



Board of Adjustment
Agendas & Minutes

MINUTES OF SEPTEMBER 27, 2004

The regular meeting of the Sussex County Board of Adjustment was held Monday evening September 27, 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, Mr. Rickard – Secretary to the Board and Mrs. Norwood – Recording Secretary.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Revised Agenda with the Minutes of September 13, 2004 to be added. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of September 13, 2004 and to table the Minutes of September 20, 2004. 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. 8778 – Douglas W. Hitchens – north of Route 18, 650 feet west of Road 527.

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

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously to re-open the case. Vote carried 5 – 0.

Mr. Rickard presented the case. Douglas W. Hitchens was sworn in and testified requesting a special use exception to retain a manufactured home on a parcel; that he plans to subdivide 1-acre for his daughter; that his daughter currently resides in the manufactured home; that the loss of his wife has prompted him to prepare his will; and that they will share a driveway.

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 for the existing manufactured home**.
Vote carried 5 – 0.

Case No. 8780 – Sue Anne and Danny Branham – west of Route One, east of Tanglewood Avenue, being Lot J-79 within Sea Air Mobile City Mobile Home Park.

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A variance from the setback requirement for an accessory structure and a variance from the separation requirement between units in a mobile home park.

Mr. Rickard presented the case. Sandra Staphl was sworn in and testified requesting a 5-foot variance from the required 5-foot side yard setback requirement, 11-foot variance from the required 20-foot separation requirement between units, a 14.2-foot variance from the required 20-foot separation requirement between units and a 10-foot variance from the 20-foot separation requirement between units in a mobile home park; that she replaced the unit 2-years ago; that a Certificate of Compliance was issued on the unit; that the shed measures 10' x 10'; and that the Zoning Inspector advised her of the required variance.

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 since it will not alter the character of the neighborhood and since there have numerous variances granted in the mobile home park**.
Vote carried 5 – 0.

Case No. 8781 – Jim Baker – south of Route 22, north of East Harbor Drive, being Lot 266 within White House Beach Mobile Home Park.

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

Mr. Rickard presented the case. Jim Baker was sworn in and testified requesting a 2-foot variance from the required 20-foot separation requirement and a 3-foot variance from the required 20-foot separation requirement between units in a mobile home park; that the existing unit measures 24' x 56'; that the proposed unit measures 28' x 76'; that there will be a 24' x 28' attached garage; and that he believes the lot measures 40' x 80'.

Bob Sylvester was sworn in and testified in opposition to the application and stated that he lives on Lot 265; that he is concerned about water run-off; that the unit will only be 3-foot from his lot line; that approval of this request could set a precedent and that he wants the unit to meet the setback requirements.

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. Hudson, and carried unanimously that the

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variance be **granted for a 3-foot variance on each side of the unit since it will have no adverse effect on the neighborhood.** Vote carried 5 – 0.

Case No. 8782 – White House Beach, Inc. – southeast of Route 22, south of West Harbor Drive, being Lot 612 within White House Beach Mobile Home Park.

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

Mr. Rickard presented the case. William Showell was 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 until a permanent structure can be established; that the size of the unit will measure 10' x 46'; that the permanent office will be a double-wide unit with a basement; and that the park was established in 1959.

Mr. Mills asked the Applicant if the park has ever considered having a survey done and would they accept a stipulation from the Board to have a survey done within a year from the approval of this case.

In rebuttal, William Showell, stated that he would have to check back with his Board of Directors in reference to the proposed stipulation.

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 **left open for the Applicant to report back to the office on whether the park will have a survey done.** Vote carried 5 – 0.

Case No. 8783 – Edwin and Nancy Hampton – south of Route 54, west of Tyler Avenue, being Lot 35, Block 5 within Cape Windsor Development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Edwin Hampton was sworn in and testified requesting a 5-foot variance from the required 10-foot side yard setback requirement; that they built an extension on the front of the existing dwelling; that the builder obtained the building permit; and that previous variances were granted in 1987.

Roger Lahman was sworn in and testified in opposition to the application and stated that the Applicant opposed another owner in the park for a boat lift; that the Applicant showed up on the property to measure for the boat lift; that the Applicant is

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very aware of the setback requirements; and that he does not believe the encroachment to be the fault of the builder.

In rebuttal, Edwin Hampton, stated that he was the Vice-President of the Homeowner's Association; that it was his duty to send letters in reference to the boat lift; and that he and his wife intend to resign from their positions with the Homeowner's Association.

Motion by Mr. McCabe, seconded by Mr. Workman, and carried unanimously that the case be **tabled until October 18, 2004**. Vote carried 5 – 0.

Case No. 8784 – Timothy T. Hall, Sr. – east of Road 326, north of Meadow Lane, being Lot 74 within Stockley Crossing IV Development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Timothy Hall was sworn in and testified requesting a 5-foot variance from the required 10-foot side yard setback requirement for an attached garage; that the garage will measure 24' x 28'; and that when he applied for the building permit he discovered he would not meet the required setbacks.

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. 8785 – Julia Hemphill – northwest of Road 233, 366 feet east of Road 234B, being Lot 1.

A special use exception for a day care facility.

Mr. Rickard presented the case. Julia Hemphill was sworn in and testified requesting a special use exception to operate a day care facility; that she will care for up to 12 children; that she will have 1 full time employee; that the hours of operation will be Monday through Friday from 6:30 a.m. to 5:30 p.m.; and that the ages of the children will be from 6-weeks old to 11-years old.

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.

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Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted for 12-children ranging in age from 6-weeks old to 11-years old with the hours of operation being Monday through Friday from 6:30 a.m. to 5:30 p.m. and since it will not alter the character of the neighborhood.**

Vote carried 5 – 0.

Case No. 8786 – Randy Gooner, Sr. – west of Road 30, 3,600 feet south of Road 231.

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

Mr. Rickard presented the case.

No one appeared on behalf of the application.

William and Joyce Stout were sworn in and testified in opposition to the application and stated that they are concerned for their privacy; that by creating a road to gain access to the property will create a flooding problem; that the Applicant has a variety of animals which will create a lot of noise; and that they do not want the request granted for fear it will start a precedent.

Mr. Mills stated that it appeared that the remaining portion of the land would be land locked.

Glen Moore was sworn in and testified in opposition to the application and stated that the property extends along behind the other property owners; and that there is road frontage further down the road.

By a show of hands 6 parties appeared in opposition to the application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **denied due to lack of a record of support and since it will alter the essential character of the neighborhood.** Vote carried 5 – 0.

Case No. 8787 – Bonnie and Peter E. Bloomer, Sr. – northeast of Road 475, northeast of Shady Lane, being Lots 43 and 43 within Short Hills Development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Peter Bloomer was sworn in and testified requesting an 8.4-foot variance from the required 15-foot side yard setback requirement for a proposed addition; that the addition will measure 28' x 12'; that an existing deck in

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the rear yard and his septic system in the front yard prevent him from building the addition there; and that the addition will be a family room and bath.

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. 8788 – Short's Marine, Inc. – intersection of Route 5 and Audrey Drive.

A special use exception for a tent.

Mr. Rickard presented the case. Tim Willard, Attorney, on behalf of the application, testified requesting a special use exception for a tent; that a special use exception was granted in 1992; that the Finding of Facts did not specify the five year limit; that the tents are used for special events throughout the year; that they use the tents approximately 6-times a year; that the tents are up for a 10-day span each time; and that the tents do not adversely effect the neighborhood.

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. Hudson, and carried unanimously that the special use exception be **granted for a five (5) year period**. Vote carried 5 – 0.

Case No. 8789 – Andrea Andrus and Margaret Shaw – south of Route One, northwest of Atlantic Street, being Lot 19 within Washington Heights Development.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. Margaret Shaw was sworn in and testified requesting a 15-foot variance from the required 30-foot front yard setback requirement; that the existing structure cannot be renovated; that they plan to tear down the existing structure and build a new dwelling; that the proposed dwelling is in character with the neighborhood; that the dwelling will set farther back on the property than the adjacent dwellings; and that she submitted pictures.

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. McCabe, and carried unanimously that the variance be **granted**. Vote carried 5 – 0.

Case No. 8790 – David E. and Nancy Leager – southwest of Road 312, southwest of private road, being Lot 26 within Isaac W. Harmon Lots Development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. David Leager was sworn in and testified requesting a 5.5-foot variance from the required 10-foot side yard setback requirement; that he obtained a building permit 2-years ago to enclose a carport; that when he applied for the Certificate of Compliance he was made aware of the encroachment; that the dwelling was built in 1955; that the carport was built in 1973; and that the shed has been removed.

Shirley Shock was sworn in and testified in opposition to the application and stated that she lives next door; that the carport is now a 2-car garage; that the garage is only 4-foot from the fence; and that she is upset the Applicant has come for a variance after the fact.

In rebuttal, David Leager, stated that the structures roof existed when he purchased the property; and that he only added an end wall to enclose the carport.

Mr. Rickard stated that the office received 2 letters in support of the application.

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted since it was not created by the Applicant and due to the uniqueness of the fact that the dwelling is not parallel to the road and is a minimum variance request**. Vote carried 5 – 0.

Case No. 8791 – Robino Builders – north of Road 324, 3,200 feet east of road 321.

A special use exception for a temporary sales office.

Mr. Rickard presented the case. Robert McVey was sworn in and testified requesting a special use exception for a temporary sales office; that they plan to lease an existing structure to use for the sales office; that the sales office will be used for 2 currently approved subdivisions; that there is ample parking; that the hours of operation will be 11 a.m. to 4 p.m. for six to seven days a week; that the use is only needed for a

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12-month period; and that the sales office will be moved to a model dwelling in the subdivisions.

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. Workman, and carried unanimously that the special use exception be **granted for a period of twelve (12) months**.
Vote carried 5 – 0.

Case No. 8792 – Lynne and Harold Caswell, Jr. – north of Road 279, south of Maple Lane, being Lots 97 and 98 within Angola Neck Park Development.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. Harold Caswell was sworn in and testified requesting a 1.7-foot variance from the required 30-foot front yard setback requirement for Lot 98 and a 1-foot variance from the required 30-foot front yard setback requirement for Lot 99; that they own both lots; that they purchased two manufactured homes; that the manufactured home company placed the units; that the manufactured home company has not been very cooperative; that they have been issued temporary Certificate of Compliance's; and that they have not made final payment on the units due to the encroachments.

Mr. Mills stated that the Board has issued a zero tolerance towards any more variance requests for Atlantis Homes.

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 since it was not created by the Applicant and will not alter the**

character of the neighborhood and that Counsel send a letter to Atlantis Homes that no permits will be issued without a survey. Vote carried 5 – 0.

Case No. 8793 – Margaret and Jennifer Ryan – northeast of Road 297, north of Merchantman Drive, being Lot 130 within River Village II Development.

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

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Mr. Rickard presented the case. William Wright, Attorney, present on behalf of the application, testified requesting a 10-foot variance from the required 30-foot front yard setback requirement for a dwelling and a 4.5-foot variance from the required 5-foot rear yard setback requirement for a shed; that the Applicant purchased the property in 1983; that in preparing the contract of sale they discovered the Certificate of Compliance had never been issued; that in 1983 the same variance request was denied; that the lot is unique in size due to the cul-de-sac; that there is no adverse effect to the neighborhood; and that he submitted surveys and pictures.

Dorothy Gudger was sworn in and testified in support of the application and stated that she is the President of the Homeowner's Association; that the Homeowner's Association held a meeting and voted to support the application; and that after 11-years there is certainly no adverse effect on the neighborhood.

By a show of hands 4 parties 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. 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. 8794 – Robert T. Burns – north of Route 54, east of Canvasback Road, being Lot 28, Block D within Swann Keys Development.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Robert and Trisha Burns were sworn in and testified requesting a 5-foot variance from the required 10-foot side yard setback requirement for a proposed manufactured home; that initially the unit was to measure 23' x 56'; that the proposed unit will now measure only 20-foot wide; that they adjusted the size of the unit to better accommodate their neighbor; that the proposed unit will be

placed within the same footprint as the existing unit; and that they want to keep the existing sunroom.

Beatrice Santini was sworn in and testified in opposition to the application; that she was opposed to the 23-foot wide unit; that she did not want to see a precedent started with the wider unit; and that she submitted pictures.

John Bastian was sworn in and testified in opposition to the application and stated that he is a member on the Board of Directors; that the Association is out of the business

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of telling owners what to do with their property; and that there is not enough room between units for the fire companies.

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

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the variance be **granted for a 5-foot side yard variance 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.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **denied since records indicate it is not a non-conforming manufactured home**. Vote carried 5 – 0.

Case No. 8741 – Dolores A. Beers – south of Route 54, west of Grant Avenue, being Lot 35 within Cape Windsor Development.

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

The Board discussed the case.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the variances be **denied since it is out of character with the neighborhood and the structure can be moved to comply with the setback requirements**. Vote carried 5 – 0.

Case No. 8742 – Cheryl Ciesa – north of Road 234B, 153 feet west of Road 233.

A variance from the side yard setback requirement.

The Board discussed the case.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted with the stipulation that the Applicant provide the name and address of the builder to the office.** Vote carried 5 – 0.

Meeting Adjourned 9:40 p.m.