

Minutes of August 18, 1997

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, August 18, 1997 in the County 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. Mills, Mrs. Hudson, Mr. Wheatley, Mr. Jones-Attorney, Mr. Rickard-Chief Zoning Inspector and Mrs. Talley-Recording Secretary.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the minutes of August 4, 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. 6371--Denis P. Lamartina - Southeast corner of North Drive and Second Street within Tru-Vale Acres Subdivision, being 460 feet southwest of Road 270A, and being more specifically Lot 1, Block E of Tru-Vale Acres Subdivision.

A variance from the front yard setback and the side yard setback requirement for a corner lot.

The case was presented by Mr. Rickard. Denis P. Lamartina was sworn in and testified, requesting a 5.8' variance from the 30' front yard setback requirement and a 6.8' variance from the 15' side yard setback on a corner lot, being Lot 1, within Tru-Vale Acres Subdivision. Mr. Lamartina stated that he purchased the property May 24, 1997 and was not aware of the existing deck violations, since the decks existed before he purchased the property.

Mrs. Hudson asked how long the structures have been on the property.

Mr. Lamartina stated that the house was built in 1969 and the decks put on in 1983. He stated that they are approximate dates. He stated that the decks were there when he purchased the property and that the property has been sold more than one time.

Mr. Jones asked Mr. Rickard about the deck setbacks.

Mr. Rickard stated that an open unclosed first floor deck can encroach into the setback 5 feet.

Michael B. Kyriados was sworn in and testified in behalf of the application, stating that he owns property next door and the decks do not bother him. He stated that the decks were there when the property was purchased by the applicant.

By a show of hands there were six people present in opposition.

Gary Gene Lofland was sworn in and testified in opposition, stating that the decks were added on, on weekends when the previous owner had the property and there were no permits obtained. He stated that the deck violations are not the applicants fault, but he feels everyone should go by the rules and regulations. He stated that he has lived in the development for 25 years. He stated that people were notified when the construction was going on. He stated that this type of building has to stop somewhere. He stated that the building has been going on for 10 to 15 years, working on weekends.

Mr. McCabe questioned if there is a Homeowners Association in the subdivision, and if the people have to get a building permit from them.

Mr. Lofland stated that there is a Homeowners Association, but it has not been active in the past. He stated that the applicants property was there before the Association. He stated that the Association has not always been active and they go by the County restrictions. He stated that even though the Association has been lax they do have rules and regulations.

Edward Dixon was sworn in and testified in opposition. He stated that he informed the applicant that the decks were built without permits before he, the applicant, bought the property. He presented a letter from a property owner who was not notified about the meeting. Mr. Dixon stated that everyone is upgrading and it is not progress when things are allowed to be built illegally. He stated that he has lived on his present property for 15 years.

Mr. Rickard read the letter presented from Myrtle Grace Kelly stating that she was not notified about the meeting.

Mr. Jones asked when the decks were built.

Mr. Dixon stated that the decks were built 5 years ago, and were reported to the County, but building continued. He stated that they are attempting to do the right things.

Mr. Lamartina in rebuttal, stated that he was not informed by Mr. Dixon about the decks before he purchased the property. Mr.

Lamartina stated that he was allowed to put a manufactured home on the property and he feels the opposition is retaliating against him for that reason.

Bill McCafferty was sworn in and testified that he is President of the Civic Association and a 27 year resident of Tru-Vale Acres. He stated that no one has intimidated the applicant and there is no animosity towards him, they just want a more pleasant place to live.

Mr. Dixon stated that he just wants a fair decision by the Board.

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 Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the variances be granted, finding the hardship was not created by the applicant and the use will not alter the essential character of the area. Vote 5-0.

Case No. 6393--State of Delaware - Office of Telecommunications Management - North side of Road 334A,
925 feet southwest of Road 331, near the
Dagsboro Fire Tower.

A variance from the front yard setback requirement.

The case was presented by Mr. Rickard. Lisa Goodman, Attorney, was present representing the applicants, who requested a variance from the side yard and front yard setback requirements to permit the base of a Radio Communication Tower to be located 25' rather than 40' from the street and to permit an equipment shelter to be located 20' rather than the required 40' from the front yard setback requirement. Ms. Goodman stated that Richard Reynolds and Carl Pedison, were also present representing the application should the Board need to ask them any questions. Ms. Goodman stated that this is one of six towers that is part of a state wide emergency system. She stated that all emergency agencies are involved and will be on the system. She stated that the present system is overcrowded and there is unreliable coverage now in the County, with poor and none existence coverage now in some areas. Ms. Goodman stated that they would operate at 800 MHZ. She stated that the signals need to get into all buildings, with a link of 20 sites, to allow good coverage. They will be able to talk to Kent and New Castle County and it will help everyone in the County. She also

stated that the system is working in New Castle County and is almost ready in Kent County. She stated that there will be six sites in Sussex County. This Dagsboro site is an old fire tower property. All property is State owned. They tried to pick sites where towers already exist. The property is one acre and narrow at one end. They do not want to disturb anything existing. Ms. Goodman stated that since the application reconfiguration was done and they find that they only need a 17.1 foot variance from the front property line, and the side yard variance is not needed.

Mr. Jones read the application as it was advertised and explained that they cannot change the application and the Board could only give a 20' variance.

Ms. Goodman stated that they can redesign and live with the 20' variance from the front and the side yard variance is not needed. The 20' variance would be for the tower and building, both structures.

Benjamin H. Miller was sworn in and testified in behalf of the application, stating that he is Chief of Engineering and Technology with the Delaware State Police, and they have had problems with communications along Route 54 and Route 1. He is in favor of the variance request.

There were no parties present in opposition.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that a 20' front yard variance be granted for any structure. Vote 5-0.

Case No. 6394--Helen Truitt - Southwest side of Quaker Road,
650 feet southeast of Route 18 (Savannah
Road) near Lewes.

A variance from the lot width requirement and
the square footage requirement for a parcel.

The case was presented by Mr. Rickard. Helen Truitt was sworn in and testified, requesting a 57' variance from the 150' lot width and a variance of 12,560 sq.ft. from the required 20,000 sq.ft. The existing lot is 8,000 sq. ft. Ms. Truitt stated that she inherited the property from her brother. She currently has the property for sale. She stated that she plans to give 7' to the people on adjacent property who have used it for years.

There were no parties present in opposition.

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

Case No. 6395--Myron L. & Cheryl D. Jackson - Southwest side of a private road within Levi W. Street Subdivision on the southwest side of Road 312A, 0.75 mile northwest of Road 312.

A variance from the rear yard setback requirement.

The case was presented by Mr. Rickard. Myron L. & Cheryl D. Jackson were sworn in and testified, requesting a 0.5' variance from the 10' rear yard setback requirement to be 9.5', for an existing attached garage. It was stated that the builder placed the garage in error. The home on the property was built in 1997. They stated that there are no buildings on the adjacent property to the rear of their property,

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. 6396--James V. Hoster - East side of U. S. Route 13 and 1,700 feet north of Road 488.

A variance from the front yard setback requirement for vehicles displayed for sale and a special use exception for the use of a mobile home type structure for a business.

The case was presented by Mr. Rickard. Bruce Hoster was sworn in and testified, requesting a 25' variance from the front yard setback for vehicles displayed for sale and a special use exception to use a mobile home type structure for a business. Mr. Hoster stated that his business is a consignment business where he will display boats, campers, etc., and due to the topography of the lot he needs to place the display closer to the front of his property. He stated that the manufactured home is temporary, because he plans to build an office and building later. He stated that he is legally disabled and needs to have the business. He stated that

the manufactured home is not the typical office type, but will be of better use. Mr. Hoster stated that the deal will be between the owner of the vehicles and the buyer. He stated that the property is wooded and explained what other businesses are in the area, as well as other manufactured homes and manufactured home parks. He feels the business will not be out of character with the area. The manufactured home will have a A-Frame roof.

Mr. Mills asked how long he would need the mobile home type structure for his office.

Mr. Hoster stated that he needs the unit now and no more than nine months to one year. Mr. Hoster stated that he has to have \$10,000 for Del, D.O.T. for entrances and \$5,000 to \$8,000 for a septic mound system. He stated that there is a billboard on the property owned by someone else, that has been there for years. The billboard does not advertise his business. He stated that the manufactured home to be used for the business is 12'x 60' in size and will have a kitchen, but no one will live in it. The vehicle display will be 15' from the front property line. He wants his display to be in line with the utility poles. He stated that he will specialize in boats, campers, motorcycles, generators, air compressors and a couple of cars on display and that larger items will be placed to the rear of the property. He stated that boat trailers will be on the front line since they are low to the ground. He stated that he has an agreement with Lankford that he cannot put anything up to obstruct the billboard. Mr. Hoster stated that the office will be 45' back and no variance is needed for it.

There were no parties present in opposition.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the variance and special use exception be granted, with the following stipulations: nothing be displayed higher than 6' in the front yard and the manufactured home type office not be on the property more than two (2) years. Vote 5-0.

Case No. 6397--Barbara A. Long and Shirley R. Davis - North side of Route 48, 400 feet west of Route 30.

A special use exception to operate a day nursery/child care center.

The case was presented by Mr. Rickard. Barbara Long and Shirley Davis were sworn in and testified, requesting to operate a day nursery/child care center in a double-wide manufactured home on a permanent foundation.

Mr. Rickard read a faxed letter in support of the application with four signatures.

The applicants stated that they would have a maximum of 30 children and 3 employees. They stated that they have been working with Barbara Neal, with the State of Delaware who tells them what they can and cannot do in regards to State regulations. The property contains 1.4 acres with a horseshoe drive. The people will only drive onto the property to discharge and pick-up the children. The manufactured home will be back 150' from the front property line. The hours for the day nursery/child care center will be 7:00 A. M. to 5:30 P. M., five days per week. Mrs. Long stated that she had, had a day care in her home for five years. They will have a fenced play yard for the children. It was also stated that the State will do an inspection of the facility.

There were no parties present in opposition.

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

At the conclusion of the meeting Mr. Mills stated that he withdrew his motion to table Case No. 6397. Mr. Mills then made a motion, seconded by Mr. Wheatley and carried unanimously that the special use exception be granted. Vote 5-0.

Case No. 6398--Gerald and Joyce Gerhart - Lot 15 of Denton Manor Subdivision, located northeast of Dorothy Circle and being northwest of Road 351, approximately 2,100 feet northeast of Road 349.

A variance from the side yard setback requirement for an accessory structure.

The case was presented by Mr. Rickard. Gerald Gerhart was sworn in and testified, requesting a 5' variance from the 5' side yard setback requirement to 0'. Mr. Gerhart stated that he has an existing shed on his property, being Lot 15, within Denton Manor, and added onto it without realizing that there was an encroachment. He stated that his septic system in the front yard along with a 40' setback does not allow him to put it in the front yard. He stated that it does not interfere with the dwelling on the adjacent property, Lot 16, in any way.

Alex Vojacsek, a neighbor, was sworn in and testified in support of the application, stating that the applicants shed looks good and it is the only place he could put it. He stated that the shed does not interfere with him.

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. Vote 5-0.

Case No. 6399--First State Community Action Agency - North side of
Route 24, 0.25 mile west of Road 310A.

A special use exception to operate a day care center.

The case was presented by Mr. Rickard. Lynele Hyland was sworn in and testified representing the applicants, who requested to operate a day care center that will have 20 children and 3 staff members, with one being a volunteer. There will be two paid staff members and one volunteer. Ms. Hyland stated that they occupy the V.F.W. on Route 24 and have a two year lease. She stated that there will be no infants in the center. The children's ages will be 3 to 5 years of age. She stated that she has contacted other agencies for the operation of a day care center. There will be a fenced in area for the children and they will have their own bus transportation.

Mr. McCabe questioned the manufactured home on the property.

Ms. Hyland stated that the manufactured home does not belong to First State Community Action Agency.

Aleatha Holland Short, a member of the V.F.W. auxiliary and lives within 200 feet of the property, was sworn in and testified in opposition stating that First State Community Action Agency has leased the V.F.W. from June to September and she does not want to see a day care center for the entire year. She stated that the V.F.W. gave up their use of the building for First State Community Action to use the building. She opposes the day care because the V.F.W. will not have access of the building for 12 months.

Mr. Jones explained to Ms. Short that the Board can only act on the day care center and the V.F.W. would have to provide the lease.

Ms. Short stated that she does not oppose the children, only the day care center and they will put restraints on the lease..

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

Case No. 6400--John R. Collier - Lot 24, within Silverview Farm
Manufactured Home Park, on the north
side of Road 273.

A variance from the twenty (20) foot setback
requirement between units in a manufactured
home park.

The case was presented by Mr. Rickard. John R. Collier was sworn in and testified, requesting a 5' variance from the 20' setback requirement between units in a park, being Lot 24, within Silverview Farms. The applicant wishes to construct a 6'x 10' deck on the back of his manufactured home.

Mr. Rickard read a letter from Silverview Farms, Inc., Charles E. Burton, Community Manager, in support of the application.

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. 6401--William F. Moss - Lot 25, within Suburban Development
Subdivision, located at the southeast
corner of Old Bay Road and Quillen Road
and 600 feet west of Route One.

A variance from the side yard setback and rear
yard setback requirements for decks.

The case was presented by Mr. Rickard. Hal Dukes, Attorney, was present in behalf of the application. The applicant requested a 1.6' variance from the 5' setback requirement for an open deck in the rear of the property and a 2.1' variance from the 5' side yard setback requirement for an open deck and a 5' setback from the 15' required setback on a corner lot. The property being Lot 25, within Suburban Development Subdivision. Mr. Dukes stated that the property was sold with the violations existing. Mr. Dukes made reference to a shed being on the property that houses the heater system and connected to the house by a pipe. Mr. Dukes stated that

the uses will not infringe on the neighbors property.

There were no parties present in opposition.

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

Case No. 6402--John W. Cooper - Lot 22, within Keenwik By The Bay Subdivision, located east of Bayberry Road 1,200 feet south of Cedar Road and approximately 0.5 mile south of Route 54.
A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. John W. Cooper was sworn in and testified, requesting a 4' variance from the side yard setback requirement for steps and landing that have exceeded the extension greater than 4' above grade, in a flood zone, on Lot 22, within Keenwik By The Bay. Mr. Cooper stated that he built the three story home for Dorothy Kelly. He stated that the lot is only 50' wide and there is no other place to put the steps. He stated that a Certificate of Compliance was issued by the Inspector, but he failed to count the steps. The Inspector explained to the owner that the steps coming from the 2nd. floor have to meet the setbacks and that they needed to apply for a variance.

Mr. Rickard read correspondence received from property owners in Keenwik By The Bay, pertaining to this case, from Hugh Higgins and Robert A. Lennox. It was decided that the letter from Mr. Lennox did not apply to the area he stated in his letter.

Mr. Cooper stated that other homes in the development have encroachment, with one going all the way to the bulkhead.

Mr. Wheatley questioned if there is a Homeowners Association.

Mr. Cooper answered that he did not know.

Dorothy Kelly, the property owner, was sworn in and testified, stating that the lots in Keenwik By The Bay are very small, with most being 50'x 100'. She stated that her lot is 93' in length. She stated that everyone is going tall. She stated that she fears fire safety. Photographs were presented. She stated that the steps do not block the view of anyone. She and her daughter have master bedroom suites on the third floor, and she stated that she needs the exit for fire safety. She was not aware of any encroachment. She stated that there is no other place to put the steps on the lot and she is concerned about fire and being on the

third floor.

Hugh F. Higgins, Cecelia Higgins and Joseph Sakalosky were sworn in and testified in opposition. Mr. Sakalosky spoke for himself and Mr. Higgins. He stated that he owns Lot 21, with a tenant living in it. He has the deck going to the bulkhead and there was no restrictions when his home was built. He stated that when he looks out from his property he sees the stairway. He feels the fire safety should have been considered before construction was started. He feels the applicnt should comply to the building code requirement. He lives on Lot 19 & 20 and owns Lot 21.

Ms. Kelly stated that she should not be here now with setback encroachments, that she and her daughter are victims of the error made. She stated that she cannot see anyway to pull the stairs out.

Mr. Cooper stated that the mistake was when Planning and Zoning told him they did not measure from the steps and a Certificate of Compliance was issued by the Inspector.

Mr. Sakalosky stated that there were no Ordinances when the home was built on Lot 21, that it was built at least 25 years ago.

Motion was made by Mr. McCabe, seconded by Mrs. Hudson and carried unanimously that the case be tabled, to give the Board members time to look at the property again. Vote 5-0.

Case No. 6403--R & R Seaside, Inc. - North side of Route One,
1,035 feet northwest of Road 271.
A variance from the requirements for signs.

The case was presented by Mr. Rickard. Jeffrey L. Stevens, with Rogers Sign Co., was sworn in and testified representing R & R Seaside, Inc., who requested a variance from the requirements for signs, to allow a second sign for Dress Barn Womens Retail Outlet Store. The sign will be 3'x 11', 33 square feet in size. Mr. Stevens stated that the store is located behind K-Mart and is not visable. He stated that this application is the same as other sign variances that have been granted to the outlets.

There were no parties present in opposition.

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

Case No. 6404--Michael K. and Helen M. Caputo - Lot 53 & 1/2 of Lot 51, within Bay View Park Subdivision, located east of Alda Lane, 95 feet north of Hassell Avenue and west of Route One.
A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. Michael Caputo was sworn in and testified, requesting a 1.2' variance from the side yard setback for an attached shed on Lot 53 & 1/2 of Lot 51, within Bay View Park Subdivision. The setback requirement from the side yard is 10'. Mr. Caputo stated that the house was built in the early 70's and the shed was built attached to the house and in line with the house. He stated that the lot 82.5'x 95' runs on an angle.

Mr. Rickard read correspondence received from Alfred Talbot and Mariann Talbot addressed to Mr. Lank, Director of Planning & Zoning, stating their opposition to an all-around variance for the property.

Mr. Caputo stated that he had owned the property since July and found the problem when he went to settlement.

There were no parties present in opposition.

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

Case No. 6405--William C. Walton - West side of U. S. Route 113 and 1,200 feet south of Road 213.
A variance from the rear yard setback requirement.

The case was presented by Mr. Rickard. William Walton was sworn in and testified, requesting a 17' variance from the 20' rear yard setback requirement. Mr. Walton wants to build a 3 bay pole garage as close to his house as possible. He stated that the property next to where the garage will be built is an open field that he tills. He stated that he wants to keep the garage in line with the house. In answer to a question from the Board, Mr. Walton stated that he has five manufactured homes on the property. He stated that there had been nine.

There were no parties present in opposition.

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

Case No. 6406--Epworth Fellowship Church - North side of Road 476
and 710 feet west of Road 446.

A special use exception for use of a mobile home type structure for business use (classroom) to be located on the north side of Road 476 and 710 feet west of Road 446.

The case was presented by Mr. Rickard. Charles E. Morris was sworn in and testified representing Epworth Fellowship Church, who requested to us a mobile type structure for business (classroom). Mr. Morris stated that the 1994, 40'x 8', with one section going out 4', computer mobile classroom will be placed near their school. He stated that it will be used for a computer lab. He stated that they already have a mobile type classroom that was approved by the Board years ago. The mobile classroom will be used throughout all grades.

There were no parties present in opposition.

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

OLD BUSINESS

Case No. 6381 (cont'd.)--Larry B. Steele, III - South side of Route
487A, 550 feet west of Bethel.

An appeal of the Directors decision.

The case was reviewed by Mr. Callaway.

Mr. Jones explained the appeal and the language in the Zoning Code that was brought out at the public hearing concerning how many accessory structures can be put on a property.

After some discussion, motion was made by Mr. Mills, seconded by Mr. McCabe and carried unanimously to uphold the Directors decision. Vote 5-0.

Case No. 6382--James C. Bailey, Jr. - West side of Route 619,
Lot 13, within Meadow Brook Estates.

A variance from the rear yard setback requirement.

The case was reviewed by Mr. Callaway.

After some discussion, motion was made by Mr. McCabe, seconded by Mr. Mills and carried unanimously that the case be tabled, and have the Inspector go out and measure and find out why the applicant applied for a variance. Vote 5-0.

OTHER BUSINESS

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.

Request for a rehearing.

Mr. Rickard stated that he had received a letter from Fred Tana, A to Z Builders, who represents the applicants, requesting a rehearing for their variance request that was denied for lack of representation. Mr. Tana stated in his letter that he did not appear at the public hearing, due to illness and sent a letter from a doctor confirming it.

Motion was made by Mrs. Hudson, seconded by Mr. McCabe and carried unanimously to rehear Case No. 6388 due to excusable neglect. The applicant needs to reapply and pay the fee required. Vote 5-0.

Case No. 5949--George S. Isaacs - South side of Route 18, at the intersection of Route 484.
A special use exception to place an off-premise sign.

Request for a one (1) year extension.

Motion was made by Mr. Wheatley, seconded by Mr. McCabe and carried unanimously that a one (1) year extension be granted to Case No. 5949. Vote 5-0.

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

Meeting adjourned at 9:45 P. M.