

Minutes of August 4, 1997

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, August 4, 1997 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:03 P. M. with Chairman Callaway presiding. The Board members present were: Mr. Callaway, Mr. McCabe, Mr. Mills, Mrs. Hudson, Mr. Wheatley, Mr. Jones-Attorney, Mr. Rickard-Chief Zoning Inspector and Mrs. Talley-Recording Secretary.

Motion was made by Mr. McCabe, seconded by Mrs. Hudson and carried unanimously that the minutes of July 21, 1997 be approved as circulated.

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

Case No. 6380--Paul & Sandra Neutz - East side of Route 274,
Bay Drive, Lot 10, within Rehoboth Bay
MHP.

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

The case was presented by Mr. Rickard. Margaret Lawson was sworn in and testified representing the applicants who requested a 1.3' variance, from the 20' setback requirement between units in a park, being Lot 10, within Rehoboth Bay Manufactured Home Park. The applicants propose to replace an older manufactured home with a new 26' x 60' double-wide manufactured home and since the new manufactured home is larger than the existing unit, a variance is needed. The applicants are also putting a 8' x 10' shed on the lot.

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. 6381--Larry B. Steele, III - South side of Route 487A,
550 feet west of Bethel.

An appeal of the Directors decision.

The case was presented by Mr. Rickard. Mr. Rickard read an appeal letter from Mr. Steele concerning a permit, No. 162975, issued to Stephen Kary. Mr. Steele believes that the Planning and Zoning Office has not correctly interpreted the setback requirements for accessory buildings, pertaining to Section 115-207, Section 115-208(B) and 115-209(A) of the Sussex County Code.

Mr. Steele stated that if the Board acts in his behalf he feels he should have the filing fee for the applicaiton returned to him.

Robert Witsil, Esquire was present representing Mr. Steele and stated that Mr. Steele waives claim to the application fee being returned. Mr. Witsil stated that the building permit was issued to property immediately west of Mr. Steele's property, where an accessory structure has been placed outside of the setback code.

Larry B. Steele, III, Esquire, was sworn in at this point.

Mr. Witsil stated that Mr. Steele's neighbor, Stephen Kary has two or three existing buildings that do not encroach, but four months ago he placed an accessory building for storage of vehicles 5' from the side property line. Mr. Witsil referenced the Zoning Code stating the 5' setback from the rear and side property line.

Mr. Steele questioned how far the setback has to be. He stated that the accessory structure is not larger than 600 sq. ft. Photographs were presented and explained what is on Mr. Kary's property.

Mr. Witsil questioned Mr. Steele if Mr. Kary farmed the property. In responce, Mr. Steele stated that Mr. Kary farms some of his property. Mr. Witsil stated that the first opposition is to the permit issued for the shed. He stated that the shed should not be permitted to remain. Second, to bring the issue of taking to Council to say how many accessory structures can be put on a property.

Mr. Steele showed a plan of how accessory structures could look lined up, if placed behind a residence. He feels any person can start a parade of accessory buildings on their property.

Mr. Witsil referenced the Zoning Ordinance which states that a accessory structure "may" be located 5' from a side lot line and 5' from a rear lot line.

Mr. Jones asked if it was agreed that the neighbors accessory structure is in the rear yard.

Mr. Steele stated that the accessory structure is behind the residence.

Mr. Jones asked if the Code pertaining to the rear yard has been met.

Mr. Steele responded, yes.

Mr. Mills asked if the applicant was saying to limit the

accessory structures to only two (2) and reason why.

Mr. Steele responded yes and based on the current interpretation of the Code a parade of accessory structures could be started.

Mr. Witsil stated that the present language of the Ordinance says "and" 5' from the side "and" 5' from the rear. That interpretation would be to keep sheds to the very rear and very side. He feels the Code should say "or".

Eric Howard, Esquire was present representing Mr. Kary. Mr. Howard stated that the Ordinance states 5' from the side and rear, it does not state shall or must be. Mr. Howard stated that it is not a logical conclusion to say, put as close as possible. He stated that Mr. Kary has 9+ acres and that Mr. Steele has 18 acres. He stated that there is not a lot of accessory structures squeezed on the property.

Stephen Donald Kary was sworn in and testified that he is the owner of the property being challenged. He stated that he constructed a shed to store vehicles and other equipment, lawn mowers, etc., in. The shed is 12' x 28' in size. He stated that the building permit states 5' from the side and rear property lines. Mr. Kary stated that he would have a shorter shed to place it anywhere else on the property. He stated that the existing buildings were on the property when he bought it. Photographs were presented and explained, also showing Mr. Steele's out buildings. Mr. Kary stated that Mr. Steele has three (3) accessory buildings between his house and Mr. Steele's. He stated that he has no intent to put a line of accessory buildings, as many as will fit, along his property line. He stated that he owns approximately 9.8 acres that faces Broad Creek.

Mr. Mills asked if the accessory buildings are closer to the road than the house.

Mr. Kary responded by saying yes.

Mr. Howard stated that the Ordinance should state always have to be, he does not feel Mr. Steele's interpretation of the Ordinance is right.

Mr. McCabe asked if the setback requirements had been met when the buildings were built.

Mr. Kary stated that he ran a string and to his knowledge they were.

Mr. Mills stated that there is no dispute over the actual distant.

Mr. Steele stated that was correct.

Lawrence B. Lank, Director of Planning and Zoning, was sworn in and testified, that this is one issue that has been on-going since Zoning. He stated that before 1982 the setbacks had been 3' from the side property line and 5' from the rear property line, and it was changed. He stated that as long as he can remember accessory structures have been put in the side or rear yard. He suggested that they should do their own interpretation on how the wording should be done. Mr. Lank stated that the dwelling was built facing the river and the setbacks are from the road which is considered the front. He stated that the permit issued was done correctly, and that the accessory structure is under 600 sq.ft.

Mr. Mills asked if Planning and Zoning determines the front of the property.

It was stated that Planning and Zoning has the right to say which is the front of a property.

Motion was made by Mr. Mills, 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 case be tabled. Vote 5-0.

Case No. 6382--James C. Bailey, Jr. - West side of Route 619,
Lot 3, within Meadow Brook Estates.
A variance from the rear yard setback
requirement.

The case was presented by Mr. Rickard. He read a letter into the record in support of the application from Susan Argo and Robert G. Argo.

James C. Bailey, Jr. was sworn in and testified, requesting a 5' variance from the rear yard setback requirement of 10' for a 12'x 24' pole barn, on Lot 3, within Meadow Brook Estates. Mr. Bailey stated that he wants the pole barn to keep his boat in and it infringes on the rear property line 5'. He stated that other property owners have no problem with it.

Mr. McCabe questioned why the applicant has to be 10' from the rear property line if the pole barn is under 600 sq. ft.

Mr. Lank, sworn in on a previous case, stated that he did not know why the application was before the Board.

Mr. Bailey stated that the violation notice he got stated that he was encroaching.

Mr. Jones, suggested that the application be tabled to give time to take the necessary steps to solve the issue.

There were no parties present in opposition.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the case be tabled until they can clarify the request. Vote 5-0.

Case No. 6383--Harry L. C. & Violet R. Blose - South side of Route
16, Bay Shore Drive & Adams Avenue, Lot
10, within Broadkill Beach.

A variance from the front yard setback
requirement.

The case was presented by Mr. Rickard. Mr. Rickard read correspondence from Mr. Blose about the request.

Harry Blose was sworn in and testified, requesting a 13' variance from the front yard setback of 30' to build over an existing porch. Mr. Blose stated that the violation was from Mr. Bunting, Zoning Inspector, informing him that if the variance is denied, the structure must be removed and that all flood zone setback requirements must be met. Mr. Blose stated that he had submitted a plot plan. He stated that a manufactured home had been on the property for 20 years facing the creek. After pilings were driven to face the creek, he was determined that the front of the property is the road and not the water. His house will face the creek. The previous manufactured home faced the creek. Mr. Blose stated in answer to Mr. Jones, that he believed the home actually fronted the creek and that he is 17' from Adams Ave.

Mr. McCabe questioned how far back the neighboring houses are from his property.

Mr. Blose stated that there is not a house around that meets the setback.

Mr. McCabe questioned if he is going to clean-up all of the

delapidated buildings.

Mr. Blose stated that he will not be as close as the previous structure and that the old trailer will be torn out, that he is presently using it for storage.

Scott Hilligoss, contractor, was sworn in and testified in opposition. He stated that he had Mr. Wingate do his staking of his property. He stated that the first permit the applicant got was for piling only and the second permit he has is for remodeling. Mr. Hilligoss stated that the applicant is building all new construction. He questioned the septic and well location. He stated that he had to remove old buildings before he built and that Mr. Blose staked his own pilings. He stated that he is not opposed to the variance, but to how Mr. Blose is doing the work. He questioned how Mr. Blose can do his own staking and be permitted to leave everything on his property, when he could not. He feels the Board is being misled, because he, Mr. Blose, has not gotten all of the proper permits. He feels general contractors should be treated the same when they get permits.

Mr. Rickard stated that the permit was given for remodeling and that any misleading done was by the applicant.

Mr. Hilligoss stated that the applicant was advised by Mr. Betts of the Planning and Zoning Office to stop work and he continued working.

Mr. Blose in rebuttal stated that his father is ill and his last request is to see a new beach house on the property. Mr. Blose stated that he will see a new beach house. He stated that he has contacted DNREC about septic. Mr. Blose stated that there will be a 10'x 30' enclosure under the house. It is where he is living now during the construction.

Mr. Hilligoss stated that Mr. Blose had opposed his variance request.

Mr. McCabe questioned what the area underneath the house will be used for when the house is completed.

Mr. Blose stated that it will be used for storage and not for living quarters.

Mr. Jones stated that the front yard is on Adams Ave. and not the marsh, that Planning and Zoning was correct on that.

Motion was made by Mr. McCabe, seconded by Mr. Mills and carried unanimously that the variance be granted, with the stipulation that the other buildings on the property and the old

trailer be removed within one (1) year upon completion of the construction, and that Planning & Zoning look into other issues and they be cleared up. Vote 5-0.

Case No. 6384--Demarie Enterprises and Associates, Inc. - East side of Route 374, 2,000 feet south of Route 54, Lot 113, within Hidden Acres II.

A variance from the rear yard setback requirement on a through lot.

The case was presented by Mr. Rickard. Charlie Coffman, Land Surveyor, was sworn in and testified, representing the applicants who requested a 10' variance from the 40' rear yard setback on a through lot, on Lot 113, within Hidden Acres II. Mr. Coffman stated that he represented the applicants on Lot 113 and Lot 114 on Case No. 6385, following this case. He stated that the setback request is the same for both cases. He stated that the applicants are compressed by the old setbacks and the property is not sellable. He stated that most people now want larger lots to place double-wides on, and that a 14' manufactured home is too wide.

Mr. McCabe asked that since both Case No. 6384 and 6385 were for the same amount of variance, the testimony be incorporated into both cases.

Mr. Rickard read Case No. 6385's request into the record.

Mr. Jones questioned if the evidence for both cases is the same.

Mr. Coffman replied that it was.

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 for Case No. 6384 and Case No. 6385. Vote 5-0.

Case No. 6385--Demarie Enterprises and Associates, Inc. - East side of Route 374, 2,000 feet south of Route 54, Lot 114, within Hidden Acres II.

A variance from the rear yard setback requirement on a through lot.

The case was presented with Case No. 6384 by Mr. Rickard. Charlie Coffman sworn in on Case No. 6384 represented this case also. The cases were heard together on Case No. 6384 and all

testimony heard on Case No. 6384 is incorporated into this case. The applicants requested a 10' variance from the 40' rear yard setback on a through lot, being Lot 114, within Hidden Acres II.

There were no parties present in opposition.

Motion was made by Mr. McCabe, seconded by Mr. Wheatley and carried unanimously that the variance for Case No. 6384 and Case No. 6385 be granted. Vote 5-0.

Case No. 6386--James E. Swartz, Jr. - South side of Route 277,
Woodland Circle, Lot 32, Blk. A, Sec.
2. within Angola By The Bay.

A variance from the rear yard setback
requirement.

The case was presented by Mr. Rickard. Jack E. Swartz, Jr. was sworn in and testified, explaining that the name on the application should be Jack and not James Swartz, Jr. Mr. Swartz was represented by Daniel Myers, Attorney. Mr. Swartz requested a 8.46' variance from the required rear yard setback of 20'. Mr. Myers stated that two years before the applicant's house was built the rear yard setback permitted was 10'. He stated that the house has changed hands five times since that time and when Mr. Swartz purchased the house the encroachment was discovered.

Mr. Swartz presented pictures. He stated that there are trees and a septic in the front yard that would have to be removed to move the house forward.

William Ferreri, Realtor, was sworn in and testified in behalf of the application stating that the house does not harm the character of the neighborhood.

Mr. Myers stated that his client Mr. Swartz, did not create the hardship and he is requesting the minimal amount of variance needed.

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. Vote 5-0.

Case No. 6387--Frank Sekscinski - West side of Route 357, 1/2 mile
south of Route 358, Lot 92, within Cedar
Landing.

A variance from the front yard setback requirement.

The case was presented by Mr. Rickard. Mr. Rickard read a letter from Elaine Banning, Nanticoke Homes Sales Representative, in support of the variance. She stated that an honest mistake had been made.

Frank Sekscinski, Jr. was sworn in and testified, requesting a 3' variance from the 30' front yard setback requirement to be 27'. Pictures were presented and a letter from S. F. Mancari, President of Cedar Landing Homeowners Association, in support of the application.

Mr. Rickard read the letter from the Homeowners Association into the record.

Charlie Coffman sworn in on Case No. 6384 and 6385 testified in behalf of this application also.

Mr. Seckinski stated that 75% of the homes in Cedar Landing Development have a variance.

Mr. Rickard stated that Teal Court is considered the front of the property

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. 6388--Terrance Shannon & James Dreibelbis - South side of
Route 277, Bridgeway Drive West, Lot 22,
within Angola By The Bay.

A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. There were no parties present representing this case.

The Chairman held the case open until the end of the public hearings to give the applicants or a representative time to appear.

At the conclusion of the public hearings, the Chairman referred back to this case. There were no parties present representing the case, and no interested parties present.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the variance be denied, due to lack of representation and the applicants cannot reapply for a similar application for the period of one (1) year. Vote 5-0.

Case No. 6389--James D. Adkins and Carl M. Anderson - North side of Route 9, 470 feet southwest of Route 5.

A special use exception to operate a bed and breakfast facility.

The case was presented by Mr. Rickard. Carl M. Anderson was sworn in and testified, requesting to operate a bed and breakfast facility. They will have three (3) rental rooms, and there will be no individual cooking facilities in the rooms. He stated that adequate parking will be provided.

There were no parties present in opposition.

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

Case No. 6390--Bonnie R. Simkins - Northeast side of Route 261, Waterview Dr., Lot 136, within Sweetbriar MHP.

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

The case was presented by Mr. Rickard. Mr. Rickard read letters of support from Michael S. & Joanne Widner and Dorothy Grove.

Annette Simpkins Annenberg, sister of the applicant, was sworn in and testified representing the application. The applicant requested a 6' variance from the 20' setback requirement between improvements for an accessory structure. She stated that the shed was put on the property approximately one year ago and that she had a permit.

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. 6391--John and Marsha Chichester - South side of Route 5, Lot 274, within Riverdale Subdivision.

A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. Mr. Rickard read a letter of support from Kenneth S. Clark, Sr., owner of the Subdivision.

John Chichester was sworn in and testified requesting a 7' variance from the 10' side yard setback requirement, to add a bedroom addition to his existing manufactured home. He stated that the manufactured home is only 3' from the side property line now and he wants to continue on the same setback line. He will be no closer than what exists.

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. Vote 5-0.

Case No. 6392--Rosetta M. Billings Causey - South side of Route 456, 1,277 feet west of Route 62.

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

Mr. Jones, Attorney, did not participate in this case due to a conflict of interest.

The case was presented by Mr. Rickard. Rosetta M. Billings Causey was sworn in and testified, requesting to place a third manufactured home on her property for a rental unit. She stated that the existing manufactured homes on the property are hers and her mothers, but her mother is deceased and her son will live in her (mother's) unit.

Mr. Mills explained to the applicant that the Board cannot act on a manufactured home for a rental, that the only way they can act on a third manufactured home, would be as an on farm unit for an employee of the farm or immediate family member.

Mr. Lank, sworn in on a previous case, stated that the applicant had been into the Planning and Zoning Office on other occasions and he had discussed her options with her.

Ms. Causey asked if she could replace her mother's unit with a newer one.

Mr. Mills responded that the unit could be replaced.

Ms. Causey stated that the two existing manufactured homes have been on the property since 1973 and 1980. She will have a total of two (2) manufactured homes on the property of 60 acres.

There were no parties present in opposition.

Motion was made by Mr. McCabe, seconded by Mr. Mills and carried unanimously that the special use exception be denied. Vote 5-0.

OTHER BUSINESS

Case No. 5985--Sylvia Pruitt - South side of Route 505, 1,407 feet west 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.

A request for a time extension.

Mr. Rickard stated that he had received a letter requesting a one year time extension for Case No. 5985. The time for the placement of the manufactured home is due to run out in September.

After some discussion, motion was made by Mrs. Hudson, seconded by Mr. Wheatley and carried unanimously to grant a one (1) year time extension to Case No. 5985. Vote 5-0.

Case No. 5862--Joseph J. Balsamo - North side of Virginia Ave., 105 feet east of Route 1, Lot 5, Sec. D, Fenwick Island.

A variance from the lot size requirement for a duplex.

Mr. Rickard stated that he had received a letter requesting a one year time extension for Case no. 5862. The time for the variance request ran out in May.

After some dicussion, motion was made by Mr. McCabe, seconded by Mr. Mills and carried unanimously to grant a one (1) year time extension to Case No. 5862. Vote 5-0.

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

Meeting adjourned at 9:16 P. M.