

Minutes of November 3, 1997

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, November 3, 1997 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order with Chairman Callaway presiding. The Board members present were: Mr. Callaway, Mr. McCabe, Mr. Mills, Mr. Wheatley, Mr. Jones-Attorney, Mr. Rickard-Chief Zoning Inspector and Mrs. Talley-Recording Secretary.

Motion was made by Mr. Mills, seconded by Mr. McCabe and carried unanimously that the minutes of October 20, 1997 be approved as circulated. Vote 4-0.

Mr. Jones, Attorney, announced that Case No. 6459, Joseph R. Hudson, et al, had been cancelled due to an advertising error and has to be advertised and rescheduled.

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

Case No. 6456--Ron Hoadley - East side of 2nd. Street, Lot 20,  
within Ann Acres.

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

The case was presented by Mr. Rickard. Warren and Helen Creech were sworn in and testified stating that they are the property owners and Mr. Hoadley is the Realtor. They stated that Mr. Hoadley had told them he would not attend the meeting. Mr. and Mrs. Creech requested a 1.1' variance from the 10' side yard setback and a 10.4' variance from the 30' front yard setback on Lot 20, within Ann Acres. They propose to construct a second story addition to their home, which will be the same setback as the existing structure. They purchased the property 10 years ago as an older one story home. They propose to use the first floor for their living quarters and use the second story for guests to stay in. There is a possibility they will rent the second floor, which will have bedrooms and kitchen facilities.

Mr. Jones, Attorney, explained to Mr. & Mrs. Creech that before going ahead with the apartment on the second floor, they should talk with Planning and Zoning to see if they can have an apartment.

There were no parties present in opposition.

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

Creech check with Planning and Zoning to see if what they propose is permissible, for their own protection. Vote 4-0.

Case No. 6457--Jerry Stansberry - At the intersection of Old Bay Road and Quillen Road, approximately 600 feet from Route One, Lot 25, within Suburban Development.

A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. Jerry Stansberry was sworn in and testified and was represented by Lynn O'Donnell, Attorney, with Sergovic & Ellis. The applicant requested a 6' variance from the 10' side yard setback to accommodate a 8.2'x 6.7' accessory building, which is attached to the dwelling. The property being located on Lot 25, within Suburban Development. The accessory building houses the furnace and hot water heater that services the dwelling. Ms. O'Donnell stated that they had been before the Board previously for three variances on this property for decks. The variance for the accessory structure was not requested at that time. The property is 50'x 100' in size and the accessory structure is pre-existing. The applicant has purchased the property and it would create a hardship to remove the accessory building. Ms. O'Donnell stated that the variance would not cause an impact on adjacent properties or to the public welfare and they are requesting the minimal variance.

Mr. McCabe questioned what variances had previously been requested.

Ms. O'Donnell stated that a 1.6' variance from the rear property line, a 2.1' variance from the side and a 1.1' variance from the corner side of the property had been requested for decks.

In answer to Mr. Wheatley's question the applicant stated that the accessory structure is attached to the dwelling.

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. Vote 4-0.

Case No. 6458--Neal Cypher t/a C & C Coffee Co., Inc. - North side of Route One at the corner of Route 276.  
A special use exception to place a manufactured home for business use.

The case was presented by Mr. Rickard. Neal Cypher and Dean Joseph Cypher were sworn in and testified requesting to use a manufactured home type structure for a Coffee Shop. Portfolio's were presented to the Board showing what the structure will look like along with a commercial lease agreement, copy of a survey, permit for entrance construction and a letter from Health and Social Services. It was stated that the Coffee Shop will be a drive-up and will be located 80' from the road and approximately 100' from the side property lines. They will do some site work and add steps and landscaping. It was stated that the unit is not on the property as yet.

It was explained to the applicants that if the request is approved it would be for a period of five years.

Dean Cypher stated that they want to get the structure up and running and use it as a drive-up Coffee Building.

Mr. Jones asked if it is a manufactured home type structure.

Dean Cypher stated that it has wheels and can be moved. They built it themselves. He stated that there are other shops located in Seattle that have done well. It is not a franchise. They will purchase their coffee from a company in Seattle.

There were no parties present in opposition.

Motion was made by Mr. Mills, seconded by Mr. Wheatley and carried unanimously that the special use exception to granted for a period of five (5) years. Vote 4-0.

Case No. 6459--Joseph R. Hudson, et al - North side of Route One  
at the corner of Route 276.

A special use exception for outdoor display for  
promotional activities and tents.

This case was cancelled due to an error in advertising. The case will be readvertised and rescheduled.

Case No. 6460--Elizabeth A. Wallace - Northeast side of Route 279A,  
1/4 mile northeast of Russell Avenue, Lot  
55, within Oak Orchard-Delaware Oyster  
Subdivision.

A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. Elizabeth A. Wallace and Patricia Moore were sworn in and testified. The applicant requested a 5' variance from the 10' side yard setback requirement to be able to place a 28'x 40' double-wide manufactured home on her property being Lot 55, within Oak Orchard-Delaware Oyster Subdivision. Ms. Wallace stated that she appeared in front of the Board and was granted a front yard setback variance last year. When she purchased the manufactured home she was told the septic system would not fit the way she had planned to place it. The manufactured home has to be turned around to accommodate the septic system and now a side yard variance of 5' is needed and the front yard variance is no longer needed. She stated that she thinks the front yard variance time limit has run out.

Mr. Rickard stated that the Board has approved other variances in the development.

Frank Kossek and Richard Miller were sworn in and testified in opposition to the variance request.

Mr. Miller stated that he feels if the variance is approved there will be others who will ask for variances and it will cause overcrowding and put homes closer together.

Mr. Kossek stated that he has been a property owner in the area for 30 years and the lots were set up for homes only. He stated that at the present time it is also set up for manufactured homes and only two lots are for homes. He feels the use will depreciate his property. The applicants property abuts up to the rear of his property. He stated that he is only a summer resident, but Mr. Miller is full time. He feels there has to be some kind of consistency in the development. He stated that the applicants property has been unkept and a lot of money has gone into his property and Mr. Miller's.

Ms. Wallace stated that there will be a permanent foundation will be put on the double-wide manufactured home and the title will be turned in to become a house. She feels the unit will be an asset to the lot.

Mr. Mills asked Mr. Kossek if there is a Homeowners Association in the development.

Mr. Kossek stated that he has deed restrictions, and that there is some kind of an Association in Oak Orchard, but nothing to enforce setbacks.

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 Mr. McCabe, seconded by Mr. Wheatley and carried unanimously that the 5' side yard variance be granted and that the previous front yard setback variance be nullified. Vote 4-0.

Case No. 6461--Michael S. Meyers - South side of Route 466, at the intersection of Route 467A.

A variance from the setback requirements for a private stable.

The case was presented by Mr. Rickard. Michael S. Meyers was sworn in and testified requesting a 15' variance from the 50' setback requirement for a private stable. The applicant purchased the property to be able to keep horses on it for his wife. Mr. Meyers stated that there is a 24'x 60' shed on the property that he wanted to remodel into a barn, but it could not be done, so he decided to build a new barn. He stated that he had at least 4' of fill on one end because of the property sloping on one end. He wants to move the barn back up the hill and needs a variance to place the 24'x 48' barn. He stated that the adjacent property is owned by the person he bought his property from and the opposite side is woodland. He stated that the setback will be from Route 467A. Mr. Meyers stated that the nearest home is more than 100' away.

There were no parties present in opposition.

Motion was made by Mr. McCabe, seconded by Mr. Mills and carried unanimously that the 15' variance be granted. Vote 4-0.

Case No. 6462--Ralph W., Jr. & Gladys R. Cashen - West side of Main St., 506 feet north of Route 535, within Indian Village.

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

The case was presented by Mr. Rickard. Grayson Hurley was sworn in and testified representing the applicants, who requested to retain a manufactured home on property on the basis of medical hardship.

Mr. Rickard read a letter from Dr. Roberto M. Villasenor referencing the health of Hazel Hurley. Mr. Rickard stated that the applicant had approval on November 20, 1989 and October 16, 1995.

Mr. Hurley stated that the medical hardship is for his great-grandmother who is 92 years old and still needs care. He stated that it is a continuation of the previous request.

There were no parties present in opposition.

Motion was made by Mr. Mills, seconded by Mr. Wheatley and carried unanimously that the special use exception be granted on the basis of hardship for a period of two (2) years. Vote 4-0.

Case No. 6463--Route 13 Market, L.P. - South side of Route 462,  
800 feet east of Route 13.

A variance from the height requirement for signs.

The case was presented by Mr. Rickard. David Roeberg was sworn in and testified representing Route 13 Market, L.P. and was represented by Everett Moore, Attorney. Pictures and a plot plan were presented. Mr. Moore stated that the applicants wish to fly an identifying balloon 16' long by 6'6" high to advertise their market and to be more than 25' high in the air. A 25' height is required above grade. The balloon will only be flown on weekends, Friday, Saturday and Sunday.

Mr. Roeberg stated that the Market sets back from Route 13 and Route 462 behind Johnny Janosik's property and the visibility is limited because of the Janosik's buildings. The balloon will advertise that the Route 13 Market is open. He stated the balloon had been up, but they had received a violation notice, took it down and applied to the Board. He stated that there are no residential homes in this area. Mr. Roeberg stated that it will not alter the essential character of the neighborhood, nor be detrimental to the area. He stated that there is a farm field between them and Route 13. He stated that technically a sign height is 100' including the balloon. They are only open Friday, Saturday and Sunday. The balloon is brought down on Sunday and is not flown in bad weather.

There were no parties present in opposition.

Motion was made by Mr. Mills, seconded by Mr. McCabe that the height variance be granted, with Mr. Wheatley voting nay. Motion was carried with three voting in favor and one against. Vote 3-1.

#### 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. McCabe stated that he had physically gone out to the property and looked at the shed. He stated that the shed does not extend over the old cement pad. It sets on the pad exactly as the old one did. Mr. McCabe stated that the pad is definitely the old pad. He stated that he sees no problem with the request.

Motion was made by Mr. McCabe, seconded by Mr. Wheatley and carried unanimously that the variance be granted. Vote 4-0.

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

A variance from the minimum lot width requirement.

The case was reviewed by Mr. Callaway.

Mr. Mills stated that he felt the applicants were not trying to gain additional lots and they should have a 50' right-of-way and 25' radius on the second lot.

Motion was made by Mr. Mills, seconded by Mr. Wheatley and carried unanimously that the 100' variance be granted. Vote 4-0.

The Board took a 5 minutes break.

Case No. 6453 (cont'd.)--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 reviewed by Mr. Callaway.

Mr. McCabe stated that he looked at the property and does not see anything wrong with what they are asking for, providing they stay 10' from the bulkhead.

Motion was made by Mr. McCabe, seconded by Mr. Mills and carried unanimously that the variance be granted, subject to the setback at no point being closer to the buikhead than 10'. Vote 4-0.

Case No. 6455 (cont'd.)--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 requirements.

The case was reviewed by Mr. Callaway.

After some discussion, motion was made by Mr. Wheatley,  
seconded by Mr. Mills and carried unanimously that the variance be  
denied. Vote 4-0.

#### OTHER BUSINESS

Case No. 6063--Greenwood Country Retirement, Inc. - Southwest side  
of Route 16, 950 feet east of Route 585.

A special use exception to add a twenty (20) bed  
assisted living complex and eleven (11) additional  
retirement homes to the existing convalescent home.

Request for time extension.

Mr. Rickard read a letter from Mark Yoder, Jr. requesting a  
time extension on the special use exception granted by the Board.  
The letter was received on October 20, 1997 and their time expired  
on October 29, 1997.

Motion was made by Mr. Wheatley, seconded by Mr. Mills and  
carried unanimously that a one (1) year time extension be granted  
to Case No. 6063. Vote 4-0.

Mr. Rickard stated that the applicants had started their  
construction and have completed one home out of eleven.

It was decided that the applicants have substantially started  
construction and therefore, no time extension is needed.

Motion was made by Mr. Wheatley, seconded by Mr. Mills and  
carried unanimously to withdraw the motion previously made, since  
the applicants have substantially started construction and a time  
extension is not needed.

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

Meeting adjourned at 8:15 P. M.