

Minutes of December 6, 1993

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, December 6, 1993 in the Court of Common Pleas, 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. Wheatley, Mrs. Hudson, Mr. Mills, Mr. Callaway, Mr. Jones-Attorney, and Mr. Betts-Zoning Inspector III.

Motion was made by Mr. Wheatley, seconded by Mr. Callaway and carried unanimously that the minutes of November 15, 1993 be approved as circulated.

Case No. 5231--Linwood Hayden, Sr. - North side of Route 54, $\frac{1}{4}$ mile west of Route 58B, Lot 36, Laws Point Road, within Swann Keys.

A variance from the side yard setback requirement.

The case was presented by Mr. Betts. Linwood Hayden, Sr. was sworn in and testified, requesting a 5'5" variance from the side yard setback of 10', on Lot 36, Swann Keys. The applicant has constructed a shed next to his home that is attached by corner flashing when siding was put on, but not nailed to the home. Mr. Hayden, Sr. presented prepared material to the Board. Mr. Hayden, Sr. testified that he felt he had abided by the law since he had an Inspector on the property and showed what he wanted to do. He also was given a Certificate of Compliance from Planning and Zoning. He also told about going to Swann Keys Association for their approval. A picture was presented. When Swann Keys inspected the shed they questioned the shed not being 10' from the side property line, since they considered the shed attached. A Planning & Zoning inspector visited the site and after an inspection he felt the shed is attached and needs to be 10' from the side property line. An unattached shed can be 5' from the side property line. Mr. Hayden stated he feels that since the shed is not nailed it is not attached.

Mr. Betts stated that Mr. Hayden requested a final inspection before the siding was put on.

Mr. Hayden stated that the older shed on his property will not be removed.

Edgar Gore was sworn in and testified in opposition. Mr. Gore stated that he had sent a letter of opposition to the Board and that there were other parties present in opposition.

Mr. Betts read letters of opposition from: Swann Keys Civi Association, Edgar Gore, Chairman and Board of Directors of Swann Keys, Bettie Bozze, Park Manager.

Robert McIntyre, President of Swann Keys Board of Directors was sworn in and testified that they are unanimously opposed to the variance. It is his and their feeling that Mr. Hayden does not want to comply

with their rules or the County rules.

Paul Bennaman & Bernard Lanham residents of Swann Keys were sworn in and testified in opposition. Mr. Lanham stated that something unattached can be seen through from one end to the other.

Mr. Hayden stated he feels the shed is not attached.

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 variance be denied, finding the request does not meet the requirements for the granting of a variance and finding the shed is attached.

Case No. 5242--Warwick Park Owners Association, Inc. - South side of Comanche Circle, 275 feet west of Apache Avenue, Lot 4, Block A, within Warwick Park.

An appeal of the Director's decision concerning the placement of a manufactured home on a temporary emergency basis.

The Chairman announced that Case No. 5242 would be heard at this time due to so many interested people being present.

Mr. Jones, Attorney, asked Mr. Lank, Director of Planning and Zoning to be sworn in and give testimony as to why he reached his decision concerning the placement of a manufactured home on a temporary emergency basis, on Lot 4, in Warwick Park.

Mr. Lawrence Lank, Director of Planning and Zoning, was sworn in and testified explaining his decision and referenced the Zoning Code pertaining to an emergency situation. Mr. Lank testified that the property owners Wolfgang von Baumgart and Adele Haase were told they could place a manufactured home on their property to live in for one year as an emergency, because fire destroyed their home. He told Mr. von Baumgart that a camper trailer could not be used as a residence that it had to be a manufactured home. Mr. Lank referenced a letter prepared by Mr. von Baumgart pertaining to the fire and a memo prepared by staff of the Planning and Zoning Office concerning the fire and that the house was uninhabitable. Mr. Lank stated that the emergency was established and certified. He stated that on October 13, 1993 a permit to place a manufactured home was issued referencing the use as an emergency permit for one year. He stated that numerous other permits for the same situation have been issued in accordance with Chapter 115 of the Code of Sussex County.

David Hackett, Attorney, was present representing the Homeowner's Association of Warwick Park and others. He submitted restricted covenants and a letter of October 12, 1993 sent to Mr. Lank referencing the covenants of Warwick Park.

Mr. Lank stated he received the letter from Mr. Hackett after the permit for the manufactured home was issued.

Bob Williston, Vice President of the Homeowner's Association and a homeowner in Warwick Park, was sworn in and testified in behalf of the appeal. Mr. Williston explained what he knew about the fire and damage to the property. He also stated that there has been no indication by Mr. von Baumgart that he is going to rebuild the home, and there is a manufactured home and travel trailer on the lot. He also stated that no application was presented to the Architect and Review Committee in Warwick Park. Mr. Williston stated that Mr. von Baumgart and Mrs. Haase have violated the Warwick Park covenants by placing a manufactured home on the property. He stated that the property has 3 dwelling units on it, counting the burned house, and that this has lowered property values and is an unsightly appearance. He stated their restrictions forbid nuisances. In answer to questions from the Board Mr. Williston stated that they do not encourage storing travel trailers on lots in the development.

Mr. Betts stated that County laws permit storage of travel trailers on property, but not to be lived in. He also stated that the emergency permit is good for one year, after that time they would have to apply to the Board to keep the manufactured home on the property.

Mr. Hackett stated that the Association would be willing to work with them if some action had been taken to repair what is there.

Mr. Lenk stated that he had been advised by phone that the manufactured home is hooked-up to the septic system used by the house and there is no problem.

Lois Jane DeVall was sworn in and testified that she lives in Warwick Park and is opposed to the manufactured home. She stated that they have good covenants and that the yard of Mr. von Baumgart and Mrs. Haase is a disaster area.

Paul Collins was sworn in and testified there is a litigation battle going on. That the property owners von Baumgart and Haase violate the covenants of the development and there is no effort to rebuild.

Frank B. Parks was sworn in and testified that there is nothing personal against Mr. von Baumgart and Mrs. Haase. He stated he was the party that woke Mr. von Baumgart when the house was on fire. He presented a picture of the dwelling and stated that Mr. von Baumgart and Mrs. Haase have no insurance.

By a show of hands there were 29 people present in behalf of the appeal.

Adele Haase and Wolfgang von Baumgart were sworn in and testified. Mr. von Baumgart feels they have an extreme hardship, that they have complied with the County laws and they feel the appellants are interfering with their property. They want the Board to uphold the Zoning Code, that the manufactured home is their dwelling. Mr. von Baumgart stated he intends to demolish the structure. They have litigation coming up on January 6, 1994. They will abide with County Codes and if they win the judgement they will erect a home. He stated that they have no intention of living in Warwick Park. They have intent to remove the manufactured home within the year. He testified

that at the present time his income is below poverty.

Mrs. Haase testified that their money went towards the litigation, they were not expecting a fire. She feels the people in the development have no mercy or compassion and they want to get out. She stated they will not rebuild.

Mr. Hackett questioned their owning the manufactured home and also if there was a collection taken in excess of \$700.00 for them.

Mr. von Baumgart stated the manufactured home provides them with a place to live and they cannot afford to move it anywhere else. They are trying to prevent looters and trespassing to preserve what they have left. He stated there was a collection taken with the idea for them to move to a motel.

Mr. Jones questioned whether Mr. Hackett felt the County should enforce the restrictions of Warwick Park.

Mr. Hackett in answer stated he does not feel the County can enforce the development restrictions, but they should enforce the violation of the restrictions. He feels the covenants are more restrictive than the County's.

Mrs. Haase testified that the \$700.00 collected was rejected because they did not want to go to a motel. She does not feel their property devalues other properties since property next to theirs has been sold.

Mr. von Baumgart requested that the emergency permit be continued.

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 case be tabled to give the Attorney time to review the case.

Case No. 5232--William S., Sr. & Susie P. Stack - North side of Route 54, $\frac{1}{4}$ mile west of Route 58B, Lot 38B, Blue Teal Road, within Swann Keys.

A variance from the side yard setback requirement.

The case was presented by Mr. Betts. William & Susie Stack were sworn in and testified, requesting a 2' variance from the 10' side yard setback to replace their existing manufactured home with a 24'x 48' double-wide unit on Lot 38B, in Swann Keys. They stated that the Swann Keys Association recommended they get a single-wide manufactured home. They testified that there are other manufactured homes with add-on's in their area.

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. 5233--Bette Kareskie - West side of Route 54, $\frac{1}{4}$ mile west of Route One, Lot 6A, within Mason Dixon Trailer Park.

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

The case was presented by Mr. Betts. Bette Kareskie was sworn in and testified, requesting a 9' variance from the 20' setback requirement between units to construct a 9'x 20' screen porch, on Lot 6A in Mason Dixon Trailer Park. She testified that there are no problems with the Association. She stated that there are other like situations in the park and she does not feel the use will affect the neighbors.

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. 5234--Henry Atkins - Northeast side of Route 233, $\frac{1}{4}$ mile north of Route 235.

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. Henry Atkins was sworn in and testified, requesting to place a manufactured home on property he owns for his grandson to live in. He proposes to deed a one acre parcel to his son if approved for the manufactured home. He stated that there are other manufactured homes in the area. He also stated he does not plan to sell anymore property for manufactured homes.

Donald E. Jefferson, grandson, was sworn in and testified in behalf of the application. He stated that he does not have the manufactured home yet.

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, finding the use will not adversely affect the neighborhood.

Case No. 5235--Church of God Prophecy - East side of Route 13A, 1,900 feet north of Route 534.

A special use exception to retain a manufactured home to be used as a parsonage.

The case was presented by Mr. Betts. Walter G. Willey was sworn in and testified representing the Church of God Prophecy, who wish to keep a manufactured home on their property to be used as a parsonage. They were granted approval (Case No. 2481) by the Board for five years. The case expired in 1989. They need approval for the unit to remain on the property. Mr. Willey stated that if approved he is not sure who will live in the manufactured home, but it will be someone associated with the Church. Their present Pastor has his home in

Delmar. They would like a young people's Pastor to live there and also possibly hold young people meetings there.

There were no parties present in opposition.

Motion was made by Mr. Wheatley, seconded by Mr. Callaway and carried unanimously that the special use exception be granted, for a period of five (5) years, finding the use will not adversely affect the neighborhood.

Case No. 5236--Charles & Ruth Moore - North side of Route 231,
350 feet west of Route 22 (Route 5).

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. Charles & Ruth Moore were sworn in and testified, requesting to place a 24'x 48' double-wide manufactured home on property they are purchasing for their residence. The manufactured home will be put on a block foundation.

Mr. Betts stated that property across the road known as Teal Point is a GR District which permits manufactured homes.

Nelson Hall was sworn in and testified that he is the owner of the property and in favor of the applicants putting a manufactured home on the property.

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, finding that the use will not adversely affect the neighborhood.

Case No. 5237--Franklin Lebo - West side of Route 565, 1,200 feet
northeast of Penn Central.

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. Frank Lebo was sworn in and testified, requesting to place a new 28'x 70' manufactured home on his property for his residence. He testified that the manufactured home will be placed on a block foundation and that there are other manufactured homes in the area, as near as on adjacent properties.

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, finding the use will not adversely affect neighboring properties.

Case No. 5238--Donna M. Reid - South side of Donald Drive, on the
west side of the intersection of Route
309, within Hitchens Development.

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. Donna M. Reid was sworn in and testified, requesting to place a 1985, 14'x 70' manufactured home on property in Hitchens Development, for her residence. She testified that there are other manufactured homes in the area.

Mr. Betts stated that there is an old dwelling on the property that will be removed.

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, finding that the use will not adversely affect the neighborhood.

Case No. 5259--Boyd H. Chaney, Jr. - East side of Route 42, at the intersection of Route 624.

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. Boyd Chaney, Jr. was sworn in and testified, requesting to place a new 28'x 68' double-wide manufactured home on his property for his residence. He testified that the adjacent properties are farmland, a Pulpwood Co. and a residence. The nearest manufactured home is $\frac{1}{4}$ mile away according to Mr. Chaney. Mr. Chaney testified that he plans to put the manufactured home on a permanent foundation.

Mr. Betts read letters of opposition from: H. Grier Staton, Irene L. Webb, Lillie L. McCartney, Mrs. R. H. Smith, Robert F. McCartney and Norman F. Ward.

There were 19 people present in opposition by a show of hands.

Marvin D. Transeau was sworn in and testified in opposition and presented a petition with 42 signatures of people in the immediate vicinity. Mr. Transeau stated that there are expensive homes in the area plus a tree farm. He fears the owner will create a strip development for other manufactured homes. He feels to permit the manufactured home will be a gross injustice to people in the area and will devalue property. Mr. Transeau stated he has no objection to a stick-built home. He stated that the manufactured home in the area was placed in 1974 on 98 acres, but has since been subdivided to allow two acres for the unit and was deeded to the owners son.

Kenneth Irvin Mann was sworn in and testified in opposition stating he owns property in the area and has restrictions against manufactured homes. He also fears the manufactured home will devalue property in the area.

Norman F. Lord was sworn in and testified in opposition stating the land is used as agricultural and prohibits any other uses.

Thomas E. Robbins was sworn in and testified in opposition stating he owns property in the area and he does not object to a dwelling being built, but opposes a manufactured home.

Grier Staton was sworn in and testified in opposition stating he owns 11½ acres with a house on it, located approximately ½ mile away. He has deed restrictions that prohibits manufactured homes.

Motion was made by Mr. Wheatley, 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 to denied, finding the use will adversely affect the neighborhood and adjoining property.

Case No. 5240--Zachary D. & Gina Rae Dowlin - North side of Route 54, ¼ mile west of Route 58B, Lot 13A, Swann Drive, within Swann Keys.

A variance from the side yard setback requirement.

This case was withdrawn.

Case No. 5241--Richard Sharp - East side of Route One, 700 feet north of Seabreak Drive.

A variance from the setback requirements for a tennis court.

The case was presented by Mr. Betts. William Paul West, of Land Tech, Inc. was present, sworn in and represented Richard Sharp, who requested a variance for the reduction of the setback distance of 50 feet to 10 feet for a private tennis court from the property lines and from a setback of 100 feet to 75 feet from existing dwellings. The tennis court will have typical cyclone fence around it.

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

Old Business

Case No. 5230 (cont'd.)--Decoy, Inc. - East side of Bunting Avenue, 50 feet south of Delaware Avenue, within the unincorporated part of Fenwick Island.

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

Mr. Betts testified that the applicants have told him they are going to withdraw their application and re-submit it, but have not done so yet.

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

Case No. 5207 (cont'd.)--George V. Brown - South side of Route 54,
50 feet northeast of Route 381, Lot 286,
within Keenwick Sound Subdivision.

A variance from the front yard setback requirement.

The case was reviewed by Mr. Betts.

After some discussion, motion was made by Mrs. Hudson, seconded by Mr. Mills and carried unanimously that the variance be denied, finding the Keenwick Sound Association is opposed to the variance and the use does not meet the requirements for a variance.

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

Meeting adjourned at 9:50 P. M.