

Minutes of January 13, 1992

The regular meeting of the Sussex County Board of ADjustment was held Monday evening, January 13, 1992 in the County Council Conference Room, Courthouse, Georgetown, Delaware.

The meeting was called to order at 7:00 P. M. with Chairman McCabe presiding. The Board members present were: Mr. McCabe, Mr. Stuchlik, Mrs. Hudson, Mr. Carey, Mr. Wheatley, Mr. Jones-Attorney and Mr. Betts-Zoning Inspector.

Motion was made by Mr. Stuchlik seconded by Mr. Carey and carried unanimously that the minutes of January 6, 1992 be approved as circulated.

Case No. 4613--Robert E., Jr. & Elberta C. Murray - West side of Route 346B, east of St. Andrews Court, Lot 30D, within The Colony.

A variance from the rear yard setback requirement.

The case was presented by Mr. Betts. Robert E., Sr. & Elberta C. Murray were sworn in and testified, requesting a 5'9" variance from the rear yard setback of 15' for an open deck. The rear yard setback required is 20', but an open unenclosed deck can encroach into the rear yard setback 5' making the setback 15'. The deck is already constructed. A permit had been obtained, but the proper setbacks were not followed and were not read. Pictures were presented. The property is located at Lot 30D in The Colony.

There were no parties present in opposition.

Motion was made by Mr. Carey, seconded by Mr. Wheatley and carried unanimously that the case be taken under advisement.

At the conclusion of the public hearings, the Chairman referred back to this case. After some discussion, motion was made by Mr. Stuchlik, seconded by Mr. Carey and carried unanimously that the variance be denied, finding that the applicants failed to present testimony to support the variance according to the law.

Case No. 4614--Sussex County Community Action - North side of Route 508, on the east side of the intersection with Route 507.

A special use exception to operate a Day Care Center.

The case was presented by Mr. Betts. Christine Harris was sworn in and testified representing Sussex County Community Action who requested to operate a Day Care Center in the Town of Columbia, near Delmar and the Maryland line. The property is owned by the Church and has an existing building on it that will be used for the

Day Care Center. The building is vacant at the present time. The Center will operate 5 days a week from 7:30 A.M. to 5:30 P.M. There will be 40 to 50 children with staff members. There is an existing playground with fencing on the property. The Day Care Center will also care for Children from Maryland if needed. She testified there is a need for the Center.

Mabel L. Gaines was sworn in and testified in behalf of the required Day Care Center. She testified that there is a need for the Center in the Columbia area.

There were no parties present in opposition.

Motion was made by Mr. Carey, seconded by Mrs. Hudson and carried unanimously that the special use exception be granted.

Case No. 4615--P & A Engineering Co., Inc. - East side of Route 13,
2098 feet south of Route 452.

A special use exception to operate a concrete/
asphalt crushing machine.

The case was presented by Mr. Betts. George L. Stroop was sworn in and testified representing P & A Engineering Co., Inc., who was also represented by David Rutt, Attorney. The applicants request to operate a concrete/asphalt crushing machine in an HI-1 District. Mr. Rutt referenced and quoted the Zoning Code. The applicants propose to use a portable crusher to crush concrete, asphalt and cinder block to be used as a road base. The applicants previously operated a crusher in Wicomoco, Maryland. A copy of an application to D.N.R.E.C. was presented. A drawing of the type of crusher to be used was explained as to its operation and noise level. It was explained that the noise would sound like a train in the distance and the noise level will be monitored and in compliance with D.N.R.E.C. Mr. Stroop explained that there is a small amount of dust and the vibration would only be felt if you stand next to it. He stated there is no run-off, no air pollution and not a fire hazard. A survey of the site was also presented. The crusher will be 550' back from Route 13 and 50' from the property lines. The materials will be stock piled next to the crusher. The adjacent properties contain equipment, farmland and woodlands. They will operate the crusher December through March, five days a week, hours to be 8:00 A.M. to 5:00 P.M. They hope to crush 20,000 to 30,000 tons this year, will increase per the market. He testified it is safe for adjacent neighbors. A letter from Air & Waste Management was presented. They feel it is better to crush the materials than to put them in the landfill.

Sharon Cordrey was sworn in and testified, questioning dust, drainage, noise and vibration. She has horses and is concerned about noise, and a pond and fears dust getting in the pond. She could not say if she is for or against it, until she could possibly see how the crusher works.

Mr. Stroop stated that the nearest house is approximately 2500 feet away. He feels there should be no problem with the horses and

stated that he has had no complaints before when he was in Maryland, about houses shaking. He also stated he would be glad to make arrangements for Ms. Cordrey to see the type of machine in operation.

There were no parties present in opposition.

Motion was made by Mrs. Hudson, seconded by Mr. Carey and carried unanimously that the case be taken under advisement.

At the conclusion of the public hearing, the Chairman referred back to this case. After some discussion, motion was made by Mr. Carey, seconded by Mr. Stuchlik and carried unanimously that the special use exception be granted for a period of time through March, 1993, and at that time to be brought up before the Board as to the effect on the surrounding community, to operate the months of December through March and the location of the crusher to be per plot plan presented.

Case No. 4616--Henry B. Stone - South side of Route 54, $\frac{1}{2}$ mile west of Hayes Avenue, Lot 16, within Edgewater Acres.

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

The case was presented by Mr. Betts. Henry B. & Margaret Stone were sworn in and testified, requesting a variance of 9'6" from the 30' front property line setback requirement and an 8' variance from the 15' side property line setback requirement. Mr & Mrs. Stone were representing their daughter and son-in-law who own the house on Lot 16, in Edgewater Estates. The variance requests are for an addition to the front of the house and a deck on the side of the house. There has been no construction started on these two additions. They feel there will be no impact on the neighbors. Pictures were presented.

Charles E. Phillips, President of Edgewater Estates Civic Associates and Pat Ficken, resident and Board member were sworn in and testified in behalf of the request. Mr. Phillips presented a letter from the Association who are in favor of the application.

There were no parties present in opposition.

Motion was made by Mr. Carey, seconded by Mr. Wheatley and carried unanimously that the variances be granted.

Case No. 4617--Edward S. Wilson, Jr. - Northeast side of Route One, 185 feet southeast of Carolina Street, Lot 24, within Killens Addition.

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

The case was presented by Mr. Betts. Edward Wilson, Jr. was sworn in and testified, requesting a 3.07' variance from the side property line and a .29' variance from the front property line for

a dwelling that exists on the property. The present construction was built in the 1920's by Walls Builders and Mr. Wilson's father.

Bruce Edward Killen was sworn in and testified that his concern is not being able to use the service entrance next to the property. When explained that the variance needed is on the opposite side of the property from the service entrance, Mr. Killen stated he has no problem with the variance request.

There were no parties present in opposition.

Motion was made by Mrs. Hudson, seconded by Mr. Carey and carried unanimously that the variance be granted, finding the property is odd shaped and the construction has been on the property for a long time.

Case No. 4618--Frank Prekup - South side of Route 238, 1200 feet west of Route 16.

A special use exception to place a manufactured home in an AR-1 District on less than five acres for a permanent residence.

The case was presented by Mr. Betts. Frank Prekup was sworn in and testified, requesting to place a manufactured home on his property for his residence while he constructs a house. He proposes to purchase a 3 bedroom manufactured home, 14' wide and no smaller than 65' or 70' or a 24'x 50' or 52' double-wide manufactured home. He proposes to live in the manufactured home until his dwelling is completed. He feels the home will be completed within three years.

Fredrick Gunn, Jr., Earl J. Orth, III and Fred Gunn, Sr. were sworn in and testified in behalf of the manufactured home.

There were no parties present in opposition.

Motion was made by Mr. Carey, seconded by Mrs. Hudson and carried unanimously that the special use exception be granted for a period of three (3) years.

Case No. 4619--Ocean Wines and Spirits, LTD. - Southwest side of Route 14, 800 feet north of Route 271.

A special use exception to retain a manufactured home for security purposes.

This case was withdrawn.

Case No. 4620--Laurie M. & Jeffrey M. Zell - East side of Route One, Brixton Court, Lot 31, within The Preserve.

A variance from the maximum height requirement.

The case was presented by Mr. Betts. Jeffrey M. Zell and George Eisenberger, Architect, were sworn in and testified. Mr. & Mrs. Zell are requesting to construct a new dwelling and are

requesting a variance of 2½ feet from the 35' height requirement for a dwelling, to be 37'6". A model of the home was shown and a subdivision plan was submitted and explained. Also presented was a copy of a letter from Michael Lynn, Vice President of Carl Freeman Associates voicing no objection to the requested variance. It was stated that the house will not block anyones view. Mr. Eisenberger testified that when he designed the home he had misunderstood the measurements relating to height. The dwelling has not been built. A plan of the structure was shown.

Mr. Betts read into the record the letter received from Michael Lynn.

There were no parties present in opposition.

Motion was made by Mr. Stuchlik, seconded by Mr. Carey and carried unanimously that the case be taken under advisement.

At the conclusion of the public hearings, the Chairman referred back to this case. After some discussion, motion was made by Mr. Stuchlik and seconded by Mr. Carey that the variance be denied, with Mr. McCabe voting against denial. Motion carried with four voting for denial and one voting against denial. Findings for denial were, failure to meet requirements according to the Code for granting of a variance, can be developed and meet requirements and it would set a precedent.

Case No. 4621--Kenneth E. Walz & Robert G. Ward, Jr. - Northeast side of Route 270A, on the east side of Shady Ridge Drive, Lot 16, within Shady Ridge.

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

The case was presented by Mr. Betts. Kenneth Walz and Robert Ward, Jr. were sworn in and testified, requesting a 3' variance from the 5' rear yard setback requirement and a 1' variance from the 5' side yard setback requirement for a shed that already exists on the property. The applicant purchased the property five years ago with the shed already on it. He did other construction work and when the Inspector went to check the work he found the existing shed in violation. Letters from two neighbors were presented voicing no objections. The shed has a wood floor, but doesn't feel it can be relocated because of trees and shrubs.

Mr. Betts read the letters presented into the record from Fannie & Maurice Blaik and Edward & Margaret Diggins who have no objections.

There were no parties present in opposition.

Motion was made by Mrs. Hudson, seconded by Mr. Wheatley and carried unanimously that the variances be granted.

Case No. 4622--Anna P. Baker - Southeast side of Route 265,
at Route 266A, Lot 3A, within Capes
Cove.

A variance from the setback requirement between
units in a park.

The case was presented by Mr. Betts. Anna P. Baker was
sworn in and testified, requesting a 2' variance from the 20' setback
requirements between units on Lot 3A, Capes Cove. The applicant
wishes to replace an existing manufactured home with a 1992, 22'x 48'
double-wide manufactured home. She testified that there is no
problem with the neighbors.

There were no parties present in opposition.

Motion was made by Mr. Carey, seconded by Mrs. Hudson and
carried unanimously that the variance be granted.

Case No. 4623--Freddie E. & Karen J. Rosen - West side of Route 502,
 $\frac{1}{2}$ mile north of Route 512.

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

The case was presented by Mr. Betts. Freddie & Karen Rosen
were sworn in and testified, requesting to place a 1973, 12'x 60'
with a 4' tip-out, manufactured home on their property on hardship
basis to care for their mother who is ill. The manufactured home
is already on the property and occupied by their mother. They did
not know a public hearing was needed. An updated letter, dated
in December, was presented from a doctor.

Mr. Betts read into the record a letter from a doctor, dated
in August, referencing their mothers health.

It was explained to the applicants that a hardship approval
must be renewed every two years and if the hardship ceases the
manufactured home must be removed.

There were no parties present in opposition.

Motion was made by Mr. Wheatley, seconded by Mr. Carey and
carried unanimously that the special use exception be granted on
basis of hardship for a period of two (2) years.

Case No. 4624--Leroy Rideout, Jr. - Northwest side of Route 535,
900 feet northeast of Route 534, Lot 14,
within Indian Village.

A special use exception to place a manufactured
home in an AR-1 District on less than five acres
for a permanent residence.

The case was presented by Mr. Betts. Leroy, Jr. and Evelyn
Rideout were sworn in and testified, requesting to place a 1983,
14'x 70' manufactured home on property for their permanent residence.

The applicants are purchasing Lot 14, in Indian Village. The development is predominantly manufactured homes.

There were no parties present in opposition.

Motion was made by Mrs. Hudson, seconded by Mr. Wheatley and carried unanimously that the special use exception be granted.

Case No. 4625--Albert C. & Cornelia Clark - North side of Route 308, on the east side of the intersection with Route 309.

A special use exception to place a manufactured home on a medical hardship basis and a variance from the minimum size for a manufactured home.

The case was presented by Mr. Betts. Albert & Cornelia Clark were sworn in and testified, representing their Church who wishes to place an 8'x 22' camping trailer on property owned by Jennie Jackson Hrs., for the residence of Mr. William L. Morris and on basis of hardship. Mr. Morris is destitute and needs help. He is not well and needs someone to look after him. He has no utilities or income and they fear for his well-being. The manufactured home is undersized and a variance is needed from the 450' requirement for a manufactured home. Mrs. Clark testified that things will be supervised and they will look after Mr. Morris.

It was explained that if the use's are approved, they would have to re-apply every two years and if the hardship ceases the manufactured home will have to be removed.

Harris H. Short, who has been working with the applicants, was sworn in and testified in behalf of the request, stating that conditions were bad and the manufactured home is needed.

Mr. Betts stated that a letter from the VA Hospital is needed, referencing Mr. Morris's condition.

There were no parties present in opposition.

Motion was made by Mr. Carey, seconded by Mrs. Hudson and carried unanimously that the special use exception and variance be granted on the basis of hardship for a period of two (2) years.

OLD BUSINESS

Case No. 4610 (cont'd.)--William H. Derrickson - East side of Route 347, 3/4 mile north of Route 349.

A special use exception to place a second dwelling on a parcel for summer use.

Motion was made by Mrs. Hudson, seconded by Mr. Carey and carried unanimously that the case be tabled.

OTHER BUSINESS

Mr. Betts informed the Board that a letter had been written to Jerry Edge, for which the Board members were given a copy, explaining that his six months time had expired and the manufactured home for Case No. 4245, would have to be removed, since he had not met the conditions for his approval.

Meeting adjourned at 9:15 P. M.