

Minutes of April 21, 1997

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, April 21, 1997, in the County Council Administration 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, Mrs. Hudson, Mr. Wheatley, Mr. Jones-Attorney, Mr. Betts-Zoning Inspector III and Mrs. Talley-Planning & Zoning Secretary.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the minutes of April 7, 1997 be approved as circulated.

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

Mr. McCabe announced that Case No. 6297 had been withdrawn and Case No. 6300 had been cancelled. There were no interested parties present for either case.

Case No. 6288--Emily M. Williams, Trustee - North side of Route 269, across from Route 276.

A variance from the front yard setback requirement.

The case was presented by Mr. Betts. Thomas F. Williams, was sworn in and testified representing the applicant who requested a 9" variance from the 40' front yard setback requirement to be 39'3" from the front property line for a dwelling. Mr. Williams stated that the builder and surveyor blame each other for the error. Mr. Williams stated that the dwelling has been built approximately five years and he does not know how the encroachment happened, and the father of the applicant is deceased. The applicant wants to sell the property.

There were no parties present in opposition.

Motion was made by Mrs. Hudson, seconded by Mr. Mills and carried unanimously that a 9" variance be granted.

Case No. 6289--Sharon Fried - North side of Route 231, 30 feet west of Route 5, Lot 1.

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. Sharon Fried was sworn in and testified requesting to place a 1997, double-wide

manufactured home on her property, which is less than 3/4 acres in size. She testified that there are other manufactured homes in the area and Teal Point Subdivision with double-wide manufactured homes. She stated that the unit will be placed on a solid foundation.

Mr. Betts stated that the Board had approved five or six other applications for manufactured homes in the area, plus there is a GR General Residential District across the road.

There were no parties present in opposition.

Motion was made by Mr. Mills, seconded by Mr. Callaway and carried unanimously that the special use exception be granted for a new double-wide manufactured home on a permanent foundation.

Case No. 6290--Thomas C. Goldhahn, II - West side of Route 240A,
530 feet south of Route 238, Lot 4.

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. Thomas C. Goldhahn, II was sworn in and testified, requesting to place a 1984, 14'x 70' manufactured home on his 1.33 acre property. He stated that there are other manufactured homes in the area, the nearest two lots away.

There were no parties present in opposition.

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

Case No. 6291--Lorenza B. Whaley - North side of Route 24, 1,500
feet east of Route 463.

A variance from the minimum lot width requirement.

The case was presented by Mr. Betts.

There were no parties present to represent this case.

James P. Lofgren, who owns property next door was sworn in as an interested party.

Mr. Whaley appeared before Mr. Lofgren could speak. Lorenza B. Whaley was sworn in and testified, requesting a 60' variance from the minimum lot width of 150' to create access to his rear property. He does not intend to further subdivide the rear

property, he just needs an access to it.

Mr. Lofgren stated that he had no opposition if the use is for access only.

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. 6292--Sarah D. Washington - East side of Route 113,
approximately 1,800 feet south of Road
625.

A special use exception to operate a Day Care
Center.

The case was presented by Mr. Betts. Sarah D. Washington was sworn in and testified and was represented by Jim Fuqua, Attorney. The applicant requested to relocate her Day Care Center to an area north of the present location and stay in the area. Mr. Fuqua stated that Ms. Washington started her Day Care Center in 1984 at its present location which is a rented site. She has 36 children now and it is in the best interest of everyone to relocate and stay in the area. Mr. Fuqua stated that the applicant was previously denied her request to relocate her Day Care Center and he feels she failed to address the concerns that the Board had. He stated that he does not feel the use will adversely affect the area, there will be adequate parking and she will expand the facility. He stated that the present site had problems with plumbing, air conditioning, and the location being next to a farm there were not always pleasant odors. Next to the present property there is also the raising of ponies, which is not pleasant to have children next to. Mr. Fuqua stated that Ms. Washington had said there is a problem with high nitrates in the water. The nitrate is 10.5 which is a level higher than the state standards. Copies were submitted to the Board. Mr. Fuqua also stated that there had been rumors that the owner was going to terminate the lease. The proposed location will be south of the existing location and will serve the same clientel. It is a large property with an existing dwelling on it and there will be a 28'x 60' additon added to the dwelling. The area will be fenced, there will be 8 parking spaces to the north end, there is adequate room for an entrance and exit, buffered with trees and a handicap ramp provided. It was stated that the applicant will have no more than 50 children, which is regulated by the state. The hours will be 6:15 A.M. to 6:00 P.M. It was stated that Ms. Washington had contacted neighbors Ms. McClain and Mr. Morgan and they have no objections. Mr. Fuqua stated that the property is a large lot and more parking could be provided. He

also stated that the use is a needed service in the area. Seven letters from clients and three letters from employees were presented voicing no objections and stating the need for the center. Mr. Fuqua asked Ms. Washington if the testimony given by him was appropriate. Ms. Washington stated that she approved the statements made by Mr. Fuqua. Mr. Fuqua submitted a copy of conditions he prepared that he feels would be appropriate for the center if the Board approved it.

Karen Emory Brittingham and Christopher Washington were sworn in, in behalf of this application.

Ms. Brittingham testified in behalf of the application, stating that she was present for another case, but being familiar with the applicants operation, she wanted to testify for the applicant. She stated that she lives 1 1/2 miles south of the project and she feels that traffic is not impaired at the new location. She feels the new site will blend in with the neighborhood and will be an asset to the community.

Christopher Washington did not wish to speak.

Mr. Betts read the letter presented from George Shaw, Subdivision Manager for the Department of Transportation to Wayne Thornton District Permit Supervisor in reference to the Day Care Center.

Mr. Callaway questioned how many children and how many employees there would be.

Mr. Fuqua stated that there are 36 children now and 5 employees.

Mr. Callaway questioned how many employees there would be if the amount of children increased to 50.

Mr. Fuqua stated that there would probably be more employees hired.

Mr. Callaway questioned if the existing dwelling could handle the 36 children the applicant now has.

Mr. Fuqua stated that the addition will be added before the Day Care Center is in use.

Mr. Callaway questioned the quality of the water at the new site.

Mr. Fuqua stated that there are no water problems at the new

site. He feels the water problems at the present site started when the ponies came into the area. He stated again that all renovations and additions will be done before the use is started.

Mr. Mills questioned if there would be a problem if more parking spaces were needed.

Mr. Fuqua stated that there is enough area to add more parking.

Jenny Washington was sworn in and testified in behalf of the application, stating that the amount of children is regulated by another agency.

Motion was made by Mrs. Hudson, seconded by Mr. Mills 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 Mr. Wheatley, seconded by Mr. Mills and carried unanimously that the special use exception be granted, finding that the use will not adversely affect the neighborhood. Mr. Mills asked that the motion be amended to adopt the conditions presented by Mr. Fuqua. The conditions adopted are:

1. Regular business hours not exceed 6:15 A.M. to 6:00 P.M.
2. Maximum number of children shall not exceed 50.
3. All dropping off and picking up for children shall be from the on site parking lot except for school buses.
4. Business will be licensed and comply with all requirements of the State of Delaware regarding; Operation of Child Care Center.

Case No. 6293--Albun, Inc. - Northeast side of Route 113, at Route 321.

A variance from the requirements for signs.

The case was presented by Mr. Betts. Loretta G. Williams was sworn in and testified representing the applicants, who requested a 133 sq. ft. variance from the 150' sq. ft. requirement of a ground sign to be 288 sq. ft. for two signs. She testified that the sign will be 8'x 32' for a speedway.

Mr. Betts stated that the applicant is permitted two signs because the property has two frontages.

Margaret Lingo was sworn in and questioned where the signs are to be located. She lives in the area.

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. 6294--Robert J. Karmarcik - South side of Collins Avenue,
800 feet east of Route One, Lot 13,
within Indian Beach Surf Club.

A variance from the front yard setback requirement.

The case was presented by Mr. Betts. Robert J. Karmarcik was sworn in and testified and was represented by John Sergovic, Attorney. Mr. Karmarcik requested a 16' variance from the 30' front yard setback requirement on Lot 13, Indian Beach Surf Club. Mr. Sergovic stated that on the application he had requested a 14' variance, but a 16' variance is needed.

In answer to Mr. Mills question, Mr. Betts stated that the application does not have to be readvertised

Mr. Sergovic stated that the applicant wants to conform with the front setbacks with the immediate neighborhood. Mr. Sergovic stated that with the number of existing units on the street the average lot setback could be 17' or 15'+. He presented a calculation sheet he had prepared. Mr. Sergovic made reference to a property owned by Mr. McInerney in 1984 where he went to the Board and was granted a variance, but time lapsed and the variance approval ran out. Mr. Karmarcik was opposed to the variance requested by Mr. McInerney. Mr. McInerney then went to the Director of Planning and Zoning and was able to use Pierce St. as his front. Mr. Sergovic stated that if the Director had granted his client to use Pierce St. as his front they would not be before the Board for a variance. Mr. Karmarcik wants to be allowed to place his dwelling to be able to get some advantage of the Ocean View. Mr. Karmarcik verified what Mr. Sergovic had stated.

Patricia Maisano was sworn in and testified in opposition stating that she and her husband Daniel purchased Lot 4 and they have the view of the bay and ocean. She stated that she was told that no one would build to block either view. She stated that they spent a lot of money for the lot and house, which was bought for the views. She does not want her views blocked. She opposes the variance request.

Lawrence Radnovic was sworn in and testified in opposition, stating that he has owned his property Lot 11, since 1979. He stated that no lots to the west have had variances. He stated that his view will be severely impaired. He stated that he knew someone

would build on the applicants property, but he thought they would adhere to the setbacks. He is opposed to the variance request.

Mr. Sergovic in rebuttal stated that the lot fronts on Collins Ave. as determined by the Director. The applicant has a 15' setback from the side corner lot which shortens the lot. Mr. Sergovic stated that if the Director had determined Pierce Ave. as the front they would not be here for a hearing. The applicants decking and steps will encroach.

John McNab was sworn in and testified in opposition, questioning the granting of a variance where no variances have been granted before. He lives across the street from the applicants property and he stated that his ocean view will be lost. He is concerned about revising the Zoning.

Mr. Betts read a letter received from Barbara-Cherrix O'Leary, Attorney in behalf of Mr. & Mrs. Maisano who are opposed to the variance.

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 Mr. Callaway and carried unanimously that the variance be denied, finding the use would alter the essential character of the area based on testimony of the affected views, and the property can be reasonably developed without a variance.

Case No. 6295--Emma L. Tucker - East side of Route 113, 1,225 feet north of Route 224.

A special use exception to operate a Day Care Center.

The case was presented by Mr. Betts. Emma L. Tucker was sworn in and testified requesting to operate a large Group Home (Day Care Center) to give her two more children than she has now. She presently has a home occupation for six children. She has been a day care provider for almost 10 years, using this property for home day care for approximately 4 years. She is able to care for 6 pre-school children and 3 school age, plus her own child. She wants to change her licensing to allow 12 children. The hours are from 6:00 A.M. to 9:00 P.M. and she has adequate parking, plus a horseshoe driveway.

Mr. Callaway questioned how far she is from Mrs. Washington's Day Care Center, and if her water has been tested.

Ms. Tucker stated that she is approximately one mile from the Washington Day Care and that her water was tested and is fine.

There were no parties present in opposition.

Motion was made by Mrs. Hudson, seconded by Mr. Callaway 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. 6296--William O. Stokes, Jr. & E. Martin Stokes - North side of Route 211, 709 feet east of Road 225.

A variance from the minimum lot width requirement.

The case was presented by Mr. Betts. Karen Emory Brittingham, from Murphy Associates, was sworn in and testified representing the applicants, who requested a 94.22' from the front lot width requirement of 150' to be 55.78', to create a new parcel. The owners would like to sell a parcel of land with the existing house on it using the existing driveway. Ms. Brittingham submitted copies of a aerial photograph showing the property. The existing property with the dwelling has well and sewer. She explained where the existing entrance is located on the property. She feels the use will not alter the essential character of the area or create a safety hazard, and she feels there will be no environmental impact to the property.

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. 6297--Larry D. Sherman

This case was withdrawn.

Case No. 6298--W. Marshall & Joan E. Hamilton - South side of Route 54, one mile west of Route One, Roosevelt Avenue, Lot 6, within Cape Windsor.

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

The case was presented by Mr. Betts. W. Marshall Hamilton was sworn in and testified, requesting a 5' side yard setback variance from the 10' requirement and a 5' rear yard setback variance from the 20' rear yard variance, on Lot 6, within Cape Windsor, on a lot 50'x 97.5'. The applicant wishes to place a Nanticoke Home on the property to replace a manufactured home. Mr. Hamilton stated that he purchased the property in 1983 when the setbacks were 5'. He stated that the Association has no problem with the requested variance.

Mrs. Hudson asked Mr. Hamilton if he will have a shed on the property.

Mr. Hamilton stated that he will keep the shed where it is now.

There were no parties present in opposition.

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

Case No. 6299--Doyal E. Lovett - South side of Route 64, 450 feet west of Route 66, Lot 47, within Villa Park Estates.

A special use exception to place a second manufactured home to be attached to the existing manufactured home to be used as one single family unit.

The case was presented by Mr. Betts. Doyal E. Lovett was sworn in and testified, requesting to attach a 14'x 70' manufactured home to his existing 12'x 60' manufactured home to become one single family unit, on Lot 47, within Villa Park Estates. Mr. Lovett stated that when completed the unit will have one kitchen, vinyl siding all around both units and an A-Roof. Mr. Lovett stated that he proposes to have the work completed within one year. He testified that he had spoken with some of the people in the development and they have no objections. They are in the process of forming an Association.

Mr. Mills questioned if the unit will have a solid foundation.

Mr. Lovett stated that he will have a block foundation in the future.

Mrs. Hudson asked Mr. Lovett if he plans to have a porch.

Mr. Lovett stated that he will leave the porch on the units.

Mr. Mills reminded Mr. Lovett that he would have to stay within the required setbacks.

Mr. Lovett stated that he will be 30' back from his front property line to the porch. He will meet the required setbacks.

Mr. Betts stated that Mr. Lovett's property is 140' x 171', pie shaped, and he should meet the setback requirements.

There were no parties present in opposition.

Motion was made by Mrs. Hudson, seconded by Mr. Mills and carried unanimously that the special use exception be granted, with the stipulations there be vinyl siding all around, A-Roof and be completed within one year. The motion was amended to completion being done within two years and include in the stipulations there be a block foundation.

Case No. 6300--Robert Harris, Jr. & Joseph M. Zduriencik - South side of Route One, approximately 3 miles south of the Town of South Bethany, Lot 1, within Maisons Sur-Mer.

A special use exception to operate a Bed and Breakfast Facility.

This case was cancelled.

Case No. 6301--George R. Warren - South side of Route 263, 1/4 mile northeast of Route 9, Lot A17, within Donovan's MHP.

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

The case was presented by Mr. Betts. Wayne Warren was sworn in and testified representing his father George Warren, who requested a 12' variance from the 20' setback requirement between units in a park, being Lot A17, within Donovan's Mobile Home Park. Mr. Warren stated that his father wants to add a 4' addition to his shed to store lumber that is now out in the open. Mr. Warren stated that there is no problem with the Association.

Mr. Betts stated that other variances have been approved in this park.

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. 6302--Constance C. Heckert - South side of Route 353, 355 feet west of Route 17.

A variance from the front yard setback requirement.

The case was presented by Mr. Betts. Barry Dickerson, builder, was sworn in and testified representing Constance Heckert who requested a 33' variance from the front yard setback requirement of 40' to be 7'. Mr. Dickerson stated that he thought he had obtained all of the permits and had everything on the plan.

Mr. Betts stated that Mr. Dickerson had all of his permits and replaced an old porch.

Mr. Dickerson stated that the porch is no closer to the road than the old one.

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.

OTHER BUSINESS

Case No. 5860 - County Development. Assoc., L.L.C.

Request for a time extension.

Mr. Betts stated that he had received a letter from Lighthouse Plaza, Preston Lynch Dyer requesting a six month extension on Case No. 5860. The letter was read into the record giving the reasons for the extension request.

Motion was made by Mrs. Hudson, seconded by Mr. Mills and carried unanimously that a six (6) months extension be granted for Case No. 5860.

Discussion

Mr. Jones discussed the court's decision upholding the Board's

decison on the County Seat Material case.

There was also discussion pertaining to reapplying in one year on cases that have been denied.

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

Meeting adjourned at 8:55 P. M.