

Minutes of February 9, 1998

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, February 9, 1998 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:03 P. M. with Chairman Callaway presiding. The Board members present were: Mr. Callaway, Mr. McCabe, Mrs. Hudson, Mr. Mills, Mr. Jones-Attorney, Mr. Rickard-Chief Zoning Inspector and Mrs. Talley-Recording Secretary.

Motion was made by Mrs. Hudson, seconded by Mr. Mills and carried unanimously that the minutes of February 2, 1998 be approved as circulated. Vote 4-0.

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

Case No. 6515--Craig & Juanita Littleton - West side of Route 13A, north of Route 501, Lot 16, within George O. Cooper Subdivision.

A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. Juanita & Craig Littleton were sworn in and testified, requesting a 12' variance from the side yard setback requirement of 15' to construct a 24' x 28' garage. The applicant's property is Lot 16, within George O. Cooper Subdivision and has an existing garage that is 1' from the side property line. The existing garage needs to be torn down or remodeled. He chooses to build a new garage and wants it to be 3' from the side property line. He also has a compost shed and a chicken house on the property.

There were no parties present in opposition.

Motion was made by Mrs. Hudson, seconded by Mr. McCabe and carried unanimously that the variance be granted. Vote 4-0.

Case No. 6516--Margaret & Benn Mullins North side of Road 368, 420 feet east of Road 52.

A variance from the 3/4 acre lot size requirement to place a multi-sectional manufactured home.

The case was presented by Mr. Rickard. He read a letter directed to Mrs. Mullins stating that the Board has not always acted favorably to a 3/4 acre variance.

Mrs. Mullin was sworn in and testified and was represented by Steve Parsons, Attorney. In answer to questions from Mr. Parsons

Mrs. Mullins stated that she has owned the property since 1985, which is over a 1/2 acre in size (27,308 sq. ft.). A copy of the survey was presented. She wants to place a 1997 or 1998, 22'x 44' double-wide manufactured home on the property, and a lot of 3/4 acres is required in an AR-1 Agricultural Residential District. Pictures were presented. It was stated that Mrs. Mullins had approval for a manufactured home in 1992, but due to financial problems she could not place the unit and the application expired.

Mr. Callaway explained that the Land Use Plan now in affect requires 3/4 acre in size to place a manufactured home in an AR-1 District.

Mrs. Mullins stated that she purchased the manufactured home after the Land Use Plan was in affect. She was under the impression that she could go under the old approval. She stated that she knew the approval had expired.

Mr. Rickard read a letter into the record from neighbors Preston Hudson and Thomas A. Cahill voicing no objections.

There were no parties present in opposition.

At the conclusion of the public hearings, the Chairman referred back to this case. After some discussion, motion was made by Mr. McCabe, seconded by Mr. Mills and carried unanimously that the variance be denied, finding the request does not comply with the Land Use Plan, the applicant has not shown a hardship because the manufactured home was purchased after the law was changed, the situation was actually created by the applicant, the request is actually for a use variance instead of an area variance, that the Land Use Plan does not call for this type of variance and the intended manufactured home is only 22' wide instead of 24' wide that is required. Vote 4-0.

The Board asked Mr. Jones to do research to stop taking variance applications for 3/4 acre lots.

Case No. 6517--Ed Montague - West side of Route 13, corner northwest of Road 468.

A variance from the setback requirement for display of automobiles for sale.

The case was presented by Mr. Rickard. Edward Montague was sworn in and testified requesting a 25' variance from the 25' front yard setback requirement to display automobiles for sale. Mr. Montague stated that he has been in business for one year and leases the property from Sam Tyndall. The business is for his son, but is a corporation between himself, his son (Mike) and his wife. He stated that he thought the setback was from the right-of-way,

but was told it is from the property line. He stated that there are other businesses that protrude out in front and his business is blocked by other businesses in the area plus a park and ride where people park their cars.

Mr. Rickard stated that the applicant was under the impression that the measurement is from the road or the right-of-way, but the setback is from the property line. He stated that the County and the State are working hand in hand on this setback problem.

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 4-0.

Case No. 6518--Handley & Marie Orr - Northeast of Road 78, 375 feet northwest of Route 80.

A special use exception for driving range.

The case was presented by Mr. Rickard. Handley & Marie Orr were sworn in and testified requesting a special use exception for a driving range on 5 acres of a 36.02 acre farm. They plan to keep their farm active. They are located two miles from a golf course now. They stated that they are not impacted by traffic, there will be no lighting and will close at dark. The driving range will not be near any houses, except theirs. They stated there is one neighbor who has a horse farm and he only questioned where the entrance will be, and is not opposed. The driving range will be set off the back of their house towards the back of the property. They will operate from dawn to dusk.

Kenneth Handy was sworn in and asked questions pertaining to there being an attendant on the premises and he asked to see the plans. He stated that he was not opposed.

The applicants stated that there will be an attendant on the property.

There were no parties present in opposition.

Motion was made by Mr. Mills, seconded by Mr. McCabe and carried unanimously that the special use exception be granted for a period five (5) years and it be a dawn to dusk operation. Vote 4-0.

Case No. 6519--John & Georgette Stelyn - North side of Pine Street,  
135 feet east of Sycamore, Lot 23,  
Block C, within Shady Dell Park.

A variance from the front yard setback requirement.

The case was presented by Mr. Rickard. John & Georgette Stelyn were sworn in and testified requesting a 17' variance from the 30' front yard setback requirement on Lot 23, within Shady Dell Park. It was stated that the existing dwelling is 18' from the front property line. A deck and steps will be 13' from the front property line. It was stated that they were aware of the 30' setback and measured from the road and not the property line. The applicants stated that the work is already setup and there will be a problem to move it. It was stated that Luv Homes placed the manufactured home. Mrs. Stelyn stated that she got the permit and was told the setbacks. Pictures were shown. She stated that there is no Homeowners Association in Shady Dell Park.

Mr. McCabe stated that the Board has approved other variances in the subdivision.

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. Vote 4-0.

Case No. 6520--6520--Annabelle E. Truitt - East side of Route 46,  
west of Winding Brooke Drive, Lot 42,  
within Clearbrook Estates.

A variance from the rear yard setback requirement.

The case was presented by Mr. Rickard. Barry G. Joseph, General Contractor, was sworn in and testified representing Annabelle E. Truitt, who requested a 10.7' variance from the rear yard setback of 40' on a through lot. The property is located at Lot 42, within Clearbrook Estates. Mr. Joseph stated that he knew the setback was going to be close and had a survey done. He then filed for a variance. He stated that there are no neighbors behind Ms. Truitt's property. He stated that the house is too big for the lot, but they cannot place it any other place on the property. It is an odd shaped lot with a cul-de-sac and 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 4-0.

Case No. 6521--Universal Outdoor, Inc. - West side of Route 113,  
.4 miles south of Route 26.

A special use exception to replace a billboard.

This case was withdrawn.

Case No. 6522--William F. Keenan, Jr. - West side of Bay Shore  
Drive, Lot 4 and 1/2 Lot 5, Old Inlet  
Beach.

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

The case was presented by Mr. Rickard. Steve Carroll, Builder, was sworn in and testified representing William F. Keenan, Jr. who requested a 3.7' variance from the 10' side yard setback requirement on the south side for an existing structure, and a 10' variance from the 10' rear yard setback requirement on the west boundary for existing deck, stairs and boardwalk, to be a 0' setback. The property is Lot 4 and 1/2 of Lot 5, Old Inlet Beach. Mr. Carroll stated that he tied the boardwalk going onto the dunes to the stairs. There is a cantilever (box) that protrudes out on the dwelling that is used for storage. Pictures were presented. Mr. Carroll stated that Mr. Keenan bought the house in 1991 and the boardwalk was built in 1992. The house and deck existed, only the stairs and boardwalk were built. He stated that tying into the boardwalk caused the violation. A survey was done.

Mr. Rickard stated that all are over 4' and the cantilever and steps need a variance.

Ray G. (Rusty) Trout, Jr. was sworn in and testified in opposition, stating that he plans to build a house across the street from the applicants property. He had to decide where to put his septic system mound on the property and decided to place it on the south side of the property for the best view. He stated that the only problem he has with the applicants dwelling is the alcove protruding out, that was built after he (the applicant) purchased the property. He stated that his house will go all the way to the right side of his property. Mr. Trout stated that he feels the applicants addition will adversely affect the value of his property and obstruct his view of the bay. He questioned if a building permit was issued. He is not opposed to the stairs.

Mr. Carroll stated that the box (cantilever) is a 3'x 4' storage area. He stated he does not feel a permit was issued for the storage area. He also stated that the storage area (cantilever) could be taken off.

Mr. Rickard read from the Zoning Code pertaining to setbacks for open unenclosed additions that may encroach into the setback 5' providing they are not above the first floor level and in a flood zone. He stated that he does not know if a permit has been issued he would have to do research to find out.

Motion was made by Mrs. Hudson, seconded by Mr. McCabe and carried unanimously that the case be tabled until the next meeting and Mr. Rickard do research for the building permit. Vote 4-0.

OLD BUSINESS

Case No. 6505--(cont'd.)--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.

Mr. Callaway reviewed the case.

After some discussion, motion was made by Mrs. Hudson, seconded by Mr. McCabe and carried unanimously that the variance be denied, finding the request does not meet the Land Use Plan, the use was created by the applicant, there was no show of a hardship and the request is for a use variance rather than a land use variance. Vote 4-0.

Case No. 6510 (cont'd.)--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.

Mr. Callawaay reviewed the case.

Mr. McCabe stated that he had saw the property and the applicant has now put up a 6' fence out by the raod, which does not meet any standards.

After some discussion, motion was made by Mr. McCabe, seconded by Mrs. Hudson and carried unanimously that the special use exception be denied, finding the reasons stated by the applicant at the hearing are not primarily related to medical hardship and are related to other hardships and financial. Vote 4-0.

OTHER BUSINESS

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 to the Board that there is not much in Delaware to address the alcohol concern. He stated that the other conditions put on the approval are not regulated by other agencies. He expressed concern about the Board putting a condition relating to alcohol on the approval, since Delaware has a Commission of Alcohol. There is a State agency in control of alcohol. He stated that the Board could say as licensed by the Delaware Alcoholic Beverage Commission, which would permit alcohol if licensed. He stated that the Board would be saying no to alcohol and the State Agency would be saying yes. He stated that the County has never been involved with alcohol. He also reminded the Board that the approval they gave Mr. Hudson is for one year and if they do not have to approve it anymore if they have not met the approval granted to them. If they removed the condition, they could say that the use of alcohol on the premises is subject to regulations by the Delaware Alcoholic Beverage Commission.

The Board members expressed concern about the public taking alcohol on the property. It was stated that they put the condition on the approval because they are saying yes to the use of the land.

Mr. Lank, Director of the Planning and Zoning, appeared before the Board and explained his letter that was presented at the last meeting. He explained alcohol related functions pertaining to the Alcoholic Beverage Commission. He also stated that the applicants can have three charitable functions now, but they wanted more.

It was stated that the Board has to decide if the use of alcohol on the premises is a major condition and if it should be removed without a public hearing.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the request for removal of condition attached to the approval of Case No. 6459 be denied, finding that the removal is a major change and that a new application and

public hearing is required under Section 115-214 of the Code which is the section that covers this. Also finding that, that condition was a substantial reason why the Board granted approval in the first place and they may not have granted the application for a Special Use Exception in the first place if that condition had not been there. Vote 4-0.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the meeting be adjourned. Vote 4-0.

Meeting adjourned at 8:55 P. M.