

Minutes of October 28, 1996

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, October 28, 1996 in the Court of Common Pleas, Courthouse, Georgetown, Delaware.

The meeting was called to order at 7:00 P. M. with Chairman McCabe presiding. The Board members present were: Mr. McCabe, Mr. Callaway, Mr. Mills, Mrs. Hudson, Mr. Wheatley, Mr. Jones-Attorney, Mr. Betts-Zoning Inspector III and Mrs. Talley-Planning & Zoning Secretary.

Motion was made by Mr. Callaway, seconded by Mr. Wheatley and carried unanimously that the minutes of October 21, 1996 be approved as circulated.

Mr. Jones-Attorney, read a statement explaining how the Board of Adjustment meetings are conducted and the procedure for hearing the cases.

Case No. 6143--Charles A. & Nancy G. Cross - South side of Sandpiper Lane, East of Route One, Lot 24, within Bayberry Dunes.

A variance from the front yard setback requirement.

The case was presented by Mr. Betts. Charles & Nancy Cross were sworn in and testified, requesting a 13.6' variance from the front yard setback requirement of 30', within Bayberry Dunes on Lot 24. The applicants stated that a variance is needed for a stairs on the front of their house. Mr. Cross stated that he built the house and has lived there for 12 years. He stated that the Bayberry Dunes Association is aware of the variance request. Mrs. Cross stated that she had spoken with Jim Murray and Gifford Stack and they stated that the Association has no problems with the variance.

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

There were no parties present in opposition.

Motion was made by Mrs. Hudson, seconded by Mr. Callaway and carried unanimously that the variance be granted.

Case No. 6144--William H. Griswold - South side of Route 277, Lot 13 and part of Lot 14, within Angola By The Bay.

A variance from the rear yard setback requirement.

The case was presented by Mr. Betts. William H. Griswold was sworn in and testified, requesting a 4'6" variance from the 20'

rear yard setback requirement, on Lot 13 and part of Lot 14, within Angola By The Bay. Pictures were presented. Mr. Griswold stated that two years ago he built a house on the property, which is in compliance with the setback requirements, but a deck on the rear of the house extends into the setback, which is permitted if it is an open deck. He proposes to close the deck in with a roof and screen. There is woods next to the property and the common area in the rear of the property is wooded. He stated that he has a tremendous amount of debris that falls on the deck and is also bothered with flying insects. He feels he will be able to better use the deck if it is enclosed. The deck will not extend out any further than it is now. He stated that the Association has no problem with his variance proposal.

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

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.

Case No. 6145--Steven Lee & Brenda M. Jones - South side of Route 430, 1,500 feet west of Route 427.

A variance from the front yard setback requirement.

The case was presented by Mr. Betts. Steven Lee & Brenda M. Jones were sworn in and testified, requesting a variance from the 40' front yard setback requirement for a house. The applicants had appeared before the Board on May 20, 1996 for a variance to be able to subdivide property. Now a survey shows a front yard variance is needed for the manufactured home on the property. When the applicants went to settlement it was discovered the manufactured home will be 3.4' too close to the front property line. The manufactured home has been on the property for two years and when the person doing the footers measured he did not take into consideration the overhang.

There were no parties present in opposition.

Motion was made by Mrs. Hudson, seconded by Mr. Callaway and carried unanimously that the variance be granted, finding the use will not have an adverse affect on the surrounding area.

Case No. 6146--Joanne Maddox - East side of Route 585, 450 feet south of Route 587A.

A special use exception to place a manufactured

home in an AR-1 District on less than five acres for a permanent residence.

The case was presented by Mr. Betts.

There were no parties present to represent this case.

Mr. McCabe stated that the case would be held open and they would refer back at the end of the meeting to give the applicant time to appear.

Mr. McCabe referred back to this case. There were no parties present to represent the case. The hearing was opened since there were interested parties present.

Linda Rohleder & Craig Prettyman were sworn in and testified in opposition. Ms. Rohleder stated that she has owned farmland for 20 years and it adjoins Heather Glenn. She stated she has invested \$300,000 in the property. She stated that there are problems in Heather Glenn. She feels another manufactured home will be a detriment to the value of her property. Mr. Prettyman stated that there are two manufactured homes unoccupied, two with no skirting and weeds on the property. He stated that the unsold lots have tall weeds on them. Ms. Rohleder feels to add another manufactured home will deteriorate the property. She stated that the Board has allowed manufactured homes in the area. She wants the Board to view the property. She stated that if in the future she wanted to sell her farm, no one would want to buy it. She hopes the Board will come out and view the area. Mr. Prettyman also feels that as the area builds up, people will be in opposition to their agriculture business.

Motion was made by Mr. Mills, seconded by Mr. Wheatley and carried unanimously that the special use exception be denied, due to lack of the applicant to appear, and the applicant cannot reapply for a period of one (1) year.

Case No. 6147--Gregory M. & Deborah A. Sarley - South side of Route 277, 1/4 mile east of Route 24, Lot 34, within Angola By The Bay.

A variance from the front yard setback requirement.

The case was presented by Mr. Betts. Gregory Sarley was sworn in and testified and was represented by Bill Schab, Attorney. Mr. Sarley requested a .6' variance from the 30' front yard setback requirement on Lot 34, within Angola By The Bay for his house. The applicant thought the house met the proper setbacks when he was buying it, but when a survey was done the encroachment was

discovered. The seller of the property had a survey with the same setbacks, but failed to notice the front yard encroachment. Mr. Sarley stated that his property is on a cul-de-sac and the septic is in the rear of the property.. It was stated that the Association has no problem with the variance request.

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

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.

Case No. 6148--Kenneth, Sr. & Gwendolyn Lane - East side of Route 42, at the intersection of Route 624 and Route 42.

A variance from the minimum lot width requirement.

The case was presented by Mr. Betts. Kenneth, Sr. & Gwendolyn Lane were sworn in and testified, requesting a 100' variance from the minimum lot width requirement of 150', to create a new parcel for their son. Their son proposes to build a home on the new parcel of land. He will build his home on the rear parcel and the applicants want to build a home on the front parcel. The property is vacant now. A 50' right-of-way must be provided. The applicants propose to have one driveway for both properties and one entrance off the road.

Mr. Betts stated that the subdivision was submitted before the moratorium and if granted it will be a legal lot.

Grier Stayton, a property owner down the road, was sworn in and testified in opposition and presented a petition with 49 signatures of people who live in the area and are opposed to the application. A letter of opposition from Linda Ross was submitted also. Mr. Stayton stated he feels the variance will set a dangerous precedent. The nature of the community could be changed. Maps were presented showing farmland preservation districts now on the books, and that the area is going in that direction. He feels that the variance would be contradictory to whats in the area now and whats proposed. He stated that visibility on the corner is bad now, would be a traffic hazard, safety hazard and he feels highway assistance is needed for the entrance. He stated that there is no guarantee that the property could not be sold to someone else and they would not know who would live on it. He referenced the Comprehensive Plan that is being considered. He stated that the entrance is not active now.

By a show of hands, 15 people were present in opposition.

Mr. Betts read letters of correspondence in opposition from L. & E. B. Ross, Irene Webb, Robert & Lily McCartney and Marie Smith.

Mr. Lane stated that he does not intend to put a manufactured home or a modular home on the property, he intends to put a cape cod. He stated that his entrance is south of the curve.

Motion was made by Mr. Wheatley, seconded by Mr. Mills 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. Callaway, seconded by Mr. Wheatley and carried unanimously that the variance be denied, finding the use would be out of character with the area, the applicants had not met the legal requirements for the granting of a variance and there are large tracts of land in the area. Vote 5-0.

Case No. 6149--Sean Oates - South side of Route 54, 350 feet west of Route 396.

A variance from the minimum lot width requirement.

The case was presented by Mr. Betts. Sean Oates was sworn in and testified, requesting a 100' variance from the 150' lot width requirement to create a new lot. He proposes to build a house on the rear parcel and rent out the existing house. There will be a 50' right-of-way.

Mr. Mills questioned if there would be one driveway.

Mr. Oates stated that there will be one driveway back to the new house. The existing house has a driveway.

There were no parties present in opposition.

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. After some discussion, motion was made by Mrs. Hudson, seconded by Mr. Wheatley and carried unanimously that the variance be granted.

Case No. 6150--Neil & Amanda Otwell - South side of Route 54, 1/4 mile east of Route 58B.

A variance from the side yard setback requirement.

The case was presented by Mr. Betts. Neil Otwell was sworn in and testified, requesting a 3' variance from the 5' side yard setback requirement. Mr. Otwell bought the property in 1983 with a shed on it. Since it had deteriorated he replaced the shed without being aware it needed a variance. It was replaced in the same location as the old shed. He stated that the immediate neighbors and the Association have no objections. The property is Lot 50 in Keen Wik.

There were no parties present in opposition.

A letter voicing no objections was read into the record by Mr. Betts from Lee and Joan Baker.

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

Case No. 6151--Richard L. & Terry M. Fooks - West side of Route 589, 1,700 feet south of Route 589A.

A special use exception to place a manufactured home in an AR-1 District on less than five acres for a permanent residence.

The case was presented by Mr. Betts. Richard Fooks was sworn in and testified, requesting to place a 1975, 12'x 68' manufactured home on his property for his use. He testified that the manufactured home is setting on the property, but is not being lived in. He stated that there is a house and manufactured home on either side of his property. He stated that a previous manufactured home on the property had burned over a year ago. He stated that he has owned the property for seven years with a manufactured home on it.

There were no parties present in opposition.

Motion was made by Mr. Wheatley, seconded by Mr. Callaway 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 Mr. Mills and carried unanimously that the special use exception be granted.

Case No. 6152--Nancy E. Harrold - South side of Route 473, 700 feet northeast of Route 20.

A special use exception to place a manufactured home in an AR-1 District on less than five acres for a permanent residence.

The case was presented by Mr. Betts. Nancy E. Harrold and Bonnie T. Willey were sworn in and testified. Ms. Harrold requested to place a 14'x 80' manufactured home on her property. It was stated that there are other manufactured homes down the road. Ms. Willey stated that she and Larry own 11 lots in the area and they have no objections.

Delores Ball, Joseph Ball and Fred Jester were sworn in and testified in opposition.

Fred Jester who lives 500' away on Route 20, stated that when Ms. Willey put homes on her lots, she never came to visit him and explain what she was doing and ask his feelings about the development. He is opposed to manufactured homes. He stated that more manufactured homes could cause safety problems for the children in the area.

Delores Ball stated that property values could go down if a manufactured home is permitted on a small amount of land. She fears the property could become a rental and not be taken care of. She stated that one manufactured home in the area is on 20 acres.

Mr. Ball is concerned about property values and that others could come into the area.

Mr. Betts read a letter of opposition from Anna Yurek.

Ms. Willey stated that there are three bedroom homes on their lots and she is not putting in manufactured homes.

Mr. Mills asked the parties present in opposition if they would also object to a double-wide manufactured home on a permanent foundation or if they were opposed to any manufactured home.

Mr. Jester stated that he is opposed to any manufactured home.

Mr. Ball stated that Ms. Willey has small rental homes on her property. Mrs. Ball stated that the amount of people living in the small homes is not being monitored very well.

Mr. Jones, Attorney, explained that the amount of people living in the dwelling is not a matter for the County as long as it is a single-family.

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. After some discussion, motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the special use exception be denied, finding that a single-wide manufactured home would be out of character with the area and the use will substantially adversely affect the area.

Case No. 6153--Pica T. & Victor A. Buckley - East side of Route 364A, 1,950 feet southwest of Route 364B.  
A special use exception to place a manufactured home in an AR-1 District on less than five acres for a permanent residence and a variance from the setback requirements for a poultry house from a dwelling not on the premises.

The case was presented by Mr. Betts. Victor A. Buckley was sworn in and testified, requesting to keep a manufactured home on his property.

Mr. Betts stated that the applicant no longer needs the variance for the poultry house. The only request to consider is the manufactured home.

Mr. Buckley stated that he wants to keep the manufactured home on the property. It has been on the property for two years. Due to illness, Mr. Buckley needs to subdivide his property of 6.02 acres, keep the parcel with the manufactured home and sell the remaining parcel.

Chester Kimble, Jr. was sworn in and testified in opposition and read from a prepared statement. He expressed concern about the septic and drain fields. He questioned if new permits would be issued for septic and well. He questioned what would become of the remaining property. He stated that people had purchased property in the area because of the open space and he feels the applicants request is not in order with what was placed on the farm and would set a precedent. He presented a copy of his comments.

Joan Tregoe was sworn in and testified in opposition, stating that she is adjacent to the property. She feels that if a manufactured home should be on five acres it should stay that way. She feels it is a big problem in Sussex County today.

Mr. Buckley stated that when he purchased the property he wanted to raise chickens. They could not live in the old house on the property, so he put a double-wide manufactured home on it. He stated that there is no one living in the old house. He let someone stay there when he was out of the country rent free. He stated that there is plenty of room for a septic and that the property is not on the market yet. When he got ill he tried to sell the farm, but no one could get a down payment. He does plan to live in the double-wide manufactured home and sell the remaining parcel to help with his medical expenses.

Mr. Kimble stated that when he called the Real Estate Office he was told the property is for sale for \$70,000.

Mrs. Tregue stated that she too was told by the Real Estate Office that the property was for sale.

Mr. Buckley stated that he has no contract on the property.

Motion was made by Mrs. Hudson, seconded by Mr. Callaway 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. Callaway, seconded by Mrs. Hudson and carried unanimously that the case be tabled until the next meeting.

Case No. 6154--Charles T. Howey - North side of Route 363,  
300 feet south of Route 362, Lot 72  
within Plantation Park II.

A variance from the side yard setback requirement.

The case was presented by Mr. Betts. Charles T. Howey was sworn in and testified, requesting a 4' variance from the 10' side yard setback on Lot 72, within Plantation Park II. The applicant stated that he has an open deck on the side of his house and he wants to enclose it with screen and a roof. The trees in the area and bugs make it hard to enjoy the deck. He feels the deck enclosure will enhance the property value.

Robert L. Williamson was sworn in and testified in behalf of the application. He lives adjacent to the property and he feels that everything Mr. Howey does for the property is for the better. He is on the Board of Governors and they are not opposed. He stated that to his knowledge no one is against the application.

There were no parties present in opposition.

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

The Board took a five minute recess.

Mr. McCabe stated that since Case No. 6155 would take more time they would hear the last two cases first.

Case No. 6156--Jon Douglas Binnix - West side of Route One, one mile south of Route 50, Lot 39, within Bayview Park.

A variance from the rear yard setback requirement.

The case was presented by Mr. Betts. Jon Douglas Binnix was sworn in and testified, requesting a 5' variance from the rear yard setback requirement on Lot 39, within Bayview Park for an addition to the house. He proposes to construct a bedroom addition and screen porch. He stated that the house was built 13 years ago and they need to put in a master bathroom, and have a porch to be able to sit out at night. He testified that there is no problems with the neighbors or the Association that he is aware of.

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

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 the odd shape of the lot and the use will not adversely affect the area.

Case No. 6157--Terrence & Lynette Roberts - East side of Route 576, 1,360 feet south of Route 404.

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

The case was presented by Mr. Betts. Terrence & Lynette Roberts were sworn in and testified, requesting to keep a manufactured home on property on medical hardship basis. This is a renewal of a hardship approval. They testified that the same conditions still exist.

Mr. Betts read a letter dated August 27, 1996, from a doctor referencing the medical hardship.

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 medical hardship basis for a period of two (2) years.

Case No. 6155--Dyer, McCrea Ventures, L.L.C. - East side of Route 270A, 580 feet north of Route One.

A special use exception to operate an Assisted Living Facility.

The case was presented by Mr. Betts. Eugene Barteline, Gary McCrea and Preston Dyer were sworn in and testified. Prepared material was presented. The applicants requested to be able to operate an Assisted Living Facility that will be included as part of an RPC for the entire 45.54 acre parcel which are parcels "C" and "D" of Bryce M. Lingo Subdivision. The zoning is GR and C-1. Mr. Dyer stated that the 120 unit is part of the overall plan, the remaining 40 acres of the RPC will contain an 80 lot Independent Living Age Restricted Subdivision. He referenced the Zoning Code not stating Assisted Living Facilities, but states convalescent homes, nursing homes or homes for the aged. The request falls into this category. He stated that the use will not adversely affect the adjacent properties. The entrance to the project will be off of Route 270A.

Mr. Barteline, a partner in the joint venture, stated that the site is ideal for assisted living in Sussex County and that the facility is needed. It is a place for the elderly to live that do not need a nursing home, but assisted help. He stated that he has 11 free standing facilities with 1100 residents. He knows this type of living. He stated that it should be conditioned with the subdivision RPC approval to be heard by Planning and Zoning. Pictures of the model were shown. They plan to have 100 beds for this site, a dining room, with three meals a day delivered to residents. The facility will be designed just like home. There will be a 24 hour licensed nursing staff, coordinator, medical director and van service. Everything needed (without going to a nursing home) will be provided. Plans of how the complex will look were shown.

Mr. Dyer stated that the property is zoned C-1 General Commercial and GR General Residential. In the GR Zoning, manufactured homes are permitted. He explained how many manufactured homes could go on the property versus how many RPC units are permitted. He stated that the current moratorium does not affect this site plan. Mr. Dyer referenced a letter from Mr. Leidy, Dept. of Transportation and a traffic study. He stated that a small percentage of the assisted living residents do not have their own vehicles. He stated that they have met with the residents of Beachfield, a development adjacent to the property.

Mr. Dyer referenced conditions for the project that they prepared for the residents of Beachfield. He stated that they have had several calls inquiring for themselves or someone else about the assisted living facility. Nine letters of support were submitted from people in the Rehoboth/Sussex County Area. Mr. Dyer stated that the traffic for the aging is reduced compared to the traffic for the potential use of the property. He feels the use will not create an adverse affect on the area. The service area will be screened. Exhibits and letters were submitted.

A letter from Lucien Ferguson, member Governor's Advisory Council on Services for Aging and Adults with physical Disabilities Meals on Wheels Lewes and Rehoboth, Vice President was received in support of the application.

Vince Robertson, Attorney with Griffin & Hackett, P.A., was present and represented homeowners of Beachfield who are in opposition. He read from and presented prepared material as an exhibit. He made reference to the entrance. He also stated that the application is not for manufactured homes, only 120 bed assisted living. He stated that the residents of Beachfield would welcome conditions if the application is approved, but he feels conditions are not enough. He stated that the Assisted Living Facility will have 120 beds with 70 parking spaces. The roadway accessing this facility and its parking will be approximately 8 feet from the adjacent property lines of Beachfield Homeowners. There is no indication that they will be unable to drive and this will undoubtedly lead to congestion along the roadway, since it will be necessary for them to park in the parking lot or along the roadway. He made reference to a letter from Joel Leidy, the Subdivision/Utility Engineer with Del D.O.T., stating the current internal site intersection proposal creates numerous driver decision points and would have the potential to cause confusion and thereby congestion. Mr. Robertson stated that all traffic will be accessing Route One via Route 270A, an already overcrowded and dangerous intersection. He feels the surrounding environment enjoyed by his clients and others in this area of Sussex County will be adversely affected. He stated that the proposed development borders Beaver Dam Branch, a wetlands area and stream. His clients have concern about run-off and other related detrimental effects to the environment. Mr. Robertson made reference to the current Land Use Plan and how this use is affected. He stated that in the Sussex County Comprehensive Plan the area in which this use is proposed is designated as a conservation district. He stated that in the Delaware Code it states that a Certificate of Need, CON, must be obtained from the State, and if a CON is required the special use exception is premature. He mentioned the subdivision proposal that the Planning & Zoning Commission has to consider and feels since this has not

been done, the application should be deferred and preserve the public's right to comment, when the issues have been resolved. Exhibits and pictures were presented.

Vincent Saccardi, who lives at 108 Beachfield Dr., was sworn in and testified in opposition. He is opposed to the road being 10' off his property line. He feels it is no safe for him or his grandson. He stated that according to a traffic survey, there have been 347 accidents from the light to Rehoboth. He feels it is raping of the land and pillaging property values. He suggested that a road be run through other property owned by Mr. Dyer. He stated that he has been in the County for 18 years and some of the zoning is beyond belief. He is opposed to a highway zooming along behind his house. He is not against the elderly or assisted living.

Terry Bartley, a resident of Beachfield, was sworn in and testified in opposition. He referenced the Zoning Code and special use exceptions. He read from a prepared statement. He is concerned about the adverse effect, density, buffer, RPC and waterway buffer. He referenced the newspaper notice. His concern about projected traffic. He stated that if the Board approves the request it be voided if not approved by the Sussex County Council.

In rebuttal, Mr. Bartelini stated that the average of the residents is 83 years of age. He referenced parking. He stated that there will be 35 employees in the facility. The traffic will be low. There will be extra vehicles for holidays and mothers day.

In rebuttal, Mr. Dyer referenced the manufactured homes that can be put on the property. He stated that assisted living is regulated by the same body as nursing homes, etc. It will be a licensed facility. Where the road was mentioned to be put, Mr. Dyer stated that he does not own the property, that it is owned by C.H.S. Association out of Washington, D.C. He stated that there will be no encroachment into the wetlands.

Mr. Saccardi stated that manufactured homes could not be put on the property and make a profit. He referenced again the traffic in the area. He stated that he is not opposed to the development as long as the situation is not abused.

Mr. Barkley read from the Code referencing manufactured homes.

Mr. Betts read correspondence from Mable Granke, Susan & Joseph Dube and Richard Anthony.

Mike Diamico was sworn in and questioned the 404 wetland area.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the case be tabled until November 18, 1996, and the public hearing be left open until the end of the business day, two (2) weeks from this date, October 28, 1996.

OLD BUSINESS

Case No. 6132 (cont'd.)--Nanticoke Homes, Inc. - South side of  
Route 36, 165 feet east of Route 619A,  
formerly Windsor Crest.

A variance from the minimum lot width requirement.

The case was reviewed by Mr. Betts. Mr. Betts stated that the subdivision that was created in 1992, at that time could sustain individual septic systems. The subdivision was never recorded, but had the appropriate approvals.

After some discussion, motion was made by Mrs. Hudson, seconded by Mr. Mills and carried unanimously that the case be tabled until the next meeting.

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

Meeting adjourned at 10:37 P. M.