

Minutes of September 14, 1992

The regular meeting of the Sussex County Board of Adjustment was held after due notice on September 14, 1992, in the County Council Chambers, Room 115, Courthouse, 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. Wheatley, Mrs. Hudson, Mr. Mills, Mr. Callaway, Mr. Jones-Attorney and Mr. Betts-Zoning Inspector III.

Motion was made by Mrs. Hudson, seconded by Mr. Wheatley and carried unanimously that the minutes of August 31, 1992 be approved as circulated.

Case No. 4885--Malcolm S. Impink - South side of Route 353, 300 feet east of Route 365, Lot 19-B, within Sherwood Acres.

A variance from the side yard setback requirement.

The case was presented by Mr. Betts. Malcolm Impink was sworn in and testified, requesting a 2½' variance from the side yard setback requirement of 10', on Lot 19-B, Sherwood Acres. Mr. Impink constructed a screen porch on his property last fall and made a mistake by building too close to the side property line. He had obtained a permit with the proper setbacks on it. He built the porch at the same location as his existing patio. Pictures were presented.

There were no parties present in opposition.

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

Case No. 4886--Iris B. Zebrook - Route One, at the intersection of Route 221, Lot B-61, within Sea Air Mobile City.

A variance from the setback requirement between units in a park.

The case was presented by Mr. Betts. Iris Zebrook was sworn in and testified, requesting a 2' variance from the 20' setback requirement between units to be 18', to be able to replace a 12' wide manufactured home with a 14'x 65' manufactured home. The unit will go in the same location as the existing one, but will be 2' wider. The property location is Lot B-61, Sea Air Mobile City.

There were no parties present in opposition.

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

Case No. 4887--DMDY Limited - Southeast side of Route 350,  $\frac{1}{2}$  mile east of Route 349, Lot 7, within Denton Woods.

A variance from the front yard setback requirement for a through lot.

The case was presented by Mr. Betts. Dennis Blades was sworn in and testified representing DMDY Limited and was also represented by Robert Witsil, Attorney. Harold Carmean, Appraiser, and Mary Lou blades, Sales Agent for DMDY, were also sworn in since they would be testifying in behalf of this application. The applicants requested a 10' variance from the 40' front yard setback requirement for a house constructed on Lot 7, Denton Woods. Mr. Blades had obtained a building permit with the front yard setback 30'. The lot being a through lot requires a 40' setback from the front property line facing the County Road. A mistake had been made on the permit. Mr. Blades also stated plans were shown at the time he obtained a permit. Mr. Blades had the foundation and a deck constructed when the Zoning Inspector informed him he should be 40' back. Pictures were presented. The development community consists of manufactured homes, most with block foundations. There are no other stick-built homes in the development. Mr. Witsil stated that the applicant's did not create the problem since the setbacks on the permit were followed. The final value of the home is in excess of \$89,000.00. The home is virtually completed.

Harold Carmean an Appraiser, testified giving his credentials in regards to appraising. He testified he investigated the property and explained his findings. He feels the home will not alter the character of the neighborhood nor will it impair or be detrimental to other property.

Mrs. Blades stated it is not physically possible to move the home to comply with zoning regulations.

Mr. Mills questioned why they continued to build after being cited.

Mrs. Blades stated that they totally enclosed and weather proofed the home and added siding. The exterior is completed. She testified she was given the impression there would not be a problem with the variance being approved.

Richard Hutchison was sworn in and testified in opposition. He stated that restrictions do not permit a stick-built home on the property. He feels there is no reason why a manufactured home could not be put on the lot. He testified that he has the same objections that he had at the previous hearing, since this is a rehearing. He stated they have been misled by Mr. Yingling, the developer, since others were told nothing could be put in the development except manufactured homes.

Allen Farnum, Lot 64, was sworn in and testified in opposition, stating that when he bought his lot in March from Mary Lou Blades, he was told they could not put a modular home in the development, so they bought a double-wide manufactured home (preferring a modular). He opposes everything about the application. He also stated he had to

meet the setbacks.

Mr. Witsil stated that he is familiar with the deed and has no knowledge about the restrictions for homes.

Mr. Jones, Attorney, stated that the Board cannot honor deed restrictions.

William O. Cole was sworn in and testified in opposition, referencing the initial hearing that was held for this case. He stated that he lot will accommodate a manufactured home and that careful reading of the restrictions references manufactured homes throughout them.

Fred Flicko was sworn in and testified in opposition stating that the development is a manufactured home type community. He presented a picture and also a news add, advertising Denton Woods as a manufactured home type community. They all bought accordingly. He is opposed to a stick-built home. It is in violation and contrary to the rest of the homes. He also feels if it were a manufactured home the violation could be corrected.

Mr. Jones stated that all exhibits from previous hearings would be incorporated into this hearing.

Mr. Witsil feels it is discrimination against a house. It is not a self imposed hardship, that Planning and Zoning made the error. He feels the home will improve property values. He also stated that Mr. & Mrs. Blades are not involved in the development. They work for Mr. Yingling.

Mrs. Blades stated that DMDY Corp. is owned by Robert Yingling and his family. She stated that the house is to be sold.

Documents were presented to Mr. Jones by Mr. Witsil.

There were 8 people present in opposition.

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

Case No. 4888--Lowell Folke - Northwest side of Route 36, 200 feet southwest of Route 208.

A variance from the lot size requirement of one acre to be considered exempt from the requirement of having a main building on the lot.

The case was presented by Mr. Betts. Lowell Folke was sworn in and testified, requesting a variance from the one acre lot size to be considered exempt from the requirement of having a main building on a lot. The applicant wishes to place an accessory structure (pole shed) on a parcel where there is no main dwelling. The Planning and

Zoning Commission can grant this if the lot contains at least one acre. They are requesting a variance from the lot size.

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.

Case No. 4889--Linwood A. Hayden, Sr. - North side of Route 54,  
one mile east of Route 381, Lot 36E,  
within Swann Keys.

A variance from the setback requirement between units in a park.

The case was presented by Mr. Betts. Linwood Hayden, Sr. was sworn in and testified, requesting a 3' variance from the 20' setback requirement between units, being Lot 36E, within Swann Keys. The applicant requests the variance to construct an addition on his unit. He stated that the Association has approved his variance.

There were no parties present in opposition.

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

Case No. 4890--James W. Corron, Sr. - West side of Route 510, 300  
feet north of Route 54.

A special use exception to place a manufactured home in an AR-1 District on less than five acres for a permanent residence.

The case was presented by Mr. Betts. James Corron, Sr. and Margaret Corron were sworn in and testified, requesting to place a 28'x 60' double-wide manufactured home on property they are purchasing for their permanent residence. They testified that there are no other manufactured homes on the adjacent properties, but some around the corner from their property. They stated that there are other lots for sale in their area.

Frank D. Bonsall was sworn in and testified in opposition, stating that he owns property in the area. That the manufactured homes on Route 501 and 510 have been there for years. He explained what is in the area. Pictures were presented. He stated that the Ross Brothers, who own the property, has large parcels of land in the area. He testified that the area is primarily stick-built homes and no new new manufactured homes have been put in the area.

James Dormar was sworn in and testified in opposition stating he fears other manufactured homes will come in the area, with the amount of acreage the Ross Brothers own. There will be no stopping the manufactured homes once one is approved.

Robert Mack was sworn in and testified in opposition stating that the area is predominately farmland and homes, and that a manufactured home will not be in character with the neighborhood. He would like the

area to continue as it is.

There were 8 people present in opposition.

Mrs. Corron stated that they will put the manufactured home on a block foundation, will keep it up in appearance and will make it permanent.

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 Mrs. Hudson, seconded by Mr. Mills and carried unanimously that the special use exception be denied, finding that the manufactured home would be out of character with the area, possible depreciation of property values and hurt further development.

Case No. 4891--Lori A. Smith & William A. Beam - South side of Route 66, 2,500 feet west of Route 62.

A special use exception to place a manufactured home in an AR-1 District on less than five acres for a permanent residence.

The case was presented by Mr. Betts. Lori Smith & William Beam were sworn in and testified, requesting to place a manufactured home on their property to be used temporary for their residence until they can build a home. They feel it will take approximately 3 years to build their home. They own all the land around their parcel for the manufactured home. She stated that there is a camper trailer now on the site they are occupying. They will purchase a two bedroom, two bath single-wide manufactured home.

Lemuel F. Seth Hudson was sworn in and testified in behalf of the request. He stated that the area is agriculture and that the applicants are proposing agricultural uses, so he welcomes them in the area.

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.

Case No. 4892--J. Neil Kasley - Northwest side of Route 68, across from Route 454B.

A special use exception to place a manufactured home in an AR-1 District on less than five acres for a permanent residence.

This case was withdrawn.

Case No. 4893--Helen Lucia Moore - Southeast side of Mercer Avenue, 800 feet northeast of Route 297A.

A variance from the side yard setback requirement.

The case was presented by Mr. Betts. Helen Lucia Moore was sworn in and testified and was represented by Bob Wolhar, Attorney. Ms. Moore requested a 3' variance from the 10' side yard setback for a porch that has been constructed on her home, located in the Del. Oyster Farms. The dwelling has been on the property over 60 years and the porch was constructed following the same line as the house, not coming out any further. The builder obtained a permit and built the porch addition. The encroachment was an oversight by the contractor. It was stated that it would cost approximately \$4,000.00 to remove the encroachment. Pictures were presented. The applicant feels there will be no change in the character of the neighborhood or area. The porch is no greater an encroachment than the existing house.

Marie Miller was sworn in and testified in opposition, stating she lives next door and is fearful that the variance will prevent her from utilizing her property. She also questioned why the applicant proceeded to build when she was told of her violation.

Ira Cordrey was sworn in and testified in opposition, stating that the applicant was given a permit based on zoning requirements, but they defied the law and continued to finish the work after told a variance was needed. He testified that Ms. Moore has been on the property three years. He stated that she is in court now for a quick claim deed to property in front of her house.

There were 8 people present in opposition.

Richard Miller was sworn in and testified in opposition concerned whether approval is by show of hands. He questioned changes in the law in the future.

Geraldine Cordrey was sworn in and testified, explaining the Oak Orchard area. She believes the builder found out laws are not what he thought they were.

Charles Purnell property owner in the area, was sworn in and testified, explaining the area and the litigation on the property. He questioned blocking the view and breeze being cut-off.

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 Mrs. Hudson, seconded by Mr. Mills and carried unanimously that the variance be granted, finding the structure is no closer to the property line than the existing house, majority of the houses in the area are non-conforming and it will not affect property values.

Case No. 4894--Melvin J., Jr., Janet L. Ware and Michelle O'Connell -  
West side of Route 523, 450 feet south  
of Route 522A, Lots 9 and 11, within Rumbridge  
Acres.

A special use exception to place a manufactured home in an AR-1 District on less than five acres for a permanent residence.

The case was presented by Mr. Betts. Melvin Ware, Jr. and Janet Ware were sworn in and testified, requesting to place a manufactured home on property they are purchasing for their permanent residence, located at Lot 9 & 11, Rumbridge Acres. They have not purchased the manufactured home as yet, but it will be a three bedroom, used unit. They testified that there are other manufactured home in the area.

There were no parties present in opposition.

Motion was made by Mr. Callaway, seconded by Mr. Mills and carried unanimously that the special use exception be granted.

Case No. 4895--Alice V. Mayfield - North side of Route 291, ½ mile east of Route 5.

A variance from the side yard setback requirement.

The case was presented by Mr. Betts. Alice Mayfield and Dewey Mayfield, III were sworn in and testified, requesting a 3' variance from the side yard setback of 15' for a 16'x 22' storage building that is attached to a 24'x 24' garage. When the storage building was attached to the garage the size was over 600 sq. ft., therefore, the setback has to be 15' from the side property line.

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.

Case No. 4896--Marion McConnell Lassen, Etal. - West side of Hall Avenue, 500 feet east of Route One, Lot 16, within The Chancellery.

A variance from the side yard setback requirement.

The case was presented by Mr. Betts. John Lassen was sworn in and testified and was represented by Jim Fugua, Attorney. Mr. Lassen requested a 5' variance from the side yard setback requirement of 15' on a corner lot, to be 10'. The property being Lot 16 in The Chancellery Subdivision. Mr. Fuqua stated that Mr. Lassen has house plans for the property he bought in 1991. He presented a map of the area and explained what is in the area. He stated that the lot is unique due to D.N.R.E.C. requirements. It was stated that the corner street abuts sand and will never be used as an open street to traffic. They feel the variance will not alter or impair the area. Mr. Fuqua stated that the street does not provide access to the properties. He stated that the hardship was not created by the applicant and a minimal variance is needed. A letter from the developer, John Lewis Smith, III, was presented in favor of the variance. The letter was read into the record by Mr. Fuqua and pictures were presented. Mr. Fuqua also referenced several areas in Fenwick Island where similar variances have been granted.

Robert Witsil, Attorney, represented R. Bruce McNew who is opposed to the variance and presented and read a notarized letter into the record from Mr. & Mrs. McNew. He feels the dwelling will affect

his view of the ocean. A letter from Michael Moore who worked for the Planning and Zoning Office was submitted referencing the subdivision. Mr. Witsil stated tha D.N.R.E.C. has to decide where the beach walkway has to be located and the 15' setback may be important for this. He referenced other lots in the area and he feels that a reasonable size structure can be built and meet the setback requirement. He feels that since this is the first lot to be developed a precedent will be set. He feels they do not meet the requirements for granting of a variance according to the Zoning Code and Delaware Code.

James Ward was sworn in and testified in opposition. His wife owns Lots 1,3,5 & 19 and has a house on Lot 1 & 19, according to Mr. Ward. He stated that if the variance is granted it will bring the applicants 5' closer to him and will block more of the view of the ocean. He feels it may cause a decrease in property values, and he wants the 15' maintained. He also stated that the driveway goes in on the dedicated area going into their property.

Mr. Fuqua in rebuttal referenced statements made and stated that the driveway would not be affected.

Motion was made by Mr. Wheatley, 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 Mrs. Hudson, and carried unanimously that the case be tabled.

Case No. 4897--Randy Ott - North side of Route 74, 3,805 feet northeast of Route 447, Lot 2, within Pine Woods.

A special use exception to place a manufactured home in an AR-1 District on less than five acres for a permanent residence.

The case was presented by Mr. Betts. Randy Ott was sworn in and testified, requesting to place a 1993, 28'x 60' double-wide manufactured home on his property for his residence. He stated that there are other manufactured homes in the area, the nearest directly across the road

Joe Gogarty next door neighbor was sworn in and testified in behalf of the request. He stated he has a modular home and he and no objection to the manufactured home.

Margaret & Webster Green were sworn in and testified in behalf of the manufactured home. They feel the manufactured home will help build up the area, and that all of the manufactured homes in the area are not on five acres. They live across the road.

There were no parties present in opposition.

Motion was made by Mr. Callaway, seconded by Mr. Mills and carried unanimously that the special use exception be granted.

Case No. 4898--C.P. Diver, Inc. - Northeast side of Route One,  
800 feet east of Route 276.

A special use exception to place a non-conforming tent for special purposes.

The case was presented by Mr. Betts. Mark Berryman was sworn in and testified, representing C. P. Diver, Inc., who requested to use a non-accessory tent for special purposes. He stated they will use the tent for special event type sales, that it will be put up and taken down in a few days. They would like to be able, if needed, to use it five (5) times a year.

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 for a period of five times per year, not to last more than two weeks (14 days) at a time, for a maximum of five years.

Case No. 4899--Rodney Thomas - North side of Route 31, 1,050 feet east of Route 574

A special use exception to place a manufactured home in an AR-1 District on less than five acres for a permanent residence.

The case was presented by Mr. Betts. Pearly Thomas was sworn in and testified, representing the applicant and her daughter. Her daughter is seeking to place a manufactured home on her brother's property for her residence. Mr. Thomas is in the service and when he is home he will occupy the manufactured home with his sister. The manufactuerd home has not been purchased yet. There are other manufactured homes in the area.

There were no parties present in opposition.

Motion was made by Mr. Wheatley, seconded by Mr. Callaway and carried unanimously that the special use exception be granted.

#### OLD BUSINESS

Case No. 4849 (Cont'd.)--Joseph E. L. & E. Jacqueline Whalen - North of Route 54, one mile east of Route 381, Lot 23, within Swann Keys.

A variance from the setback requirement between units in a park and a variance from lot lines.

Mr. Betts reviewed the case.

Mr. McCabe stated that he had talked with Swann Keys management and they after viewing the applicants property have changed their mind and no longer oppose the variance.

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

Case No. 4815--Four Paws Animal Hospital - On a private road on the south side of Route 531, ½ mile west of Route 533.

Discussion.

Mr. Jones, Attorney, stated to the Board that they should not consider changing the fence height without a new hearing.

It was the consensus of the Board that they are not interested in amending their decision regarding the height of the fence.

OTHER BUSINESS

Case No. 4532--Stephen J. & Kelli J. McCulloch

Request for an extension.

Mr. Betts stated that a letter had been received from Jim Griffin, Attorney, on behalf of the applicants requesting a one year extension on the application Case No. 4532. Mr. Betts asked to have more time to research the request before they act on the request.

Discussion

Jerry Edge

Mr. Betts presented copies of a letter to the Board Members, that he had sent to Mr. Edge notifying him that his time has expired for removing the tires.

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

Meeting adjourned at 9:58 P. M.