required 30-foot front yard setback requirement for a proposed dwelling; that an existing billboard is the only improvement on the property; that the proposed dwelling will measure 40' x 22'; that the property is larger than the other lots in the development; that due to the unique shape of the lot the buildable area is smaller; and that water and sewer is available.

Robert Pelikan was sworn in and testified in opposition to the application and stated; that he is not opposed to a single-family dwelling; that he is concerned the proposed structure will be used for a business; that the existing entrance crosses over his property; and that he submitted a picture.

Mr. Berl stated that the property is zoned MR and will not allow a commercial use without a Planning and Zoning Commission hearing and that the entrance is not an issue the Board can consider.

Kevin Rusnak was sworn in and testified in opposition to the application and stated that he had concerns that the property would be used commercially; and that he has no objection to a single-family dwelling.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted due to the unique shape of the lot and since it will not alter the character of the neighborhood and is a minimum variance.** Vote carried 5 – 0.

**Case No. 8758 – Robert and Barbara O'Neill** – north of Route 22, east of Oyster road, being Lot 17 within Malones Bayside Mobile Home Park.

A variance from the separation requirement between units in a mobile home park and a variance from the side yard and rear yard setback requirements.

Ms. Hudson presented the case. Robert O'Neill was sworn in and testified requesting a 4-foot variance from the required 10-foot side yard setback requirement, a 4-foot variance from the required 10-foot rear yard setback requirement, a 5-foot variance from the required 20-foot separation between units from Lot 16, a 9-foot variance from the required 20-foot separation requirement between units from Lot 18, a 9-foot variance from the required 20-foot separation requirement between units from Lot 15, and a 7-foot

variance from the required 10-foot side yard setback requirement; that he has lived on the property for 20-years; that he replaced his manufactured home; that the park owner advised him to apply for the variances; that similar variances have been granted in the park; that he has moved the shed to the rear of the unit to help keep the uniformity of the park; and that a survey could be provided.

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

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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 case be **left open for the Applicant to provide a survey to the Board.**

Vote carried 5 – 0.

**Case No. 8759 – Mark Wheatley** – east of Road 536, 1,020 feet northeast of Road 541.

A special use exception to place a manufactured home on a hardship basis.

Ms. Hudson presented the case. Mark and Melissa Wheatley were sworn in and testified requesting a special use exception to place a manufactured home on a hardship basis; that the Planning and Zoning Department told them a manufactured home could be placed on 20-acres; that when they tried to obtain the placement permit they were told a single-wide unit cannot be placed there unless the property was farmed; and that they purchased the unit to live in while they build a single-family dwelling.

By a show of hands, 2 parties 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. Workman, and carried unanimously that the special use exception be **granted for a period of one (1) year since it will not alter the character of the neighborhood and is a unique request.** Vote carried 5 – 0.

**Case No. 8760 – Tiffany L. Elliott** – north of Road 545, northeast of Passwaters Drive, being Lot 26 within Morningside Village II Development.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. Lee Johnson was sworn in and testified requesting a 2.4-foot variance from the required 5-foot side yard setback requirement for a pole shed; that the Applicant purchased the property in March 2003; that in November 2003 she obtained a building permit for the pole shed; that in January 2004 a Certificate

of Compliance was issued; that the pole shed measures 24' x 24'; that a contract of sale is pending the Board's decision; and that he submitted surveys.

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.

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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. 8761 – George H. Harrison, Jr.** – north of Route 22, being Leisure Point Mobile Home Park.

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

Ms. Hudson presented the case. George Harrison, Jr. was sworn in and testified requesting a 5-foot variance from the required 20-foot separation requirement between units for the mobile home park; that he is not here due to any violations; that the mobile home park has existed since 1969; that he is seeking the variance to accommodate the increase in size of manufactured homes; that the lot sizes are 50' x 100'; that the Fire Marshal's office requires a 10-foot separation; that the intention is to retain a clean uniformed look to the community; that the typical problem in meeting the separation requirement is from the shed to the neighboring unit; and that they would not need further variances for porch and deck additions.

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, since the park is well maintained, and that it meets the standards for the Fire Marshal's office.** Vote carried 5 – 0.

**Case No. 8762 – Rodney and Cherrie Welch** – south of Road 277, southwest of Oak Street West, being Lot 43 and part of Lot 42, Section 1, Block C within Angola By The Bay Development.

A variance from the front yard setback requirement.

Ms. Hudson presented the case. Rodney Welch was sworn in and testified requesting a 18-foot variance from the required 30-foot front yard setback requirement for a shed; that he purchased the dwelling in 1998; that he built an addition in 2002 which created a new front for the dwelling; that the old front of the dwelling is where he plans to place the shed; that the proposed location for the shed accommodates his and his neighbors needs in the best way; that he does not want to block his neighbors view of the

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water; that the Homeowner's Association approved the plan for the addition to the dwelling which created the new front; and that he submitted pictures.

By a show of hands 3 parties appeared in support of the application.

Ms. Hudson stated that the office received 1 letter in opposition to the application.

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

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the variance be **granted due to the uniqueness of changing the fronts on the dwelling that testimony that the Homeowner's Association did not oppose the changes and that the location of the shed on the property is changing.** Vote carried 5 – 0.

**Case No. 8763 – Charles Vanauken** – south of Road 279, south of Holly Drive, being Lot E-22 within West Bay Park Mobile Home Park.

A variance from the separation requirement between units in a mobile home park and a variance from the side yard setback requirement.

Ms. Hudson presented the case. Charles Vanauken was sworn in and testified requesting a 9-foot variance from the required 20-foot separation requirement between units and a 1.5-foot variance from the required 5-foot side yard setback requirement for a shed; that the shed was placed in 1976; that he replaced the unit in 1999; that he never obtained a Certificate of Occupancy for the unit; that he did not know why an inspection was never done; that the Zoning Inspector told him of the encroachment on the shed; 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. Mills, and carried unanimously that the variances be **granted since the shed has been there for a number of years and that**



**due to trees on the site the separation violation is not a fire hazard and since it will not alter the character of the neighborhood.** Vote carried 5 – 0.

**Case No. 8764 – Thomas and Denise Valley** – south of Road 433, northwest of Brooke Lane, being Lot 71 within Meadow Drive II Development.

A variance from the side yard setback requirement.

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Ms. Hudson presented the case. Thomas Valley was sworn in and testified requesting a 2-foot variance from the required 15-foot side yard setback requirement for a pole barn; that he staked the area for the pole barn; that he did not expect the builder to

place the pole right outside of his stakes; and that the Homeowner's Association 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. Hudson, seconded by Mr. Mills, and carried unanimously that the variance be **granted since it will not alter the character of the neighborhood.**  
Vote carried 5 – 0.

### **OLD BUSINESS**

**Case No. 8651 – Holland Fisher** – west of Road 621, 800 feet south of Route 36.

A special use exception for determination of existence of manufactured home.

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

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the case be **tabled until September 27, 2004.** Vote carried 5 – 0.

### **OTHER BUSINESS**

**Case No. 8465 – Ronald Finelli and Tracie Miller** – north of Route 54, south of Swann Drive, being Lot 10-A within Swann Point Development.

A variance from the front yard setback requirement.

Ms. Hudson read the letter from the Applicant requesting a time extension.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to **grant the Applicant an extension for a six (6) month period.** Vote carried 5 – 0.

**Meeting Adjourned 9:05 p.m.**