

Minutes of June 19, 2000

The regular meeting of the Sussex County Board of Adjustment was held Monday evening June 19, 2000, at 7:00 P.M., in the 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. Wheatley, Mr. Mills, Mr. Hudson, Mr. Berl – Assistant County Attorney, Mr. Rickard – Chief Zoning Inspector, and Ms. Jackson – Recording Secretary.

Motion was made by Mr. McCabe, seconded by Mr. Wheatley, and carried unanimously to approve the Revised Agenda as circulated.

Motion was made by Mr. Wheatley, seconded by Mr. McCabe, and carried unanimously to approve the Minutes of June 5, 2000 as circulated.

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

Case No. 7169 – John and Carmela Coleman – east of Road 274, south side of White Oak Drive, Lot 94, within The Landing Subdivision.

A variance from the northwest side yard setback requirement.

Mr. Rickard presented the case. John and Carmela Coleman were sworn in and testified requesting a 5-foot variance from the required 15-foot northwest side yard setback for an addition instead of an 11-foot northwest side yard variance; that in 1990 they purchased the home as a vacation home; that he retired in December 1999; that they are now living in the home permanently; that they have 4 children and several grandchildren that visit them frequently; that they need more living space; that they submitted pictures of the site, survey of the property and 4 letters from their neighbors in favor of the application; that the property is heavily wooded; that they do not want to disturb the trees; and that the Board approved a similar variance to their neighbors on Lot 85.

Mr. Rickard read a letter from The Landing Homeowner's Association in opposition to the application.

The Board found that no parties appeared in opposition to the application.

Motion was made by Mr. McCabe, seconded by Mr. Wheatley, and carried unanimously that the case be taken under advisement. Vote carried 5 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Motion was made by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that

the variance be granted. Vote carried 5 – 0.

Case No. 7170 – Beach Landing – east of Bunting Avenue, 100 feet south of Route 54 and east of Route One, Lot 2, within L. P. Faucett Subdivision.

A variance from the north and south side yard and rear yard setback requirement.

Mr. Rickard presented the case. William Brown was sworn in and testified requesting a 5.4-foot variance from the required 10-foot south side yard setback requirement, a 4.95-foot variance from the required 10-foot north side yard setback requirement and a 9.3-foot variance from the required 10-foot rear yard setback requirement for a 2nd level open deck; that the home is a duplex; that the property is in a flood zone; that he submitted a survey of the property and a letter from Division of Soil and Water Conservation; that a ground level deck already existed when he bought the property; and that the deck extension will be supported by a concrete foundation.

The Board found that no parties appeared in opposition to the application.

Motion was made by Mr. McCabe, seconded by Mr. Wheatley, and carried unanimously that the variances be granted with Mr. Mills abstaining. Vote carried 4 – 0 – 1.

Case No. 7171- Diane R. and Charles W. Coursey – west of Washington Street, 1,700 feet north of Route 24 and Route 30 intersection.

A special use exception from the provisions and requirements to retain a manufactured home on a parcel.

Mr. Rickard presented the case. Diane R. Hudson and Laura Hudson were sworn in and testified requesting to retain a manufactured home on a parcel; that the large parcel has been divided into 3 parcels; that a manufactured home has been on the property for 10 years; that Laura placed her manufactured home on the property prior to 1997; and that she plans to reside on the property permanently.

Curtis Hudson was sworn in and stated that he is in favor of the application and that the land has been in the family for several years.

Lloyd Daisey and Paul Jones were sworn in opposition to the application; that they do not want any manufactured homes placed in the area; and that they submitted a petition with 27 signatures in opposition.

Motion was made by Mr. Wheatley, and seconded by Mr. Hudson, and carried unanimously that the case be taken under advisement. Vote carried 4 – 0 – 1.

At the conclusion of the public hearings, the Chairman referred back to this case. Motion was made by Mr. Wheatley, seconded by Mr. Hudson, and carried unanimously that the special use exception be granted with Mr. Mills abstaining. Vote carried 4 – 0 – 1.

Case No. 7172 – Marilyn A. and Carl H. Helton, Sr. – west of Road 273, west side of Somerset Road, Lot 13, within Rehoboth Beach Yacht and Country Club Subdivision.

A variance from the southwest side yard setback requirement.

Mr. Rickard presented the case. Carl Helton, Sr. and Jeff Fry were sworn in and testified requesting a 1.7-foot variance from the required 10-foot southwest side yard setback requirement for an inground pool; that he submitted pictures and a survey of his property to the Board; that the pool was originally to be placed on the center of his property behind his home, but the pool hole kept caving in whenever it rained, so he decided to place the pool closer to his side property line; that the size of the pool is 33'x14'; that it would be costly to relocate the pool; that an outdoor shower already compromises where the pool is located; that he has a 5.6-foot fence around the pool area; and that Roger Jones, member of the Homeowner's Association for Rehoboth Beach Yacht and Country Club, was in favor of the application.

Joseph Trulli was sworn in and stated that he is in opposition to the application; that he owns the adjacent property; that he submitted a survey of his property to the Board; that he has concerns with the water run off, cracking of his driveway and his property value; that he has lived there for 8 years; and that he had no problems with the water run off prior to the placement of the pool.

Blanche Davis, President of the Homeowner's Association for Rehoboth Beach Yacht and Country Club, was sworn in and questioned if Mr. Helton had said that he had spoken with her about the application, and was advised by the Board that Mr. Helton had referenced his conversation with Roger Jones and not her.

Motion was made by Mr. McCabe, seconded by Mr. Wheatley, and carried unanimously that the case be taken under advisement. Vote carried 4 – 0 – 1.

At the conclusion of the public hearings, the Chairman referred back to this case. Motion was made by Mr. McCabe, seconded by Mr. Wheatley, and carried unanimously that the variance be granted with Mr. Mills abstaining. Vote carried 4 – 0 – 1.

Case No. 7173 – Gap, Inc. – south of Route One, across from Road 271.

A variance for a second wall sign and a variance from the maximum square footage requirement.

Mr. Rickard presented the case. Bruce Larsen was sworn in and testified requesting a variance for a second wall sign and a 70-square foot variance from the maximum allowed 100-square feet for a wall sign; that in 1998 the Board approved them for a 50-square foot variance and second wall sign which read Old Navy; that they are replacing the existing signs; and that they would like to add the word Outlet to the signs.

The Board found that no parties appeared in opposition to the application.

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

Case No. 7174 – Alden James, Nanette James, and David Horsey – south of Route 20, 0.3 miles southeast of Road 62.

A special use exception for a determination of existence of a non-conforming use for a borrow pit.

Mr. Rickard presented the case.

Mr. Lawrence Lank, Director of Planning and Zoning, was sworn in, submitted and summarized records from the files which include a letter to Joseph T. Conaway, dated April 12, 2000; xerox copies of five (5) aerial photographs; a 1975 inactive borrow pit listing, a 1988 borrow pit report which assumed that the site was a part of the land fill; a letter from Joseph T. Conaway, dated February 15, 2000; a letter from David G. Horsey & Sons, Inc., dated December 20, 1999, which referenced commodities sold; a letter to Michael Horsey, dated February 9, 2000; a letter from Michael Horsey, dated December 20, 1999; and a letter from Robin James, dated December 15, 1999.

Robin T. James, George A. Adams, and Michael Horsey, were sworn in and James Fuqua, Jr. Esq., Attorney, was present on behalf of the applicant's requesting a determination of existence to establish that a borrow pit existed on the site prior to the establishment of Sussex County Zoning jurisdiction and that the borrow pit has continued to operate since it was first established; that they submitted current photographs of the borrow pit and property; that the borrow pit has never been unused for a two (2) year period; that the property is owned by Alden and Nanette James; that they submitted two (2) deeds to the Board, dated March 28, 1957; that the site is located off of Route 20,

adjacent to the entrance for Delaware Solid Waste Authority; that Mr. Adams has been familiar with the site since 1960; that in 1960 the borrow pit was started by Department of Transportation; that in 1967 his father hauled away dirt from the site; that his father sold the business to David G. Horsey & Sons, Inc.; that he worked for them until 1985 and then started working for a Septic System Company; that Robin James had know about the borrow pit since the early 1960's; that the farm was rented for 25 years and was tilled from 1971 through 1975; that George & Lynch , I-A Construction and David G. Horsey & Sons, Inc., etc. bought material from the borrow pit; that Mike Horsey is employed with David G. Horsey & Sons, Inc.; that his earliest knowledge of the borrow pit was as a little boy; that in 1985 they bought out the Adams Business; that in 1989 his mother started a commodities report; that topsoil was removed from the borrow pit in 1989 through 1999; that 1968 aerial photographs showed a borrow pit existed, but was smaller at the time; that David G. Horsey & Sons, Inc. has a contract with Delaware Solid Waste Authority to provide dirt; that at least 90% of the dirt from the borrow pit will go on the landfill site; that the borrow pit will create minimal traffic impact, no dust, and will not effect neighboring property owners; and that the maximum depth of the borrow pit would be 20-foot.

By a show of hands 19 parties appeared in opposition.

June West, Attorney, was present on her behalf and 33 neighbors and stated that she is in opposition to the application; that she submitted a petition with 34 signatures in opposition to the application, photographs of the site, and aerial photographs to the Board; that she owns 100 plus acres of land and has lived there for 27 years; that she acknowledges that a small pit existed prior to 1970; that the borrow pit has been unoccupied for more than 25 years; that a photo, dated June 11, 2000 of the entrance to the borrow pit shows thick vegetation growing around it; that in 1989 a second borrow pit appeared; that in 1984 through 1985 dirt was removed from the site; that in 1985 activity ceased; that the applicant's have not demonstrated continuous use of the borrow pit; and that she requested that Mr. McCabe abstain from voting to the application.

William E. Hitchens was sworn in and stated that he is in opposition to the application; that he and his sister owns 95 acres next to the borrow pit since 1942; that he moved on the property in 1965; that his Niece built a home on the property in 1978; that the original borrow pit was started by Harold Conway in the 1930's; that the original borrow pit has not been in continuous use; that in 1984 through 1985 topsoil was removed from the pit; that in 1992 through 1993 Mr. James brought in a bulldozer and built up the topsoil; that he can see the borrow pit from his property; that he never saw any activity going on until Delaware Solid Waste Authority opened in August 1985; and that there is no need for a borrow pit in the area.

Ruth Lewis was sworn in and stated that she is in opposition to the application and submitted a letter from her Brother, Edward Ross Hearn, also in opposition to the application; and that he owns 40 acres next to the borrow pit property.

Paul Ennis was sworn in and stated that he is in opposition to the application; that he lives directly across the street from the borrow pit; that he had permission to hunt water fowl from Mr. James at the borrow pit since 1986; that in the early 1990's he watched men level out dirt to be able to plant seeds; and that he used to swim in the borrow pit and never saw any digging being done.

Holly Downs was sworn in and stated that she is in opposition to the application; that she built a home directly across the road from the borrow pit in July 1990; and that she has never seen anyone hauling dirt from the borrow pit, that she has only saw tractors in the area.

Motion was made by Mr. Wheatley, seconded by Mr. Mills, and carried unanimously that the special use exception be tabled until July 10, 2000 with Mr. McCabe abstaining. Vote carried 4 – 0 – 1.

Case No. 7175 - Katherine M. and H. Francis Smith – north of Hornkill Avenue, 1,509 feet west of Pilot Town Road, Lots 58 through 61, within Hornkill Avenue Development.

A variance from the east side yard setback requirement.

Mr. Rickard presented the case. Harry Faust, III was sworn in and testified on behalf of the applicant's requesting a 2.5-foot east side yard variance from the required 15-foot side yard setback requirement for Lots 58-61 and a 5-foot northeast side yard variance from the required 15-foot side yard setback requirement for Lots 53-57; that Mr. Faust has a contract with the Smith's to purchase Lots 53-57; that the Smith's intend to retain Lots 58-61 that is currently improved with a residence; that Mr. Faust submitted two septic plans designating them as Diagram #1 and Diagram #2, a survey, a copy of the tax map, the development covenants and restrictions for Hornkill Ave. Development and a letter with 35 signatures in favor of the application; that Diagram #1 reveals that Lots 53-56 cannot be improved with well and septic because there are insufficient isolation distances between any potential well or septic sites on those lots and the wells and septic of adjacent property owners; that the rear yard of the lots are eliminated from septic design consideration due to a setback imposed by DNREC of 70-feet from shellfish water ditch located in the rear of the property; that Diagram #2 reveals that Lots 53-56 can be improved if they are part of a parcel compromising Lot 57; and that the additional square footage of Lot 57 must be part of any improved parcel in order that there be sufficient area within which to establish a septic system for the parcel,

otherwise Lots 53-56 are rendered not buildable; and that the subdivision of Lots 53-57 from Lots 58-61 would render the home located on Lots 58-61 in violation of the east side yard building setback restriction because the home is only 12.5-feet from the boundary line of Lots 57 instead of the required 15-foot side yard requirement.

The Board found that no parties appeared in opposition to the application.

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

Case No. 7176 – Veronica and Harry F. Faust, IV – north of Hornkill Avenue, 1,509 feet west of Pilot Town Road, Lots 53 through 57, within Hornkill Avenue Development.

A variance from the northeast side yard setback requirement.

There was a consensus of the Board that the record of this Case was the same as Case No. 7175.

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

Case No. 7177 – Edgar Blount and David Lanier – west of Route One, west of Loretta Street, 350 feet south of Hassell Avenue, Lot 35, within Bayview Park Subdivision.

A variance from the south side yard setback requirement.

Mr. Rickard presented the case. Edgar Blount was sworn in and testified requesting a 3-foot variance from the required 10-foot south side yard setback requirement instead of a 7-foot south side yard variance for a 2nd floor staircase; that he is in the process of building the home; that the reason for the variance is because of a safety hazard, should a fire occur in the enclosed ground level area; that the water heater, washer and dryer and heating units are all housed in the ground level area; that the staircase would not block anyone's view in the area; and that he had discussed with Mike Cummings, Builder, of any alternative ways of building the staircase, but stated that it would be impossible to place the staircase on the inside of the deck.

Carol L. Ahern, neighbor, was sworn in and testified that she is in favor of the application.

Dayna Feher, neighbor, was sworn in and testified that she is in opposition to the application; that she is speaking on behalf of the Homeowner's Association for Bayview

Park; that Mr. Blount is building a beautiful home, but it would set a precedent; that five homes in Bayview Park have 2nd floor decks without a staircase; that she thinks there is an alternative way of having the staircase; that the areas next to the water ways need to be preserved; and that she submitted 9 letters to the Board in opposition.

By a show of hands 9 parties were in opposition to the application.

Mr. Rickard read a letter from John B. Hendrickson, President of the Bayview Park Association, in opposition to the application.

Motion was made by Mr. Wheatley, seconded by Mr. McCabe, and carried unanimously that the case be taken under advisement. Vote carried 5 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Motion by Mr. McCabe, seconded by Mr. Wheatley, and carried unanimously that the variance be denied. Vote carried 5 – 0.

Case No. 7178 – Michael D. Kjos – southeast of Road 485, 1,350 feet southwest of U.S. Route 13.

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

Mr. Rickard presented the case and read a letter from Dr. Eduardo L. Jiloca. Michael D. Kjos was sworn in and testified requesting to place a manufactured home on 13.2 acre parcel to care for Roseann Zabel, his fiancé's mother.

The Board found that no parties appeared in opposition to the application.

Motion was made by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the special use exception be granted for a period of 2 years. Vote carried 5 – 0.

Case No. 7179 – Clark Spicer – southwest side of U.S. Route 13, 13,900 feet northwest of Route 9.

A variance from the rear yard setback requirement.

Mr. Rickard presented the case. Clark Spicer was sworn in and testified requesting a 15-foot rear yard variance from the required 20-foot rear yard setback for a

24'x54' pole building; and that a church is located next to him and are in favor of the application.

The Board found that no parties appeared in opposition to the application.

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

Case No. 7180 – Gregory Haley – south of Road 277, south of Boat Dock Drive West, Lot 31, within Angola By The Bay Subdivision.

A variance from the rear yard setback requirement.

Mr. Rickard presented the case. Gregory Haley was sworn in and testified requesting a 6-foot rear yard variance from the required 20-foot setback requirement for an open deck; that the size of the deck is a 12'x25'; that he purchased the home 2 years ago; that the parcel is a pie-shaped lot; that his neighbors are in favor of the application; and that he submitted a letter from the Homeowner's Association for Angola By The Bay in favor of the application.

The Board found that no parties appeared in opposition to the application.

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

Case No. 7181 – Virginia Lynn Finner – south of Road 350, 2,263 feet northeast of Road 349.

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

Mr. Rickard presented the case and read a letter from Elizabeth Bell, D.O. Virginia Lynn Finner was sworn in and testified requesting to place a manufactured home on her parcel; that her daughter and her 3 children live with her; and that she would like her grandson, granddaughter and their 2 children to place a manufactured home on her parcel to care for her.

The Board found that no parties appeared in opposition to the application.

Motion was made by Mr. McCabe, seconded by Mr. Mills, and carried unanimously that the special use exception be granted for a period of 2 years. Vote carried 5 – 0.

Case No. 7182 – Gennaro and Anna Maietti – south of Road 277, north of Dogwood Drive, Lot 2, within Angola By The Bay Subdivision.

A variance from the north front yard setback requirement.

Mr. Rickard presented the case. Gennaro and Anna Maietti were sworn in and testified requesting a 9-foot north front yard variance from the required 40-foot north front yard setback requirement; that they purchased the property 1 year ago; that they were not told it was a through lot; that they received the incorrect setback requirements from a Real Estate Company; that their architect called Planning and Zoning and was told the incorrect setbacks; and that the property is a pie-shaped lot.

Mr. Rickard read a letter from Kimberly J. Rogers, General Manager, for Angola By The Bay Property Owners Association in favor of the application.

Michael Teddy and Mr. Abbott were sworn in and stated that they both were told the incorrect setbacks; and that Mr. Teddy has been a builder for 4 years.

The Board found that no parties appeared in opposition to the application.

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

Old Business

Case No. 7144 – Edwin D. Broyles – west of Mallard Drive, 330 feet north of Swann Drive, Lot 74, Block H, within Swann Keys Subdivision.

A variance from the front yard setback requirement.

Mr. Rickard stated that a Planning and Zoning Inspector went to Swann Keys Subdivision and pulled an average of 10-foot for the front yard setback requirement.

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

Case No. 7133 – Vivian Sink – northeast of Route 20 (Concord Road), ¼ mile West of Road 484.

A variance from the lot width requirement.

Mr. Rickard stated to the Board that Planning and Zoning received a current survey of her property and that she is asking for a variance of 100-foot from the required 150-foot lot width requirement.

Motion was made by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the variance be granted with the stipulation that the driveway is to be shared. Vote carried 5 – 0.

Meeting Adjourned 10:45 P.M.