

Minutes of June 3, 1996

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, June 3, 1996 in the County Council Chambers, Room 115, Courthouse, 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. Mills, Mrs. Hudson, Mr. Wheatley, Mr. Callaway, 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 May 20, 1996 be approved as circulated.

Mr. McCabe read a statement explaining how the Board of Adjustment meetings are conducted.

Case No. 6002--Charles & Judith Thompson - South side of Route 253, 4,620 feet east of Route 319.

A special use exception to place a manufactured home to be used as a private workshop.

The case was presented by Mr. Betts. Charles Thompson was sworn in and testified, requesting to use a manufactured home on his property for a private workshop. The manufactured home is already on the property. Mr. Thompson stated that it is either a 1970 or 1975 and is 12' wide by 65' or 70'. The unit has no kitchen or bath and will be gutted out. There are houses on adjacent property and he is surrounded by woods. He testified that the unit will not be visible to the adjacent houses. He plans to put siding and skirting on the unit. Mr. Thompson stated that there are no other manufactured homes located in the area for any use.

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. Callaway and carried unanimously that the special use exception be granted with the stipulation that the woods be maintained as buffer and the manufactured home not be placed so it will not be seen from the road.

Case No. 6003--Ida M. Brown - South side of Route 505, 2,010 feet west of Route 509.

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

The case was presented by Mr. Betts. Ida M. Brown was sworn in and testified, requesting to place a manufactured home on her property for her daughter to live in and look after her. The manufactured home will have three bedrooms, be a single-wide and will have skirting around it. She testified that she lives in a 14'x 56' manufactured home on the property. She showed where the manufactured home will be located on the property.

Mr. Betts read a letter from Nanticoke Cardiology, Richard E. Simons pertaining to the illness that Mrs. Brown has.

Mr. McCabe explained to the applicant that if the hardship is approved it would have to be reapplied for every two years and should the hardship cease to exist the manufactured home would have to be removed.

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 hardship for a period of two (2) years, for a new single-wide manufactured home.

Case No. 6004--Evelyn & Joe Ferrell - North side of Route 470,
at Route 482.

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. Evelyn Ferrell and Edward H. Owens were sworn in and testified, requesting to place a used 1970 manufactured home on property the applicants are buying for their use. It was stated that there is a double-wide manufactured home and vacant lot on either side of the property. It was stated that there are other manufactured homes in the area. Mrs. Ferrell stated that she will put a single-wide manufactured home with a pop-out on the property. It will be on a cement block permanent foundation.

There were no parties present in opposition.

Mr. Betts stated that no correspondence had been received pertaining to this case.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the special use exception be granted, with the stipulation that the manufactured home be placed on a permanent foundation.

Case No. 6005--Kenneth Allen - Northwest side of Route 285, 1,200 feet south of Route 18.

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

The case was presented by Mr. Betts. Kenneth Allen and Constance Scott were sworn in and testified. Mr. Allen requested to place a 1986, 14'x 50' two bedroom manufactured home on property for his mother on the basis of hardship. It was stated that the manufactured home will be skirted. It was also stated that there are no other manufactured homes close by.

Mr. Betts stated that the area is a mixture of conventional homes and manufactured homes. He also read a letter from Habib Bolourchi, M.D., stating the diagnosis of Mrs. Scott.

There were no parties present in opposition.

Mr. McCabe explained that if the application is approved the hardship must be reapplied for every two years, and should the hardship cease the manufactured home must be removed.

Motion was made by Mr. Callaway, seconded by Mrs. Hudson and carried unanimously that the special use exception be granted on the basis of hardship for a period of two (2) years, with the stipulation that the manufactured home must have skirting.

Case No. 6006--Vernon & Francis Rickards - South side of Route 335, 383 feet east of Route 335A.

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. Vernon & Francis Rickards were sworn in and testified, requesting to place a 1991, 14'x 72' manufactured home with a 12'x 24' addition, on property they are buying for their use. Pictures were shown. They testified that there are other manufactured homes in the area. It was also stated that there will be skirting around the manufactured

home to start and at a later time a block foundation will be added.

Mr. Betts stated that the Board had approved other manufactured homes in the area.

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.

Case No. 6007--Robert L. Niblett, Sr. - West side of Route 482,
on the north side of Route 470.

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. Robert L. Niblett, Sr. was sworn in and testified, requesting to place at least a 14'x 70' manufactured home on property he is buying for his use. He has not purchased the unit yet. On adjacent property there is an old house on one side and vacant property on the other. He will start out putting skirting on the manufactured home.

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.

Case No. 6008--Joseph Cavalluzzo - West side of Route 348, one
mile north of Route 346, Lot 8, within
Mallard Creek.

A variance from the rear yard setback requirement.

The case was presented by Mr. Betts. Joseph D. Cavalluzzo, Regina Cavalluzzo and Gregory P. Moffett were sworn in and testified. The applicants requested a 2.33' variance from the rear yard property setback requirement of 20' to be 17.67', for an existing garage. Mr. Moffett, son-in-law, helped to build the garage and there was some confusion in the setback requirements. The property is Lot 8, within Mallard Creek. It was stated that there is no problem with the Homeowners Association in regards to the variance request.

Mr. Betts stated that the building permit was issued with the

correct setbacks on it.

Mr. Betts read notes of no objections on legal notices sent by Lillian P. White and Sarah and Salvatore Romona.

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. 6009--Jerry Miller & Leonard Lass - Northeast side of
Route 349, 1/2 mile north of Route 26,
Lot 6, within Whites Creek Manor.

A variance from the front yard setback requirement.

The case was presented by Mr. Betts. Gary E. Willey was sworn in and testified representing the applicants who requested a 5' variance from the front yard setback of 30' on Lot 6, within Whites Creek Manor for a remodeled house with storage area. It was when they refinanced their loan the encroachment was found. Mr. Willey showed a blue print and a copy of the survey. He stated that the property is odd shaped and the front corner is the only encroachment.

Johnny Bellamoney, Architectural Chairman of Whites Creek Manor, was sworn in and testified, stating that he feels 5' is a lot to ask for. He stated there are deed restrictions and he asked the Board to hold their decision until he could get back to the Board at Whites Creek Manor. He stated that he would not be for or against the variance until he could meet with their Board.

Mr. Jones, Attorney, explained to Mr. Bellamoney that the decision before the Board of Adjustment is only the County's restrictions, and that Whites Creek Manor can still enforce their deed restrictions.

There were no parties present in opposition.

Motion was made by Mr. Callaway, 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 by Mrs. Hudson, seconded by Mr. Callaway and carried unanimously that the variance be granted, finding that there are unique physical circumstances or conditions, including irregularity, narrowness or shallowness of lot size or shape, the variance will not alter the essential character of the neighborhood or district

in which the property is located and the variance will represent the minimum variance that will afford relief.

Case No. 6010--Howard & Mary Fortunato - South side of Route 275A,
1/4 mile east of Route 274, Lot 11-C.
within Rehoboth Shores Estates.

A variance from the front yard setback requirement.

Mr. Jones, Attorney, stated that due to a conflict of interest he would not participate in this case.

The case was presented by Mr. Betts. Howard & Mary Fortunato were sworn in and testified, requesting a 2' variance from the 30' front yard setback requirement to be 28', on Lot 11-C, within Rehoboth Shores Estates. The applicants stated that they have a Certificate of Compliance and survey for their house, which they bought in 1989. In the process of selling the property a new survey shows an encroachment. The original survey shows the house to be 31.2' from the front property line and the new survey shows the house to be 28' from the front property line. Each surveyor claiming to be correct. They stated that there is no problem with the Association in Rehoboth Shores Estates pertaining to the variance request.

Mr. Betts stated that there are other properties in the development with the same problem.

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.

Case No. 6011--Irene & George Conrad - South side of Route 361A,
1/4 mile west of Route One, Lot 16,
within Ocean Pines.

A variance from the side yard setback requirement.

The case was presented by Mr. Betts. George Conrad was sworn in and testified, requesting a variance from the side yard setback on Lot 16, within Ocean Pines. A 10' side yard setback is required. Mr. Conrad requested to go to the property line in order to build a house. He requested at least an 8' variance leaving 2' to be able to move around in the side yard. Mr. Conrad stated that due to the size of the lot and an unrecorded easement the lot is too small to build on or to sell without the variance. He proposes to build a house on the property and then sell it. The easement is wooded and not in use and is not recorded. He stated that he wants

relief by either moving the easement or a variance to be able to build. He stated he cannot do away with the easement due to access for property in the rear.

Mr. Jones, Attorney, explained to Mr. Conrad that the Board has no authority to move the easement. He questioned the survey that had been submitted.

Mr. Conrad stated that the survey was done for the estate, that it is not of record with the easement on it.

Thomas Beight was sworn in and testified representing George Coleman & Margaret and Robert & Barbara Gale adjacent property owners to Mr. Conrad. Mr. Beight stated that he is an Attorney licensed to practice in Delaware. Mr. Beight presented a copy of a deed. He stated the referenced lot was never meant to be built on, and explained how the property was formed and ownership. He showed and explained a copy of a plot. He also referenced the out-lot (Mr. Conrad's Lot) and the easement. He presented pictures and a letter dated March 19, 1996 referencing the easement. Mr. Beight feels that due to the density it would be an injustice to build on the out-lot. He feels anything built on the lot will be converted to cash.

Mr. Conrad explained the letter presented referencing the easement. He stated that the easement mentioned in the letter is another easement from Jefferson Bridge Road. He testified there is no record of any out-lot. He stated he had received a letter from Shane Abbott, Assistant Director of Planning and Zoning, stating that Lot 16 is a legal buildable lot.

Mr. Beight stated the property should be built on within the restrictions. He feels the entire neighborhood should not suffer.

Mr. Conrad stated that he has talked to builders about stick built homes and a representative of Nanticoke Homes about a modular home. He feels the buildable area is 1100 sq. ft. He stated he wants to build a one-story house because he feels a two-story house will look wierd, since most of the houses in the area are one-story.

H. Thomas Ellison, Jr., owner of adjacent property was sworn in and testified in opposition, stating he bought his property and built on it in 1982. He objects to any change in the setbacks. He feels it would devalue his property and will not be in character with the neighborhood. He feels the applicants lot was never meant to be used to build on.

David Skeen, owner of Lot 15 in front of the applicants property, was sworn in and testified in opposition. He testified

he purchased his property in 1990 for a vacation house. He is opposed to moving the restriction. He questioned how the property got approved as a buildable lot. He feels it will look like an abortion.

Mr. Betts read letters of opposition from Richard J. Smith, III & Sherrilynn Smith and Thomas & Virginia Sitton.

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

Case No. 6012--Edward P. O'Malley - North side of route 54, 3/4 mile west of Route One.

A special use exception for off premise parking.

The case was presented by Mr. Betts. Edward P. O'Malley and Richard Lyman were sworn in and testified. Mr. O'Malley requested to use off premise parking for his Marina. He needs a minimum of 12 to 15 additional parking spaces to seat 48-60 additional patrons. Pictures were presented. He wants to deck in an area for outside seating at a Marina. He wants to use 35 parking spaces at Lyman's Antique store at night when the antique store is closed. He has already been doing it.

Mr. Lyman stated that they alternate parking between the two business establishments.

Mr. Betts read an agreement between the parties pertaining to parking and signed by Mr. O'Malley and Mr. Lyman.

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.

Case No. 6013--Mark Brittingham - South side of Route 472, northeast of Route 434A.

A special use exception to place a manufactured home on less than five acres for a permanent residence.

The case was presented by Mr. Betts. Mark Brittingham was sworn in and testified requesting to place a new 28'x 48' double-wide manufactured home on property he is buying for his use. He testified that there are other manufactured homes in the area. He will place the manufactured home on a permanent foundation. He will front on Route 472.

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 on a permanent foundation.

Case No. 6014--Clifford & Charlene Morris - West side of Route 216,
200 feet north of Route 30.

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. Clifford & Charlene Morris were sworn in and testified, requesting to place a 1975, 24'x 44' manufactured home on their property for their use. They testified there are stick-built homes and other manufactured homes in the area. They stated that the unit will be placed on a permanent foundation.

Sheila Elaine Hood and Thomas William Hood were sworn in and testified in behalf of the application. They stated they live almost in front of the applicants property and they are not opposed to the request.

There were no parties present in opposition.

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

Case No. 6015--William P. & Nancy L. Petratis - East side of Route 24, at Route 298, Lot 22, within Sherwood Forest South.

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

The case was presented by Mr. Betts. William P. & Nancy Petratis were sworn in and testified, requesting to connect a manufactured home to their existing manufactured home to become one single family unit. They testified that there will be an A-Roof over all, matching siding and skirting. There will be only one kitchen. The existing manufactured home is 12'x 60' or 65' and they propose to have a unit the same size or smaller to connect to the existing one. They hope to have the work completed within one year. They testified that there are other manufactured homes in the area. They stated they will meet the required setbacks.

Mr. Betts stated that no correspondence had been received pertaining to this case.

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 that the manufactured homes be completely covered in the same material, have an A-Roof and the work be completed within one (1) year.

Case No. 6016--Robert L. & Ruth E. Segletes - North side of Route
38, 2,100 feet east of Road 216.

A special use exception to retain a manufactured home in an AR-1 District on less than five acres for a permanent residence.

The case was presented by Mr. Betts. Robert L. & Ruth E. Segletes were sworn in and testified, requesting to retain a manufactured home for their residence. The manufactured home has been on the property for 8 years. It was placed on the property on hardship and they want to keep it there permanently. They are purchasing the property. They testified that there is farmland all around the property and they will live in the manufactured home as they do now.

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 would be no problem in the area.

OLD BUSINESS

Case No. 6001 (cont'd.)--Rachel Lawley - South side of Route 36,
270 feet west of Route 208.

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 reviewed by Mr. Betts.

Mr. Callaway stated that Mr. Sapp had contacted him about this case and he told Mr. Sapp he could come to the hearing tonight but the public hearing was closed and there could be no input. Mr. Callaway stated that he had visited the site and found the area is mixed with commercial business's, conventional homes and

manufactured homes. He feels the use will not have any affect on the neighborhood.

Mr. Wheatley stated that he too visited the site and he feels the use will not substantially adversely affect the neighborhood.

Motion was made by Mr. Callaway, seconded by Mr. Wheatley and carried unanimously that the special use exception be granted for a new double-wide manufactured home on a permanent foundation, finding the use will not substantially adversely affect the area, the area has mixed uses and will not substantially adversely affect adjacent properties. Vote 5-0.

DISCUSSION

Mr. Betts made the Board aware of an application that will appear from a party who did not ask for enough variance for steps and a landing when he originally applied to the Board. He felt the Board should know the reason when they get the application a second time.

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

Meeting adjourned at 8:41 P. M.