

Minutes of August 7, 2000

The regular meeting of the Sussex County Board of Adjustment was held Monday evening August 7, 2000, at 7:00 P.M., in the Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00 P.M., with Chairman Callaway presiding. The Board members present were: Mr. Callaway, Mr. McCabe, Mr. Wheatley, Mr. Mills, Mr. Hudson, with Mr. Berl – Assistant County Attorney, Mr. Oates – Planning and Zoning Inspector, and Ms. Jackson- Recording Secretary.

Motion by Mr. McCabe, seconded by Mr. Wheatley, and carried unanimously to approve the Revised Agenda as circulated.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of July 17, 2000 as circulated.

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

Case No. 7200 – Joseph Martellini – south of Road 382, east side of Wanmar Court, Lot 3A, within Wanmar Lake Subdivision.

A variance from the west side yard setback requirement.

Mr. Oates presented the case. Joseph Martellini was sworn in and testified requesting a 1-foot variance from the required 15-foot west side yard setback requirement for an existing dwelling; that 1 year ago his neighbor had his lot surveyed and saw that his neighbors stakes were closer than before, then realizing that his dwelling was in violation; that the dwelling was built 9 years ago; and that he submitted pictures to the Board.

Mr. Mills questioned the applicant about the height of a deck that was built on the west side of the dwelling and the applicant was not sure of the height.

The Board found that no parties appeared in opposition to the application.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the case be taken under advisement. Vote carried 5 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Motion was made by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the variance be tabled until August 28, 2000 so that a Planning and Zoning Inspector can go to the property and measure the height of the deck. Vote carried 5 – 0.

Case No. 7201 – Georgia R. Boone - north of Greenley Avenue (Route 38), 600 feet east of Road 213.

A variance from the east side yard setback requirement.

Mr. Oates presented the case. Georgia Boone was sworn in and testified requesting a 3-foot variance from the required 15-foot east side yard setback requirement for a bedroom addition; that the size of the addition will be a 12'x14'; and that there is no room in the rear of the property to build the bedroom addition because of a septic system and garage.

The Board found that no parties appeared in opposition to the application.

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

Case No. 7202 – Myra Karlik – southeast of Road 265A, 1,650 feet northeast of Route One.

A variance from the southwest side yard setback requirement.

Mr. Oates presented the case. Myra Karlik was sworn in and William E. Moore, Attorney, was present on behalf of the applicant and testified requesting an 8-foot variance from the required 15-foot southwest side yard setback requirement for an open deck; that they submitted a brochure containing a copy of the building permit, public notice, hand drawing of the property, plot plan, and photographs; that she bought the home for her daughter; that she has spent \$40,000 remodeling the home and is not finished; that Bird Construction remodeled the home, built the deck, and obtained the permits; that the deck was built in the same footprint, but 8 inches smaller; that the only entrance to the home is from the front and southwest side yard; that the rear of the property is wooded; and that when the final inspection was done, she was notified of the setback violation.

The Board found that no parties appeared in opposition to the application.

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

Case No. 7203 – George and Janice Smith – west of Route One, north side of Siham Road, Lot B-2, within Whispering Pines Mobile Home Park.

A variance from the separation requirement between units in a mobile home park.

Mr. Oates presented the case. Ms. West, Manager of Whispering Pines, was sworn in and testified requesting a 6-foot variance from the required 20-foot separation requirement between units in a mobile home park for a deck; that the wife of the contractor obtained the permit and told them that the setbacks were 10-foot; that the contractor, Delaware Maintenance, built the deck in March or April of 2000; and that the contractor has been doing work in Sussex County for several years.

Robert Johnson, neighbor, was sworn in and testified requesting that he is in favor of the application; that the manufactured home and lot is an asset to the community; and that the setback violation was done by accident.

Mr. Oates stated that there have been similar variances granted in that area.

The Board found that no parties appeared in opposition to the application.

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

Case No. 7204 – Roberta C. Brennan – west of Road 449, 2,642 feet north of Road 450.

A special use exception for a commercial kennel and a variance from the setback requirements for a commercial kennel.

Mr. Oats presented the case. Roberta Brennan was sworn in and testified requesting a special use exception for a commercial kennel and a 200-foot variance from the required 200-foot setback requirement from all property lines for any open runs, cages, pens or kennels; that she submitted pictures to the Board; that she now has 9 dogs instead of 16; that she has had 6 dogs put to sleep; that she has been in court a few times; that she had an open house for her neighbors on August 6, 2000; that her dogs are debarked with the exception of 3 dogs; that they do not go outside until 8:30 A.M. and are in by dawn; that her whole yard is enclosed with a fence; that the dogs do not bother anyone; that she has been a hobby breeder since 1947; that she does not plan on breeding anymore dogs; that she just wants her 12-13 year old dogs to live out their lives; that she has spent thousands of dollars trying to keep her dogs; that the dogs sleeping quarters are in the garage and that they take turns sleeping in the home; that she does not throw her dogs carcasses or feces in a dumpster; that when they pass away she has them cremated;

that the only time that she has sold dogs were if they were from a litter; that she has not done that in 5 years; that her dogs are friendly, therapy dogs, and good citizen dogs; that they do not run loose; that there are no odors, noise and dust from the dogs; that she would like to get down to 4 dogs; that she had never boarded dogs; that she has a Delaware kennel license; that her dogs are licensed and tattooed; and that she has abided by what she thought was the laws.

Barbara Furbush was sworn in and testified that she is in favor of the application; that she has been a friend of Roberta for 20 years; that they both have shown dogs; that Roberta was really excited about moving to Delaware; that she has been a President of Dog Clubs and a Judge in Europe; that Roberta has not bred any dogs since she has been in Delaware; that she has a nice home; and that she takes good care of her dogs.

Robert Short was sworn in and testified that he is in favor of the application; that he lives directly across the road; that he has 3 dogs; that his dogs make more noise than Roberta's dogs; that everything Roberta has stated is true; and that it does not decrease his property values.

Raymond Oullette was sworn in and testified that he is in opposition to the application; that she needs to abide by the laws; that he owns 12 acres of land that backs up to her land; that the dogs do not bother him, but thinks she does not need all of those dogs; that it adversely affects property values; that he has lived here 20 years and has abided by the laws; that this problem has been going on since January 1999; and that he did not attend the open house because he was not invited.

Arthur Leigh was sworn in and testified that he is in opposition to the application; that her dogs could be a problem with breeding them and the noise; that the area will probably some day become a business area; that he has no problems with the existing dogs; and that he was not aware of the open house.

Jean Larmore was sworn in and testified that she is in opposition to the application; that she lives next door to Roberta; that she hears and sees everything that goes on; that she thinks Roberta will still breed her dogs; that Roberta has more dogs than she says she has; and that she needs to abide by the laws.

Norma Jean Hudson was sworn in and testified that she is in opposition to the application; that she plans on building a new home next to Roberta; that she likes Roberta, but does not like the dogs; that there will be a problem with odors from the dogs; and that she has concerns with how feces, afterbirth, and dead dogs will be disposed of.

Alan Hudson was sworn in and testified that he is in opposition to the application; that he has lived in the area for 65 years, that there has never been a problem with dogs in the area until 2 years ago; that there is a lot of barking from the dogs; and that the applicant needs to abide by the laws.

Mr. Oates read a letter to the Board in opposition to the application from Douglas Taylor.

Motion By Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be taken under advisement. Vote carried 5 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Motion was made by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the case be re-opened. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the special use exception and variance be tabled until August 28, 2000. Vote carried 5 – 0.

Case No. 7205 – Harry and Joyce Backus – northeast of Road 341, north side of West Lagoon Road, Lots 47 & 48, within Dogwood Acres Subdivision.

A variance from the west side yard setback requirement.

Mr. Oates presented the case. Harry Backus was sworn in and testified requesting a 3-foot variance from the required 5-foot west side yard setback requirement for a screened in shed; that a 5'x16' concrete pad exist; that he will use it for cleaning fish; and that he also has a shed on his property that has been there for 10 years.

The Board found that no parties appeared in opposition to the application.

Motion by Mr. McCabe, seconded by Mr. Wheatley, and carried unanimously that the variance be granted. Vote carried 5 – 0.

Case No. 7206 – Perdue Farms – south of Route 24, 1,500 feet east of Holly Oak Road.

A special use exception to use a mobile-home-type structure as a temporary office.

Mr. Oates presented the case. Joe Dixon, representing Perdue Farms, was sworn in and testified requesting to place a mobile-home-type structure as a temporary office; that he submitted a plot plan to the Board; that Perdue Farms has an agreement with

Mountaire Farms; that they are sharing an office with Mountaire Farms; that they need this structure for their manager and office staff; that the size of the structure is a 24'x60'; and that the structure will be 29-feet from the extraction plant that was built in the mid 1950's.

Mr. Oates read a letter to the Board in favor of the application from Anna Showell.

The Board found that no parties appeared in opposition to the application.

Motion by Mr. Wheatley, seconded by Mr. Mills, and carried unanimously that the special use exception be granted for a period of 3 years. Vote carried 5 – 0.

Case No. 7207 – Eugene Risher – west of Anchor Road, Lot 77, within North Shores Subdivision.

A variance from the front yard setback requirement.

Mr. Oates presented the case. Eugene Risher was sworn in and Daniel Meyers, Attorney, was present on behalf of the applicant and testified requesting a 9.7-foot variance from the required 30-foot front yard setback requirements for a porch; that the home was built in the 1960's; that the porch was built in 1990; that the lot is oddly shaped; that the home is on a cul-de-sac; that Mr. Risher renovated the home in 1990; that he was just told recently about the violation; that there are no objections from the neighbors; that there is very little traffic; that it is a private community; that the rear of the property borders a canal; that variances have been granted in that area; that the building contractor and the applicant were unaware of the violation; and that the builder, D.F. Quillen, obtained the permit.

The Board found that no parties appeared in opposition to the application.

Motion by Mr. Hudson, seconded by Mr. McCabe, and carried unanimously that the variance be granted. Vote carried 5 – 0.

Case No. 7208 – Barbara Geier – northeast of Road 349, intersection Philadelphia Avenue and Tuscon Street, Lot 1136, within Banks Acres Subdivision.

A variance from the southeast side yard setback requirement.

Mr. Oates presented the case. Barbara Geier was sworn in and Susan Weidmann, Attorney, was present on behalf of the applicant and testified requesting a 1.4-foot variance from the required 5-foot southeast side yard setback requirement for a detached

garage; that Barbara purchased the property on June 2, 2000; that 2 days before settlement she learned of the violation; that the Realtor discovered the problem; that the garage is a permanent structure with a concrete foundation; that there is no other place on the land to put the garage; that it would be costly to move; that she does not know who placed the garage or how long it has been there; that the manufactured home has been there since 1996; that the garage is currently being used for storage; that the shed shown on the survey, is an outside shower that is being removed; and that there is a walkway between the home and the detached garage.

The Board found that no parties appeared in opposition to the application.

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

Case No. 7209 – Richard K. Wilson – northwest of Road 485, northeast of U.S. Route 13.

A variance from the lot width requirement.

Mr. Oates presented the case. Richard Wilson was sworn in and testified requesting a 75-foot variance from the required 150-foot lot width requirement; that there would be no way that a home could be built without the variance; and that no other variances should be needed if this variance is granted.

The Board found that no parties appeared in opposition to the application.

Motion by Mr. McCabe, seconded by Mr. Wheatley, and carried unanimously that the variance be granted with Mr. Mills abstaining. Vote carried 4 – 0 – 1.

Case No. 7210 – David and Sandra Godwin – east of Road 213, 1,400 feet south of Route 113.

A variance from the setback requirement for a poultry house.

Mr. Oates presented the case. David and Sandra Godwin were sworn in and testified requesting a 28-foot variance from the required 200-foot requirement from the next door dwelling not on the property for a poultry house on the southeast side of the property instead of a 27-foot variance; that they have 6.9 acres of land; that they can meet the 50-foot from all property lines; that the size of the poultry house is a 51'x500'; and that their neighbor is in favor of the application.

Wayne Brittingham, housing manager for Perdue Farms, was sworn in and testified that he is in favor of the application; that the applicant asked him to go and check his property to make sure that he would be able to place the poultry house; that he gave the applicant an information packet that also contained the Zoning Ordinance; and that Perdue likes to be a good neighbor with everyone.

Mr. and Mrs. Price were sworn in and testified that they are in opposition to the application; that they have concerns about run-off, noise, and odors from the poultry house; that it will decrease their property value; and that the poultry house will be directly in their back yard.

Mr. Mills stated to Mr. Price that the poultry house must meet the 200-feet from any dwellings not on the property; and that Mr. Price lives across the street from the proposed use, which does meet the 200-feet from his dwelling.

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

Case No. 7211 – Paul Scott Allen – west of Road 350, southwest side of Lake View Drive, Lot 25, within Banksville Park.

A variance from the front yard, rear yard, west side yard and east side yard setback requirements.

Mr. Oates presented the case. Paul Scott Allen was sworn in and testified requesting a 4-foot rear yard variance and a 3-foot west side yard variance for a 11'x6' shed, a 6-foot west side yard variance for a 21'x45' garage, a 3-foot west side yard variance and a 21-foot front yard variance for a 11'7" x 28' shed, a 3-foot rear yard variance and a 3-foot east side yard variance for a 10'x20' shed; that the 10'x20' shed is a replacement for a shed that was there since 1974; that he put it in the same footprint; that he was limited with the setbacks because of a very large oak tree; that the 11'x6' shed was limited also because of a well and a maple tree; that Powell Company started building the 11'7"x28' shed 2 years ago; that it took them 1 ½ years to finish the first floor; that they are suppose to finish the garage by October 15, 2000; that Jack Powell obtained the permit and thought the setbacks were 5-foot from the property lines; that he is the third owner of the property; and that the entire development is in violation.

Mary Miele was sworn in and Ray Tomasetti, Attorney, was present on her behalf and testified that she is in opposition to the application; that they submitted pictures to the Board; that Mary has owned the property since 1997; that she is waiting for a job transfer; that on May 30, 2000 the County had notified her that her shed was in setback violation; that on June 15, 2000 she had her shed moved to comply; that the applicant has created a hardship; that when he replaced the shed he should have placed it correctly; that she is in opposition only to the 2 sheds placed in the rear of the property; that the applicant should move the 10'x20' shed to comply; that the 6'x11' shed should be torn down; that she has concerns with the damage to her fence; that the roof of the 10'x20' shed is almost on top of her fence; that rain spills off the roof of the shed and onto her fence; and that the drawing the applicant submitted of his property incorrectly shows the dimensions of the buildings and the incorrect distances from the property lines.

Motion by Mr. McCabe, seconded by Mr. Wheatley, and carried unanimously that the variances be tabled until August 28, 2000, so that a Planning and Zoning Inspector can go to the property to measure the dimension of the buildings and the setbacks from the property lines. Vote carried 5 – 0.

Case No. 7212 – Claudia R. Branco – northwest of Road 312, Oak Waw Avenue, Lot 49, within Riverdale Park.

A variance from the side yard setback requirement.

Mr. Oates presented the case. Claudia Branco was sworn in and testified requesting a 7-foot variance from the required 10-foot side yard setback requirements for a screen porch on a pre-existing concrete slab; that she submitted letters to the Board from neighbors in favor of the application; that she has owned the property for 3 years; and that the home has been there for more than 30 years.

The Board found that no parties appeared in opposition to the Board.

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the variance be granted. Vote carried 5 – 0.

Case No. 7213 – David Gene Wille – south of Route 54, south of Taft Avenue, Lot 10, within Cape Windsor Subdivision.

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

Mr. Oates presented the case. David Wille was sworn in and testified requesting a 5-foot variance from the required 10-foot east side yard setback requirements and a 1-foot variance from the required 20-foot rear yard setback requirements for a manufactured home; and that he would like to replace his exiting home with a new home in the same footprint.

Mr. Oates read a letter to the Board from Bernard Bowerman with the Cape Windsor Community Association in favor of the application.

The Board found that no parties appeared in opposition to the application.

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously that the variances be granted. Vote carried 5 – 0.

Case No. 7214 – Vaughn and Cindy Esham – west of Road 561, 2,650 feet south of Road 554.

A variance from the southeast side yard setback requirement.

Mr. Oates presented the case. Cindy Esham was sworn in and testified requesting a 13-foot variance from the required 15-foot southeast side yard setback requirements for a 30'x40' detached garage; that the garage was built by R.L. Ewing Contractor; that he also obtained the permit; and that she did not know it was in violation until it was inspected.

By a show of hands 1 party was in favor of the application.

Leroy Allen was sworn in and testified that he was in favor of the application, but had concerns that the garage might be placed over his property line.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the variance be tabled until August 28, 2000. Vote carried 5 – 0.

Meeting adjourned 10:05 P.M.