



## *Board of Adjustment*

Agendas & Minutes

### MINUTES OF NOVEMBER 1, 2004

The regular meeting of the Sussex County Board of Adjustment was held on Monday evening November 1, 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. Hudson, Mr. McCabe, Mr. Mills, and Mr. Workman, with Mrs. Robinson – Assistant County Attorney, Mr. Richard – Secretary to the Board, Ms. Hudson – Zoning Inspector II and Mr. Lank – Director of Planning and Zoning.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve to Revised Agenda as circulated. Vote carried 5-0.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously to approve the Minutes of October 18, 2004 as circulated. Vote carried 5-0.

Mrs. Robinson read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing the cases.

### PUBLIC HEARINGS

**Case No. 8825 – Larry Pennington and David Lasher** – east of Road 270A, southwest of Beaver Dam Reach, being Lot 77, Phase II within The Woods at Seaside Development.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. Prentice Watkins was sworn in and testified on behalf of the applicants requesting a 6-foot variance from the required 10-foot side yard setback requirement for an addition to the residence on the premise; that the applicants found a need for the variance after a survey was performed; that the home is currently 12-foot 3-inches from the property line; and that a letter has been obtained from the Seaside Homeowners Association, Inc. voicing no objections.

Ms. Hudson advised the Board that two variances have been granted in the Development and that one letter in opposition was received expressing concerns that a precedent may be established for more variance request and the loss of trees.

The Board found that there were no parties present in support of or in opposition to this case.

Motion by Mr. McCabe, seconded by Mr. Mills and carried unanimously that this case be taken under advisement. Vote carried 5–0.

At the conclusion of the public hearings, the Board discussed this case.

Minutes  
November 1, 2004  
Page 2

Motion by Mr. McCabe, seconded by Mr. Hudson and carried unanimously that a variance of 6-feet be granted **since there should be no impact on the essential character of the neighborhood.** Vote carried 5–0.

**Case No. 8826 – Robert Seabold and Linda Handy** – west of Road 479, 835 feet north of Road 465, being Lot 7.

A special use exception to operate a convalescent home.

Ms. Hudson presented the case. Robert Seabold was sworn in and testified that he proposes to build a rest care home on the premise; that he and his wife presently operate a rest care home in Ocean View; that they propose to build a residence to serve eight (8) residents; that he and his wife will operate the facility; that a nurse will provide service for the residents when he and his wife are away; that they propose a circular drive in front of the residence with parking for visitors; and that they residence will be built to meet all setback requirements.

Ms. Hudson advised the Board that the Ordinance provides that one parking space be provided for each 4 patient beds and one parking space per two employees on the largest shift.

Mr. Lank added that if the project is approved a commercial entrance permit will be required from the Delaware Department of Transportation (DelDOT).

The Board found that there were no parties present in support of the case.

The Board found that there were 7 parties present in opposition.

Pret Allen Givens, Ralph Givens, and Lewis Atkins were sworn in and testified that the area is developing with residential projects; that they are concerned about additional traffic; that they are concerned about negative impacts on property values; that poultry houses exist within a couple of hundred feet of the site; that they are concerned that if the project is approved the residents will complain about odors, dust and noise; that they are concerned about the residents in the project are not elderly, but residents with

alcohol or drug abuse problems; that the use is a commercial type of use and should be in a urban area, not a rural area; that the applicant has not be clear about the size of the building; that the lot size is too small for the size of the building proposed; and that the lot may not be large enough for the building, parking, driveway and septic system.

Mr. Mills advised the opposition that if the use is approved the Board can place limitations and stipulations on the project.

Minutes  
November 1, 2004  
Page 3

Mr. Seabold advised the Board that he is applying for a rest care home for elderly residents, not a rehab center.

Pret Allen Givens asked the Board who controls the use of the facility.

Mr. Seabold advised the Board that they are licensed by the Delaware Health and Social Services and are inspected by that Department.

Pret Allen Givens advised the Board that the opposition is not opposed to a single-family residence being built on the premise.

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 Board discussed this case. The Board referenced concerns about the lot size and the use, parking, septic, the driveway and parking, and that the use in a single-family residential neighborhood.

Motion by Mr. Mills, seconded by Mr. Hudson and carried unanimously that the special use exception be **denied since it could substantially impact the neighboring properties**. Vote carried 5–0.

**Case No. 8827 – Mr. and Mrs. Ivory H. Conway** – east of U.S. Route 13, 3,300 feet south of Road 583.

A special use exception to operate a boardinghouse.

Ms. Hudson presented the case. Mr. and Mrs. Ivory H. Conway were sworn in and testified that they propose to operate a boardinghouse; that they live on the premise in a mobile home; that the residence on the premise will be used for the boardinghouse; that tenants will be evaluated and will be required to follow house rules that will be enforced; that no smoking, no alcoholic beverages or drug use will be permitted; that no more than four (4) rooms will be used for boarding; that no more than five (5) tenants will occupy the residence at any one time; that Mr. Conway operates a furniture repair

and upholstery business on the premises; that the residence has a full kitchen; that no eating will be allowed in the tenant rooms; that tenants are charged \$100.00 per week; that tenants will be required to be at least 18-years of age or older; that they have an option to purchase the property; that he has not spoken to the neighbors for an opinion; that he does not know how long the mobile home has been on the premise; and that the mobile home and residence has individual up-to-date septic systems.

Minutes  
November 1, 2004  
Page 4

The Board found that there were no parties present in support of the application.

Janice and Dempsey Smith were sworn in and testified in opposition to the case and stated that they have lived in the area since 1960; that there are petroleum tanks on the premise; that there are eight (8) homes in the area; that older single women live in the area and that there are two day care centers in the area; that they are concerned about safety and the type of residents that will live in the boardinghouse; that the site is a mess; that the mobile home was placed on the premise by Merle Embleton; that the house is in disrepair; that dirt has been placed over the area of the petroleum tanks; and that they and other residents in the area are opposed to the use of the premise for a boardinghouse.

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 Board discussed this case.

Mr. Mills questioned if the mobile home had been legally placed on the premise.

Motion by Mr. Mills, seconded by Mr. McCabe and carried unanimously that the case be **tabled until the next regular Board meeting of November 15, 2004 for a legal opinion and more information on the legality of the mobile home.** Vote carried 5–0.

**Case No. 8828 – Fidel Escamilla** – south of River Road, west of Third Street, being Lot 12 within Riverview Development.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. David Fox was sworn in and testified on behalf of the applicants requesting a 2-foot variance from the required 10-foot side yard setback requirements; that the lot is small and narrow in width; and that the variances are being requested so that a home can be placed parallel to the street, rather than lengthwise.

Ms. Hudson advised the Board that several variances have been granted in this development.

The Board found that there were no parties present in support of or in opposition to this case.

Motion by Mr. McCabe, seconded by Mr. Workman and carried unanimously that the variances be **granted since they do not alter the character of the neighborhood**.  
Vote carried 5–0.

Minutes  
November 1, 2004  
Page 5

**Case No. 8829 – Ramon Amon and Gene Sirlouis** – east of Route One, south of Collins Avenue, being Lot 22 within Indian Beach Development.

A variance from the front yard setback requirement.

Ms. Hudson presented the case. Gene Sirlouis and Ramon Amon were sworn in and testified that they were originally granted variances on February 2, 2004; that they sought the variances before working with a architect to design the dwelling; that they now propose two french balconies in their design to help eliminate the appearance of a flat wall; and that they are now requesting an additional 2-foot variance, therefore a 15.2-foot variance is being requested from the required 30-foot front yard setback.

The Board found that there were no parties present in support of or in opposition to this case.

Motion by Mr. Mills, seconded by Mr. McCabe and carried unanimously that the variance be **granted since there was no opposition, since the variance does not alter the character of the neighborhood, and with the stipulation that the variance granted is a 15.2-foot variance from the required 30-foot front yard setback requirement**. Vote carried 5-0.

**Case No. 8830 – First State Signs** – north of Route 9, 96 feet east of Road 269A.

A variance for a second wall sign.

Ms. Hudson presented the case. Dale McAllister was sworn in and testified on behalf of the First State Signs requesting a second wall sign for the Happy Harry's drug store; that the side of the building is very visible; that signage is needed for visibility; that the sign will cover less than 7% of the wall; that Happy Harry's built a new drug store in Millsboro; and that this sign was removed from the original drug store and will be placed on this building if the variance is granted.

The Board found that there were no parties present in support of or in opposition to this case.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted for the second wall sign since it will not impact neighboring properties.** Vote carried 5-0.

Minutes  
November 1, 2004  
Page 6

**Case No. 8831 – David Rickards** – south of Road 370, 2,421 feet northeast of Road 367B.

A variance from the rear yard setback requirement.

Ms. Hudson presented the case. David Rickards was sworn in and testified that he is requesting a 15-foot variance from the required 20-foot rear yard setback requirement; that he had a 16-foot by 12-foot shed on the premises and added a 24-foot by 42-foot garage addition to the shed; that he owns the adjoining lot; that he is not aware of any objections from his neighbors; and that the structure meets the required setback for the side yard.

The Board found that there were no parties present in support of or in opposition to this case.

Motion by Mr. McCabe, seconded by Mr. Hudson and carried unanimously that the variance be **granted since it does not alter the character of the neighborhood.** Vote carried 5-0.

**Case No. 8832 – Layne Thomas Builders, Inc.** – south of Route 54, south of Garfield Avenue, being Lot 13, Block 2 within Edgewater Acres Development.

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

Ms. Hudson presented the case. James Westerberg was sworn in and testified that they originally were requesting a variance of 10-feet from the required 30-foot front yard setback requirement and a variance of 10-feet from the required 20-foot rear yard setback requirement; that the lot is only 91-foot deep; that they have spoken to the neighbors and want to conform with the neighboring property setbacks and are now requesting a 14-foot variance on the front and a 7-foot variance for the rear; that the side yard setbacks will be maintained; and that the variances will conform to the setbacks for the neighboring homes.

Bill Brown was sworn in and stated that he is the owner of Lot 12 and that the homes in the immediate area have been built 13-feet from the rear.

The Board found that there were no parties present in opposition to the variances.

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the variances be **granted since several similar variances have been granted in the development and since there should be no negative impact on neighboring properties**. Vote carried 5-0.

Minutes  
November 1, 2004  
Page 7

**Case No. 8833 – Fox Glen Limited Liability Company** – south of Road 531, west of Fox Glen Drive, being Lot 8 within Fox Glen Development.

A variance from the side yard setback requirement.

The Board found that no one was present on behalf of this case.

Mr. Callaway stated that the case would be carried until the end of the public hearings.

At the conclusion of the public hearings, Mr. Callaway again asked if any one was present on behalf of this case.

The Board again found that no one was present on behalf of this case.

Motion by Mr. Mills, seconded by Mr. Workman and carried unanimously that this case be **denied for lack of representation**. Vote carried 5-0.

**Case No. 8834 – James and Mary Dalious and Thomas E. and Diane M. Robbins** – northeast of Road 209, 2,030 feet southeast of Road 36, being Lots 8 and 9.

A variance from the minimum lot size requirement and a variance from the side yard setback requirement.

Ms. Hudson presented the case. Thomas E. Robbins was sworn in and testified that he and his neighbors, the Dalious' are requesting permission to relocate their side property line so that the porch on the Dalious lot does not encroach over the property line; that by relocating the property line it becomes necessary for variances in the square footage of each lot; that a variance of 22,194 square foot is needed for the Dalious lot and a variance of 23,119 square foot is needed for the Robbins lot; and that a variance of 7.1-foot is needed from the required 10-foot side yard setback requirement for the porch.

The Board found that there were two parties present in support.

The Board found that there were no parties present in opposition to the case.

Motion by Mr. Mills, seconded by Mr. Workman and carried unanimously that the variances be **granted since the lots were originally non-conforming in size and since the variances will not alter the character of the area**. Vote carried 5-0.

Minutes  
November 1, 2004  
Page 8

**Case No. 8835 – Eugene and Cynthia Alichwer** – north of Road 358, east of Crab Street, being Lot 88 within Bayshore Mobile Home Park.

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

Ms. Hudson presented the case. Cynthia Alichwer was sworn in and testified that their propose to place an 8-foot enclosed screen porch onto their mobile home; that the owner of the park has written a letter of no objection; and that they area requesting a variance of 5-feet from the required 20-foot separation requirement between units in the park.

The Board found that there were no parties present in support of or in opposition to this case.

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously that the variance be **granted since there will be no impact on the character of the neighborhood**. Vote carried 5-0.

**Case No. 8836 – Jimmie and Martha Peden** – southeast of Road 562, 5,184 feet northeast of Road 404.

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

Mr. Richard presented the case. Jimmie Peden was sworn in and testified that he proposes to subdivide a lot off of the frontage of his property and wants to retain a 50-foot wide access entrance to the residual acreage.

Nakita Powell and Dr. Erethia Evans were sworn in and testified that they are concerned about the location of the entrance to the property.

Mr. Mills advised them that the entrance is drawn to go straight back to the rear.

Mr. Peden stated that he can create a 5-acre parcel for his commercial greenhouses, and that he has no objection to a combined driveway serving both parcels.

Motion by Mr. Mills, seconded by Mr. Workman and carried unanimously that the variance be **granted since it does not alter the character of the neighborhood, since it is a deep parcel, and with the stipulation that the entrance to both parcels be a combined entrance.** Vote carried 5 – 0.

The Board recessed for 10-minutes.

Minutes  
November 1, 2004  
Page 9

**Case No. 8837 – Harold and Lisa Vickers** – south of Road 64, 1,000 feet east of Road 455.

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

Ms. Hudson presented the case. Harold and Lisa Vickers were sworn in and testified that they propose to build a 30-feet by 40-feet unattached residential garage; that are requesting a variance of 15-feet from the required 20-foot rear yard setback and a variance of 10-feet from the required 15-foot side yard setback for the garage; and that the septic system is on the other side of the property.

Hans Rudolph, Jr. was sworn in and testified in opposition to the variances and stated that he had to follow all guidelines; that the garage is too large and encroaches setbacks; that there may be a negative impact on property values; that the neighbors are opposed; that the owners operate H & L Trucking, a towing service, and haul vehicles to and from the site, store vehicles in the rear yard, display and sell vehicles, boats and lawn mowers in the front yard; that the garage will change the appearance of the neighborhood and impacts the character of the area; and that he opposed the proposed setbacks.

Ms. Vickers stated that the boat in the front yard is their boat, that they have sold a car or two from the site for a friend or family member, not as a business; that they do have a roll-back truck for hauling vehicles; that the garage is proposed for their personal use, not a business; and that the fenced in area on an adjacent lot is a storage area from their personal use, not a business.

Mr. Vickers stated that he does have an impound lot on the adjacent lot and that he does have a license for the business from the Delaware Division of Revenue.

Mr. Lank advised Mr. Vickers that if he is operating a hauling business and an impound lot for the storage of vehicles it will be necessary that he apply for a Conditional Use.

Motion by Mr. Mills, seconded by Mr. Hudson and carried unanimously that the case be **tabled until the next regular meeting, November 15, 2004**. Vote carried 5-0.

**Case No. 8838 – K. Gary and Diane R. Wetzel** – north of Road 358, east of Shark Street, being Lot 189 within Bayshore Mobile Home Park.

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

Minutes  
November 1, 2004  
Page 10

Ms. Hudson presented the case. Diane Wetzel was sworn in and testified that they propose to add an 8-foot porch onto their mobile home and need a 1.4-foot variance from the required 20-foot separation requirement between units in a park.

Mrs. Wetzel added that a letter was filed with the application from the owner of the mobile home park voicing no objections to the proposal.

The Board found that there were no parties present in support of or in opposition to the case.

Motion by Mr. McCabe, seconded by Mr. Mills and carried unanimously that the variance be **granted since other variances have been granted in the park**. Vote carried 5-0.

**Case No. 8839 – Duane Hatfield Smith** – east of Route 24, north of Road 275, being Lot 35 within Estates of Sea Chase Development.

A variance from the rear yard setback requirement.

Ms. Hudson presented the case. Duane Hatfield Smith was sworn in and testified that he proposes to add a deck to his unit and is requesting a variance of 9-feet from the required 10-foot rear yard setback requirement for his single family detached condominium dwelling; that a concrete pad exists on the rear of the unit and is too small for two chairs and a table; that he plans on preserving the trees along the rear of his lot by building the proposed deck around the trees; and that the deck is proposed to be built with two levels, one level 28-inches above grade and one level 10-inches above grade.

The Board found that there were no parties present in support of or in opposition to this case.

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 Board discussed this case.

Mr. Mills stated that he is concerned that a precedent may be established for additional variances in the development.

Motion by Mr. Mills, seconded by Mr. Hudson and carried unanimously that the case be **tabled until the next regular meeting, November 15, 2004 for review of the site plan for the Estates of Sea Chase**. Vote carried 5-0.

Minutes  
November 1, 2004  
Page 11

#### OLD BUSINESS

**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.

The Board discussed this case which has been tabled since September 27, 2004.

Mr. McCabe stated that he had looked at the site several times and that the application is similar to other variances granted in the development.

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried with 3 votes that the variance be **granted since it does not affect the general character of the neighborhood**. Vote carried 3-2 with Mr. Callaway and Mr. Mills opposing the motion.

**Case No. 8799 – Louis and Clare Szeliga** – south of Route 54, west of Grant Avenue, being Lot 46 within Cape Windsor Development.

A variance from the rear yard setback requirement.

The Board discussed this case which has been tabled since October 4, 2004.

Mr. McCabe stated that he had looked at the site and that the application is similar to other variances granted in the development.

Motion by Mr. McCabe, seconded by Mr. Workman, and carried unanimously that the variance be **granted since it does not affect the general character of the neighborhood**. Vote carried 5-0.

**Case No. 8813 – Kelly and Reece Hales, Jr.** – south of Road 64, 1,150 feet east of Route 13A.

A variance from the minimum lot width and square footage requirements for a parcel and a variance from the side yard setback requirement.

The Board discussed this case which has been tabled since October 18, 2004.

Ms. Hudson stated that a survey was received and that they could not determine the age of the pole building and that it has been assumed that it existed prior to zoning jurisdiction.

Minutes  
November 1, 2004  
Page 12

Motion by Mr. Mills, seconded by Mr. Hudson and carried with 4 votes that the variances be **granted since they do not alter the character of the area and with the stipulation that there be a combined entrance serving both parcels**. Vote carried 4-0-1 with Mr. McCabe not voting since he did not participate in the public hearing.

#### OTHER BUSINESS

**Case No. 8801 – Jeremy Murdick** – west of Road 432, 2,000 feet north of Road 329, being Lot A.

A variance from the rear yard setback requirement.

A request to reapply.

Ms. Hudson read a note from Mr. Murdick apologizing for missing the scheduled public hearing since he was sick and requesting a rehearing.

Motion by Mr. Mills, seconded by Mr. McCabe and carried unanimously to **grant permission for the applicant to reapply with the stipulation that the filing fee be paid prior to scheduling**. Vote carried 5-0.

Meeting adjourned at 10:08 p.m.