

Minutes of December 7, 1998

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, December 7, 1998 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:05 P. M. with Chairman McCabe presiding. The Board members present were: Mr. McCabe, Mr. Callaway, Mr. Mills, Mr. Hudson, Mr. Wheatley, Mr. Berl-Esquire, Mr. Rickard-Chief Zoning Inspector and Mrs. Talley-Recording Secretary.

Mr. McCabe asked for any additions or changes to the agenda. Hearing none, motion was made by Mr. Mills, seconded by Mr. Callaway and carried unanimously that the agenda for December 7, 1998 be adopted. Vote 5-0.

Motion was made by Mr. Callaway, seconded by Mr. Wheatley and carried unanimously that the minutes of November 16, 1998 be approved as circulated. Vote 5-0.

Case No. 6749--Bessie West - North of Road 334, 1,880 feet west of Road 333.

A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. Mr. Rickard read the Inspector, Donna Mowbray's remarks concerning this case.

Mr. Hudson stated that he would not participate in this case due to a conflict of interest.

Bessie West of Dagsboro, was sworn in and testified requesting a 5'10" variance from the 10' side yard setback for a new double-wide manufactured home. Ms. West stated that she is going to remove an old house that is on the property now, and there will be only one living unit on the property and she will live in it.

There were no parties present in opposition.

Mr. Rickard read correspondence pertaining to this case from Gregory Hudson and Jeffrey Hudson voicing no objections.

Motion was made by Mr. Callaway and seconded by Mr. Mills that the variance be granted with the stipulation the old existing house be removed, with Mr. Hudson abstaining. Motion carried with four voting in favor and one not voting. Vote 4-0.

Case No. 6750--Nicholas & Stephanie Abbonizio - Southwest of Hassell Avenue, 100 feet north of Loretta Street, part of Lot 27 & 28, Bayview Park.

A variance from the front yard setback requirement.

The case was presented by Mr. Rickard. Nicholas Abbonizio of Havertown, PA, was sworn in and testified requesting a 15' variance from the 30' front yard setback requirement on Lots 27 & 28, within Bayview Park. Mr. Abbonizio stated that the property is irregular in shape and reduces the buildable area. He proposes to build a 3000 sq. ft. house on the two lots and needs a variance. He testified that the property is the same as it was when he purchased it. In answer to Mr. Mills question, he stated that the dock was there when he purchased the property and the whole subdivision was already divided when he bought his lots.

Mr. Rickard stated that he had received correspondence from 19 people in opposition voicing concerns in regard to the existing house already non-conforming; property values; can be built within the limits; will set a precedent, obstruct views and there is no hardship.

Robert Lewis of Bethany Beach, was sworn in and testified representing the Association who is opposed to the variance. He read a letter from John Hendricks voicing opposition. He stated that an average has been set on the lots and feels ample room should be there. He referenced blocking view; detrimental; out of scale; out of character; will set a precedent; feels there is plenty of room to keep within the character of the neighborhood and he feels there is no hardship. It is their feeling it is a convenience and should not be granted. Mr. Lewis stated that it is also his opinion that the variance should not be granted, that the house proposed is larger than the lot. He stated that the average setback on the street is 20'.

Mr. Rickard stated that he knows the average is in the 20's.

In answer to Mr. Mills, Mr. Lewis stated that there are no deed restrictions that the Association has. They have tried to keep everything uniform. He stated that at one time the property was heavily wooded and the bay could not be seen. In answer to Mr. Callaway, he stated that he would have to consult with the Association to see if they would be satisfied if a Zoning Inspector went down and did an average.

Linda Morrow of Bethany Beach, was sworn in and testified in opposition. She stated that the lots had been previously granted a variance in the rear of the property. She voiced concern about a structure being built larger than the lot; variance not necessary; a variance is not necessarily the answer; feels that character of the neighborhood is threatened; that Hassell Ave. is

the main road in Bayview; the property is on a curve; parking; concerned about safety and visability. She stated that there are no covenants in Bayview Park, that they go according to the Sussex County Code. She feels if the applicants build a two story house in place of a one story home, it will not cause any problems. She would like to see the property preserved and the variance denied.

Mr. Rickard stated that the applicants property is in a flood zone and would be built on pilings.

By a show of hands there were 27 people present in opposition.

Mr. Abbonizio stated that they had planned to park their cars under the house.

Mr. Rickard corrected his statement pertaining to letters received. He stated that 23 letter of opposition had been received instead of 19.

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 Mr. Callaway and carried unanimously that the case be tabled and have a Zoning Inspector go down to Bayview Park and determine an average on Hassell Avenue, and that the hearing be left open for the Bayview Park Association to respond in writing within ten working days. Vote 5-0.

Case No. 6751--Donna Bath - East of Road 352, Intersection of Road 353, Lot 29, Pine Grove.

A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. Donna Bath of Ocean View, was sworn in and testified requesting a 4" variance from the side yard setback for an existing garage on Lot 29, within Pine Grove. Ms. Bath stated that a mistake was made when the garage was built.

Mr. Rickard read correspondence received from Lottie MacConnell, owner of Lot 30, within Pine Grove, voicing no objections.

There were no parties present in opposition.

Motion was made by Mr. Callaway, seconded by Mr. Mills and carried unanimously that the variance be granted. Vote 5-0.

Case No. 6752--Dominic & Leslie Marra - East of Route One, 450 feet north of Road 58, Lot 9.

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

The case was presented by Mr. Rickard. Leslie Marra was sworn in and testified requesting a 5' variance from the front yard setback requirement and a 3' variance from the side and rear yard setbacks to construct a new home. The applicants want to tear down an existing old house and build a new one. She stated that it is in the beach area and she feels the new home will enhance the area. They are Lot 9 on Route One, north of Road 58.

Mr. Rickard read correspondence received from Endre G. & Sylvia B. Biro who own property adjacent to the applicants and are opposed to the application.

Albert James Reidinger of Clifton, VA and who own Lot 7, within Bay View Park was sworn in and testified in opposition. He read a prepared statement and submitted copies to the Board. He asked that no residence be allowed to built on Lot 9 less than 14 feet from the common lot line. He feels it will create a potential fire hazard to both residences if they build closer. He referred to a previous fire in the area from cooking out on a grill and that fire equipment could not get to the fire and a hand-pump had to be used.

Mrs. Marra in rebutal stated that they have a gas grill that will be placed on a deck. She presented pictures and stated that space will be gained in the front of the property.

Dominic Marra of Middletown, was sworn in and testified that there are houses and townhouses all along the street that are hooked together and other townhouses in the area. He does not feel that great opposition has been presented. They propose to build a single family home.

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. Mills, seconded by Mr. Hudson and carried unanimously that the case be tabled until the next meeting to give the Board members a chance to look at the property again. Vote 5-0.

Case No. 6753--John A. Delligatti - East of Road 279, Lot F-45,  
West Bay Mobile Home Park.

A variance from the side yard setback requirement.

The case was presented by Mr. Rickard, and he read a statement from the applicant pertaining to his request and stating that he has a deteriorating condition and needs to erect a wide deck with a ramp and stairs running along the home from the driveway to facilitate entry to the front door.

John Delligatti of Wilmington, DE, was sworn in and testified requesting a 3'6" variance from the side yard setback on Lot F-45, within West Bay Park. He proposes to build a new home and needs a variance for entrance ramps. He stated that there is no opposition from his neighbors or the Association.

Mr. Rickard read correspondence from West Bay Community Management, Fred M. Calhoun voicing no opposition.

There were no parties present in opposition.

Motion was made by Mr. Wheatley, seconded by Mr. Callaway and carried unanimously that the variance be granted. Vote 5-0.

Case No. 6754--Martin S. Fidler - South of Road 306A, south of  
Vacation Road, Lot 23, Holiday Pines.

A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. Martin S. Fidler of Millsboro, was sworn in and testified requesting a 18" variance from the side yard setback requirement and a 10" variance from the side yard setback requirement on Lot 23, within Holiday Pines. Mr. Fidler stated that he purchased the property in May, 1993 and when he had a survey done for sale of the property, the encroachments were found. A shed, the manufactured home and deck are in violation. An 18" variance from the side property line is needed for the manufactured home and deck and a 10" variance is needed for the shed.

There were no parties present in opposition.

Motion was made by Mr. Callaway, seconded by Mr. Mills and carried unanimously that the variance be granted. Vote 5-0.

Case No. 6755--Walter Wright, Jr. & Joyce Long - Southwest of Road  
92, northwest of Road 375.

A variance from the minimum lot width requirement.

The case was presented by Mr. Rickard. Joyce Wright of Frankford was sworn in and testified requesting a 16' variance from the 150' width on a second lot. Ms. Wright stated that her name is now Joyce Wright. She stated that it was her parents property and her daughter and husband are going to purchase the property and need a 16' variance. She wants the lot next to it for herself. She stated that there are no further plans to sell the property and it will be kept in the family

There were no parties present in opposition.

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

Case No. 6756--Glenn & Susan Henicle - West of Route One, west of  
Loretta Street, Lot 34, Bay View Park.

A variance from the front yard setback requirement.

The case was presented by Mr. Rickard. He stated that 14 letters of opposition had been received voicing concerns in regards to property values affected; can be built within the limits; will set a precedent; obstruct views and there is no hardship.

Steven Bilobran of Bethany Beach, was sworn in and testified representing the applicants who requested a 15.3' variance from the front yard setback of 30' on Lot 34, within Bay View Park, to construct a new dwelling. Mr. Bilobran stated that both application 6756 and the next case No. 6757 are the same with the same applicants.

The Chairman stated that both Case No. 6756 for Lot 34 and Case No. 6757 for Lot 35, would be heard together and all evidence would be incorporated into Case No. 6757.

Mr. Bilobran stated that the applicants are requesting the minimal amount of variance due to the uniqueness of the lots. He read from prepared pamphlets and presented them to the Board. He stated that all of the lots gained 5' from previous court cases. He referenced other property owners within the Development who have had variances. He stated that it is a small variance requested; no hazard to anyone; minimal variance and will not harm views of the adjoining neighbors homes, He referenced the neighbors property across the street. Mr. Bilobran stated that the lots have been

vacant and when they are built on some of the view will be lost; that they are on a dead end street; conforming to the existing houses; other properties have gotten variances; referenced the bulkhead put in by the present owner Mrs. Myers and mentioned the actual road not being where it is supposed to be. He presented signatures in favor of the variance and also presented pictures.

Mr. Rickard stated that the 25 signatures presented in favor also pertain to Case No. 6757.

Charles Zonko of Fenwick Island and mailing address Selbyville, was sworn in and testified in behalf of the application. He explained the type of house to be constructed and showed the plans. It will be a two story house on pilings and will have four spaces under the house for parking. He stated that the existing house on Lot 35 is too old to remodel and it will be torn down and they will rebuild. He stated that the lot is unique and it will encroach 7' closer than the existing house. He feels it will add to the value of other homes, will conform nicely and it will enhance the neighborhood. Mr. Zonko stated that the dwelling will not be used for rental. A copy of the plan was presented to the Board.

Susan Henicle of Waynesboro, PA, was sworn in and testified that they had previously owned a condo and found that they need more space for family to visit. She stated that they will continue to maintain the end of the street as Mrs. Myers has done.

Harry Crigger of Ocean View was sworn in and testified in behalf of the application, stating that he is the listing agent for the property. He read a message from Mrs. Myers, who he stated could not be present due to an injury. The message referenced Loretta Street were the properties are located; the homes that exist and homes that have been built, and she does not feel the applicants house will change the character of the development.

Robert Lewis of Bethany Beach, sworn in on Case No. 6750 also represented Bayview Park Association on these cases. He stated that they have the same opposition as he presented on Case No. 6750. He stated that the house being 5' from the street is not acceptable. He questioned the letter with the signatures in support. He also presented four more signatures of opposition.

By a show of hands there were 27 people present in opposition, and 6 people present in support of the application.

At the request of the opposition Mr. Rickard read the 25 names of the people who signed the letter presented in support of the application.

William E. Feher of Bethany Beach, was sworn in and testified in opposition, stating that he owns property at 105 Loretta St. and has lived there two years. He stated that he bought the property because of the character of the park. Mr. Feher stated that he is a year round resident and never had a variance. Mr. Feher expressed concerns about his view; character of the neighborhood; homes being too close to the street and he feels it does not justify a variance.

Mr. Feher was told that prior to his purchasing his property a variance had been granted in 1986.

Barry Kelly a resident of Bay View Park, was sworn in and testified in opposition stating that the applicants do not own the property yet. He feels they are trying to squeeze a big house on one lot and since they own Lots 34 & 35, why not combine both lots and build on both lots and meet the requirements.

Linda Morrow sworn in on Case No. 6750, testified in opposition to both cases. She read a prepared statement in opposition and referenced the amount of setback requested saying it is unacceptable for the park and Sussex County. She stated that they are trying to keep some of their green and does not want anything to happen like Ocean City, MD. She feels the request is out of character with the neighborhood and that squaring off a building is not reason for a variance. She stated that once a variance is granted the precedent is set and others could follow. She also stated that the road in the development is where it is supposed to be and presented a plot plan.

Mr. Spencer of Bethany Beach, who owns property across the street, was sworn in and testified in opposition, stating that the people in the development have worked within the covenants and that permitting this variance will cause more to come in the park. He stated that it will impact the whole park. He also stated that three of the people who were on the list of signatures in support do not live within the park.

Motion was made by Mr. Callaway, seconded by Mr. Mills and carried unanimously that Case No. 6756 and Case No. 6757 be taken under advisement.

At the conclusion of the public hearings, the Chairman referred back to Case No. 6756 and 6757. After some discussion, motion was made by Mr. Mills, seconded by Mr. Callaway and carried unanimously that Case No. 6756 and Case No. 6757 be tabled and have a Zoning Inspector go down to Bay View Park and determine an average on the street and the hearing be left open for the Bay View Park Association to respond within 10 working days. Vote 5-0.

Case No. 6757--Glenn & Susan Henicle - West side of Ruote One, west  
of Loretta Street, Lot 35, Bay View Park.  
A variance from the front yard setback requirement.

The case was presented by Mr. Rickard with Case No. 6756.

The Chairman stated that all testimony heard on Case No. 6756 would be incorporated into this case.

At the conclusion of the public hearings, the Chairman referred back to Case No. 6756 and 6757. After some discussion, motion was made by Mr. Mills, seconded by Mr. Callaway and carried unanimously that Case No. 6756 and Case No. 6757 be tabled and have a Zoning Inspector go down to Bay View Park and determine an average on the street and the hearing be left open for the Bay View Park Association to respond within 10 working days. Vote 5-0.

The Board took a five minute recess. Mr. McCabe called the meeting back into session at 9:25 P. M.

Case No. 6758--Geoffrey & Jill Elliott - Southeast of Route 18,  
Doe Drive, Lot C-16, Deerwood.  
A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. Geoffrey Elliott was sworn in and testified requesting a 3.3' variance from the side yard setback of 5' for a carport, on Lot C-16, Deerwood. Pictures were presented. Mr. Elliott stated that the carport has been on the property for approximately two years where the existing driveway is. Mr. Elliott stated that at the time he put the carport on the property he thought it was in compliance. A new survey showed the carport is not in compliance. Mr. Elliott is requesting to keep it at its present location. He stated that there is no active Association in the development.

Mr. Rickard read letters of opposition from Esther Sach, and Rick Simmons who own property in the development and want to sell their properties. In answer to questions from the Board, Mr. Rickard stated that there have been no complaints nor have the applicants been cited prior to this application.

Mr. Mills stated that deed restrictions and covenants take precedent over the County.

In answer to Mr. Wheatley's question, Mr. Elliott stated that it is the only location to put the carport on the property because of a concrete sidewalk, trees and drainage fields. He also stated that he thought he was in compliance since he went by a red stake that was on the property.

There were no parties present in opposition.

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. Mills, seconded by Mr. Wheatley and carried unanimously that the variance be granted, finding the use will not detract from the neighborhood. Vote 5-0.

Case No. 6759--John Szemelynec - South of Route One, Golden Avenue,  
Lot 47, Sea Air Mobile Home Park.

A variance from the separation requirement between units in a mobile home park.

The case was presented by Mr. Rickard. George Littleton of Milton, was sworn in and testified representing the applicant, who requested a 3'4" variance from the 20' setback requirement between units in a mobile home park, on Lot 47, within Sea Air Mobile Home Park. He stated that the applicant purchased the property a year ago and refurbished the porch, and was violated by Mr. Bunting, Zoning Inspector because of the encroachment.

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. Vote 5-0.

Case No. 6760--Robert L. & Patricia A. Price - Southwest of Road  
474, 2,500 feet southeast of Route 9.

A variance from the minimum lot width requirement.

The case was presented by Mr. Rickard. Robert Price was sworn in and testified requesting a 19.9' variance from the 150' lot width requirement for a lot. Mr. Price stated that he sold property to his son and they built houses side by side. They decided to run a line and divide the property. His son sold his property and now Mr. Price wants to straighten the line.

There were no parties present in opposition.

Motion was made by Mr. Mills, seconded by Mr. Hudson and carried unanimously that the variance be granted as presented. Vote 5-0.

Case No. 6761--Eugene Weber, Jr. - Intersection of Crazy Lane and Fourth Street, Units C-1 thru C-4, Bay Vista.

A variance from the rear yard setback requirement.

The case was presented by Mr. Rickard. Eugene Weber, Jr. was sworn in and testified requesting a 5'1" variance from the rear yard setback on Units C-1 thru C-4, Bay Vista, to build a 12'x 14' sunroom over a hot tub. He stated that there are wetlands behind his property and no hoses. He stated that there is no Association in Bay Vista and the use will not affect anyone but himself.

There were no parties present in opposition.

Mr. Rickard read a letter of opposition from Ronald T. Moore, Trustee, who owns property in the area.

Motion was made by Mr. Mills, seconded by Mr. Callaway and carried unanimously that the variance be granted, finding that there are wetlands and open space behind the applicants property and the use will not adversely affect other properties. Vote 5-0.

Case No. 6762--Richard W. & Lynn S. Fitchett - East of Route 30, 820 feet north of Route 9.

A variance from the front yard setback requirement.

The case was presented by Mr. Rickard. Richard Fitchett of Georgetown, was sworn in and testified requesting a 13' variance from the 40' front yard setback requirement to construct a 22'x 24' two car garage to be 27' from the front property line. He stated that the lot next to him is vacant.

There were no parties present in opposition.

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

Motion was made by Mr. Callaway, seconded by Mr. Mills and carried unanimously that the variance be granted. Vote 5-0.

Case No. 6763--William & Patricia Thompson - East of Road 493, 1/2 mile north of Road 494.

A special use exception to place a second on-farm manufactured home.

The case was presented by Mr. Rickard. Patricia Thompson of Laurel, was sworn in and testified requesting to place a 2nd. manufactured home on their farm for a tenant to live in and help with chickens. They have a chicken farm with three chicken houses. She stated that they work away from the farm and need help with the chickens. She stated that her son lives in the existing manufactured home and does not work on the farm.

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 2nd. on-farm manufactured home. Vote 5-0.

#### OLD BUSINESS

Case No. 6744 (cont'd.)--Pelican Square - West of Route One, Intersection south of Road 283.

A variance from sign requirements.

Mr. McCabe reviewed the case. After some discussion, motion was made by Mr. Mills, seconded by Mr. Hudson and carried unanimously that the case be tabled until the next meeting to give the Board Members time to revisit the site. Vote 5-0.

Motion was made by Mr. Mills, seconded by Mr. Hudson and carried unanimously that the meeting be adjourned. Vote 5-0.

Meeting adjourned at 10:15 P. M.