

Minutes of April 20, 1998

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, April 20, 1998 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:02 P. M. with Chairman Callaway presiding. The Board members present were: Mr. Callaway, Mr. McCabe, Mr. Mills, Mrs. Hudson, Mr. Wheatley, Mr. Berl-Attorney, Mr. Rickard-Chief Zoning Inspector, Mr. Shockley-Zoning Inspector III and Mrs. Talley-Recording Secretary.

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

Case No. 6562--Todd Robert & Julie Kaye Dill - North of Route 54,
640 feet east of Road 453.

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

The case was presented by Mr. Rickard. Todd Robert Dill was sworn in and testified, requesting to place a 28'x 40' double-wide manufactured home on his property for his step-father and mother, Harold and Denis Hearn, to live in. He stated that his parents need assistance, since his step-father has had a stroke and his mother is not able to do work. He stated that they both need help. Letters from the doctors were submitted.

Mr. Rickard read the letters submitted into the record from Ability Rehab Associates, Marianne Sturr, D.O.M.S., referencing Mr. Hearn's health and from Robert A. Moyer, M.D., referencing Mrs. Hearn's health.

Mr. Dill stated that it would be easier to care for them if they were close by. They felt if approved a double-wide would look good in the neighborhood.

Mr. McCabe explained that if approved it would be for two years and they would have to reapply every two years for as long as the hardship existed and when the hardship ceases the manufactured home would have to be removed.

Mr. Dill stated that he was aware of the process having been told at the time he applied. He stated that he would set the unit as close to his home as possible, not knowing what the setbacks are.

Mr. Rickard stated that the setbacks would be 40' from the front property line, 15' from the side property lines and 20' from the rear property line.

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 on the basis of medical hardship for a period of two (2) years. Vote 5-0.

Case No. 6563--Eugene Stowell - North of Road 312, east of
Pocohontas Avenue, Lot 17, Riverdale.

A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. Eugene Stowell was sworn in and testified, requesting a 5 1/2' variance from the 10' side yard setback on Lot 17, within Riverdale, to build a 12'x 22' room (den) addition. The dwelling, with storage space was built in 1950. The 5'x 9' area is a laundry room. It was stated that an existing carport was being occupied.

Denise M. Stowell, wife of the applicant, was sworn in and testified, stating that there is a carport that was enclosed with an exercise room and they allow their brother to stay in until he can afford to move. The addition proposed will be a den for entertaining. They have children and need more space.

Mr. Rickard stated that there are no separate utilities on the property.

It was decided that the 5'x 9' addition did not need a variance since it is nonconforming.

John Henry Givens, who lives at 16 Pocohontas Ave., was sworn in and testified in opposition, expressing concern about the new addition for the applicant, causing trouble with the sewer and will cause more water to be used. He stated that the applicant has no access to their property without going on his property to do the work. He questioned how the truck will go in and out of the applicants property if they have trouble with their septic.

Mr. Stowell stated that their house is approximately 40' back from the the front property line, and they can have access to and from by going on the opposite side of the house from Mr. Givens.

Mr. Mills stated that septic problems would have to be taken up with D.N.R.E.C.

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 Mrs. Hudson, seconded by Mr. Wheatley and carried unanimously that the 5 1/2' variance be granted. Vote 5-0.

Case No. 6564--Samir Ghabra - East of Route One, Lot 2, Block B.
Lincoln Park.

A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. Samir Ghabra was sworn in and testified, requesting a 6' variance from the 10' side yard setback requirement on Lot 2, within Lincoln Park. He stated that the County and the Fire Company has asked him to put a fire escape in to go up to the second floor apartment. He stated that he will eliminate an existing deck. There is an existing porch on the front and back with no steps. There will be no deck, only a fire escape. He stated that he has enough decking in the front and back. He also stated that the house is not encroaching the property line setbacks.

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. Vote 5-0.

Case No. 6565--Real Deal Auto Sales - East of U. S. Route 13,
corner of Route 24 north.

A variance from the front yard setback requirement for automotive sales display and a variance from the corner side yard setback requirement.

The case was presented by Mr. Rickard. Barry Sipple and Reese Carey were sworn in and testified representing this case. The applicants requested a 25' variance from the front yard setback (Route 13) to have a "0" setback, and a 15' variance from the side corner setback (Rte. 13 & 24) to have a "0" setback, for automobile sales display. It was stated that they have been in business for four years and the cars have been up to the front line.

Emanuel Gulab, who has a motel on adjacent property, was sworn in and testified in opposition, stating that the applicants auto sales display blocks the view of his motel and the entrance to his motel when the cars are out to the front property line. He stated that he has owned the motel since 1989. He opposes the variance on Route 13.

Mr. Sipple stated that if the vehicles stay even with the guard rail it should be ok.

Mr. Shockley stated that the cars on display on the south side is closer to Route 13. He stated that the property line to the curb appears to be 16'.

Mr. Gulab stated that if the display stays where it is now and does not come out any further it will be ok with him.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the variance be granted, with the stipulation that the cars be kept back to the property line. Vote 5-0.

Case No. 6566--Benito G. Cautillo - Southwest of Bay Shore Drive, 50 feet northwest of Adams Avenue, Broadkill Beach, and 350 feet southeast of Route 16.

A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. Benito G. Cautillo and Frederick J. Tana were sworn in and testified. The applicant requested a 5' variance from the 10' side yard setback on both sides of the property for an elevated deck. The deck exceeds the minimum floor elevation.

Mr. Tana stated that the house was built on piling and the applicant wants parking underneath. Pictures were presented. He stated that the house is already built but the decks are not.

Mr. Cautillo stated that there was a misunderstanding about open decks.

Mr. Mills expressed concern that they had not taken the decks into consideration when the house was built.

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 5-0.

Case No. 6567--County Development Associates, L.L.C. - North of Route One, 1/4 mile southeast of Road 275A.

A variance from height requirement for signs and a variance from the square footage requirement for signs.

The case was presented by Mr. Rickard. Preston Dyer, Attorney, was sworn in and testified, representing the application. The applicants requested a variance from the height requirements for signs. A 5' variance from the height requirement and a 42 sq. ft. variance from the requirements for a ground sign. This application is a modification of Case No. 5860 to delete two 100 sq. ft. signs and replace them with one ground sign to be 192 sq. ft.

Mr. Rickard read a narrative written by Mr. Dyer explaining what they propose to do. Case No. 5860 provided for five pylon signs for four subdivision parcels at Lighthouse Plaza. They have one pylon sign constructed. They seek to extend the current approval for a 96 sq. ft. pylon sign issued for Casapullas, Case No. 6162, to be located on the K-Mart Connector Road. If this application is approved to terminate that permit in exchange for this additional square footage on pylon #2. The effect would be no increase in sign size, only a combination of two permits on one pylon location.

There were no parties present in opposition.

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

Case No. 6568--George H. Wright - West of Road 365, Lot 16, Pine Manor Estates.

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

The case was presented by Mr. Rickard. George Wright was sworn in and testified, requesting a 12' variance from the front yard setback requirement and a 5' variance from the side yard setback requirement on Lot 16, within Pine Manor Estates. Mr. Wright stated that when the dwelling was built he went by the existing property stakes and when it was resurveyed the stakes were off. The dwelling was just built.

There were no parties present in opposition.

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

Cse No. 6569--Charter Oak Partners - Northwest of Route One, 80 feet southwest of Route 271.

A variance for a second on premise ground sign.

The case was presented by Mr. Rickard. Larry E. Holding, with Rogers Sign Co., was sworn in and testified, requesting a second on premise ground sign to identify The Rehoboth Country Grill and Gourmet Grocer located at the Rehoboth Outlets - Center II. Mr. Holding stated that this a new restaurant and people are having a hard time locating it. It will be a 150 sq. ft. sign with a height of 25'. It will not interfere with vision or traffic.

There were no parties present in opposition.

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

Case No. 6570--Sally S. Griffith & Michele Justis - Northeast of Road 298, 1,450 feet northeast of private access road, Lot 1, Creek View.

A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. Eric Howard, Attorney, was sworn in and testified representing the applicants who requested a 5" variance from the side yard setback requirement on Lot 1, within Creek View. Mr. Howard stated that when the applicants bought the property it was a shell and they finished the construction. They thought the garage was within the setback requirements. The front corner of the garage encroaches into the setback. He stated that the use will have no impact on surrounding properties. Mr. Howard stated that he has Power of Attorney for the applicants. He presented a letter from a neighbor Bill Oettel.

Mr. Rickard read the letter presented from Mr. Oettel stating no objections.

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 5-0.

Case No. 6571--James J., Jr. & Denise F. Weller - West of U. S. Route 13, intersection east of U. S. Route 13A.

A variance from the front yard setback requirement for trailer sales display.

The case was presented by Mr. Rickard. James J. Weller, Jr. was sworn in and testified, requesting a 25' variance from the 25' front yard setback requirement to be a "0" setback. He stated that he does not want to move back, since the trailers are lined up with

a building and there is a ditch there. He feels if he has to move the display back he will have to decrease his inventory. It is an odd shaped lot.

There were no parties present in opposition.

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

CAse No. 6572--Clearwater Land Ltd. - North of Road 363, within Clearwater RPC on the northwest side of Cypress Lane and northeast of North Oaks Lane, Unit 196, Clearwater RPC.

A variance from the setback requirement between multi-family structures.

The case was presented by Mr. Rickard. Robert J. Harris, an owner, was sworn in and testified, requesting a 5' variance from the 40' separation requirement between multi-family structures, for a stairs. Mr. Harris stated that when the two buildings were laid out by Land Tech they were familiar with the setback, but not the structures they build with steps. The foundation and pilings are in place and there is no way to move them. He stated that there are no neighbors affected by the variance requested. They would like to go ahead with it the way it was designed. He stated that there are four multi-family unit buildings on the street. Mr. Harris stated that the stairs are the only thing causing the encroachment.

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. Vote 5-0.

Case No. 6573--Homer's Mobile Homes - East of U. S. Route 13, 1,160 feet south of Route 64.

A variance from the front yard setback requirement for manufactured homes sales display.

The case was presented by Mr. Shockley. Mary P. Taylor was sworn in and testified representing the application. The applicants requested a 20' variance from the front yard setback requirement for manufactured homes sales diaplay. The display is 23' from the front yard setback with the closest unit. Ms. Taylor stated that they had inadvertently placed one of their manufactured homes. She stated that the business has been there for several years. They are requesting a variance to be in compliance from now

on. She stated that they did not realize they were too close. There is nothing but woods near and no one lives there.

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. 6574--Armiger's Auto Center, Inc. - South of U. S. Route 13, 652 feet south of Road 470.

A variance from the front yard setback requirement for automotive sales display.

The case was presented by Mr. Shockley. Jay Armiger was sworn in and testified representing the application. The applicants requested a 20' variance from the 25' front yard setback requirement for automotive sales display. They have displayed the vehicles since December, 1980. They were moved back from being on the front property line because they were too close to a ditch. Mr. Armiger stated that he wants the display to be visible.

There were no parties present in opposition.

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

Case No. 6575--Fred M. Calhoun - East of Road 279, 1.23 miles southeast of Road 277, Lot C-12, West Bay Park.

A variance from the separation requirement between units in a manufactured home park.

The case was presented by Mr. Shockley. Fred M. Calhoun, manager of West Bay Park was sworn in and testified requesting a 2' variance and a 1' variance from the setback requirement of 20' between units within a mobile home park, being Lot C-12, West Bay Park. The property is leased by Harold Haigh. It was stated that the property marker stakes were knocked out by tree cutters and when a new unit was placed on the property it was done incorrectly and a variance is needed. Mr. Calhoun stated that there is no objections from the neighbors.

There were no parties present in opposition.

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

Case No. 6576--Michael C. Miller, Sr. - North of Road 285A, 200
feet east of Road 285.

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

The case was presented by Mr. Shockley. Michael C. Miller, Sr. was sworn in and testified, requesting a 10' variance from the front yard setback of 40' and a 3' variance from the 10' side yard setback requirements. Mr. Miller stated that he has been living on the property since 1993. The property with a manufactured home was deed to him in 1997. He built an addition to the manufactured home and then tore the manufactured home down and built a house. He built the same size as the manufactured home, but encroaches, due to an unusual property line. Pictures were presented and explained.

Mr. Rickard stated that a different survey came in after the application was filled out. There needs to be an alteration of the variances requested. The applicant now needs a 3.5' variance from the front yard and a 1.05' variance from the west side yard and a 3.7' variance from the east side yard setback.

There were no parties present in opposition.

Motion was made by Mr. McCabe, seconded by Mr. Wheatley and carried unanimously that a 3.5' variance from the front yard setback, a 1.05' variance from the west side yard setback and a 3.7' variance from the east side yard setback requirements, 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.

After some discussion, motion was made by Mr. Mills, seconded by Mr. McCabe and carried unanimously that the case be tabled until the next meeting. Vote 5-0.

Case No. 6550 (cont'd.)--Carol L. Spencer - South of Road 565, 100
feet west of Conrail right of way.

A variance from the road frontage requirement.

The case was reviewed by Mr. Callaway.

After some discussion, motion was made by Mr. Mills, seconded by Mr. McCabe and carried unanimously that the case be tabled until the next meeting, since Mr. Jones, Attorney, was to do research on the case for the Board and he was absent. Vote 5-0.

Case No. 6557 (cont'd.)--Thomas M. & Wanda J. Dowling - Northwest of Road 562, west of Route 34.

A special use exception to place four (4) on farm manufactured homes.

The case was reviewed by Mr. Callaway.

Mr. Rickard stated that he found in his research that only one manufactured home on the property has a legal permit. He stated that two manufactured homes are permitted on 50 acres of land.

After some discussion, motion was made by Mr. Wheatley, seconded by Mr. Mills and carried unanimously that the special use exception be denied, finding that the use will substantially adversely affect adjacent and neighboring properties. Vote 5-0.

Case No. 6559 (cont'd.)--Janet B. Coombes - East of Road 240, 1,560 feet south of Road 16.

A special use exception for a third on farm manufactured home.

The case was reviewed by Mr. Callaway.

Mr. Rickard stated that when researching the property he found that the subdivision referred to by the applicant has not been recorded and has been taken off of the tax maps. She has 17.1 acres and the property is tilled.

After some discussion, motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the special use exception be granted. Vote 5-0.

OTHER BUSINESS

Proposed Rules of the Board of Adjustment.

It was the consensus of the Board to put the Proposed Rules of the Board of Adjustment on the next agenda. Vote 5-0.

DISCUSSION

Mr. Rickard stated that the 9' fence at Spring Lake, that the Board questioned, is legal and has a permit.

The Berrier Case that Mr. McCabe asked about has been rescheduled.

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

Meeting adjourned at 9:10 P. M.