

Minutes of November 18, 1996

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, November 18, 1996 in the County Council Chambers, Room 115, 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. Mills, seconded by Mrs. Hudson and carried unanimously that the minutes of November 4, 1996 be approved as circulated.

Mr. Jones read a statement pertaining to how the Board of Adjustment meetings are conducted and the procedure for hearing the cases.

Case No. 6155--(cont'd)--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.

Mr. McCabe stated, for the benefit of people present interested in this case, that the case would be tabled until the next meeting on December 2, 1996, to give the Board members time to review the evidence received since the original meeting.

Motion was made by Mr. Callaway, seconded by Mr. Wheatley, and carried unanimously that the case be tabled until the next meeting on December 2, 1996.

Case No. 6173--Donald W. Cornish - South side of Route 20, one mile east of Route 481.
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 left the case open until the end of the meeting to give the applicant or a representative time to appear.

At the end of the public hearings, the Chairman referred back to this case. There were no parties present to represent this application and there were no interested parties present.

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

Case No. 6174--Bethany Beach Development L.L.C. - South side of Route 368, on the west side of the intersection with Route 361.

A special use exception to place a temporary building for use as a sales and rental and construction office for an approved real estate development or subdivision.

This case was withdrawn. Mr. Betts read a letter of withdrawal from G. Troy Purnell.

Case No. 6175--Robin & William West - North side of Route 22, 2 miles east of Route 22C, Lot 1, Harbor within Malones Bay Side MHP.

A variance from the minimum square footage for a manufactured home.

The case was presented by Mr. Betts. Mario Malone, owner of the park, was sworn in and testified representing the applicants, who requested a 4 square foot variance from the minimum square footage for a manufactured home. The minimum requirement is 450 square feet. He stated that the applicants wish to place a park model manufactured home as a permanent residence. The unit was previously used as a sales office. The unit will stay on the lot as it is. He stated that this would be the last park model unless someone else brings one in.

There were no parties present in opposition.

Motion was made by Mrs. Hudson, seconded by Mr. Mills and carried unanimously that the variance be granted, finding that the use will not adversely affect the area.

Case No. 6176--Martha Richardson - South side of Route 80, 877.3 feet west of Route 550.

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. Martha Richardson was

sworn in and testified.

Mr. Mills stated that prior to the meeting he had been contacted by E. Elmer Marine concerning this application. Mr. Marine had stated that he was opposed to the requested manufactured home and has heard that the applicant plans to rent the unit at a later time, when she builds a home on Hearn's Pond. Mr. Mills responded by telling Mr. Marine that he could not discuss the case prior to the meeting.

Ms. Richardson stated that she wants to place a 1986 or 70, 14'x 60' Fleetwood manufactured home with a porch and deck, on property she has owned for 30 years. She stated that she is retired now and intends to live in the manufactured home and it will not be rented. She stated that if at a later time she builds a home on Hearn's Pond, she would sell the property with the manufactured home on it, but she will not rent it. She stated that there are other manufactured homes in the area that are single-wide units. A picture was presented. She stated that a perc test on the property had been done. She stated that she owns two lots that total approximately three acres. She stated that she could perhaps buy more property to make her property five acres but feels it is silly to do so.

Mr. Betts stated that one manufactured home (Turner's) was approved by the Board.

Charles Marine was sworn in and testified in opposition stating that he has strong feelings that the manufactured home will be rented. He also feels the unit will degrade his property.

William Theodore Imlay was sworn in and testified in opposition, stating he is partial owner of property next to the applicants. His mother and sister also live in the area. He feels the manufactured home will depreciate his property.

Keith Bryan Marine was sworn in and testified in opposition, stating he lives around the corner on Route 80. He stated that one of the manufactured homes in the area was put in before zoning and the other (English's) is on five acres. He stated that the Turner manufactured home was put there by a public hearing for their granddaughter to care of her grandfather, who is now deceased, but the manufactured home is still there. He feels he should not have to come to hearings all of the time for manufactured homes on less than five acres, since the regulations state five acres for a manufactured home. He feels the Board should adhere to the five acre requirement. He feels the applicant does not need the manufactured home for a residence.

Louise Marine was sworn in and testified in opposition, stating that she is part owner of adjacent property and feels the manufactured home will depreciate her property. She stated that she lives directly in front of the applicant's property and there are nice homes in the area. She stated that other rentals in the area are disruptive. She is concerned that the applicant will rent the manufactured home.

Kathleen Jackson was sworn in and testified that she is new to the area and feels the five acre requirement should be adhered to. She too feels the applicant will rent the manufactured home. She expressed concern about people that would rent the property, she wants the property taken care of.

Ms. Richardson stated that she has no intention of renting the property. She stated that she does not want to create any problems in the area. She stated that she will sell the property if the people in the area do not want her there. She stated that she has owned the property for thirty years.

Mr. Marine stated that they have been property owners in the area for thirty eight years.

Motion was made by Mr. Mills, 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. Mills, seconded by Mrs. Hudson and carried unanimously that the special use exception be denied, finding the use will adversely affect surrounding properties.

Case No. 6177--The Mill Outlet - Northeast side of Route One, at the intersection of Route 275A.

A variance from the requirements for signs.

The case was presented by Mr. Betts. John T. Selby and Byron Douglas Braniff were sworn in and testified representing The Mill Outlet, who requested a variance from the requirements for signs to have a second wall sign. Mr. Selby stated that the signs will match in color. Mr. Selby stated that the sign will be placed at the Lighthouse Plaza, with one facing south, towards K-Mart, and the other facing east. The store is 9600 sq. ft. in size with an entrance on the front and the side. The signs total square footage for both signs will be 104 square feet.

Mr. Betts stated that 100 square feet per wall sign is allowed.

There were no parties present in opposition.

Motion was made by Mrs. Hudson, seconded by Mr. Mills and carried unanimously that the variance be granted for a maximum of 104 square feet for both signs.

Case No. 6178--James & Peggy Kelly - Southwest side of Route
213, 1,000 feet south of Route 565,
Lot 4, within Kellers Acres.

A variance from the side yard setback requirement.

The case was presented by Mr. Betts. Joe Conaway, President of Consultants Unlimited and Sales Manager for Cooper Realty, was sworn in and testified representing the applicants who requested a variance from the side yard setback requirement of 15', the variance being 11.5' on the front end of a shed and a 12.15' on the rear end of a shed. Mr. Conaway stated that the shed was built in June 1982 and was the first structure on the property. The house was built in 1988. The applicant had a permit to build the structure. When the property was sold the encroachment was discovered by a survey that was done. The shed is over 600 square feet in size.

There were no parties present in opposition.

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

Case No. 6179--Edward S. & Maria R. Downes - North side of Dolby
Lane, 95 feet east of Brinsfield Avenue,
Lot 23, within Lakeshores.

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

The case was presented by Mr. Betts. Edward & Maria Downes were sworn in and testified, requesting a .6' variance from the side and rear yard setback requirement for a utility building that has been on the property approximately six years, being Lot 23, within Lakeshores. The applicants stated that there is nothing on the property in the rear and there is no Homeowners Association.

Allen O'Neal, Attorney, was present in behalf of the application, and stated that when a survey was done the setback problem was found. He stated that the encroachment was not caused by the applicants.

There were no parties present in opposition.

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

Case No. 6180--Robert N. Bayly - East side of Route 13, 800 feet south of Route 454A.

A variance from the side yard setback requirement.

The case was presented by Mr. Betts. Robert Bayly was sworn in and testified and was represented by Robert Witsil, Attorney. Mr. Bayly requested a 20' variance from the 20' side yard setback requirement for a commercial garage on a commercial lot that abuts residential property. Mr. Witsil presented finding of facts he had prepared. Mr. Witsil stated that there is a Delmarva Power and Light Company easement adjacent to Mr. Bayly's garage. There are adjacent neighbors and one dwelling on the premises. The 16' wide addition Mr. Bayly proposes will keep materials inside of the building. Mr. Witsil asked Mr. Bayly if the statements he had made were correct. Mr. Bayly stated that all statements made by Mr. Witsil were true and correct. He stated that he had purchased the property in 1983. The structure was built in the 60's. He stated that the addition will be in conformance with the present structure. Letters were presented in favor of the application.

Mr. Betts read the letters presented from Beverly J. and Paul Wieland and Delmarva Power and Light, Daniel Massey, Real Estate Coordinator, voicing no objections.

There were no parties present in opposition.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the variance be granted, finding the use will not adversely affect the surrounding properties.

Case No. 6181--William L., Jr. & Patricia L. Campbell - South side of Route 527, 0.30 mile west of Route 579.

A variance from the setback requirements for a stable.

The case was presented by Mr. Betts. William, Jr. & Patricia Campbell were sworn in and testified, requesting a 20' variance from the 50' side yard setback requirement for a 20'x 24' stable that is under construction. The applicants stated that the stable is 95% completed. They stated that the neighbors dwelling is several feet away. The neighbor, Delbert Wilson, most affected by the variance has no objection.

There were no parties present in opposition.

Mr. Betts read correspondence voicing no objections from Delbert & Brenda Wilson.

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

Case No. 6182--Philip Barton & Timothy Conaway - East side of Route 13, 1/4 mile south of Route 18, Lot 3.
A special use exception to place an off premise sign.

The case was presented by Mr. Betts. Philip Barton was sworn in and testified requesting to place an off premise sign to be 300 square feet per side with two sides, in a commercial district. Mr. Barton proposes to put up a billboard to advertise his business which will consist of Barton's Southern States, Landscape and Mini Storage. He stated that there are other businesses in the area and there are no homes. One sign will advertise their business and he hopes to lease the other sign.

Glenn H. Griffin was sworn in and testified in opposition, stating that he owns land adjacent to the applicant's property. He stated that there had been a golf course previously on the property of the applicants. He stated that he has a mini storage business in the area and it is south of where the applicants are putting their mini storage. He feels the sign will block his sign that advertises his mini storage. He stated that he can live with two businesses the same in the area, but he wants the applicant to place his sign in another location. He feels the applicants sign will take away from his business since people will feel the mini storage is all the same.

Mr. Barton in rebutal stated that his golf business is no longer in operation, because it was to costly to replace nets after the winter weather. He wants a billboard where the entrance he has to use is located. He has to use the entrance to keep entrances down according to the state.

Mr. Griffin stated that he is not fighting the mini storage, just the sign, since it will block his sign. He feels people will think the businesses are combined. He would have no complaints if the sign were placed 150 to 200 feet south of where the applicants want it.

Mr. Barton stated that he would have to see if there is enough space to put the sign on the south side.

Mr. Betts stated that there is a minimum 50' setback off the side line per the Ordinance.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the case be tabled until the next meeting on December 3, 1996, and that the case be left open for comments. Comments from Mr. Barton must be received by the end of the day on Thursday, and comments received from Mr. Griffin by the end of the day on Monday.

Case No. 6183--H. M. Pickering - Dune Road at the corner of Collins Road, Lot 12, Block 3, within Sussex Shores.

A variance from the rear yard setback requirement.

The case was presented by Mr. Betts. George B. Smith, Attorney, was present and represented H. M. Pickering, who requested a 10' setback to be 8.57' for an elevator shaft, located on Lot 12, within Sussex Shores. A variance of 1.43' is requested. Mr. Smith stated that the cottage has everything on the second floor and the elevator was needed for Mr. Pickering due to his health. Mr. Pickering is now deceased, but Mrs. Pickering still needs the elevator for herself and also she occasionally rents the cottage. It is one of few cottages that will accommodate handicap people. The elevator is built and encroaches into the setback. Mrs. Neff a neighbor has no objections and a letter was presented.

Mr. Betts read the letter presented from Joan Neff voicing no objections.

There were no parties present in opposition.

Mr. Smith stated that the Association has approved the variance.

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

Case No. 6184--Charter Oak Partners - East side of Route One, 1,000 feet north of Route 271.

A variance from the parking requirements.

The case was presented by Mr. Betts. Jeff Byrd and Gordon Mead, Engineers representing Charter Oak Partners, and Sam Boracci, representing Applebee's Restaurant, were sworn in and testified. The applicants requested a variance to add 44 parking spaces to the existing Ocean Outlets Seaside to accommodate a proposed Applebee's

Restaurant. The proposed restaurant would require by code a total of 72 parking spaces. The existing center has a total of 1,172 parking spaces. The proposed total parking would equal 1,216 spaces which is approximately two percent less than the 1,244 spaces required. Mr. Mead stated that the restaurant will have 4370 sq. ft., patron use will be 2220 sq. ft. on the largest shift, requiring 57 spaces. It was stated that the restaurant and outlets do not share peake times. The employees at the outlets generate some of the traffic, but will keep the traffic off the highway to drive from the outlets to the restaurant. Mr. Mead feels it is a justifiable request.

Mr. Byrd stated that the property for the parking was used for a septic field, but with County sewer the land can be used for parking. He stated that Nike, which would be an 8,000 square foot store, had expressed interest for the property, but would create more traffic.

Mr. Betts stated that the applicants need 57 parking spaces, they have 44 spaces, therefore, the variance is for 13 additional parking spaces.

John Merryman was sworn in and testified in behalf of the variance. He is a partner in the Lighthouse Plaze and he stated that he could be before the Board asking for the same thing.

Mabel Granke was sworn in with questions. She would like to see the outlets make their parking lot safer for pedestrians. She feels a crosswalk is needed. She feels it at least could be taken into consideration for safety. She is concerned about people who have to negotiate parking lots.

Mr. Byrd stated that in the old section, there were problems crossing the road, but State requirements had to be met.

Mr. Betts stated that Planning and Zoning will have to approve the site plan and they could put in crosswalks.

Robert Derrickson was sworn in and testified in opposition, representing County Bank on the opposite side of the street. He stated that people now park at the bank. They have had to have cars towed. He stated that he has no problem with the outlets or the restaurant, only with the parking.

Mr. Byrd stated that they are not under parked, they are within the County regulations. They are now trying to add more parking spaces. He feels it is not a serious problem.

Mr. Derrickson stated that they have a serious problem now and it is not going to help an already conjested problem. He asked the

Board to table the requested variance and visit the site after Thanksgiving.

Mr. Betts read a letter received from Richard Derrickson in opposition.

Mr. Byrd stated that Mr. Derrickson's letter referred to separate outlets.

Motion was made by Mr. Callaway, 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. Mills, seconded by Mr. Callaway and carried unanimously that the case be tabled until the next meeting on December 2, 1996.

Case No. 6185--Thomas & Irene Devan - Northwest side of Route 54,
1,000 feet west of Route 113, Lot 4.

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. Thomas Devan was sworn in and testified, requesting to place a new 24'x 60' double-wide manufactured home on his property on a solid foundation for his use. He does not own the unit yet. He testified that there is a single-wide manufactured home 1/4 mile away. He stated that there is a cemetery and Mumford Sheet Metal Works in the area, plus woods and farmland. He stated that the septic would go in the front yard and the well in the rear yard.

Russell Evans was sworn in and testified that he owns a farm in the area and his son and daughter have homes in the area. He questioned the size of the manufactured home. He stated that he would not be opposed to a 28'x 48' manufactured. Mr. Evans stated that there are two lots the applicant owns.

Mr. Devan stated that he only has one lot.

Lou Ann Lathbury was sworn in and testified that she bought one of the Devan lots and will put an \$85,000.00 Nanticoke home on the property.

Mr. Evans presented letters of opposition to double-wide manufactured homes less than 28' wide. He opposes single-wide manufactured homes.

Sara Lee Stevens was sworn in and testified that she is concerned about someone else coming along with something smaller. She does not want manufactured homes on the property. She stated that the applicants property is the only place outside the Town limits that is not developed. She stated that if the Board approves this one, it will set a precedent. She has a new home.

Douglas M. Hudson was sworn in and testified that he is concerned about what is going on. He is not opposed to double-wide manufactured homes on a permanent foundation. He does not want a precedent set for others to come.

Ms. Lathbury stated she would not oppose a new double-wide manufactured home on a permanent foundation.

Mr. Evans stated that he is more in favor of a 28' wide manufactured home.

Mr. Betts read correspondence from Isaiah C. Mumford, Russell W. Evans and Eva C. Long pertaining to this case.

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 Mrs. Hudson, seconded by Mr. Callaway and carried unanimously that the case be tabled until the next meeting on December 2, 1996.

Case No. 6186--James & Denise Weller - West side of Route 13 at the intersection of Route 13A.

A special use exception to place four (4) manufactured home type structures to be used as offices.

The case was presented by Mr. Betts. James Weller was sworn in and testified, requesting to use (4) manufactured home type structures as offices for his business. Mr. Weller stated that the application had the name as Waller and it should be Weller. Pictures were presented. Mr. Weller stated that the units are already on the property and house secretaries. The size of the units is 8'x 32', and have been on the property for two years. He now is told he needs permits. He rents them from Allied Company. He uses them for his business. He stated that if he had known from the beginning he would have applied. The company he rents them from thought no permits were needed. Asked if he intended to build buildings at a later time, Mr. Weller said he had no definite time to build. He stated that the units are anchored and skirted.

It was stated that if Mr. Weller has plans to use more of the manufactured home type offices, he would need additional approvals.

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 for a period of five (5) years.

Case No. 6187--Marie M. Wallop - West side of Route 525, 1,080 feet south of Route 46, Lot 1, Lands of Theodore Simpler.

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

The case was presented by Mr. Betts. Marie Wallop was sworn in and testified, requesting to continue the use of a manufactured home on medical hardship basis, on Lot 1, Lands of Theodore Simpler. This is a renewal of Case No. 5472. She stated that nothing has changed in reference to the medical hardship.

Mr. Betts read a letter from a Doctor pertaining to the applicants mother's health, dated August 20, 1996.

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 be granted on the basis of hardship for a period of two (2) years.

OLD BUSINESS

Case No. 6170 (cont'd.)--Catherine Harmon - South side of Route 88, 200 feet east of intersection with Route 261, Lot 3.

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 reviewed by Mr. Betts.

After some discussion, motion was made by Mr. Callaway, seconded by Mr. Wheatley and carried unanimously that the special use exception be denied, finding the use will adversely affect the area and due to the opposition in regards to this case.

Case No. 6172 (cont'd.)--Sarah D. Washington - East side of Route
113, 1,800 feet south of Route 625.
A special use exception to operate a day care
center.

The case was reviewed by Mr. Betts.

Mr. Callaway stated that he had viewed the property and that the building is not a new building. He voiced concern about the parking and the size of the building for the amount of children proposed. He feels that in its present condition the building is unsafe.

Mr. Betts read the parking requirements from the Zoning Code for a day care center. He stated that the site plan for Planning and Zoning would have to show the parking.

Mrs. Hudson voiced concern about people going in and out of the property, that there could be problems.

Mr. Jones questioned if the State would get involved with the entrance.

Mr. Betts stated that the State would not get involved because the entrance is already there.

Motion was made by Mr. Wheatley, seconded by Mr. Mills and carried unanimously that the case be tabled until the next meeting on December 2, 1996, to give Mr. Betts time to find out more information on the parking spaces needed.

OTHER BUSINESS

Case No. 6132 Nanticoke Homes

Request for rehearing.

Mr. Betts stated that a letter had been received from Karen Emory Brittingham, with Charles Murphy, Surveyors, Inc., requesting a rehearing on Case No. 6132 that was previously denied by the Board. He read the letter into the record stating their reasons for the rehearing request.

After some discussion, motion was made by Mr. Callaway, seconded by Mr. Wheatley and carried unanimously that the request for a rehearing for Case No. 6132 be denied, finding that in their opinion there was nothing newly discovered and the requirements had

not been met to request a new hearing.

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

Meeting adjourned at 9:32 P. M.