

Minutes of December 1, 1997

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, December 1, 1997 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

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

Motion was made by Mr. Mills, seconded by Mr. Wheatley and carried unanimously that the minutes of November 17, 1997 be approved as circulated.

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

Case No. 6472--Mike Lapinta t/a Casapulla's South - Northeast side of Route One, 800 feet south of Road 275A.
A variance from the requirements for signs.

The case was presented by Mr. Rickard. Mike Lapinta and John Selby were sworn in and testified. Mr. Lapinta requested a 25' variance from the height requirement of 25' for a sign. The proposed sign will be 50' in height. Mr. Selby stated that they had been before the Board for a second on premise sign.

Mr. Lapinta stated that he has a sub shop in White House Plaza. His shop is located several hundred feet from Route 1, and since the shop is so far back from the highway it is hard to see it from Route 1. Mr. Lapinta stated that on the property next to the sub shop a Ruby Tuesday's Restaurant is being constructed and it will block the view more. He wants to place a sign 50' in height to be seen. He presented a letter from Preston Dyer owner of the property where he has his shop, voicing no objections.

Mr. Rickard read the letter presented from County Development Assoc., LLC, Preston Lynch Dyer, in favor of the application.

Mr. Lapinta presented a site plan of the restaurant being constructed. He stated that the ground work has already started.

Mr. Selby presented pictures of the site.

Mr. Mills questioned why they could not put a sign on Route 1, and why they located the sub shop to the rear of the property.

Mr. Lapinta stated that all of his available space was used

and the developer told him to get a sign of his own. He chose the location of the shop because of rent and he was not concerned at the time about not being seen.

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 Mrs. Hudson and carried unanimously that the variance be denied, finding the applicant did not address the need for a variance, the property can be utilized without a variance and the hardship was created by the applicant. Vote 5-0.

Case No. 6473--Joseph Deramo - West side of Colgate Drive, Lot 27,
within Maplewood.

A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. Susan Weidman, Esquire, was present representing the applicant who is away on vacation and could not attend the meeting. Ms. Weidman presented a letter from the property owner on Lot 28.

Mr. Rickard read the letter presented from Diane Deaver, Lot 28, Maplewood, voicing no objections if it does not alter her property.

Ms. Weidman stated that the dwelling is already constructed and it would be a hardship to tear a portion of it down. The applicant built the home for his retirement. He is a contractor and had a building permit and was aware of the setbacks, but cannot explain how the encroachment occurred. Ms. Weidman stated that Mr. Deramo is a contractor but will not be open for business. He does plan to build his neighbors house.

Mr. McCabe stated that the property is odd shaped.

Mrs. Hudson stated that the applicant did have enough room on the opposite side of his property to be able to place the house correctly.

Ms. Weidman stated that the house is completely finished.

Mr. McCabe asked if a Certificate of Compliance has been issued for the house.

Ms. Weidman stated that a Certificate of Compliance has not been issued, that is why the applicant applied to the Board.

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. McCabe, seconded by Mr. Wheatley and carried unanimously that the case be tabled until the meeting on December 15, 1997. Vote 5-0.

Case No. 6474--Cornelius Dolan - Southwest side of Route One, Canal Road and Maple Street, Lot 15, within Truitt's Park.

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

The case was presented by Mr. Rickard. Cornelius Dolan was sworn in and testified, requesting a 9.85' variance from the 30' front yard setback requirement to build a screen porch on an existing deck, and a 3.7' variance from the side yard setback requirement of 10' for a shower enclosure. Mr. Dolan stated that the house was built 10 years ago and at that time he was not aware of setbacks in wetland areas. He would like to build a porch to be able to sit outside in the evenings. It was when Mr. Dolan went to obtain a building permit that he found out the existing deck encroached. He stated that the development is an older neighborhood. The dwelling was built by Trivits Construction Company in 1988 and the deck and shower have been on the property since 1988. A portion of the deck encroaches.

Mrs. Hudson stated that most of the dwellings in the development are closer to the road.

Mr. Rickard explained that an open deck can encroach 5' into the setback, but when enclosed it must meet the greater setbacks.

There were no parties present in opposition.

Motion was made by Mrs. Hudson, seconded by Mr. Mills and carried unanimously that the variances of 9.85' and 3.7' be granted. Vote 5-0.

Case No. 6475--Van W. & Penny D. Milligan - Northwest side of Route 535, 467 feet southwest of Route 534, Lot 10 and part of Lot 11, Friedel Lands.

A special use exception to operate a day care center.

The case was presented by Mr. Rickard. Van Milligan was sworn in and testified requesting to operate a day care center on their property. Mr. Milligan stated that they presently have a Craft Shop on the property and in lieu of it they want to open a day care center. Mr. Milligan stated that his wife plans to retire from her present job and be director of the day care center, and she is also a practical nurse. They have two daughter-in-law's who will also help with the day care center. They plan to start with at least 10 children if needed and maybe at a later date have as many as 18 to 20 children. The hours will be 6:30 A. M. to 5:30 P. M. Monday through Friday, with no weekend hours. They will have ample parking and have a fenced in play area. They propose to open May 15, 1997 if approved. They will meet all State agency requirements. They also have two grandchildren who will be in the day care center. One daughter-in-law will start work and the other one will start depending on the need. They also have other people who will work if needed. Mr. Milligan stated that he does not know of any opposition from the neighbors.

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. Vote 5-0.

Case No. 6476--Emu-Zing Acres - East side of Route 469, 1/2 mile southwest of Route 325.

A special use exception to raise and sell birds on less than five acres.

The case was presented by Mr. Rickard. Tina Lofland and Ray Thompson were sworn in and testified requesting to raise emu's and sell the birds on less than five acres. Mr. Thompson stated that they will start with 35 to 40 birds. He stated that they weigh approximately 150 pounds and are 4 1/4' to 5' tall. They eat pellet type food and just require a shelter. They adapt to any climate. They look like an ostrich and they nest on their own. They are not noisy and only make sounds when they are mating, which is from November to March. They will have a 6' fenced in area 100'x 150'. Mr. Thompson stated that they will have no more than 150 birds, but that is years down the road.

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 for a period of five (5) years. Vote 5-0.

Case No. 6477--Delmarva Aggregates c/o David G. Horsey - North side
of Route 490, .25 mile west of Blades
Town Limits.

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

The case was presented by Mr. Rickard. Kevin E. Burdette from McCrone, Inc. Engineering, was sworn in and testified, representing the applicants who requested to use a 12'x 40' manufactured home type structure for a sales office. It will be a manufactured office unit. They are also requesting to place a 14'x 70' manufactured home on the property for a guard/caretaker to live in. Mr. Burdette stated that since the land has been cleared and construction of the facility, there have been uninvited people visiting the site in the evening and weekend hours leaving debris on the property. There has also been vandalism that has occurred on the property. They hope a guard/caretaker will take care of this problem. The mobile office will be located approximately 500' from the Road and is well buffered by landscaping berms and is not visible from the road or current neighbors. The manufactured home to be lived in will be approximately 200' from the Road nestled into a grove of existing trees. The driveway and entrances will be from the existing entrance road. He feels the use will not be a detriment to the area. In answer to a question from the Board, Mr. Burdette stated that David Webb has lots on adjacent property and that Mr. Webb sold the applicants their property knowing what would go on it. When asked if the applicant is planing to build a permanent structure, he said eventually they will build, but that is 10 to 15 years away and depends on what happens on the property now with the business.

Mr. Rickard stated that documentation was presented substantiating what Mr. Burdette said.

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 the type of structures presented and for a period of five (5) years. Vote 5-0.

Case No. 6478--Roland Harris - North side of Meadowview, 1,700 feet west of Route 291, Lot 76, within Coolspring Farms.

A variance from the front yard setback requirement.

The case was presented by Mr. Rickard. Roland Harris was sworn in and testified requesting a 10' variance from the front yard setback requirement of 30' for his manufactured home on Lot 76, within Coolspring Farms. He stated that he had been before the Board previously, but that at that time it was on the wrong lot. He stated that Oakwood Homes had placed the manufactured home on the lot approximately 1 1/2 years ago. After it was placed it was found to be too close to the front property line. Mr. Harris stated that he got the permit to place the manufactured home, but he thought Oakwood Homes knew the setbacks.

There were no parties present in opposition.

Motion was made by Mrs. Hudson, seconded by Mr. Mills and carried unanimously that the 10' variance be granted, due to the odd shape of the lot. Vote 5-0.

OLD BUSINESS

Case No. 6466--Joseph Corden (cont'd.) - East side of Hiawatha Blvd., 400 feet south of Chippawa Drive within Blackwater Village, north of Road 26.

A variance from the front yard setback requirement.

Mr. Callaway reviewed the case.

Mr. McCabe stated that he had looked at the site and there is no blairing violation and that the structure is close to 40' from the edge of the road. He believes the structure was not purposely built in violation.

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

DISCUSSION

Mr. Jones told the Board about a court case to be heard, and made reference to caroling on the circle being the same night as the next scheduled Board of Adjustment meeting, December 8, 1997.

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

Meeting adjourned at 8:20 P. M.