

Minutes of July 6, 1998

Mr. Callaway introduced Mr. Jeffrey Hudson as a new member to the Board of Adjustment.

Prior to the regular meeting of the Sussex County Board of Adjustment, the Board reorganized at 7:00 P. M.

Mr. Callaway appointed Mr. Rickard as acting Chairman for the purpose of holding an election of Officers.

Mr. Rickard opened the nominations for Chairman.

Motion was made by Mr. Mills, seconded by Mr. Hudson to nominate Mr. McCabe for Chairman.

Motion was made by Mr. Wheatley to nominate Mr. Callaway for Chairman. There was no second to the motion.

Motion was made by Mr. Mills that the nominations for Chairman be closed.

Nominations for Chairman were closed.

Motion was adopted to nominate Mr. McCabe as Chairman; 3 yea, 2 nay.

Vote by roll call:

Mr. Mills	-	yea
Mr. Hudson	-	yea
Mr. Wheatley	-	nay
Mr. McCabe	-	yea
Mr. Callaway	-	nay

Mr. Rickard opened nominations for Vice Chairman.

Motion was made by Mr. Wheatley, seconded by Mr. Mills to nominate Mr. Callaway for Vice Chairman.

Motion was made by Mr. Mills to close the nominations for Vice Chairman.

Nominations for Vice Chairman were closed.

Motion was adopted to nominate Mr. Callaway as Vice Chairman; 5 yeas.

Vote by roll call:

Mr. Mills	-	yea
Mr. Hudson	-	yea
Mr. Wheatley	-	yea

Mr. McCabe - yea
Mr. Callaway - yea

The meeting was turned over to Mr. McCabe, the new Chairman.

Motion was made by Mr. McCabe, seconded by Mr. Wheatley to appoint Mr. Rickard as Secretary.

Mr. McCabe read a thank you note from Mrs. Margaret Hudson, former Board member thanking them for the flowers and calls she received during her illness.

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, July 6, 1998 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order with Chairman McCabe presiding. The Board members present were: Mr. McCabe, Mr. Callaway, Mr. Mills, Mr. Hudson, Mr. Wheatley, Mr. Berl-Esquire, Mr. Rickard-Chief Zoning Inspector and Mrs. Talley-Recording Secretary.

Motion was made by Mr. Mills, seconded by Mr. Callaway that the minutes of June 15, 1998 be approved, with Mr. Hudson abstaining. Motion carried with four voting in favor and one not voting. Vote 4-0.

Mr. Callaway stated that there needs to be a correction made in the minutes of June 29, 1998, where it states he made a motion. The Chairman cannot make motions.

Motion was made by Mr. Callaway, seconded by Mr. Mills that the minutes of June 29, 1998 be approved as corrected, with Mr. Hudson abstaining. Motion carried with four voting in favor and one not voting. Vote 4-0.

Case No. 6598--James W. Harris - West of Road 312, Lot 44,
Isaac W. Harman Subdivision.

A variance from the side yard setback requirement.

The Case was presented by Mr. Rickard. James Harris who resides at, R. D. 3, Box P8B, Millsboro, was sworn in and testified requesting a 7'4" variance from the east corner, and a 1' variance from the west corner on Lot 44, within Isaac Harmon Subdivision, to add an addition and remodel his home. Mr. Harris had previously

appeared before the Board, but asked for a greater variance than what was on his application and he had to reapply. He stated that he needs more room and wants to put an addition on his dwelling. He stated that he will be no closer than his dwelling is now, and that the dwelling was built in 1970. Mr. Harris stated that there is no Homeowners Association in the development.

There were no parties present in opposition.

Motion was made by Mr. Wheatley, seconded by Mr. Mills and carried unanimously that the variances be granted, due to the way the house was built years ago and due to the odd shaped lot. Vote 5-0.

Case No. 6631--William & Brenda Hamilton - South of Beach Plum Drive, 450 feet southeast of Alaska Avenue, Lot 10, Section Two, Block B, North Shores.

A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. William & Brenda Hamilton who reside at Chesapeake City, MD., were sworn in and testified requesting a 3.5' variance from the 10' side yard on Lot 10, North Shores, for an existing deck. The deck has a height greater than 4' above grade. The dwelling built on pilings and the first floor is located 10'9" above grade. The deck has to be 10' from the side property line.

Mr. Rickard explained that the Zoning Inspector, Franklin Bunting violated the applicants.

Mr. Hamilton stated that he had part of the deck enclosed, and that a survey was done finding the deck is too close to the side property line. He stated that the deck has been there since they purchased the home. He presented the old survey showing the home and deck. The dwelling was built in 1974. He did not know about the encroachment until they enclosed part of the deck.

Mr. Rickard stated that since the deck is above grade it has to be 10' from the side property line. If it were a ground level deck and not in a flood zone, open and unclosed it could encroach into the side yard setback 5'

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. 6632--Mark Shepherd - Northeast of Road 349, Hickman Drive, Lot 4B, Whites Creek Manor.

A variance from the rear yard setback requirement.

The case was presented by Mr. Rickard. Mark Shephard was sworn in and testified requesting a 5.5' variance from the 10' rear yard on Lot 4B, within Whites Creek Manor, for a rear deck. Mr. Shepherd stated that he had to move his house back to put a septic system in. He stated that the house was completed one week ago. He stated that he has approval from the Association.

Mr. Rickard read a letter from the Whites Creek Homeowners Association, Johnny Balamoti, Roads/Grounds & Architectural Approvals Committee, WCMOA, in favor of the variance requested. A letter was also read from Gerald E. Sebold, Lot B-3, voicing no objections.

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. Vote 5-0.

Case No. 6633--Stewart R. Sadler - Northeast of Road 255, Abbott Drive, Lot 10 & 11, Eastman Heights.

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

The case was presented by Mr. Rickard. Stewart R. Sadler, 612 Abbotts Dr., Milford, was sworn in and testified requesting a 10' variance from the rear yard setback requirement of 20' and a 5' variance from the 15' side yard setback requirement, to build a garage. The property is located at Lot 10 & 11, within Eastman Heights. Mr. Sadler stated that he has a pool, a septic system and drain fields in his yard and he needs a variance to be able to build the size and style garage he wants. It is for storage and a camper. He stated that the Homeowners Association in the development is inactive.

James A. Andrew, 609 Abbott Dr., Milford, was sworn in and testified in behalf of the application, stating that he lives across street.

There were no parties present in opposition.

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

Case No. 6634--George & Beverly Eschenbach - North of Route 22,
2,150 feet east of Road 298, Lot 11, Lingo
Estates.

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

The case was presented by Mr. Rickard. George & Beverly Eschenbach, Circle Rd., Millsboro, were sworn in and testified, requesting a 2.4' variance from the 20' setback requirement between units on Lot 11, within Lingo Estates, for a carport. It was stated that the carport is already on the property. The applicants stated that they were not aware of a 5' buffer on the property.

Mr. Rickard stated that the Zoning Inspector, Donna Mowbray, issued a violation to the applicants. He stated that the carport must be 10' from all property lines and 20' from the unit/additions on the next property. He read a letter from Shane Abbott, Assistant Director of Planning & Zoning explaining the setbacks in the park.

The applicants stated that the manufactured home has been on the property for 8 weeks. A copy of the permit was submitted.

Mr. Rickard read the setbacks on the permit, which stated the 20' setback requirement.

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. 6635--Geoffrey R. & Carole F. Abbott - West of Andrew
Street, 70 feet south of Hassell Avenue,
Lot 13 & 14, Bay View Park.

A variance from the front yard setback requirement.

The case was presented by Mr. Rickard. Geoffrey & Carole Abbott, Middletown, MD., were sworn in and testified, requesting a 15' variance from the 30' front yard setback requirement on Lots 13 & 14, within Bayview Park, for a stairs on an existing dwelling. It was stated that the dwelling is in a flood zone. The applicants are going to make a significant addition and will raise the dwelling. A stairs is needed to be able to get into the dwelling. It was stated that the dwelling was built in 1961 or 62. The applicants stated that the Association has no architectural review.

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. Vote 5-0.

Case No. 6636-Sea Air Village - South of Route One, Lot D-67, Sea Air Village.

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

The case was presented by Mr. Rickard.

There were no parties present representing this case. The Chairman held the hearing open until the end of the meeting to give the applicant time to appear.

At the conclusion of the public hearings, the Chariman referred back to this case. There were no parties present representing the application and no interested parties present. Motion was made by Mr. Mills, seconded by Mr. Callaway and carried unanimously that the variance be denied, due to lack of representation and the variance cannot be applied for, for a period of one year. Vote 5-0.

Case No. 6637--Silas F. Bush - East of Road 279, 1.23 miles south of Road 277, Lot B-4, West Bay Mobile Home Park.

A variance from the lot coverage requirement in a mobile home park.

Silas F. Bush and Carol Ann Bush, Lewes, were sworn in and testified requesting a 20 sq. ft. variance from the 35% lot coverage requirement on Lot B-4, West Bay Mobile Park, for a 14'x 14' shed. Ms. Bush stated that they want to construct a shed. She stated that there is no other storage on the property. There is a double-wide manufactured home on the property. Pictures and a letter were presented.

Mr. Rickard read a letter dated June 28, 1998, from West Bay LLC, Fred Calhoun, Manager of West Bay 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. Vote 5-0.

Case No. 6638--Ralph A. & Anna F. Gallegan - North of Route 22, Lot
113, Long Neck Village Mobile Home Park.
A variance from the lot coverage requirement in a
mobile home park and a variance from the side yard
setback requirement.

The case was presented by Mr. Rickard. Ralph Gallegan, Long Neck Village, Millsboro, was sworn in and testified requesting a 305 sq. ft. variance from the 35% lot coverage in a mobile home park for a proposed 2 car 24'x 24' garage and a 4' variance from the 5' side yard setback requirement for an existing deck. He stated that he plans to remove an existing shed before the garage is built.

Mr. Rickard read a letter from the Long Neck Village Association, Rita Gajewski and others voicing no objections.

Mr. Mills questioned the deck meeting the 20' setback requirement between units, that it was not a part of the application. He stated that the applicant will need a 7.9' variance between units.

Mr. Gallegan stated that he bought the unit in 1989 and he does not know if the previous owner had a variance.

Mr. Berl, Attorney, stated that the Board could vote on the two variances before them and the applicant would have to reapply for the variance between units.

There were no parties present in opposition.

Motion was made by Mr. Mills, seconded by Mr. Wheatley and carried unanimously that the lot coverage and side yard variance be granted provided the applicant reapplies for the variance between units. Vote 5-0.

Case No. 6639--Louis G. Thibault, Jr. - North of U. S. Route 113,
1,070 feet south of Road 565.

A variance from the front yard setback requirement.

The case was presented by Mr. Rickard. Louis Thibault, Jr., R. D. 4, Box 330, Georgetown, was sworn in and testified, requesting a "0" variance from the front yard setback requirement of 40'.

Mr. Rickard read prepared material pertaining to this case. He stated that the applicant is supposed to be 40' back from the front property line with his display of lawn furniture and storage buildings. The applicant had a previous hearing and Mr. Rickard stated that he discovered it had expired. He read the Finding of Facts written 1987.

Mr. Thibault wants the original variance reinstated. He stated that when he steps out of his house he is on State property. He stated that his house was built in the 1930's. He stated that the problems started when the Route 113 dual highway came through. He stated that he has operated on the property for 15 years. He also stated that there are other structures next to him that are on the property line. He referenced a party down the road with sheds that were brought in and was allowed to operate while applying for a variance.

Daniel Yost, Rte. 4, Box 319, Georgetown, was sworn in and testified in opposition and stated that he has leased property to the party Mr. Thibault mentioned who sells sheds. He stated that there is an 8' ditch along the road and the sheds are back beyond it. He feels they should all unload the sheds on the right of way and then move them back further than 40' from the road.

Mr. Thibault stated that he is against someone coming from another state and starting a business and not complying. He would like his prior approval reinstated.

Motion was made by Mr. Mills, 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. Mills and carried unanimously that the case be tabled, to give Mr. Rickard time to look at other records. Vote 5-0.

Case No. 6640--Kings Creek Associates - South of Patriots Way,
corner intersection east of Queens Court,
Lot 225, Kings Creek Country Club.

A special use exception for temporary buildings for
sales or rental office.

This case was withdrawn.

Case No. 6641--Douglas J. Dixon - South of Sea Gull Drive, 134 feet
west of Route 14, Lot 106, Indian Beach.
A variance from the front yard & rear yard setback
requirements.

The case was presented by Mr. Rickard. Douglas J. Dixon, 106 Seagull Dr., Indian Beach, was sworn in and testified and was represented by Scott Bradley, Esquire. Mr. Dixon requested a variance to allow a deck and stairway to encroach 14.7' into the 30' front yard setback, and a variance to allow a deck and stairway to encroach 3.1' into the 10' rear yard setback, on Lot 106, within Indian Beach. Mr. Bradley stated that the dwelling was built in the 1950's and it is a small lot. He stated that all of the homes violate the 30' setback requirement. He stated that in 1984 the house was raised to put a brick foundation under it, which created a 2 1/2 story house. He stated that the stairways and decks have been on the house for 14 years. A variance was applied for in 1984-85 and was denied. Mr. Bradley stated that a variance can be given if practical difficulty is shown and he believes he can. Pictures were shown of the house before and the stairways and decks as they exist now. He stated that cars can be parked under the deck. It was stated that Mr. Dixon uses the house as his personal residence and does not rent it out. He rented it the first year, but no longer does it. It was stated that most of the living is on the second floor, with a garage on the first floor. It was stated that the neighbor behind him and to the left of his property have no objections.

Doug Marshall, Esquire, testified in behalf of the application, stating that the decks were constructed 14 years ago. He stated that Mr. Dixon bought the property from the previous owner, and that the house was raised up, but is in the same place.

Patricia Price, Realtor, Bay Drive, Rehoboth, was sworn in and testified in behalf of the application, stating that she is familiar with the neighborhood and it is all beach houses. She feels Mr. Dixon's house is an asset to the neighborhood. She stated that the lot is shallow and the use does not alter the essential character of the neighborhood, will not impair other properties and not be a detriment to public welfare in any way.

Mr. Bradley read five steps from the Code pertaining to variances. He feels the property is unique which causes practical difficulties; property cannot be developed without the variance; the hardship was not created by the applicant; it will not alter the essential character of the neighborhood and will be an odd

situation and hardship to tear the deck down; and the applicant is requesting the minimum variance.

Mr. Rickard read correspondence received in opposition pertaining to this case from Joseph Corbi, L. D. Thomas and Mrs. M. M. Thomas, Victorine Mertes, Frederick Mertes and Carol Mertes Smith.

Joseph Corbi, 110 Seagull Dr., Rehoboth, was sworn in and testified in opposition, questioning what was said about the raising of the house.

Victorine Mertes, 109 Seagull Dr., Rehoboth, was sworn in and testified in opposition, presenting pictures of the applicants property. She stated that they have had to call the State Police to the property on occasions. She stated that she owns the road, and that the applicant has group rentals and that the only house in the area in violation is the applicants.

Mr. Rickard stated that when the applicant was denied in 1985, there was no constable and the matter was turned over to the Attorney.

Mr. Bradley stated that there is a building permit to raise the house. He questioned if there was a reduction in the price of the house.

Mr. Marshall stated that the heirs to the property did not want a reduction in the purchase price, but money is being held in escrow.

Mr. Bradley stated that money is being held in escrow that can be used if the encroachments have to be torn down.

Mr. Dixon stated that he has not rented the house to anyone except friends and family. Right now he does not rent it out. He stated that he sometimes has a party, at least one per year. He stated that Mr. Corbi has attended a party at his home. He stated that he has never been issued a warning from the State Police. He stated that he does not have parties on a regular basis and that the parking has never blocked anything. In answer to Mr. Mills question, he stated that the only cosmetic changes that have been made is a dormer he had put in, and that no plans have been made for the house if not approved. He stated that he has never had any problems, has no security, but has had some vandalism.

Mr. Corbi stated that at one time there have been as many as 200 people in the applicants home for parties. A letter was entered into the record referencing parties not setbacks.

Mr. Marshall stated that the pre-existing nonconforming house meets the average setback.

Motion was made by Mr. Callaway, 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. Callaway and carried unanimously that the case be tabled until the next meeting. Vote 5-0.

The Board members took a 5 minute recess.

The Chairman called the meeting back into session at 9:17 P. M.

Case No. 6642--Norris L. Niblett, Trustee - South of Road 70, 1,900 feet east of Road 461.

A special use exception to place a manufactured home for office use.

The case was presented by Mr. Rickard. Norris Niblett, Rte. 2, Box 225F, Laurel, was sworn in and testified, requesting to place a 12'x 40' manufactured home for his office. He stated that he is in the Real Estate Business and farms. He has 10 1/2 acres and would like to use the unit for an office, with a fax machine in it. He stated that there will be no living quarters in it and no kitchen.

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. Votte 5-0.

Case No. 6643--Eastern Shore Optical, Ronald & Kathleen Krajewski - Northwest of Road 535, corner of Pine Cove Circle, Lot 4, V. Hurley Subdivision.

A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. Ronald & Kathleen Krajewski, 16 Club House Dr., Rehoboth, were sworn in and testified, requesting a 17' variance from the 20' side yard setback

requirement for a ground sign. The applicants stated that they are replacing an old sign and relocating it. They purchased the Wayside Florist building that had a sign, which blew down. When they attempted to get a permit they were told the sign was not legal and did not conform. They were told the sign would have to be placed in the middle of their lot. They feel it would be a hazard there. It was stated that the neighbors have signs at the edge of their properties.

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. Vote 5-0.

Case No. 6644--Kevin L. Niblett & Tiesha S. Littleton - North of
Route 78, 2,145 feet west of Road 490A.

A variance from the setback requirement for a poultry house.

The case was presented by Mr. Rickard. Kevin Niblett and Tiesha Littleton, R. D. 5, Box 135, Seaford, were sworn in and testified, requesting a 40' variance from the 50' setback requirement for a poultry house. It was stated that the property is long and narrow. The neighbors poultry house is the closest house to them. It will be 50' from the wetlands, so they need to move it closer to one side. It will meet the 200' setback from the nearest neighbors house.

There were no parties present in opposition.

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

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

Meeting adjourned at 9:41 P. M.