

Minutes of November 20, 1995

The regular meeting of the Sussex County Board of Adjustment was held Monday evening November 20, 1995, 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. Mills, Mrs. Hudson, Mr. Wheatley, Mr. Callaway, Mr. Jones-Attorney and Mr. Betts-Zoning Inspector III.

Motion was made by Mr. Mills, seconded by Mr. Callaway and carried unanimously that the minutes of November 6, 1995 be approved as circulated.

Case No. 5858--John H. Hohman - South side of Monroe Avenue, 100 feet west of Bay Drive (Route 16A), Lot 9 within Old Broadkill Beach.

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

The case was presented by Mr. Betts. John Hohman was sworn in and testified, requesting a 5' variance from each side property line and a 4' variance from the rear property line, for a new 26' x 30' home, with a 6' deck on the front and a 4' balcony on the back of the home, located on Lot 9, within Old Broadkill Beach. The septic system on the property interferes with placing the home to meet the setbacks. The neighbors property also has a deck that would obstruct the applicants view. He stated that neighbors have had variances.

Mr. Betts stated that there is no Homeowners Association in Old Broadkill Beach.

There were no parties present in opposition.

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

Case No. 5859--Vivian Bridge - North side of Route 22, 1.5 miles east of Route 22C, Lot G-15, within Rehoboth Shores.

A variance from the maximum lot coverage within a manufactured home park.

The case was presented by Mr. Betts. Edward Samsel was sworn

in and testified representing Vivian Bridge, who requested a variance from the 35% maximum lot coverage within a park, being Lot G-15 in Rehoboth Shores. The applicant proposed to build a carport and the concrete was poured before Mr. Samsel realized the addition would be 380.45 sq.ft. over the 35% maximum coverage required. When Mr. Samsel discovered the error he stopped working and filed for a variance. Mr. Samsel said he will be within the setbacks.

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.

Case No. 5860--County Development Associates, L.L.C. - North side
of Route 1, 2920 feet west of Road 271.
A variance from the requirements for signs.

The case was presented by Mr. Betts. Preston Lynch Dyer and Dale Lee McAllister were sworn in and testified, representing the application, who requested a variance from the sign requirements permitted, requesting additional free standing signs. Mr. McAllister stated that a shopping center is proposed near K-Mart on Route 1, and the signs are needed to advertise the stores. He showed a site plan and explained where the signs are to be placed. There will be four pads where they propose to put one sign on each pad that will be 150 sq.ft. in size and be 20' in height. Mr. Dyer does not want the pad sites to have individual deeds. They propose to also have a larger free standing sign, but if it is oversized they will reapply to the Board.

Mr. Betts stated 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. 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 Mrs. Hudson and carried unanimously that the variance be granted for four (4) signs not to exceed 100 sq. ft. and no taller than 20' in height.

Case No. 5861--Deborah Toner - East side of Route One at the
intersection with Route 9.

A special use exception to operate a Day Care Facility.

The case was presented by Mr. Betts. Deborah Toner was sworn in and testified, requesting to operate a Day Care Facility for 12 children, to be located on Lot 30, in Dutch Acres. The applicant will not live in the home, but will use it for the Day Care Facility. She stated she will have 12 children up to six years of age and 2 after school children for a total of 14 children. There will be one other employee. She stated there will be a fence installed. She testified that the Homeowners Association/deed restrictions are not active. Ms. Toner stated she prefers the use be known as a large family operation and not a Day Care Facility.

Mr. Betts explained that the Zoning Code classifies the use as a Day Care Center. To be classified as a home occupation the person must live on the property and no more than 6 children are permitted. Mr. Betts read a letter of opposition from Lambert Ayres.

Mr. Jones, Attorney stated that if the applicant sold the property, the new owner could operate the same business, but no other business would be permitted.

Ms. Toner stated that she had spoken with Mr. Ayres and he was concerned that the zoning would change.

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 Mr. Mills, seconded by Mr. Callaway and carried unanimously that the special use exception be granted, with the stipulation that there be no more than 12 full time and 2 after school children and no children older than six (6) years of age.

Case No. 5862--Joseph J. Balsamo - North side of Virginia Ave., 105 feet east of Route 1, Lot 5, Sec. D, within Fenwick Island.

A variance from the lot size requirement for a duplex.

The case was presented by Mr. Betts. Joseph J. Balsamo was sworn in and testified and was represented by Steve Parsons,

Attorney. Mr. Balsamo requested a variance of 2260 sq. ft. in the density on a 50'x 100' lot, located on Lot 15, Fenwick Island, to be able to construct a duplex. In answer to questions from Mr. Parsons, Mr. Balsamo stated he would like to construct a duplex on his property. He stated that parking will be provided. A picture of how the duplex will look and a survey were presented. Mr. Parsons stated that there are no wetlands on the property and there is a shopping center, a cottage and a manufactured home on either side of the property. He also stated that there are two duplex structures across the street in front of the property. Pictures were submitted. The property is zoned commercial which permits a duplex. Mr. Parsons stated that the use will not alter the character of the neighborhood, will not impair the appropriate use or development of adjacent property, will not be detrimental to the public welfare and the minimum amount of variance needed has been requested.

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

Don Conaway, Real Estate Agent, was sworn in and testified in behalf of the application, stating that the property is unique in size and that it is the last vacant lot in the area.

Margaret Griswold was sworn in and testified that she is a homeowner in the area and expressed some concern. She viewed the pictures that had been presented. She stated she does not like what has been requested, but she is not 100% against the use.

Mr. Parsons stated that fencing will be put on the property.

Grace DeLong was sworn in and testified in favor of the application. She testified that she lives next door to the applicants property and she feels that something worse could go on the property.

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. Wheatley, seconded by Mr. Callaway and carried unanimously that the variance be granted, finding the use will not adversely affect the neighborhood.

Case No. 5863--Robert & Martha Vincent - Southwest side of Route
20, 2300 feet northwest of Route 479.

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

The case was presented by Mr. Betts. Robert & Martha Vincent were sworn in and testified, requesting to retain a manufactured home on the basis of hardship. They wish to continue the use as hardship, since nothing has changed in their situation.

Mr. Betts read letters in favor of the application from Mary Ann Vincent and Fred T. Kahn, M.D.

There were no parties present in opposition.

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

Case No. 5864--Marshall L. Wright - Northwest side of Route 24, at
Route 279, Lot 68, within Fox Hollow.

A variance from the rear yard setback requirement.

The case was presented by Mr. Betts. Marshall L. Wright was sworn in and testified, requesting a 5' variance from the 10' rear yard setback on Lot 68, Fox Hollow, for the construction of a 24'x 50' pole barn. Mr. Wright built a home on the property, and there is an existing basketball court pad that he would like to use as flooring for the pole barn. He stated that deed restrictions on the property were no longer active.

Mr. Jones, Attorney, explained to Mr. Wright that if the variance is approved it would be for County restrictions only and not for his deed restrictions which could be violated.

Richard Ross, owner of property across from Mr. Wright was sworn in and testified in favor of the variance. He stated that the applicants property is an odd-shaped lot.

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

Case No. 5865--Country Glen Homes, Inc. - Route 594, 1/4 mile south of Route 545, Lot 39, within Country Glen.
A variance from the front yard setback requirement.

The case was presented by Mr. Betts. Doris K. West, listing agent, for Country Glen, was sworn in and testified in behalf of the application. The applicants requested a 5.91' variance from the front property line setback of 30' for a manufactured home and a 8.91' variance for an open deck. She testified that the variance is needed because of existing septic system locations in Country Glen that has existed since 1987. She testified that all new manufactured homes going in Country Glen will meet the setbacks. She stated that the applicants manufactured home will have a permanent foundation.

Mary D. Cross, selling agent, was sworn in and testified in favor of the variance request.

There were no parties present in opposition.

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

Case No. 5866--Milton W. Hill - Southeast side of Route 493, 1400 feet south of Route 24.

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

The case was presented by Mr. Betts. Milton W. Hill was sworn in and testified, requesting to place a second manufactured home on his property on medical hardship for his son and family to live in. Mr. Hill testified that he works a lot at night and would like to have his son nearby to look after Mrs. Hill (son's mother), whose health is not good. Mr. Hill stated he and his wife will live in the existing 14'x 70' manufactured home. His son will live in the proposed 1993, 14'x 80' manufactured home. Mr. Hill stated that his wife works everyday for the County and he is a Deputy Sheriff.

Mr. Betts read a letter into the record from a doctor referencing Mrs. Hill's health. He also read a letter of opposition from Donna Parker.

Franklin Kenton, owner of adjacent property, was sworn in and testified in opposition, stating that he understood when he purchased his property, five acres was needed for a manufactured home. He does not want the manufactured home next to him.

Russell Perdue was sworn in and testified in opposition, stating that the property was previously owned by his mother, who sold it to Norris Niblett and Bob Durham with the understanding no manufactured homes would be permitted. He stated the area has been turned around and he is opposed to anymore manufactured homes in the area.

Sandra F. Perdue, daughter of the previous owner, was sworn in and testified in opposition, stating her nephew was denied the placement of a manufactured home on one acre. She is opposed to manufactured homes on less than five acres.

Elston Henry was sworn in and testified in opposition. He testified he feels that Mr. Hill's son wants to get out of a manufactured home park. He feels there are too many manufactured homes in the area.

Mike V. Toadvine was sworn in and testified that he lives next to the Hill property and he is opposed to the application. He does not want two manufactured homes next door. He plans to build a home on his property.

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. Mills and carried unanimously that the special use exception be denied, finding there was no proof established that Mrs. Hill is disabled to warrant a medical hardship, also the Board felt they could not approve the request when another manufactured home had been denied on a smaller lot, in the area.

Case No. 5867--Thomas C. & Marian E. Payne - West side of Route
13A, 300 feet north of Route 451.

A variance from the side yard setback requirement.

The case was presented by Mr. Betts. Thomas C. Payne was sworn in and testified, requesting a 7' variance from the 15' side yard setback on his property for a hobby shop addition he wants to

add to his home.

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.

Case No. 5868--A. E. Moore, Inc. - South side of Route 326, 1/4
east of Route 82.

A special use exception to place a manufactured home to be used as a temporary office.

The case was presented by Mr. Betts. Thomas White was sworn in and testified, representing the application. The applicants requested to place a 12'x 44' office trailer on property to be used as a temporary office. The business has grown and employees have increased. They hope to have a warehouse at a later date. He showed and explained the office trailer structure. He stated they would like to use the structure for 2 to 5 years. He stated the mobile structure will be removed if the business ceases.

Mr. Betts read a letter in favor of the application from Mr. Willis, Middlesex Business.

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 for a period of five years, with the stipulation the office trailer be removed if the business no longer exists.

Case No. 5869--Atlantic Sign, Incorporated - South side of Route
54, 900 feet east of Route 390.

A special use exception to place an off premise sign.

The case was presented by Mr. Betts. Steven J. Lobo, representing the application, was sworn in and testified and was represented by John Cordrey, Attorney. Mr. Lobo requested to place a 10'x 30' off premise sign on property and the sign will be under 25' in height. Mr. Cordrey made reference to the Zoning Code concerning off premise signs. They stated that there are other signs in the vicinity.

There were no parties present in opposition.

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

Case No. 5870--Oak Orchard West, Inc. - North side of Route 22,
2200 feet east of Road 298, Lot 26, 27,
36, 37, 44, 45, 42 - 52, within Lingo
Estates.

A variance from the agricultural buffer requirement.

The case was presented by Mr. Betts. Audrey E. Lingo was sworn in and testified and was represented by Barbara O'Leary, Attorney. The applicants requested a 12' variance from the 50' agricultural buffer requirement on Lots 26, 27, 36, 37, 44, 45, 42 - 52 in Lingo Estates. The use has been in existence for over 10 years. The variance request is to bring it into compliance. The buffer now is 88' instead of 100'. Ms. O'Leary made reference to approval given by Mr. Derrickson, previous Planning and Zoning Director, years ago, but was not recorded.

Dorothy Harmon McDowell and Charlotte Scerati were sworn in and testified in behalf of the variance.

There were no parties present in opposition.

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 variance be granted.

Case No. 5871--Amelia Ann Burton - West side of Route 382, 1/4
mile south of Route 48.

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. Daniel Burton & John

Burton were sworn in and testified representing the applicant who requested to place a 28'x 44' manufactured home on her property for her residence. She wishes to remove two small existing cottages and replace them with the manufactured home. They testified there are other manufactured homes in the area, they explained their locations.

There were no parties present in opposition.

Motion was made by Mrs. Hudson, seconded by Mr. Mills and carried unanimously that the special use exception be granted, with the stipulation that the two (2) existing small cottages be removed.

Case No. 5872--Wesley & Marlene Weir - North side of Route 527,
1600 feet west of Route 522.

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. Wesley Weir was sworn in and testified, requesting to place a 28'x 44' double-wide manufactured home on their property for the residence of their two sons. They testified there are other manufactured homes in the area plus a manufactured home park. They propose to subdivide property to provide a lot for the new manufactured home.

Mr. Jones, Attorney, explained to Mr. Weir that the Board's policy has been for the land and manufactured home to be in the name of the person occupying it.

Mr. Weir stated he is not prepared to put the property in his sons name at this time, therefore, he stated that he and his wife could move in the proposed manufactured home and his two sons could move into the existing house.

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 be granted, provided the applicants live in the manufactured home or the sons name be put on the deed to the property.

OLD BUSINESS

Case No. 5849 (cont'd.)--R.B.O. Associates, LP. - Southwest side of
Route One, 1500 feet northwest of Route
270.

A variance from the front yard setback requirement.

The case was reviewed by Mr. Betts.

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

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

Meeting adjourned at 9:12 P. M.