

Minutes of December 15, 1997

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, December 15, 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, Mrs. Hudson, Mr. Mills, Mr. Wheatley, Mr. Jones-Attorney, Mr. Rickard-Chief Zoning Inspector and Mrs. Talley-Recording Secretary.

Motion was made by Mr. Wheatley, seconded by Mr. McCabe and carried unanimously that the minutes of December 8, 1997 be approved as circulated. Vote 5-0.

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

Case No. 6459--Joseph R. Hudson, et al. - North side of Route 264, & Road 258, southwest of Route One.

A special use exception for outdoor display for promotional activities and tents.

The case was presented by Mr. Rickard. John Sergovic, Attorney, was present representing Joseph R. Hudson, et al., who requested a special use exception for outdoor display for promotional activities and tents. The applicant wishes to have a limited number of events on his property located next to the Eagle Crest Air Park. Mr. Sergovic stated that they no longer want to include punkin chunkin, which has been an event held on their property previously. They do not wish to have punkin chunkin a part of the application, because they have outgrown the amount of land used for the event. The applicant proposes to have 8 events in a calender year and limited to events being sponsored or benefitted in part for charity. Punkin chunkin and the Beach Boys Concert were events held on the property. Mr. Sergovic read from the Sussex County Code pertaining to the amount of events the Director can approve which is three (3). The applicant decided to come before the Board for approval of 8 and have control of the events. Letters of support were presented from neighbors and the Delaware Bay Authority offering their input. The land will be utilized for charitable events.

Craig Hudson was sworn in and testified explaining how the traffic will flow, stating that the traffic will be better controlled. The property incompasses 70 acres. They propose to put the stage on the north end of the property near the Church. He stated that the main entrance will be from Route 241. Traffic will

exit on Route 264 going to Milton or Route one. There will be a fence between the runway from the airstrip and the access road. He stated that it will be different than what it was for the Beach Boys Concert.

Mr. Sergovic stated that he had a letter from Dennis Forney with the Cape Gazette in support. Mr. Sergovic stated that Mr. Forney has worked with sponsors especially for the Beach Boys Concert.

Craig Hudson stated that there is a need for this type of use in the area. He stated that the property is large enough and has plenty of parking and is out of the way from Rehoboth.

Mr. Sergovic referenced University of Delaware events, to which Mr. Hudson said that he had attended some of the events. Mr. Sergovic questioned Mr. Hudson about traffic problems.

Craig Hudson stated that they can handle 2,000 cars per 15 minutes.

David Tumatto was sworn in and testified that they had four state police and six volunteers to direct traffic. The police were at Route One and the six volunteers were in the parking areas. They had 6,000 to 7,000 vehicles and moved 2,000 vehicles per 15 minutes. In one night it took 45 minutes to 1 hour to move the vehicles.

Mr. Sergovic stated that the uses serve a public need and the land is used for charitable events that will be limited to 8 events. They will make certain improvements are made to accommodate the events, and punkin chunkin will not be a part of the events.

Mr. Mills questioned a letter from Geo and Genie Hindall presented to the Board in which the letter referenced three events per year and questioned them being all day events.

Craig Hudson stated that the amount of events were incorrect that the reference to three events was in the Zoning Code and in answer to all day events, he stated that is what they are planning, but they do not know if it will end up that way. He stated that it is a fly-in resident community and he thought the letter was referencing fly-in antique airplanes.

Mr. Mills asked if there was 12,000 people maximum at the events.

Mr. Sergovic stated that maybe 15,000 is more accurate.

Craig Hudson stated that the Beach Boys Concert promoters gave out 17,000 tickets for the concert. They do not know the accurate count of people.

Mr. Mills asked if the special use exception is approved does the applicant face variances for height or setback requirements. He referenced a tower. He also asked if the applicant is aware of the County setback and height requirements, and if all events are charitable.

Craig Hudson stated that there would be a sign put up as to what event would be at the property and that they are aware of the County requirements. Mr. Hudson stated that they would contact local charities and they maybe would give their help.

Mr. Mills asked what a reasonable, maximum, amount of people would be.

Mr. Hudson stated that it would safe to say not to exceed 15,000 people.

Mr. Sergovic stated that they should probably go to almost 20,000 people.

Mrs. Hudson asked if there would be enough parking provided.

Craig Hudson stated that there is 2,800 parking spaces.

Mr. Sergovic stated that there is emergency access adjacent to the parking grounds on the west side of the grounds. He stated that there are 2,500 to 2,600 parking spaces in another area.

Mr. Rickard referenced the letters presented by Mr. Sergovic in support of the application from: Maryann K. Ryan, Cynthia S. Small, Executive Director of Sussex County Convention and Tourism Commission, Geo & Genie Hindall, Michael R. Owens, Director of Operations Cape May-Lewes Ferry, Delaware River and Bay Authority, and Dennis Forney, with the Cape Gazette.

By a show of hands there were 14 people present in oppsition.

Charles McKeown was sworn in and tesified in opposition, stating that he lives in Eagle Crest and that the people who sent letters in support do not live there. He stated that he does not oppose events, just the location. He read from a prepared statement, citing runways, aircraft dangers, and how people and aircraft do not mix, trash, and the negative affect to property values. He stated that Eagles Crest offered a quiet community. He presented his statement along with 10-12 signatures of residents in

opposition.

Richard Malone was sworn in and testified in opposition and made reference to the punkin chunkin event and the Beach Boys Concert. He stated that the punkin chunkin event was set up on his side of the property and that 2,000 people walked through his yard. He stated that they have had to deal with motorcycles and dirt bikes and figure eights being made on his property. Also, with the camping over night there have been problems. He feels they are prisoners in their own yard. He stated that there were pumkins thrown in their yard and a break-in on their vehicle. He feels the security for the events has been inadequate. He stated that campfires are also a problem and turning around in his driveway. He stated that it takes more than one day to set-up for the events. He feels it is not safe for his children or family to be out after dark. He stated that with the stage change to be up against the Church it will have people going through the yard.

Robin Melchiorre was sworn in and testified in opposition and read three letters from residents including herself, in opposition, with 10 signatures. The letters referenced deed restrictions, traffic and disturbing the peace. She feels the events should be held in a commercial zone and not a residential zone.

Serenda Ruth Connor was sworn in and testified in opposition stating that she lives across the road from the applicants property and is concerned because her house is in the woods. She is concerned about traffic, safety and her child. She is concerned about the number of people at the events and how it could affect the residents in the neighborhood. She applauded the Beach Boys Concert saying that it was handled good. She feels however that the events need a better location.

Kenneth John Philcox was sworn in and testified in opposition stating that he is a resident of Eagle Crest Subdivision. He read a letter of opposition. He stated that having worked around aircraft he feels danger in having people around the aircraft runway and he feels that the use will devalue his property.

Otis J. Clifton was sworn in and testified in opposition stating that he owns property adjacent to the applicants property. He feels the applicant has no respect to adjacent properties. He rents farmland and there have been people and vehicles in the soybean fields. He feels the security is inadequate. He stated that nobody in the community is in favor of the application. He stated that he owns property adjacent to the end of the runway, but does not live there. He stated that putting the stage to the north of the property will put the noise further away from Mr. Hudson and closer to the Church.

Terri Clifton Malone was sworn in and testified in opposition stating that she feels the applicant has no respect for private property. She stated that the property of the applicant is 100 yards from her house, and they have people going through their yard. She fears the events will grow in size and there will be more of them. She has concerns about the camping and camp fires. She stated that they will not know who will sponsor the events or if the events will outgrow the 70 acres.

Mr. Sergovic in rebuttal stated that they cannot direct sponsors of the events.

Joseph Hudson was sworn in and testified that there have never been any ruts on the runway and there will be a barrier between the runway and area where the concerts are to be held. He stated that there has never been a disaster, but could be a potential problem. He stated that he is aware of the problem with walking across Mr. Malone's property. He stated that he thought that most people were very ruly and orderly. He stated that all of the residents had free tickets and some of them were at the concert.

Craig Hudson in answer to Mr. Sergovic's question, stated that there could be a curfew time, but a reasonable time is around 11:00 P. M. and they could impose a starting time no earlier than 9:00 A. M. and he agrees with there being no over night camping. He stated that they were not in control of the punkin chunkin event, they only rented the land. In reference to security he stated that if there were 10,000 people, there would be 20 security people, which would be more than adequate. In answer to Mr. Mills question, Mr. Hudson stated that they intend to run the events. He stated that with the 8 events, they propose to have two events in the summer, starting with July 4th., then on weekends after that. He stated that if it were a festival similar to an Italian festival, the event could need two days. Carnival type things are not their intent. They may do fireworks.

Mr. Mills questioned how they can assure the residents they will keep things under control, and what can be done to prevent people from going through the Malone's property.

Mr. Craig Hudson stated they think they can control things, but cannot guarantee it, but feels fencing will do a lot. He showed the Malone's the location of the fencing to be put up and that the stage will be 800' from their property line.

Mrs. Malone stated in answer to Mr. Mill's question, that she feels a fence will help.

Joseph Hudson stated that the fence will go along the property

out to the dual highway. He stated in answer to Mrs. Hudson's question that the fence a 6' tall chain link fence.

Mr. Jones asked if the events will cause the airstrip to close down.

Craig & Joseph Hudson stated that it would not, that people in the community want an air show. Joseph Hudson stated that it would close down only if an air event was requested.

Kenneth Philcox stated that a fence cannot always keep young people out, especially from a concert. He expressed concern about a airplane hitting someone.

Robin Melchiorre stated that there will be 10,000 to 15,000 people every three weeks attending the events.

Joseph Hudson stated that most of the complaints can be eliminated with fencing. He stated that an airplane can fall any place and that there are always risks in everything. He stated that there will no night time camping.

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 case be tabled. Vote 5-0.

Case No. 6471--Applebees Restaurant - Southeast side of Route One,
1,035 feet northwest of Route 271.

A variance from the requirements for signs.

The case was presented by Mr. Rickard. Larry E. Holding was sworn in and testified, requesting to place a 2nd. pylon ground sign on property for Applebees Restaurant. The sign will be 6'1"x 11', 66.913 sq. ft. Mr. Holding stated that he was before the Board for the same application previously, but the case had to be rescheduled and was not acted upon. Applebee's Restaurant is located in the Rehoboth Outlets. He stated that he sign will have a height of 10' and be 11' wide. He stated that the sign will meet all County and State setback requirements.

There were no parties present in opposition.

Motion was made by Mr. Wheatley, seconded by Mr. McCabe and carried unanimously that the variance for a second ground sign be

granted. Vote 5-0.

Case No. 6480--Diane R. & Stephen Dempsey - East side of Route 22,
Lot 6, within Lingo Estates MHP.
A variance from the side yard setback requirements.

The case was presented by Mr. Rickard. Diane R. Dempsey was sworn in and testified, requesting a 5' variance to meet the 10' side yard setback requirement on Lot 6, within Lingo Estates MHP, for a covered porch. Ms. Dempsey stated that they had moved a manufactured home onto the lot and had a porch. The porch encroaches into the side yard setback. She stated that the lot next to her is empty and for sale. She presented a memo that she took to the neighbors and the Homeowners Association prior to the meeting tonight. She stated that variances have been approved on Lots 11 & 42. She stated that she could move the porch, but would like to keep it where it is. She presented a letter from Audrey Lingo, President of the Homeowners Association and a picture.

Mr. Rickard read the letter presented in support of the application with 8 signatures, including the President of the Homeowners Association's signature.

There were no parties present in opposition.

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

Case No. 6481--Rescheduled.

Case No. 6482--John W. Myers, Jr. - East side of Tennessee Drive,
225 feet north of Georgia Drive, northwest
of Road 363, Lot 119, within Plantation
Park, Sec. II.

A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. John W. Myers, Jr. was sworn in and testified, requesting a 3.3" variance from the 10' side yard setback requirement for a porch addition, located on Lot 119, Plantation Park. Mr. Myers stated that he purchased the property in September and did not know the porch encroached. He presented a letter from the Community Association.

Mr. Rickard read the letter into the record from the Plantation Park II Committee, Marvin Mouser, President, in support of the application.

There were no parties present in opposition.

Motion was made by Mr. McCabe, seconded by Mr. Wheatley and carried unanimously that the variance of 3.3" be granted. Vote 5-0.

Case No. 6483--Michael & Iris McCabe - West side of Route 82, on the north corner of Route 407.

A variance from the setback requirements for a commercial poultry structure.

The case was presented by Mr. Rickard. Michael & Iris McCabe were sworn in and testified, requesting a 7' variance from the 50' setback requirement for a commercial poultry structure. The structure will be 43' from the south property line. A drawing was presented. Mr. McCabe stated that he had to give 10' of his property up when they paved Road 407. He has two existing poultry houses and putting in two more. One is in need of a variance and the other is back in the woods. They are tearing down an old poultry house to build a new one.

Mr. Wheatley asked if the the applicants had a 53' setback before the road was widened, and after the widening it was 43' from the property line.

Mrs. McCabe said that that was correct.

There were no parties present in opposition.

Motion was made by Mr. Wheatley, seconded by Mr. Mills and carried unanimously that the 7' variance be granted. Vote 5-0.

Case No. 6484--Bradley W. Hall - Northwest side of Route 333, 520 feet northeast of Route 331.

A special use exception to place two manufactured homes to be connected and used as one single family unit.

The case was presented by Mr. Rickard.

There were no parties present representing this case.

Mr. Callaway stated that the case would remain open until the end of the meeting to give 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 the case and there were no interested parties present.

Motion was made by Mr. McCabe, seconded by Mr. Mills and carried unanimously that the special use exception be denied due to lack of representation and the applicant cannot reapply for a similar application for a period of one (1) year. Vote 5-0.

Case No. 6485--Scott Waxman - North side of Route 16, Bayshore Drive, Lot 14, Broadkill Beach.

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

The case was presented by Mr. Rickard. Scott Waxman was sworn in and testified requesting a 14' variance from the front yard setback requirement and a 3' variance from the side or corner setback requirement. The property being Lot 14, Bayshore Drive, Broadkill Beach. Mr. Waxman stated that he had relied on the builder to get the necessary permits and approvals. He realized a permit had not been obtained, therefore, there was nothing showing the setback requirements. He stated that it is a vacation property, but he is there quite a bit of the time. He requested to put the existing lot within the guide lines and recognize the recently built porch in the front of the dwelling. He stated that the lot next door is an empty lot, and to the rear there is an elderly couple that are not full time residents.

Mr. Mills asked the name of the builder.

Mr. Waxman stated that First State Builders, Rick Corson, had built the structure.

Mr. Wheatley questioned who was to get the building permit.

Mr. Waxman stated that Mr. Corson was to get the permit, and that he had stood on the lot with the builder and discussed the setbacks. He purchased the property in 1983. The dwelling was built in the 1960's and is 12' from Bayshore Drive, not the porch. He stated that the house has encroached since it was built.

Mr. Rickard stated that the shortest width of a lot is determined to be the front on a corner lot.

There were no parties present in opposition.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that a variance of 14' from the front yard

and a variance of 3' from the side yard setback requirements be granted. Vote 5-0.

Mr. Rickard explained to the Board how a permit is obtained and that the person getting the permit is told the setbacks. He stated that the builder or homeowner is told what the setbacks are. He estimated that 98% of the builders are aware of the setbacks.

Case No. 6486--Jay Mervin & Sharon Witmer - Route 341, Lot 244,
within Dogwood Acres.

A variance from the front yard setback requirement.

The case was presented by Mr. Rickard. Jay Mervin & Sharon Witmer were sworn in and testified requesting a 5' variance from the front yard setback requirement of 30' to be 25'. The applicants explained that they had purchased the property in May, 1997, but the existing home was too bad to live in or repair. So they put another home on the property. After the home was in and all setup they found that there was an encroachment after they had applied for the Certificate of Compliance. The new home is larger than the old one and had to be set in the opposite direction.

Mr. Rickard stated that there has been a problem with setbacks on South Dogwood Drive for a long time.

There were no parties present in opposition.

Motion was made by Mr. McCabe, seconded by Mr. Mills and carried unanimously that the 5' variance from the front yard setback requirement be granted. Vote 5-0.

Case No. 6487--Craig W. & Juanita D. Littleton - West side of Route
13A, 2,250 feet north of Route 501.

A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. Craig & Juanita Littleton were sworn in and testified, requesting a 8'10" variance from the 15' side yard setback requirement to add a 15'8" bedroom addition to their home. They stated that their granddaughter uses the attic for sleeping and they want to have her bedroom downstairs. They stated that the dwelling has been on the property for approximately 30 to 40 years, but they have owned it since 1985. They had the property surveyed when they bought it.

There were no parties present in opposition.

Motion was made by Mrs. Hudson, seconded by Mr. Mills and carried unanimously that the 8'10" variance be granted. Vote 5-0.

Case No. 6488--Avis C.Mannino - South side of Route One,
Whisperwood Lane, Lot 1, Block 6, within
Breezewood.

A variance from the front yard setback requirement.

The case was presented by Mr. Rickard.

There were no parties present representing this case.

Mr. Callaway stated that the case would remain open until the end of the meeting to give 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 the case and no interested parties present.

Motion was made by Mr. Mills, seconded by Mr. McCabe and carried unanimously that the variance be denied, due to lack of representation and the applicant cannot reapply for a similar application for a period of one (1) year. Vote 5-0.

Case No. 6489--Nanticoke Sportsmen's Club - West side of Route 485,
840 feet north of Road 488.

A special use exception to operate an indoor
archery and pistol range.

The case was presented by Mr. Rickard. Paul Howeth, Jr. was sworn in and testified representing Nanticoke Sportmen's Club, and was represented by John Sandy, Attorney. The applicants wish to convert a new 100'x 32' block storage building to be used for an indoor archery and pistol range to be used by members and guests. They stated that the use will not infringe on the neighbors and will alliviate some of the noise. Mr. Sandy stated that the by-laws limit the use to membership. They have 260 members and each member can have a quest come three times. He stated that currently the Police and Department of Corrections use their facilities. He stated that the boy scouts use it two times a year. They will make the new facility available to them also. The new building will eliminate noise outside.

Mr. Rickard read a letter from Phil Townsend with the Sussex Correction Institute in support of the application.

Mr. Mills asked if they plan to leave their outdoor range open.

Mr. Sandy responded that they plan to leave the outdoor range open.

By a show of hands there were 12 people present in favor of the application.

There were no parties present in opposition.

Motion was made by Mr. Wheatley, seconded by Mrs. Hudson and carried unanimously that the special use exception be granted for a period of five (5) years. vote 5-0.

OLD BUSINESS

Case No. 6473 (cont'd.)--Joseph Deramo - West side of Colgate Drive, Lot 27, within Maplewood.

A variance from the side yard setback requirement.

Mr. Callaway reviewed the case.

Mr. McCabe stated that he had visited the property and he feels the error was not intentional.

After some discussion, motion was made by Mr. McCabe, seconded by Mr. Mills and carried unanimously that the variance be granted, finding the use will not adversely affect the neighborhood. Vote 5-0.

OTHER BUSINESS

Executive Session to conduct a strategy session involving legal advice or opinion from an attorney-at-law with respect to pending or potential litigation.

(Added to Agenda 12/12/97, when need for Executive Session became apparent.

Motion was made by Mr. Mills, seconded by Mr. McCabe and carried unanimously that the Board go into Executive Session. Vote 5-0.

The Board members present were: Mr. Callaway, Mr. McCabe, Mrs. Hudson, Mr. Mills, Mr. Wheatley, Mr. Jones-Attorney and Mr. Rickard-Chief Zoning Inspector.

The Board met with its legal counsel to hold a strategy session with respect to potential litigation on Case No. 6479. The Board discussed with its legal counsel references to possible litigation against the Board, both as a public body and its individual members, made by the Applicant prior to the public hearing, at the public hearing, and in written submission to the Board. Legal counsel discussed with the Board its legal obligations with respect to rendering a decision on Case No. 6479, as those obligations related to the possibility of future litigation. No decisions were made by the Board and no votes were taken.

Motion was made by Mr. Mills, seconded by Mr. McCabe and carried unanimously to go out of Executive Session. Vote 5-0.

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

Meeting adjourned at 9:50 P. M.