

Minutes of February 5, 1996

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, February 5, 1996 in the County Council Chambers, Room 115, 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. Mills, Mrs. Hudson, Mr. Wheatley, Mr. Callaway, Mr. Jones-Attorney and Mr. Betts-Zoning Inspector III.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the minutes of January 22, 1996 be approved as circulated.

Case No. 5906--Loren S. Fuller--North side of Route 466, 407 feet east of Route 479.

A variance from the front yard setback requirement.

The case was presented by Mr. Betts. Loren S. Fuller was sworn in and testified, requesting a 17' variance from the 40' front yard setback requirement to be 23' for a shed. Mr. Fuller stated that the shed is already on the property and holds a generator for his chicken houses. He testified that the shed has been on the property approximately two years. The Planning and Zoning Inspector found that the shed is in violation. The setbacks were measured wrong.

Mr. Betts stated that the Inspectors have been checking old permits and the shed violation was found during an inspection.

There were no parties present in opposition.

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

Case No. 5907--Cornelia & Albert Clark, Jr. - West side of Route 309, 351 feet north of Route 308.

A variance from the minimum lot width requirement.

The case was presented by Mr. Betts. Albert Clark, Jr. was sworn in and testified, requesting a 22' variance from the 150' road frontage requirement for a new lot. Due to the location of an existing manufactured home on the property the 150' road frontage requirement cannot be met. A new home will be put on the newly created lot.

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.

Case No. 5908--Ray & Joanna Millman - South side of Route 554,
1/2 mile east of Route 30, Lot 4, within
Buck's Run.

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

The case was presented by Mr. Betts. Ray Howard Millman was sworn in and testified, requesting to place a new 14'x 76' manufactured home on their property, Lot 4, within Buck' Run, as a second on-farm manufactured home. The applicants propose to live in the new unit and give the existing unit to their daughter for her residence. The property is 5.1 acres in size. Mr. Millman stated that the property is not used for farming at the present time. He stated the property was used by someone else for soy beans last summer, but not at the present time. He stated that he has not owned the property long.

Mr. Jones, Attorney, explained to the applicant that he had applied for a second on-farm manufactured home and the property must be utilized as a farm.

Mr. Millman stated that the property is not utilized as a farm, but he plans to put horses on it in the future. He stated he needs to have his daughter living on the property.

Mr. Jones stated the use can only be granted if the property is utilized as a farm.

Mr. Millman stated that at some point he will utilize it as a farm.

There were no parties present in opposition.

Motion was made by Mr. Callaway, 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, seconded by Mr. Callaway and carried unanimously that the special use exception be denied, finding the property is not primarily farm use, just a building lot, the use would have a negative impact on the surrounding properties and would set a precedent for others.

Case No. 5909--James B., III & Deborah A. West - East side of Route
257, 850 feet south of Route 88.

A variance from the minimum lot width requirement.

The case was presented by Mr. Betts. James B. West, III was sworn in and testified, requesting a 12' variance from the 150' lot width to create two lots. The existing manufactured home will be moved on one of the lots. There is no plan for the second lot.

There were no parties present in opposition.

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

Case No. 5910--James V. Tigani, Jr. - West side of Anchor and Holly Roads Circle, 500 feet south of Holly Road, Lot 76, within North Shores.

A variance from the side yard and front yard setback requirements and a variance from the elevation requirements in a flood zone.

The case was presented by Mr. Betts, stating that the variance from the elevation requirements in a flood is no longer needed. James Tigani, Jr. was sworn in and testified and was represented by Robert Witsil, Attorney. The applicant requested an 8' variance from the south side property line, a 3.5' variance from the north side property line setback requirements, a 10.6' variance from the front yard setback requirement and a 1.8' variance from the 7' requirement first floor level within a flood zone, for additions to his house. The property being Lot 76, North Shores. Mr. Witsil stated they are just requesting the side yard variance and the front yard variance since the variance from the elevation requirements in a flood zone is no longer needed. Mr. Witsil presented prepared material to the Board. He stated the applicant has owned the property for several years and a recent survey showed the encroachments. Mr. Tigani living in Wilmington hired a contractor to build the additions. Permits were issued but the contractor did not do a follow-up to get the proper inspections. Mr. Witsil presented a print-out copy showing the permits were issued. A copy of a 1971 letter referencing the applicants property from the North Shores Building Committee was presented. He stated the lot is unique and is on a cul-de-sac, which makes it narrow in size. He stated that the applicant had no idea of the encroachments until the survey and he feels the hardship was not created by the applicant. Mr. Witsil stated the structure as it stands cannot be built to meet the code, and to remove the additions would cause a hardship.

Mr. Tigani stated that all statements made by Mr. Witsil were true as presented.

Ernest Blaser, Appraiser, was sworn in and testified in behalf of the application. He stated he has been an appraiser for eight years. He stated he had appraised the applicants property for

settlement. In his professional opinion he feels the variances will not be a detriment to the area and will be a value to the properties in the area. He also concurs to the narrowness in the front yard.

Mr. Witsil stated it will be difficult to place the additions anywhere else on the property. He stated that letters were sent to all the closest neighbors, in addition to the notification done by the County. He stated he had not heard from anyone. He also testified that there are no problems with the Board of Governors of North Shores.

Bryce M. Lingo was sworn in and testified in behalf of the application, stating he lives three doors from the applicants property. He feels the applicants property enhances the values of other homes.

Mr. Betts read the letter presented by Mr. Witsil, from the North Shores Board of Governors, signed by David L. Hackett.

There were no parties present in opposition.

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

Case No. 5911--E. Eugene Martin - North side of Route 298, on the east side of Canal Road, Lots 39 and 41, within Short Hills Development.

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. Bill Wright, Attorney, was present representing E. Eugene Martin, who requested to place a 28'x 60' manufactured home on property he is purchasing, being Lots 39 & 41, Short Hills Development. He presented pictures of the proposed manufactured home and existing manufactured homes in the area. He stated there is a mixture of homes and manufactured homes in the area. Mr. Wright stated the manufactured home will be placed on a permanent foundation and will be consistent with the established homes in the area. The applicant will live on the property with his daughter. He feels there will be no negative impact on the area.

Anthony Szczuka who owns property in the area was sworn in and testified and presented a letter from Irv Levin, an interested party and property owner in the area. Mr. Szczuka stated that he is not opposed if the unit is placed on a solid foundation and does

not have skirting.

Mr. Betts read the letter presented from Irv Levin.

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 stipulation that the manufactured home be a double-wide as shown and placed on a permanent foundation.

Case No. 5912--Cedar Landing Homeowners Association - North side of Blue Heron Court, 150 feet southwest of Waterway Drive, approximately 1,200 feet west of Road 357, Outlot D, within Cedar Landing.

A variance from the lot depth requirement.

The case was presented by Mr. Betts. Joe Conaway, President of Consultants Unlimited and with Cooper Realty, was sworn in and testified, representing the applicants who requested a 10' variance from the lot depth of 100' for lot, Outlot D in Cedar Landing. The Homeowners Association desires to trade this lot to the developer in exchange for Lots 39 and 40. They will combine these two lots for a community center adjacent to the pool/tennis facility. The subdivision will have one less lot than currently exists. Mr. Conaway stated lot Outlot D will be offered for sale. There will be no difficulty in meeting all other setbacks when the properties are utilized.

Terrance Coll, owner of Lot 28, was sworn in and testified that he bought his property in 1989, thinking Outlot D could not be built on. He feels it will devalue his property and sees no hardship for the applicants. He plans to build a home on his property in the future. He has not discussed this with the Homeowners Association.

Mr. Conaway stated there is a letter from the Association in the material he presented.

Mr. Betts read the referenced letter addressed to Lawrence Lank, Planning and Zoning Director, from the Cedar Landing Homeowners Association, Sam Mancari, President.

Mr. Conaway explained where a house could be located if built on the property. He stated that it is his estimation that a house would be closer to Lot 27, not Lot 28.

Mr. Coll stated that presently there is no house on Lot 27.

Mr. Mills questioned Mr. Conaway as to what the plans would be if the request was denied.

Mr. Conaway in answer, stated he does not know what the plans would be.

Motion was made by Mrs. Hudson, 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 Mrs. Hudson that the variance be granted, finding the use will not adversely affect the area, will be a help to the Homeowners Association and will benefit the Community as a whole, with Mr. Mills voting nay. Motion carried with four voting in favor and one against.

Case No. 5913--Renee Gordon - East side of Holly Road, 180 feet north of Route 20, Lot 65 and part of Lots 64 and 66, within Nanticoke Acres.
A variance from the rear yard setback requirement.

The case was presented by Mr. Betts. Renee Gordon was sworn in and testified, requesting a 9.2' variance from the rear property line setback for a deck. She stated the deck has been built since 1990. She had a building permit for the deck. She is selling the property, Lot 65, part of Lots 64 and 66, Nanticoke Acres, and that is how the encroachment was discovered. She testified that previously there was a porch on the house that was removed and replaced with a deck. The porch was not the same size as the deck. She stated there is no problem with the neighbors and is not aware of a Homeowners Association in the development. She feels the use does not affect the neighborhood, in fact makes the rear of the property look nicer.

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. 5914--Eagle's Nest Ministries, Inc. - Northeast side of Route 16 at Route 233.
A special use exception to operate a Day Care Facility.

The case was presented by Mr. Betts. James B. Anderson was present in behalf of the application and affirmed. The applicants requested to be able to operate a Day Care Facility at an existing Church. He stated the Facility will be top quality with a christian atmosphere. The amount of children they will have will depend on what the State allows. They will use an existing Church building.

Lucy Dutton was present in favor of the application and affirmed. She stated she will be Chief Administrator for the Day Care Facility. She feels there is a need for the Facility in the area. She testified that she has a Day Care and cannot handle more children.

Cindy Bunting affirmed. She stated she is the mother of a small child and that there is a need for the Day Care Facility. She wants to see it open with christian atmosphere.

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.

OLD BUSINESS

Case No. 5905--Robert I. & Linda S. Lekites - Northeast side of Route One, at Red Mill Pond, Lot 1, within Willow Creek.

A special use exception to operate a Bed and Breakfast.

The case was reviewed by Mr. Betts.

Mr. Callaway stated that due to the bad weather he had not had a chance to visit the property and would like the case tabled until the next meeting.

Motion was made by Mr. Callaway, seconded by Mrs. Hudson and carried unanimously that the case be tabled until the next meeting.

Meeting adjourned at 8:00 P.M.