

Minutes of February 22, 1999

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, February 22, 1999 in the County Council Chambers, County Administrative Office Building, 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. Callaway, Mr. Mills, Mr. Hudson, Mr. Wheatley, Mr. Berl-Esquire, Mr. Rickard-Chief Zoning Inspector and Mrs. Talley-Recording Secretary.

Mr. McCabe asked for any additions or changes to the agenda. Hearing none, motion was made by Mr. Mills, seconded by Mr. Callaway and carried unanimously that the agenda for February 22, 1999 be adopted. Vote 5-0.

Motion was made by Mr. Mills, seconded by Mr. Callaway and carried unanimously that the minutes of February 1, 1999 be approved as circulated. Vote 5-0.

Case No. 6792--John B. & Jean F. Wharton, Sr. - South of Road
335, 1,200 feet east of Road 333A, Lot 2,
J. M. Cannon Subdivision.

A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. John Wharton, Sr. of Dagsboro, was sworn in and testified requesting a 10' variance from the 15' side yard setback requirement on Lot 2, within J. M. Cannon Subdivision, for a proposed 24'x 32' detached garage. Since the garage is over 600 sq. ft. in size, it must meet the greater setbacks. He explained that there is no other suitable place on the lot to place the garage. He also stated that there are no deed restrictions on the property.

There were no parties present in opposition.

Motion was made by Mr. Wheatley, seconded by Mr. Callaway and carried unanimously that the case be taken under advisement. Vote 5-0.

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 variance be granted. Vote 5-0.

Case No. 6793--Thomas Okinsky - South of Route 54, northeast of
Bayberry Road, Lot 33, Keen-Wik on the
Bay.

A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. Dorothy Kelly of Fenwick Island, and agent for the buyer, was sworn in and testified representing the application. The applicant requested a 10' variance from the 10' side yard setback to be "0" setback. The property is located at Lot 33, Keen-Wik on the Bay. Ms. Kelly stated that the home is under contract and that the 2nd. story deck encroaches into the setback, but has been there for a number of years. She presented a packet of material and made reference to the items in it. She stated that when a lot line was changed it created the encroachment, but she does not know when it was done. She stated that Mr. Okinsky has owned the property since 1987 and the deck was there when he purchased it.

Mr. Rickard read a letter in support from Judy Farlow, President of the Keen-Wik on the Bay Association.

There were no parties present in opposition.

Motion was made by Mr. Callaway, seconded by Mr. Wheatley and carried unanimously that the variance be granted, finding the use will not substantially affect adversely adjacent properties having been on the property for approximately 15 years. Vote 5-0.

Case NO. 6794--Bentas, L.L.C. - East of Route One, corner
intersection south of William F. Street,
Lots 3, 4, and 6, Dodds Addition.

A variance from the setback requirements, parking requirements, and design.

The case was presented by Mr. Rickard. Scott Bradley, Esquire, represented the case. The applicants requested five variances as follows: A variance of 17.2 feet from the minimum front yard setback requirement of 40'; A variance of 9 feet from the minimum width of 25 feet for interior driveways, the interior of the driveway on the south side is proposed to be 16 feet wide; A variance of 25 feet from the minimum width of 25 feet for interior driveways, on the north side of the property, they propose to back out onto William F. Street with no interior driveway; A variance of 2 feet from the minimum parking space of 10 feet by 22 feet for parallel parking spaces, the proposed parking spaces to be 10 feet by 20 feet; A variance of 5 parking spaces from the minimum requirement of 31 parking spaces required, to be 26 parking spaces. Mr. Bradley stated that there is an existing building on the property to be used for a restaurant. He stated that the building is over 50 years old and has been used for various

businesses. He stated that the land was subdivided in 1947 and presented a copy of the survey. He also presented a copy of a survey approved by Lawrence Lank, Director of Planning and Zoning, showing how the property exists today. He made reference to other businesses in the area. He stated that the lot will be paved, building renovated and landscaping will be provided. He stated that a handicap ramp and stairway going to the second floor are the only structural changes and they are seeking to come forward 8' from where they are now. He explained that there are other businesses in the area closer to the front property line than their building. He summarized all the variances needed and stated that the property is unique, since they cannot develop it as a restaurant in accordance with the existing zoning; the hardship was not created by the applicant; the use will not alter the character of the neighborhood and it is the minimal variances requested.

Sandy Flood of Lewes, was sworn in and testified that she will operate the restaurant. That it will be open until 10:00 P. M. and will be a family restaurant. She stated that she has spoken to people in the area and explained what their intent is. One property owner asked for at least an 8' fence to be installed. She stated that it will be a southern style bar-b-que family restaurant and not a rowdy establishment.

Mr. Mills explained that the height requirement for a fence in the side and rear yard is 7'.

Mr. Rickard read a letter from Tade L. Gerischer, Sr., with Engineering Services of Delaware, explaining the previous use of the property, proposed use, parking and that they will ask DelDot for the entrance to be grandfathered as it does exist on Delaware Route 1.

In answer to Mr. Callaway's question, Mr. Bradley stated that the vehicles will back out onto William Street if they are parked there.

Jim Clark, Architect, from Milton, was sworn in and testified in behalf of the application. He stated that there will be a raised patio for smoking, with roof and screen in the rear of the building, plus a stairway with a roof. He stated that the building must have two egresses. In answer to Mr. Hudson's question, he stated that the seating will be for 100 people.

Sallie Harris, property owner to the rear of the property, was sworn in and expressed concern about rowdy people; existing on William F Street, it being a residential area; late night operation and height requirements on a fence. She stated that she is the

person that requested a fence be put up. She expressed concern about how many parking spaces there will be. She asked to go on record as being concerned.

Mr. McCabe explained that the Board has no jurisdiction to dictate what goes on inside the restaurant or how the business is run. He stated that there will be 28 parking spaces.

Mr. Rickard stated that the Director of Planning and Zoning can approve a fence over 7'.

In answer to Mr. Berl, Mr. Clark stated that the building code regulates the patron space and they can remove more space inside to have less parking spaces. He stated that the patio in the rear does not come under the amount of floor space, since no seating is used for smoking and a cooler.

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.
Vote 5-0

At the conclusion of the public hearing, the Chairman referred back to this case. After some discussion, motion was made by Mr. Callaway, seconded by Mr. Wheatley and carried unanimously that the case be tabled until the next meeting, to give the Board members time to revisit the site. Vote 5-0.

Case No. 6795--Sargio Corporation - South side of Road 373, Bay Vista Marina Area.

A variance from the lot size requirement in a conservation zone.

The case was presented by Mr. Rickard. Mr. Rickard stated that the requirements in a conservation zone is 1 acre for a lot, water will is not available, but the property is in the Sanitary Sewer District.

Ramesh Batta, Professional Engineer and Surveyor, was sworn in and testified in behalf of the application. He stated that two parcels designated as Parcel "0" and "N" shown on the site plan does not meet the requirements of 1 acre for a Conservation District. The applicants are requesting a variance of 0.2 acre from the 1 acre requirement and a 0.1 acre variance from the 1 acre requirement in a Conservation District. He stated that water and sewer will be available to the properties and that they will meet

all of the required setbacks from the property lines. He stated that there is not enough buildable area without the variances. Mr. Batta stated that the use will be within the character of the area. For access to the property there are existing roads, Basin Street and First Street

Henry Shaubach of Bay Vista and Quarryville, PA, was sworn in and testified in opposition. He presented pictures, restrictions, a copy of the plot from Recorder of Deeds and the public notice he received in the mail not mentioning Lots "O" and "N". He stated that the property is not suitable to put a house on, that at times it is under water. He thought the area was to remain in conservancy/recreation for Bay Vista. He also stated that egress is a problem. He questioned Lots "O" and "N" not being on his plot and he stated that the testimony he has heard does not coincide with what he got from Recorder of Deeds.

Mr. Rickard read a faxed letter from Lori Thompson in opposition to the variance request.

Harry Reichert of Bay Vista, Rehoboth, was sworn in and testified in opposition. He stated that he built the first place in the area in 1952 and his house is seven blocks high. He stated that the area floods over. He stated that the area was for recreation and marina and that the requested variances are wrong.

Mr. Batta stated that these properties were not part of Bay Vista, that access to the property is provided and they request to build on less than one acre the requirement in a Conservation Zone. All setbacks will be met.

Motion was made by Mr. Callaway, seconded by Mr. Wheatley and carried unanimously that the case be taken under advisement. Vote 5-0.

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 Mr. Callaway and carried unanimously that the case be tabled until the next meeting, to be able to view the plot and testimony given. Vote 5-0.

Case NO. 6796--Jim Lee, Inc. - West of U. S. Route 13, 975 feet south of Road 545.

A special use exception to place a manufactured home-type structure for a business.

The case was presented by Mr. Rickard. John Harold Truxon of Ellendale, was sworn in and testified representing the applicants who requested to use a 12'x 60' manufactured home type structure for business. Mr. Truxon stated that he is President of Jim Lee, Inc., which is owned by Jim Tennefoss. He stated that Jim Lee, Inc. is a separate business from Jimmy's Grill and that the existing office space is too small and can only accommodate standing room for one person. He stated that they want to buy more property around them and have plans to expand, but it is in the talking stage. Mr. Truxon stated that they need more office space to operate the business. In answer to Mr. Mill's question, Mr. Truxon stated that the properties were bought as two properties, but it could be combined as one. He stated that Jimmy's Grill is separate from Jim Lee, Inc. He stated that plans have been drawn up to add more space in the future. He stated that the office manufactured home type structure will be placed down near the diner and he does not know how long they will need the unit.

Eddy Parker of Bridgeville, and adjacent property owner, was sworn in and testified, stating that he and his family have lived in on their property for 27 years and the business use has impacted his property. He stated that he does not object to the request if the applicants place the manufactured home type structure for an office, on the far end of the property and it is used only for office and not living space. He made reference to several violations on the applicants property and also questioned the ownership of the property. He is not opposed as presented, but wants to make sure the unit is placed where they say. He wants to go on record for the applicants to state ownership of the property.

Mr. Truxon stated that the unit will be placed on the southern corner of the property, per the drawing presented. He stated that Jim Tennefoss is the owner of the property. Mr. Truxon stated that he is President of Jim Lee, Inc. and Vice President of Jimmy's Grill, he is a stockholder of the business. He stated that the unit will have no kitchen, but will have water and bathroom.

Mr. McCabe explained to Mr. Truxon that if approved the use is only for a five year period, and if needed longer they would have to reapply.

There were no parties present in opposition.

Motion was made by Mr. Mills, seconded by Mr. Callaway and carried unanimously that the case be taken under advisement. Vote 5-0.

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 Mr. Callaway and carried unanimously that the case be tabled until the next meeting. Vote 5-0.

Case No. 6797--Benjamin and Julia Moses - South of Route 54, east of Cleveland Avenue, Lot 18, Block 4, Cape Windsor.

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

The case was presented by Mr. Rickard. Benjamin Moses of Germantown, MD, was sworn in and testified, requested a 5' variance from the side yard setback of 10' and a 5' variance from the rear yard setback of 20' for a new residence on Lot 18, within Cape Windsor. He stated that there was a manufactured home, with stick built addition on the property and they want to replace it with a house. They had to remove the stick built addition and unit, because they cannot use the existing foundation. They want to put the new home in basically the same footprint as the manufactured home, with addition. He stated that Cape Windsor was previously a trailer park and it was changed, which changed the setbacks. He wants to be consistent with the area. He stated that there is no problem with the Cape Windsor Association.

There were no parties present in opposition.

Mr. Rickard stated that no correspondence had been received pertaining to this case.

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

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

Meeting adjourned at 8:50 P. M.