

Minutes of October 20, 1997

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, October 20, 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, Mr. McCabe, Mrs. Hudson, Mr. Mills, Mr. Wheatley, Mr. Jones-Attorney, Mr. Rickard-Chief Zoning Inspector and Mrs. Talley-Recording Secretary.

Motion was made by Mrs. Hudson, seconded by Mr. McCabe and carried unanimously that the minutes of October 6, 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. 6444--Coastal Resorts Development Corporation - West side of Route One, 200 feet north of Road 360, Lot 12, within The Cove.

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

The case was presented by Mr. Rickard. John Thomas Marrin was sworn in and testified representing Coastal Resorts Development Corporation who requested to reverse the front yard and rear yard setbacks on Lot 12, within The Cove. The front yard setback requirement is 30' and the rear yard setback is 10'. Lot 12 borders the canal between Sections one and two of The Cove. Lots 13-21 have their front building setback lines facing the water, and the rear facing the street. Because of their proximity to 404 wetlands or to the mean high water line, each of these lots can be built on if the setbacks are reversed. The applicants requested that Lot 12 be made to conform with the other lots which border the canal and the 10' setback be measured from the cul-de-sac right-of-way and the front on the water. A site plan was presented. Mr. Marrin stated that there is wetlands in the area. He stated that the development has received variances on Lots 13-21.

Mr. Mills questioned if the subdivision was prior to the wetland laws.

In response Mr. Marrin stated that it was not.

Steve Kaladin was sworn in and testified that he lives across the bay from Beach Cove and is concerned about building in the flood plain. He feels the applicants want to put as many homes on the property without regards to property size. He read from the

Delaware Inland Bays, page 68 and presented pictures dated and with the time on them, showing how much of the property is under water.

Mr. McCabe stated that the development exists now and the applicants are requesting a variance from the setbacks.

Mr. Marrin stated that all wetland permits are in place and that they will be further away from the Inland Bays.

Mr. Mills questioned if the dwelling will be on stilts.

Mr. Marrin stated that the dwelling will be put on pilings, with parking underneath. He stated that fill will be brought in to keep from getting wet.

Motion was made by Mr. Mills, 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. Motion was made by Mr. McCabe, seconded by Mrs. Hudson and carried unanimously that the variance be granted, finding that the lot is odd shaped, the use does not move the buildable area closer to the water, the view would not be affected, the lot already is an approved lot, not creating a lot that is not there, and the applicant has shown a hardship. Vote 5-0.

Case No. 6445--Gerald C. Rust - West side of Route 48, 650 feet west of Road 315.

A variance from the lot size requirement for two (2) lots.

The case was presented by Mr. Rickard. Gerald C. Rust was sworn in and testified, requesting a 10,857 sq. ft. variance for parcel A and a 9,231 sq. ft. variance for parcel B, to meet the square footage requirement for a 3/4 acre lot. Mr. Rust stated that the property is part of the original farm deeded to him May, 1991. He plans to build a home on the property for his mother-in-law. When he planned to subdivide the property there was a moratorium that did not allow him to subdivide. When the moratorium was lifted the lot size had changed and he now needs variances. There are no dwellings on the property now, but the lots will be buildable lots.

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.

At the conclusion of the public hearings, the Chairman referred back to this case. After some discussion, motion was made by Mrs. Mills, seconded by Mrs. Hudson and carried unanimously that the variances be granted. Vote 5-0.

Case No. 6446--John Green, Marion Green, and Ronald & Lisa Hunt -
East side of Route 601, 3,750 feet
north of Route 577.

A variance from the minimum lot width requirement.

The case was presented by Mr. Rickard. John Green and Marion Green were sworn in and testified and were represented by James Reed, Attorney. The applicants requested a 100' variance from the 150' road frontage requirement to leave a 50' right-of-way for entry to a rear parcel of land. Mr. Reed stated that the applicants will add land from Lot 1 to enlarge Lot 2. He stated that Lot 1 is over 20 acres of timberland. He stated that they are not creating a new lot, they are just adding to the existing lot, since the potential buyers want a larger lot. There will be no additional entrance added.

John Green was sworn in and testified that the buyer wants a larger lot. He explained the existing lots and how they were surveyed. He stated that when the property is sold it will all be one lot, which will be Lot 2.

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 Mrs. Hudson, seconded by Mr. McCabe and carried unanimously that the case be tabled until the next meeting. Vote 5-0.

Case No. 6447--Joseph & Sandra Myers - South corner of Route 535
and Route 535A, Lots 51 and 52, within
North Shores.

A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. Sandra Wachter-Myers was sworn in and testified requesting a 14'6" variance from the 15' side yard setback for a garage, being Lots 51 & 52, within North Shores.

Mr. Rickard read correspondence from Cooper Realty, Thomas J. Cooper, addressed to Mr. Lank, Director of Planning and Zoning, voicing opposition to this case.

Ms. Myers stated that her builder, Ron McGee, had obtained a building permit with the correct setbacks on it. An inspection was done on August 7, 1997 and the Inspector stopped the construction and told her the garage was in violation, but did not know where the property lines were. She had a survey done since a survey was not done when she purchased the property two years ago from Callaway, Farnell and Moore, Realtors. The garage is in violation. She requested a variance to be able to complete the construction. She stated that 24" of the corner of the garage will be cut-off by the contractor, leaving 6" to the property line. The garage is 24'x 30' in size.

Mr. Jones asked if she was requesting a 0" variance to go to the property line.

Ms. Myers stated that she was. It was written on the application that a 14'6" variance is requested.

By a show of hands there were 16 people present in opposition.

Paul Wootten was sworn in and testified in opposition. He presented pictures and letters of opposition. Mr. Wootten stated that he lives next door. He stated that he had told the applicant to watch restrictions when the contractor built the foundation. Mr. Wootten stated that he had called Planning and Zoning and the construction was stopped. He stated that the framing is up. He stated that there are no homes closer than 25' to the property line. He expressed concern about backing out of the garage. He stated that the garage is out of alignment with other homes. He stated that the applicant has plenty of room to build within the restrictions. Mr. Wootten stated that the applicant needs to modify the garage. He stated that out of 83 residents in the development, there was 51 signatures on the letters presented. He stated that there is no Homeowners Association in North Shores.

Earl Radding was sworn in and testified in opposition.

Mr. Mills questioned the size of the garage.

The applicant stated that the garage is 24'x 30' in size.

Mr. Ed Blachley was sworn in and testified in opposition asking the Board not to make an acception to the rule and deny the application.

Motion was made by Mrs. Hudson, seconded by Mr. McCabe and carried unanimously that the variance be denied, finding the applicant had failed to meet the requirements for the granting of a variance set forth by the Delaware Code and in the Sussex County Code. Vote 5-0.

The Board took a five minute break.

Case No. 6448--Louis & Jacalyn Baker - West side of Route One, Lot
Lot 3, within Bay View Park.

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

The case was presented by Mr. Rickard. Jacalyn Baker was sworn in and testified requesting to operate a bed and breakfast on Lot 3, within Bay View Park. Ms. Baker stated that she would rent two rooms, with breakfast only, for 12 months.

Mr. Rickard stated that there were 16 letters of opposition received.

Ms. Baker stated that she thought she only needed a license to operate a bed and breakfast. She was not aware she needed to change the zone. She wants to rent two bedrooms where there would be four adults at a time. In answer to Mr. Mills question, she stated that there are homes being rented in the development.

Mr. Jones questioned if there would be two rooms and no cooking.

Ms. Baker stated that there would be two rooms and no cooking and there would be parking for four cars.

Mr. Jones explained to Ms. Baker that it would not be a change of zone, but a special use exception.

Ms. Baker stated that she does not want any changes in Bay View Park.

By a show of hands there were thirty (30) people present in opposition.

Allen Hebner, Robert Myer and John Hendrickson were sworn in and testified in opposition. A petition was submitted with 26 signatures of opposition. A prepared statement and small map were also submitted to the Board. It was stated that Bay View Park is a private residential community with 120 homes and is zoned MR Medium Density Residential. There is a Homeowners Association. It

was stated that rentals in the development are different than people coming into the area for a bed and breakfast, where meals are prepared and sold. It was stated that the original concept of the development is residential and they feel the use will affect the residences and safety of the community.

Mr. Myer stated that he feels if the use is permitted it will open the door for more of the same use. He does not want a precedent to be set. It could cause parking problems, could grow from two rooms and it could affect property values.

Mr. Hendrickson stated that he is President of the Board of Directors of the Park and opposes the requested bed and breakfast. He feels it will not be an enhancement, will create more traffic and more could follow. A letter was presented.

Mr. Mills asked if the developments covenants prohibit this kind of use.

Mr. Hendrickson stated that their covenants do not cover bed and breakfast, that it is up to Planning and Zoning.

Mr. Rickard stated that of the letters received, 98% reference commercial.

Mr. Jones stated that the letters will be made a part of the record.

Motion was made by Mr. McCabe, seconded by Mrs. Hudson and carried unanimously that the special use exception be denied, based on the evidence presented and the use will adversely affect the adjacent properties. Vote 5-0.

Case No. 6449--Jennifer Zerby - South side of the intersection of Route One-A and Route One.

A variance from the requirements for signs.

The case was presented by Mr. Rickard. Jeff Stevens, representing Rogers Sign Co., was sworn in and testified and represented the applicant, who requested a variance to use 300 sq. ft. on an existing back side of a sign which is non-conforming. Mr. Stevens stated that the two billboards have been in existence since the 1960's and the State wants them to bring them up to standards. Pictures were submitted and he explained Boardwalk Plaza. The billboards are on the opposite side of the property with a building in between. There is a professional retail center behind one billboard. The billboard is 25' wide and 16' tall and have been the same size since they were built.

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. 6450--Violet Waters - East side of Route 516, 700 feet north of Route 525.

A special use exception to operate a day care center.

The case was presented by Mr. Rickard. Violet Waters was sworn in and testified requesting to operate a day care center. She stated that she is allowed nine (9) children and wants to add up to fourteen (14). The children will range in ages infant (12 weeks) to 12 years old. She will operate Monday through Friday from 7:00 A.M. to 5:00 P.M., no weekends. Parking will be provided and there will be a fenced-in yard.

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 to operate a day care center be granted. Vote 5-0.

Case No. 6451--Christopher Valenti - East side of New Road, Lot 1, within Lands of L. Lebreton Subdivision.

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

The case was presented by Mr. Rickard. Christopher Valenti was sworn in and testified and was represented by Jim Fuqua, Attorney. Mr. Valenti requested to place a manufactured home type building for an office on Lot 1, Lebreton Subdivision. J & B Landscaping business is on the property. He was granted a special use exception to operate a plant nursery and now needs the manufactured home to be used as an office. There is a residence on the property, but has become too small and a burden to have an office in it. Mr. Fuqua explained and showed the location on the property where the manufactured home office will be. The maximum size will be 12'x 56'. He stated that there is no retail sales on the site, it will be office use only.

Mr. Valenti stated that everything Mr. Fuqua presented was true.

Mrs. Hudson asked Mr. Valenti if he planned to build an office.

Mr. Valenit stated that he will build an office and that he has 6 full time employees.

There were no parties present in opposition.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the special use exception to use a manufactured home for an office be granted, limited to a 12'x 56' unit for a period of five (5) years. Vote 5-0.

Case No. 6452--K-Mart - Northeast side of Route One, 3/4 mile south of Route 24.

A variance from the requirements for signs.

The case was presented by Mr. Rickard. Dale McAllister, John Walters and John Simeone were sworn in and testified, representing K-Mart, who requested a 267 sq. ft. variance for a wall sign. The sign will be a total of 367 sq. ft. It was stated that K-Mart has remodeled their store and changing their name across country. Pictures were shown. They are adding " Big" to their K-Mart sign, since they are adding pantry items. The sign will have individual letters. With a 300' long store the sign will be less than 10% of the store front. It is a 1117 sq. ft. store. The letters " Big" will be over the entrance of the store.

There were no parties present in opposition.

Motion was made by Mrs. Hudson, seconded by Mr. Mills and carried unanimously that the variance for 267 sq. ft. be granted. Vote 5-0.

Case No. 6453--Sydney I. & Phyllis Green - Lots 27, 28, 29, 30 and 31, within Bay View Park.

A variance from the rear yard setback requirement.

The case was presented by Mr. Rickard. Sydney I., Phyllis Green and Steven Billobran were sworn in and testified. Mr. Billobran represented the applicants, who requested a 5' rear yard variance to conform with what exists on the lagoon for Lots 27, 28, 29, 30 and 31, within Bay View Park.. Mr. Billobran had a 1985 survey to the survey presented and pictures were reviewed. It was stated that DNREC had requested keeping in line with the bulkhead and shoreline.

Mr. Rickard read a letter from William F. Moyer, Wetlands, referencing their request. Letters from adjoining property owners in favor of the request had been received.

Mr. Billobran stated that the applicants plan to combine Lots 27 and 28 and run the bulkhead down as a continuous line. He stated that the applicants plan to sell the properties. In answer to Mr. Mills question, Mr. Billobran stated that there would not be a need at a later time for a variance on Lot 27 and 28. He stated that structures will be no closer than on Lot 32, they are trying to line up. Pictures were presented. He stated that there is no bulkhead on these lots now, but has been applied for. If granted they will be 10' from the bulkhead and they are seeking a 5' variance and will conform with what exists. He stated that whoever builds will have to be 10' back from the bulkhead as per the development regulations too.

Mr. Green stated that he purchased the land in 1951-52. He explained how the property was at that time.

Mr. Rickard stated that there were 12 signed documents in favor and would be part of the record.

By a show of hands there were 30 people present in opposition.

Jean O'Connor was sworn in and asked who the people are that signed the petition presented.

Mr. Rickard read the petition names in favor into the record.

Mrs. Green stated that they are the people who are most concerned.

Mr. Rickard read letters of opposition from Catherine & George Thomas, Herschel & Edith Hudson and Joyce & Terrence McDowell.

John Hendrickson, sworn in on Case No. 6448, testified in opposition to this case. He presented a letter of opposition. He stated that there is no reason for the increase, that it would be a parralel line. It was stated that if DNREC give the land there would be no need for a variance.

Donald O'Connor was sworn in and testified asking the applicants to put in part of the bulkhead so the area would not wash away. He asked the Board not to grant the variance not knowing of it is needed or not.

Mr. Billobran stated that the property is zoned for single family and there will be no condos or townhouses.

Mr. Myer sworn in on Case No. 6448 was also in opposition to this case. Mr. Myer stated that the park is unique and Mr. Green is not going to build houses, he is going to sell the property and

problems could come with the larger lots.

Mr. Hendrickson presented a petition with 40 signatures in opposition.

Francis DeFelice who lives across the canal, was sworn in and questioned whether rip rap or bulkhead would be added and how far out the rip rap will go into the lagoon.

Mrs. Green stated that the property has been owned since 1961 and that her husband has been a part of the Association. She stated that they have never lived or owned a home on the property. They have allowed children to play on the property and build playhouses. She stated that two properties next to their property has pushed into the lagoon and it is a real hardship to the other lots. Mrs. Green stated that they live in Bethesda. She stated that in 1985 they were asked to put a bulkhead in and they could not afford to do so at that time. She stated that they will not infringe on neighbors property. They have no intention of being a developer there.

Motion was made by Mr. McCabe, seconded by Mr. Wheatley and carried unanimously that the case be tabled until the next meeting. Vote 5-0.

Case No. 6454--Gary W. & Kay E. Hearn - South side of Route 74,
1,200 feet east of Route 434.

A special use exception to place a manufactured home on a medical hardship basis.

The case was presented by Mr. Rickard. Gary Hearn was sworn in and testified requesting to place a 14'x 70', 1985 or 86 manufactured home on their property for Mrs. Hearn's mother to live in and to be able to care for her. The same application was applied for in 1996 but was never carried out.

Mr. Rickard read a letter from Dr. P. G. Rosas referencing the health of Bessie Carmine, Mrs. Hearn's mother.

Mrs. Hudson stated that if approved it would be for two years and has to be renewed 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 Mr. Mills and carried unanimously that the special use exception be granted on the basis of hardship for a period of two (2) years. Vote 5-0.

Case No. 6455--Loren S. Fuller - North side of Route 466, 450 feet east of Route 479.

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

The case was presented by Mr. Rickard. Loren S. Fuller was sworn in and testified requesting a 45' variance from the side and rear yard setback requirements of 50' for a poultry manure shed. The proposed manure shed will be 41'x 100' or 41'x 64'. He stated that he has three poultry houses on the property and now has to pile the manure on the ground. He feels it is better to keep it under cover and dry. He stated that there is farmland adjacent to his property and the nearest house is 500' to 600' away. He stated that his son will build the shed.

Mrs. Hudson questioned if the manure shed could be put on the other side of the property.

Mr. Fuller stated that there is a composter on the property.

Jeffrey L. Fuller was sworn in and testified in behalf of the application. He stated that the manure is in piles on the property now and it would be better to have it under cover to keep the nitrites from going into the ground. He stated that it is the only location on the property to place it.

Minnie Culver and Robert Culver were sworn in and testified in opposition stating that they own the adjacent property next to where the manure shed will go. They questioned how far from their line the manure shed has to be. They want it to be what the law allows.

Mr. Mills explained that according to the applicant it is the only place on his property where he can put it. If not approved he would have to leave the manure in piles on the property as it is now.

Mr. & Mrs. Culver stated that their house is 400' to 500' away and they do not want the manure shed to be 5' from their property line.

Mr. McCabe questioned Mr. & Mrs. Culver if they would be opposed to any type of building.

Mr. & Mrs. Culver stated that they would be opposed to any type of building. They feel it will devalue their property.

Mr. Mills stated that the manure filters nitrates into the ground being out in the open.

Mr. Wheatley stated that he feels it would be better to enclose the manure.

Mrs. Culver stated that they want the manure shed to be further than 5' from the property line.

The Board questioned if the manure shed could be put in front of the chicken houses.

The applicant stated that the shed could not be put in front of the chicken houses because there is a house and shed there.

Jeffrey Fuller stated that the building size is state approved.

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. Mills and seconded by Mrs. Hudson that the variance be denied. There were three Board members in favor of denial, Mr. Mills, Mrs. Hudson and Mr. Callaway. The motion died. There was no voting and there was not 3 affirmative votes.

Motion was made by Mr. McCabe, seconded by Mrs. Hudson and carried unanimously that the case be tabled until the next meeting. Vote 5-0.

OLD BUSINESS

Case No. 6436 (cont'd.)--Eugene John Swann, Jr. - Northeast side of Route 54, Lot 75H, within Swann Keys.

A variance from the side yard setback requirement.

The case was reviewed by Mr. Callaway.

Mr. Rickard reviewed what happened at the public hearing.

Motion was made by Mr. McCabe, seconded by Mrs. Hudson and carried unanimously that the case be tabled. Vote 5-0.

Case No. 6438 (cont'd.)--Darlene Smith - Northwest side of Route 346, Lot 4, within Louise DeMarie Subdivision.

A variance from the side yard setback requirement.

Mr. Rickard reviewed the case. He made mention that the hearing had been left open for 10 days. He had received correspondence from Shirley Stephens and James Stephens voicing no opposition. The letter was read into the record.

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

Motion was made by Mrs. Hudson, seconded by Mr. Mills and carried unanimously that the meeting be adjourned.

Meeting adjourned at 10:20 P. M.