

Minutes of March 16, 1998

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, March 16, 1998 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:05 P. M. with Chairman Callaway presiding. The Board members present were: Mr. Callaway, Mr. McCabe, Mr. Mills, Mrs. Hudson, Mr. Wheatley, Mr. Jones-Attorney, Mr. Rickard-Chief Zoning Inspector and Mrs. Talley-Recording Secretary.

Motion was made by Mr. Mills, seconded by Mrs. Hudson that the minutes of March 2, 1998 be approved as circulated, with Mr. Wheatley abstaining. Motion carried with four voting in favor and one not voting. Vote 4-0.

Mr. Jones read a statement explaining how the Board of Adjustment meeting is conducted and the procedure for hearing the cases. Mr. Jones also stated that due to a possible conflict on Case No. 6538 and Case No. 6545, the Board should consider another Attorney should legal advice be needed.

Case No. 6536--Milton S. Chaski, Jr. - East side of Route 24, north of Love Creek.

A variance from the front yard setback requirement.

The case was presented by Mr. Rickard. Richard George Corson was sworn in and testified representing the applicant who requested a 7' variance from the 30' front yard setback for a 12'x 26' porch. The existing manufactured home has been on the property for 12 years. He stated that the owner of the park has no objection.

Mr. Rickard read a letter into the record from Milton Chaske, Jr., Love Creek Marina and Mobile Home Sites, Inc., in favor of the requested variance.

Felipe Garcia-Carrion was sworn in and testified in behalf of the application. Mr. Garcia-Carrion stated that he needs the porch to accommodate his wife who has health problems. She needs the porch to sit in. He stated that there is no other place to put the porch.

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 5-0.

Case No. 6537--Union Wesley United Methodist Church - East of Road  
365, 1,250 feet south of Route 26.

A special use exception to operate a day care facility.

The case was presented by Mr. Rickard. Rev. Alice J. Irvin and Jacqueline Hammond were sworn in and testified representing the case. They propose to have a day care facility in a new addition being constructed to the Church. Rev. Irvin stated that the new 3,000 sq. ft. addition should be completed by April 1, 1998. The 42'x 75' multi-purpose building will be used for day care, fellowship and after school programs. She stated that they will have the maximum amount of children allowed by the licensing agency, have five full time employees, operate from 6:00 A. M. to 9:00 P. M. seven days per week, for children 18 months and up. Rev Irvin stated that there will be plenty of parking space, she showed a layout of the building and parking. Jacqueline Hammond stated that there will be 45 children.

Claudia Drew Waters was sworn in and testified in behalf of the application, stating that she is a member of the Church and the day care center is needed for the children of people who have to work.

There were no parties present in opposition.

Motion was made by Mr. McCabe, seconded by Mr. Mills and carried unanimously that the special use exception be granted. Vote 5-0.

Case No. 6538--Edward M. Launay - North of Glade Circle West, 800  
feet west of Glade Farm Road, Lot 77,  
Holland Glade.

A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. Edward M. Launay was sworn in and testified requesting a 0.10' variance from the 15' side yard setback requirement on Lot 77, within Holland Glade, for a completed dwelling. Mr. Launay referenced a letter sent to the Board from his nearest neighbor.

Mr. Rickard read the letter into the record from Carroll Bradt and Barbara Keck, neighbors on Lot 80, voicing no objections.

Mr. Launay explained a survey done by Coast Surveyors showing the encroachment. He stated that his builder was Buddy Griffin and he (Mr. Launay) was involved with the construction as well. He

testified that they are both at a loss to explain the error. He stated that the property next door was being cleared and the iron pins may have been put back wrong. He feels the variance will not be detrimental to neighbors or himself. He stated that it is a large 5,000 sq. ft. two story dwelling, and would be hard to move or make an adjustment.

George A. Metz was sworn in and testified in opposition, stating that he lives on Lot 78. He stated that he had received a letter from the Sussex County Engineering Department stating that there is a need for a section of his property for a pumping station for the sewer lines. He thought they could use a portion of his land and a portion of the applicants, but when Mr. Launay was contacted he turned it down. He feels the 15' setback requirement is feasible. He stated that he has no choice concerning the pump station and the decision on the variance could further devalue his property.

Mr. McCabe stated that he does not feel that a 0.10' variance would devalue the property of Mr. Metz.

Mr. Launay stated that he had received a letter from the Engineering Department stating that they were considering several sites and it was never noted to use both his and Mr. Metz's lot. He told the County he was not interested.

Motion was made by Mrs. Hudson, seconded by Mr. McCabe and carried unanimously that the variance be granted. Vote 5-0.

Case No. 6539--Kenneth & Susan Lehman - North of Route One,  
40,000 feet south of Route 5.

A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. Kenneth & Susan Lehman were sworn in and testified requesting a 5' variance from the 20' side yard setback requirement to keep an existing building and for a new building. The property is zoned C-1 General Commercial but abuts up to an AR-1 Agricultural Residential District. The new 49'x 100' building will be used for a show room for a plumbing and spa business. They propose to keep the same front level and parking spaces uniform.

There were no parties present in opposition.

Motion was made by Mr. McCabe, seconded by Mr. Wheatley and carried unanimously that the variance be granted, finding the use will not personally affect the neighbors. Vote 5-0.

Case No. 6540--Sandra R. Piper Waters - North of Willow Street,  
corner of Route 213, Lots 329 through  
332, within the Town of Ellendale.

A special use exception to operate a child care  
facility.

The case was presented by Mr. Rickard. Sandra R. Piper Waters was sworn in and testified requesting to operate a child care facility for a maximum of 60 children. She stated that there is a need for a day care facility in Ellendale, since there is none there now. She stated that they want the maximum amount of children allowed for the square footage of the building. She will care for children 18 months to 12 years, from 6:00 A. M. to 9:00 P. M., Monday through Friday, with no weekend hours. Ms. Waters stated that parking will be provided. There will be one director, five child care workers and one person for meal preparation. There will be others for part/time as needed. She presented a petition signed by everyone within 200 feet of the property and voicing no objections, plus a letter from the Town of Ellendale-Ellendale Council also in favor of the requested day care facility.

Francine Piper was sworn in and testified in favor of the application, stating that she is a former resident of Ellendale and there is no day care facility in the town. She feels it will be a good project.

Mr. Rickard read the petition into the record, with 17 signatures in support of the application.

There were no parties present in opposition.

Motion was made by Mr. Wheatley, seconded by Mrs. Hudson and carried unanimously that the special use exception be granted, finding there is a need for it. Vote 5-0.

Case No. 6541--Scott Hilligoss - Southwest of Bay Shore Drive,  
corner of Monroe Avenue, Lot 5, Broadkill  
Beach.

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

The case was presented by Mr. Rickard. Scott Hilligoss was sworn in and testified, requesting a 8' variance from the 15' side yard setback from a side street, a 4' variance from the 10' rear yard setback for a dwelling with side entry. Mr. Hilligoss presented a survey done by Wingate & Eschenbach. He stated that they will move the stairway around to the front of the dwelling, therefore, the amount of variance now needed is 3.3' from the side

yard setback requirement and 3.6' variance from the rear yard setback requirement. Mr. Hilligoss stated that he thought the side yard setback was 10' and a corner side yard needs 15 feet. The property being Lot 5, Broadkill Beach.

Mr. Mills stated that there would be no problem with the amount of variance change in respect to the advertisement, since the request is a smaller amount.

There were no parties present in opposition.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the 3.3' side yard variance and the 3.6' rear yard variance be granted. Vote 5-0.

Case No. 6542--Paul & Molly Berrier - East of West Lagoon, 600 feet north of Road 341, Lot 56, Dogwood Acres.  
A variance from the front yard setback requirement.

The case was presented by Mr. Rickard. Paul Berrier was sworn in and testified requesting a 7' variance from the 30' front yard setback requirement to move a manufactured home forward to make room for a new sewerage system, on Lot 56, within Dogwood Acres. Mr. Berrier stated that there has been a change in the amount of variance needed and presented a new drawing. He stated that he had discussed the change in the variance with the Planning & Zoning Office and others and they thought there would be no need to readvertise the change in the variance. Mr. Berrier stated that he now needs a 13' variance instead of the 7' requested. He wanted to put a 14'x 60' manufactured home on the property but could not find one, so he had to go larger. He stated that his friend and next door neighbor had the same problem and has already been granted a variance.

Mr. Jones stated that since the variance request is for a larger amount the case would have to be readvertised.

Mr. Rickard stated that he thought the next closest meeting would be April 20, 1998.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the applicant be allowed to reapply and no additional charge be made. Vote 5-0.

Motion was made by Mr. McCabe, seconded by Mr. Mills and carried unanimously that the case be tabled. Vote 5-0.

Case No. 6543--John H., Jr. & Kelly E. Merritt - West side of Road  
455, 1,250 feet south of Road 455B.

A variance from the side yard setback requirement  
for a poultry house.

The case was presented by Mr. Rickard. Kelly E. Merritt and Florence Alice Brittingham were sworn in and testified. The applicants requested a 14.41' variance from the 50' side yard requirement for a poultry house. Mrs. Brittingham, mother of Ms. Merritt, stated that they are not going to put chickens on the property and the poultry house will be torn down, so there is no longer a need for a variance. She stated that there is a building on the property but she will not raise chickens. She asked if the variance could be considered for any future buyer of her property who might want a chicken house.

Mr. Jones stated that if the Board granted the variance request it would only be good for a one year period and something would have to be started. Mr. Jones stated that the Board could allow the application to be withdrawn because the applicants no longer need the requested variance.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously to allow Case No. 6543 to be withdrawn. Vote 5-0.

Case No. 6544--John M. Hudson - North of Hemlock Lane, corner of  
Yew Lane, Lot 5, Addition 2, Piney Glade  
Subdivision.

A variance from the front yard setback requirement.

The case was presented by Mr. Rickard. Barbara O'Leary, Attorney was present representing John M. Hudson. Doug Marshall, Real Estate Attorney, was sworn in and testified in behalf of this case. He stated that he is very familiar with the application. He stated that the manufactured home was placed on Lot 2, within Piney Glade Subdivision, after 1983. He stated that it is a five lot subdivision and the lot in question is on a "S" curve, the house was misplaced on the property. He stated that one corner of the house is 27.5' from the property line instead of the 30' required. The house was placed by the previous owner, but the contract purchaser will purchase the property. He stated that the house was set-up on the property when surveys were not commonly used. The house is on a foundation and it would be difficult to move it. He also stated that the house has now been classified as Class C by the Board of Assessment. He stated that the use will not

substantially or permanently impair adjacent properties, nor be detrimental to public welfare. It is the minimum variance requested.

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 5-0.

Case No. 6545--Alfred & Anna Creed - East of Kent Drive, 2,500 feet south of Route 24, Lot 44, Woodlands of Millsboro.

A variance from the front yard setback requirement.

The case was presented by Mr. Rickard. Joe Conaway, Vice President and Sales Manager of Cooper Realty, was sworn in and testified representing the applicants, who requested a 1.6' variance from the front yard setback requirement for a house, a 6' variance from the front yard setback requirement for an open deck and a 2.5' variance from the front yard setback requirement for a metal carport. Mr. Conaway stated that he listed and sold the property located at Lot 44, within Woodlands of Millsboro. He stated that the home was placed November, 1996 by Luv Homes, and was not placed correctly. The applicants lived there and added on resulting in violations. The property was resurveyed by Coastal Surveyors. The hopeful purchaser is presently living there as a rental. He stated that the Creed's did not cause the problem, they inherited it. He feels it does not affect values of properties in the area.

There were no parties present in opposition.

Motion was made by Mrs. Hudson, seconded by Mr. Wheatley and carried unanimously that the variances be granted. Vote 5-0.

Case No. 6546--Robert A. Bunting - West of Route One, 1/4 mile north of Bethany Beach, Lot 14, Seabreak.

A variance from the front yard setback requirement.

The case was presented by Mr. Rickard. Robert A. Bunting was sworn in and testified requesting a 3.2' variance from the 30' front yard setback requirement on Lot 14, within Seabreak, to construct two balconies. The owners of the property are Mr. & Mrs. Brooks. Mr. Bunting stated that the property is on ocean front and the neighbors encroach into the front yard setback now. He stated that the Association has already approved the requested variance. The balconies will extend out further than the foundation of the house.

Robert John Brooks was sworn in and testified in favor stating that he is one of the owners of the property along with his wife. He stated that the home is 11 years old and has a very plain front. They propose to construct two balconies. He stated that it will be consistant with what exists.

Mr. Rickard read a letter into the record from Thomas Johnson, Jr., S. Ocean View Drive, who is in opposition to the variance.

There were no parties present in opposition.

Motion was made by Mr. McCabe, seconded by Mr. Wheatley and carried unanimously that the variance be granted, finding the use will not affect anyone in the development. Vote 5-0.

Case No. 6547--Joseph & Mary Dulany - South of Clam Shell Lane, Lot 44, Keen-Wik West.

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

The case was presented by Mr. Rickard. Joseph Dulany was sworn in and testified requesting a 1.09' variance from the 30' front yard setback, a 0.5' variance from the 10' side yard setback and a 10' variance from the 10' side yard setback to be "0". The applicants purchased the home in 1992 not aware of the problems until a month ago. The variances are requested on the east and west side yards and the front yard. A single-car garage was built in 1979-80, a 2 car garage was built in 1983 on the front and a 9' addition was constructed by the aplicant on the west side of the property approximately 5 years ago. He stated that there is a growth of pine trees on the line and other buildings that have been there 16 to 19 years. He feels the variance will not create any neighboring problems and the east side of the property borders a lagoon. He stated that he accepts the error as his own, that it was not properly laid out before the work started. He stated that the error would be hard to correct.

Richard William Porter, neighbor, was sworn in and testified in favor of the application.

There were no parties present in opposition.

Motion was made by Mrs. Hudson, seconded by Mr. McCabe and carried unanimously that the variances be granted. Vote 5-0.

OLD BUSINESS

Case No. 6523 (cont'd.)--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 reviewed by Mr. Callaway.

Mr. Rickard stated that he had sent the Zoning Inspector, Mr. Shockley, out to the property and that it has been 1/3 cleaned up.

After some discussion, motion was made by Mr. McCabe and seconded by Mr. Mills that the case be tabled, with Mr. Wheatley abstaining. Motion carried with four voting in favor and one not voting. Vote 4-0.

OTHER BUSINESS

Case No. 6162--County Development Assoc. - Northeast side of Route One, 800 feet south of Route 275A.

A variance from the requirements for signs.

Request for a time extension.

Mr. Rickard read a letter sent to Mr. Abbott, Assistant Director of Planning and Zoning, from County Development Assoc., Preston Dyer, requesting a one year extension for their sign approval.

Motion was made by Mrs. Hudson, seconded by Mr. McCabe and carried unanimously to grant a one (1) year extension to Case No. 6162, due to an unavoidable delay due to bad weather.

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.

Letter of intent.

Mr. Rickard read a letter into the record addressed to Lawrence Lank, Director of Planning and Zoning rejecting the approval of their special use exception granted by the Board on

January 5, 1998. The letter was sent from John Sergovic, Attorney for the applicant.

Proposed rules of the Board of Adjustment

It was the consensus of the Board to have a separate meeting to discuss the proposed rules of the Board of Adjustment and have it the only item on the agenda, since there is not enough time to do this at a regular meeting with a lengthy agenda. The Board will decide on a date at the next meeting.

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

Meeting adjourned at 9:00 P. M.