

Minutes of July 20, 1992

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, July 20, 1992 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. Wheatley, Mrs. Hudson, Mr. Mills, Mr. Callaway, Mr. Jones-Attorney and Mr. Betts-Zoning Inspector III.

Motion was made by Mr. Wheatley, seconded by Mrs. Hudson and carried unanimously that the minutes of July 13, 1992 be approved as circulated.

Case No. 4803--Willard Kauffman - East side of Route 36, across from Route 612A.

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 in behalf of this case. The Chairman tabled the case until the end of the meeting at which time Willard & Elizabeth Kauffman were present and affirmed. The applicants requested to keep a 14'x 70' manufactured home on their property for permanent residence. The manufactured home was placed on the property in 1988 as an emergency due to fire destroying their home. They would like the manufactured home to remain as their residence.

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.

Case No. 4804--Jeffrey Mitchell - North side of Route 410, 1,200 feet west of Route 328.

A variance from the side yard setback requirement.

The case was presented by Mr. Betts. Sherry L. Mitchell was sworn in and testified, requesting a variance from the side yard setback to build a room addition. The applicant had requested a 10' variance, but wants to reduce it to a 8' variance, from the 15' side yard setback. The location for the addition is the only space to put it. Ms. Mitchell stated that the neighbor has no objection.

There were no parties present in opposition.

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

Case No. 4805--Jeffrey S. McWilliams - East side of Route 550,  
792 feet south of Route 20.

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. Jeffrey and Jimmy L. McWilliams were sworn in and testified, requesting to place a 12'x 50' or 52' manufactured home on their property to live in while they build a house, which they feel will take 2 to 3 years. The old house on the property will be removed, and when the new house is complete the manufactured home will be removed. There is a manufactured home park across the road from the property, which is in Maryland since their property borders the Maryland Line.

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, with the stipulation that the old building be removed.

Case No. 4806--John P. & Leilani J. George - On a private road on the west side of Route 357, 900 feet north of Route 359, part of Lot 18, within Ray's Acres.

A variance from the side yard setback requirement.

The case was presented by Mr. Betts. John & Leilani George were sworn in and testified, requesting a 3.25' variance from the 10' side yard setback requirement to be 6.75' for a 10'x 24' addition and deck to be built on Lot 18, Ray's Acres. They feel it will be an improvement to the property.

There were no parties present in opposition.

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

Case No. 4807--Lloyd T. Morris - Northwest side of Route 277, 810 feet north of Route 287.

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. Lloyd T. Morris was sworn in and testified and was represented by Jane Brady, Attorney. Mr. Morris requested to place a 12'x 70' manufactured home on his property for his permanent residence. The applicant described the area and what exists. He stated there are other manufactured homes in the area. The area consists of a majority of manufactured homes. He feels his manufactured home will not adversely affect the area.

Carl T. Horner was sworn in and testified that he owns property in the area as well as Long's Lane which provides access to Mr. Morris's

property. He feels the use will not be a detriment to the area and he has no objection.

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.

Case No. 4808--Linda L. Good - East side of Boat Dock Court, Lot 16, Blk. 22, Sec. 4, within Angola By The Bay.

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

The case was presented by Mr. Betts. Linda L. Good and Roger Good were sworn in and testified and were represented by Kenneth Clark, Attorney. The applicant requested a 2' variance from the side property line of 10' to be 8' and 11' from the rear property setback of 20' to be 9'. The applicant purchased the existing property with an existing house that encroaches into the side and rear yard setback, on Lot 16, Angola By The Bay. The house was placed on the property by the previous owners. The survey done of the property showed the existing encroachments.

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, due to the odd shaped lot.

Case No. 4809--Charles G. Matthews - South side of Route 22,  $\frac{1}{2}$  mile east of Route 298, Crab Alley East, Lot 1074, within Pot Nets North.

A variance from the setback requirements from lot lines in a manufactured home park.

The case was presented by Mr. Betts. Charles Matthews was sworn in and testified, requesting a 3'8" variance from the 10' setback requirement to be 6'4", in a manufactured home park, on Lot 1074, Pot Nets Park North. The applicant built a deck and small gazebo 7 to 8 years ago. He continued to build a deck and realized he had never received or applied for any Certificate of Compliance or approval from the County. When he applied for a Certificate of Compliance he was informed by the Zoning Inspector of the violations. He had failed to check the setbacks. The addition is an open deck and the gazebo with roof is not closed in and has a swing in it. He testified that others in the park have similar front yard setbacks.

There were no parties present in opposition.

Motion was made by Mrs. Hudson, 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. Mills and carried unanimously that the special use exception be granted.

Case No. 4810--Donald & Wendy Cunningham - Northwest side of Route 36, across from Route 631.

A variance from the setback requirements for a commercial barn.

The case was presented by Mr. Betts. Donald Cunningham was sworn in and testified, requesting a variance of 60' from the side yard setback requirement of 100' to be 40', to construct a calf structure (barn). A blue print was presented and explained. The applicant proposes to put liquid manure, 10,000 gallon tanks, in the ground, which is a part of the operation. The barn, 204' x 56' in size will be further away from neighboring properties and an existing cemetery, if the variance is granted. A picture of the cemetery was shown. Mr. Cunningham explained that there is a 2 stage storing system for manure. He is dealing with other agencies such as ASC, D.N.R.E.C. and the Government.

Mr. Betts read a letter into the record from Mark & Ella Swartzentruber in favor of the variance. He also read a letter from Virginia Swartzentruber in opposition to the variance. There was also a letter of opposition from Robert H. Myers, read into the record. Mr. Betts stated that along with Mr. Myers letter there were seventeen letters of opposition received stating the same comments.

Mr. Jones, Attorney, explained that the calf barn is a permitted use on the applicants property. The only thing being considered by the Board is a variance.

Mr. Cunningham stated that he will put the calf barn on the property with or without the variance, he feels the location he wants to put the barn and have the manure tanks, with a lagoon system, is further away from the other properties. It will have less odor. If the barn has to be put at another location, he will be forced to slurry buggy the manure and there is more odor. He feels there is less impact on the area with a two stage system.

Virginia Swartzentruber was sworn in and testified in opposition. She has her property for sale and feels the value will be lowered and the use would not be good for the sale.

Wayne Swartzentruber affirmed. He stated he is concerned about the impact the use will have on the Church building across from the area. He feels it would be better if Mr. Cunningham built a chicken house and there would be less odor. He also stated that the Greenwood Mennonite School is approximately  $\frac{1}{4}$  mile away. Mr. Swartzentruber does not live in the area. He stated he is a party to the sale of Virginia Swartzentruber's property.

There were 5 property owners present in opposition, in addition to the signatures on the letters received.

Mr. Cunningham stated that the proposed location is 500' or more from the nearest dwelling. He testified that this will be his livelihood.

Motion was made by Mr. Mills, seconded by Mrs. Hudson 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, pursuant to the presentation given by the applicant. The Board feels that better protection for property owners in the area will be given and in relation to the existing cemetery.

Case No. 4811--Robert N. Thompson - East side of Route 266, 400 feet north of Route 266A, Lot 3, within Cape's Cove.

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

The case was presented by Mr. Betts. Catherine & Robert Thompson were sworn in and testified, requesting a 2'8" variance from the 20' setback requirement between units in a park, being Lot 3, Cape's Cove. The applicants have a deck that has existed since 1983-84 and they were putting new lumber on it when it was found to be in violation of the setback requirement. They testified that there are other properties in the area similar.

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.

Case No. 4812--Martha A. Russell - North side of Route 273-A, Lots 33 and 34, within Bay Vista.

A variance from the front yard setback requirement.

The case was presented by Mr. Betts. Martha and Jeffrey Russell were sworn in and testified, requesting a 6' variance from the 30' front yard setback requirement of 30' to be 24', on Lots 33 & 34, Bay Vista. The applicants propose to enclose and extend an existing deck on 1st. and 2nd. level. The existing deck is out to the property line now.

There were no parties present in opposition.

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

Case No. 4813--Robert L. Venables, Sr. - North side of Route 24, 1,150 feet west of Route 461, on the west side of Boyce Avenue, Lots 160 and 161, within Lake Pines Subdivision.

A special use exception to place an accessory building and fenced area on a vacant lot.

This case was postponed to be re-advertised.

Case No. 4814--Frank J. & Leslie L. Umstetter - North side of Route 612, 369 feet west of Route 13.

A variance from the setback requirements for a private stable.

The case was presented by Mr. Betts. Frank and Leslie Umstetter were sworn in and testified, requesting a 37.2' variance from the 50' rear yard setback requirement for a stable to house a maximum of two horses. The applicants purchased the property on June 20, 1992 with a horse barn on it. The horse barn is too close to the rear property line. The barn has been on the property for a long time. There is a wooded area to the rear of the property.

Mr. Betts read letters into the record from neighbors, Otis Scott, Jr. and Don & Joanne Huey voicing no objections. Mr. Betts also read a letter from Kenneth Warrington-Bessie Warrington Hrs., voicing opposition to the requested variance.

Anna Mae and Ceibert Bragg were sworn in and testified in behalf of the variance. They testified as to what is in the area and that the stable has been there 4 to 5 years.

There were no parties present in opposition.

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

Case No. 4815--Four Paws Animal Hospital - On a private road on the south side of Route 531, ½ mile west of Route 533.

A variance from the setback requirements for an animal hospital.

The case was presented by Mr. Betts. Molly and Michael Metzler were sworn in and testified, and was represented by John Sergovic, Attorney. Mr. Sergovic stated that the applicants purchased a property with an existing building from Donald Booth, who had previously used the building for a glass business which was approved by Conditional Use. They were told the zoning was appropriate for an animal hospital and they purchased more property to meet the 5 acre requirement. The existing building is not 200' from the property line setback requirements and they are requesting a 108' variance from the front yard setback, a 175' variance from the side yard setback and a 141' variance from the rear yard setback requirement. The animal hospital is operating, since the applicant felt they were legal. The deed and property survey had been approved and recorded. The applicants have invested a large sum of money as well as life savings into the business. The use is permitted, but cannot operate without the variance approval. Mr. Sergovic referenced a letter dated November 18, 1990 that was written and sent to Lawrence Lank,

Director of Planning and Zoning, from Joseph Conaway, Realtor, referencing the use on the property. A copy of the letter and sales contract for purchasing more property were presented. A copy of a plot surveyed by Ted Simpler showing the structure and approved by Lawrence Lank was presented. A copy of the deed was presented. Mr. Metzler stated that everything pertaining to his business is contained inside of the building. He renovated the building and did not change the outside. He does not use the whole building. He does not have tractor trailer deliveries, and with the dropped ceilings and insulated walls it conceals noise. He had obtained a building permit to do the work. A copy of the permit was submitted and a copy of the Booth Conditional Use approval was also submitted. He was informed by Planning and Zoning of the violation and the need to apply for a variance. It was stated that the building cannot be physically moved. It was also stated that the animals are brought in on leashes and in carriers. He proposes to fence the property in to secure any animals that may be loose. There is an entrance to the property that has existed and is hidden. They hope to have the State put signs up referencing the entrance. He has an estimate from Delmarva Paving to open a new entrance if he has too. He feels he has cleaned up and improved the area.

Mrs. Metzler concurred with her husbands statements.

Joseph Conaway, Realtor, was sworn in and testified explaining the sale of the property, letters to and from Lawrence Lank, previous listing by Callaway, Farnell and Moore and the placment survey. He stated that some of the homes in the area came after the building (Booth Glass) was constructed. He feels the use of the property is a perfect "marriage" between the residential area and the animal hospital. The property is zoned AR-1, but would meet the setbacks if it were C-1. He feels the values of property have increased.

Theodore B. Simpler, Surveyor, was sworn in and testified to the survey he did dated February 6, 1992. He also stated that no building could be placed on the property and meet the 200' setback requirement.

Robert Booth, seller of the property, was sworn in and testified that they sold the property because of the location and people not being able to find their business.

Michael Filicko was sworn in and testified in behalf of the application and to the character of Dr. Metzler as a veterinarian. Mr. Filicko is a golden retriever breeder and uses Dr. Metzler's services. He feels it would be an injustice to close the practice.

Virginia & Joseph Mangone who live across the road, were sworn in and testified in behalf of the request. They stated the business is quiet and does not disturb them, nor does the traffic.

Mr. Witsil, Attorney, for the opposition had no questions for the previous people testifying.

Marion Davis affirmed, stating he is in favor of the request. He testified to the high character of Dr. Metzler and the clean operation. He lives in Millsboro, but takes his animals to Dr.

Metzler.

Alice & John Sturgis were sworn in and testified that they are in favor of the request. They have poodles that Dr. Metzler takes care of. They live in Laurel. Mr. & Mrs. Sturgis testified to his (Dr. Metzler's) good character and the operation he has.

Michael Deaton property owner at the end of the road was sworn in and testified in behalf of the application. He states there is no traffic issue, quiet and less industrious than the glass business.

Mr. Witsil, Attorney for the opposition, questioned Mr. Deaton asking him to read the restrictive covenants for the development that states no animals to be boarded and named some animals that are prohibited.

Mr. Sergovic objected, saying the Board can not consider deed restrictions.

A copy of the deed was presented by Mr. Witsil.

By a show of hands there were approximately 45 people present in behalf of the application.

Mr. Witsil questioned how many of the people present were customers of Dr. Metzler. Approximately 30 people are customers.

Julie Hudson was sworn in and testified in behalf of the request, referencing the dependability of Dr. Metzler.

John Walls was sworn in and testified in behalf of the application.

Annie Bishop, employed by the SPCA was sworn in and testified in behalf, stating that Dr. Metzler is always available when they need him.

John J. Smith was sworn in and testified in favor, feels it would hurt a lot of people if the business should close.

Denise Irwin was sworn in and testified in behalf of the request, stating she owns a boarding kennel in Lewes.

Dawn Walls was sworn in and testified in favor of the application, stating she works for an animal facility in Lewes, but would work for Dr. Metzler anytime.

Robert Booth, seller of the property and sworn in previously stated that Dr. Metzler keeps the area looking nice, he works long hours and spoke of his good character.

Malcolm Chandler who lives in Bayard was sworn in and testified in behalf of the request.

Robert Witsil, Attorney, representing the O'Marrow's, who are in opposition, stated that the booming business is at the wrong

location, a burden of the Zoning Code, does not meet the deed restrictions and the Conditional Use granted on the property was for a specific use.

Garnet O'Marrow was sworn in and testified in opposition and was questioned by Mr. Witsil. He showed the location of his property as well as his father's property. He has 9½ to 10 acres and his parents property is on Route 531. Mr. O'Marrow referenced No. 13 of the deed restrictions that states no diseased/sick animals.

Mr. Witsil stated that the landowners are aware of the restrictions. Pictures were presented showing the area and the animal hospital within location to Mr. O'Marrow's property. He also referenced the ingress and egress to the property. Mr. O'Marrow purchased his property in 1988 with the existing glass business on the adjacent property. The glass business had employees that went in to work and would leave by 6:00 P.M., 98% of the time, with very little traffic generated, sometimes on Saturday, but never on Sunday. The animal hospital generates more traffic approximately 20 cars per day, with different type clientel. Dr. Metzler has hours early morning until late at night. Mr. O'Marrow testified he phoned and voiced his concern to the Realtor within 24 hours when he heard of the sale. He testified that his parents are approaching 75 years of age and sleep with their windows open and the noise disturbs them. Dogs relieve themselves on their (his parents) lawn and people stop, confusing his parents place with the animal hospital. They have nothing against the doctor, but do not want the hospital in their back yard. He is concerned about the total use of the 5,000 square foot building. He lives in Heritage Farm and has invested heavily in his property. He has also seen animals tended to in the yard of the animal hospital by Dr. Metzler.

Francis O'Marrow was sworn in and testified in opposition stating he lives in front of the animal hospital. He bought the property in 1989. He feels it is aggravation to have people come into his yard and run over shrubs and lawn trying to get to the hospital. He has put a sign out, but it doesn't help. He testified the glass business was very quiet. He also stated that he feels property values will be hurt.

Harold L. Carmean, Advisor and Appraiser, was sworn in and testified giving his credentials as an appraiser. He feels the animal hospital will devalue the property owned by the O'Marrows. He feels it is a detriment and nuisance with cars coming in and out. He feels there is a 15% decrease in property value.

Mary Rollin was sworn in and testified that the O'Marrow's were told the property would be sold to a similar business and low key.

Charlotte O'Marrow was sworn in and testified in opposition, stating the animal hospital is very annoying. They have to have a chain put up because of people crossing over their lawn and they (people) are irritated. Dogs bark when they try to sleep and during the day.

In answer to Mr. Witsil's question, Dr. Metzler stated he

does not board sick animals, he treats them and none are kept on the property.

Mr. Sergovic questioned Garnet O'Marrow about development, Heritage Farm, how it was recorded and about the roads and right-of-way.

Mr. Sergovic also questioned Mr. Carmean about the value.

In closing, Mr. Sergovic stated that a variance is needed to use as an animal hospital. He presented and made reference to 3 cases that had been decided in courts. He feels the Board should not concern themselves with restricted covenants. He presented a copy of a memorandum with Judge Lee's decision. Mr. Sergovic feels there is no health hazard and there are no open kennels.

In closing, Mr. Witsil referenced the amount of variance requested and the violation. That a hardship has not been met, only economic hardship. There is no clear-cut allegations that they were mis-led by Planning and Zoning Department. He referenced testimony given by clients. He feels a remedy of mis-representation of title can be an out for Dr. Metzler by the former owner. That there is a serious violation of setbacks.

Mr. Jones, Attorney, asked to be given a chance for himself and Mr. Witsil to review the decisions presented by Mr. Sergovic. He asked that the hearing be held open for the Attorneys.

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

Case No. 4816--Kathleen & Russell LeCates - South side of Route 64,  
2,500 feet west of Route 62.

A special use exception to place a second manufactured home on a farm.

The case was presented by Mr. Betts. Kathleen and Russell LeCates were sworn in and testified, requesting to place a 14'x 70' manufactured home on her parents property for their residence as a 2nd. manufactured home on farm. They will be helping some on the farm. The existing manufactured home is also 14'x 70'.

Geoffrey & Kathleen Cropper, parents, and Norman and Hazel Cropper were sworn in and testified in behalf of 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. 4817--Stanely Huey, Sr. - Northwest side of Route 36,  
across from Route 208.

A special use exception to place a second and third manufactured home on farm.

The case was presented by Mr. Betts. Stanely Huey, Sr. William Allen Huey and Diane Depew, were sworn in and in and testified. Mr. Huey, Sr. stated that he wants to place a 2nd. and 3rd. manufactured home on his 15.14 acres. The 3rd. to be occupied by his son and daughter-in-law. The applicant has two manufactured homes and a house on the property. The home and both manufactured homes are rented out. Mr. Huey stated that the 1st. manufactured home was placed approximately 30 years ago and the 2nd. manufactured home placed approximately 8 years ago. The owner testified that he lives in a house on a separate parcel. He uses the rent money received as extra income. Mr. Huey testified he has a permit for the 2nd. manufactured home. The 3rd. manufactured home will be for his son.

Mr. Betts responded to questions from the Board stating, the 1st. manufactured home could be non-conforming and can stay on the property, but the 2nd. manufactured home would not be legal for renting. The Ordinance provides for and in some cases if approved by the Board, manufactured homes for employees on the farm or family members, not to be rented out.

Eugene D. Smith, owner of property in front of the applicant was sworn in and testified in opposition. Mr. Smith stated that one manufactured home was put on the property for his daughter and after she moved out he rented the unit. He fears the same will happen with his son, and it will begin to appear as a manufactured home park.

Don Zook was sworn in and testified, that he has a home next door and he is concerned about the applicants property becoming a manufactured home park. He feels three (3) manufactured homes is too much.

Mr. Huey stated that his son is buying the manufactured home and plans to live in it and there will be no more manufactured homes put on the property.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the case be tabled, to give Mr. Betts time to research the validity of Mr. Huey's permit for the 2nd. manufactured home.

#### OTHER BUSINESS

##### Case No. 4787--DMDY Limited

Mr. Betts stated that a letter had been received requesting a re-hearing for this case. They state that they have new evidence that was not presented at the original hearing.

Motion was made by Mrs. Hudson, seconded by Mr. Wheatley and carried unanimously to rehear Case No. 4787.

#### Discussion

The Board members further discussed Case No. 4815.

Motion was made by Mr. Mills, seconded by Mr. Callaway and carried unanimously that Case No. 4815 be tabled.

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

Meeting adjourned at 12:09 A.M.