

Minutes of May 4, 1998

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, May 4, 1998 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00 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. Shockley-Zoning Inspector III and Mrs. Talley-Recording Secretary.

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

Case No. 6577--John H. & Elouise H. Cunnington - North of Route 16,
300 feet northeast of Road 602.

A variance from the minimum lot width requirement.

The case was presented by Mr. Shockley. John Cunnington, who resides at R.D. 2, Box 96W, Greenwood and James Carl Cunnington, were sworn in and testified in behalf of the application. Mr. John Cunnington requested a 100' variance from the 150' lot width requirement to have 50' of road frontage and a new lot containing 3.39 acres for his son. When asked why he did not make one parcel 150' and use the remainder for a variance, he replied he did not think he had too. He stated that property on both sides of him have had variances. He also stated that there is no house on the property and it is being farmed.

Mr. Mills questioned Mr. Shockley about the variances on either side of the property.

Mr. Shockley stated that no research had been done on the other properties.

There were no parties present in opposition.

Motion was made by Mr. Wheatley, 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, to give the Inspector time to do research on the variances of other properties. Vote 5-0.

Case No. 6578--Elton R. & Alice J. Wood - East of Road 619, east of
Road 634.

A variance from the minimum lot width requirement
and square footage requirement.

The case was presented by Mr. Shockley. Alice J. Wood who resides at 404 Old Shawnee Road, Milford, and Roger Elton Wood, who resides at the same address, were sworn in and testified requesting a variance from the minimum lot width requirement and a variance from the square footage requirement to create two parcels. They are requesting a 66' variance from the 150' lot width requirement and a 12,346 sq. ft. variance from the square footage of the lot on parcel A.. A 98' variance from the 150' lot width requirement to be 52' on parcel B. Mr. Wood stated that the property, his mother's, was granted a variance in 1994, but it was never completed, so they are reapplying now. Mr. Wood stated that there is now a change of 30' in the variance request since they need more room for the new septic system. He stated that they will share a driveway. They are now seeking a lesser variance on his mother's parcel. The variance requested on Parcel A is a 9856 sq. ft. variance from the required 32,670 sq. ft. to be 22,814 sq. ft., a 66' variance from the required 150' to be 84' on the frontage. On Parcel B a 98' variance from the required 150' frontage to be 52' is requested. Parcel B will have 36,600 sq. ft. Mr. Wood stated that he wants to live near his mother who is partially disabled and his father is in a nursing home.

Mr. Shockley stated that the variance is the same as requested in 1994 except for the 30' adjustment.

Mr. Wood stated that there is no problem with the neighbors and they all know of their intent.

Kari Ann Wood, who resides at the same address and is the wife of Elton Wood, was sworn in and testified that she is in favor of the application.

Mr. Shockley read two letters into the record from Edna Sneller and Lori Benton, who are in favor of the application, and from Dr. H. E. Masten, M.D. referencing the health of Mrs. Wood. He also read the Finding of Facts for the previous hearing in 1994, Case No. 5487.

There were no parties present in opposition.

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

Case No. 6579--Rehoboth Golf Properties L.L.C. - Northwest of Road 273A, 300 feet north of Route 273.

A special use exception for a pitch and putt golf course with lights.

The case was presented by Mr. Shockley. Steven W. Smith, who resides at 12 Chatham Road, Rehoboth Beach Yacht & County Club, Rehoboth, and James F. Wiles, who resides in Virginia, were sworn in and testified on behalf of the application. Mr. Smith stated that he had 80 acres of land and had approval for 20 acres to be lighted for a golf course. He proposes to have a pitch and putt golf course with lights. He will light approximately 6 acres. Mr. Smith showed and explained a site map showing the golf course. He stated that they have berms 15 to 20 feet high, will have 25' high light poles with lights focusing down on the property. There will be no loud speakers, it will be for entry level golfers and he feels there is a need for this type of use in the area. He stated that he has hedgerow that is 30' high. He stated that the poles will not be above that. He feels they have buffered themselves from any problems. He feels they have segregated themselves from everybody, mentioning Kings Creek and Silver View Farms. He stated that the last group to play will be at 11:00 P. M. and 11:30 P. M. for the lights to go off. He stated that the course will be 9 holes. He stated that he used 20 acres with lights for the driving range that was there for five years.

Donald R. Smith who resides at Kings Creek was sworn in and Robert Witsil, Attorney, was present representing Kings Creek Homeowners Association, who still own 35 lots within the Kings Creek Development. Mr. Witsil stated that the Association is in favor of what has been proposed with the following conditions: the lighted area be 8 acres, with no loud speakers on the pitch and putt or the pro shop, that the buffered area remain on the other side of the executive course (the area shown in green on the site plan), the closing time to be 11:00 P. M. with lights out at 11:15 P. M. and that the applicants use 750 haligent light bulbs for the lighting, nothing brighter.

Jack Daggett, Project Manager with Kings Creek, who resides at 9 Alexander Court, Kings Creek, Rehoboth, was sworn in and testified that his home is not affected, but he represents property

owners who have property that abuts up to the applicants property. He stated that they are in favor of the applicaiton, but they have not all seen the map that was explained showing the pitch and putt. He stated that they are concerned about the wooded wetlands. They have no problem with the lights as long as the vegetation is on, but are concerned when the vegetation is off, if the lights could be seen. He stated that the use will be a positive addition to the area and he is in favor.

Mr. Smith stated that the lights would be seasonal to cover the 13 weeks of summer. He showed and explained the site plan to Mr. Daggett. He stated that if they angle the lights it could prevent them showing through when the vegetation is off. In answer to Mr. Daggett's question, he stated that he would have to have Board approval for any more lighting than requested.

Gordon Reed, who resides in Kings Creek, was sworn in and testified questioning where the putting green in on the site plan and questioned speaker systems.

Mr. Shockley read a letter of opposition into the record from Marilyn & John Martin.

When asked Mr. Smith stated that he would be in agreement with the conditions proposed by Mr. Witsil. He stated that the use was planned to be as far away from Kings Creek as possible. He stated the berm will be 15' above the actual level of the course, and with the 5' cypress, after a few years he feels the pitch and putt will be totally consumed.

Mr. Mills reviewed the conditions that were proposed.

Mr. Witsil stated that there is a letter he had presented, but he put it in the wrong file by mistake.

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 following conditions for a period of five (5) years:

1. All lights out by 11:15 P. M.
 2. Maximum of 8 acres to be lit.
 3. Nine (9) hole pitch and putt golf course.
 4. No loud speakers at all anywhere.
 5. The 150' wooded buffer on the executive course to remain.
 6. The lights to be pointing down.
 7. Maximum 750 watts each and maximum 25' in height.
 8. Lyland cypress be planted on the 15' berm.
- Vote 5-0.

Case No. 6580--Edward J. Timmons, Sr. - Northeast of Route One,
intersection of Route 83.

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

Mr. Shockley stated that the location of the property was
wrong on the application and therefore, it was advertised wrong.
It should be on Route 113 and not Route One.

There were no interested parties present.

Mr. Jones, Attorney, stated that the case would have to be
readvertised at no cost to the applicant, since there could be
people interested at the proper location.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and
carried unanimously that the case be tabled to be readvertised with
no fee to the applicant. Vote 5-0.

Case No. 6581--Charles A. Parnell & Anthony B. Carroll - North of
Route 18, 1.5 miles west of U.S. Route 13.

A special use exception to place a manufactured
home for a watchman and caretaker for security
reasons.

The case was presented by Mr. Shockley. Charles Parnell, who
resides in Felton, Delaware, was sworn in and testified requesting
to place a 1985 or newer 14'x 70' manufactured home on his property
for a caretaker to live in and watch over his business. Mr.
Parnell stated that he has a mini storage business on the property
and has been broken into twice. Locks were cut off of every
building and doors broken. He stated that people also park on the
property at night. He stated that the scales on the property are
not utilized and he will park the manufactured home backed up to
the scales. He stated that there will be one person living in the
manufactured home.

There were no parties present in opposition.

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

Case No. 6582--Betty J. Taylor & Janet E. Schweizer, Trustees -
Southwest of Crestview Avenue, across from
Third Street within private subdivision,
southeast of Savannah Road (Route 18).

A variance from the square footage requirement for a lot.

The case was presented by Mr. Shockley. Janet Schweizer and Oscar Schweizer, who reside at 210 Crestview Ave., Lewes, Delaware, were sworn in and testified, requesting a 12,510 sq. ft. variance from the 20,000 sq. ft. lot requirement on Parcel B. Mr. Schweizer stated that his mother-in-law had recently passed away and prior to this happening, she wanted to subdivide her property and had planned to ask for this variance. They want to carry out her plans. They are purchasing the property and plan to build or sell, but it will not be a rental property. He stated that the neighbors are in favor of the variance.

Mr. McCabe stated that there are other properties in the area with lesser frontages.

Mr. Shockley stated that he had a petition with six signatures on it in favor of the application.

Rush Ellis, who resides on Front St., Lewes, Delaware, was sworn in and testified wanting to see the survey of the property. He stated that he owns property in the area. He stated that he is not in opposition.

There were no parties present in opposition.

Motion was made by Mrs. Hudson, seconded by Mr. Wheatley 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. Mills and carried unanimously that the variance be granted, finding other properties in the area have the same lot sizes. Vote 5-0.

Case No. 6583--Donald F. Webster - West of Route 270A, corner intersection north of Route One.

A special use exception to place a manufactured home type structure for any business, commercial or industrial use.

The case was presented by Mr. Shockley. Frances P. Robino, who resides on Rte. 1, Dagsboro, Delaware, was sworn in and testified requesting to use a 1993, 10'x 30' manufactured home type structure for a real estate sales office for Sea Bright Subdivision. Mr. Robino stated that he will use the unit for sixty (60) days and then their sample will be done. He stated that he

rents the unit, that it meets all setbacks and is 50' back from Route One and 25' to 30' back from Route 270A.

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 for a 1993, 10'x 30' mobile home type structure for sales until July 1, 1998. Vote 5-0.

Case No. 6584--Jeffrey & Eugene Gooding - West of Cleveland Street,
south of Lincoln Drive, Lot 38, Block 4,
Cape Windsor.

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

The case was presented by Mr. Shockley. Linda Gooding, who resides at 509 Marsh Road, Wilmington, Delaware, was sworn in and testified, representing the application. The applicants requested a 5' variance from the side yard setback requirement of 10' and a 5' variance from the 20' rear yard setback requirement on Lot 38, within Cape Windsor. The applicants wish to place a new manufactured home on the property. She stated that the previous manufactured home was closer to the property lines.

Mr. Shockley read a letter into the record from the Cape Windsor Association, John W. Weston, President of the Board of Directors, voicing no objections.

There were no parties present in opposition.

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

Case No. 6585--Jeffrey & Regina Culley - West of U.S. Route 13,
corner north and south of Road 482.

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

The case was presented by Mr. Shockley. Jeffrey Culley who resides at 15 White Oak St., Laurel, Delaware, was sworn in and testified, requesting a 2' variance from the 20' setback requirement between units in a park for a shed to be 18', located in Laurel Village. He stated that he placed the shed according to the setbacks on the building permit and there was no 20' setback between units on the permit. He stated that it is a movable shed.

The Zoning Inspector found the encroachment. He stated that there is no problem with the neighbors.

Mr. Shockley stated that Mr. Culley was correct, there was no 20' setback on the permit.

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. 6586--Frank & Barbara Hogan & Frank & Barbara Travaglini -
West of Elmwood Avenue, Lot 9 & 10, Angola
By The Bay.

A variance from the rear yard setback requirement.

The case was presented by Mr. Shockley.

There were no parties present representing this case.

There were no interested parties present.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the variance be denied, due to the applicant not being present, and cannot be reappied for, for a period of one (1) year. Vote 5-0.

Case No. 6587--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. Shockley. Paul Berrier, who resides at 104 Thistledown Dr., Hummelstown, Pennsylvania, was sworn in and testified requesting a 13' variance from the front yard setback requirement of 30' to be 17', to place a manufactured home. The property being located at Lot 56, within Dogwood Acres. Mr. Berrier stated that he had to replace the septic system and needs a variance to place a 14'x 70' unit on the property. He stated that other people in the development have less than 30' frontages, that some of the other properties are nonconforming.

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. 6588--Gene's Auto Sales, Inc. - North of U.S. Route 13,
1,000 feet south of Road 545.

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

The case was presented by Mr. Shockley.

There were no parties present representing this application.

There were no parties present in opposition.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and
carried unanimously that the variance be denied, due to the
applicant not being present and cannot be reapplied for, for a
period of one (1) year. Vote 5-0.

Case No. 6589--New Dawn Enterprises, Inc. - North of Route 14, west
of Lewes/Rehoboth Canal.

A variance from the setback requirement for a
canopy.

The case was presented by Mr. Shockley. Steven Bessy, who
resides at 4 Oakridge Court, Newark, Delaware, was sworn in and
testified, representing the application. He requested a 20'
variance from the 20' setback requirement for a 24'x 30' canopy
over two existing gas pumps. He stated that since the application
was submitted he has changed the size of the canopy to 20'x 30'.
He stated that he has operated at the site a number of years. He
showed pictures of the competition in the area that have canopys.
He stated that his customers want a canopy for weather protection.
He is afraid he will lose customers without it. He wants to have
a "0" setback. He feels the use will not have a negative impact
for visibility of traffic. He stated that propane tanks and the
canal are on either side of the property. A letter of support was
submitted. He stated that the size of the canopy was reduced to
make it more even and appropriate.

There were no parties present in opposition.

Mr. Shockley read a letter into the record from a neighbor,
Angela Richter in favor of the application.

Motion was made by Mr. McCabe, seconded by Mr. Mills and
carried unanimously that the variance 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. Mills stated that he had revisited the property and found that 6 or more tractor trailer type structures had been moved on the 5 acre parcel now, and the property has not been brought into compliance.

After some discussion, motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the special use exception be denied, finding placement of the manufactured home on the property in question would substantially affect adversely the uses of adjacent neighboring properties. Vote 5-0.

Case No. 6550--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.

Mr. Jones read a letter into the record from Lawrence Lank, Director of Planning & Zoning, stating that the existing manufactured home was permitted in 1986 as on farm on a minimum amount of five acres. The applicant has to maintain five acres for the existing manufactured home, the remaining property would be .21 acres which is not enough for the minimum lot size requirement of .75 acres.

After some discussion, motion was made by Mrs. Hudson, seconded by Mr. McCabe and carried unanimously that the variance be denied, finding the applicant cannot meet the County requirements. Vote 5-0.

OTHER BUSINESS

Proposed Rules of the Board of Adjustment.

It was the consensus of the Board to hold a special meeting on June 29, 1998 to discuss the Rules of the Board of Adjustment.

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

Meeting adjourned at 8:55 P. M.