

## Minutes of October 2, 2000

The regular meeting of the Sussex County Board of Adjustment was held Monday evening October 2, 2000, at 7:00 P.M., in the 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. McCabe, Mr. Wheatley, Mr. Mills, Mr. Hudson with Mr. Berl – Assistant County Attorney, Mr. Rickard – Chief Zoning Inspector, and Ms. Jackson – Recording Secretary.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Revised Agenda as circulated.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of September 18, 2000 as circulated.

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

Case No. 7246 – David and Karen Ottinger – south of Route 54, south Tyler Avenue, Lot 1, within Cape Windsor Subdivision.

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

Mr. Rickard presented the case. David and Karen Ottinger were both sworn in and testified requesting a 5-foot variance from the rear yard setback from the required 20-foot setback requirement for a deck and a 9-foot variance from the required 10-foot north side yard setback for a 2<sup>nd</sup> story deck instead of a 5-foot variance from the required 10-foot side yard setback requirement; that they have approval from the Cape Windsor Home Owner's Association; and that they are replacing an existing manufactured home.

Mr. Rickard read a letter from Gerard Petrick with concerns for the community.

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 variances be granted. Vote carried 5 – 0.

Case No. 7247 – J & Y Partnership Ltd. – northeast of U.S. Route 113, 498 feet southeast of Road 407, Lots 59 through 63, within Houston Acres Subdivision.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. John Park Sr. was sworn in and testified

requesting a 10-foot variance from the required 40-foot front yard setback requirement for an addition on an existing furniture store; that he owns the furniture store; that he has owned the property for 32 years; that the addition being built on the front of the existing structure would even out the look of the building; and that he has adequate parking.

Mr. Rickard stated that he visited the site and saw no problems for the requested variance.

By a show of hands, 1 party was in favor of the application.

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

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

Case No. 7248 – Mignon M. Peters – south of Road 298, northeast side of Deer Trail Road, Lot F-2, within Winding Creek Village Subdivision.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Mignon Peters and Amy Schrader were sworn in with Daniel Myers, Attorney, present on behalf of the applicants, requesting a 2.2-foot variance from the required 15-foot east side yard setback requirement instead of a 3.2-foot variance from the required 15-foot side yard setback requirement; that the home has been there since 1978; that Ms. Peters bought the home in 1983 and was not aware of any problems; that the home can not be easily moved if the application were to be denied; and that it would not effect property values.

Mr. Rickard read two letter in favor of the application.

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

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

Case No. 7249 – Edward Watkins – west of Route One, east of Belle Road, Lots 33 and 35, within Bay View Park Subdivision.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Edward Watkins was sworn in and testified requesting a 1-foot variance from the required 10-foot north side yard setback

requirement for a dwelling; that he would like to align the home with the road; that he would be moving a home to the property; and that the property is in a flood zone.

By a show of hands, 1 party was in favor of the application.

Dayna Feher was sworn in and testified that she is in opposition to the application; that she is on the Board of Directors, that it would set a precedent to the community; that the variance is not a hardship case; and that she submitted 4 letters in opposition to the application.

Mr. Rickard read a letter from the Bay View Park Association in opposition to the application.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the case be taken under advisement. Vote carried 5 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Motion was made by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the variance be denied. Vote carried 5 – 0.

Case No. 7250 – Richard M. and Carl J. Hazzard – west of Road 621, 1,831 feet north of Road 635.

A variance from the lot area requirement for a multi-family dwelling.

Mr. Rickard presented the case. Richard and Carla Hazzard were sworn in and testified requesting a 2-foot variance from the required 10-foot north side yard setback requirement for an attached garage; that they found out the garage was in violation when they sold their home in August; that the garage was built in 1992 or 1993; that Carla obtained the permit; that Gerald Hitchens with Union Contractors built the garage; that the size of the shed in the rear of the property is 10'x16'; and that the septic system is on the opposite side of the home.

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

Motion by Mr. Mills, seconded by Mr. Wheatley, and carried unanimously that that variance be granted and that a letter be sent to the contractor referencing the error in construction. Vote carried 5 – 0.

Case No. 7251 Buchanan Developers, Inc. – east of Route One, south side of Cove Road, Lot 41, within Tower Shores Subdivision.

A variance from the lot area requirement for a multi-family dwelling.

Motion was made by Mr. Mills, seconded by Mr. McCabe, and carried unanimously to incorporate Case # 7251, Case #7252, Case #7253, and Case #7254. Vote carried 5 – 0.

Mr. Rickard presented the case. William Buchanan, Jr., Charles Adams, and Bill Lucks were sworn in and testified requesting a 1,260-square foot variance for Lot 32 from the lot area requirement for 2 multi-family dwellings, a 1,260-square foot variance for Lot 42 from the lot area requirement for 2 multi-family dwellings, a 350-square foot variance for Lot 41 from the lot area requirement for 2 multi-family dwellings, and a 78-square foot variance for Lot 31 from the lot area requirement for 2 multi-family dwellings; that they will meet all setback, height and parking requirements; that they read the minutes, dated September 18, 1999, from Tower Shores Home Owner's Association recommending support to the Board; and that they submitted a copy of Board of Adjustment Case #3780 approval; and a letter from the Sussex County Engineering Department referencing the expansion of the Bethany Beach sanitary sewer district.

By a show of hands, 1 party was in opposition to the application.

William Gearhart was sworn in with Robert Witsil, Attorney, on behalf of the applicant stating that they are in opposition to the application; that they submitted a packet to the Board referencing a letter from Robert Witsil, his Findings of Fact in opposition to the application, the Sussex County Code Sewer Ordinance, and the "Purpose of Regulations" provisions of 9 Delaware Code Section 6904, and the Findings of Fact from Case #3780; that they submitted the Minutes from the Tower Shores meeting held on September 18, 1999 and the Minutes from the Watergate Association Board of Directors meeting held on September 13, 2000; that Mr. Gearhart is a resident of Atlantic Watergate and is on the Board of Directors; that Atlantic Watergate is a Subdivision of Tower Shores; that Tower Shores maintains the roads and the beach; that the applicant has failed to prove a hardship; that the lots in Tower Shores are not irregular in shape; that each of the parcels have a lot that is larger than the other and that the breakdown of percentage of smaller lots of 6,000 square feet requires a 17.5% variance of total lot area; that the other lot in that parcel requires a 5% variance; that they have concerns with the 17.5% variance; that Lot 31 is the largest lot and requires a 78-square foot variance; that Mr. Witsil's calculation for parcel 76 should be a 1,611-foot variance; that the Sussex County Code Sewer Ordinance prohibits the equivalent number of dwelling units the applicant is seeking; that the application does not meet the requirements of Code 69-17 and Code 115-211; that Mr. Gearhart attended the Tower Shores meeting and asked Mr. Buchanan several questions; that he is confused about the zoning of the property; that he does not oppose the development but opposes the extra density; and that it would set a precedent in the community.

Mr. Rickard read a letter from Tower Shores in favor of the application and 4 letters in opposition to the application.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the case be taken under advisement. Vote carried 5 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Motion was made by Mr. Mills, seconded by Mr. Wheatley, and carried unanimously that the variances be granted. Vote carried 5 – 0.

Case No. 7252 – Buchanan Developers, Inc. – east of Route One, south side of Cove Road, Lot 41, within Tower Shores Subdivision.

A variance from the lot area requirement for a multi-family dwelling.

There was a consensus of the Board that the record of this Case was that same as Case No. 7251.

Motion by Mr. Mills, seconded by Mr. Wheatley, and carried unanimously that the variance be granted. Vote carried.

Case No. 7253 – Buchanan Developers, Inc. – east of Route One, south side of Cove Road, Lot 42, within Tower Shores Subdivision.

A variance from the lot are requirement for a multi-family dwelling.

There was a consensus of the Board that the record of this Case was the same as Case No. 7251.

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

Case No. 7254 – Buchanan Developers, Inc. – east of Route One, north of Bay Road, Lot 31, within Tower Shores Subdivision.

A variance from the lot area requirement for a multi-family dwelling.

There was a consensus of the Board that the record of this Case was the same as Case No. 7251.

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

Case No. 7255 – Douglas Rhodes - southeast of Route 14, northeast side of North Brandywine Road, Lot 6, within Shawnee Acres Subdivision.

A variance from the rear yard setback requirement.

Mr. Rickard presented the case. Dennis Hudson was sworn in and testified requesting a 30-foot variance from the required 40-foot through lot setback requirement for an above ground swimming pool; that he submitted the permits that were obtained to the Board; that the permit stated the incorrect setback requirements; that he has installed a fence around the pool; and that he received a violation letter from Tina Rafail, Planning and Zoning Inspector.

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

Mr. Rickard read a letter from Shawnee Acres Homes Owner's Association in favor of the application.

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

At the conclusion of the public hearings, the Chairman referred back to this case. Motion was made by Mr. McCabe, seconded by Mr. Mills, and carried unanimously that the variance be tabled until October 16, 2000. Vote carried 5 – 0.

Case No. 7256 – Trudy W. Schuyler and Jane A. Greenwell – 200 feet south of Road 283, 525 feet west of Road 283-A.

A special use exception to operate a bed and breakfast inn.

Mr. Rickard presented the case. Trudy Schulyer and Jane Greenwell were sworn in with Margaret Cooper, Attorney, present on behalf the applicants requesting to operate a bed and breakfast inn; that it consists of 2 bedrooms; that there is minimal traffic; that it is a quiet and peaceful atmosphere; that they have lived their for 17 months; that they moved there in May and that their first guest was in August; that their neighbors knew what their plans were when they moved there; that they were not aware they had to apply for a special use exception; that there are seasonal and full time residents in the area; that they share a driveway with neighbors for about 25-feet; that the guests who stay there are in their 40's; that music is not allowed after dark; that no children are allowed; that

the guests are usually in their rooms by 10:30 P.M.; that they are a year round bed and breakfast; that no new adjustments have been made to the home; that the driveway is narrow and is surrounded by woods; that the only problem they have had since they have been there is that ruts were made in a neighbors property; that Wright's Lawn Care fixed their neighbors property for them; that they submitted a letter from Wright's Lawn Care; that they did not charge them since it was such a small job; and that the Bed and Breakfast would not effect property values.

By a show of hands, 7 parties were in favor of the application.

Carolyn Creatore was sworn in and testified that she is in favor of the application; that there are no problems with noise or a lot of traffic; that it does not effect property values; and that it is a quiet bed and breakfast.

Bridgett Bauer was sworn in and testified that she is in favor of the application; that there are no problems with noise; and that the applicants have fewer guests than other residents in the neighborhood.

Linda Bova was sworn in and testified that she is in favor of the application; that she is a resident of the area; and that she sold the home to the applicants.

By a show of hands, 12 parties were in opposition to the application.

Bill Schab, Attorney, was present on behalf of Paul Fair and Gary Shaw and testified that they are in opposition to the application; that a plot plan of Beachwood was submitted to the Board; that the applicants property is part of the Subdivision; that there are restrictions in the Subdivision; that Mr. Miller bought the property and that it was land locked; that in February 1985 Mr. Lank, Director of Planning and Zoning, approved the Subdivision request; that the access to the land is not part of the Subdivision; that Mr. Miller deeded out parcels A and B to Benny Waxman; that 1 year later the 2<sup>nd</sup> parcel was deeded out to Mr. Waxman; that all deeds were submitted to the Board; that the applicants business is on the internet; and that the issue is about the driveway going over Paul Fair and Gary Shaw's property.

Paul Fair was sworn in and testified that he is in opposition to the application; that on August 5, 2000 he found a car in his ditch; and that he has concerns with the Bed and Breakfast because of it being commercial.

Gary Shaw as sworn in and testified that he is in opposition to the application; that he has concerns with noise and traffic; that traffic goes over his property; and that he bought his property because of the deed restrictions.

Edward Wright was sworn in and testified that he is in opposition to the application; that he lives behind the Bed and Breakfast; that his driveway entrance is from Road 283; that he has a security light that comes on every time someone pulls in the driveway; and that his dogs are always barking because his security lights are always coming on because of the extra traffic.

Vera Morris was sworn in and testified that she is in opposition to the application; that at one time she owned the property; that it is not a good location for a Bed and Breakfast; and that she has concerns with the traffic going on her property.

John Kosinski was sworn in and testified that he is in opposition to the application; and that a Bed and Breakfast should not be permitted in the area.

Mr. Rickard read 4 letters in opposition to the application and read 2 letters in favor of the application.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the special use exception be tabled until October 16, 2000. Vote carried 5 – 0.

Case No. 7257 – Gerald J. Linn – south of Road 363, northwest side of Marina Park Drive, Lot 12, within Plantation Park Marina Subdivision.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. Gerald Linn was sworn in and testified requesting a 9-foot variance from the required 30-foot front yard setback requirement for a garage; that he submitted letters from the neighbors in favor of the application and pictures to the Board; that there was an error in measurement; that Ron O'Connor was the contractor; and that the contractor obtained the permit.

By a show of hands, 3 parties were in favor of the application.

Mr. Rickard read 3 letters in favor of the application.

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

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously that the variance be granted and that a letter be sent to the contractor referencing the error in construction. Vote carried 5 – 0.

Case No. 7258 – Alex E. Wisniewski – south of Route 22, north side of Green Holly Road, Lot 201, within Pot Nets Bayside Mobile Home Park.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Alex Wisniewski was sworn in and testified requesting a 1.5-foot variance from the required 5-foot northeast side yard setback for a proposed attached carport; that he has lived there for 30 years; and that it would not be practical for the carport to go on the opposite side of the home because of the driveway.

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 variance be granted. Vote carried 5 – 0.

Case No. 7259 – Richard E. King, Jr. – south of Route One, west of Center Avenue, Lot C-84, within Sea Air Village Mobile Home Park.

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

Mr. Rickard presented the case. George Littleton, Manager, was sworn in and testified requesting a 3-foot variance from the required 20-foot separation requirement between units in a mobile home park for a shed that is in violation; and that the applicant is a summer resident.

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

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

Case No. 7260 – Richard Webster – south of Road 363, northwest side of Marina Park Drive, Lot 15, within Plantation Park Marina.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Richard Webster and Barbara Joseph were sworn in and testified requesting a 0.3-foot variance from the required 10-foot southwest side yard setback requirement for a dwelling; that Barbara works for Hudson Homes and has no idea where they lost the 0.3-foot.

Mr. Berl stated to Barbara that Hudson Homes has frequently been making mistake with setback requirements. Barbara stated that she would let Hudson Homes know of the mistakes.

By a show of hands, 2 parties were in favor of the application.

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

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

### **Old Business**

Case No. 7211 – Paul Scott Allen – west of Road 350, southwest side of Lake View Drive, Lot 25, within Banksville Park.

A variance from the front yard, rear yard, west side yard, and east side yard setback requirement.

The Board discussed the case. Mr. McCabe requested that the shed in the front of the property and the shed on the southwest side of the property be moved to comply with the setback requirements; and that the garage and the shed on the east side of the property be granted the requested variances.

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously that the variances be granted as discussed. Vote carried 5 – 0.

Case No. 7227 – James and Gwen Foehner – north of Road 279-B (now a private road), 520 feet northeast of Mallard Drive, Lot 19 and 20, within Joy Beach Subdivision.

A variance from the front yard, west side yard, and rear yard setback requirements.

The Board discussed the case.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the variances be granted and that a letter be sent to the contractor referencing the error in construction. Vote carried 5 – 0.

Case No. 7242 – John H. Thomas and Edward Kozlowski - southwest of Route One, north side of Queen Street, Lot 193, within Camelot Mobile Home Park.

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

Mr. Rickard stated that he has not yet received a survey from Camelot; and that Mr. Berl has sent a letter to Camelot requesting a survey.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the variance be tabled until a survey is received. Vote carried 5 – 0.

Meeting Adjourned 10:13 P.M.