

## Minutes of August 17, 1998

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, August 17, 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. Hudson, Mr. Mills, Mr. Wheatley, Mr. Berl – Assistant County Attorney, Mr. Rickard – Chief Zoning Inspector, and Mr. Lank – Director.

Mr. McCabe asked if there were any amendments or additions to the revised agenda. Hearing none, motion was made by Mr. Mills, seconded by Mr. Callaway, and carried unanimously that the revised agenda for August 17, 1998 be adopted as circulated.

Motion was made by Mr. Wheatley, seconded by Mr. Mills, and carried unanimously that the minutes of August 3, 1998 be approved as circulated.

Mr. Berl explained how the Board of Adjustment meeting is conducted and the procedures for hearing the cases.

Case No. 6675—KINGS CREEK ASSOCIATES – North of Patriots Way, Northeast Intersection of Queens Court, Lot 225, Kings Creek.

A special use exception for temporary use of residential dwelling structure as a real estate sales office.

The case was presented by Mr. Rickard. Jack Daggett was sworn in and testified on behalf of Kings Creek Associates who are requesting to use an existing garage attached to a dwelling owned by Kings Creek Associates as a sales office for lots within Kings Creek Country Club Residential Community.

Mr. Daggett presented a packet of information to the Board which included a picture of the dwelling and landscaping; a promo map of Kings Creek Country Club Residential Community; and a copy of a recent amendment to the restrictions for the Kings Creek Country Club Residential Community.

Mr. Daggett stated that he is a real estate agent for RE-MAX Realty Group and project manager for Kings Creek Associates; that he is requesting approval to utilize the garage as a sales office in compliance with the referenced amendment to the deed restrictions; that originally a manufactured home sales office was approved and opened in 1989 on common grounds owned by Kings Creek Associates; that in 1996 the sales office was relocated to the attached garage on lot 225; that an application was filed a few months ago, but had to be withdrawn; that the deed restrictions were recently amended to permit Kings Creek Associates to maintain a sales office on any lot in Kings Creek Country

Club Residential Community which it owns, for the purpose of selling the remaining lots within the Community; that 90% of the sales for the Community have been performed at the sales office; that "OPEN" flags are displayed on the site during business hours; that no business signs exist on the site; that the location provides an easy access for clients; that business traffic is low, typically 2 to 5 vehicles per week; that claims recently made by representatives of other real estate firms about sales of homes outside of the Community from the site are false; that he has a second office in Rehoboth for sales outside of the Community; that the sales office has operated since creation without complaints; that the dwelling is occasionally occupied by Mr. Akras, the developer; that 20 lots remain to be sold; and that it could take 1 to 3 years to sell out all of the lots.

Mr. Rickard stated that 114 letters and petitions have been received in support, and summarized the comments.

Mr. Rickard stated that 31 letters and petitions have been received in opposition, and summarized the comments.

Edgar Skeen, a resident of Kings Creek, was sworn in and testified in support, stating that the site is well maintained and is an asset to the community.

Ronald Borders, a resident of Kings Creek, was sworn in and testified in support, stating that he built the dwelling; that the house belongs to the developer; that the developer does not intend to keep the sales office on the site permanently; that Mr. Daggett is a good neighbor and a full time resident in the Community; and that minimal traffic is created by the sales office.

Joseph Comorat, a lot owner in Kings Creek, was sworn in and testified in support, stating that the site is well landscaped and maintained; that Mr. Daggett would do nothing to harm the Community; that there are no traffic problems created by the sales office; and that the sales of lots will assist and improve the membership of the Country Club.

Dorothy Dayton, an employee for Mr. Daggett, was sworn in and testified in support, stating that there are no general real estate transactions performed on the site that relate to properties outside of the Community.

Robert Witsil, Attorney, stated that he was present, on behalf of the Board of Directors of the Kings Creek Homeowners Association, to be assured that the recently amended deed restrictions are met; that a recent newspaper advertisement concerned many of the residents in the Community since it referenced that the RE/MAX Realty Group had moved, with sales by Jack Daggett at the sales office at Kings Creek Country Club and rentals by Susan Daggett at the Rehoboth Beach sales office; that another advertisement,

sent to homeowners of Kings Creek, offered re-sale of homes within the Community and does not comply with the recently amended deed restrictions.

Mr. Witsil submitted the two advertisements for the record.

Mr. Witsil requested stipulation that only lots within holdings of the developer be permitted to be sold at the sales office; that no signage, other than the 4 existing "OPEN" flags, be permitted; and that the use should be limited to 2 years, if approved.

Don Smith, a resident of Kings Creek and President of the Board of Directors, was sworn in and testified that the Board dealt with Mr. Akras in negotiating the deed restrictions, and that the use should be limited to developer lots only, as stipulated by the deed restrictions.

Kevin Conlon, a resident of Kings Creek, was sworn in and testified that the applicants have been selling lots in the Community for 9 years; that the need for a special use permit is to afford the developer with a temporary place to conduct business while the land is under development; that traffic is a concern within the Community; that the Community has matured to 95 single family homes and 12 homes under construction; that over 89% of the lots have been sold; that the need for a sales office has long past; that the stipulation that only developer lots will be sold is unrealistic, and cannot be properly controlled or monitored; that the original approval for the manufactured home sales office had expired after 2 years; that the sales office alters the essential character of the neighborhood with its "OPEN" flags since its provides the appearance that the neighborhood is incomplete and still underway; that the primary issue is commercial use of a residence within the Community; and that if no decision is made this evening, the sales office should be closed until a decision is made.

Mr. Conlon submitted his written comments for the record.

Mr. Daggett, in rebuttal, stated that he and Mr. Akras worked with the Board of Directors in preparation of the deed restrictions; that he questioned Mr. Conlon's traffic concern since he only has 2 to 5 clients per week; that the majority of the traffic is going to or from the Country Club; that Mr. Witsil's reference that the remaining lots are less desirable is not appropriate since the lots are scattered throughout the Community; and that he can accept approval for 2 years, but prefers 3 years.

Mr. Berl questioned if the reference that lots outside of the Community could not be sold from a development sales office was a State law.

Mr. Daggett stated that he understood that he could not sell lots outside of the Community, but was not sure if it was a State law.

Mr. Witsil, in rebuttal, stated that a real estate ruling does not exist, and that the Board of Directors has the right to take legal action if sales take place on outside lots.

Sally Wood, a resident of Kings Creek, was sworn and testified that no one in the Community opposes Mr. Daggett, personally or in the way he operates the business, but oppose the continuation of the sales office within the Community; that a site within the Community has been utilized for a sales office for 9 years, some of which were in violation; and that a commercial sales office does not belong within the Community.

Francis Collins, a resident of Kings Creek, was sworn in and testified that he went to the sales box in front of the sales office and found listings for lots for sale, and lots and homes for re-sale.

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.

The Board discussed the points and issues raised during the public hearing.

Motion was made by Mr. Mills, seconded by Mr. Wheatley, and carried unanimously that the special use exception be granted with the stipulations that sales be limited to developer lots only; that no re-sales or general sales of lots located outside of the Community shall be permitted; that the property shall be properly maintained; and that the special use exception shall not exceed 2 years.

Motion Carried 5-0.

Case No. 6676—HOWARD & LINDA GREGORY – Northeast of East Mill Run,  
100 feet southeast of Lilly Pad Drive, Section I, Lot 15, Overbrook  
Shores.

A variance from the side yard setback requirements.

The case was presented by Mr. Rickard. Mr. Rickard added that the proposed dwelling has been approved by the Homeowners Association for Overbrook Shores. Howard Gregory was sworn in and testified requesting a 5 foot variance from the 15 foot side yard setback on both sides. Mr. Gregory stated that the house had to be moved back 30 additional feet; that the Homeowners Association approved the building plans on July 31, 1998; and that the dwelling will have an attached garage.

There were no parties present in opposition.

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

Motion Carried 5-0.

Case No. 6677—MILLARD & JO DAUGHERTY – North of Route 404, 1,200  
East of Road 569.

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

The case was presented by Mr. Rickard. Mr. Rickard added that a letter from R.H.Beckert, M.D. has been submitted which describes the illnesses. Millard Daugherty and Jo Daugherty were sworn in and testified that this request is a renewal of a previously approved case, and that there has been no change in the health conditions.

There were no parties present in opposition.

Motion was made by Mr. Wheatley, seconded by Mr. Callaway, and carried unanimously that the variance be granted for a period of 2 years.

Motion Carried 5-0.

Case No. 6678—THEODORE J. ROHLEDER – East of Road 274, Rehoboth  
Bay, Lot C-32 Rehoboth Bay Mobile Home Park.

A variance from the separation requirement between units in a mobile home park;  
a variance from the maximum lot coverage requirement in a mobile home park.

The case was presented by Mr. Rickard. Theodore J. Rohleder was sworn in and testified requesting a 1' variance from the required 20' separation requirement from improvements on lot C-34; a 7' variance from the required 20' separation requirement from improvements on lot D-31; and a variance of 62 square feet from the 35% lot coverage requirement. Mr. Rohleder stated that the variance will permit an additional bedroom and porch; that he moved into the park in 1983; that the park is well maintained; that his family has grown with grandchildren and more space is needed; that the additions will include an A-roof and new windows throughout. Mr. Rickard added that a letter has been received from Rehoboth Bay Community in support.

There were no parties present in opposition.

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

Motion Carried 5-0.

Case No. 6679—J.O.B. CONSTRUCTION & JOE BUSBY – West of Route 17,  
38 feet east of Road 561.

A variance from the rear yard setback requirement.

The case was presented by Mr. Rickard. Joey J. Busby was sworn in and testified, requesting a 17' variance from the 20' rear yard setback requirement; that the required setback would place the building too close to an existing building and would hinder access of large trucks, necessary to the business; that a potato farm exist on the adjoining lands to the rear; and that he is not aware of any opposition.

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.

Motion Carried 5-0.

Case No. 6680—ROBERT T. & CONSTANCE W. PRAS – Seabreak Drive,  
Corner intersection of South Seaview Drive, Lot 39, Seabreak.

A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. John Sergovic, Attorney, was present with Louise Stalding, of Clarksville, who was sworn in and testified on behalf of the applicants who are requesting a 0.7' variance from the required 10' side yard setback requirement. Ms. Stalding stated that an error was discovered when a survey was performed; that it may be impossible to move the dwelling; and that it is impractical to revise the construction of the home, which was built in 1987.

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.

Motion Carried 5-0.

Case No. 6681—JACK & DEBRA ESTERLY – North of Road 358, Lot 171, Bayshore  
Park.

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

The case was presented by Mr. Rickard. Debra Esterly was sworn in and testified requesting a variance of 1' from the required separation between units in a mobile home park for a shed; that they purchased the mobile home 10 years ago with a metal shed; that they recently purchased a wooden shed to replace the metal shed on the same location; and that the inspector found the shed to be too close to an adjoining mobile home.

There were no parties present in opposition.

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

Motion Carried 5-0.

Case No. 6682—DONALD L. REESEY – South of Road 363, Lot 39, George R. Moore Subdivision.

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

The Case was presented by Mr. Rickard. Donald L. Reeseey was sworn in and testified requesting a 3.91' variance from the front yard setback requirement for a porch; a 6.0' variance from the front yard setback requirement for steps; a 3.1' variance from the rear yard setback requirement for a shed; and a 0.31' variance from the side yard setback requirement for a shed. Mr. Reeseey stated that he bought the property approximately 20 years ago; that he placed a new mobile home on the lot and had a porch built; that the mobile home and porch are built on a solid foundation; that the street is privately maintained, so he measured to the road, not the right of way; that a survey performed indicated the right of way and the error in the placement of the mobile home and porch; that he did not know that he needed a permit for the shed; that the shed replaced a shed that had existed at the same location for approximately 20 years; and that the inspector had requested the survey.

There were no parties present in opposition.

Motion made by Mr. Mills, seconded by Mr. Callaway, and carried unanimously that the variances be granted.

Motion Carried 5-0.

Case No. 6683—RONALD T. & CYNTHIA HOUSTON – West of Road 516, ½ mile North of Road 525.

A variance from the minimum lot width requirement.

The case was presented by Mr. Rickard. Mr. Rickard added that the lot was created by a deed in September 1982 and made reference to a survey prepared by a surveyor; and that the survey was never approved by the Office or recorded. Reverend Ronald T. Houston and Cynthia Houston were sworn in and testified requesting a 60' variance from the minimum lot width requirement of 150' along a public road. Reverend Houston stated that he had 2 deeds since 1982; that he purchased the second lot for his daughter; and that his daughter is ready to build her home.

There were no parties present in opposition.

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

Motion Carried 5-0.

Case No. 6684—JOSEPH & DONNA ZAMMETTI – North of Route One, Rose Bush Court, Lot 31, Sara Glen.

A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. Joseph Zammetti and Donna Zammetti were sworn in and testified requesting a 4' variance from the 15' side yard setback requirement so that they may build an attached garage onto their dwelling, which was built in 1997; that lot 30 is vacant and owned by the developer; that the developer recently amended the deed restrictions to require attached garages; and that their lot is the only lot without an attached garage.

There were no parties present in opposition.

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

Motion Carried 5-0.

Case No. 6685—FRANK & BARBARA HOGAN; FRANK & BARBARA TRAVAGLINI – South of Road 277, Elmwood Avenue West, Lot 9 & 10, Angola-By-The Bay.

A variance from the rear yard setback requirement.

The case was presented by Mr. Rickard. Norman C. Barnett, Attorney, was present with Elsworth Garman, who was sworn in and testified requesting a 1' variance from the rear yard setback for a shed and a 0.3' variance from the rear yard setback for the dwelling. Mr. Garman stated that the home was built in 1984 and that the shed was placed

approximately 10 years ago; that a new survey was performed and it was found that an error existed; that the rear of the lot adjoins common area within the community; and that when the shed was placed a representative of Angola-By-The-Bay showed him where to locate the shed.

There were no parties present in opposition.

Motion made by Mr. Hudson, seconded by Mr. Wheatley, and carried unanimously that the variances be granted.

Motion Carried 5-0.

Case No. 6686—CAREY'S, INC. – West of U.S. Route 13, south corner of Route 24.  
A variance from the front yard setback requirement.

The case was presented by Mr. Rickard. Reese Carey and Robert Allen were sworn in and testified requesting a 36' variance from the required 40' front yard setback requirement for a proposed canopy over a gas pump island. Mr. Allen stated that the business has existed on the site for 43 years; that they propose to erect a canopy over the gas pumps; that no visual obstruction will be created since the canopy is 14'6" in height; and that the pump island will be extended to the south at the same existing setback.

There were no parties present in opposition.

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

Motion Carried 5-0.

#### OLD BUSINESS

Case No. 6674—MARY MONAHAN – West of Route One, Unit 52, Kings Grant.  
A variance from separation requirement between buildings.

The Chairman referred back to this application which had been tabled at the last meeting on August 3, 1998.

The Board discussed the points and issues raised during the public hearing.

Motion was made by Mr. Mills, seconded by Mr. Wheatley, and carried with a vote of 4 to 1, with Mr. McCabe opposed to the motion, that the variance should be denied since the improvements were built without a permit, and since a precedent could be established for additional applications within the same development.

Motion Carried 4-1.

OTHER BUSINESS

Case No. 6662—CHESTER H., JR. & SHARON PORCHES- East of U.S. Route 13-A,  
1,016 feet north of Road 480, Lot 1 & 2, Johnson's Lands.

A special use exception for commercial dog kennel; a variance from the setback Requirements. A request for a rehearing.

Mr. Rickard read a letter from the applicants requesting a rehearing. The Board discussed the request.

Motion made by Mr. Callaway, seconded by Mr. Wheatley, and carried unanimously that the request for a rehearing be granted.

Motion Carried 5-0.

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

Motion Carried 5-0.

Meeting adjourned at 9:15 P.M.