

Minutes of January 13, 1997

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, January 13, 1997 in the County Council Administration Office Building, Georgetown, Delaware.

The meeting was called to order with Chairman McCabe presiding. The Board members present were: Mr. McCabe, Mr. Callaway, Mr. Mills, Mrs. Hudson, Mr. Wheatley, Mr. Jones-Attorney, Mr. Betts-Zoning Inspector III and Mrs. Talley-Planning & Zoning Secretary.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the minutes of December 16, 1996 be approved as circulated.

Mr. Jones read a statement explaining how the Board of Adjustment meetings are conducted and the procedure for hearing the cases.

Case No. 6208--Anne J. Kaylor - West side of Route 267, 1/2 mile east of Lewes, Gills Neck Road.

A variance from the minimum lot width requirement.

The case was presented by Mr. Betts. Anne Kaylor was sworn in and testified and was represented by Ned Maull, Attorney. Ms. Kaylor requested a variance from the minimum lot width requirement to subdivide a parcel into two parcels. Mr. Maull presented a copy of a tax map to the Board. Mr. Maull stated that the applicant had been before the Board before, and Mr. Griffin, Attorney, representing opposition had appealed the decision to have a new hearing, because he had missed the original hearing, thinking the meeting started at a time later than 7:00 P.M. He stated that the property is peculiar or unusual in shape. Parcel A already has a home on it in compliance with the setback requirements. Parcel B will be removed from Parcel A. Parcel B is to be 1/2 acre in size for Ms. Kaylor's daughter to build a home on to be near her mother. He stated that the use will not alter the neighborhood and would be in character with the area. He stated that there are other properties in the area with lesser than 150' frontage. He feels property values will not be adversely affected. Five letters from adjoining neighbors in favor of the requested variance, were read by Mr. Maull and presented as exhibits. Letters received were from F. Irvin Walls, II & Linda Walls, Beth Joselow & Tom Mandel, Ronal & Nancy Smith and Emily J. McCarthy.

Ms. Kaylor stated that she bought the property approximately 12 years ago. She now wants to have her family near her. She stated that it is a family thing and that it would be nice to be together. She hoped the Board would approve the variance.

Hazell M. Smith was sworn in and testified in opposition and was represented by Jim Griffin, Attorney. Ms. Smith is an

adjoining property owner who owns property on four different surfaces of the applicant's property. Mr. Griffin referenced Ordinance 632 adopted by the County Council, to have lots be 150' wide. The Ordinance has been in affect since November, 1989. Mr. Griffin stated that the variance is an appeal, meaning the Director has already denied the request and the Board is asked to over ride the Director's decision. He stated that there is no proof shown to the Board when existing lots in the area were created with smaller than 150' widths, nor has there been a showing variances were granted. Mr. Griffin referenced the Zoning Code and presented copies of sections of the code. Mr. Griffin stated that there is another way to have two lots by having a common entrance to the lots. Mr. Griffin stated that there was an error on the request, that this is not a front yard setback variance request, but a lot width variance request. He read from the Ordinance the reasons for granting a variance. He feels that there has been no showing that the use is not self creating, no hardship or unusual conditions and that there is enough land, just not enough frontage. Mr. Griffin stated that the property can be subdivided with a common entrance. He presented a copy of the Ordinance adopted by County Council in reference to the 150' width. Mr. Griffin stated that the property of the applicant is near a curved road. He stated that the applicant had said that she has owned the property for 12 or 13 years. Mr. Griffin presented a copy of the deed showing the property has been owned since 1981. He stated that she could have subdivided the property before the law was changed. That the property has been a rental property, that Ms. Kaylor resides in Arlington, Virginia.

Ms. Smith stated that she lives on Gills Neck Road and that her property surrounds the Kaylor property on three sides and across the road. She stated that the road is a paved road with no white center stripe and the road is curved. She stated that the development Wolfe Run in on the road and uses one common entrance. Ms. Smith believes the Code that was adopted in 1989 should be enforced. She does not object to Ms. Kaylor having her daughter there she wants them to have one common entrance. She stated she would do the same is she ever sold her property.

Mr. Maull in rebuttal stated that the Kaylor property has never been a rental property.

Mr. Betts stated that the advertisement for the hearing was correct.

Mr. Mills asked Ms. Kaylor if she would object to a single entrance to the property.

Mr. Maull stated on behalf of Ms. Kaylor that they have not

discussed the one entrance, since they did not know it would be asked of them.

Mr. Jones asked if Ms. Smith objected to the variance if it was approved with the condition that there be one driveway.

Mr. Griffin stated that one entrance is what Ms. Smith wants.

Mr. Mills questioned if the approval with the condition would hold if the property were sold.

Mr. Jones stated that it would.

Mr. Maull stated that the subdividing of the property does not fall in the moratorium.

Mr. Jones stated that any subdivision would have to be approved by Planning and Zoning.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the case be left open until the next meeting for Mr. Maull and the applicant to decide if she could use one entrance.

It was stated that the case should also be held open for Mr. Griffin to have input. Motion was made by Mr. Mills, seconded by Mr. Callaway and carried unanimously to amend the previous motion to hold Case No. 6208 open until the next meeting for Mr. Griffin and Mr. Maull to have further input.

Case No. 6216--Janet N. Squatrito - Northeast side of Wilson Avenue, 750 feet south of Lincoln Drive and 850 feet south of Route 54, Lot 14, Block 3, within Cape Windsor.

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

The case was presented by Mr. Betts. Janet Squatrito was sworn in and testified, requesting a 5' variance from the 20' rear yard setback requirement and a 5' variance from the 10' side yard setback requirement on Lot 14, within Cape Windsor. The applicant wishes to place a new modular home on her property to replace a single-wide manufactured home. She would like to place the modular in the same location as the manufactured home and also to line it up with the other neighbors. It will be 15' from the bulkhead. Letters from the neighbors on Lot 13 and Lot 15 were presented who are in favor of what the applicant proposes to do. Ms. Squatrito stated that the Association has no problems with the variance.

Mr. Betts read the letters presented from Richard & Helen Miller and Salvador & Peggy Anselmo.

Thomas Rockstroh was sworn in and testified in opposition stating that he lives at 20 Wilson Ave. in Cape Windsor. He presented a drawing showing the applicants property directly across from his residence. He stated that he does not speak for the Association, but the people in Cape Windsor live close together. He stated that the applicants property is on a corner lot and has cables and poles that encroach in the right-of-way. Mr. Rockstroh stated that he is tired of people putting things such as fences, poles and cables in the right-of-way. He presented his letter, copy of the setbacks and a drawing of his lot.

The applicant felt that Mr. Rockstroh had the back and front mixed up, because she is going further from the road and closer to the lagoon. She stated that Cape Windsor always stated the location of the front and rear of the property different from the County. Ms. Squatrito stated that she does not have a fence on her property, that Mr. Rockstroh has a fence. She stated that she will remove the cables and add bushes. She will not have anything in the easement.

Mr. Jones stated that the Board cannot enforce the Community right-of-way, and that it is not an issue for the Board to consider.

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

Case No. 6217--Gary & Robin Short - East side of Route 17, 400 feet north of Route 52B, Lot 13, within Smithfield Acres.

A variance from the side yard setback requirement.

The case was presented by Mr. Betts. Gary Short was sworn in and testified, requesting a 11.3' variance from the 15' side yard setback on Lot 13, within Smithfield Acres, to construct an attached garage. He stated that it is the only location on the property he can add the garage. He stated that there is farmland next to his property and he has no problem with the neighbors.

There were no parties present in opposition.

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

Case No. 6218--Steven & Brenda Evans - Southwest side of Route 64,
600 feet northwest of Route 66, Lot 28,
within Villa Park Estates.

A special use exception to place a second manufactured home to be connected to the existing manufactured home to be used as one single-family unit.

The case was presented by Mr. Betts. Steve Evans was sworn in and testified, requesting to place a new 14'x 70' manufactured home on his property to be connected to an existing 12'x 70' manufactured home to become one single-family unit. He stated that the manufactured homes will have one kitchen, same siding, A-Roof and on a permanent foundation. He hopes to complete the work within one year. It will be one living unit when completed.

There were no parties present in opposition.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the special use exception be granted with the stipulations that the manufactured home be placed on a permanent foundation, with same siding all around, A-Roof, one kitchen, to be one single-family living facility and be completed within one (1) year.

Case No. 6219--David W. Erickson, Sr. South side of Route 214,
750 feet west of Route 216, Lot 42,
within Draper Foods Subdivision.

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. Rev. David W. Erickson, Sr. was present and affirmed. Rev. Erickson requested to place a 1996, 28'x 52' double-wide manufactured home on a permanent foundation on property he is purchasing for his own use. He stated that there is vacant property and other manufactured homes in the area.

There were no parties present in opposition.

Motion was made by Mr. Wheatley, seconded by Mr. Mills and carried unanimously that the special use exception be granted for a new double-wide manufactured home on a permanent foundation.

Case No. 6220--Patricia W. Harris - Southwest side of Route One,
at Route 271, Lot E-78, within Sea Air
Mobile City MHP.

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

The case was presented by Mr. Betts. There were no parties
present in behalf of this case. There were no interested parties
present for or against the application.

The Chairman stated that the case would be held open until the
end of the meeting to give the applicant time to appear.

At the conclusion of the public hearings, the Chairman
referred back to this case. There were no parties present
representing this case.

Motion was made by Mr. Mills, seconded by Mr. Callaway and
carried unanimously that the variance be denied, due to no
representation, and the applicant cannot reapply for a period of
one (1) year.

Case No. 6221--Irma J. Ball - North side of Francis St., 486 feet
east of North Third Street, near Delmar.

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. Irma J. Ball was sworn
in and testified, requesting to place a 1996, 12'x 70'
manufactured home on her property to live in while she repairs her
old house. She testified that the old house is in need of
extensive repairs. She can only live on the second floor of the
house now. She stated that if she cannot repair the house she will
remove it. She does not know how long it will take to repair the
house. She would like to leave both structures on the property.

Mr. Jones, Attorney, explained that she cannot have two living
structures permanently on the property.

Mr. Mills asked Ms. Ball if two years would give her ample
time to repair the house.

She did not know how long it would take.

Granville Wilson Brittingham, Jr. was sworn in and testified
in opposition. He stated that he lives in front of the property
and he questioned the property size. He stated that the applicant

does not stay on the property half of the time. He feels that Ms. Ball needs a grant to fix the house up, and does not feel a manufactured home will do any good. Pictures and letters of opposition from people in the area were presented. He questioned a permanent structure with the house still being on the property. He stated that there are no other manufactured homes around except way down the road there is a park. He feels the manufactured home if granted will never be removed. He stated that through the years the applicant has been back and forth. He feels she needs a grant.

Mr. Betts read the letters of opposition presented from Lelah Crockett and William & Catherine Beardsley.

Ms. Ball showed a copy of her deed. She stated that she cannot financially afford to repair the home. She will live in the manufactured home. She stated that she stays with friends sometimes.

Jessie L. Stevens, present for another case, was sworn in and testified in behalf of the applicant, stating that she does not know the applicant, but feels she needs help. She stated that if the people in the area are so opposed to the manufactured home, she questioned why they do not help the applicant, since she is handicapped. She stated that the applicant had said that she lives on the second floor because she cannot live on the first floor. She stated that it is hard to get a grant.

Mr. Jones, Attorney, stated that the only issue before the Board is whether or not to permit a manufactured home on the applicant's property.

Mr. Stevens stated that he would not object to a two year period of time for the manufactured home.

Motion was made by Mr. Mills, seconded by Mrs. Hudson 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 Mrs. Callaway, seconded by Mr. Mills and carried unanimously that the special use exception be granted for a period of two (2) years, at which time only one (1) structure can be on the property. Finding the use will not substantially affect adversely surrounding properties nor have a negative impact on other properties.

Case No. 6222--Joan (Givens) Church - North side of Route 472, 906 feet east of Route 432, Lot 2, within Bush Farms.

A variance from the side yard setback requirement.

The case was presented by Mr. Betts. Lisa Workman, daughter of the applicant, was sworn in and testified, representing the applicant. She stated that her mother (the applicant) purchased the property in 1991 and did not have a survey done at that time. Five years later she is selling the property and when a survey was done an encroachment was found. She is requesting a 1.83' variance from the 10' side yard setback requirement on Lot 2, within Bush Farms. She stated that a shed that exists on the property will be pulled back onto the property to meet the proper setbacks.

Russell M. Donaway was sworn in and testified in behalf of the application, stating that he is the potential buyer and is in favor of the variance request to make it possible to purchase the property. He stated that the shed setbacks would be corrected.

There were no parties present in opposition.

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

Case No. 6223--Dora L. Bell - East side of Route 54A, 1/2 mile northeast of Route 113.

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

The case was presented by Mr. Betts. Dora L. Bell was sworn in and testified, requesting to place a manufactured home on her grandparents property to be able to care for them. She stated that she is called upon sometimes during the night and it would be easier for her if she lived closer.

Mr. McCabe explained that if the manufactured home is approved it would be for a period of two years and if the hardship ceased to exist the manufactured home would have to be removed.

Mr. Bell stated that her grandfather wanted to give her some property.

Mr. Jones, Attorney, explained that subdividing property is another case and that there is a moratorium on now for subdividing property.

Ms. Bell stated that the existing manufactured home is a 28' x 54 double-wide unit. She also stated that there is an old manufactured home on the property not being used, a manufactured home used as a rental unit and her grandparents manufactured home. Her manufactured home would be the fourth unit on the property. She stated that the old unit that is not occupied can be removed.

Mr. Betts stated that he feels the existing manufactured homes have been on the property for several years. He stated that he can check to see how long they have been on the property.

Ms. Bell stated that she does not know what size her unit will be, but she prefers a double-wide. She stated that part of the property is in the County and part in the Town of Frankford. Its possible that the existing manufactured homes are in the Town of Frankford. She stated that there would be no problem removing the unoccupied manufactured home.

There were no parties present in opposition.

Motion was made by Mr. Callaway, seconded by Mr. Mills 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. Callaway, seconded by Mr. Mills and carried unanimously that the case be tabled until the next meeting, to give Mr. Betts time the research the existing manufactured homes.

Case No. 6224--Susam M. Wills - South side of Route 277, 1/4 mile east of Route 24, Lot 31, within Angola By The Bay.

A variance from the rear yard setback requirement.

The case was presented by Mr. Betts. Susan Wills was sworn in and testified, requesting a 8' variance from the 20' rear yard setback requirement on Lot 31, within Angola By The Bay, to construct a screen porch. She testified that she has cats that her neighbors do not like and she would like to keep her cats in the porch. She stated that Angola By The Bay has no problem with the porch.

Carey B. Steen was sworn in and testified and stated her mother wanted to see the site plan. After viewing the site plan she stated that she had no objections.

There were no parties present in opposition.

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

Case No. 6225--Reuben H. Short - East side of Route 471, 1/2 mile west of Route 431.

A special use exception to place a second

manufactured home to be connected to the existing manufactured home to be used as one single family unit.

The case was presented by Mr. Betts. Reuben Short was sworn in and testified requesting to place a second manufactured home on his property to be connected to an existing manufactured home to become one living unit. The existing manufactured home is 10'x 47' in size and the second manufactured home will be 14'x 55'. He stated that the units will have the same siding all around, an A-Roof, one kitchen, two baths and be placed on a permanent foundation. He should have the work completed within one year. He stated that the second manufactured home will go in front of the existing manufactured home and the add-on will stay as it is now.

There were no parties present in opposition.

Motion was made by Mrs. Hudson, seconded by Mr. Mills and carried unanimously that the special use exception be granted, with the stipulations that the units have the same siding, an A-Roof, one kitchen and be completed within one (1) year.

Case No. 6226--Michael A. Rainwater & Donna Kunde - West side of
Route 365, 1,100 feet north of Route 353.
A special use exception to place a second and
third manufactured home on farm.

The case was presented by Mr. Betts. Michael Rainwater was sworn in and testified, requesting to place a second and third manufactured home on his grandfather's property. The second and third manufactured homes would be for grandson and daughter. The grandfather already has a manufactured home on the property. Mr. Rainwater stated that his manufactured home will be a new 1997, 14'x 76' unit. He stated that his unit will not have a permanent foundation, but will have skirting. He feels the manufactured homes will not affect adversely the values of other properties.

There were no parties present in opposition.

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

Case No. 6227--Henry Duhadaway - South side of Route 475, 1/4
mile north of Route 466.
A special use exception to place a manufactured
home to be used for storage.

The case was presented by Mr. Betts. Henry Duhadaway was sworn in and testified, requesting to place a 14'x 70' manufactured home on his property to be used for storage. He stated that an old shed on the property will be removed. He will put siding on the storage unit and will use it in place of the shed.

There were no parties present in opposition.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the special use exception be granted, for a single wide manufactured home to be used for storage with new siding and the old shed be removed.

Case No. 6228--Wm-Mar, Inc. - South side of Route One, at the intersection of Route 270A.

A special use exception for off premise parking.

The case was presented by Mr. Betts. Mary Jane Payne was sworn in and testified, requesting off premise parking for the Comfort Inn Hotel. She testified that they are having hardship with parking due to the hotel and Mulligan's Restaurant next door. She stated that parking is needed for customers and employees. She stated that they now have 128 parking spaces, but with the restaurant next door their patrons park in their lot. They propose to use the property to the rear for the new spaces.

Mr. Betts stated that according to the plot there are 30 spaces proposed.

There were no parties present in opposition.

Motion was made by Mr. Callaway, seconded by Mr. Mills and carried unanimously that the special use exception be granted.

OLD BUSINESS

Case No. 6205 (cont'd.)--William & Margaret Martin - South side of Route One, 1/4 mile south of Route 274, Old Landing Road, Lot 1, within Wm-Mar Associates, LLC Subdivision.

A variance from the height requirement for signs.

The case was reviewed by Mr. Betts.

It was the consensus of the Board that to approve this request

would set a precedent for others to go larger.

After some discussion, motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the variance be denied, finding that according to Article 115-211 of the Zoning Code the applicants have not met the requirements for the granting of a variance.

Case No. 6210--Phillip B. Gordy - East side of Route 13, 2,170 feet south of Route 451.

A special use exception to place a third manufactured home on farm.

Mr. Betts reviewed the case. Mr. Betts stated that he had not researched the property as requested.

After some discussion, motion was made by Mr. Mills, seconded by Mr. Callaway and carried unanimously that the special use exception be tabled until the next meeting to give Mr. Betts more time to do the research.

Case No. 6213 (cont'd.)--Ocean Wines & Spirits, Ltd. - West side of Route One, 250 feet northwest of Route 271.

A variance from the twenty foot landscaped buffer within the highway corridor overlay zone.

The case was reviewed by Mr. Betts.

Mr. Jones stated that he had not checked into the other properties along the road to see if they had buffer requirements. He does not feel others have been allowed to build in the buffer zone.

After some discussion, motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the case be tabled until the next meeting to give counsel time to do research.

OTHER BUSINESS

Case No. 6172--Sara D. Washington - Request for rehearing.

Mr. Betts read a letter requesting a rehearing for Case No. 6172 for a Day Care Center that was denied by the Board.

Mr. Jones reviewed the reasons for the granting of a rehearing.

Mr. Callaway stated that he feels there has been nothing newly discovered since the public hearing. He feels the applicant had not met the requirements for a rehearing.

After some discussion, motion was made by Mr. Callaway, seconded by Mrs. Hudson and carried unanimously that the request for a rehearing for Case No. 6172 be denied, finding the applicant had not met the requirements for a rehearing according to the rules.

Case No. 6198--Jesse Stevens - Request for rehearing.

Mr. Betts read a letter requesting a rehearing from Ms. Stevens. She gave her reasons for not being present at the public hearing which resulted in a denial.

After some discussion, motion was made by Mr. Mills, seconded by Mr. Callaway and carried unanimously that a rehearing for Case No. 6198 be granted, finding that a mistake or excusable neglect by the applicant had been made.

Motion was made by Mrs. Hudson, seconded by Mr. Callaway and carried unanimously that the meeting be adjourned.

Meeting adjourned at 9:20 P. M.