

Minutes of May 5, 1997

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, May 5, 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, Mr. Mills, Mrs. Hudson, Mr. Wheatley, Mr. Jones-Attorney, Mr. Betts-Zoning Inspector, III, Mr. Rickard-Zoning Inspector and Mrs. Talley-Planning & Zoning Secretary.

Motion was made by Mr. Callaway, seconded by Mr. Wheatley and carried unanimously that the minutes of April 21, 1997 be approved as circulated.

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

Mr. McCabe announced that Case No. 6311 had been cancelled. There were no interested parties present.

Case No. 6303--Catherine Harmon - South side of Route 88, 548 feet east of Ruote 261.

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. There were no parties present to represent this case. The Chairman opened the hearing.

Cathy Kiernan was sworn in and testified in opposition, stating that she lives across the street from the applicant's property. She stated that she was curious about the lot location, since the applicant was denied a previous case on a lot in front of the one requested. A letter of opposition was presented from other neighbors.

Mr. Betts read the letter presented from Bea and Calvin Mitchell who voiced opposition to the manufactured home.

Motion was made by Mr. Mills, seconded by Mr. Callaway and carried unanimously that the special use exception be denied, due to lack of representation, and the applicant cannot reapply for one year with the same application. Vote 5-0.

Case No. Michael James & Beth Garvilla - North side of Route 20, 2,100 feet east of Route 442.

A variance from the side yard setback requirement.

The case was presented by Mr. Betts. Beth Garvilla was sworn in and testified, requesting a 10' variance from the side yard setback requirement of 15', to put a garage next to her home. She stated that it is the only place to put the garage and use it properly as a garage. There is a dwelling and farmland on either side of her property. A letter from a neighbor, Joyce Harrell, was submitted.

Mr. Betts read the letter of support that was submitted from Joyce Harrell.

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. Vote 5-0.

Case No. 6305--Charles & Lucille Maxwell - South side of Route 349, at Route 347, Lot 30, within White's Neck Village.

A variance from the rear yard setback requirement on a through lot.

The case was presented by Mr. Betts. Charles Maxwell was sworn in and testified, requesting a 10' variance from the 40' rear yard setback on a through lot, being Lot 30, White's Neck Village. Mr. Maxwell wishes to construct a 16'x 20' accessory building on his property. He stated that there is no other place to put the building due to his septic system. He will remove an existing shed.

There were no parties present in opposition.

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

Case No. 6306--Jean R. & George A. Picot - North side of Route 297A, at the corner of Mercer Avenue and Paul Street, Lot 6, within Delaware Oyster Farms.

A variance from the side yard setback requirement on a corner side.

The case was presented by Mr. Betts. Mary Angela Morris and Mark Davis, with ECI Consultants, were sworn in and testified in behalf of this application. The applicants were represented by Preston Dyer, Attorney. The applicants requested a 4.1' variance from the 15' side yard setback requirement on a corner lot, being

Lot 6, within Delaware Oyster Farm, on a lot 50'x 90' in size, to construct a dwelling. The foundation is already started.

Mr. Davis stated that he is with the firm that is working on the subdivision. He stated that the applicants lot is narrow and a corner lot which restricts the size of the dwelling that can be built. He feels the reasonable use of the property is in jeopardy to meet the corner setback of 15'. He feels that a 10' setback is more reasonable to build on. He feels it is a hardship due to the narrowness of the lot and that it is a corner lot.

Ms. Morris explained the lots on Mercer Ave., pictures were presented. She stated that other lots in the development have structures on them closer to the property lines. The foundation was put on the property with the understanding that the setback was 10'. She stated that it is an old subdivision.

Mr. Dyer stated that when the encroachment was discovered, the construction was stopped. He feels the use is not contrary to the public interest, that without the variance it would cause practical difficulties and hardship to the applicants due to the shape, narrowness of the lot and it being a corner lot. He feels the use will not be a detriment to the area or adjacent properties.

Charles E. Watts and Daniel Bartoli were sworn in and testified in opposition. Mr. Watts presented 39 letter of opposition to the requested variance. Mr. Watts stated that all of the existing homes have been built to conform to the proper setbacks. He stated that there are laws to eliminate hodgepodge. He questioned why the applicants tried to put a house on the lot knowing the setbacks.

Mr. Bartoli stated that he bought his property for the water view and if the applicants are allowed to build as proposed they will be in his view. He stated that he is opposed and does not want the variance granted

Richard Miller, Scott Walls and John Elwood were sworn in and testified in opposition. Mr. Elwood stated that he had to have a shed moved in the 1980's because it was not uniform. Mr. Walls questioned if the property is sold or if the dwelling is to be a spec house. He feels the variance will be a hazard to the community and will obstruct views. Mr. Miller stated that the homes are too close to the road. He feels that they should not have to pay for a mistake made by the applicants. He stated that holding tanks are needed for septic and he feels the property should conform.

By a show of hands there were 14 people present in opposition.

In rebuttal Mr. Dyer stated that the subdivision was subdivided in 1959 and that the lot being a corner lot is a hardship. He stated that there is an approved waste water treatment plant for the subdivision. He stated that the request is only for 4.1' and that there is no need for more of a variance. They thought the setback was 10'.

Mr. Miller stated that there had been a house on the applicants property and was moved. He feels the variance will set a precedent.

Jean Rock was sworn in and testified that she bought the property in 1989 and wants it to be gorgeous. She testified that she is not a greedy person and is not going to make much from the sale of the land.

Mr. Betts referenced the letters presented and one received in the mail. He stated that all of the letters were basically the same. He read one letter into the record. Mr. Betts stated that a building permit was issued with the correct setbacks.

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 Mrs. Hudson, seconded by Mr. Mills and carried unanimously that the case be tabled until the next meeting, to give the Board members time to visit the property. Vote 5-0.

Case No. 6307--James E. Douglass - North side of Route 22, Lot 81,
within Long Neck Village.

A variance from the rear yard setback requirement.

The case was presented by Mr. Betts. Dorothy Douglass was sworn in and testified representing the applicant who requested to be within 18" instead of 10' from the rear yard property line, for a new deck. The applicant proposes to build a 8.5'x 30' deck on the rear of his manufactured home. Ms. Douglass stated that there are properties in Long Neck Village with similar structures. She stated that there is a Homeowners Association in Long Neck Village and they are not opposed.

Mr. Betts stated that other variances have been approved by the Board in Long Neck Village.

Mr. Mills questioned the setback of the manufactured home.

Mr. Betts stated that they go by the survey which states that

the manufactured home has a 10' setback.

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 Mrs. Hudson, seconded by Mr. Mills and carried unanimously that the variance be granted. Vote 5-0.

Case No. 6308--Frank A. Miranda - West side of Route One, 1/4 mile south of Indian River Inlet, Lot 12, within Ocean Ridge West.

A variance from the side yard setback requirement.

The case was presented by Mr. Betts. Frank Miranda was sworn in and testified, requesting a 1/2' variance from the 10' side yard setback requirement to be 9 1/2' for a deck. Mr. Miranda stated that a deck was built out too far and the steps encroach into the setback, on Lot 12, within Ocean Ridge West. He stated that the property on either side of his property is vacant. He stated that the Homeowners Association is in favor of the variance. Mr. Miranda stated that he owns the lot where the encroachment abuts up to.

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. 6309 Richard & Madelon Kidwell - South side of Route One, Lot E-72, within Sea Air Mobile City.

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

The case was presented by Mr. Betts. Richard & Madelon Kidwell were sworn in and testified, requesting a 10' variance from the 20' required setback between units in a park, being Lot E-22, within Sea Air Mobile City. The applicants wish to construct a carport that will be open on all sides. They testified that the Homeowners Association is in favor of the variance request.

Mr. Betts stated that no correspondence had been received pertaining to this case, and that the applicants neighbor had a variance approved last year.

There were no parties present in opposition.

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

Case No. 6310--Charles Walther - South side of Route 54, one mile west of Route One, Lot 4, within Glenn Acres.

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

The case was presented by Mr. Betts. Lisa Fleming was sworn in and testified representing the applicant who requested a 4' variance from the 10' side yard and a 7.2' variance from the 20' rear yard setback requirement, to construct a deck, on a 50'x 115' lot. Ms. Fleming stated that the deck is to be the same width as the house, but out further in the rear to maintain the view around the house on adjacent property. She stated that there is a Homeowners Association. She stated that there are no other variances in the development at this time, but she feels her neighbor will apply.

There were no parties present in opposition.

Mr. Mills explained to Ms. Fleming that even if approved by the Board, the Glenn Acres stipulations would take precedent over the Board approval.

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

Case No. 6311--Donald Gene Htufs

This case was cancelled.

Case No. 6312--Cynthia K. Webster - East side of Route 52, 200 feet north of Route 52C.

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. Cynthia Webster was sworn in and testified and was represented by Steve Parsons, Attorney. Ms. Webster requested to continue the use of a manufactured home on a one acre lot, that had been on farm. Mr. Parsons stated that the applicant's grandmother owns the property

and the manufactured home has been on it as an on farm unit. The grandmother wants to sell the applicant one acre with the manufactured home.

Ms. Webster stated that her grandmother is in her 80's and she wants to sell her a one acres parcel. A survey and pictures were presented of the 1981 manufactured home as it exists. She stated that there are three other manufactured homes surrounding hers. It was stated that the use will not affect property values in the area.

Letters presented were from: Sandra Bridgeman, Patricia & James Warrington, Florence Colmery, Wayne Hopper, Ida Hazel and Thomas W. Webster, Sr., all in favor of the application.

There were no parties present in opposition.

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

Case No. 6313--Alfred C. Kunz - Alda Lane, one mile south of Route 261, Lot 45, within Bay View Park.
A variance from the front yard setback requirement.

The case was presented by Mr. Betts. Alfred Kunz was sworn in and testified, requesting a 12' variance from the 30' front yard setback requirement on Lot 45, within Bay View Park, on a lot 58' x 80' in size. Mr. Kunz wants to build a porch and deck, one on each side of his house. He feels the additions will have no affect on the neighbors property. He stated that the variance is similar to a variance approved for Lots 42 and 43, on adjacent property. He feels no view will be affected. He stated that there is a Homeowners Association, but he is not aware of any problems.

Mr. Betts stated that no correspondence had been received.

Linda Murrow, Robert J. Lewis and Barry Kelly were sworn in and testified in opposition. Ms. Murrow read a prepared statement and presented hand-outs. She stated that the use will inhibit the view, she referenced the curve on Alda Ave., safety, since children and adults use the road and there are no sidewalks. She presented letters from Frank Keith, Jr., Albert Grover and Mr. Boyer. She read parts of the letters. They all are in opposition to the variance. She feels the variance could set a precedent. She stated that her property conforms to the Sussex County Code. She also stated that there are other lots that could be developed and if they expanded there would be a precedent already set. She wants to maintain the character of the area by conforming to the Code.

Robert Lewis stated that he is on the Bayview Park Association Board and when the development was laid-out the streets did not conform. He feels the variance would set a precedent for everyone coming along in the future. He asked the Board to deny the variance.

Barry Kelly stated that he feels the amount of the variance (40%) is too much to ask. He does not remember any other variances on the main entrance way. He feels the size house proposed for the lot is not suitable for the size of the lot.

In rebuttal Mr. Kunz stated that he does not want to set a precedent. He stated that the lot is not wide or deep and he questioned if he could go for a smaller amount of variance. He stated that there are trees there now and his intent is to put a deck and porch on the house, that the house is not big. He stated that what he proposes should not block any view. He also stated that if the trees come down the neighbors front view could possibly be blocked.

Ms. Murrow stated that she has a nice size deck on her property that conforms.

By a show of hands there were seven (7) people present in opposition.

Mr. Betts made reference to the letters that were presented.

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 Mr. Wheatley and carried unanimously that the variance be denied, finding the use would have an adverse affect on the surrounding properties, that the lot is a buildable lot without a variance, the use could alter the character of the neighborhood, would set a precedent and due to the opposition presented. Vote 5-0.

Case No. 6314--Robert & Pamela Bitler - Northwest side of Route 571, one mile south of Route 577, Lot 7, within Smithville Estates.

A special use exception to place two manufactured homes to be connected to be used as one single family unit.

The case was presented by Mr. Betts. Pamela Bitler was sworn

in and testified requesting to connect two manufactured homes to be used as one single family unit. She stated that there will be one kitchen, same siding on both units, painted, A-Roof and skirting. There will not be a permanent foundation. The two units are 12'x 60' in size. She stated that there are manufactured homes on either side of their property. She feels the work should be completed within two months.

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 with stipulations: The units must have an A-Roof, same siding on both, skirting, one (1) kitchen, one (1) living unit and the work must be completed within six (6) months. Vote 5-0.

Case No. 6315--Warren & Nora Williams - Southeast side of Route
264, 4,080 feet northeast of Route One.

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. Scott Bradley, Attorney, was present representing the applicants, who requested to place a manufactured home on property they are purchasing, to live in while they build a home. Mr. Bradley stated that the advertisement was wrong stating for a permanent residence, because it will be temporary for as long as it takes to complete their home. Mr. Bradley stated that the applicants have their well and septic approval. They will remove the manufactured home when their home is completed. The manufactured home will be 14'x 48' in size and put perpendicular on the lot. He feels the manufactured home will not have an adverse affect on the area. He stated that the applicants will have their home completed within one year. He presented a letter from the owner of the land, Theodore Richards, in favor of the application providing the manufactured home is removed within two years. The applicants are purchasing the property.

Mr. Bradley was asked by the Board if one year would be enough time to complete the home, if approved.

Mr. Bradley stated that the applicants had only asked for one year, but he would accept a longer time for them if approved.

Mr. Betts read the letter presented from Mr. Richards in favor of a temporary manufactured home.

Theodore W. Richards was sworn in and testified in behalf of

the application, stating that he does not want the manufactured home on a permanent basis, only temporary.

There were no parties present in opposition.

Motion was made by Mr. Callaway, seconded by Mrs. Hudson and carried unanimously that the special use exception be granted for a period of two (2) years. Vote 5-0.

Case No. 6316--Alton White - West side of Route 497, 250 feet north of Route 24.

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

The case was presented by Mr. Betts. Alton White was sworn in and testified, requesting to place a 14'x 72' manufactured home on his property for his father-in-law to live in. He stated that his father-in-law is not well and needs to be closer to be able to care for him. Mr. White stated that he lives in a dwelling on the property and wants the manufactured home for his father-in-law.

Mr. Betts read a letter from H. Paul Aguillon, MD, pertaining to the health of the applicants father-in-law.

Mr. McCabe explained to the applicant that if approved he would have to reapply every two years for as long as the hardship exists, and the manufactured home would have to be removed if the hardship ceases.

Joseph A. Patchett, III was sworn in and questioned if the hardship ceases would the manufactured home be removed. He stated that he does not oppose the requested manufactured home if it is not permanent.

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

Case No. 6317--Thomas & Heidi Johnson - West side of Route 527, 1/2 mile north of Route 18, Lot 53, within Collins Pond Acres.

A variance from the front yard setback requirement.

The case was presented by Mr. Betts. Thomas & Heidi Johnson were sworn in and testified, requesting a 4'6" variance from the 30' front yard setback requirement, on Lot 53, within Collins Pond Acres, on a lot 91'x 163'. In 1990 a house was constructed on the property and a permit was obtained. An addition was built and the house was sold. When a survey was done the encroachment was discovered. The lot is located on a proposed cul-de-sac. The builder laid the house out and the applicants thought they were legal.

Mr. Jones, Attorney, stated that it was their obligation to follow 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.

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

Meeting adjourned at 8:50 P. M.