

Minutes of August 1, 1994

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, August 1, 1994 in the County Council Chambers, Room 115, Courthouse, Georgetown, Delaware.

The meeting was called to order at 6:57 P. M. with Chairman McCabe presiding. The Board members present were: Mr. McCabe, Mr. Mills, Mr. Wheatley, Mrs. Hudson, Mr. Callaway, Mr. Jones-Attorney and Mr. Betts-Zoning Inspector III.

Motion was made by Mrs. Hudson, seconded by Mr. Mills and carried unanimously that the minutes of July 18, 1994 be approved as circulated.

Case No. 5401--Robert I. Kaplan - Southeast side of Terrace Road, 93.5 feet northwest of Route One, Lot 23, Blk. C, Silver Lake Manor.

A variance from the minimum lot size requirement for a duplex and a variance from the height requirement for a fence.

The case was presented by Mr. Betts. Robert Kaplan was sworn in and testified, requesting a variance from the minimum lot width for a duplex and a variance from the height requirement for a fence. The property being Lot 23, in Silver Lake Manor. A 2,760 sq. ft. variance from the 7,260 sq. ft. for a duplex and a variance of 10' from the 30' setback requirement for a 7' fence. Mr. Kaplan's property is zoned commercial and he could put a business with an apartment over it, but would prefer to have a duplex. He will live in part of the duplex and rent the remaining unit. He will provide the four parking spaces needed for the duplex. The fence will provide the privacy needed for a patio he wants to put on the property. A sketch/plan was presented. He stated no visibility will be obstructed.

Armand Girard and Dorothy Girard were sworn in and testified in opposition, requesting to see the plans Mr. Kaplan presented. They voiced concerns about parking. They presented a letter of opposition from a neighbor. They stated the area is all single family. They are not opposed to the fence, and are less opposed to the commercial use. Mr. Girard presented a letter he had prepared.

Mr. Betts read the letter of opposition presented by neighbor, Tim Cabrey.

Charles Hopkins, owner of Sir Boyce's Pub, who abuts up to the rear of Mr. Kaplan's property, was sworn in and testified in opposition to the fence in the rear of the property, because of the vents coming out of his restaurant.

It was explained to Mr. Hopkins that the rear yard fence height is not a problem, the variance is for the front yard fence height.

Mr. Betts read the letters of opposition that were presented.

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 Mrs. Hudson and carried unanimously that the case be tabled.

Case No. 5402--Dolores Fenix Sapienza - South side of Salisbury St., ¼ mile west of Route One.

A special use exception to operate a Bed and Breakfast Inn.

The case was presented by Mr. Betts. Dolores Fenix Sapienza was sworn in and testified, requesting to operate a Bed and Breakfast Inn, in an old (1832) farmhouse, she has moved to the location and restored. She presented a prepared statement and read from it, explaining how she had purchased the property and decided to turn it into a Bed and Breakfast Inn. She stated that parking will be provided. There will be no cooking facilities in the rooms. There will be three bedrooms, and she (Mrs. Sapienza) will live on the premises. A picture of the farmhouse was shown. She feels the use will have an environmental impact on the County. The property will be kept up with on going maintenance. She testified there are 10 Bed and Breakfast Inn's from Lewes to Dewey Beach.

Robert Nowicki was sworn in and testified in opposition, stating he lives in Bay Strand II. He stated that the area is single family. He questioned not being notified by mail about the hearing. Mr. Nowicki read from a prepared statement his opposition and quoted from the Zoning Code in reference to Bed and Breakfast's. He is concerned about the amount of rooms.

Mr. Jones, Attorney, explained that there is no legal requirement to personally notify adjacent property owners. He also explained that a Bed and Breakfast can have up to six rooms.

Mr. Nowicki expressed concern about Federal Wetlands, how many people can occupy a Bed and Breakfast, traffic, fear of more expansion to the area and maintenance of the property. He presented letters from other condo owners in Bay Strand, Mr. Warren McDonald and Judy & Jack Ledebor. Dewey Beach Ordinance's were presented. The applicant's property is near Dewey Beach.

James Pranger of the Seabreeze Property Owners Association, was sworn in and explained where the property is in respect to the applicants. He stated he spoke without prejudice. He has concerns about what is happening and wishes the applicant had shown them her plans.

Marguerite Iandolo was sworn in and questioned the posting of the property, whether in Dewey Beach or not and what could happen if the property were sold to someone else. She expressed concern about the traffic. She stated she is opposed, that the area is a

single family residential community with a dead end street.

Mrs. Sapienza stated she is not located in Seabreeze.

Mr. Betts stated that the Sussex County Tax Maps indicate the applicants property is in Seabreeze.

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 special use exception be granted, finding the use will not substantially affect adversely the uses of neighboring properties, that the adjacent property is condominium on smaller property and it will be in character with Seabreeze uses that are single family.

Case No. 5403--The Preserve Homeowners Association, Inc. - North side of Route One, 3 miles north of the Town of Bethany Beach, within The Preserve.

A variance from the setback requirements for signs.

The case was presented by Mr. Betts. Michael Lynn, applicant, and Suzanne Bagley, Homeowners Board, were sworn in and testified and were represented by Ned Maull, Attorney. The applicants requested a 12' variance from the 25' setback to be 13' for a subdivision sign. They testified that the sign currently sets back too far at the entrance of the development and people pass it and then have to back up. He feels it causes a safety hazard. Pictures were presented and explained. It is not the developments request to have the sign to sell property in the development, because all property is sold. The homeowners want to identify the property and have their guests be able to find it.

Mr. Lynn showed a plan and explained. The sign is now 25' back from the front and he has contacted the State Highway Department who also has sign regulations. Copies of a letter from the State was presented giving their consent.

Mr. Betts read a letter from Robert Beers, President of the Board of Homeowners Association voicing no objections.

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. 5404--James Vander Hoven - West side of Route 514, 450 feet north of Route 509.

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. Kathy Vander Hoven and James Vander Hoven were sworn in and testified, requesting to place a

1986, 14'x 70' manufactured home on property for Kathy Vander Hoven's (daughter) use. She will live in the manufactured home. Mr. Vander Hoven is giving his daughter a parcel of land. They testified the manufactured home will be on the property for 1 to 1½ years, at which time a home is to be built. It was stated that there are other manufactured homes in the area. Mr. Vander Hoven stated that the remainder of his parcels of land are to be put back as one parcel.

Michael Dennis was sworn in and testified in opposition. He stated there are no other manufactured homes on Route 514. He feels a manufactured home will down grade his property. He was not opposed if a stipulation granting a certain amount of time to construct the dwelling and the manufactured home be removed, is given.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the special use exception be granted for a period of five years, with the stipulation that the manufactured home be removed or replaced with a conventional home and the other parcels 26, 27, 28 and 29 be deleted and put as one parcel.

Case No. 5405--Joseph Tinley - North side of Route 18, 475 feet west of Route 527.

A variance from the minimum lot frontage requirement.

The case was presented by Mr. Betts. Joseph Tinley was sworn in and testified, requesting a variance from the minimum lot frontage for a new parcel. He requested a 85.2' variance from the 150' frontage requirement. He will put a dwelling or manufactured home on 9½ acres and has no plans for the remaining parcel.

Jerry Brinkley was sworn in and testified in behalf of the application, stating he is purchasing acreage next to Mr. Tinley and has no objection if it is not going to be subdivided.

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. 5406--William R. Wolter - East side of Route 602, 730 feet southeast of Route 611.

A special use exception to place a manufactured home to be used as an office and for security.

The case was presented by Mr. Betts. William Wolter was sworn in and testified, requesting to place a manufactured home on his property for use as an office and for security, due to vandalism. He showed a plot and explained the location. Mr. Wolter had approval by the Board to place a manufactured home office/security on January 20, 1993 (Case No. 5004), but the unit was not placed and the approval expired.

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 for a period of five (5) years.

Case No. 5407--Geraldine A. Januk & Catherine Meyer - North side of Route 351, at the intersection of Route 349, Lot 16, Blk. B, within Banks Acres.

A variance from the front yard setback requirement.

The case was presented by Mr. Betts. Geraldine Januk and Catherine Meyer were sworn in and testified, requesting a 7' variance from the 30' front yard setback to be 23'. The applicants requested to place a double-wide manufactured home on Lot 16 in Banks Acres, to replace a single-wide unit. They are unable to place the unit further back on the property due to a porch, concrete pad, septic tank and electric pole. They stated that there is no Association in Banks Acres.

There were no parties present in opposition.

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

Case No. 5408--Melissa & Norman Swift - East side of Route 113 at the intersection with Route 323.

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. Melissa and Norman Swift were sworn in and testified, requesting to place a 1969, 12'x 60' manufactured home on their property for their residence. They stated that there are other manufactured homes in the area, the nearest 200 to 300 feet away.

There were no parties present in opposition.

Motion was made by Mr. Mills, seconded by Mr. Callaway and carried unanimously that the special use exception be granted, finding the property is odd in size.

Case No. 5409--Randy Willey - South side of Route 527, $\frac{1}{2}$ mile northeast of Route 18.

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. Randy Willey was sworn in and testified, requesting to place a single-wide manufactured home on property for his use. He testified that there are other manufactured homes in the area.

There were no parties present in opposition.

Motion was made by Mr. Wheatley, seconded by Mrs. Hudson and carried unanimously that the special use exception be granted, finding the property is odd in size.

Case No. 5410--Russell & Laura Hastings - North side of Route 515,
at the intersection with Route 510.

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

The case was presented by Mr. Betts. Laura Hastings was sworn in and testified, requesting to place a 1995, 14'x 70' manufactured home on their property as a second on farm unit. The manufactured home would be occupied by a relative of Mrs. Hastings mother-in-law, who needs assisted care, but will live alone. The person to live in the second manufactured home will not work on the farm. The existing on farm manufactured home is occupied by the applicants daughter.

Mr. Jones, Attorney, explained to the applicant that the Zoning Code states that a manufactured home on farm must be occupied by an immediate member of the family or an employee, which does not apply to the person they want to live on the property.

The Board decided that since the person to occupy the manufactured home needs care, perhaps they should have requested a hardship use.

Mr. Jones stated he needed to do research as to whether the applicants could change their application to hardship without reapplying.

There were no parties present in opposition.

Motion was made by Mr. Callaway, seconded by Mr. Mills and carried unanimously that the case be tabled to give Mr. Jones time to do research.

Case No. 5411--Charles Foster, III-North side of Route 361, east of
the Assawoman Canal, Unit 30, within Bahama
Beach Cottages.

A variance from the rear yard setback requirement.

The case was presented by Mr. Betts. Charles Foster, III was sworn in and requested to have his application withdrawn. He stated that he had built a deck without a permit and he wishes to dismantle the deck and withdraw his application for a variance. His property being Unit 30, within Bahama Beach Cottages.

Mr. Jones, Attorney, read from the Zoning Code pertaining to withdrawing an application and explained to Mr. Foster that he had not requested his withdrawal in the allotted time required, therefore, the Board would have to vote to deny the variance and he could not reapply for one year.

Mr. Foster stated that whatever the Board did would be fine with him.

John Sergovic, Attorney, for Mr. Pepperman who is in opposition, requested the Board deny the application rather than accept the withdrawal. He stated that there were a number of people present in opposition.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the variance be denied and cannot be reapplied

for, for a period of one year.

Case No. 5412--Alfred A. Casapulla - Route 360 at the intersection of Route 357, on the south side of Deer Leap, 350 feet south of Bethany Loop, Lot 336, within The Salt Pond Development.

A variance from the rear yard setback requirement.

The case was presented by Mr. Betts. Alfred Casapulla was sworn in and testified, requesting a 7' variance from the 10' rear yard setback on Lot 336, Salt Pond Development to build a house. Due to the size of buildable area he is requesting relief from the setbacks. There are wetlands adjacent to the applicants property, but he will not encroach into the setbacks on the wetlands.

Mr. Betts read a letter from James A. Fuqua, Attorney for Salt Pond, voicing no objections.

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. 5413--James N. Riddell - East side of Route One, 2 miles south of South Bethany, Lot 17, within Seaside Villas.

A variance from the side yard setback requirement.

The case was presented by Mr. Betts. Wayne Michael Wilkins, builder, was sworn in and testified representing James Riddell who requested a 3'6" variance from the 10' side yard setback to be 6'6", on Lot 17, Seaside Villas, to construct a stairway on his unit. Mr. Wilkins stated that the applicant would like to have the same convenience as others in the development. The stairway would also add another entrance/exit to the home for safety. He stated the stairway would be located on the beach side.

Theresa Baroody, Steven Joseph Shay and Albert Lawrence Dean, Jr. were sworn in, in opposition and were represented by Robert Witsil, Attorney. Mr. Witsil presented proposed Finding of Facts and documents. Mr. Witsil stated that Seaside Villas Condominium documents specifically require the Association approve any alteration or new construction. No evidence was presented by the applicant that he had received the Association approval. The opposition's concerns were about decreased walkway space and less open space for people to use the walkway.

Mr. Shay, Vice President of the Board of Seaside Villas stated that Council did not have plans. They want to keep the properties uniform and do not want the walkway to the beach encroached upon. Pictures were presented. He feels the space between the walkway and stairs would be too narrow and leave no place for people to step-off on to pass on the walkway. He stated that no other units have stairways.

Mr. Dean, owner of the adjacent unit, stated the stairway would affect his property, Unit 18 and neighboring Unit 19. He feels stairways make easy access from one unit to another and is concerned about vandalism. He feels it will adversely affect his property.

Ms. Baroody stated she thought if one unit had steps they all would have to.

Mr. Witsil read a letter of opposition from Mr. & Mrs. David Eddington. Mr. Witsil also stated that the variance request does not meet the requirements of the Code and Delaware Code

Mr. Jones stated that the Board does not recognize condo restrictions. He confirmed what Mr. Witsil presented is correct.

Mr. Wilkins stated that his client had discussed his plans last year. He stated that other places are more narrow than what his client proposes. He thought the Association knew.

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 Mrs. Hudson and carried unanimously that the variance be denied, finding the request does not meet the requirements for the granting of a variance and the use would adversely affect neighboring properties.

Case No. 5414--Rose Ann Justice-Smith - East side of Route 13A,
305 feet north of Route 454A, lot 3.

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. Phyllis Parker, Realtor, was sworn in and testified, representing the applicant who requested to place a 28'x 60' double-wide manufactured home on property she is purchasing. The applicant will live in the manufactured home with her three children. The unit will have a block foundation and concrete steps. She testified that there are other manufactured homes in the area.

There were no parties present in opposition.

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

Case No. 5415--Cornelis & Cornelia Dekievit - West side of Route One, 2 miles south of Route 26, on the east side of Belle Road, 490 feet north of Hassell Avenue, Lot 37, within Bay View Park.

A variance from the side yard setback requirement.

The case was presented by Mr. Betts. John Bennett was sworn in and testified representing the applicant, who requested an 8' variance from the 10' side yard setback requirement on Lot 37, in Bayview Park for a deck that will be more than 4' above grade (property located in flood zone area). The deck with stairs will go up the back. He stated that the Association is in favor of the request.

There were no parties present in opposition.

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. Callaway, seconded by Mr. Mills and carried unanimously that the case be tabled.

OLD BUSINESS

Case No. 5386 (cont'd.)--Thomas H. Shelar - North side of Route 224,
1,600 feet southwest of Route 38.

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 reviewed by Mr. Betts.

After some discussion, motion was made by Mr. Callaway, seconded by Mr. Mills and carried unanimously that the special use exception be denied, finding the use will have an adverse affect on the area, valid opposition presented and would substantially adversely affect neighboring properties.

Case No. 5388 (cont'd.)--Michael Townsend, Sr. - North side of Route
471, ¼ mile west of Route 432, Lot No. 5.

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 reviewed by Mr. Betts.

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

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

Meeting adjourned at 9:51 P. M.