

Minutes of September 22, 1997

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, September 22, 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, Mrs. Hudson, Mr. Wheatley, Mr. Jones-Attorney, Mr. Rickard-Chief Zoning Inspector and Mrs. Talley-Recording Secretary.

Motion was made by Mrs. Hudson, seconded by Mr. Wheatley and carried unanimously that the minutes of September 8, 1997 be approved as circulated. Vote 3-0.

Mr. Jones read a statement explaining how the Board of Adjustment Meetings are conducted and the procedure for hearing the cases.

Case No. 6416--Ronald A. Kaminski - East side of Road 274 and west of Laganberry Lane, Lot 22, Block 2, within Breezewood Subdivision.

A variance from the front yard setback requirement.

The case was presented by Mr. Rickard. Ronald Kaminski was sworn in and testified requesting a 20' variance from the front yard setback of 40' for a through lot, being Lot 22, within Breezewood Subdivision.

Mr. Rickard stated that a permit was issued to Mr. Kaminski in error. It was not issued as a through lot.

Mr. Kaminski stated that last November 15, 1996, he purchased a permit for a 2 car garage. Mr. Kaminski stated, that when he started excavation on July 25, a neighbor told him he was too close to the road. He called Mr. Rickard and asked the correct setbacks. Mr. Kaminski stated that he cannot move the garage forward because it would be on the house. He stated that there is not enough room. Mr. Kaminski stated that he has the plans approved and the materials ordered. He went by the setbacks on the permit that he was issued. He applied to the Board on July 30th. He stated that he was conscientious enough to call and do the right thing by not building. He also stated that he would not be able to get into the garage if he moved it forward.

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, due to an error on the permit when it was issued. Vote 3-0.

Case No. 6417--Charles D. Murphy Associates, Inc. - South side of Small Avenue, 117 feet east of Railroad Avenue (Road 38B), and north of Greely Avenue within Lincoln.

A variance from the lot size requirement and lot width requirement.

The case was presented by Mr. Rickard. Karen Emory Brittingham, with Charles Murphy Associates, Inc., was sworn in and testified representing the property owner John Holloway, Jr. who requested a variance of 6.51' from the 150' road frontage for a lot. Ms. Brittingham stated that Mr. Holloway wants to subdivide a parcel of land with an existing dwelling on it. She stated that the existing dwelling will have frontage on Small Avenue and the proposed dwelling for the new lot would have frontage on Greely Avenue. By subdividing the property it will allow Grace Holloway's granddaughter to be near and assist her. The variances requested would allow relief from the minimum 3/4 acre lot size and the 150' road frontage on Small Avenue. Ms. Brittingham referenced a letter from DNREC concerning the septic system. She stated that soil borings had been done and presented a letter. She stated that the use will not detract from the area and will have minimal affect on the area residents. She stated that the property is 33,653 sq. ft. in size, one parcel will be 16,900 sq. ft. and the other 15,790 sq. ft. By splitting the property it creates less than 150' of frontage.

Grace Holloway, John Wayne Larrimore and Catherine Larrimore were sworn in and testified in behalf of the variance request.

Catherine Larrimore stated that she needs to care for her grandmother, she takes her to the doctor and looks after her.

Grace Holloway stated that she needs her granddaughter to help care for her.

Mr. Rickard read a letter received from Rodney Wyatt, DNREC, referencing the property.

Ms. Brittingham stated that she is aware of the conditions from DNREC. She presented a faxed copy of a letter from Byron Jefferson. There are two variances requested, lot size and lot frontage.

There were no parties present in opposition.

Motion was made by Mrs. Hudson, seconded by Mr. Wheatley 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 variances be denied, finding the applicants had not proven the requirements needed for the granting of a variance as stated in the Sussex County Zoning Code. Vote 3-0.

Case No. 6418--Frank & Mary Russomano Southwest corner of Road 275 and Road 274.

A special use exception to operate a Bed and Breakfast Inn (Tourist Home).

The case was presented by Mr. Rickard. Frank & Mary Russomano were sworn in and testified and were represented by Robert Witsil, Attorney. The applicants requested to operate a Bed and Breakfast Inn (Tourist Home), on their property. Mr. Witsil stated that the applicants had purchased property known as the Joseph Farm and want to operate a Bed and Breakfast. They propose to have four rooms and two baths, but will start with three rooms. He stated that there is adequate parking and the Bed and Breakfast will be owner occupied at all times. There will be no cooking facilities in the rooms, Mr. Russomano will do the cooking. Mr. Witsil asked if the statements he had made were true. Mr. & Mrs. Russomano stated that the statements made by Mr. Witsil were true.

William H. Atkins, Carol Gerding, Julie Wilson and Verity Watson were sworn in and testified in opposition. They voiced concerns about noise, activity around a swimming pool on the applicants property, more rooms made available, parking, and late night pool activity. They feel it is a residential area and the Bed and Breakfast does not belong in a residential area. It was questioned if it is a rezoning and is it commercial. They expressed concern about the busy intersection. Concern was also expressed about somebody else later building more.

Mr. Jones explained that there is no rezoning and with Board approval it would be to use the property for this one thing.

Mr. Witsil stated that there would be no quest use for the swimming pool for liability purposes. He stated that there is a property across the street that is proposing multi-family use and the Bed and Breakfast would have less car noise. He stated that the Board could restrict the use to three rooms, since that is what they plan to start with. He stated that the parking meets the Code and there should be only four cars at any one time. The applicants would park in a garage/shed. There is no need for accessive expansion.

Mr. Atkins questioned how the use of the pool would be restricted and watched. He stated that his bedrooms face the pool area. He stated that they are not trying to be unreasonable, but they are protecting themselves. In answer to a question from the Board, Mr. Atkins stated that he would still be opposed even with stipulations.

It was explained that it is not easy to watch everything going on in the County, but the Zoning Inspector would be the one to watch the property.

Ms. Wilson stated that she too would still be opposed and again voiced concern about the pool use and night time hours.

Ms. Watson stated that she too would still be opposed and voiced concern about other outside activities that might require lights.

Mr. Witsil stated that the applicants have no intentions for anything except a Bed and Breakfast (Tourist Home).

Motion was made by Mrs. Hudson, seconded by Mr. Wheatley 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. Wheatley and carried unanimously that the special use exception be granted, finding the use will not substantially adversely affect the area. Vote 3-0.

Case No. 6419--Gus E. Glaros & Teresa M. Glaros - East side of
Route 13A, 0.28 mile north of Road 470.
A variance from the front yard setback
requirement.

The case was presented by Mr. Rickard. Gus E. Glaros was sworn in and testified and was represented by Mark Stein, Attorney with Moore & Rutt. Mr. Glaros requested a 9.98' variance from the front yard setback requirement of 40' for a front porch. Mr. Glaros purchased a home where the previous owner had steps/stoop and put a roof over it to be used as a porch. Mr. Stein stated that the applicants did not create the hardship and they are requesting the minimal variance.

Mr. Glaros stated that if he had to remove the structure it would make the house look worse. He purchased the house in 1997.

Mr. Stein stated that the previous owner did not follow through and get a Certificate of Compliance.

Mr. Callaway stated that the application stated enclosed porch, but the survey states covered porch.

Mr. Glaros stated that the porch is covered but not enclosed and he has no plans to enclose it.

Mr. Jones stated that a variance is needed whether the porch is enclosed or just covered with a roof.

There were no parties present in opposition.

Mrs. Hudson questioned what the other property setbacks in the area are like.

Motion was made by Mr. Wheatley, seconded by Mrs. Hudson and carried unanimously that the case be tabled and have Mr. Rickard send the Inspector out to see if the setbacks are in line with other properties in the area. Vote 3-0.

Case No. 6420--Oakwood Homes, c/o Glenn Reid - East side of U. S. Route 113 and the west side of Road 83.

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

The case was presented by Mr. Rickard. Glenn Reid, General Manager of Oakwood Homes, was sworn in and testified and was represented by Steve Parsons, Attorney. Mr. Reid requested a 20' variance from the 40' front yard setback requirement on a through lot for manufactured home sales. Mr. Parsons stated that the applicants property is unique with a 40' setback from both roads. He feels the variance will not alter the essential character of the neighborhood. Mr. Parsons showed a picture of what the office area and road looks like

Mr. Reid stated that they sell manufactured homes and employ approximately 30 people.

Mr. Parsons presented copies of a survey containing approximately 2.35 acres. He stated that if they had to meet the setback it would reduce the use of the land. The manufactured homes that they sell, approximately 80% are double-wide units, more than single wide units. Mr. Parsons stated that he feels the variance will not impair vision when looking north and there are no problems with the back road to Millsboro. The land is leased. Commercial land is limited around the area. He explained the

picture that was shown. He feels the use will not alter the character of the neighborhood nor be detrimental to property values. He stated that it is a unique lot because it is a through lot, with frontages on two roads. The Inspector made them aware of the 40' setback.

Mrs. Hudson asked if a variance had ever been granted on this property before.

Mr. Rickard stated that he could check to see if a previous variance has been granted.

Elva Dorothy Allen was sworn in and testified in behalf of the application, stating that she owns property adjacent to Oakwood Homes and she is in support of the requested variance.

Samuel M. Keenan was sworn in and testified in behalf of the application stating that he owns property on Route 83, behind Oakwood Homes and has no problem with them. He stated that it is a 60' road and they do not bother anyone.

There were no parties present in opposition.

Motion was made by Mrs. Hudson, seconded by Mr. Wheatley and carried unanimously that the case be tabled, to give Mr. Rickard time to see if a previous variance has been granted to this property. Vote 3-0.

Case No. 6421--Bruce W. Plomasen & Julia A. Plomasen - West side of Riga Drive across from Ogre Drive within Ocean Way Estates.

A variance from the minimum lot width requirement and a variance from the minimum lot area.

The case was presented by Mr. Rickard. Bruce Plomasen was sworn in and testified requesting a 5' variance from the minimum lot width of 75' and a variance of 299.60 sq. ft. from the minimum lot area of 10,000 sq. ft. The applicant owns two adjoining lots, one with a dwelling on it. Both lots are 75' wide and Mr. Plomasen wants to add 5' from Lot 8 to make Lot 7, 80' wide to add an addition to the existing dwelling and meet the setback requirements. Thus Lot 8 will be undersized, 70' wide and 9,700.40 sq. ft. in size. The property being in Ocean Way Estates. The applicant stated that he wants to reside on the property permanently and with the children and grandchildren visiting, he will need more space. He wants to almost double the amount of space he has now. The new addition will be 15' wide. Mr. Plomasen submitted a copy of a

letter he had written to the property owners within 200' of his property. He stated that in response from the 13 property owners he wrote to, ten were in favor, one does not live on the property, one does not own the property and 1 no response. He stated that there is no Civic Association in the development.

There were no parties present in opposition.

Mrs. Hudson questioned if Mr. Plomasen planned to sell the smaller 70' lot.

Mr. Plomasen stated that they plan to sell the smaller lot and use the proceeds to be able to make the addition to his home.

Mr. Jones questioned why Mr. Plomasen had not asked for a variance from the 10' setback for his addition instead of the variance requested.

Mr. Plomasen stated that he had not thought of it and did not think it was a possibility when he talked to Mr. Abbott in Planning and Zoning.

Motion was made by Mrs. Hudson, seconded by Mr. Wheatley 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. Wheatley and carried unanimously that the variances be granted, finding the use will not adversely affect the neighborhood. Vote 3-0.

Case No. 6422--Arcy A. Passwaters & Clorinda J. Passwaters - North
side of Road 543 and 1,510 feet east of
Road 30 (Atlanta Road).

A variance from the minimum lot width
requirement.

The case was presented by Mr. Rickard. Arcy A. Passwaters was sworn in and testified requesting a 5.49' variance from the lot width of 150' to create a new parcel. The property consists of approximately 4.89 acres and the applicants will retire in two years and move to the property. Mr. Passwaters feels the amount of property he has is too much to maintain. He proposes to build a new home on the smaller lot and sell the existing house. The new house will be built on property behind the existing house. The entrance to the property is off Route 543 for the new lot.

Mr. Jones asked if it would be possible to have a shared entrance for both properties.

Mr. Passwaters explained that he would have to go through the property where the existing house is, so it would not be possible. He did state that he would however, be willing to make the entrance where they wanted it to be. He stated that if he moved his present entrance he could have one shared entrance.

There were no parties present in opposition.

Motion was made by Mrs. Hudson, seconded by Mr. Wheatley 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 variance be denied, finding the applicant had not met the requirements for the granting of a variance under the Sussex County Code and there was nothing showing the property was unique. Vote 3-0.

Case No. 6423--Judith Baker - West of Road 243, 1,100 feet east of North Bedford Street, and 900 feet west of the Railroad.

A special use exception to continue the use of a manufactured home to meet a hardship situation.

The case was presented by Mr. Rickard. Judith and Merrill Baker were sworn in and testified, requesting to continue the use of a manufactured home to meet a hardship situation. Previous cases are Case No. 5560, 4930 and 4174.

Mr. Rickard read a letter from Pedro Cardona, M.D. referencing the health of Chester Baker, who the applicant cares for.

Mr. Baker stated that the situation has not changed and seems to be getting worse.

Mrs. Baker asked if there was anyway they could continue the use without having to reapply every two years.

Mr. Jones explained that the law says they have to reapply every two years for as long as the hardship exists.

There were no parties present in opposition.

Motion was made by Mr. Wheatley, seconded by Mrs. Hudson and carried unanimously that the special use exception be granted on the basis of hardship for a period of two (2) years. Vote 3-0.

Case No. 6424--Lawrence Kim Walls - West of Road 286, 2,668 feet northwest of Road 285.

A special use exception to use a manufactured home to meet a hardship situation.

The case was presented by Mr. Rickard. Lawrence Kim Walls was sworn in and testified requesting to place a 28'x 58' double-wide manufactured home on his property to help care of his father. He stated that his father's house is on the property also.

Mr. Rickard read a letter from Wallace Lecher, Jr., M.D. referencing Mr. Walls, Sr. and his health.

Mrs. Hudson asked the applicant if he realized that if approved it would be for a period of two years.

Mr. Walls stated that he knew about the two year period and he already has the property in his name.

There were no parties present in opposition.

Motion was made by Mrs. Hudson, seconded by Mr. Wheatley and carried unanimously that the special use exception be granted on the basis of hardship for a period of two (2) years. Vote 3-0.

Case No. 6425--Carlton J. Bailey - South side of Road 275 and 1,430 feet west of Road 274.

A variance from the minimum lot width requirement.

The case was presented by Mr. Rickard. Carlton J. Bailey and Renee Dawn Bailey were sworn in and testified and were represented by John Sergvic, Attorney, and requesting a 42.01 variance and 99.99' from the 150' lot width requirement to create a new parcel. Mr. Sergovic presented a copy of a survey. He stated that the property is long and narrow and of no beneficial use. The applicants want to upgrade their lifestyle and create another residence on the property. The new dwelling will be a stick-built or modular home. The applicants do not know if they will sell the property or rent it. Mr. Sergovic stated that the applicants will use the existing road for both lots. He stated that the property is approximately 120' from the proposed Bed and Breakfast property heard earlier at this meeting. He stated that the use will not

create anymore traffic or congestion and there will be no impact on surrounding properties.

The applicants stated that they will reside on the back portion of the property and that they only cut grass on it now.

Mr. Sergovic stated that they request a double variance, and in answer to Mr. Wheatley's question, he stated that they will end up with two nonconforming lots.

Julie Wilson sworn in on a previous application, spoke in support of this case.

There were no parties present in opposition.

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 variances be denied, finding the applicant had not met the requirements for the granting of a variance under the Sussex County Code, the property is not unique and the property can be developed in accordance with the Code. Vote 3-0.

Case No. 6426--Otis & Ruth Oliver - Northwest side of William F Street, 100 feet northeast of Fisher Street, being Lot 29, Block E of Dodd's Addition Subdivision, northeast of Route One.

A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. Jim Gallo, adjacent neighbor, was sworn in and testified representing the applicants, who could not be present at the meeting. The applicants request a 9' variance from the minimum side yard setback requirement of 10', on Lot 29, Dodd's Addition Subdivision. The applicants propose to construct a deck elevated off of the roof. Mr. Gallo stated that there is no Homeowner's Association in Dodd's Addition.

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 3-0.

Case No. 6427--James W. & Donna M. Bailey - Southwest side of Road 16A (Bay Shore Drive) at the northwest corner of West Virginia Avenue, 1,070 feet northwest of Route 16 and being Lot 13, Section E, Broadkill Beach.

A variance from the front yard setback requirement.

The case was presented by Mr. Rickard. James Bailey was sworn in and testified requesting a 9' variance from the 30' front yard setback requirement to be 21' for a proposed addition. The property being 50'x 100' in size and Lot 13, within Broadkill Beach, was purchased by the applicant in 1984. The applicant proposes to build a 13'x 15' living room addition to the existing cottage to make it more livable. He stated that the septic system is in the rear of the property and he cannot build further back. He stated that he will not protrude out any further than others in the area, since all are very close to the front. He stated that the house faces West Virginia Ave. and it is a dirt street with no through traffic.

Mr. Rickard stated that there have been other variances granted in Broadkill Beach.

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 3-0.

Case No. 6428--Mary A. Bensinger - Southwest side of Road 275A and 1,050 feet east of Road 274.

A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. Mary Bensinger was sworn in and testified and was represented by David Rutt, Attorney. Ms. Bensinger requested a 6.7' variance from the 15' side yard setback requirement to be 8.3'. Mr. Rutt stated that a building permit and a Certificate of Compliance was issued in 1982, for a building with four units and one kitchen, with the rest of the building being apartments. Ms. Bensinger applied for commercial zoning and then the application was withdrawn, because Council thought it would be best to apply for a conditional use. The setback in the side yard is in violation.

Ms. Bensinger stated that she moved on the property in 1982 and had all permits. The property has been used and occupied by family. She learned about the side yard encroachment when she applied for the conditional use. With the variance she can use the building as it is now. She stated that she could not afford to

move it.

Mr. Rutt stated that she does not feel the use will alter or impair the area and it is the minimal variance requested. The error was not created by the applicant and it will not be detrimental to public welfare.

Ms. Bensinger stated that all statements made by Mr. Rutt were true.

There were no parties present in opposition.

Motion was made by Mr. Wheatley, seconded by Mrs. Hudson and carried unanimously that the variance be granted. Vote 3-0.

Case No. 6429--Coastal Resorts Development Corporation - Southwest corner of Nature's Way and Water's Edge, Streets within the Cove, at North Bethany, and being approx. 200 feet west of Route One.

A variance from the front yard setback requirement.

The case was presented by Mr. Rickard. Jeff Clark, with Land Tech, Inc. and John Thomas Martin were sworn in and testified representing the applicants who requested a 20' variance from the 30' front yard setback requirement, being Lot 13, The Cove. It was stated that Lot 13 is one of ten lots accessed by Nature's Way which front on the lagoon. Each of the other lots has a direct view of the water, however, due to its irregular shape, Lot 13 does not. In order to provide a water view the applicants request that Nature's Way and Water's Edge be reversed. This will allow the house to be constructed on Lot 13 to have a visual connection with the water. Mr. Clark stated that Planning and Zoning had allowed the front of the property to be oriented toward the water and the street be the rear. Mr. Clark presented a copy of a plan showing how the property will look. He stated that the neighbor adjacent to the property was in favor because it enhances his view.

There were no parties present in opposition.

Motion was made by Mrs. Hudson, seconded by Mr. Wheatley and carried unanmously that the variance be granted as presented in the site plan with the setback being 30' from Nature's Way. Vote 3-0.

Case No. 6430--Coastal Resorts Development Corporation - Westerly end of Nature's Way, a street within the Cove at North Bethany, and being approx.

0.25 mile west of Route One.
A variance from the front yard setback requirement.

The case was presented by Mr. Rickard. Jeff Clark and John Thomas Martin, sworn in on the previous case No. 6429, were representing this application. Mr. Clark stated that Lot 21, within The Cove, is one of eleven lots along Nature's Way. Each of the other lots front on the lagoon and has its rear setback adjacent to Nature's Way. A 20' variance is requested so that Lot 21 can also be deemed to have its rear yard facing Nature' Way. Lot 21 does not front on the lagoon, it is situated on the Beach Cove waterfront. The variance will make the building setback line a consistent ten feet around the cul-de-sac. A site plan was presented. It was stated that the buildable area on Lot 21, would not be buildable without the variance.

There were no parties present in opposition.

Motion was made by Mrs. Hudson, seconded by Mr. Wheatley and carried unanimously that the varinance be granted. Vote 3-0.

OLD BUSINESS

Case No. 6414 (cont'd.)--Dale Collins, Jr. & Lora Collins - North side of Road 368, 850 feet east of Road 365.

A special use exception to operate a day care center.

Mr. Callaway reviewed the case.

Motion was made by Mrs. Hudson, seconded by Mr. Wheatley and carried unanimously that the case be tabled until the next meeting when all Board Members will be present. Vote 3-0.

Motion was made by Mrs. Hudson, seconded by Mr. Wheatley and carried unanimously that the meeting be adjourned. Vote 3-0.

Meeting adjourned at 9:28 P. M.