

Minutes of July 20, 1998

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, July 20, 1998 in the County Council Chambers, County Administrative Office Building, 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. Callaway, Mr. Mills, Mr. Hudson, Mr. Wheatley, Mr. Berl-Esquire-Mr. Rickard-Chief Zoning Inspector and Mrs. Talley-Recording Secretary.

Mr. McCabe asked if there were any additions to the agenda. Hearing none, motion was made by Mr. Wheatley, seconded by Mr. Callaway and carried unanimously that the agenda for July 20, 1998 be adopted. Vote 5-0.

Motion was made by Mr. Callaway, seconded by Mr. Wheatley and carried unanimously that the minutes of July 6, 1998 be approved as circulated. Vote 5-0.

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

Case No. 6645--LeRoy E. & Rhea L. Foltz - South of Route 54, Tyler Avenue, Lot 38, Cape Windsor.

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

The case was presented by Mr. Rickard. LeRoy & Rhea Foltz, 28 Yeates Dr., New Castle, were sworn in and testified, requesting a 5' variance from the side yard setback requirement and a 4' variance from the rear yard setback requirement to replace a manufactured home on Lot 38, within Cape Windsor. The applicants wish to replace the existing manufactured home with a 28'x 44' modular home, with a 10' front porch. The single wide unit and 2 existing sheds are to be removed. The applicants want to place the modular home where the manufactured home is now.

Mr. Rickard stated that no correspondence had been received pertaining to this case. In answer to Mr. Mills question, he stated that the 20' setback requirement between units does not apply to this case.

There were no parties present in opposition.

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

Case No. 6646--James & Janet Mullin - South of Road 349, west of  
Road 351, Lot 3, Banks Acres.

A variance from the side yard setback.

The case was presented by Mr. Rickard. James & Janet Mullin, 340 Brighton Rd., Norristown, PA, were sworn in and testified requesting a 2' variance from the side yard setback requirement on Lot 3, within Banks Acres for their manufactured home. The applicants stated that they moved to the property last March and received a letter of violation from Mr. Rickard that according to the Zoning Inspector, Mike Milligan, they were in violation. Mr. Milligan told the applicants to ask for a 2' variance to be sure the measurement is accurate.

Mr. Rickard read a letter dated July 7, 1998 into the record from Gary & Jane Kuehn voicing no objections.

There were no parties present in opposition.

Motion was made by Mr. Wheatley, seconded by Mr. Callaway and carried unanimously that a 2' variance be granted. Vote 5-0.

Case No. 6647--Bruce & Betty Lou Russell - West of Road 527, 2,800  
feet south of Route 18.

A special use exception to use a manufactured home for storage purposes.

The case was presented by Mr. Rickard. Betty Lou Russell, R. D. 2, Box 179, Georgetown, was sworn in and testified requesting to use a manufactured home for storage. Ms. Russell stated that the manufactured home will be placed 300 yards from the front of the property and will not be visible from the road. There will be no kitchen, no water and the unit will be used for storage of furniture.

There were no parties present in opposition.

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

Case No. 6648--Donna L. Wilkerson & Brenda Klein - West of Road  
348, north of Road 349.

A variance from the front yard setback requirement.

The case was presented by Mr. Rickard. Dean E. Wilkerson, R. R. 2, Box 161A, Dagsboro, was sworn in and testified in behalf of this application. The applicants requested a 2' variance from the front yard setback requirement for an existing dwelling. He stated that the dwelling was built in 1994 and replaced a manufactured home that was on the property. The dwelling was placed where the manufactured home had been.

There were no parties present in opposition.

Motion was made by Mr. Mills, seconded by Mr. Wheatley and carried unanimously that a 2' variance be granted from the front yard setback requirement. Vote 5-0.

Case No. 6649--Jay M. Darling - Southeast of Road 206, 250 feet  
northeast of Road 208.

A variance from the lot width requirement.

The case was presented by Mr. Rickard. Jay M. Darling, R. D. 1, Box 122, Lincoln, DE, was sworn in and testified, requesting to divide property to be two lots, each having 125' frontage, where 150' is required. One lot has an existing dwelling and the applicant wants to build a dwelling on the new lot. It was stated there are other lots with similar road frontages in the area. He stated that there are two adjacent properties that have 125' frontages and a farm field on the other side. Mr. Darling stated that there will be two separate driveways.

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

There were no parties present in opposition.

Motion was made by Mr. Callaway, seconded by Mr. Wheatley and carried unanimously that the requested variance be granted, finding the use will not substantially adversely affect the area. Vote 5-0.

Case No. 6650--Eller Media Company - East of Route 13 North, .4  
miles north of Route 9.

A variance from sign requirements.

The case was presented by Mr. Rickard. Alexis O'Leary, Salisbury, MD, was sworn in and testified representing the applicants who requested a 10' variance from the 25' maximum height requirement for a sign. She stated that they want to rebuild an

existing sign to be a single pole steele 12'x 24' sign with a height of 35'. A drawing was presented. They request the variance to give the sign better visability. Pictures of the existing sign were presented.

There were no parties present in opposition.

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

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 variance be denied, finding the sign can be seen at the 25' height requirement. Vote 5-0.

Case No. 6651--Jeffrey G. & Linda T. Stewart - East of Road 434A,  
570 feet south of Road 472.

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

The case was presented by Mr. Rickard. Jeffrey & Linda Stewart, R. D. 9, Box 325-C, Millsboro, were sworn in and testified.

Mr. Rickard read a letter from Rehoboth Beach Institute, Phil Stein, M.D., Ph.D., referencing Mr. Stewart's health.

The applicants stated that they will live in the main house and their son will live in the 14'x 80' manufactured home to the rear of the property. They stated that there are single-wide manufactured homes on either side of their property.

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

Mr. Mills explained that if approved it would be for a two year period.

There were no parties present in opposition.

Motion was made by Mr. Mills, seconded by Mr. Wheatley and carried unanimously that the special use exception be granted for a period of two (2) years on medical hardship basis. Vote 5-0.

Case No. 6652--Joan Patricia Shifflett - West of Road 376, 850 feet north of Road 392.

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

The case was presented by Mr. Rickard. Joan Patricia Shifflett, Rte. 3, Box 2, Frankford, was sworn in and testified, requesting to place a manufactured home on her property on medical hardship basis for her mother, Margaret Granruth to live in.

Mr. Rickard read a letter from Douglas A. Bruce, M.D., referencing Mrs. Granruth's health.

Ms. Shifflett explained that an existing manufactured home was damaged by a driving storm, with the roof blown off. She wants to use that manufactured home for storage and put another manufactured home on the property for her mother. She does not have the new unit yet. Ms. Shifflett was granted a variance for the manufactured home in 1996. Ms. Shifflett stated that she owns property in Baltimore and has not been able to sell it. She stated that she has had many problems as well as economic hardships and needs the Boards help in any way. She stated that she has lived on the property at times in the existing house, but it is in need of repair. She also stated that she has lived in an apartment in Ocean City, when works there.

Mr. Rickard stated that in 1995, Case No. 5857, Ms. Shifflett was granted a special use exception on hardship basis that has expired. She is once again applying for the same hardship, and she wants to use the existing manufactured home for storage.

Mr. Mills questioned the application being for hardship and storage.

Betty Breasure, Frankford, was sworn in and testified in opposition and represented other people present in opposition. She stated that she has been a resident for 14 years, living three doors down from the applicants property. She stated that no one has occupied the applicant's manufactured home since it was put on the property. She stated that the applicants property has been unkept, while all of the other residents in the area maintain their property. She feels the Board should look at the concerns at hand. She believes the applicant owns property in Frankford as well. Ms. Breasure feels the applicants property is not livable. She stated that the applicant's manufactured home has been delapidating since it was moved on the property.

Ms. Shifflett stated that she does not own property in Frankford. She stated that the grass has been cut by Mr. Mitchell and has she paid him for his services. She wants the Board to take everything into consideration. She stated that her place of residence is in Ocean City since the storm.

Mr. Mills questioned Ms. Shifflett, why she needs a manufactured home if she does not live in the house.

Ms. Shifflett stated that she will live in the house and have the proposed manufactured home for her mother to live in, and use the existing manufactured home for storage.

Mr. Mills asked how long it will take before she can move in the house and move her mother in the manufactured home.

Ms. Shifflett stated that she would need 60 days, and that the existing house would be her permanent residence, except for the time she spends in Ocean City.

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.

At the end of the public hearings, Mr. Mills made a motion to reopen this case for further discussion.

After some discussion, motion was made by Mr. Mills, seconded by Mr. Callaway and carried unanimously that the special use exception be denied, finding that once the existing dwelling is in condition and occupied by the applicant she can reapply. The applicant should also apply to the Board to use the existing manufactured home for storage. Vote 5-0.

Case No. 6653--Regina Yancheski & Thomas J. Tomsho - East of  
Grant Avenue, Lot 19, Block 6, Cape  
Windsor.

A variance from side yard & rear yard setback requirements.

The case was presented by Mr. Rickard. Thomas J. Tomsho, 5906 Grace Ave., Baltimore, was sworn in and testified requesting a 5' variance from the side yard setback requirement and a 5' variance from the rear yard setback requirement to put a new Nanticoke Home (Modular) on his lot, being Lot 19, Cape Windsor. He is taking out the existing manufactured home and replacing it with the modular. He questioned the steps being allowed into the setback.

Mr. Rickard informed Mr. Tomsho that the steps can encroach into the setback 5'.

Mr. Mills questioned why the applicants could not meet the side yard setback.

Mr. Tomsho stated that he had to be able to use the area for parking.

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. Vote 5-0.

Case No. 6654--Phillip Wright, DBA Vernon Powell Shoe Co. - West of  
Route One, north of Road 273.  
A variance for a second wall sign.

The case was presented by Mr. Rickard. Joseph Phillip Wright, Jr., Dogwood Drive, Salisbury, MD, was sworn in and testified representing the applicants who requested a variance to erect a second wall sign. He stated that the shoe store is located on a corner in the Rehoboth Outlets. The store has two frontages and was notified by the owners of the outlets they need to replace the signage. He stated that both signs at the entrances are identical.

There were no parties present in opposition.

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

Case No. 6655--Annemarie Huber & Julius Updegraff - Southeast of  
Road 270A, Lot 43, Fieldwood Addition to  
Tru Vale Acres.  
A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. Annemarie Huber & Julius Updegraff, N. Ramblewood Dr., Rehoboth, were sworn in and testified, requesting a 5.3' variance from the 10' side yard setback requirement on Lot 43, within Fieldwood Addition to Tru Vale Acres. The variance is requested for a porch that has been on the property since 1984. They are in the process of selling the property and found that the porch is in violation. They stated that there is no problem with the Association pertaining to the variance, and there is a wooded area next to the property on one side and on Lot 41, there is a single-wide manufactured home.

David Eric Spittle, Sea Air Mobile Village, Rehoboth, was sworn in and testified that he is the party who wants to buy the applicants property. He stated that the property beside the applicants is completely wooded and for sale and that there is marshland to the rear of the property. He stated that the applicants had to fill in the property and put in a retaining wall.

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. 6656--Bethel Tabernacle of Clarksville, Inc. - South of  
Route 54, 1/4 mile southwest of Road 365.  
A special use exception for a convalescent home.

The case was presented by Mr. Rickard. Vernon Robert Truitt, Frankford and Kathy Minor, 34 Deer Run Acres, Selbyville, were present in behalf of the application and affirmed. Mr. Truitt stated that they want to establish a home for families in transition. In answer to Mr. Mills question, he stated that he has not heard of any problems from residents in Hidden Acres. He stated that the home will have three bedrooms and a single family residence similar to a Nanticoke modular. It will be for one family. In answer to Mr. Hudson's question, he stated that the Parsonage is on the same lot. By a show of hands there were 12 people present in support of the application.

James McFall and Sally McFall, P. O. Box 232, Ocean View, were sworn in and testified in opposition. They stated that they live two houses away from the applicants property on Route 54. They questioned where the home is to be built on the property. Mrs. McFall testified that they have 20 acres of land and have four horses and expressed concern about a convalescent home.

Mr. Truitt stated that the use will not bother the horses and they do not know about a convalescent home. He stated that the home will be placed on the east side of the property. He stated that they own 3.9 acres with a Church and Parsonage on it. He also stated that it does require a license for the establishment.

Mr. Rickard stated that the type of home requested in the Code and in a MR District, falls under a special use exception for convalescent homes, nursing homes or homes for the aged. In answer to Mr. Mills question, Mr. Rickard stated that the property cannot be used for any other use.

Mrs. McFall asked if the use is nonconforming or will they collect fees or if it is non profit. She presented a petition with signatures against anymore structures on the property.

Mr. Rickard read the petition of opposition presented with five signatures on it: James McFall, Sally McFall, Wesley Calhoun, Hilda Calhoun and Nancy Baugher.

Mabel Margaret Schultz, Box 98, Frankford and Irving H. Williams, R. D. 4, Georgetown were sworn in and testified in behalf of the application. Ms. Schultz stated that she is a neighbor and President of the Atlantic Thrift Shop, and that she objects to the terminology battered women as stated on the application.. She stated that the use is for people who need a place to live and not for battered women. Mr. Williams stated that there is a need for a place for people to stay when a situation arises. He stated that it would be better than a motel.

Ms. Minor stated that she currently does case management in Seaford and she feels there will be no problems. She stated that she is also Executive Director for Interfaith Mission and she helps get people back on their feet. She stated that people have to have approval before the home is occupied and there will be no drugs, smoking or drinking. If this happened the people would be turned out.

Karen Christine Hitchens, Oak Orchard, Millsboro, was sworn in and testified in behalf of the application, stating that she was a battered/abused woman. She previously had an abusive marriage that affected her and her three year old son. She stated that when she was thrown out of her home, she had to go to a motel because she did not have anyplace else to go. She feels her life might have been different if she had, had a place to go such as the applicants are requesting.

Rev. Lee T. Oxford, Milford, affirmed. He stated that he has been Pastor since 1990 with Eagles Nest Fellowship Church and he has had some people stay with him who needed help. He stated that he is in favor and there is a need for a place for people to stay who need help. He asked the Board to vote in favor of the request.

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. Wheatley, seconded by Mr. Hudson and carried unanimously that the special use exception be granted. Vote 5-0.

Case No. 6657--Christine G. Records - Southeast of Road 32, .7  
miles northeast of Road 585.

A variance from the lot width requirement.

The case was presented by Mr. Rickard. Robert W. Nash, Abbott Dr., Milford, was sworn in and testified representing the applicant who requested a 50' variance from the 150' lot width requirement for a new parcel and a 100' variance from the 150' width requirement for the remaining parcel. Mr. Nash stated that people are buying the land to operate a farm and it will not change the complexion of the area. He stated that they want their mother to live on the lot in a manufactured home, which will be replaced at a later date with a modular. He stated that the people buying the property are family members. It is primarily an agricultural area. He stated that everything exists, they just want to sell a parcel of land. There were four people present in favor of the application.

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. 6658--Arthur G. & Annie Mae Bull - North of Road 346, 450  
feet east of Road 531.

A variance from the lot width requirement.

The case was presented by Mr. Rickard. Michael Bull and Lenora Bull, Delmar, MD., affirmed, representing the application. The applicants requested a 17.42' variance from the 150' lot width requirement to create a new lot. They stated that they will live on one parcel and place a new double-wide manufactured home. There will be two separate driveways.

Mr. Rickard stated that there are smaller frontages in the area. He also stated that the manufactured home would have to be at least 24' wide.

Helen Hood, Timonium, MD., was sworn in and testified, stating that when the property is wet there is water that stands, and she is concerned about the septic system. She is not opposed to a house going on the property. She does not want it to become a health hazard.

Mr. McCabe explained that the applicants would have to comply with State regulations pertaining to the septic.

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. 6659--Eagle's Nest Fellowship Church, Inc. - Northeast of Road 233, corner of Route 16.

A special use exception to use manufactured home type structure for classrooms.

The case was presented by Mr. Rickard. Rev. Lee Oxford, Milford, affirmed on Case No. 6656, represented this application. He stated that they would like to use a manufactured home type structure for their classrooms. He stated that they will need the space for at least twelve months.

There were no parties present in opposition.

Motion was made by Mr. Callaway, seconded by Mr. Wheatley and carried unanimously that the special use exception be granted for a period of five (5) years. Vote 5-0.

The Board recessed for five minutes.

The Chairman called the Board back into session at 8:52 P. M.

#### OLD BUSINESS

Case No. 6616 (cont'd)--Herb Woodland, Jr. - West of U.S. Route 113, 4,800 feet north of Road 244.

A variance from the front yard setback requirement for shed sales display.

The case was reviewed by Mr. McCabe.

Mr. Hudson stated that because he was not at the original hearing he would not be participating in the discussion or voting on this case.

Mr. Rickard stated that as the Board had suggested, he went to the site, presenting pictures, and found that the applicant has moved the shed display back 40'.

Mr. Mills questioned if the applicant can now meet the setback without the need for a variance.

Mr. Rickard stated that the applicant does not need a variance now. He stated that the applicant does not need to encroach the front or unload the sheds in the front.

After the discussion, motion was made by Mr. Mills and seconded by Mr. Wheatley that the variance be denied, finding there is no longer a need for the variance, with Mr. Hudson abstaining. Motion was carried with four voting in favor of denial and one abstaining. Vote 4-0.

Case No. 6639 (cont'd.)--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 reviewed by Mr. McCabe.

Mr. Rickard presented pictures, showing that the applicant still has sheds encroaching into the front yard setback. There is a warehouse on the property also. He stated that the applicant had so many things to do and had said he would move when Route 113 was completed. He stated that there are swing sets and sheds that are not in compliance with the 40' front yard setback. The office/house are pre-existing.

Mr. Callaway stated that the applicant can move back and does not need a "0" setback, because he has the room.

After the discussion, motion was made by Mr. Callaway, seconded by Mr. Wheatley and carried unanimously that a variance be granted to display no closer to the front property line than the existing encroachment of the office. Vote 5-0.

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 reviewed by Mr. McCabe.

Mr. Rickard stated that no complaints had been received prior to the public hearing in reference to the applicants decks.

After some discussion, motion was made by Mr. Hudson, seconded by Mr. Mills and carried unanimously that the variances be granted. Vote 5-0.

Proposed Rules of the Board of Adjustment

After some discussion, motion was made by Mr. Callaway, seconded by Mr. Mills and carried unanimously that the Rules of the Board of Adjustment be adopted as corrected on June 29, 1998. Vote 5-0.

Other Business

Mr. McCabe read a thank you card from the Ralph family thanking the Board for their act of kindness at the death of Donald Ralph.

Discussion

There was a discussion pertaining to some of the cases that are being heard by the Board being sent to the Planning and Zoning Commission in reference to parking.

Motion was made by Mr. Wheatley and seconded by Mr. Mills that the meeting be adjourned, with Mr. Callaway voting no. Motion carried with four voting in favor and one voting against. Vote 5-1.

Meeting adjourned at 9:34 P. M.