

Minutes of July 7, 1997

Prior to the regular meeting of the Sussex County Board of Adjustment the Board met to reorganize.

Mr. McCabe appointed Mr. Rickard as acting Chairman for the purpose of holding and election of officers.

Mr. Rickard opened the nominations for Chairman.

Motion was made by Mr. Mills to nominate Mr. McCabe.

There was no second and no vote was taken.

Motion was made by Mr. Wheatley, seconded by Mrs. Hudson to nominate Mr. Callaway.

Motion adopted; 5 yea

Vote by roll call:

Mr. Weatley	yea
Mrs. Hudson	yea
Mr. Mills	yea
Mr. McCabe	yea
Mr. Callaway	yea

Mr. Rickard opened nominations for Vice Chairman.

Motion was made by Mr. Mills, seconded by Mr. Callaway to nominate Mr. McCabe.

Motion adopted; 5 yea

Vote by roll call:

Mr. Callaway	yea
Mrs. Hudson	yea
Mr. Wheatley	yea
Mr. Mills	yea
Mr. McCabe	yea

Mr. Rickard turned the meeting over to elected Chairman Callaway.

The Chairman appointed Mr. Rickard as Secretary.

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, July 7, 1997, in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

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No vote was taken.

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Motion adopted; 5 yea

Vote by roll call:

Mr. Weatley	yea
Mrs. Hudson	yea
Mr. Mills	yea
Mr. McCabe	yea
Mr. Callaway	yea

Mr. Rickard opened nominations for Vice Chairman.

Motion was made by Mr. Mills, seconded by Mr. Callaway to nominate Mr. McCabe.

Motion adopted; 5 yea

Vote by roll call:

Mr. Callaway	yea
Mrs. Hudson	yea
Mr. Wheatley	yea
Mr. Mills	yea
Mr. McCabe	yea

Mr. Rickard turned the meeting over to elected Chairman Callaway.

The Chairman appointed Mr. Rickard as Secretary.

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, July 7, 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 Callaway presiding: The Board members present were: Mr. Callaway, Mr. McCabe, Mrs. Hudson, Mr. Mills, Mr. Wheatley, Mr. Witsil-Attorney, Mr. Rickard-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 June 16, 1997 be approved as circulated. Vote 5-0.

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

Case No. 6353--Mary Davis - Northeast side of Route 636, 1/4 mile north of Route 637.

A variance from the minimum lot width requirement.

The case was presented by Mr. Rickard. Mary Davis and Sheila Davis were sworn in and testified. Mary Davis requested a 40' variance from the 150' lot width requirement to create two parcels. One parcel will have a lot width of 150.0' and one lot will have a lot width of 110'. Mrs. Davis proposes to give the lot to her daughter to place a double-wide manufactured home on. She stated that there are single-wide manufactured homes on the property next to hers and other manufactured homes in the area.

Mr. Rickard read a letter from Norman W. Davis in support of the application.

There were no parties present in opposition.

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

Case No. 6354--R. R. Seaside, Inc. - North side of Route One, 1,050 feet west of Route 271.

A variance from the requirements for signs.

Larry Holding, from Rogers Signs, was sworn in and testified representing the applicants who requested a variance from the requirements for signs to allow a second sign for the Starter Outlet Store. Mr. Holding stated that the store is located behind the K-Mart Store and some of the store cannot be seen. Also towers have been put up and can have lettering. The sign can be put on

the tower for visability. Mr. Holding stated that he also has another application on the agenda (Case No. 6360) for the same thing for Bugle Boy Outlet. He stated that the signs will be 50 sq. ft. or less.

Mr. Mills stated that the testimony given on this case should be incorporated into Case No. 6360.

Mr. Callaway stated that the testimony given on this case will be incorporated into Case No. 6360.

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 for both cases, Case No. 6354 and 6360. Vote 5-0.

Case No. 6355--George Sherman Construction - North side of Route
269, 150 feet east of Route 18.

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

The case was presented by Mr. Rickard. Orville T. Mills, Jr. was sworn in representing this case, and the case was represented by Jim Fuqua, Attorney. The applicant requested a 6.6' variance from the side yard setback and a .3' variance from the 10' rear yard setback requirement in a C-1 General Commercial District where the C-1 District borders a residential district. Mr. Fuqua explained the survey. He stated that the applicant has office and storage on the property and he built an addition. When the addition was planned, the site plan showed a 5' setback. A permit was obtained based on the site plan and a Certificate of Compliance was issued. When a survey was done it was discovered that the business is next to a residential district, McNichol Place and needed a greater setback. The building is complete. There is fence and woods along the border of McNichol pLace, therefore, they do not feel the use will adversely affect the property owners. Mr. Fuqua stated that basically the rear yard setback adjacent to a commercial district is 5', so a rear yard variance is no longer needed. They are requesting a side yard variance only.

Motion was made by Mr. Mills, seconded by Mr. McCabe and carried unanimously that the variance be granted, finding that the there is a hardship and the applicant did not know of the intrusion at the time the permit was obtained and followed the plan. Vote 5-0.

Case No. 6356--Gary Passwaters - South side of Route 224, 1,800 feet west of Route 30.

A variance from the height requirement for a fence.

The case was presented by Mr. Rickard. Martin Barner, Wanda Faye Warrington and John Buchanan were sworn in and testified. The applicant requested a variance in the height of a fence to be 6' high in the front yard, where there is a 3 1/2' height requirement, for the first 30' back on the property. Mr. Barner stated that he has K-9 dogs on the property, since he has a construction business. He stated that he has had one dog killed and he wants to maintain the fence to keep the dogs on the property. There will be two German Shepherd dogs. The fence will be wood and chain and 6' all the way around the property, with the wood fence being on the front of the property. He feels the fence will also provide safety for the children. He stated that he wants to put a mirror on the property to be able to observe the property. In answer to the Board's question, Mr. Barner stated that the fence will not restrict visibility.

Mr. Buchanan spoke in behalf of the application, stating he has children and is in favor of the fence.

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, with the stipulation that a mirror be put-up on the property. Vote 5-0.

Case No. 6357--Crab Daddy's Restaurant - South side of Route 54, 1.5 miles west of Fenwick Island.

A special use exception for off-street parking.

The case was presented by Mr. Rickard. Maxwell Morris, Surveyor, and Chuck Evans were sworn in and testified representing Crab Daddy's Restaurant, who requested a special use exception to use off-street parking for the business. Mr. Morris presented copies of the survey. Mr. Evan's, owner of Crab Daddy's, stated that he has an agreement in writing with Moore, Warfield & Glick Realtors, to use their parking lot after 6:00 P. M. He proposes to use six parking spaces to be able to use his deck. Employees stack park down beside the building. He will have a total of 14 spaces if the employees are allowed to use stack parking. Mr. Evans stated that the agreement is for one year, but automatically renews each year. The parking spaces are 10' x 20' in size.

Mr. Mills questioned if the Realtor parking area has the minimum or more amount of parking spaces.

Mr. Evans stated that he did not know. He stated that he has provided parking for employees.

There were no parties present in opposition.

Mr. McCabe stated that he sees no problem with the applicant's request, since the Board has granted others to use off-street parking.

Motion was made by Mr. McCabe, seconded by Mr. Mills and carried unanimously that the variance be granted, with the stipulation that for the duration of their agreement they submit a copy of the agreement annually for after six parking. Vote 5-0.

Case No. 6358--Richard T. Kovacs - Northwest side of Route 362,
Lot C-9, Oak Street, within Shady Dell
Park.

A variance from the front yard setback requirement.

The case was presented by Mr. Rickard. Richard T. Kovacs was sworn in and testified, requesting a 2.2' variance from the 30' front yard setback requirement. Mr. Kovacs replaced a manufactured home with a double-wide unit and had to have a new septic system and has to be 10' from it. He had to re-set his manufactured home. The final placement survey was done and he encroaches into the front yard setback. Shady Dell Park requires a 15' front yard setback and the County requires a 30' front yard setback. Mr. Kovacs stated that he has spoken with his neighbors and they have no objection. He presented a letter from his neighbor.

Mr. Rickard read the letter submitted from Jake Smith, Lot C-11, voicing no objections. He also read a letter prepared by Mr. Kovacs.

There were no parties present in opposition.

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

Case No. 6359--John Paluck - West side of Route One, Lot 9, within
Bayview Park.

A variance from the front yard setback requirement
and a variance from the flood zone requirements.

The case was presented by Mr. Rickard. John Paluck and Marty Clark, builder, were sworn in and testified. Mr. Paluck requested a 8' variance from the front yard setback of 30' and a 1' variance from the flood zone requirements of 6' from MSL - lowest floor, on Lot 9, within Bayview Park. Mr. Paluck purchased the property in 1991 and when he applied for his permit to build he thought he was in the Town of South Bethany. The construction was completed a few months ago. He hired Mr. Clark to build his house and porch. He stated that there is no way he can raise the house to meet the setbacks.

Wanona Dawson, Robert Lewis and Joan Cartright were sworn in and testified in opposition. Ms. Dawson stated that she is Vice President of the Bayview Park Association, and they are not opposed to the flood zone variance, but they do oppose the variance from the front yard setback. She stated that Mr. Rickard, Zoning Inspector told the applicant that a variance was needed for the porch. She feels to approve the variance will set a precedent and she feels the variance is not a hardship.

Ms. Cartright read a letter from the Bayview Park Board stating their opposition to the setbacks. It was stated that the house is already too close since Hassel St. is a main thoroughfare. It is their feeling it will set a precedent for the rest of the community and the applicant should go by the County's requirement.

Robert Lewis stated that the house has been under construction for five years and that the only thing done is the porch and it is illegal.

Mr. Rickard stated that he cannot average the setback for the porch. He stated that the average encroachment is about 27'. Mr. Rickard read a letter of opposition from the Board of Directors, Terry Anders.

Mr. Paluck stated that he built the porch about five years ago and understood it was ok.

Mr. Rickard stated that all of the houses are at an average.

Mr. Mills questioned if other variances have been granted in the development.

Mr. Rickard stated that other variances, a dozen or more, have been granted for the front yard setback.

Mr. Mills asked Mr. Rickard if he could do research to find out who the variances were granted to.

Nr, Rickard stated that he could do the research.

Motion was made by Mr. McCabe, seconded by Mr. Mills and carried unanimously that the case be tabled, to give Mr. Rickard time to do research on variances granted for Bayview Park. Vote 5-0.

Case No. 6360--R. R. Seaside, Inc. - North side of Route One,
1,050 feet west of Route 271.
A variance from the requirments for signs.

The case was presented by Mr. Rickard. Larry Holding, with Rogers Signs, was sworn in on Case No. 6354 and represented this case. The applicant's requested a variance from the requirements for signs to allow a second sign for Bugle Boy Outlet Store. The case was heard on Case No. 6354, and all tesitmony from Case No. 6354 is incorporated into this case.

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. 6361--Michael Bryant - Southwest side of Route One, Lot
J-47, within Sea Air Mobile City.
A variance from the setback requirement from lot
lines and between units in a park.

The case was presented by Mr. Rickard. Michael Bryant was sworn in and testified, requesting a 3' variance from the 5' setback requirement from the rear property line, a 12' variance from the 20' setback requirement between units in a park and a 6' variance between units on the left side, on Lot J-47, within Sea Air Mobile City. The applicant wants to put an addition on their manufactured home for more space. There will be a 14' addition added to the 14'x 70' manufactured home, and an outside shower.

Mr. Mills questioned if the 12' variance would cover both sides of the manufactured home so that only two variances are needed.

Mr. Rickard stated that the 12' variance would cover the setback requirement between units.

There were no parties present in opposition.

Motion was made by Mrs. Hudson, seconded by Mr. Mills and

carried unanimously that the variances be granted. Vote 5-0.

Case No. 6362--B & B Heating & Air Conditioning - North side of
Route 46, 810 feet west of Route 516.
A variance from the requirements for signs.

Mr. Mills stated that he would refrain from this case due to personal reasons.

The case was presented by Mr. Rickard. Rebecca & Robert Willin were sworn in and testified representing the application, and requesting a 10 sq.ft. variance from the requirements for signs. It was stated that they have a home occupation sign that exceeds the 6 sq. ft. requirement, and is 16 sq. ft. in size. They testified that they contracted to have the sign put up, not aware a permit was needed. They were contacted and filed for a variance. They stated that they have permission for the home occupation. They requested to keep the sign up on Route 46, where the business is located.

There were no parties present in opposition.

Motion was made by Mrs. Hudson, seconded by Mr. Wheatley that the case be taken under advisement, with Mr. Mills abstaining. Motion carried with four voting in favor and one not voting. Vote 4-0.

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. McCabe that the variance be granted, with Mr. Mills abstaining. Motion carried with four voting in favor and one not voting. Vote 4-0.

Case No. 6363--Jennifer Jackson - South side of Route 24, 3,800
feet west of Route 449A.
A variance from the height requirements for a
fence.

The case was presented by Mr. Rickard. Ben Hansen & Jennifer Hansen were sworn in and testified, requesting a 2'6" variance from the height requirement for a wooden stockade fence that is located in the front yard. Mr. Hansen stated that they want to keep the 6' fence up in the front yard. Ms. Hansen stated that she has small children and there is a lot of traffic on the road.

Mr. Wheatley questioned if the fence obstructed anyone's view.

Mr. Hanson stated that there is one neighbor and they have no problem with the fence.

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. 6363--Lemuel E. & Ruth B. Tyre - West side of Route 357,
at the intersection of a private road
within Pine Shore Acres.

A variance from the front yard and the side yard
setback requirement.

The case was presented by Mr. Rickard. Lemuel E. & Ruth B. Tyre were sworn in and testified, requesting a 10' variance from the 40' front yard setback requirement and a 5' variance from the 15' side yard setback requirement to be 10' for a corner lot, for a dwelling, within Pine Shore Acres. The applicants lost their home due to a fire and they are going to rebuild. The variances are for a porch and basement entrance. They propose to start the home soon.

There were no parties present in opposition.

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

Case No. 6365--David L. & Margie R. Johnson - West side of Route
229B, 765 feet north of Road 227, Parcel
B, lands of Harold J. and Alice Betts.

A variance from the 3/4 acre lot size requirement
for a double-wide manufactured home.

The case was presented by Mr. Rickard. Margie R. Johnson was sworn in and was represented by David Rutt, Attorney. Ms. Johnson requested a variance from the 3/4 acre lot size for a double-wide manufactured home. Mr. Rutt stated that the application should have read for a single-wide manufactured home and not a double-wide. He stated that he is not aware of how it happened, but the application is not correct.

The Board felt that the application should not be before them, since they cannot approve the use for a single-wide manufactured home.

Mr. Witsil, Attorney, asked if the applicants would like to

reapply.

Mr. Rutt stated that they would if the fee is waived.

Mr. Witsil stated that the Board could accept the withdrawal of the application and waive the application fee to reapply.

Motion was made by Mr. McCabe, seconded by Mr. Mills and carried unanimously to accept the withdrawal of the application and waive the application fee to reapply. Vote 5-0.

Case No. 6366--Marie Hayden - South side of F Street, 50 feet west of Bay Drive, Lot E-3, within Rehoboth Bay MHP.

A variance from the maximum lot coverage requirement.

The case was presented by Mr. Rickard. Marie Hayden was sworn in and testified, requesting a variance from the 35% lot coverage requirement to be 37%, on Lot E-3, within Rehoboth Bay MHP. She wishes to add a 8'x 8' shed on her lot and the total coverage with the shed will be 37%.

Roscoe Reif was sworn in and testified explaining that the lot is small and she wants an 8'x 8' shed. It was stated that there is no opposition from the park. The shed will be within the required setbacks. It will be placed to the rear of the property.

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. 6367--Gaye Henry - Southwest side of Route 395, Lot 42, within Bayview Estates.

A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. Roy Evans was sworn in and testified, representing the applicant who requested a 0.1' variance from the 10' side yard setback requirement to be 9.9' for an existing porch, on Lot 42, within Bayview Estates. Mr. Evans stated that the porch was built and when a location survey was done they found that the porch encroached into the side yard setback.

Mr. Rickard read a letter in support from the Bay View Estates Board of Directors.

There were no parties present in opposition.

Motion was made by Mr. McCabe, seconded by Mr. Wheatley and carried unanimously that the variance be granted, finding that the uses would not hurt anything. Vote 5-0.

OLD BUSINESS

Case No. 6339 (cont'd.)--Robert T. Groton - Northwest side of Route 468, 450 feet southwest of Route 13.

A special use exception to retain a manufactured home for commercial purposes.

The case was reviewed. Mr. Rickard stated that his research found that there were two approvals in 1992 for special use exceptions.

Mr. Mills questioned how many manufactured homes are grandfathered in and how many special use exceptions were granted.

Mr. Witsil told the Board that the applicant should furnish the information for the Board.

After some discussion, motion was made by Mr. McCabe, seconded by Mr. Mills and carried unanimously that the case be tabled for more facts and research as to how many manufactured homes are grandfathered in. Vote 5-0.

Case No. 6342 (cont'd.)--William C. Wyatt - West side of Route 268, at the corner of Route 269.

A variance from the requirements for signs.

Mr. Callaway reviewed the case.

After some discussion, motion was made by Mr. McCabe, seconded by Mr. Mills and carried unanimously that the variance be granted.

OTHER BUSINESS

Case No. 5922 - Ocean Wines & Spirits, Ltd.

Time Extension.

Mr. Rickard stated that he had received a letter from Theodore

Jones, President of Ocean Wines & Spirits, Ltd. requesting a one year time extension for their variance approval, due to construction complications. The side and front yard variances were approved on March 4, 1996.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that a one (1) year time extension be granted to Case No. 5922. Vote 5-0.

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

Meeting adjourned at 8:58 P. M.