

Minutes of March 3, 1997

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, March 3, 1997 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, Mrs. Hudson, Mr. Mills, Mr. Jones-Attorney, Mr. Betts-Zoning Inspector III and Mrs. Talley-Planning & Zoning Secretary.

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

Case No. 6253--Francis E. & Melissa A. Morris - North side of Route 351, 1/4 mile east of Route 349, Lot 5, within Banks Acres.

A special use exception to operate a Day Care Center.

The case was presented by Mr. Betts. Melissa A. Morris was sworn in and testified, requesting to operate a Day Care Center for up to twelve (12) children. The applicant and her mother will live on the property, being Lot 5, within Banks Acres, in a 12'x 60' manufactured home with a 12'x 40' addition. She will operate five (5) days per week, from 7:00 A.M. to 5:30 P.M. The children will range in ages from infant to pre-school.

There were no parties present in opposition.

Motion was made by Mrs. Hudson, seconded by Mr. Callaway and carried unanimously that the special use exception be granted.

Case No. 6254--Hugh O'Neill - South side of Route 360, at Route 357, Lot 287, within The Salt Pond, Phase I.

A variance from the flood zone requirements.

The case was presented by Mr. Betts. Charles Zonko was sworn in and testified representing the applicant, who requested a 2.48' variance from the 3' requirement in a flood zone, so that an electrical distribution panel can be 7.52' from the 100 year flood requirement of 10'. Mr. Zonko stated that he built the house with the electric panel and meter in the garage. Mr. Zonko stated that he does not agree with the rule because all electric panels will have to go in the homes if it is enforced. Mr. Zonko stated that he was not aware of the rule pertaining to the electric panels and there are homes where this has not been enforced.

Mr. Betts stated that the law has been enforced, but there may have been some cases that were missed. He explained the flood zone requirements to the Board and stated that this law is not a FEMA requirement, but is in the Zoning Code of Sussex County. He stated that they are trying to have the law amended. Mr. Betts stated that he will look into any other homes that may have been overlooked.

Herbert Kaminsky was sworn in and testified that he has a case on the agenda to be heard with the same problem as this application.. He stated that Mr. Zonko said it better than he could say it.

There were no parties present in opposition.

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

Case No. 6255--Peninsula Poultry Equipment - East side of Route 13,
1,200 feet southeast of Route 466.
A variance from the rear yard setback requirement.

The case was presented by Mr. Betts. Larry Hill was sworn in and testified representing the applicants who requested a 11.75' variance from the 30' rear yard setback for an open front storage building. He stated that if it is moved forward it will be in the loading area. It is needed for storage. The building will be no closer to the rear property line than the existing building.

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. 6256--Herb & Sandy Kaminsky - West side of Route 357,
1/4 mile south of Route 358, Lot 102,
within Cedar Landing.
A variance from the flood zone requirements.

The case was presented by Mr. Betts. Herb Kaminsky sworn in on Case No. 6254, testified that he was requesting a 2' variance for an electric panel below the 3' above the one hundred year flood level. It is 9.14' and needs to be 11'.

Mr. Jones, Attorney, stated that Mr. Kaminsky's testimony on Case No. 6254 will be incorporated into this case.

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. 6257--State of Delaware - West side of Route 273, 575 feet south of Route One.

A special use exception to place a manufactured home to be used as an office.

The case was presented by Mr. Betts. James Braxton and Kenneth Brock were sworn in and testified representing the State of Delaware, who requested to replace a 14'x 50' single-wide manufactured home with a 24'x 70' double-wide manufactured home to be used as an office at the Park and Ride in Rehoboth. The current manufactured home is not hooked up to water and sewer, but the new one will be. Pictures were shown, and where the new manufactured home will be placed when completed.. It will replace the existing bathhouse also.

Mr. Jones questioned if the new manufactured home will be used as an office only.

Mr. Mills asked the hours of use.

It was stated that the manufactured home will be used as an office only during the summer, with a supervisor on site. The hours will be from 7:00 A.M. to 3:30 A.M., seven days per week. A letter from the director of transit corporation was presented.

Mr. Betts read the letter presented from Nancy J. Shevock, Director of Delaware Transit Corporation.

There were no parties present in opposition.

Motion was made by Mrs. Hudson, seconded by Mr. Callaway and carried unanimously that the special use exception be granted for a period of five (5) years.

Case No. 6258--Jack E. & Honore M. Kendle - Northeast side of Route 5, 1/4 mile northwest of Route 297A, Lot 14, within Oak Orchard.

A variance from the rear yard setback requirement.

The case was presented by Mr. Betts. Jack Kendle was sworn in and testified, requesting a 4' variance from the 10' rear yard setback on Lot 14, within Orchard Manor. Mr. Kendle proposes to build a 10'x 16' porch on the rear of his home that will be only 6' from the rear property line. He stated that the porch will not

restrict any views, and there is no Homeowners Association in the development.

James Strader, next door neighbor, was sworn in and testified in behalf of the application. He stated that he has no problems with what the applicant does with his property.

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.

Case No. 6259--Jessie Stevens - Southeast side of Route 24, 550 feet north of Route 297.

A special use exception to operate a Day Care Center.

The case was presented by Mr. Betts. Jessie Stevens was sworn in and testified, requesting to operate a Family Group Home and Day Care Center for twelve (12) children full time and two (2) parttime, during the day. and the same number of children for evening and overlapping. She stated that there will be two separate sessions, consisting of day children and night children. The hours will be from 5:00 A.M. to 12:00 A.M. (Midnight). She stated that she has parents signed up now from Townsends and the Beebe Hospital. She stated she has 12 acres of property and she explained what is in the area. She now has a small area fenced and wants a larger area fenced in. Ms. Stevens stated that there will be five employees and one office manager. There will be two employees each with the children. She stated that she wants the front of the property fenced in too. She stated that she now operates a pre-school with six children.

Mr. Mills asked if she has plans to expand in the future.

Ms. Stevens stated that she plans to expand in a year, but just to add space not children.

There were no parties present in opposition.

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

Case No. 6260--Donald Dunn - South side of Route 454, 764 feet east of Route 453.

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. Donald Dunn and Margaret Ellen Evans Dunn were sworn in and testified, requesting to place a new 1997, 28'x 48' manufactured home on property they are purchasing for their own use. They testified that there are other manufactured homes all around the area and there is a stick-built home in front of them. They stated that the manufactured home will be placed on a permanent foundation.

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 double-wide manufactured home on a permanent foundation.

Case No. 6261--James Scarborough - East side of Route 533, 3,060 feet north of Route 531.

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

The case was presented by Mr. Betts. It was stated that Mr. Scarborough had stepped out of the room for a few minutes. Mr. McCabe stated that they would go on to the next case and come back to this case. After Case No. 6263, Mr. McCabe referred back to this case.

Mr. Scarborough was sworn in and testified requesting to place a second manufactured home on farm for his daughter. He stated that he believes the manufactured home to be a 1965, 14'x 55', but he is not sure. He stated that his farm will have a strawberry field and soybeans.

Mr. Jones stated that the property has to be used as a farm.

Mr. Scarborough stated that his daughter's manufactured home will be placed in back of his existing manufactured home.

Mr. Betts stated that according to the drawing he had, the manufactured home will be 200' back.

There were no parties present in opposition.

Motion was made by Mr. Callaway, 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. Callaway, seconded by Mrs. Hudson and carried unanimously

that the special use exception be granted.

Case No. 6262--Helen Wilma Maust - East side of Route 274, one
mile south of Route One, Lot L5, within
Rehoboth Bay MHP.

A variance from the setback requirement between
units in a park.

The case was presented by Mr. Betts. Helen Wilma Maust and
Ronald Weatherstine were sworn in and testified. Ms. Maust
requested a 3' variance from the 20' setback between units in a
park, being Lot 15, within Rehoboth Bay Park. Mr. Weatherstine
stated that steps have already been built and they are too close to
the neighbors deck. The steps have been built for two months.

Mr. Betts stated that a permit was issued on September 5, 1996
and the encroachment was discovered by the Zoning Inspector.

Ms. Maust stated that her steps go up to a deck.

Mr. Betts stated that other variances have been granted in
Rehoboth Bay Park.

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.

Case No. 6263--David & Cecilia Thomas - South side of Route 46,
2,150 feet west of Route 446.

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

The case was presented by Mr. Betts. Cecilia Thomas was sworn
in and testified, requesting to place a new 14'x 76' manufactured
home on her property on the basis of medical hardship for her
parents to live in. She has a manufactured home on the property
now.

Mr. McCabe explained to Ms. Thomas that if approved she would
have to reapply every two years for as long as the hardship exists,
and should the hardship cease the manufactured home would have to
be removed.

Mr. Betts read a letter dated January 13, 1997 from Prakash R.
Dalal, M.D. pertaining to the health of the applicants parents.

Mr. Mills questioned the existing manufactured home being on five acres.

Ms. Thomas stated that she has more than five acres.

James W. Smith was sworn in and testified in opposition, questioning if she could move her parents in with her. He stated that the property only has 150' of road frontage and where the unit is to be placed is not uniform. He stated that the existing manufactured home is not well kept and there is trouble with junk. He stated that he has a nice stick-built home next door. He has concern that if he ever wanted to sell his property he would not be able to. He stated that there are a couple more manufactured homes in the area and other homes as well. He fears the manufactured home will be placed perpendicular on the property, where other homes in the area are parallel.

Donald Strick was sworn in and testified in opposition, stating that he supports what Mr. Smith said and feels the same as Mr. Smith. He has a home on his property. He also questioned the septic system. Mr. Strick stated that he is opposed to the manufactured home totally.

It was explained to Mr. Strick that the Board has no control over the septic system. That the septic is controlled by DNREC.

Robert Dawson was sworn in and testified in behalf of the application. He stated that the applicants are his mother and step-father. He stated that his step-father has been in the hospital with heart surgery and they are trying to clean the property up. He stated that the neighbors have complained about their (his parents) own driveway use. He stated that his grandmother is ill and he has helped to clean the property up.

Patricia Smith was sworn in and testified in opposition stating that she agrees with Mr. Smith and Mr. Strick. She voiced concern about who will take care of the applicants property. She stated that the property is narrow and the manufactured home will have to go perpendicular.

Mr. Mills questioned whose home was there before the existing manufactured home.

It was stated that Mr. Strick was there before the manufactured home and Mr. Smith came after.

Mrs. Hudson questioned where the manufactured home will be placed.

Mrs. Thomas stated that she has tried to clean-up since her husband's illness and is trying to abide by the neighbors request. She stated that the neighbors have complained about her driving on her own property. She stated that there will be an adequate septic system, and the manufactured home will be placed the same as her existing manufactured home, but will be back further than hers.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the case be taken under advisement.

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 to give the Board members time to revisit the site.

Case No. 6264--Timothy & Marlene Perez - Northeast side of Route
563, 670 feet south of Route 31.

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. Marlene Perez was sworn in and testified, requesting to place a 1986, 14'x 70' manufactured home on their property for their son to live in. She stated that the land will be given to her son, Eric Morris. She stated that her son's name will be put on the deed and on the manufactured home.

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 occupant be part owner of the land and the manufactured home.

Case No. 6265--Owens Station Shooting Preserve, Inc. - East side of
Route 602, 730 feet southeast of Route
611.

A special use exception to operate a trap and skeet shooting range.

The case was presented by Mr. Betts. William R. Wolter was sworn in and testified and was represented by Craig Karsnitz, Attorney. Mr. Wolter representing the Owens Station Shooting Preserve, Inc., requested to operate a trap and skeet shooting range, where they already have a shooting preserve. The existing use was granted for five years and the time is now up for renewal. The previous use was approved for Tuesday through Saturday with

hours 10:00 A.M. to 4:00 P.M. and on Sunday, with no Monday shooting. The applicants now request in addition to the trap and skeet shooting range to change the hours to 9:00 A.M. to 6:00 P.M. everyday except Monday.

Mr. Wolter referenced the drawing and stated that they want push button for 5 traps. He stated that they have a large entry on Sunday and cannot complete it by 4:00 P.M.

Sheldon Swartzentruber was sworn in and testified that he is not in direct opposition, because he knew the range existed when he moved there. He expressed concern that the use will get out of hand. He does not want it to become larger.

There were no other people present in opposition.

Motion was made by Mr. Mills, seconded by Mr. Callaway and carried unanimously that the special use exception be granted, with the stipulation that there be a change in the hours as requested from 9:00 A.M. to 6:00 P.M. everyday, with no hours on Monday, and any other stipulations approved by the Board.

OLD BUSINESS

Case No. 6252 (cont'd.)--William H. Vernon - Highway One at the intersection of Route 275A.

A variance from the front yard setback requirement.

The case was reviewed by Mr. Betts.

Mr. Jones read the Highway Corridor Overlay Zone Ordinance.

After some discussion, motion was made by Mr. Callaway, seconded by Mrs. Hudson and carried unanimously that a 10' variance from the front yard setback be granted, finding that the applicant has an extra 10' in from the adjacent properties.

Mr. Jones quoted the provisions for the granting of a variance by the Board.

1. That there are unique physical circumstances or conditions, including, narrowness or shallowness of lot size or shape or exceptional topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions and not to circumstances or conditions generally created by the provisions of the Zoning

Ordinance or code in the neighborhood or district in which the property is located.

Mr. Jones asked would it be the finding of the Board that the fact the shape of the lot is that it is 10' back further from other lots in the area and would that be the first requirement, unusual shape of lot.

The Board indicated that that would be their finding. Vote 4-0.

2. That, because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Ordinance or code and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

Mr. Jones asked would it be the finding of the Board that the proposed use is a reasonable use of the property.

The Board indicated that would be their finding. Vote 4-0.

3. That such unnecessary hardship has not been created by the appellant.

Mr. Jones asked if it would be the finding of the Board that the hardship has not been created by the applicant, that the unusual shape of the property and the fact it is 10' back from other properties, that was not created by the applicant.

The Board indicated that would be their finding. Vote 4-0.

4. That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located and not substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare.

Mr. Jones asked if it would be the finding of the Board that there was insufficient evidence introduced that it would alter the essential character of the neighborhood or that it would substantially alter or be detrimental to the area.

The Board indicated that would be their finding. Vote 4-0.

5. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

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Mr. Jones asked if it would be the finding of the Board that the minimum variance was requested to afford relief.

The Board indicated that would be their finding. Vote 4-0.

All Board members present were in favor and agreed with the findings as indicated. Vote 4-0.

Motion was made by Mr. Callaway, seconded by Mrs. Hudson and carried unanimously that the meeting be adjourned.

Meeting adjourned at 8:20 P. M.