

Minutes of September 8, 1997

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, September 8, 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, Mrs. Hudson, Mr. Mills, 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 18, 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.

It was announced that Case No. 6415, Delmarva Power & Light Co. had been withdrawn.

Case No. 6407--Harold Paul Riser - Lot E-22, of the Donovan-Smith Mobile Home Park, located west of Road 263 and north of the Railroad.
A variance from the setback requirement between units within a manufactured home park.

The case was presented by Mr. Rickard. William S. Smith was sworn in and testified, representing Mr. Riser, who requested a 5' variance from the 20' setback requirement between units on Lot E-22 Donovan-Smith Mobile Home Park. The applicants manufactured home is too close to the neighboring manufactured home to the rear of the property. It is their permanent home and previously there had been a 1955 manufactured home on the property.

Mr. Rickard told the Board that the park is a very old park and most of the units set the same way.

Mr. McCabe stated that they have granted other variances in the park.

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. 6408--Earvin D. Kelley - off a private road, 600 feet south of Route One at the Lewes and Rehoboth Canal.

A variance from the 3/4 acre lot size requirement for placement of a multi-sectional mobile home in an AR-1 Agricultural Residential District.

The case was presented by Mr. Rickard. Earvin D. Kelley, Adonest James Hall, Sr., Brenda Kelly and Maurice Waples were sworn in, in behalf of this application. Earvin D. Kelley stated that he has a double-wide manufactured home on less than 3/4 acres of land, that was placed by Oakwood Homes. The property is 85'x 185' in size and Mr. Kelley needs 3/4 of an acre. His request is for a variance from the 3/4 acre lot size requirement for a double-wide manufactured home in an AR-1 Agricultural Residential District. It was stated that there is one other manufactured home in the area, a single-wide.

Mr. Mills stated that the applicants lot is less than 1/4 acre.

Mr. Jones questioned what is on the lot.

Mr. Kelley stated that the double-wide manufactured home was placed on the property by Oakwood Homes, without a permit. Mr. Kelley stated that he previously had a house on the property that was removed and the double-wide unit was put on it. He stated that Oakwood Homes told him they would take care of everything.

Mr. Mills questioned if Oakwood Homes had told him about the new Ordinance for 3/4 acre lots.

Mr. Rickard stated that Mr. Bunting, the Zoning Inspector, went out to the property and advised the applicant that a variance was needed to keep the manufactured home on the property.

Mrs. Hudson questioned how long the manufactured home has been on the property.

Mr. Kelley stated that the manufactured home was placed on the property last October (1996). The salesman at Oakwood Homes, was Glenn Reed, and that Mr. Reed told him he would handle everything.

Mr. Hall stated that he owns property in the area and is in favor of the variance requested.

Mr. Rickard explained what is in the area and what he found when he went out after Mr. Bunting had been to the property.

Mr. Rickard read a petition signed by six (6) people who were in support of the application.

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. Mr. Mills stated that Mr. Reed, with Oakwood Homes should be told about the meeting and what transpired and to be more cautious.

Mr. Jones asked when the violation was discovered.

Mr. Rickard stated that he was not sure and would have to ask Mr. Bunting the Zoning Inspector.

Motion was made by Mr. McCabe, seconded by Mr. Mills and carried unanimously that the variance be granted, finding the placement of the double-wide unit was done prior to the law change in March. It was before the fact.
Vote 5-0.

The Board asked Mr. Rickard to let future applicants who request variances from the 3/4 acre lot size for a double-wide manufactured home in an AR-1 District, know that the Board will not act favorable to every application.

Case No. 6409--University Investments Corp. - Northeast corner of
Route 24 and Bryn Mawr Drive within
Maplewood Development.

A special use exception to operate a day
care center.

The case was presented by Mr. Rickard. John Lester, Carolyn Carlson, Paul Carlson and Mary Angela Morris were sworn in representing this case. The applicants requested to operate a day care center. Mr. Lester explained the location and that the property is 1-1/4 acres in size. A 4000 sq. ft. building is proposed for the day care center on property where a J. P. Court is located. Mr. Lester explained where the parking will be provided and the entrance to the property. He stated that they have support from the Community Association. A copy of a letter was submitted. Mr. Lester stated that the center will have 75 to 100 children.

Mrs. Carlson stated that the center will operate 6:30 A. M. to 6:00 P. M. and the childrens ages will be infant through after school care.

Mr. Lester stated that parents drop-off the children and pick them up. He stated that the center will be a state of art facility. That Mr. Carlson is a retired Lewes School Principle and there will be 8 full time employees and more than one shift. The property will be well landscaped. Mr. Lester feels the center is the best use for the site. Mr. Lester stated that the County will have to approve the parking.

There were no parties present in opposition.

Mr. Rickard read the letter of support presented from Maplewood Homeowners Association addressed to Mrs. Carlson.

Motion was made by Mrs. Hudson, seconded by Mr. McCabe 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. McCabe, seconded by Mrs. Hudson and carried unanimously that the special use exception be granted, finding the proposed use will not substantially adversely affect adjacent and neighboring properties. Vote 5-0.

Case No. 6410--Grid Electric, Inc. - Northeast side of Route One
and east of Route 276.

A variance of the square footage requirement
for an on-premise sign.

The case was presented by Mr. Rickard. Richard A. Cordrey, from Enterprise Rent-A-Car, and Valerie Rogers were sworn in, in behalf Grid Electric, Inc., who requested a 21 sq. ft. variance from the maximum ground sign of 150 sq. ft. to be 171 sq. ft. Ms. Rogers explained the sign stating that the bottom of the sign will be 15'9" from the ground and will not affect the view of anyone.

Mr. Rickard stated that the sign will not be located near the road, that the sign will set way back on the property.

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. Vote 5-0.

Case No. 6411--Shirley M. Altemus - Southeast corner of Radcliffe Drive and Tulane Drive on Lot 150, Section 3, within Maplewood Development off of Route 24.

A variance from the front yard setback requirement in a MR Medium Density Residential District.

The case was presented by Mr. Rickard. Shirley M. Altemus and Charles Altemus were sworn in and testified. Mrs. Altemus requested a 15' variance from the 30' front yard setback requirement to build a house on Lot 150, within Maplewood Development. Mr. Altemus stated that the house and the property are both rectangular. The applicant wants the house to face Tulane Drive and not Radcliffe. She stated that the plans for the house have been purchased, but the house has not been built yet. She stated that the Association has approved the house.

Mr. Wheatley questioned why the house was not placed further back on the property.

Mrs. Altemus stated that she wanted to be in balance with the development. She wants the house to be in line with the houses on Tulane Drive. Her lot is located on a corner lot.

Mr. Mills stated that if the applicant moved the house 15' she could meet the setback requirement.

Mrs. Altemus stated that if she moved the house she would have no back yard and would be too close to the neighboring house. She and Charles Altemus stated that the houses on Radcliffe Drive set back 30'.

Mr. Rickard stated that the setback requirements on Radcliffe Drive (the front) are 30', on Tulane Drive the setback is 15' (side), 10' interior side and 10' rear yard setback.

Mrs. Altemus stated that she understood the house had to be back 30' from the front and the corner side lot line.

Mr. Rickard read a letter in support from Hall Dukes, Jr. with Tunnell & Raysor and a letter from Mike Mock.

Mr. Jones established the front yard setback from Radcliffe Drive to be 30' and 15' from Tulane Drive the corner side yard.

Mr. Mills questioned if the applicant could move the house back, that the house would be in line with the neighbors.

The applicant stated that she would prefer to leave the house

as shown on the plot plan.

Mr. Mills questioned if her house would be out further than those on Radcliffe Drive, why she would not be concerned about the houses on that street.

Mrs. Altemus stated that the houses on Radcliffe are no in line.

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

Case No. 6412--Robert L. & Betty J. James - East of a private Road, 1,700 feet south of Road 329 and 1,850 feet west of Route 113.

A special use exception to use a mobile home as a single-family dwelling in the AR-1 Agricultural Residential District to meet an emergency or hardship situation.

The case was presented by Mr. Rickard. Robert L. & Betty J. James were sworn in and testified requesting to place a double-wide manufactured home on their property for their granddaughter to live in and help care for the applicants two mentally handicapped daughters, and to help care for them as well. Mr. and Mrs. James stated that they both have heart problems and with their age they need someone there to help. They stated that their granddaughter now works at General Motors, but will be here most of the time. They stated that they want to have someone on the property should something happen to them, who would be able to care for their daughters.

Mr. Mills stated that they would have to reapply every two years for as long as the hardship exists. It was stated that it was necessary to establish who the hardship is for.

Mr. Rickard read a letter from Dr. J. K. Beebe, P.A. referencing the daughter's health.

There were no parties present in opposition.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the special use exception be granted on the basis of hardship for the applicants daughters, for a period of two (2) years. Vote 5-0.

Case No. 6413--Warner & Shirley Haynie - Lot 74 of the Bay City Mobile Home Park, located on Pine Street within Bay City Mobile Home Park and north of Route 22 (Long Neck Road).

A variance from the setback requirement between units within a manufactured home park.

The case was presented by Mr. Rickard. Shirley Haynie and Warner Haynie, III were sworn in and testified, requesting a 10' variance from the 20' setback requirement between units in a park, being Lot 74, within Bay City Mobile Home Park. Mrs. Haynie stated that they purchased the manufactured home two years ago for their permanent residence. They needed a larger shed and had one put on the property. The Zoning Inspector informed them that the shed was not within the setback requirement and a variance was needed to leave the shed in its present location. She stated that the shed has been on the property for six months. She stated that there is no Association in the park and no one in the park had voiced any opposition.

Mr. McCabe stated that the Board has granted other variances in the park.

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. 6414--Dale Collins, Jr. & Lora Collins - North side Road 368, 850 feet east of Road 365.

A special use exception to operate a day care center.

The case was presented by Mr. Rickard. Dale Collins, Jr., Lora Collins and Darlene Collins were sworn in and testified and were represented by Susan Weidman, Attorney. In answer to Ms. Weidman's questioned, Lora Collins stated that she wants to operate a day care center on property her in-laws own, which is now a pasture. A site plan was submitted.

Darlene Collins stated that the property is owned by she and her husband and they intend to sign the area for the day care center over to Dale, Jr. & Lora Collins.

Lora Collins stated that there will be a parking lot in front and that Planning and Zoning told them the parking requirements that are needed. She stated that the building can hold 115 children. Mrs. Collins stated that she has been a day care provider for six years, with a degree in early child care. She stated that she gets calls everyday for child care. She stated that there is only one other day care center in the area. She stated that she now has 72 on a waiting list. She also went to other day care center and inquired and they too have waiting lists. She will have children from birth up to age 12. She will operate 6:00 A. M. to 6:00 P. M. weekdays and 9:00 A. M. to 5:00 P. M. on Saturday and from 5:00 P. M. to 9:00 P. M. night shift if needed. She stated that she has school age children and the school bus stops now, and she provides a school bus shelter on the property. Mrs. Collins stated that the 2 years of ages, 3 years of ages 4 & 5 years of age children will have play grounds. Mrs. Collins stated that she sent out questionnaires to Lord Baltimore School and received responses in favor of the day care center. Tally sheets were presented to the Board. She will have pre-school and six different classrooms, special after school activities, trips and other projects for the children. She serves meals now and intends to serve meals in the new facility, breakfast, lunch and snack. She had questioned the parents if they were in favor or opposed to the serving of the food and the response was in favor. She will have a small cafeteria type food area. She stated that there are 10 houses along the road including hers and her in-laws.

Ms. Weidman read some of the names who had voiced their consent, she stated that only one person had not signed the petition. Letters had been received from parents in support, some of which were present at the meeting.

Patricia Winward was sworn in and testified in support of the application. She stated that there is a need for the day care center in the area. She stated that she found Lora four years ago. She stated that she had tried to care for children for six months and had several calls. She stated that today a person has to be careful who cares for their children. She stated that she lives approximately two miles away and there are few cars on the road, therefore, she feels it is a safe road.

Smith Purdum was sworn in and testified in support of the application, stating that he has a 4 year old boy at the day care

now and a daughter dropped off after school. He stated that he lives in Bethany Beach and had trouble finding a day care center when he moved there. He works in the Rehoboth area.

By a show of hands there were 20 people present in support of the day care center.

Ms. Weidman read the names into the record of people who had written letters in favor of the day care center: Pat Winward, Pat and Smith Purdum, Julie Ann Hudson, Van and Paige Warrington, Cindy Sue Morgan, Colleen Rodermel, Margaret Jewell, Carol Goodhand-Rupp, Sally Benner, Annette Jarvis, Maureen Grimes, Carla Alexander, Diane King, Monica Duperron, Joseph and Linda Schroeder, Pam Pridgeon, Debbie and Martin Basara, Tammy Hitchens and Patricia Toomey, and a letter faxed from Representative Shirley Price.

Dale Collins, Jr. in answer to questions from Susan Weidman stated that site evaluations for septic had been done on the property and passed.

Ms. Weidman stated that surrounding property is owned by Bake Timmons and he is not opposed. She stated that there is another business down the road, a dog kennel.

Mr. Jones questioned how many children the day care center will have.

Mrs. Collins stated there will be 115 children.

Mrs. Hudson asked how many employees there would be.

Mrs. Collins stated there will be approximately 8 to 10 employees.

Mr. Mills questioned the notes on the County Tax Map stating there be no more subdividing of the property.

Ms. Weidman stated that the owner has relinquished all rights and the property will be approved by the Planning and Zoning Commission.

Mr. Jones asked how many vehicles there will be a day.

Mrs. Collins stated that approximately 20 to 25 vehicles at different times bringing the children and picking them up.

Heather Sheridan, Sandra Green and Robert H. West were sworn in and testified in opposition.

Sandra Green, in opposition, stated that she is not opposed to day care, she has children in a day care center, it is the location of the proposed day care center. She stated that the location is on a curve and she fears there will be a cluster of cars. She stated that she has children that stand out and wait for the school bus and it could be a safety risk for her children. She stated that there could be many cars depending on the shifts. Ms. Green stated that there is no shortage of commercial property in the area where the day care center could be located. She stated that she had letters of opposition from people within a one mile radius. She also referenced the Comprehensive Land Use Plan by Sussex County. She stated that to place a building of this size in a pasture is not a proper location. She also questioned if there were ingress and egress plans.

Heather Sheridan, in opposition, stated that she had signed Lora Collins letter and should not have done so until she researched the property. She presented pictures and explained what is in the area. She referenced a pond that she has on her property. She fears that her pond could be a recepticle for run-off. She stated that one acre for 1,000 gallons of flow is needed and the applicants will not have enough property for the run-off. She also feels the use will have an adverse affect on their properties.

Robert West, in opposition, stated that due to the amount of traffic and safety aspects he opposes the day care center. He feels the use will disrupt the quiet peaceful tranquility in the area. He stated that he never opposed the dog kennel, but he does hear dogs at night. He feels the day care center will impact the noise in the area. He stated that his wife signed the Mrs. Collins paper, but now opposes it.

Mrs. Hudson asked if the letters of opposition are from people on the road where the day care center will go.

Sandra Green stated that they were.

Rob Brendel was sworn in and testified in opposition stating that he lives 1 mile east on Route 368. He stated that the property is farmland and feels a commercial site somewhere else in the County is better for a day care.

In rebutal, Susan Weidman asked Mrs. Green if she worked for Sea Coast Realty 9:00 A. M. to 5:00 P.M., and works on weekends.

Ms. Green replied that she does work for Sea Coast Realty and the hours mentioned, but does not work at night and on Saturday and Sunday only if necessary. She stated that she has to have an adult

out with her children waiting for the school bus. She stated that if there are two shifts at the day care center, it could bring 100 to 200 cars a day. She stated that she had been in contact with Social Services and was told 115 children is not the limit, in theory there could be 230 cars coming and going per day.

Susan Weidman asked Ms. Sheridan if a fence could be put up, would she approve of the day care center.

Ms. Sheridan answered that it would be ok, but her attorney says there is still liability.

Ms. Weidman asked if she works and has children.

Ms. Sheridan stated that she works 8:30 A. M. to 4:00 P. M. and she has no children. She stated that she does not want to hear children.

Ms. Weidman asked Mr. West if he is home during the day and if he has any children.

Mr. West stated that he has no children and works.

Ms. Sheridan asked the Board members what they base their decision on. She stated that all of the people in support do not live there. She feels it will adversely affect the area.

Mr. Jones, Attorney, read from the Zoning Code the standard reason for the granting of a special use exception, which states: such exceptions will not substantially affect adversely the uses of adjacent and neighboring property.

Mr. Mills stated that there seemed to be some concern about the hours of operation. He asked Mrs. Collins that if the use is approved would there be a problem with the hours of operation if limited to 8:00 A. M. to 5:00 P. M.

Mrs. Collins stated that the change in the hours would not be a problem.

Ms. Weidman stated that it is not a 9 to 5 world we live in. She agrees with some flexibility. She stated that Mrs. Collins had worked very hard to bring the case to the Board.

Mrs. Collins stated that Dover has traffic control and there needs to be some control now. In answer to Ms. Weidman's question, if the building has the capacity to hold 230 children, Mrs. Collins stated that she only wants 115 children.

Mr. Mills asked if the school buses will have to turn into her driveway.

Mrs. Collins stated that the bus pulls up on the curve next to her driveway.

Mr. Callaway asked how many nights she would operate.

Mrs. Collins stated that she would operate Monday through Friday nights.

Mr. Mills asked the opposition if they limited the hours would they still be opposed.

The answer was that they would be opposed because the use will change the area.

Mr. West stated that he is concerned about the traffic with 115 children and deliveries. It could generate 200 vehicles per day, and Mr. Collins also has a business on the property now.

Mr. Brendel asked if there are commercial properties where they could build the center and if other day care centers have been built on commercial properties.

Mrs. Collins stated that she had looked for property for over a year within the Lord Baltimore School District, and the property is very costly. She feels very lucky to have land to be deeded to her. She does not know if other day care centers are on commercial property.

Motion was made by Mr. Mills, seconded by Mr. Wheatley and carried unanimously that the case be tabled until the next meeting to give the Board members time to review all of the matters presented. Vote 5-0.

The Board members took a ten minute break.

Case No. 6415--Delmarva Power & Light Co. - East side of Road 332,
3,000 feet north of Road 335.

A special use exception to operate asphalt plant
(asphalt products or central asphalt mixing or
batching) in a HI-1 Heavy Industrial District.

This case was withdrawn.

OLD BUSINESS

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.

Mr. Callaway reviewed the case.

Mr. Rickard read a letter from the Zoning Inspector, Tina Rafail, as requested by the Board, stating the shed on Mr. Bailey's property is under 600 sq. ft. in size and can have 5' setbacks and does not need a variance.

After some discussion, motion was made by Mrs. Hudson, seconded by Mr. Wheatley and carried unanimously that the variance 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,
approximately 0.5 mile south of Route 54.

A variance from the side yard setback requirement.

Mr. Callaway reviewed the case.

After some discussion, motion was made by Mr. McCabe, seconded by Mrs. Hudson and carried unanimously that the variance be granted. Vote 5-0.

OTHER BUSINESS

Case No. 6007--Robert L. Nibblett, Sr. - West side of Route 482, on
the north side of Route 470.

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 an extension.

Mr. Rickard read a letter from Robert L. Nibblett, Sr. requesting an extension to place a manufactured home in an AR-1 District on less than five acres for a permanent residence due to septic delays. His application expires on September 13, 1997.

Motion was made by Mrs. Hudson, seconded by Mr. Wheatley and carried unanimously that a six (6) month extension be granted to Case No. 6007. Vote 5-0.

Case No. 6114--Judith E. Skinner - East side of Route 36, 1,100 feet north of Route 6.

A special use exception to operate a nursing home.

Request for an extension.

Mr. Rickard read a letter from Judith Skinner requesting an extension for her approval to operate a nursing home. Her case expires November 19, 1997.

Motion was made by Mr. McCabe, seconded by Mr. Mills and carried unanimously that a six (6) month extension be granted to Case No. 6114. Vote 5-0.

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

Meeting adjourned at 9:50 P. M.