

MINUTES OF SEPTEMBER 20, 1999

The regular meeting of the Sussex County Board of Adjustment was held on Monday evening, September 20, 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 Mr. Lank - Director.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that no action would be taken on the minutes of September 13, 1999 since the minutes were not completed.

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

Case No. 6957 -- Michael C. and Robin D. Smith -- northwest of Ashwood Drive, 450 feet southwest of Woodland Circle within Angola By The Bay and south of Road 277, Lot 22.

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

Mr. Rickard presented the case. Ned Maull, Attorney, was present on behalf of the applicants and stated in his presentation and in response to questions raised by the Board that Angola By The Bay was established in 1967; that the requested variances are for a home built in 1971 or 1972; that on January 27, 1984 the Angola By The Bay Property Owners Association, Inc. noted no objection to the improvements that exists on the site; that the improvements have existed in excess of 20-years; that the unique physical circumstances of the home and the narrowness of the lot should warrant the granting of the requested variances; that granting of the variances will not alter the character of the development; that the front deck is uncovered; and that the County should consider creating a provision that would allow the Director to approve encroachments into setbacks for improvements that have existed for years.

Mr. Rickard read the January 27, 1984 letter from John R. Umschlag and M. Brinton Page on behalf of the Angola By The Bay Property Owners Association, Inc.

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 variances should be granted as submitted. Vote carried 5 - 0.

Case No. 6958 -- United Propane -- west of Route One, 1,100 feet north of Old County Road, Lot 8, Suburban Development Corp.

A variance from the sign requirements and a variance from the side yard setback requirement.

Mr. Rickard presented the case. Stephen Holtz of United Propane and John C. Selby were sworn in and testified, requesting permission for a third on-premise sign and an 11-foot variance from the required 20-foot side yard setback requirement and stated in their presentations and in response to questions raised by the Board that they propose to erect a free standing sign; that the store is located on the southerly end of the strip center; that the existing sign is not visible from the south due to trees on the property line; that the side yard variance has been requested to permit the placement of the sign on an existing concrete pad; that the site has a frontage of 371 feet along Route One; that a 50 square foot sign is proposed; that the sign is proposed due to concerns received from customers in reference to finding the store; that five businesses exists on the site; that they do not anticipate any additional sign request for the site; that the existing ground signs and the proposed sign will not total a square footage in excess of 150 square feet, the permitted square footage for an on-premise ground sign; that the proposed sign is off-set in design to meet the minimum 5-foot front setback requirement; and that the existing "United Propane" sign will be removed.

Mr. Rickard presented photographs of the site and the existing signs and described the site.

Mr. Rickard read letters in opposition to the application from Marine Associates, the developers of Spring Lake, a condominium project south of the site, and Boardwalk Builders, a tenant within the strip center on the site.

Dan Anderson, Molly McCartney, and Chuck Smith, residents of Spring Lake, were sworn in and testified that they were in opposition to the application; that a petition will be presented with 89 signatures in opposition to the application; that the size sign requested is not appropriate; that the site already has two pylon signs; that the zoning regulations should be complied with; that the owner of the center should be present; that Phase 7 of Spring Lake, a 58 unit complex, is closest to the sign location; and that the store should be easy to find since the speed limit on Route One at this location is 35 m.p.h.

Mr. Rickard read a letter in opposition from Charles Smith, Acting President of Spring Lake Phase VII Condominium, and the referenced petition.

Mr. Selby described the sign and the existing signs on the site, and added that the existing building is 6-feet off of the property line and the rear of the building and 13-feet off of the property line at the front of the building, and that a tree line buffers the strip center and Spring Lake.

Motion by Mr. Mills, seconded by Mr. Wheatley, and carried unanimously to take this case under advisement. Vote carried 5 - 0.

At the conclusion of the public hearings, the Chairman referred back to this application. After some discussion, motion by Mr. Mills, seconded by Mr. Wheatley, and carried unanimously that the variance from the sign requirements and a variance from the side yard setback requirement be denied since the building has adequate space for advertisement; since one of the tenants within the building is opposed; and since the existing sign was illegally erected.

Case No. 6959 -- John and Sandra Stewart -- west of Route 54, east of Grant Avenue, Lot 2 within Cape Windsor Subdivision.

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

Mr. Rickard presented the case. Charles Ableson was sworn in and testified that the applicants are requesting a 4-foot variance from the required rear yard setback and a 3-foot variance from the required side yard setback on the north side of the lot; that the applicants replaced an aged mobile home with a multi-sectional manufactured home; that due to some confusion of information provided by the Cape Windsor Community Association, Inc. the applicants located their home on the lot as presented; that the applicants received approval from the Association on January 31, 1999, and the home was placed at the same setback as the original mobile home.

Mr. Rickard read the approval letter from the Cape Windsor Community Association, Inc.

Mr. Rickard advised the Board that the County requires a 20-foot rear yard setback and that the Association requires a 15-foot rear yard setback.

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

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously that the requested variances be granted since similar variances have been granted in Cape Windsor in the past. Vote carried 5 - 0.

Case No. 6960 -- George K. and Lorraine A. Lacsny -- east of Route 16, northeast side of Bayshore Drive, Lot 4, within Broadkill Beach.

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

Mr. Rickard presented the case. George K. Lacsny and Lorraine A. Lacsny were sworn in and testified that they were requesting a variance of 8'10" from the 15-foot corner side setback and a variance of 10-feet from the required 30-foot front yard setback; that last spring they removed a mobile home from the site; that they erected a modular home on the site and obtained a permit for a deck with related steps; that a certificate of occupancy has been issued for the deck; that a certificate of occupancy for the home could not be issued due to the deck encroachment in to the front yard unless a variance was granted; and that some of the lots within Old Broadkill Beach are improved up to the line.

Mr. Rickard read letters of no objection from Susan Soder, and Ron and Joan Neuman, adjoining property owners.

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

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

Case No. 6961 -- Harry and Sandra Temple -- east of Route 54, east of Cleveland Avenue, Lot 4, within Cape Windsor Subdivision.

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

Mr. Rickard presented the case. Harry and Sandra Temple were sworn in and testified that they are requesting a 4.5-foot variance from the 10-foot side yard setback requirement and a 5-foot variance from the 20-foot rear yard setback requirement; that the variance will allow more parking area on the lot, rather than on the shoulder of the street; that they have received no objections from the Cape Windsor Community Association, Inc.; and that they are removing the existing mobile home and replacing it with a 2-story site constructed home.

Roger Lambert was sworn in and testified that he lives at 17 Cleveland Avenue and was granted the same type of variance by the Board, and added that the subdivision is experiencing a building boom and that the improvements being made are a benefit to the community.

Bob Bailey was sworn in and testified that he lives at 39/40 Cleveland Avenue and supports the improvements, and added that the variance will not impact other lots in the area.

Sandra Stewart was sworn in and testified that she supports the application, and added that correspondences with the Association reference that the lagoon is the front and the street is the rear.

Mr. Rickard discussed past conversations with past presidents of the Association.

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

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

Case No. 6962 -- Five D Limited Liability Co. -- north and south of Road 283, southwest of Route One.

A variance from the height requirement.

Mr. Rickard presented the case. Donald L. Derrickson was sworn in and testified that he is requesting a 3-foot variance from the required 42-foot height; that the parapet wall at the top of the structure is on 24-inches high; that the safety requirements for the workers building the structure are greater than the requirements for contractors or employees working on the roof after completion; that the 42-foot height requirement is measured from grade; that a 24-inch parapet is not adequate for safety; and that the site exceeds the parking and setback requirements.

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

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

Case No. 6963 -- Wilbur and Nancy Mohler -- southeast of Woodlyn Road, 50 feet northeast of Road 299, Lot 1, within Woodlyn Estates Subdivision.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Wilbur Mohler was sworn in and testified that they are requesting a 5.1 foot variance from the required 10-foot side yard setback requirement; that he purchased the lot 4-years ago; that he asked the builder to locate the home at the minimum setback on the southerly side of the lot so that they could erect a

garage and shop on the northerly side; and that they propose to build a 24-foot wide garage.

Mr. Rickard read a letter from the Woodlyn Estates Homeowners Association, which referenced that on September 4, 1999 a meeting was held, and the members present voted nine (9) votes in favor of the variance and five (5) votes opposed.

Charles Colberg and John Colberg were sworn in and testified that they are landowners within Woodlyn Estates and have no objection to the variance requested.

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

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

Case No. 6964 -- William O. and Melanie Porter -- south of Route 9, east of Buck Run, Lot B-2, Deerwood.

A variance from the side yard setback requirement.

Mr. Mills stated that he would be abstaining from participating in this application.

Mr. Rickard presented the case. William O. Porter and Melanie Porter were sworn in and testified that they are requesting an 8-foot variance from the required 15-foot side yard setback requirement; that they propose to add a 20-foot wide attached garage to their modular home; that property values should improve if a garage of adequate size can be built on the site; that they have spoken to their neighbors and found no objections to the proposed variance; and that the front of the lot is narrow and limits the size of the garage.

Mr. Rickard read letters voicing no objection from Louise S. Enright, and James R. and Lisa Z. Prucnal.

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

Motion by Mr. Wheatley, seconded by Mr. Hudson, and carried with 4 votes to grant approval of this variance due to the size of the lot. Mr. Mills abstained from voting. Vote carried 4 - 0.

Case No. 6965 -- Lester and Mildred Cheek -- east of Road 349, south of Baltimore Avenue, west corner of Syracuse Avenue, Lot 37, within Banks Acres,
A variance from the front yard setback requirement.

Mr. Rickard presented the case. Lester and Mildred Cheek were sworn in and testified that they are requesting a 7-foot variance from the required 30-foot front yard setback requirement for a screen porch; that they recently installed a new double-wide on the lot; that one corner of the porch encroaches the front yard setback; and that they have spoken to the neighbors and heard no objections.

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

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

Case No. 6966 -- Santos and Dora Sanchez -- southwest of Road 505, 1,280 feet northwest of Road 76.

A special use exception to connect two manufactured homes to make one unit.

Mr. Rickard presented the case. Santos and Dora Sanchez were sworn in and testified that the two mobile homes have already been connected; that the builder connected the two mobile homes together and built a deck while the applicants were in New Jersey; that the builder is H.A. Timler and Son; that a building permit poster was located on the site by the builder; that vinyl siding and an A-roof have been installed; that the combined unit only has one kitchen; and that the unit is skirted.

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

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

The Board asked the Office to investigate the builder and the building permit poster.

Case No. 6967 -- Peninsula Poultry Equipment Co., Inc. -- east of Route 13, 1,200 feet south of Road 466.

A special use exception to place a billboard and a variance from the side yard setback requirements.

Mr. Rickard presented the case. James Fuqua, Jr., Attorney, was present with Alexis O'Leary, of Eller Media Company, who was sworn in testified that a standard sized billboard is proposed and that a variance of 25-feet from the required 50-foot side yard setback is requested; that billboards are only permitted in C-1 General Commercial and Industrial Districts; that the site is zoned C-1 General Commercial; that the area is predominantly commercial; that the site contains 1.5 acres with 338 feet of frontage; that that the sign is proposed to be located at the northerly end of the site where trash bins presently exist; that they feel that the minimum variance has been requested; that no height variance is being requested; that no square footage variance is being requested; that the 25-foot required front yard setback will be complied with; that there should be no adverse impact on property values; that a 300 square foot billboard is a standard sign board size; and that the sign should cause no interference with the area.

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 case be tabled to allow time to review the area. Vote carried 5 - 0.

Case No. 6968 -- Eva F. Parker -- west of Road 243, 1,825 feet south of Road 244, Lot 3, within Harvey Donovan Subdivision.

A special use exception to place a manufactured home for storage purposes.

Mr. Rickard presented the case. Eva F. Parker was sworn in and testified that she proposes to use the 13' by 30' aged mobile home for storage; that the unit has already been placed on the site; that the unit does not have a stove; that she will relocate the unit to conform to the setback requirements, if approved; that she will obtain a permit for the unit, if approved; and that the unit will not be occupied as living quarters.

Marion Hendricks, Christine Williamson, Lula Isler, and Melissa Isler were affirmed and testified that they are residents in the area; that they have no objection to the use of the unit for storage; that the setback requirements should be complied with; and that the unit should be improved and maintained.

Ms. Parker added that the unit is proposed for storage only, and that she will conform to the setback requirements.

Motion by Mr. Mills, seconded by Mr. Wheatley, and carried unanimously that the special use exception be granted for storage only; that the unit shall be setup with the proper setbacks; and that the unit shall be skirted and repaired within four (4) months. Vote carried 5 - 0.

Case No. 6969 -- Little Angels Day Care and Learning Center, Inc. -- north of route 9, 3,125 feet southeast of Route One, Lot 5 and 6, within Nassau Commons Subdivision.

A special use exception for a day care facility.

Mr. Rickard presented the case. Linda Walls, owner/operator of Little Angels Day Care and Learning Center, Inc., was sworn in and testified that she rents the present location at #4 Nassau Commons; that she proposes to relocate to this site at #6 Nassau Commons; that she started the day care in 1994; that the proposed day care will occupy approximately 3,000 square feet of the structure; and that the pre-school and learning center for Cape Henlopen School District will occupy approximately 3,000 square feet of the structure.

Mr. Rickard read a description of the structure which referenced that Section A and B2 will be occupied by Cape Henlopen School District; that the 2nd floor of Section A will be used for administration, a registered nurse, and psychologist offices; that the 1st floor of Section A and B2 will be used for classrooms; that Section B1, C, and D will be occupied by Little Angels Day Card and Learning Center, Inc for classrooms, an office, efficiency kitchen, and a play area; that a playground will be located on the east and north side of the building; that there will be three exits from the building to the playground located in the 2 and 3 year old classrooms and an exit from the play area for the 4 year old and school age children; that the playground will be fenced; that parking for the staff will be located behind the building on the east side; that patrons will park in front of the building on the west side; and that the main entrance will be located on the Route 9 side of the building.

Mr. Rickard read a petition statement with 44 signatures in support of the application.

Russell Garek, Principal of the Sussex Consortium, was sworn in and testified that the day care is a perfect use of the building and that the site has easy access making it a convenient location for the use.

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

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

OLD BUSINESS

Case No. 6934 (cont'd) 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.

Mr. Mills stated that the site has recently been improved; that the lot is small and that the home is small; and that there was no opposition to the application.

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

Case No. 6952 (cont'd) PNE Media, LLC -- west of U.S. Route 13, 0.3 mile south of Whitesville Road, Little Acres Subdivision.

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

Mr. Mills stated that there was no supporting documentation that justified the need for the variances.

Motion by Mr. Mills, seconded by Mr. Wheatley, and carried unanimously to deny the requested variances. Vote carried 5 - 0.

The meeting adjourned at 9:45 P.M.