

Minutes of September 14, 1998

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, September 14, 1998 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:04 P. M. with Chairman McCabe presiding. The Board members present were: Mr. McCabe, Mr. Callaway, Mr. Mills, Mr. Hudson, Mr. Wheatley, Mr. Berl-Esquire, Mr. Rickard-Chief Zoning Inspector and Mrs. Talley-Recording Secretary.

Mr. McCabe asked if there were any additions or corrections to the agenda. Hearing none, motion was made by Mr. Wheatley, seconded by Mr. Callaway and carried unanimously that the agenda for September 24, 1998 be adopted. Vote 5-0.

Motion was made by Mr. Callaway, seconded by Mr. Wheatley and carried unanimously that the minutes of August 17, 1998 be approved as circulated.

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

Case No. 6687--Thomas J. Baker - North of Road 261, Red Mill Avenue, Lot A-4, Carsyljan Acres.

A variance from the front yard setback requirement.

The case was presented by Mr. Rickard. Thomas J. Baker of Lewes, was sworn in and testified, requesting a 25' variance from the 30' front yard setback requirement on Lot A-4, Carsyljan Acres. The applicant proposes to construct a 16'x 55' addition to his existing 12'x 55' manufactured home to provide more living space. He stated that his property is located on a cul-de-sac and will not cause any problem with vehicles going down the road. An A-Frame roof will be put over all.

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, finding the property is located on a cul-de-sac and is odd shaped. Vote 5-0.

Case No. 6688--Carl King Tire Co., Inc. & Richard Hawes - East of Route One, northwest corner of Tulip Drive.

A variance from sign requirements.

The case was presented by Mr. Rickard. Richard Hawes of Dover was sworn in and testified in behalf of the application, requesting to add two (2) wall signs to an existing building. A ground and wall sign exists. It was stated that the business is located directly behind another business and they are somewhat hid. The signs will be 24" non-illuminated signs. The wall signs are needed for the business to be seen.

There were no parties present in opposition.

Motion was made by Mr. Callaway, seconded by Mr. Wheatley and carried unanimously that the varince be granted for two wall signs on an existing building. Vote 5-0.

Case No. 6689--Lowe's Companies, Inc. - Northeast of Road 276 & 275, west of Route One.

A variance from sign & height requirements.

The case was presented by Mr. Rickard. Rusty Collins of North Carolina, with Lowe's Home Center was sworn in and testified and was represented by David Rutt, Esquire. The applicants requested to have a 2nd. & 3rd. wall sign; request a 73 plus/minus sq. ft. variance for each wall sign, which there are three (3), a total of 520 sq. ft.; request a 4' building height variance from the 42' height requirement. A new Lowe's Store is being built and located on Route's 1, 9 and 275. Exhibits were presented by Mr. Rutt. It was explained that the height variance is just for the front peak of the store at the front entrance. It will be 42' to 46' in height. The variances are needed for reasonable use of the property and visibility. It is the minimal variances needed. The two wall signs are for the lumber yard and garden center for identification. Mr. Hawes stated they feel there is a need to identify the locations of the different areas of the store to avoid funneling people through one entrance. Photographs were presented. There are other businesses in the area such as L. L.Bean and K-Mart with with sign variances. Mr. Rutt stated that the uses will not alter the essential character of the area; impair use of neighboring property nor be detrimental to public welfare. Mr. Rutt stated that there is only one square footage request for signs, that according to Mr. Lank they could be put together.

There were no parties present in opposition.

Motion was made by Mr. Callaway, seconded by Mr. Wheatley and carried unannimously 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. Callaway, seconded by Mr. Wheatley and carried unanimously that the requested variances and height 42' to 46' be granted. Vote 5-0.

Case No. 6690--Daniel L. Orner - South of Road 247, 730 feet east of Route 281, Lot 2, Juel C. Stamper Subdivision.

A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. Tom McCoy, Esquire, of Georgetown, was sworn in and testified representing the applicant who requested a 1.5' variance from the 15' side yard setback requirement on Lot 2, within Juel C. Stamper Subdivision. A garage on the property was placed 13.5' from the property line. It was stated that it is an excavator error, that he did not pay attention to the property stakes.

James Katurakes of New Castle, who owns property adjacent to the applicant, was sworn in and testified questioning if there would be an impact on his property in the future if the applicant was granted the variance. He questioned what would happen if the applicant wanted to build anything else closer to his lot line.

It was explained by the Board that the applicants variance would have no impact on his property and to build anything else closer to the property lines he (the applicant) would have to seek another variance.

Mr. Katurakes stated that he was not in opposition.

There were no parties present in opposition.

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

Case No. 6691--Frank J. Tomasic - North of Route 54, Lot 6, Longs Mobile Home Park.

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

The case was presented by Mr. Rickard. Frank J. Tomasic of Harrisburg, PA, was sworn in and testified, requesting a 16' variance on the left side of his property and a 12' variance from the right side of his property, from the 20' setback requirement

between units in a mobile home park. Mr. Tomasic bought the existing manufactured home and during title changes it was found that the variances were needed. He was also notified by the Zoning Inspector that he was in violation. He meets all other setback requirements.

There were no parties present in opposition.

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

Case No. 6692--Richard & Frances Turner - South side of Road 288-A, Lakewood Drive, Lot 22, Block B, Lochwood Subdivision.

A variance from the height requirement for fences.

The case was presented by Mr. Rickard. Richard Turner was sworn in and testified, requesting to erect 104' of 8' stockade fence where the maximum height allowed is 7'; erect 32' of 6' high stockade fence of which approximately 18' will extend into the required setback area where the maximum height allowed is 3 1/2'. Mr. Turner has a deck on the side of his dwelling, located on Lot 22, within Lochwood Subdivision, and he needs to put a fence up for privacy. He wants to provide screening from the refuse and rubbish on the adjacent property, to allow use of his raised deck and to allow them to open their blinds in the dining and kitchen area. It will also provide a screen from two large barking dogs. Pictures were presented. It was stated that the fence will not obstruct anyone's vision in any way.

Arthur Romano, Lot 53 Lakewood Dr., Lochwood, was sworn in and testified in behalf of the application. He stated that the use will not hinder any vision and that the applicant has a problem with the property next door.

There were no parties present in opposition.

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

Case No. 6693--Lloyd R. Hoxter, Jr. - Northeast of Route One, Slipper Lane, Lot 7, Sara Glen Acres Subdivision.

A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. Lloyd R. Hoxter, Jr. affirmed. He requested a .7' variance from the side yard setback requirement of 15' on Lot 7, within Sara Glen Acres. He stated that there was a construction error when his house was built. The side yard setback encroachment was found when the final survey was done and going to settlement.

There were no parties present in opposition.

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

Case No. 6694--Philip Barton & Timothy Conaway - East of U.S. Route 13, 1/8 mile south of Route 18.

A special use exception to use a balloon for advertisement and a variance from the height requirement.

The case was presented by Mr. Rickard. There were no parties present representing this case.

Mr. McCabe left the hearing open until the end of the meeting to give the applicant or a representative time to appear.

At the conclusion of the public hearings, the Chairman referred back to this case. The applicants nor a representative were present to present their case, and there were no interested parties present.

Motion was made by Mr. Callaway, seconded by Mr. Wheatley and carried unanimously that the special use exception and variance be denied, due to lack of representation, and the applicants cannot reapply for a period of one year. Vote 5-0.

Case No. 6695--Peter A., Jr. & Nancy L. Papa - East of Route 14, intersection of Fassett Road and Ocean Road, Lot 2B-3, Sussex Shores Development.

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

The case was presented by Mr. Rickard. Michael Cummings, one of the builders from Millville, was sworn in and testified representing the applicants who requested a 14.3' variance from the front yard setback requirement of 30' and a 0.2' variance from the side yard setback of 15', on Lot 2B-3, within Sussex Shore Development. It was stated that the dwelling was renovated and the

work is completed. A survey was submitted before the construction was started, but the setbacks were measured from the street and not the property line. Mr. Cummings stated that the cantilevered deck extends over and encroaches, but the basic house is where it was.

Mr. Rickard read a letter from Wilgus Associates, Inc., Property Management Division, for Sussex Shores Beach Association, not opposing the application.

There were no parties present in opposition.

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

Case No. 6696--Donald L. Roberts - Southwest of Road 395, south of Bay View West, Lot 38, Block 4, Bayview Estates.

A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. Donald Roberts of Selbyville, was sworn in and testified, requesting a 5' variance from the 10' side yard setback requirement of 10', on Lot 38, within Bayview Estates. Mr. Roberts stated that the variance is needed on the east side of his dwelling to be able to attach a one car garage. It was stated that there is a vacant lot next to his property where the garage will go. A letter was presented from Mr. Roberts neighbor.

Mr. Rickard read the letter presented into the record from Philip C. Schrecengost, Lot 39, Bayview West, voicing no objection to the variance.

There were no parties present in opposition.

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

Case No. 6697--Morgan Stanley Dean Witter - Southeast of Route One, northwest intersection of Road 270-A.

A variance for a second wall sign.

The case was presented by Mr. Rickard. Larry E. Holding of Milton and in behalf of Rogers Sign Co., was sworn in and testified representing the applicant. The applicant requested to have a second wall sign. He stated that Dean Witter has merged with Morgan Stanley and a new sign is needed. He stated that the sign

will be a chanel neon type sign and will be the proper size and square footage.

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. Vote 5-0.

Case No. 6698--Leonard & Gayle Sears - North of Road 462, 740 feet southeast of Road 461, Lot A-1, Briarwood Manor Mobile Home Park.

A variance to permit continuation of previously existing encroachments into buffer zone.

The case was presented by Mr. Rickard. Leonard Sears was sworn in and testified and was represented by Mr. Michael P. Morton, P.A. of Wilmington.

Mr. Rickard asked that Case No. 6699, 6700 and 6701 be incorporated into this case since they follow and are in the same mobile home park and have the same type of variances. Mr. Rickard stated that the Zoning Inspector, Mr. Shockley found that there are manufactured homes encroaching into the buffer zone, and were approved by a previous Zoning Inspector. Mr. Rickard stated that the existing manufactured homes have to remain as they are until they are removed; they can have no additions and the variances if approved can not go with the properties.

Mr. Morton stated that the properties are rented by the applicants. He referenced and presented a letter from Lawrence Lank, Director of Planning and Zoning that things in the park were not in conformance. He referenced an asbuilt plan done by Woody Dishroon, with Gene Littleton Surveyors. He stated that six manufactured homes were removed and four remain and are the cases before the Board for variances.

Mr. Sears when questioned by Mr. Morton, stated that he has been a resident in Briarwood for 20 years and is the resident manager along with his wife. He stated that manufactured homes have been in the buffer zone for 8 to 20 years. It was stated that the violations were not created by the applicants. It was stated that the uses will not alter the essential character of the neighborhood; will not impair adjacent property and will not be detrimental to public welfare. Mr. Sears stated that there were 37 violations when they started and they are down to the ones listed in the letter. He stated that Certificate of Compliances were

issued except for the previous owners.

Mr. Rickard stated that the Board should consider what is before them now.

Donald White of Federalsburg, MD, and Jack O'Day of Seaford were sworn in and testified in support of the applications. They questioned if the variances were granted, could the residents do any improvements, such as siding, etc. if needed.

Mr. Berl, Esquire, explained that only if there are enlargements or expansions would a variance be needed, but if the manufactured home is destroyed it could not be replaced. If destroyed by mother nature it could be put in the same spot with a variance request. Mr. Berl stated that all testimony in this case would be incorporated in Case No. 6699, 6700 and 6701.

There were no parties present in opposition.

Motion was made by Mr. Mills, seconded by Mr. Callaway and carried unanimously that the variance for Case No. 6698 be granted, with a stipulation that they cannot further expand into the buffer zone. Vote 5-0.

Case No. 6699--Wayne & Catherine Hill - North of Road 462, 740 feet southeast of Road 461, Lot A-2, Briarwood Mobile Home Park.

A variance to permit continuation of previously existing encroachments into the buffer zone.

The case was presented by Mr. Rickard with Case No. 6698. Leonard Sears sworn in on Case No. 6698 was representing this case and was also represented by Michael P. Morton, P.A.

All testimony from Case No. 6698 was incorporated into this case.

There were no parties present in opposition.

Motion was made by Mr. Mills, seconded by Mr. Hudson and carried unanimously that the variance be granted, with the stipulation that they cannot further expand into the buffer zone. Vote 5-0.

Case No. 6700--Milton & Sharlene Hill - North of Road 462, 740 feet
southeast of Road 461, Lot A-37, Briarwood
Mobile Home Park.

A variance to permit continuation of previously
existing encroachments into buffer zone.

The case was presented by Mr. Rickard with Case No. 6698.
Leonard Sears sworn in on Case No. 6698 was representing this case
and was also represented by Michael P. Morton, P.A.

All testimony from Case No. 6698 was incorporated into this
case.

There were no parties present in opposition.

Motion was made by Mr. Mills, seconded by Mr. Callaway and
carried unanimously that the variance be granted with the
stipulation that they cannot further expand into the buffer zone.
Vote 5-0.

Case No. 6701--Isabelle White - North of Road 462, 740 feet
southeast of Road 461, Lot C-8, Briarwood
Manor Mobile Home Park.

A variance to permit continuation of previously
existing encroachments into the buffer zone.

The case was presented by Mr. Rickard with Case No. 6698.
Leonard Sears sworn in on Case No. 6698 was representing this case
and was also represented by Michael P. Morton, P.A.

All testimony from Case No. 6698 was incorporated into this
case.

There were no parties present in opposition.

Motion was made by Mr. Mills, seconded by Mr. Hudson and
carried unanimously that the variance be granted with the
stipulation that they cannot further expand into the buffer zone.
Vote 5-0.

The Board members took a five minute break. Mr. McCabe called
the meeting back into session at 8:35 P. M.

OTHER BUSINESS

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 a time extension.

Mr. Rickard read a letter from Judith Skinner requesting a time extension for her special use exception to operate a nursing home, since time has elapsed. She cited reasons that involved other agencies for the delay.

After some discussion, motion was made by Mr. Mills, seconded by Mr. Wheatley and carried unanimously that a six (6) month time extension be granted to Case No. 6114. Vote 5-0.

Motion was made by Mr. Mills, seconded by Mr. Callaway and carried unanimously that the meeting be adjourned. Vote 5-0.

Meeting adjourned at 8:47 P. M.