

Minutes of March 2, 1998

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

The meeting was called to order at 7:12 P. M. with Chairman Callaway presiding. The Board members present were: Mr. Callaway, Mr. McCabe, Mr. Mills, Mrs. Hudson, Mr. Jones-Attorney, Mr. Rickard-Chief Zoning Inspector and Mrs. Talley-Recording Secretary.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously to amend the agenda to include a executive session at the end of the agenda in order for the Board to conduct a strategy session with their Attorney, with respect to both pending and potential litigation and also some personnel matters. This matter is being added at this time because it was not determined to be necessary until today.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the minutes of February 9, 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. 6523--Charles E. & Barbara V. Hearn - Southwest side Road 78, 270 feet southeast of Road 487.

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

The case was presented by Mr. Rickard. Mr. Rickard read a letter into the record from Mark Grenada, MD, referencing Mrs. Hearn's illness.

Mr. Mills stated that he had received a phone call prior to the meeting from Bruce Marine in reference to this case. He told Mr. Marine that he was not allowed to discuss the case before the public hearing, but Mr. Marine persisted. Mr. Mills stated that he did take notes. He stated that in the event Mr. Marine will not testify this evening or would not want him to disclose any information he gave me on the phone he would refrain from voting.

Charles Hearn was sworn in and testified and was represented by Robert Witsil, Attorney. Mr. Hearn requested to place a manufactured home on his property, where his home is located, on a medical hardship basis. Mr. Witsil stated that the opposition present to this application has emotions to other lands owned by the applicants. Mr. Hearn stated that this property is a five acre parcel where he lives. He stated that Mrs. Hearn has had two heart

attacks and four by-passes and has been hospitalized twice since her surgery and she needs constant care. He stated that the manufactured home requested will be a double-wide unit and it is not on the premises yet. Mr. Witsil feels the opposition is opposed to anything Mr. Hearn has. Mr. Hearn has a salvage operation on an adjacent property, and he has been in violation with the County, has a legitimate nonconforming use, but has gone beyond the nonconformity. He stated that the salvage yard is not a part of the five acres. Mr. Witsil suggested that if the Board approves the request there be a condition put on it to remove the illegal nonconformity on the adjacent parcel or delay the decision until the client will rectify, but in referring to a letter from Mr. Lank, Director of Planning and Zoning, it will take longer than ten days. Mr. Hearn stated that he can rectify the situation by April 1, 1998. It was also mentioned that there is a problem with tires belonging to Mr. Hearn and encroaching onto another persons, Mr. O'Neal's property. Mr. Hearn stated that he has called a surveyor to resurvey the property lines and will have the tires moved by April 1, 1998. Pictures were presented. Mr. Witsil stated that he feels the problems are not with the requested manufactured home, but with other violations. He stated that the Board has the ability to correct the problems by delaying the decision until April 1, 1998.

Mr. Rickard stated that the case is in the hands of Mr. Lank and Constable Bett's office and any decision will go to Mr. Bett's office.

Mr. Mills asked if Mr. Hearn had a problem with the Board considering the other problems on his property.

Mrs. Hudson questioned the single-wide manufactured home on Mr. Hearn's property.

Mr. Hearn stated that he does not have a problem with the consideration of the other problems on his property. He stated that the single-wide unit was placed on his property years ago and his son lives in it and has helped care for Mrs. Hearn. He stated that his daughter will live in the double-wide manufactured home that is requested.

Mr. Mills asked if Mr. Hearn had considered adding onto his existing dwelling, in lieu of placing a manufactured home.

Mr. Hearn stated that he would have to add a lot to the dwelling, because his daughter has a lot of furniture and also has a daughter. He stated that the single-wide manufactured home is on another parcel that his house is the only thing on the five acres.

There were 23 people present in opposition. John Sandy, Attorney, was present representing the opposition. He presented petitions with 88 signatures opposing the application. Mr. Sandy stated that the opposition is not about the nonconforming use, it is about another double-wide manufactured home being placed on the property. He stated that Mr. Hearn's dwelling is a double-wide manufactured home that has been bricked. Mr. Sandy stated that the property was previously a 20 acre parcel, until it was surveyed out by Mr. Littleton in 1993. A copy of the survey was presented. Encroachment of the tires was shown. Mr. Sandy stated that Mr. Marine had an attorney and forced removal of tires that encroached onto his property. A letter from Mr. Lank to Mr. Hearn was referenced and aerial photographs were shown and presented. It was stated that in the photographs it shows a tree line change and consistent and gradual eroding of the tree line. He stated that Diane Absher previously owned the property. He referenced a letter telling Mr. Hearn that he could not expand the salvage yard. He stated that in the past when Mr. Hearn was given an inch he took a mile. He referenced Mr. Hearn being before Judge Ellis and convicted. He explained and showed the Marine home and the Hearn's double-wide with an addition. He stated that Mr. Hearn has carved off five acres and now the 14 acre parcel in the rear is land locked. Mr. Sandy referenced the standards for granting a variance in accordance with the zoning regulations. He stated that only he and his wife live in the existing double-wide manufactured home and if the doctor says Mrs. Hearn needs 24 hour care, they should move their daughter in and make an addition. Another option would be to put the unit on the 14 acres. He stated that the feeling is Mr. Hearn is trying to start his own manufactured home park. Diane Absher will be moving into the requested manufactured home. He feels the use will alter the essential character of the neighborhood. He stated that Mr. Hearn does not come before the Board with clean hands and if the manufactured home is permitted it will not be easy to remove it.

Bruce Arnold Marine, neighbor, was sworn in and testified in opposition, stating that he told Mr. Hearn he had no problem with the manufactured home if it is legal to put it on the property. He was not aware at the time that Mr. Hearn had to come before the Board of Adjustment.

Mr. Mills questioned who lives in the existing manufactured home.

Mr. Hearn stated that his son lives in the only manufactured home there and he lives in the existing unit approved for his daughter.

Mr. Witsil stated that there are two manufactured homes properly permitted and no others being lived in. One of the units

on the property has furniture stored in it. The small dwelling on the property is not being lived in.

Twelve people appeared in favor of the application. Robert L. Niblett was sworn in and testified in favor of the application, stating that he lives in Concord and is Mr. Hearn's brother, and he knows Mr. Hearn needs help for someone to care for his wife that she is very ill. He feels the issue is the salvage yard and he stated that a salvage yard is not a pretty sight, but is needed. He stated that the applicants home is nice and the double-wide manufactured home requested is nice.

Mr. Mills questioned if fencing is required.

Mr. Rickard stated that it is a nonconforming use, but the expansion may fall into that category. Mr. Rickard stated that it is his opinion that a location survey should be requested to find out where everything is.

David Brent Nichols was sworn in and testified in favor of the application, stating that he lives one mile away and has known the applicants for 20 years. He stated that a junk yard is needed when people need something, but no one wants to live near one. He stated that there is a manufactured home, old building (unlivable), an old trailer and salvage yard there. He stated that the applicant need help, that Mrs. Hearn is in bad shape, and should not be put in the position of having to go into a nursing home.

Joseph Stanley Fritz, Jr. was sworn in and testified, that he lives in Galestown, Maryland and has known the applicant for 21 years. He stated that there are 14 trailers in the junk yard and only two lived in. He stated that Mrs. Hearn has worked hard along with Mr. Hearn in the junk yard and now needs help. He stated that Mr. Hearn cannot be there all of the time.

Judith Mae Jester was sworn in and testified in favor of the application, stating that she is a certified nurses aide, works for an agency, and takes care of Mrs. Hearn two hours per day. She stated that she has cared for Mrs. Hearn since before Christmas and she has to have help 24 hours a day. She stated that their daughter-in-law is getting burned out from constant care. They need help.

Mr. Mills asked Mr. Hearn that if the Board approves the requested medical hardship and the time comes that the manufactured home is no longer needed, what assurance does the Board have of getting the unit moved.

Mr. Hearn stated that there will be no hassel to move the manufactured home and the Board has only his word

Mr. Rickard read the petitions into the record with 88 signatures of 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. Vote 4-0.

Case No. 6524--Gene & Patricia Fulton - Northeast of Road 349,
Lot 1, within Banks Acres.

A variance from the corner setback requirement.

The case was presented by Mr. Rickard. Patricia Fulton was sworn in and testified, requesting a 3' variance from the corner setback requirement of 15' on Lot 1, within Banks Acres. Ms. Fulton stated that the Zoning Inspector could not find markers on the property and the property runs on an angle. She stated that the manufactured home has been on the property since 1975 and they put an addition on it two years ago.

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. 6525--Joseph A. Dunphy, Jr. - East of Route 113, 2,341
feet northwest of Road 337.

A special use exception to place a manufactured type structure for auto sales business office.

The case was presented by Mr. Rickard. David Bruce Rogers was sworn in and testified representing the applicant who requested to use a manufactured type structure for an auto sales business office, for his business known as Holly Motors, until the permanent structure is completed. He stated that a site plan for the permanent office has been submitted to Planning and Zoning. Prepared material was presented to the Board. He stated that the applicant will have a 5500 sq. ft. building on the property within six months. He stated that the unit is now in violation not knowing Board approval was needed. Photographs were shown. He stated that the property was used for a flea market but has been

cleaned up and they are ready to start the business. He stated that the existing manufactured type structure was moved on the property after Christmas.

Mr. Mills told Mr. Rogers to make sure they are far enough back from the right-of-way.

Mr. Rogers assured the Board that will not be an issue.

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 period of six (6) months and then the manufactured type structure be removed. Vote 4-0.

Case No. 6526--Delmarva Power & Light Company - Northwest of Road 335, 2,865 feet southwest of Road 335-A.
A special use exception from height limits for a communication tower.

The case was presented by Mr. Rickard. John Sergovic, Attorney, was present representing the application. The applicants requested a special use exception from the height limits for a communication tower. They propose to have a 400' high tower to replace a 200' tower for better communication. Mr. Sergovic stated that he had people present to testify in behalf of this application, Rhonda Sue Von Betty, Real Estate Representative, Jeff Martin, Technician with Delmarva Power & Light Co. and Joe Conaway, Real Estate Consultant. Mr. Sergovic stated that Mr. Martin is related to Mr. Mills, Board member and wanted it to be a part of the record.

Mr. Mills stated that Mr. Martin is his cousin, but since the hearing is not a personal matter relating to Mr. Martin, he would not disqualify himself.

Rhonda Sue Von Betty was sworn in and testified, stating that Delmarva Power and Light Co. provides service to Delaware, Maryland and Virginia. They have a 200' communication tower on the property, but they need to increase the tower to 400'. They need to provide safe and efficient service to customers. They need reliability during emergency operations. When they do not operate they have to use cellular phones. She stated that the increase in height is necessary to improve customer service.

Jeffrey Palmer Martin was sworn in and testified presenting copies of the outline of his testimony specializing in wireless

communication facilities. He stated that there is a need for the tower to restore power from major storms. He stated that out of 600 800 Mhz channels throughout the county, only fifty of these channels are available for utility and other industrial businesses. He stated that an inspector is on site when the construction of the tower is done. They are constructed to withstand storms. They will operate at 800 megahertz. Delmarva must operate under FCC Interference guidelines that dictate the signal levels and antenna heights that allow the operation, in order to eliminate interference. In the event that interference does occur they are required by the FCC to resolve the interference at Delmarva's cost. He stated that they will operate within the FCC's emissions guidelines. He stated that the power plant facility is the perfect location for the tower, and the site will provide the required radio coverage into the beach area. At night they will have a red light system. It will be monitored 24 hours a day.

Mr. Sergovic stated that there will be no threat to aviation with the towers. He stated that the tower needs to be at the Indian River site at lower signal levels.

Mr. Martin stated that they have sought other location, but they cannot move because of channel interference, and the tower cannot be less than 400', because of the need for coverage at the beach area.

Joseph Thomas Conaway was sworn in and testified in behalf of the application, stating that he is sales manager for Cooper Realty. He presented material pertaining to property sales. He showed and explained tax maps and owners of property. He does not feel the use will have an impact on property values in the area.

There were no parties present in opposition.

Mr. Sergovic presented a prepared finding of facts to Mr. Jones to view and use if it is any help. He stated that there will be no negative affect on neighboring properties, and if approved they will go to Mr. Lank of the Planning and Zoning Office for safety features.

Motion was made by Mr. Mills, seconded by Mr. McCabe and carried unanimously that the special use exception be granted, finding that the use will not adversely affect surrounding properties. Vote 4-0.

Case No. 6527--John T. & Doris E. Dukes - North of Route 20, 900 feet east of Road 474.

A variance from the lot width requirement.

The case was presented by Mr. Rickard. Barbara Ellen Hocker was sworn in and testified in behalf of the applicants, who requested a 20' variance from the required lot width requirement in an AR-1 District. Ms. Hocker stated that she wants to place a 24'x 60' double-wide manufactured home on the property to take care of her parents who live next door. She wants to live on the property permanently.

Mr. Mills asked Ms. Hocker if she had considered applying for a hardship case.

Ms. Hocker stated that she wants to live on the property permanently and not have to reapply every two years. She stated that the total acreage will be 3/4 acre, but she needs a 20' variance from the lot width. She stated that there are other manufactured homes in the area.

Eugene Dukes Bryan was sworn in and testified in favor of the application, stating he has no problem with the variance request.

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 4-0.

Case No. 6528--Jack & Angela Mullins - East side of Route 13, 700 feet south of Route 13.

A variance from the setback requirement for display of automobiles.

The case was presented by Mr. Rickard. Jack Mullins was sworn in and testified and was represented by Mike McGroerty, Attorney. Mr. Mullins requested a 25' variance from the 25' front yard setback requirement to have "0" setback to display automobiles for sale. A survey was presented. Mr. McGroerty stated that the property is a triangle. Mr. Mullins stated that he has to have a retention pond in the rear of his property for drainage. It was stated that there is a unique physical circumstance in the property, and the use will not alter the character of the neighborhood. Mr. McGroerty explained the businesses in the area and made reference to the car lots who have been granted variances. He feels the use will not be detrimental to public welfare. It was stated that \$400,000 has been invested in the property. The applicants feel there will be no impact on adjoining properties.

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, due to the unique character of the lot. Vote 4-0.

Case No. 6529--L. H. I. - East side of Route 113 and Road 454A,
intersection north side of Road 454A.
A variance from the front yard and side yard
setback requirements.

The case was presented by Mr. Rickard. Joseph Conaway, President of Consultants Unlimited sworn in on Case No. 6526, was present representing this case. The applicants requested a 15' variance from the front yard (Rte. 13) setback requirement and a 10' variance from the side yard setback requirement on a corner lot for manufactured home display. He stated that the units are all fenced in for security. He stated that the setback will be measured from the fence line and be 25' from there. He stated that the units will be at least 80' from the highway. Two units that are closest to the property lines they want to remain until they are sold and then new ones will be placed back to comply. Mr. Conaway asked to limit one in front and one on Route 454A to one year to be sold or moved.

There were no parties present in opposition.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that a 15' front yard variance and 10' side yard variance be granted for a period of one (1) year. Vote 4-0.

Case No. 6530--Lawrence F. Hills - Northwest of Road 216A,
intersection Road 217.
A variance from the rear yard setback requirement.

The case was presented by Mr. Rickard. Lawrence F. Hills was sworn in and testified, requesting a 12' variance from the 20' rear yard setback requirement for a 24'x 30' garage he proposes to build. He stated that there are norway spruces on the rear of the property. He stated that there is no problems with the neighbors and that there is no Association that he is aware of. The property is located at Lot 3, within Cedar Creek Dev. He stated that the entrance will be from Route 216A.

There were no parties present in opposition.

Motion was made by Mr. McCabe, seconded by Mr. Mills and carried unanimously that the variance be granted, finding that the use will not adversely affect the neighborhood and no oppositon

present. Vote 4-0.

Case No. 6531--Oakwood Homes, Inc. - West side of Route
13, 2,700 feet south of Road 454A.

A variance from the setback requirement for display
of manufactured homes.

The case was presented by Mr. Rickard. Kevin Allen Gross, Sr. was sworn in and testified representing Oakwood Homes, Inc., who requested a 24' variance from the 40' front yard setback requirement to display manufactured homes. He stated that the units have been on the property for 3 to 4 months. He wants to leave them there until August and then bring everything into compliance. Only three of the manufactured homes on display need a variance. The office is to be moved. He stated that six months would be sufficient time. Mr. Gross stated that he thought the measurement was from the telephone poles.

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 for a period of six (6) months. Vote 4-0.

Case No. 6532--Top City - Southwest side of Route 13, 132 feet
northwest side of Road 466.

A variance from the front setback requirement for
display of automobiles, carports and truck caps.

The case was presented by Mr. Rickard. Austin Cap Mills was sworn in and testified representing the application. He requested a 25' variance from the 25' front yard setback to be "0" setback to display carports, truck caps and used cars. Mr. Mills stated that he has been operating for 8 or 9 years and was unaware they were in violation. He stated that his business does not create any safety hazards.

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. 6533--Thomas C. Ritchey - Northeast of Road 341, northwest
side of West Lagoon Road, Lot 57, within
Dogwood Acres.

A variance from the front yard setback requirement.

The case was presented by Mr. Rickard. Thomas C. Ritchey was sworn in and testified requesting a 7' variance from the front yard setback on Lot 57, within Dogwood Acres. Mr. Ritchey wishes to replace a manufactured home on his property and needs a variance in the front yard to allow for a new septic system in the rear of the property. He presented sketches of what he proposes to do. The lot is 50'x 100' and the manufactured home is 14'x 56' and to move it further back on the property would put it over the septic system. He stated that they have a voluntary Homeowners Association. He stated that there are other manufactured homes in the development closer to the front property line.

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. 6534--Sam Petersheim & Dutch Country Mkt. - North side of
Road 462, 925 feet east of Route 13 North.
A variance from the front yard setback requirement.

The case was presented by Mr. Rickard. Sam Petersheim was present in behalf of this application and affirmed. Mr. Petersheim requested a 1 1/4' variance from the 40' front yard setback requirement for a commercial building. He stated that he put the building on the property and when the placement survey was done the encroachment was discovered. He thought the setback was correct and measured it again himself.

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 4-0.

Case No. 6535--Virgil Pugh, Sr. & Christina Schenkel - East side of
Poplar Drive, 735 feet north of Woodland
Circle, Lot 60, within Angola By The Bay.
A variance from the rear yard setback requirement.

The case was presented by Mr. Rickard. Virgil Pugh, Sr. was sworn in and testified and was represented by David Rutt, Attorney. Mr. Pugh requested a 1.9' variance from the 20' rear yard setback for an existing house that has been added on to, on Lot 60, within Angola By The Bay. Mr. Rutt presented prepared material and a survey. Mr. Pugh stated that the property was purchased November 5, 1997. It was stated that the variance requested is the minimum required. It was stated that it would be a practical difficulty to

move the house. It was stated that there is a vacant lot next door never to be developed and common open ground to the rear of the property. Photographs were presented. Mr. Rutt stated that there is a curve on the lot line. It is their feeling the use will not alter the essential character of the neighborhood.

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 4-0.

OLD BUSINESS

Case No. 6522--(cont'd.) 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.

Mr. Callaway reviewed the case.

Mr. Rickard stated that he had done the research requested by the Board and it does not appear there is a permit for the side (cantilever) addition. It is currently in violation.

After some discussion, motion was made by Mr. Mills and seconded by Mrs. Hudson and carried unanimously that the variance for a 10' rear yard setback be granted and the 3.7' side yard setback variance be denied, finding there was no permit and have not met the requirements for granting a side yard variance. Vote 4-0.

OTHER BUSINESS

Proposed Rules of the Board of Adjustment.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the proposed rules of the Board of Adjustment be tabled. Vote 4-0.

The Board took a five minute recess.

Back in session, motion was made by Mr. Mills, seconded by Mr. McCabe and carried unanimously that the Board go into executive session for the Board to conduct a strategy session with their Attorney, with respect to both pending and potential litigation and also some personnel matters. Vote 4-0.

During the executive session the Board discussed strategy of pending and potential litigation, no discussion took place with respect to personnel matters.

At the conclusion of the executive session, motion was made by Mr. McCabe, seconded by Mrs. Hudson and carried unanimously to go out of executive session and back into the regular meeting. Vote 4-0.

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

Meeting adjourned at 10:50 P. M.