

Minutes of September 28, 1998

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, September 28, 1998 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:05 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. Rickards-Chief Zoning Inspector and Mrs. Talley-Recording Secretary.

Mr. McCabe asked for any additions or changes to the agenda. Hearing none, motion was made by Mr. Mills, seconded by Mr. Callaway and carried unanimously that the agenda for September 28, 1998 be adopted. Vote 5-0.

Motion was made by Mr. Callaway, seconded by Mr. Wheatley and carried unanimously that the minutes of September 14, 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. 6702--James I. Messick - South of Route 18, 1/8 mile east of Railroad.

A variance from the minimum lot size requirement.

The case was presented by Mr. Rickard. James I. Messick of Bridgeville, was sworn in and testified requesting a variance of 0.25 acres from the required 0.75 acre lot size requirement to create a new lot for his daughter, who will place a Nanticoke Home on it. Mr. Messick will retain a 1/2 acre lot with a house on it for himself. The new lot will be under 3/4 acre in size, but both lots will have 150' of road frontage as required. The daughter's lot will have 180' of road frontage and Mr. Messick's lot will have 150' of road frontage. Mr. Messick stated that he had planned to have the lots subdivided before the regulations changed, but it did not happen.

Pastor Clint Yoder of Greenwood, affirmed in favor of the application. He stated that he would like to see the variance approved.

There were no parties present in opposition.

Motion was made by Mr. Callaway, seconded by Mr. Mills and carried unanimously that the variance be granted with the stipulation that the home to be placed on the property must not be a manufactured home. The Board found that the use will not

substantially adversely affect the area and that the road frontage meets the requirements. Vote 5-0.

Case No. 6703--Evelyn R. Johnson South of Route One, 170 feet northwest of Road 271, Lot F-25, Sea Air Village Mobile Home Park.

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

The case was presented by Mr. Rickard. George Littleton of Milton and Manager for Sea Air Village, and Jason Knowle of Rehoboth, were sworn in and represented this application. The applicant requested a 7' variance from the 20' setback requirement on Lot F-25, Sea Air Village Mobile Home Park, to add a 12'x 24' deck. It was stated that there are no problems with the neighbors.

Mr. Rickard stated that other variances have been approved in the park.

There were no parties present in opposition.

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

Case No. 6704--Country Rest Homes, Inc. - East of Route One, corner intersection Road 206 south.

A special use exception for an assisted living facility.

The case was presented by Mr. Rickard. Mark Yoder, Jr. of Greenwood, and Byron Jefferson of Lincoln, were sworn in and testified in behalf of the application. The applicants request to have a 35 unit assisted living facility, located on Route One, south of Milford. It will be an assisted living and immediate care nursing home, with 24 hour on call services. It will be a Retirement Community and they will not sell lots, just life leases and provide services for people. Remaining Lots 1, 2 & 3 will not be a part of the community, but can be sold and houses put on them. It will give the people an option if they want to buy rather than lease the property.

Mr. Rickard stated that a Conditional Use will also be needed for the assisted living use.

It was stated that Mr. Lank, Director of Planning and Zoning recommended they go this route for approval. Mr. Yoder stated that

they have a full fledged nursing home in Greenwood now. This will be a similar use. He stated that there are not many uses like this in Milford for elderly people.

Charles Clark of Milford, was sworn in with questions. He may want to purchase some of the property between his property and Mr. Yoder's and questioned if adjustments to Mr. Yoder's plan could be made after the plan is approved. He does not want to have the use too close to his property. He was neither for or against the requested use.

Mr. Berl explained that the applicants would have to have a site plan review before the Planning & Zoning Commission, but it would not involve a Conditional Use, since they are requesting a Special Use Exception before the Board.

Mr. Yoder stated that he will be sensitive to Mr. Clarks's needs.

Mr. Rickard explained that the Board has to consider the use and not the layout of the plan.

There were no parties present in opposition.

Motion was made by Mr. Mills, seconded by Mr. Wheatley and carried unanimously that the case be taken under advisement. Vote 5-0.

At the conclusion of the public hearings, the Chairman referred back to this case. After some discussion, and a request by Mr. Berl to be able to look at the use, motion was made by Mr. Callaway, seconded by Mr. Mills and carried unanimously that the case be tabled. Vote 5-0.

Case No. 6705--Ralph Lauren Outlet Store - South of Route One, 400 feet northwest of Road 273.
A variance for a second wall sign.

The case was presented by Mr. Rickard. Larry E. Holding of Milton, was sworn in and testified, representing Rogers Signs and R.R. Ventures Bayside and Seaside, who requested a second wall sign for the Ralph Lauren Outlet Store. Mr. Holding stated that the sign will be 1'9"x 7'6" and is needed due to remodeling of the store. The existing sign is now on the west side and there is a walkway between stores. The new sign will give visibility from the highway.

There were no parties present in opposition.

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

Case No. 6706--Thomas Baron - East of Route 22, Sassafras Road,
Lot 226, Pot Nets (Bayside) Mobile Home
Park.

A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. Robert Graul of Lewes, brother-in-law of the applicant was sworn in and testified representing the application. The applicant requested a 5' variance from the side yard setback requirement on Lot 226, within Pot Nets (Bayside), to place a 10'x 12' shed. The location of the shed will be away from the applicants windows to allow more light. It was stated that there is no objection from the neighbors and he is not aware of any problems with Pot Nets.

Mr. Rickard read a statement from Security Instruments, Thomas Baron and signed by three neighbors, voicing no objections.

There were no parties present in opposition.

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

Case No. 6707--John & Ella Mae Venuti - Northeast of Boat Dock
Drive, Lot 24 & 1/2 of Lot 23, Angola By
The Bay.

A variance from the front yard setback requirement.

The case was presented by Mr. Rickard. John Venuti of Aston, PA, was sworn in and testified, requesting a 5' variance from the 30' front yard setback requirement to add a roof on an existing dwelling on Lot 24 and 1/2 of Lot 23, within Angola By The Bay. Mr. Venuti stated that the roof will be over a sidewalk from the front door to the driveway. He stated that the Homeowners Association has approved the use.

Mr. Rickard read remarks from the Inspector, which stated that the existing dwelling is setback 31' from the front property line. The applicant proposes to build an attached roof over concrete that will be 6'x 24'8" and will be 25' from the front property line. A building permit was obtained with the correct setbacks on it.

There were no parties present in opposition.

Motion was made by Mr. Wheatley, seconded by Mr. Hudson and carried unanimously that the variance be granted, due to the odd shaped lot. Vote 5-0.

Case No. 6708--Michael W. & Nancy L. Chorman - North of Road 325,
1,000 feet east of Road 321 and 500 feet
west of Road 48, Lot 30, Rawlins Manor.
A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. Michael W. & Nancy L. Chorman of Georgetown, were sworn in and testified requesting a 10' variance from the 15' side yard setback requirement for a proposed 32'x 32' garage, on Lot 30, within Rawlins Manor. The garage is over 600 square feet in size, and needs greater setbacks. The location for the garage faces the driveway. It was stated that there are no problems with the neighbors and there is no Homeowners Association in the development. Mr. Chorman stated that the garage is for personal use and not for business.

Mr. Rickard stated that no correspondence had been received pertaining to 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. Vote 5-0.

Case No. 6709--Ralph L. Stoltzfus - West of Road 345, west of
Sunset Strip, Lot 10, Oak Grove.
A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. Ralph Stoltzfus of Cochranville, PA and Virgil Engel, builder, were sworn in and testified. Mr. Stoltzfus requested a 1" variance from the left side yard setback requirement on Lot 10, Oak Grove. It was stated that a 70' house was built on a 100' lot and built too close to the left side property line. It was stated that there were survey stakes on the property and they ran a string, but the Inspector said it was too close. It could be less than an inch, but to be sure the request is for a 1" variance.

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. 6710--Gerard & Regina Baumann - East of Road 39-B, north of Road 39-A, Lot 13, Joseph D. Short Subdivision, Second Addition.

A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. Gerard & Regina Baumann of Newton, PA, were sworn in and testified, requesting a 6.4' variance from the 10' side yard setback on Lot 13, within Joseph Short Subdivision, for an existing deck. The property was purchased in May, 1995 and the deck was there at that time. Mr. Baumann replaced wooden planks on the deck and a variance is needed. There are other nonconforming decks and a dwelling on the property. Mr. Baumann stated that the structure is believed to have been on the property for 40 years. He stated that the adjacent neighbor has no objections.

There were no parties present in opposition.

Mr. Rickard read a letter from Donald Waltz in support of the application.

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

Case No. 6711--Carlton Shockley, Jr. - Northeast of Route 24, corner of Road 506 east.

A variance from the front yard setback requirement for a poultry house.

The case was presented by Mr. Rickard. Deborah Lynn Shockley of Laurel, was sworn in and testified in behalf of the applicant who requested a 0.26' variance from the 50' front yard setback requirement for an existing poultry house. Ms. Shockley stated that she is the seller of the property, and when it was surveyed the encroachment was found. She stated that the poultry house was put on the property by Perdue in 1985. She stated that her husband has owned the property all of his life.

Mr. Rickard stated that no correspondence had been received pertaining to this case.

There were no parties present in opposition.

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

Case No. 6712--John & Mary Corso - South of Mariners Way, Lot 7
Herring Creek Estates.

A variance from the front yard setback requirement.

The case was presented by Mr. Rickard. John Corso was sworn in and testified, requesting a 3' variance from the 30' front yard setback requirement to extend a porch and add a roof. The property being located on Lot 7, within Herring Creek Estates.

Mr. Rickard read a letter John & Mary Corso sent to the neighbors explaining what they were going to do and the letter received 56 signatures in support.

Mr. Rickard explained that the steps can encroach into the setbacks 5' and the overhang 2', and explained how the Inspector measure the setbacks.

There were no parties present in opposition.

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

Case No. 6713--Sophia Ann Middleton - Corner of Honolulu Road and
Road 355.

A special use exception to operate a family day care.

The case was presented by Mr. Rickard. Sophia Ann Middleton of Frankford affirmed. The applicant requested a special use exception to operate a day care from 5:30 A. M. to 5:30 P. M., six (6) days per week. She states that she now cares for some children but will add more with drop-ins. She stated that she has a fenced in play area and everything else that is needed, and is State licensed.

Anita Brittingham of Frankford was sworn in and testified in support of the application, stating that she lives on Road 355 and a day care is needed.

There were no parties present in opposition.

Mr. Hudson expressed concerns about the fenced play area going to and from the house, being fearful that children might get onto

the road. He questioned if the applicant would object to a fenced isle to the house for safety.

Ms. Middleton stated that they could not get to the road and she would prefer to leave the fenced area as it is now.

Mr. Rickard read an unsigned letter from Anna Mae Showell in support of the application, since Ms. Middleton testified that she had dropped the letter off to her house.

Motion was made by Mr. Callaway, seconded by Mr. Hudson and carried unanimously that the special use exception be granted as presented. Vote 5-0.

Case No. 6714--Mathew J. & Colleen M. Mercandante - South of
Bridgeway Drive East, west of Woodland
Circle, Lot 4 & 5, Block W, Angola By
The Bay.

A variance from the side yard setback requirements.

The case was presented by Mr. Rickard. Daniel Myers, Esquire, was present representing the applicants who requested a 4.8' variance from the side yard setback requirement of 10' on Lots 4 & 5, within Angola By The Bay. Mary Ann Molaski of Lewes and Douglas Marshall of Lewes, were sworn in and testified in behalf of the application. Mr. Myers stated that two additions had been built onto the dwelling and one rear addition does not conform. He stated that it would be difficult to move it. The house was bought in 1974 when the setbacks were 5'. It would be a practical difficulty to move the house since the addition is a bedroom and bath. They would have to tear down 5' of the structure.

Mr. Marshall stated that he did the research on the property to see along with Planning and Zoning what variances were needed. The original structure was built prior to zoning and the additions were later added.

Mr. Rickard read a letter referencing the variances needed and signed by Lawrence Lank, Director of Planning and Zoning.

Mary Ann Molaski Realtor with Caldwell Banker testified that the use would not be detrimental to the property values.

There were no parties present in opposition.

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

Case No. 6715--Elmer T. Gove - Northwest of Route 24, Bryn Mawr Drive, Lot 165, Maplewood Subdivision.
A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. Jim Yori, Esquire, with Fuaqua & Yori, represented the applicant who requested a .71' variance from the side yard setback requirement of 10' for a new dwelling. Mr. Yori stated the the 8.52" variance is needed for an existing dwelling, which was sold to Spencer & Jennifer Lynch. When a survey was done the encroachments were found. The area involved is a garage, master bedroom and bath. He stated that it would be difficult to move the house to comply. He stated that the Homeowners Association is not opposed. A letter from Mary Pastore was presented.

Mr. Rickard read the letter into the record from next door neighbor, Mary A. Pastore, voicing no objections.

Denise Moore Realtor of Milton, was sworn in and testified confirming and verifying the statements made by Mr. Yori.

There were no parties present in opposition.

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

Case No. 6716--Audrey McClaine - West of Al-Jan Drive, 1,040 feet north of Road 496, Maplewood Subdivision.
A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. Audrey McClaine of Laurel and Pat Procino of Laurel were sworn in and testified. The applicant requested a 2.3' variance from the side yard setback requirement of 15' for an existing detached garage. The house was purchased by Pat Procino two months ago. It consists of 2 1/2 acres and a line was run on the side yard. He thought it met the setbacks required, but the garage was moved and the error was created. A survey was done to sell the property and the encroachment was discovered.

Mr. Rickard stated that the Inspector had approved the setbacks too and had made a mistake.

Frank Parker of Seaford was sworn in and testified in support of the application being the Realtor who sold the property. He stated that the property is heavily wooded and an honest mistake had been made. That it was hard to see without a survey.

There were no parties present in opposition.

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

DISCUSSION

Mr. Berl discussed proceedures relating to Collins Day Care Facility and County Seat Materials.

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

Meeting adjourned at 8: 50 P. M.