

Minutes of October 6, 1997

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, October 6, 1997 in the County Council Chambers, County Administration 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, Mrs. Hudson, Mr. Mills, Mr. Wheatley, Mr. Jones-Attorney, Mr. Rickard-Chief Zoning Inspector and Mrs. Mowbray, Zoning Inspector III.

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

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

Case No. 6431--Roland Harris - southwest side of Route 262, 321 feet west of Route 290, Lot 77, Section 2, within Coolspring Farms. A variance from the front yard setback requirement.

The applicant was not present at the opening of the hearing, therefore, the Board moved on to the next case.

The Board returned to the case after the conclusion of the scheduled hearings. The applicant, Roland Harris, was present.

The case was presented by Mr. Rickard. Roland Harris was sworn in and testified. Mr. Harris stated that the wrong lot had been advertised and wrong property posted. He further stated that he did not receive notification of the hearing, he only became aware of the hearing upon calling the office.

The Board questioned the error and Mr. Rickard read a inter-office memo from Michael Brady, Environmental Planner, who took the application. The application did have Lot 77 on it, but Mr. Harris stated his lot was Lot 76 and the error in setting the home was made by Oakwood Homes. It was suggested that Mr. Harris obtain a survey to determine the exact amount of front yard setback necessary.

Based upon the advertisement error, Mrs. Hudson made the motion that this application be denied, motion seconded by Mr. Wheatley. Vote 5-0.

Case No. 6432--Lawrence J. Van Sickler - east side of Bunting Avenue 50 feet south of Virginia Avenue, Lot 3, Section C, within Fenwick Island Lots. A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. Lawrence J. Van Sickler was sworn in. Mr. Van Sickler stated that he and his wife purchased the property and had used it for a summer rental, however they plan to retire in April or May, 1998, and after selling their home in Maryland, they will live here on a permanent basis. Mr. Van Sickler stated he wants to build 12x8 two story deck and a 8x11 storage room and a bathroom on top. Mr. Van Sickler presented a letter from Rosalie Lingo and Evelyn Simpson, neighbors, dated October 1, 1997, in support of the application.

Mrs. Hudson questioned if the Van Sickler's planned to rent out the home in the future. Mr. Van Sickler assured the Board he had given all his tenants notice the home would no longer be available.

There were no persons present in support or in opposition of the application.

Motion was made by Mr. McCabe and seconded by Mr. Wheatley and carried unanimously that a variance as requested of 2' 11" on the side yard for a deck and 4' 10" side yard for a future garage be granted.

Case No. 6433--Ellis C. Kalmeyer - Route 270A, Lots 26 and 27, within Truvale Acres.
A variance from the front yard setback requirement.

The case was presented by Mr. Rickard. Ellis C. Kalmeyer was sworn in and stated he purchased the property in 1992 and the deck was there at the time of purchase. Mr. Kalmeyer stated that he replaced his unit with a double wide manufactured home and returned the deck to the original location. Mr. Kalmeyer presented photographs from 1993, 1994 and 1997 showing the original unit, deck and his new Class "C" home. Mr. Kalmeyer also presented a letter dated September 30, 1997, from his neighbors, Irv and John DiDonato, on Lot #7 in support of the variance.

Mrs. Hudson questioned if Mr. Kalmeyer had contacted the Home Owners Association and Mr. Kalmeyer stated he had talked to Mr. McCafferty of the Association.

Warren Truitt, next door neighbor, was sworn in and stated he has owned his property since 1969 and thinks this is the second deck built. He has talked to several neighbors and they had no problem with the variance.

Suzanne Truitt, was sworn in and said she was in support of the variance also.

Motion was made by Mrs. Hudson, seconded by Mr. Mills and carried unanimously that a 10' variance be granted from the required 30' front setback.

Case No. 6434--Catherine S. Sibole east side of Marina Drive, Lot 4 and part of Lot 5, within Angola By The Bay.

A variance from the rear yard setback requirement.

Mr. Rickard presented the case. Catherine S. Sibole and her husband, Morgan Sibole were sworn in. Mrs. Sibole stated the house would be 10 years old on October 7, 1997, and is presently 20' from the rear of the property. She further stated she would like to build a screen porch on the rear of the house. Mrs. Sibole told the Board the rear of the property is the Common Area for Angola By The Bay and the Homeowners Association advised her they would approve any variance the Board of Adjustment would grant.

There were no parties in favor or opposing the application, therefore a motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously to grant a 12 foot variance from the required 20 foot rear yard setback to construct a screen porch.

Case No. 6435--Preston A. Hudson, Jr. & Gayle L. Hudson north side of Route 388, 1,113 feet east of Route 17.

A special use exception to continue to operate golf driving range.

Mr. Rickard presented the case and Mr. Hudson was sworn in. Mr. Hudson stated that he has operated the business for five (5) years and would like to continue as stated in Case 4289. Mr. Hudson presented photographs showing the property.

Mr. Wheatley questioned if there had been any complaints or plans for lights. Mr. Jones questioned if Mr. Hudson had any problems or concerns over the previous conditions set by the Board. Mr. Hudson assured the Board he had not had any complaints and planned to continue business as usual. The only improvement made to the property was in installation of a culvert. He further stated he was open from sunrise to sunset, seven days a week using

the honor system when he was not there and there was adequate on site parking.

No parties appeared in favor or in opposition of the application. Mr. Wheatley made a motion to grant a renewal of Case 4289 as stated for a period of five (5) years. Mr. McCabe seconded the motion and carried unanimously.

Case No. 6436--Eugene John Swann, Jr. - northeast side of Route 54, Lot 75H, within Swann Keys.
A variance from the side yard setback requirement.

Mr. Rickard presented the case and Mr. Swann was sworn in. Mr. Swann stated he purchased the property in 1979 from his mother. He stated he obtained a building permit 9-10 months ago and went through the office at Swann Keys and also received their approval. After building his shed, Mr. Swann stated he received a letter from Swann Keys stating he was in violation. Mr. Swann is requesting the variance because he replaced the new shed on the same concrete pad and feels if he had to move it a problem would be created with the propane gas tanks and the concrete pad.

Mrs. Hudson asked if Swann Keys was in agreement with the granting of a variance and Mr. Rickard read into the record a letter from Betty Bossey, Swann Keys, Board of Directors opposing the variance. Mr. Richard also read a letter from five (5) neighbors, Ruth Helmrick, Edith McGowen, Hiram Johnson, William Jarvis and Marjorie Cook, in support of Mr. Swann.

Mr. Mills raised the question, if the Board were to grant the variance and Swann Keys rules and regulations forbid the variance Mr. Swann would not benefit from a variance from the Board. Mr. Mills was advised Swann Keys has the same setback requirements as the County.

There were no parties present in support of the variance. Betty Bossey, Community Manager of Swann Keys, spoke in opposition of the variance and stated Mr. Swann had build a 8x10 shed and not the 8x8 shed he presented the office. She further stated Mr. Swann does not have room on his lot for a 8x10 shed and would need a 3' variance.

Edward Dodsen, from Swann Keys, stated he went by the measurements on the drawing submitted and found Mr. Swann could not meet the setback requirements for Swann Keys.

It was noted that Michael Milligan, Planning and Zoning Inspector II, had issued Mr. Swann a setback violation on August 1, 1997.

A motion was made by Mr. Mills and seconded by Mrs. Hudson to take this application under advisement and the motion was carried unanimously.

At the conclusion of the hearings, the request of Mr. Swann was brought back up for discussion. After referring back to the application and discussion, Mrs. Hudson made a motion and was seconded by Mr. McCabe to table this matter. The motion was carried unanimously.

Case No. 6437--Edward D. Berghardt & Linda C. Richetta - east side of Route 5, 200 feet southeast of Route 24, Caravel Drive, Lot 159, within River Village II.

A variance from the side yard setback requirement.

Mr. Rickard presented the case to the Board. Edward D. Berghardt and Linda C. Richetta were sworn in. Norman Barnett, Esquire, represented the applicants. Mr. Barnett stated the violation was discovered at settlement through a survey showing the need for a .8 foot variance.

There were no parties present in favor or in opposition. A motion was made by Mr. Mills and seconded by Mrs. Hudson to approve a variance of .8 feet from the required side yard setback of 10 foot for a garage addition. The motion was carried unanimously.

Case No. 6438 --Darlene Smith - northwest side of Route 346, Lot 4, within Louis DeMarie Subdivision.

A variance from the side yard setback requirement.

Mr. Rickard presented the case to the Board. Darlene Smith was sworn in and advised her Realtor stated she only needed a 2'9" variance and provided the Board with an original survey. After reviewing the document it was the opinion of the Board that Mrs. Smith did need a variance of 8' as stated in her original application. Mrs. Smith stated that she was recently widowed and was not aware of a violation until she prepared to sell the property.

There were no parties present in favor of the application. Ted Stevens and Shirley Stevens were sworn in and stated they were opposing the application on the basis they need questions answered. Mr. Stevens did state he has received some answers, but cannot find the property markers and was concerned about the impact the variance would make on the lots he plans to develop/sell. Mrs. Smith advised that the property and the adjoining property has marsh areas and may not be buildable.

Mr. Ted Stevens and Shirley Stevens requested the hearing remain open to allow them time to have all their questions answered and the property markers located.

Mrs. Smith advised that she has had settlement on the property, but funds are being withheld until a decision is made by the Board.

A motion was made by Mr. Mills and seconded by Mrs. Hudson that this application remain open for a period of ten (10) days and that the Stevens' respond in writing to the board. The motion was carried unanimously.

Case No.--6439 Harold & Bernice Arner - northeast side of Route
404, 1,650 feet east of Route
569.

A special use exception to operate a day care center.

Mr. Rickard presented the case. Harold Arner and Bernice affirmed. Mrs. Arner stated she had been in the child care business for 20 years and received a license 10 years ago as required by the State of Delaware and she presently is licensed for 6 plus 2. Mrs. Arner would like to have 12 children. Mrs. Arner stated her daughter, who lives with her and is a LPN, will be her substitute and assistant.

There were five people present in favor of the application. Lee T. Weaver was the spokesperson for the group of parents/clients and stated there was a need for increase to 12 and Mrs. Arner and her family provide a good day care.

There were no parties present in opposition.

Mr. Wheatley made a motion and was seconded by Mr. McCabe to grant a special use exception to operate a day care center. The motion was carried unanimously.

Case No. 6440--Gerald Rice & Joan Rice - east side of Dogwood Dr.,
Lots 15 & 16, within Angola By The Bay.
A variance from the side yard setback requirement.

Mr. Rickard presented the case. Joan Rice was sworn in and stated the building permit was obtained for a detached garage less than 600 square feet. However, when an inspector came to inspect the concrete, he suggest the Rice's attach the garage. Since the garage was for their boat they attached the garage to the main dwelling, thus creating a zoning violation. Mrs. Rice presented a letter from five of their neighbors, Justo Pinea, Jr., Willard McMullin, Paul Bradley, and David Gatchell, in support of the variance.

She further stated that Angola By The Bay Homeowner's Association had no objections.

There were no parties present in favor or opposition of the application.

A motion was made by Mr. Mills and seconded by Mrs. Hudson to grant a variance of 1'2" variance from the 15' side yard setback requirements for an attached garage.

Case No. 6441--Terrence J. Shannon & James A. Dreibelbis - south side of Route 277, Bridgeway Drive West, Lot 22, within Angola By The Bay.

A variance from the side yard setback requirement.

Mr. Rickard presented the case to the Board. Fred Tana, A-Z Builders was sworn in and advised his company built the dwelling and he would be representing the applicants. Mr. Tana stated the error was discovered after a placement survey was done at the completion of the project. He also stated the second story was part of the main dwelling and his on site Superintendent did not think a second story deck could encroach into the setback.

Mrs. Hudson questioned the distance between this dwelling and the dwelling on Lot 23. Mr. Tana stated there was at least 22 1/2' between them. Mr. Tana further stated Angola By The Bay Homeowner's Association has expressed no objections.

Mr. Wheatley questioned if Mr. Tana had insurance for this type of error and he stated he did not.

There were no parties present in favor or in opposition of the application.

A motion was made by Mr. Mills and seconded by Mrs. Hudson to approve a 3' variance for an upper deck. The motion was carried unanimously.

Case No. 6442--Anna Mortimer - north side of Route 524, 2,330 feet east of Road 516.

A variance from the minimum lot width requirement.

Mr. Rickard presented the case. Anna Mortimer and George Mortimer were sworn in. Mrs. Mortimer stated they would like to create a parcel for their daughter, Lisa Hinton, from the farm. In doing this it would leave Mr. & Mrs. Mortimer a front yard frontage of 126.57 feet. Mrs. Mortimer stated they had started the process earlier, but the moratorium was put in place. She also stated they

hope to create lots in the future for their other children.

Mr. Mills advised Mr. & Mrs. Mortimer that this may be considered a major subdivision and could become quite costly and would require approval from the Planning & Zoning Commission and County Council. Donald Robinson, their son, was sworn in and participated in the subdivision matter. Mrs. Mortimer advised she understood, but wishes to proceed with this application as Ms. Hinton needs a home and had incurred expenses on the proposed lot.

Mr. Mills made a motion and was seconded by Mrs. Hudson to approve a variance of 23.43 feet thus creating a frontage of 126.57 feet on the 10+ acre parcel. The motion was carried 4-1 with Mr. Wheatley voting against.

Case No. 6443--Minor & Judith Kates - a private road on the north side of Route 279B, 1.25 mile east of Route 279A, Lots 99 and 100, within Joy Beach.

A variance from the rear yard setback requirement.

Mr. Rickard presented the case to the Board. Judith Kates, Donald Dykes, Builder, John Valentino, President of Joy Beach Homeowner's Association and Richard LeCates, neighbor, were sworn in. Mr. Dykes stated Mr. Kates was out to sea and would present the case on the applicants' behalf. Mr. Dykes stated that a vinyl tech room as built onto an existing deck and building permit was obtained. Mr. Dykes presented a booklet prepared by Mr. Kates containing photographs of before and after as well as letters from neighbors and the Homeowner's Association in support of the addition and variance request.

John Valentino, President of the Homeowner's Association stated he has not received any telephone calls or letter about the vinyl tech room or the hearing. He further stated he felt the room added to the community and the property.

Richard LeCates stated he was a neighbor and said the deck was on the property for two years prior to the Kates' purchasing the property. He feels the vinyl tech room adds to the neighborhood and adds value to the property.

There were no parties present in opposition of the application.

A motion was made by Mrs. Hudson and seconded by Mr. Wheatley to approve a variance from the rear yard setback of 6'5" from the 20' rear yard setback for a vinyl tech room placed on an existing deck. The motion was carried unanimously.

OLD BUSINESS

Case No. 6414--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.

This matter was tabled until all five members of the Board could be present. Mr. Mills stated there were traffic concerns and a pond expressed at the previous meeting. The question of loading and unloading children from the school bus was a concern and the possibility of the bus pulling onto the site for that purpose.

Mr. Wheatley stated that all the children would not be arriving or departing at the same time as the parents work different hours. He also stated that a day care is needed in the area.

Mr. McCabe requested it be made a part of the record that there have been concerns expressed that he was bias due to a friendship with Dale Collins, Jr. Mr. McCabe stated he did not know Dale Collins, Jr., but did know his father. He stated he considered Mr. Collins, Sr., to be a friend but has not discussed this case with him and has not seen him for a year. Mr. Jones, attorney for the Board of Adjustment, then asked Mr. McCabe if he could vote without bias, which Mr. McCabe advised he could.

The Board referred back to the application and a motion was made by Mr. McCabe and seconded by Mrs. Hudson that a special use exception to operate a Day Care Center be granted and approved unanimously with the following stipulations:

1. Maximum of 115 children.
2. On site loading and unloading of children
3. Play area fenced prior to opening
4. Hours: M-F 6:00 a.m. to 9:00 p.m.
Sat. 9:00 a.m. to 9:00 p.m.
No Sunday hours

Mr. Jones requested a roll call vote. Mr. McCabe, yes with stated stipulations, Mr. Wheatley, yes with stated stipulations, Mr. Mills, yes with stated stipulations, Mrs. Hudson, yes with stated stipulations, and Mr. Callaway, yes with stated stipulations.

At the conclusion of the hearing, Mr. Jones stated he had received two (2) pieces of correspondence, but were received after hearing and will not be made a part of the record nor has anyone but he read them.

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

Mr. Mills and Mr. McCabe did not participate in the discussion or voting as they were not present for the original hearing.

Mrs. Hudson made a motion and was seconded by Mr. Wheatley to grant a front yard variance. Motion was carried 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.

Mr. Mills and Mr. McCabe did not participate in the discussion or voting as they were not present for the original hearing.

Mrs. McCabe asked Mr. Rickard if he had found if a similar request had been made before. Mr. Rickard stated that on March, 16, 1987, Case No. 3305, Oakwood Homes had been denied the same variance by a vote of 5-0.

Mrs. Hudson stated since the applicant failed to meet the requirements as set forth in the Code, the property could be used without a variance and the hardship has been created by the applicant, she made a motion to deny. The motion was seconded by Mr. Wheatley and passed 3-0.

OTHER BUSINESS

Case No. 5860--County Development Association, L.L.C. - north side
of Route One, 2,920 feet west of Route 271.
A variance from the requirements for signs.
Request for time extension.

Mr. Rickard advised a request had been received from Preston L. Dyer through a letter requesting a time extension. Mr. Dyer stated the project is progressing, but needs more time to complete.

Mr. McCabe made a motion and was seconded by Mr. Mills, to extend for a period of six (6) months with a strong suggestion no further request be made, carried unanimously.

Case No. 6015--William P. Petraitis & Nancy L. Petraitis - east
side of Route 24, at Route 298, Lot 22,
Sherwood Forest South.

A special use exception to place a second manufactured home to be attached to the existing manufactured home to be used as one single family unit.
Request for time extension.

Mr. Rickard read a letter from Mrs. Petraitis stating she had run out of funds, is pregnant, the project had difficulties and she was the only person working and has been unable to complete the project in the time period, therefore requesting a time extension.

Mr. Rickard advised the letter was dated September 30, 1997, and Finding of Facts were dated September 13, 1996.

Mr. Mills made a motion that a time extension for a special use exception to place a second manufactured home to be attached to the existing manufactured home to be used as one single family unit be denied based upon the fact that the time had expired prior to the request. The motion was seconded by Mrs. Hudson and carried unanimously.

Adjourn: 10:00 p.m.