

MINUTES OF SEPTEMBER 13, 1999

The regular meeting of the Sussex County Board of Adjustment was held on Monday evening, September 13, 1999 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. Hudson, Mr. Mills, Mr. McCabe, Mr. Wheatley, Mr. Berl - Assistant County Attorney, Mr. Rickard - Chief Zoning Inspector, and Ms. Massey - Recording Secretary.

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

Motion by Mr. Mills, seconded by Mr. Wheatley, and carried unanimously to approve the Minutes of August 16, 1999 as circulated.

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

Case No. 6943 -- Carla and David Brown -- west of Route 36, 1,000 feet north of Road 632.

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

Mr. Rickard presented the case. David Brown was sworn in and testified that he is requesting that he be permitted to build five (5) feet from the side and rear property lines.

Mr. Rickard advised the Board that the applicants are requesting a 45-foot variance from the required 50-foot setback on the side and rear lot lines for a manure shed and a composter.

Mr. Rickard read a note from Mrs. John Lewis Green granting permission for the improvements.

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

Motion by Mr. Wheatley, seconded by Mr. Mills, and carried unanimously that the variances be granted as revised and requested. Vote carried 5 - 0.

Case No. 6944 -- Jeffrey and Robin Parker -- south of Road 432, intersection of Road 322.

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

Mr. Rickard presented the case. No one appeared on behalf of the application. There was a consensus of the Board that the case be moved to the end of the agenda. At the end of the agenda Mr. Rickard again presented the case. No one appeared on behalf of the application.

Motion by Mr. Mills, seconded by Mr. Wheatley, and carried unanimously that this case be denied since that applicants failed to appear to represent their application, therefore there was no record to support the application. Vote carried 5 - 0.

Case No. 6945 -- Helen H. Stauffer -- south of Grant Avenue, 1,600 feet south of Lincoln Drive, within Cape Windsor, south of Route 54, Lot 31.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Helen H. Stauffer was sworn in and testified requesting a 5-foot variance from the required 10-foot side yard setback requirement, and added that she wants to place a 24' by 48' home with a deck and garage on the lot; that the lot is small and only measures 40' by 120'.

Mr. Rickard read a letter from the Cape Windsor Community Association, Inc. which referenced that the applicants have met the restrictions of the community and that the Board of Directors grants approval of the setbacks.

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. 6946 -- Robert and Betty Hower -- west of Road 277, Cherry Court, Lot 35 and 1/2 of Lot 36, within Angola By The Bay.

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

Mr. Rickard presented the case. No one appeared on behalf of the application. There was a consensus of the Board that the case be moved to the end of the agenda. At the end of the agenda Mr. Rickard again presented the case. No one appeared on behalf of the application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that this case be denied since that applicants failed to appear to represent their application, therefore there was no record to support the application. Vote carried 5 - 0.

Case No. 6947 -- Hattie Burton and Gloria Foreman -- northwest of Road 285, 1,074 feet southwest of Route 9 intersection.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Gloria Foreman was sworn in and testified that she is requesting a 2.35-foot variance from the required 10-foot side yard setback requirement on the east side and a 1.0-foot variance from the required 10-foot side yard setback on the west side for an existing 1-story frame house; and that Jerry Smith, her contractor, moved the boundary line and caused the encroachment into the setbacks.

Diane Brown and Dorthine Brown were sworn in and testified that they have no objections to 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.

There was a consensus of the Board that the contractor should be notified advising him of the Board's disappointment and his responsibility for the requested variances.

Case No. 6948 -- Joseph McGettigan -- south of Route One, 170 feet northwest of Road 271, Lot K-46, within Sea Air Village Mobile Home Park.

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

Mr. Rickard presented the case. George Littleton was sworn in and testified that Mr. McGettigan is requesting a 4-foot variance of the 20-foot separation distance requirement between units within the mobile home park, and added: that the enclosed porch was constructed in 1972; that he thought that the improvements were grandfathered; that the owner bought the unit in 1997; and that he is not aware of any opposition.

Mr. Littleton submitted photographs, dated in 1972 and 1998, showing the improvements on the lot.

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

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

Case No. 6949 -- J. Petterson -- south of Route One, 785 feet east of Road 275-A, Lot 44, within Camelot Mobile Home Park.

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

Mr. Rickard presented the case. James P. Petterson was sworn in and testified that he is requesting a 3'6" variance from the 20-foot separation requirement between units within the mobile home park; that he purchased the unit on Lot 44 in March of 1999; that the deck was attached to the unit when he purchased the unit; that 20-feet exists between the units; that the deck encroaches the separation requirement; that he has spoken to the neighbors on both side of his unit and heard no objection; and that when he purchased the unit and deck he was informed that the deck was approved.

Warren Howard, present on behalf of the park management, Carefree Sales, was sworn in and testified that when the neighbor built their deck over the lot line, it caused an encroachment, and that they have established rules for all future buildings built within the park.

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

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

Case No. 6950 -- Arlene M. Jester -- east of Hidden Acres Drive, 530 feet south of Route 54 and west of Road 365 near Clarksville, Lot 2, within Hidden Acres Subdivision.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Kathleen J. Meighan, daughter of the applicant, was sworn in and testified that her mother is requesting a variance of 0.2-foot from the required 10-foot side yard setback requirement; that a vacant lot exists to the right and a home exists on the left; that her mother built her home in 1985; and that a survey was performed for a potential sale of the property and that the encroachment was found.

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

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

Case No. 6951 -- Marino Tools & Elect., Inc. -- east of U.S. Route 13, corner north of Road 462.

A special use exception for a tent for special purposes for events.

Mr. Rickard presented the case. Susan Weidman, Attorney, was present with Frank Marino, who was sworn in and testified that he is requesting permission for 24 events per year, more specifically September 17, 18, and 19, October 1, 2, 3, 8, 9, 10, 22, 23, 24, November 5, 6, 7, 19, 20, 21, and December 3, 4, 5, 17, 18, 19; that the tents will be used for tool sales; that the property is zoned LI-2 Light Industrial; that he owns a total of 12.5 acres; that a creek exists to the north; that numerous business and commercial uses exist to the east and south of the site, i.e. DeLux Market, Johnny Janosik Furniture; that the site is vacant except for 2 billboards; that he was originally a tenant at the Route 13 Market; that adequate space exists on the site for parking; that the parking area will be improved with stone; that he has spoken to Johnny Janosik and Peter Stein, local businessmen, and heard no objection; that his primary places of business are in Seaford, Dover, and Salisbury; that the closest business to the proposed tent location is the DeLux Market; that there should be no safety concerns since the shoulder is paved with a deceleration and acceleration lane; and that he has not met with DelDOT in reference to an entrance.

Mr. Mills questioned Mr. Marino as to why he left the tent on Route One up for nine days, when he had approval for only a three-day event, and after he had been notified that he was in violation.

David Rouberg, a part owner of Route 13 Market, was sworn in and questioned if the applicant has an approved access from DelDOT and approval for off street parking, and added that there is no way to police activities within a tent sale, that tent sales are not a listed permitted use in an LI-2 District, that approval of the use could establish a precedent for others to apply, that the use is not an accessory use of a business, and that the use could affect adjacent business uses.

John Camel of John's Tools in Delmar was sworn in and stated that he cannot compete with liquidation sales.

Mr. Marino stated that DelDOT put in the entrance to the property, that the parking area is on the far side of the tent away from Road 462, and that the use is accessory to his business.

Motion by Mr. Mills, seconded by Mr. Wheatley, and carried unanimously to take this case under advisement.

At the conclusion of the public hearings, the Chairman referred back to this application.

Mr. Mills stated that it appears that Mr. Marino is seeking a way to operate a business without following the proper development procedures; that he is concerned that the granting of the special use exception will set a precedent for future business and property owners; that he is concerned that Mr. Marino, based on the recent Rehoboth location request, would not abide by any time limitations set by the Board; and that the use is not an accessory use since the applicant does not have an existing business on the property, or in close proximity.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously to deny the application. Vote carried 5 - 0.

Case No. 6952 - - PNE Media, LLC -- west of U.S. Route 13, .3 miles south of Whitesville Road, Little Acres Subdivision.

A variance from the height and square footage requirements for signs.

Mr. Rickard presented the case. Fred Lauer, Attorney, was present with Stacey Riley of PNE Media, LLC, who was sworn in and testified that they are requesting a 5-foot variance from the maximum allowed height of 25-feet for a sign and a 140 square foot variance from the 300 square foot maximum allowed sign square footage; that they propose to replace an existing one-sided wooded sign with a two-sided steel pylon sign containing 440 square foot on each side; that the site is zoned C-1 General Commercial; that photographs being submitted show that the sign will be blocked from view by recent construction activities around the site; that the obstructions occurred since the billboard was constructed; that they propose to increase the height of the sign to 30-feet to be higher than the obstructions; that the existing billboard has the same square footage; and that adjacent properties will not be affected.

Mr. Rickard stated that no other billboards have been granted with similar requests.

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

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that this application be tabled until the next regular meeting on September 20, 1999. Vote carried 5 - 0.

Case No. 6953 -- Selby Sign Co., Inc. -- east of Route One, within Lighthouse Plaza.

A special use exception for a second wall sign.

Mr. Rickard presented the case. David Selby was sworn in and testified that Candy Kitchen is his client; that they are requesting a second wall sign for the business since north bound traffic cannot see the building due to its positioning in the complex; that the business will look vacant from the Super Giant side of the building without a sign; and that the only sign on the store will be for Candy Kitchen.

The Board found that no parties appeared in support of or in opposition to this application.

Motion by Mr. Mills, seconded by Mr. Wheatley, and carried unanimously that the special use exception should be granted as submitted. Vote carried 5 - 0.

Case No. 6954 -- Richard and Sharon Breski -- southeast of Route 16, southwest side of Bay Shore Drive, Lot 8, within Broadkill Beach.

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

Mr. Rickard presented the case. Richard and Sharon Breski were sworn in and testified that a mistake was made when Hudson Homes set their house; that they are requesting a 1.5-foot variance from the 30-foot front yard setback requirement, a 2.0-foot variance from the 10-foot side yard setback requirement, and an 8.1-foot variance from the 15-foot setback on a corner; that the surveyor provided the wrong dimensions of the side of the lot; and that two of the encroachments are decks.

Eulalia Mihalik, an adjoining property owner, was sworn in and testified that she has no objection to the proposal.

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

Motion by Mr. Mills, seconded by Mr. Wheatley, and carried unanimously that the variances should be granted as submitted. Vote carried 5 - 0.

There was a consensus of the Board that Hudson Homes should be notified of the Board's disappointment and Hudson Homes responsibility for the variances.

Case No. 6955 -- Joanne C. Garren -- west of Route 54, east of Roosevelt Avenue, Lot 31, within Cape Windsor.

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

Mr. Rickard presented the case. Joanne C. Garren was sworn in and testified that she is requesting a 5-foot variance from the required 20-foot rear setback requirement and a 5-foot variance from the required 10-foot side yard setback requirement for the north side of the lot; that they are proposing to replace their existing home with a double wide

manufactured home; that they have used the existing home for a vacation home; that they plan to retire in the double wide manufactured home; and that the Cape Windsor Community Association, Inc. has no objection to their proposal.

Ms. Garren submitted a copy of the Association's approval.

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

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

Case No. 6956 -- Sheldon J. Vandemark -- north of Road 77, 1,620 feet east of Road 550.
A special use exception to use a manufactured home structure for storage.

Mr. Rickard presented the case. Sheldon J. Vandemark was sworn in and testified that he proposes to utilize a trucking trailer body for a storage building, and that the unit is not a manufactured home type structure.

The Board found that a hearing was not necessary; that Mr. Vandemark did not need to apply for the trailer body to be used for storage; and that Mr. Vandemark needed to obtain a building permit for an accessory building.

Case was dismissed.

OLD BUSINESS

Case No. 6934 -- Vincent A. Finocchio -- west of Route 13-A, north of Road 488, Lot 2, within Lloyd's Subdivision.

A variance from the front yard setback requirement.

The Chairman referred back to this application deferred since August 16, 1999.

Motion by Mr. Mills, seconded by Mr. Wheatley, and carried unanimously that the case be tabled until the next meeting on September 20, 1999. Vote carried 5 - 0.

Case No. 6940 -- Michael Schuchman -- north of Route 54, west side of Swann Drive, Lot 42, within Swann Keys Subdivision.

A variance from the side yard setback requirement.

The Chairman referred back to this application deferred since August 16, 1999.

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

There was a consensus of the Board that the builder should be notified of the Board's disappointment and his responsibility for the variance.

The Board discussed variances and special use exceptions in general; the enforcement of violations; tents being granted; special uses for five years; hardship cases; the heights of fencing and boat displays in the front yard; and the up coming meeting with the County Council.

Meeting adjourned at 9:22 P.M.