

Minutes of December 2, 1996

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, December 2, 1996 in the Court of Chancery, Courthouse, Georgetown, Delaware.

The meeting was called to order at 7:00 P. M. with Mr. 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 18, 1996 be approved as circulated.

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

Case No. 6188--Mary Jean Emigh - Northeast side of Route 113,  
1/4 mile northwest of Route 82, Lot 7,  
within Pine Lodge Addition.

A variance from the height requirement for a fence.

The case was presented by Mr. Betts. Mary Jean Emigh and Bonnie Smith were sworn in and testified. Ms. Emigh requested a variance from the height requirement for a fence in the rear yard, on Lot 7, within Pine Lodge Addition. She requested that the fence be higher than the 3 1/2' requirement to be 6'. She stated that she has a permit and gave it to the person who installed the fence who went according to the permit, which states that the rear yard setback be 10'

Mr. Betts stated that Ms. Emigh's lot is a through lot with two frontages, therefore, the fence has to be 3 1/2' in height for the first 40' setback. Since the lot is a through lot she has frontage on Route 113 and Pine St. Ms. Emigh has placed the fence 6' in height with only a 10' setback.

Ms. Emigh stated that she gave the information to the person who issued the permit, that the lot was a through lot.

Mr. Betts stated that the permit states 40' front yard, 10' side yards and 10' rear yard. The rear yard should also have a height of 3 1/2'.

Ms. Smith submitted pictures and explained them. She stated that the applicant went by the permit.

Ms. Emigh stated that there are homes on either side of the

property. She stated that the neighbors had objected to the hedge she has and she thought the solution was to put up a fence. She showed a copy of the permit. She stated that the fence is not obstructing anyone's view going out onto the road, it only blocks anyone looking into her back yard.

Ms. Smith stated that the bushes have never been a problem with anyone seeing to go out onto the road.

Thomas W. Lynch, Sr. was sworn in and testified in opposition and was represented by Bill Richardson, Attorney. Mr. Richardson stated that Mr. Lynch has lived on his property for 45 years. He stated that the fence went up on the applicant's property in September. Mr. Lynch objects to the fence because he has lost one of his entrances/exits going out onto Pine Street. Pictures were presented. He feels it is a safety hazard and that the actual law should be followed, because it could cause a serious injury.

Mr. Lynch stated that he has to put half of his car out on the street to see what is coming. He does not object to the height in the middle of the property. He feels the fence should be cut down on the one end for their safety. Mr. Lynch stated that being back 30' would be satisfactory.

Mr. Richardson stated that 10' is not objectionable to Mr. Lynch. If the application is not approved he requested a time table be set.

Ms. Emigh in rebuttal stated that a telephone pole has always been there, plus a hugh cedar tree.

Mr. Richardson showed a picture of the tree and bushes which are trimmed every three years.

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 Mrs. Hudson, seconded by Mr. Mills and carried unanimously that the case be tabled until the next meeting.

Case No. 6189--Joseph A. Szeffler, Jr. - Route 263, Lot C-4, within  
Donovan-Smith MHP.

A variance from the setback requirement between  
units in a park and a variance from the lot  
coverage requirement.

The case was presented by Mr. Betts. Joseph A. Szeffler, Jr. was sworn in and testified, requesting a 7' variance from the 20' setback requirement between units and a variance from the 35% lot coverage in a park, being Lot C-4, Donovan-Smith M.H.P. Mr. Szeffler wants to build a 12'x 33' living room, screened porch addition to his existing manufactured home for more living space. He stated that the addition will not obstruct any view.

Mr. Betts stated that Mr. Szeffler needs 1120 sq. ft. and with the variance will have 1176 sq.ft. of coverage and will be 13' from a neighbor. He stated that there are other lots in the park that have been granted variances.

There were no parties present in opposition.

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

Case No. 6190--Harvey T. Smoot, Jr. - South side of Route 503, 425 feet east of Route 504, 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. Harvey T. Smoot, Jr. was sworn in and testified, requesting to place a 1992, 14'x 70' manufacturd home on property he is purchasing for his son's residence. He testified that there are vacant lots on either side of the property he is purchasing, but there are other manufactured homes in the area. Mr. Smoot stated that the property and manufactured home will be in his name, but his son will live in the manufactured home.

Mr. Jones, Attorney, explained to Mr. Smoot that for years it has been the policy of the Board that the person living in the manufactured home must have ownership to the land and the manufactured home.

Mr. Smoot stated that he would have no problem putting his son's name on the manufactured home and property with his.

Mr. McCabe explained that the ownership can be in both his and his son's name.

Mr. Smoot explained the location of the other manufactured homes in the area.

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 that the case be tabled until the next meeting.

Case No. 6191--John, III & Carolyn Cassady - West side of Blue Teal Road, one mile north of Route 54, Lot 37C, within Swann Keys.  
A variance from the side yard setback requirement.

The case was presented by Mr. Betts. John Cassady, III was sworn in and testified, requesting a 3' variance from one side and a 1' variance from the other side of his property, being Lot 37C, within Swann Keys. Mr. Cassady stated that he has a 14'x 66' manufactured home on the property that he wishes to replace. Due to changes in the setbacks in Swann Keys he will need a variance to replace his unit. He proposes to stay with a 14' wide unit but it will be longer. He will be able to meet the rear yard setback. He testified that the Association in Swann Keys has no objections if the Board approves the variance.

Mr. Betts read letters in support of the application from James Dalton, Lot 36-C, Blue Teal Road and Len Gray, Lot 38-C, Blue Teal Road.

There were no parties present in opposition.

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

Case No. 6192--Solomon & Willie Jean Hazzard - West side of Route 627, 1/4 mile north of Route 215, within Annie P. Young Subdivision.  
A variance from the rear yard setback requirement.

The case was presented by Mr. Betts. Solomon & Willie Jean Hazzard were sworn in and testified, requesting a 2' variance from the rear yard setback requirement of 10' to be 8', for a double-wide manufactured home on their property in the Annie P. Young Subdivision.

Mr. Betts read a letter of correspondence from Nathan & Michiko Carroll voicing concern about their property being built on.

Theresa Holmes was sworn in and testified representing her brother Nathan Carroll. She stated that he has no objection to the variance, but does not want to give up any of his property.

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. 6193--Kenneth R. Wilson - East side of Route 229, 1/4 mile south of Road 38.

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

The case was presented by Mr. Betts. Kenneth R. Wilson was sworn in and testified, requesting to place a new single-wide manufactured home, that has not been purchased yet, on his property for his mother-in-law to live in. He stated that she is 79 years old and wants to live independently, but needs care too. The manufactured home will possibly be a 14'x 60' or 70'.

Mr. McCabe explained that if approved the application would have to be reapplied for every two years for as long as the hardship exists and should the hardship cease, the manufactured home will have to be removed.

Mr. Betts read letters from Dr. Lynn Walsh and Roger S. Alexander, M.D. referencing the applicant's mother-in-law's health.

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

Case No. 6194--Larry E. Jones

This case was withdrawn.

Case No. 6195--Jeffrey M. Mohr & James J. Doney - Northeast side of Daisey Road, 350 feet southeast of Bay Road and west of Route One, Lot 48, within

Suburban Development Corporation.  
A variance from the requirements for multi-family structures.

The case was presented by Mr. Betts. Jeffrey M. Mohr was sworn in and testified and was represented by Robert Witsil, Attorney. The applicants requested a variance for three multi-family units on a 7,246 sq. ft. lot for a pre-existing structure. The applicants need a 1,215 sq. ft. variance per unit. Mr. Witsil presented an outline he had prepared. The applicants had approval for a Conditional Use for a multi-family structure in 1982-83. When preparing the property for a sale, it was found a variance is needed. It is the largest parcel in Suburban Acres, and is adjacent to Spring Lake a multi-family development. It is a 7,246 sq. ft. lot and the prior survey shows a 5' drainage easement along the side that was figured into the calculation of the property size. Mr. Witsil stated that he feels the variance will not be a detriment to public welfare. He submitted a copy of the County Council approval of the Conditional Use. Mr. Mohr in answering questions from Mr. Witsil explained what is in the area. He stated that a shed not owned by him will be removed. There is sufficient parking for three families. He stated that the use has been there for 10-12 years and he is seeking nothing more than what has existed.

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. 6196--Josephine E. Maclaine - East side of Route 228,  
1,250 feet north of Route 30.

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

The case was presented by Mr. Betts. Josephine E. Maclaine was sworn in and testified, requesting to place a second manufactured home on hardship to care for her 83 year old grandmother. Her grandmother, Mrs. Weaver, wants to remain independent, but needs care. The existing manufactured home is 14'x 60' and her manufactured home will be 28'x 60'.

Mr. Betts read a letter from Harvey E. Mast, M.D. referencing Mrs. Weaver's health.

There were no parties present in opposition.

Mr. McCabe stated that if the application is approved

it would have to be reapplied for every two years for as long as the hardship continues. If the hardship ceases, the manufactured home will have to be removed.

Motion was made by Mr. Callaway, 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.

Case No. 6197--Fred & Shelly Sposato - Southeast side of Route  
258, 3,300 feet north of Route 88.  
A special use exception to operate a Bed and  
Breakfast.

The case was presented by Mr. Betts. Fred & Shelly Sposato were sworn in and testified and were represented by Robert Witsil, Attorney. Mr. Witsil presented correspondence in reference to this case.

Mr. Betts read the letter presented from Nancy Reardon Millman voicing no objections.

Mr. Witsil referenced a letter from Charles & Joanne Wyatt voicing no objections.

Mr. Betts read the letter from Charles & Joanne Wyatt into the record.

Mr. Witsil presented a aerial photograph. He stated that the applicants will have two quest rooms. He testified that their driveway is 800' long and there are no close neighbors. The applicants already have a tree farm on the property. He stated that there is a need for a Bed and Breakfast in the area. Mr. & Mrs. Sposato stated that Mr. Witsil's presentation was true and correct.

Mr. Jones questioned cooking facilities in the rooms.

Mr. Witsil stated that there will be no cooking facilities in the rooms. There will be private baths in each room.

There were no parties present in opposition.

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

Case No. 6198--Jessie Stevens - Southeast side of Route 24,  
550 feet north of Route 297.

A special use exception to operate a day care center.

The case was presented by Mr. Betts.

There were no parties present to represent this case.

Mr. McCabe stated that the case would remain open until the end of the public hearings to allow the applicant 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 case 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, due to lack of representation, and the applicant cannot reapply for one (1) year.

Case No. 6199--Roslynn Kelly Smith - North side of Route 74, 400 feet east of Route 62.

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. Rosalynn Kelly Smith was sworn in and testified, requesting to place a 1985, 14'x 70' manufactured home on property for her residence. She stated that there is an old house on the property that is not structurally safe. She will remove the old house. She testified that there are other manufactured homes in the area. She will remove the old house as soon as she can, hoping to have the fire company burn it down. She feels this can be done within one year.

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 existing house be removed within one (1) year.

Case No. 6200--Ronald P. & Carol A. Wilson - South side of Route 24, on the north corner of Route 421.

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. Ronald P. Wilson was sworn in and testified, requesting to place a double-wide manufactured home on his property for his use. The existing home on the property will be removed. He is not sure if he will put the manufactured home on a permanent foundation. He stated that there are other manufactured homes in the area.

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 existing home be removed within one (1) year.

Case No. 6201--Jeffrey H. & Laura A. Buchler - South side of Route 277, 1/4 mile east of Route 24, Lot 31, within Angola By The Bay.

A variance from the rear yard setback requirement.

The case was presented by Mr. Betts. Jeffrey Buchler was sworn in and testified, requesting a 3'9" variance from the rear yard setback for an existing deck. He proposes to enclose the deck with screen and a roof. He stated that on one side of his property there is a house and on the other side is a vacant lot that he owns. He stated that the Association has no objections if the Board approves 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 Mr. Callaway, seconded by Mr. Wheatley and carried unanimously that the variance be granted.

Case No. 6202--Cynthia Pruitt - Route 574, 528 feet north of Route 31, Lots 1 and 2.

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 representing this application.

Mr. McCabe stated that the case would remain open until the end of the public hearings to allow the applicant time to appear.

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

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

#### OLD BUSINESS

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.

The case was reviewed by Mr. Betts.

Mr. Jones, Attorney, made reference to material that was recieved from the applicants and the opposition in the allotted time period set by the Board. Mr. Jones stated that the opposition in this matter raised an issue about whether the applicant had properly applied for the appropriate special use exception. The application was for a special use exception for "an assisted living facility". The opposition argued that Section 115-40(c) of the Sussex County Code provides for special use exceptions for "convalescent homes, nursing homes or homes for the aged." The opposition argued that an assisted living facility does not fall with the listed uses. Although the Code defines the terms "convalescent homes" and "nursing homes", it does not define the term "homes for the aged". The Code provides that terms which are not defined are to be given their customary usage. The Board must decide whether it believes that the term "home for the aged" is broad enough to include" an assisted living facility".

The opposition also contends that the Board should delay consideration of this application until such time as the Planning and Zoning Commission hears and decides the applicant's request for an RPC. It would be Mr. Jones advice that the Board need not delay in its consideration of this request. A decision on this special use exception is within the sole jurisdiction of the Board, regardless of the Commission's decision on an RPC. It is not uncommon for two applications on one site, each seeking separate relief, to proceed through the County at the same time.

Mr. Mills stated that he feels traffic is not an issue with

the use being for elderly people.

Motion was made by Mr. Mills, seconded by Mr. Callaway and carried unanimously that the special use exception be granted, with conditions as presented by the applicants:

1. An eight foot solid board fence (appearance to be the same on both sides) will be installed by Dyer, McCrea Ventures, L.L.C., or its assigns along the property line (southerly) of Lots 3-34-13 insert Sheet K, insert A, Parcels #518, 513, 512, 511, 510, 509, and 508. As an alternative at the option of the owners of said lots in Beachfield, Dyer, McCrea Ventures, L.L.C., or its assigns will plant a single row of Leyland Cypress along said property line to act as a buffer. The fence or the single row of Leyland Cypress will be installed at the sole cost and expense of Dyer, McCrea Ventures, L.L.C., or its assigns and such activity shall be initiated within fifteen (15) days of the date when construction of the utilities and roadway for the Assisted Living Project adjoining said lots is completed. The installation of the trees or fence shall be pursued diligently once the work is begun.

2. Dyer, McCrea Ventures, L.L.C., also agree to install a single row of Leyland Cypress from Lots 507 to the lot where the woods line begins. The row of Leyland Cypress shall be located approximately ten (10) feet from the edge of the roadway paving.

3. This obligation shall be included in the conditions of approval for the Assisted Living Project and shall run with Special Use Exception for said Project. Vote 5-0.

It was the finding of the Board that the proposed the use will not adversely affect the surrounding properties and the use does include assisted living. It was also the opinion of the Board that the proposed use will not substantially affect adversely the uses of adjacent and neighboring property; that there was insufficient evidence presented that placement of an assisted living facility on the site will cause traffic problems on the site, such that would substantially affect adversely the uses of adjacent and neighboring property; that there was insufficient evidence presented that placement of an assisted living facility on the site will cause entrance problems on Route 1, such that would substantially affect adversely the uses of adjacent and neighboring property; that certain issues raised concerning environmental concerns are adequately regulated by State and Federal environmental agencies; that there was insufficient evidence submitted that the proposed use would cause a greater impact on adjacent and neighboring properties than uses which are permitted without a special use exception. Vote 5-0.

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 read from and presented a prepared statement: He stated that this case involved a special use exception to operate a day care center on Route 113. The applicant already operates a day care center on Route 113, approximately 1500 feet away. The applicant wants to move the day care center to a different location. The existing facility cares for 36 children. The new facility will provide care for 50 children, and have 3 full time employees, 2 part-time employees, the applicant and a cook.

Mr. Callaway stated that he had driven by both the old location and the new location. There appears to be adequate parking at the old location. The new location, however, does not have adequate parking for the proposed use. He stated that he does not believe that there is adequate room for parking for the employees, as well as room for the children to be picked up and dropped off. The situation is made even more serious by the location of the proposed day care center on Route 113, a major thoroughfare.

Mr. Callaway stated that he believes that granting this special use exception will substantially affect adversely the uses of adjacent and neighboring properties, due to the dangers created by the lack of parking at this site. He is concerned about dangers to the children and their parents, persons living on adjacent and neighboring properties, and drivers on Route 113, resulting from children being dropped off at a day care center on a busy highway which does not have adequate parking. He therefore, believes that this special use exception should be denied. He also stated that the applicant made no statement at the public hearing about building a parking lot or changing the entrance whatsoever.

Mr. Wheatley stated that he had visited the site and feels that Mr. Callaway had expressed the concerns very well.

Motion was made by Mr. Callaway, seconded by Mr. Wheatley and carried unanimously that the special use exception be denied. Vote 5-0.

Case No. 6182--(cont'd.)--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 permise sign.

Mr. Betts reviewed the case stating that the record had been left open to see if the applicants could reach an agreement.

Mr. Mills stated that he visited the site and he could not see the Griffin sign until he was almost at the property. He stated that he cannot see where the Barton sign will block Mr. Griffin's sign or the building, and he feels the use will not adversely affect the Griffin building or sign.

Motion was made by Mr. Mills, seconded by Mr. Wheatley and carried unanimously that the special use exception be granted, finding that the use will not substantially adversely affect the uses of the adjacent properties, namely the Griffin property. Vote 5-0

Case No. 6184 (cont'd.)--Charter Oak Partners - East side of Route One, 1,000 feet north of Route 271.

A variance from the parking requirements.

The case was reviewed by Mr. Betts.

After some discussion, motion was made by Mr. Mills, seconded by Mr. Callaway and carried unanimously that the variance be granted with the stipulation that there be a minimum of three (3) crosswalks between the retail sales and the restaurant. Vote 5-0.

Case No. 6185 (cont'd.)--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 reviewed by Mr. Betts.

After some discussion, motion was made by Mr. Mills, seconded by Mr. Callaway and carried unanimously that the special use exception be granted for a new double-wide manufactured home on a permanent foundation and that the manufactured home be a minimum 28' wide, finding it will be more in character with the surrounding properties. Vote 5-0.

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

Meeting adjourned at 8:52 P. M..