

Minutes of February 2, 1998

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, February 2, 1998 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:02 P. M. with Chairman Callaway presiding. The Board members present were: Mr. Callaway, Mr. McCabe, Mrs. Hudson, Mr. Mills, Mr. Wheatley, Mr. Jones-Attorney, Mr. Rickard-Chief Zoning Inspector and Mrs. Talley-Recording Secretary.

Motion was made by Mrs. Hudson, seconded by Mr. Wheatley and carried unanimously that the minutes of January 12, 1998 be approved as circulated. Vote 5-0.

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

Mr. Jones stated that due to illness a request had been made that Case No. 6459 under Other Business, be held first.

Motion was made by Mr. McCabe, seconded by Mrs. Hudson and carried unanimously to amend the agenda and hear Case No. 6459 first. Vote 5-0.

Case No. 6459--Joseph R. Hudson, et al - North side of Route 264 & Road 258, southwest of Route One.

A special use exception for outdoor display for promotional activities and tents.

A request for removal of condition attached to approval.

Mr. Jones explained that the applicants are requesting the Board to remove a condition that they put on the special use exception granted to the applicants. He referenced a letter from Lawrence Lank, Director of Planning and Zoning, which states that if the change is minor to the original approval, he, the Director, may transmit the same to the Board with the original record without requiring a new application be filed.

Mr. Rickard read letters into the record from Lawrence Lank, Director of Planning and Zoning and John Sergovic, Attorney for the applicants, requesting that that a minor change to the conditions be made by removing condition No. 5, no alcohol permitted on the grounds.

Mr. McCabe asked Mr. Jones if it is out of the Board's jurisdiction to state no alcohol.

Mr. Jones stated that he has not researched if the Board has jurisdiction to state no alcohol as a condition.

John Sergovic, Attorney, addressed the Board representing the applicant. He presented a letter from The Delaware River and Bay Authority. Mr. Sergovic stated that the applicants want to hold events to raise money and that alcohol is necessary for these types of events.

John R. McCormick with the River Bay Authority was sworn in and testified explaining the events they have hosted, particularly for the hospital benefit. He stated that his role was to arrange for security. They restricted the alcohol used and purchased. They asked the Alcohol Beverage Commission to have some of their people attend. He explained the type of security they used, stating they had zero tolerance behavior policy and they prohibited tailgating. An ABC license has to be had. He feels the River Bay Authority will do a good job and in the same manor and method as was done last year at the Beach Boys event. He stated that there was approximately 135 to 140 people involved in security at the event.

Mr. Sergovic stated that the applicants cannot be certain who their sponsors will be. He feels the way to control the problem is to have it under a gathering license by the Alcohol Beverage Commission.

Mr. McCormick stated that they have strict prohibition against bringing any additional alcohol beverages. He stated that the same restrictions will apply and agents will go out and inspect and will turn it down if it is not in the best interest of the Community. He stated that the punkin chunkin was not licensed, but once an event is licensed it prohibits bringing alcohol onto the premises.

Mr. Jones questioned if the applicants are willing to have similar restrictions as others mentioned.

Mr. Sergovic stated yes, but has to be case by case basis.

Craig Robert Hudson was sworn in and testified stating that they would follow the restrictions of ABC to the letter. He stated that they have not planned anything yet, but will be different than punkin chunkin and a whole different atmosphere.

There were no parties present in opposition.

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 case be tabled until the next meeting and Mr. Jones do research to see if they have the jurisdiction to say no alcohol. Vote 5-0.

Case No. 6504--Leslie & Tracie Grow - Northeast Bluewater Run West,
corner of Breakwater Run, Lot 162,
within Keenwick Sound Phase 2.

A variance from the corner lot side setback requirement.

The case was presented by Mr. Rickard. Leslie Grow was sworn in and testified requesting a variance from the corner lot side setback. The applicants requested a 2.1' variance from the 15' corner side yard setback on Lot 162, within Keenwick Sound, for an attached garage. Mr. Grow stated that he had the garage constructed and the builder submitted plans that were approved by Planning and Zoning. When a new survey was done the violation was found. He presented a letter from the Homeowner's Association.

Mr. Rickard read the letter from the Homeowner's Association, Leonard Price, President, stating they are not opposed.

There were no parties present in opposition.

Motion was made by Mr. McCabe, seconded by Mr. Wheatley and carried unanimously that the variance be granted. Vote 5-0.

Case No. 6505--Monroe E. Brittingham, Jr. - West Road 285, 3,000
feet south of Route One.

A variance from the 3/4 acre requirement to place a double-wide manufactured home.

The case was presented by Mr. Rickard. Mr. Rickard explained to the Board that the staff has been instructed to tell people that the Board may not act favorably in creating a lot smaller than 3/4 acre. This application was processed by Mr. Brady of the Planning and Zoning staff and he compiled a letter stating that he had discussed with the applicant that the Board may not act favorably to his request.

Monroe Brittingham, Jr. was sworn in and testified requesting a variance from the 3/4 acre requirement to place a manufactured home on his property. Mr. Brittingham stated that when he first purchased the property he was told that it was zoned for manufactured homes. He cleared the land and then found that it was not zoned for manufactured homes. He has a single-wide manufactured home that he would like to use, but would be willing

a double-wide unit on the property. He would like the manufactured home placed on the property for his grandmother to live in, since she is not in good health. He decided to put a double-wide on the property and presented pictures showing what it will look like. There is nothing on the lot at the present time. He stated that his grandmother stays with relatives and friends and she does not get the care she needs. He stated that he is self employed and is in and out.

Mr. Rickard read a letter from In Medicine Associates, P.A., Kevin Wallace, M.D. referencing the grandmother's health.

Mr. Brittingham stated that he would like to place a single-wide manufactured home and add on to it or a new double-wide. The property consists of 21,406 sq. ft.

Mr. Mills explained the procedure for hardship cases.

Mr. Jones explained to the Board that this application is for a variance of the 3/4 acre lot requirement passed by County Council and can only put a double-wide manufactured home on the 3/4 acre parcel.

Mr. Mills asked Mr. Brittingham what led him to believe the property was zoned for manufactured homes.

Mr. Brittingham stated that there are other manufactured homes, single-wides, on the road and that the person who previously owned the property said he could put a manufactured home on the lot. He purchased the property last year and at that time it was wooded. He stated that the work would be done by a licensed contractor.

There were no parties present in opposition.

Motion was made by Mrs. Hudson, 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. Wheatley that the variance be denied, due to the County Code. There was no second to the motion. The motion failed.

Motion was made by Mr. McCabe, seconded by Mr. Mills and carried unanimously that the case be tabled until the next meeting. Vote 5-0.

Case No. 6506--Betsy Ann & Leonard Deverell, Sr. - Steele Drive,
Lot 11, within Sherwood Forest South.
A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. Leonard Deverell, Sr. was sworn in and testified and was represented by Jim Fuqua, Attorney. Mr. Deverell requested a 3' variance from the 10' side yard setback on Lot 11, within Sherwood Forest South, for a house that was built in 1972. Mr. Fuqua stated that the applicants live in Wilmington and they purchased the lot, 75'x 150' in size, in 1984, with the house already on the property. They had a contract to sell the property and found the encroachment. A picture was presented. He stated that the applicants did not create the violation and it is a hardship to the applicants. Mr. Fuqua stated that there is no opposition from the neighbors.

Mr. Rickard read a letter into the record from Elwood Laume, Lot 12, voicing no objections.

Mr. Deverell stated that everything Mr. Fuqua had stated was true and correct.

Mr. Fuqua stated that a 3' variance was asked for to cover a pumphouse on the property as well. When told the pumphouse was correct, Mr. Fuqua stated that a 2.9' variance would be ok.

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. Vote 5-0.

Case No. 6507--Robert M. Duncan - North Route 14, west of Lewes-
Rehoboth Canal.

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

The case was presented by Mr. Rickard. Robert Duncan was sworn in and testified requesting a 8' variance from the 10' rear and side yard setback for an existing commercial building. Mr. Duncan stated that he purchased the property for his business and now wants to build a condo on top of the building for his residence, not for rental. He stated that there is no other place to put the condo except on the Soda Center business. Pictures and plans were viewed. He stated that he had everything done and ready

to get a permit when he found out a variance is needed. He stated that the building has been on the property for years and cannot be moved. He stated that he is aware of the height requirement for his three story building. He stated that it is a summer place just for him and it will be a nicer looking place.

There were no parties present in opposition.

Motion was made by Mr. McCabe, seconded by Mrs. Hudson and carried unanimously that the variance be granted, finding that it will not have a detrimental affect on surrounding properties. Vote 5-0.

Case No. 6508--Deroin & Lori Pritchett - Southeast Route 299A,
850 feet southwest of Road 299.

A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. Deroin Pritchett was sworn in and testified, requesting a 14' variance from the 15' side yard setback requirement to construct a 28'x 28' or 26'x 28' two car detached garage. The garage will be 1' from the southwest side of the property. The house has been built, but due to the septic location he cannot put the garage at the end of the driveway. The septic runs between the house and where the garage will be. His mother and brother own adjoining property.

There were no parties present in opposition.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the variance be granted. Vote 5-0.

Case No. 6509--Peach Tree Acres, Inc. - South Route 9, 0.5 miles
west of Road 258.

A special use exception to operate an assisted living residence.

The case was presented by Mr. Rickard. E. Virginia Tolley, Cathy Truitt Schlitter and David Janasen were sworn in and testified in behalf of the application. Ms. Tolley representing the applicants stated that they request to operate an assisted living facility for people to live in who have traumatic head injuries. They want to convert a house into the facility and hope to open in March.

Cathy Schlitter a representative from Beebe Medical Center, stated that they have funding over \$200,000 to operate the facility. It will be for the State of Delaware and will be fully

staffed. She stated that they hope to have a 20 unit project in the future. In answer to a question from the Board, the people that will be living in the facility are not dangerous.

Ms. Tolley stated that there is no other facility to take care of these people. She stated that they will have first class medical care and there is a need for homes to care for these people.

Ms. Schlitter stated that other states have these facilities. Maryland has 4 or 5. They will start with a 3 to 4 bed facility. There will be a RN on duty. Material of their future project was presented.

Mr. Rickard read a letter addressed to Lawrence Lank, Director of Planning and Zoning referencing the application, from Brain Injury Association of Delaware, Sy Londoner, President BIAD & Peach Tree Acres.

There were no parties present in opposition.

Motion was made by Mr. Wheatley, seconded by Mr. McCabe and carried unanimously that the special use exception be granted, finding that a facility like this is needed in Delaware. Vote 5-0.

Case No. 6510--Juan & Ma Isabel Ponce - West Road 355, 1,550 feet south of Road 340.

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

The case was presented by Mr. Rickard. Mr. Rickard read a letter from the Milton Health Center, Maribel Garcia-Zaragoza, M.D. referencing the applicants mother's language barrier and shortness of breath.

Juan Ponce was sworn in and testified requesting to place a 1972, 14'x 70' manufactured home on his property on medical hardship basis for his mother to live in. He put the manufactured home behind his house not aware of the need for approval or a hearing. The manufactured home will be for his mother, brother and his wife and two children to live in. He stated that his brother is paying too much rent where he is now, and his mother has no one else except them to look after her. He has a double-wide on his property that he lives in.

There were no parties present in opposition.

Motion was made by Mr. McCabe, seconded by Mrs. Hudson and carried unanimously that the case be tabled until the next meeting. Vote 5-0.

Case No. 6511--William L. & Leslie J. Brown - Southwest Route 54, Garfield Avenue, Lot 12, within Edgewater Acres.

A variance from the front yard setback requirement.

The case was presented by Mr. Rickard. William L. Brown was sworn in and testified, requesting a 11' variance from the 30' front yard setback requirement, on Lot 12, within Edgewater Acres. Mr. Brown stated that he has a beach home that he rents out and a road was put in higher than the house itself. He put a metal roof over the entrance to keep water from running into the house. The metal roof comes out over a concrete pad. He had a permit and thought it was ok. He stated that there are other houses in the development that come out in the front yard. He stated that the Homeowners Association had no response.

There were no parties present in opposition.

Motion was made by Mr. McCabe, seconded by Mr. Wheatley and carried unanimously that the variance be granted. Vote 5-0.

Case No. 6512--Shirley Perry - South Road 262, southeast of Route 9.

A variance from the front yard setback requirement.

The case was presented by Mr. Rickard. Shirley Perry was sworn in and testified requesting a 3' variance from the 30' front yard setback requirement, located on Lot 39, within Coolspring Farms. Mr. Perry stated that she is putting a 14'x 66' manufactured home on her property and needs a variance from the front property line. She stated that she has no other way to place the unit due to her septic and being on a through lot. A through lot has two frontages.

There were no parties present in opposition.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the variance be granted. Vote 5-0.

Case NO. 6513--Carl E. & Doris J. Niblett - East Road 528, 928.75 feet north of Route 18.

A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. Carl Niblett was sworn in and testified requesting a 40' variance from the 50' side yard setback requirement for a manure shed used for raising poultry. Mr. Niblett stated that he has a 3 1/2 acre parcel with three operating chicken houses, and it is the only location for the manure shed. He has to maintain a 40' roadway for trucks going to the poultry houses. He stated that there is woods next to where he proposes to put the shed, and that the neighbors 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 variance be granted. Vote 5-0.

Case No. 6514--Conley's United Methodist Church Trustees - West
Road 277, intersection of Road 280-B.
A variance for a second on premise sign.

The case was presented by Mr. Rickard. Laura Davidson Hill was sworn in and testified representing Conley's United Methodist Church Trustees, who requested a variance to have a second on premise sign. The 4'x 8' ground sign will face Road 277. The existing sign is on Road 280-B. Ms. Hill stated that the existing sign is hard to read. They propose to put a illuminating sign in front of the Church Hall. Ms. Hill stated that it will be 175' from the nearest property line to the side of them.

There were no parties present in opposition.

Motion was made by Mr. McCabe, seconded by Mr. Wheatley and carried unanimously that the variance be granted. Vote 5-0.

OTHER BUSINESS

Proposed Rules of the Board of Adjustment.

Mr. Jones told the Board that he had prepared new Board of Adjustment Rules to be considered. He stated that there is a need for new rules since the existing rules are very old. He asked the Board to review and discuss the rules he has prepared. He pointed out things that were newly written. He asked that the Board read and study them and if they choose to adopt them they have to be put on an agenda.

Motion was made by Mrs. Hudson, seconded by Mr. Mills and carried unanimously that the meeting be adjourned. Vote 5-0.

Meeting adjourned at 9:20 P. M.