

Minutes of December 19, 1994

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, December 19, 1994 in the County Council Chambers, Room 115, 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, Mrs. Hudson, Mr. Mills, Mr. Wheatley, Mr. Callaway, Mr. Jones-Attorney and Mr. Betts-Zoning Inspector III.

Motion was made by Mrs. Hudson, seconded by Mr. Wheatley and carried unanimously that the minutes of December 5, 1994 be approved as circulated.

Case No. 5542--James E. Gibson & Deborah A. Rouse - North side of Woodland Court, 670 feet west of Woodland Circle, Lot 70, within Angola By The Bay.

A variance from the rear yard setback requirement.

The case was presented by Mr. Betts. Gary and Susan Malmstrom were sworn in and testified in behalf of this case. Robert Witsil, Attorney, was present representing the applicants. The applicants requested a 1.67' variance from the 20' rear yard setback on Lot 70, within Angola By The Bay, for an existing enclosed screen porch. Mr. & Mrs. Malmstrom, owners of the property, sold it to the applicants, and when the survey was done the encroachment of the porch was discovered. The screened area of the porch causes the encroachment. Mr. Witsil stated he does not feel the variance will upset the neighbors or be a detriment to properties. A minimal amount of variance is requested. Mr. Malmstrom built the porch and a permit was obtained. A letter from the applicants was read into the record and presented as an exhibit. It was stated that a letter had been sent to the Angola By The Bay Association.

Mr. Betts stated that no correspondence had been received from the Association.

There were no parties present in opposition.

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

Case No. 5543--Arnold R. & Lois Harvey - South side of Jacobs Street, at the corner of Laws Street.

A variance from the side yard setback requirement.

The case was presented by Mr. Betts. Arnold & Lois Harvey were sworn in and testified, requesting a 8'2" variance from the 15' side yard setback for a 12'x 16' shed. The shed is located on a corner lot. It is a portable shed. The applicants propose to place the shed at the same setback as the existing shed. They would like everything lined up. There is a recorded alley that is not used,

where the setback requirement is 15'.

Mr. Betts read correspondence in behalf of the applicants requested variance from: Mr. & Mrs. Ledger, Laura & Martin Harris, Edna & Richard Rowe, Dorothy Collins and Daniel & Minnie Short.

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

Case No. 5544--Mollie Hughes - East side of Penn Street, at the intersection of Juniper Street, on the south side of Route 78.

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. Mollie Hughes and George Hughes were sworn in and testified, requesting to place a new, 14'x 72' manufactured home on their property for their use. They testified that there are approximately 13 other manufactured homes in the area.

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. 5545--Bobby & Diane Jones - West side of Route 611, 1,426 feet south of Route 16.

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

The case was presented by Mr. Betts. Bobby Jones was sworn in and testified, requesting to place a second manufactured home on his farm for an employee, who will help pick-up and clean-up the property. The manufactured home will be rented to him. The existing unit on the property is a rental that has been on the property one year. There is also a rental unit on the five acre parcel adjacent to this property and owned by Mr. Jones.

Bernard West was sworn in and testified in opposition to three manufactured homes in the immediate area. Mr. West lives in a Nanticoke Home.

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 Mr. Jones, Attorney, a chance to review the case.

Case No. 5546--Tunnell Companies, L.P. - South side of Route 22C,  
one mile south of Route 22, Pot Nets and  
Pot Nets East.

A determination of the existence of a nonconforming  
use.

The case was presented by Mr. Betts. Robert W. Tunnell, Jr.  
was sworn in and testified in behalf of the application and was  
represented by John Sergovic, Attorney. Mr. Sergovic stated that  
the applicants are requesting a determination of the existence of a  
nonconforming use (115-202) of code). Mr. Sergovic stated that the  
County does not have a map of Pot Nets and Pot Nets East, they use  
a schematic plot. He stated that the park is 90% filled up and there  
is available space to create some new lots. They propose to have a  
final plan done of the park and a final determination of where the  
new lots are to be located. They are planning to pave the roads and  
want to be sure they are where they should be. Maps were presented  
into the record. Mr. Tunnell stated that there is 155 acres open  
now, with 122 lots to be included. He feels there will be no  
impact on the people or residents in the area.

Bill Sterling was sworn in and testified in behalf of the appli-  
cation, stating he is a resident of Pot Nets and feels Mr. Tunnell  
does extreme work in Pot Nets and always takes into consideration the  
residents living there.

There were no parties present in opposition.

Mr. Sergovic stated they want a final composite map and to be  
able to develop additional lots. They requested that the Board  
approve the final development plan.

Motion was made by Mr. Mills, seconded by Mr. Wheatley and  
carried unanimously that the case be taken undervisement.

At the conclusion of the public hearings, the Chairman referred  
back to this case. After some discussion, motion was made by Mr.  
Callaway, seconded by Mrs. Hudson and carried unanimously that the  
case be tabled, to give the Attorney time to do research on what  
the Board can and cannot approve in regards to a plot plan.

Case No. 5547--Truman & Sylvia Lee Mears - North side of Route 26,  
1,400 feet west of Route 330.

A variance from the side yard setback requirement.

The case was presented by Mr. Betts. Truman and Sylvia Lee Mears  
were sworn in and testified, requesting a 2.85' variance from the 10'  
side yard setback for an enclosed carport. The property is zoned AR-1,  
but can go with 10' side yard setbacks since the frontage of the  
property is under 100'. When Mr. Mears enclosed the carport it caused  
the encroachment. The violation was discovered when the structure was  
inspected by the Zoning Inspector. The applicants property abuts up  
to their mother's property.

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. 5548--Roy J. Evans - Southeast side of Route 54, 307 feet northeast of Route 381, Lot 242, with Keenwick Sound II.

A variance from the side yard setback requirement.

The case was presented by Mr. Betts. Roy J. Evans was sworn in and testified, requesting a 4.5' variance from the 10' side yard setback for a bay window, with a floor and used for a breakfast nook and a 2.9' variance for a shower stall attached to the house. Mr. Evans stated he is the builder for the property owner. He stated he thought the construction at its present setback was allowed.

Mr. Betts read letters received in favor of the variance from: Tony Vendemia and Thomas Norton, Jr., Co-Chairman, of the Architectural Review Committee in Keenwick Sound II.

There were no parties present in opposition.

Motion was made by Mrs. Hudson, 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. Callaway, seconded by Mr. Wheatley and carried unanimously that the variances be granted and that a letter of reprimand be sent to the builder, Mr. Evans.

Case No. 5549--Phyllis J. Givens - West side of Route 30, 1,000 feet south of Snow Road of Kawan Acres and 3,000 feet north of Route 48.

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. Phyllis Givens was sworn in and testified, requesting to place a 1994, 28'x 64' double-wide manufactured home with permanent foundation, on her property for her permanent residence.

Robert Givens, son of the applicant, was sworn in and testified in behalf of the application. He explained the subdividing of his land and stated there are other double-wide manufactured homes in the area.

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, finding the use will not adversely affect the neighborhood.

Case No. 5550--John Zoch - North side of Route 488, 1,321 feet east of Route 13.

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

The case was presented by Mr. Betts. John Zoch was sworn in and testified, requesting a 20' variance from the 50' side yard setback requirement for a chicken house. Mr. Zoch is building two chicken houses on his property with a road in between them to accommodate trucks. By putting the road between the chicken houses, it will create an encroachment for one chicken house, into the side yard setback.

Garold A. White, Jr., representing Allen's Hatchery, was sworn in and testified in behalf of the application.

Alvin Hastings, adjacent property owner, was sworn in and testified in opposition to the chicken houses and the odor. He stated that there are other chicken houses and a dairy farm in the area. He stated the use will devalue his property and that the existing chicken houses were therewhen he came.

Frances and William Harrison were sworn in and testified in opposition stating they live on the property behind where the chicken houses will go.

Mr. Jones, Attorney, explained that the applicant is permitted to have the chicken houses without Board approval. They are before the Board to request a variance to put one chicken house closer to the side property line than what is required.

Tracey Fisher was sworn in and testified in opposition stating the road for the chicken houses will affect her mothers property. It will also affect property owned by her aunt. She is opposed to the chicken houses.

Kenneth B. Fisher was sworn in and testified in opposition and questioned why Mr. Zoch has to go down the property line. He feels it will be too close to him.

Jenny Riggins was sworn in and testified in opposition stating she has a property with a rental manufactured homes on it and the occupant works shift work. She feels he will have trouble sleeping with trucks going in and out. She also feels the use will devalue her property and she is opposed to the odor.

It was explained to Ms. Riggins that there will be less noise by putting the road between the chicken houses.

Mr. White explained that the chicken houses are permitted because the applicant has over five acres.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the case be taken under advisement.

At the conclusion of the public hearings, the Chairman referred back to this case. After some discussion, motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the variance be granted.

Case No. 5551--Daniel W. Yost - West side of Route 113, 0.4 mile south of Route 213.

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

The case was presented by Mr. Betts. Daniel Yost was sworn in and testified, requesting to place a manufactured home on their property on hardship basis for their son to live in with his children, ages 13, 12 and 10. The applicants live on the property in a stick-built house and will help care for the children. Mr. Yost stated his son is crippled and needs help to care for the children. There is woods on both sides of the property.

There was no letter presented from a doctor to indicate there is a medical hardship.

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

Case No. 5552--Daniel W. & Ellen M. Magee - North side of Route 382,  $\frac{1}{4}$  mile east of Route 388.

A special use exception to place an off-premise sign and a variance from the requirements for signs.

The case was presented by Mr. Betts. Daniel W. Magee was sworn in and testified, requesting a special use exception to place an off-premise sign and a 205' variance from the 300' requirement for a sign from a dwelling. Mr. Magee stated that the two sided sign will be used to advertise the business of someone other than himself. He feels the location is good since beach traffic uses the road. It will be good for advertising.

Anna Meikeljohn and Gary C. Meikeljohn were sworn in and testified in opposition, stating their property adjoins Mr. Magee's property. They do not want a billboard next to their house. They feel the amount of variance requested is too large. Ms. Meikeljohn stated that if approved she may want to put a billboard on her property.

Mr. Magee stated that the variance from the dwelling is a rental house that he owns and he is more than 300' from the Meikeljohn property and does not feel the lights from the sign will affect them.

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.

Case No. 5553--William & Gislea McCafferty - South side of Route 270A,  $\frac{1}{4}$  mile southeast of Route 270, Lot 21 and 22, within Tru Vale Acres.

A variance from the front yard setback requirement.

The case was presented by Mr. Betts. William McCafferty was sworn in and testified, requesting a 9.5' variance from the front yard setback for a deck. Mr. McCafferty wants to build an open deck on his property being Lots 21 & 22, Tru Vale Acres. He stated the deck will not obstruct neighbors view. Mr. McCafferty stated he is President of the Association in Tru Vale Acres and there is no objection from them. He also stated he has no plans to enclose the deck in the future.

There were no parties present in opposition.

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

Case No. 5554--Joseph & Antoinette Mongillo West side of Route 16A, 400 feet south of Route 16, Lot 5 and part of Lot 9, within Old Broadkill Beach.

A variance from the side yard setback requirement.

The case was presented by Mr. Betts. Joseph and Antoinette Mongillo were sworn in and testified, requesting a 10' variance from the side yard setback to be 0' from the property line and a 3'7" variance from the other side line for steps with landing leading to the dwelling. The applicants had a manufactured home on the property on pilings and they replaced it with a dwelling. They had the steps half way up before they were aware a variance was needed. The property being Lot 9, Old Broadkill Beach is in a flood zone. They stated there is a road and vacant lot on either side of their property. They feel it is impractical to put the steps anywhere else. The manufactured home was 12' wide and the house is 26' wide, but on the same pilings. They had a permit for the house and access.

Bruce Penuel was sworn in and testified in opposition stating he owns the adjacent lot and is planning to build a home on it. He opposes the structure being too close to his property. He feels being on the property line is too close.

Mr. Betts stated the applicants need two variances and will need a variance for any access due to the lot frontage.

There were some options presented to the applicants that would require a lesser variance.

Mr. Betts read a letter of opposition into the record from Scott and Melinda Hilligoss.

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

After further discussion, it was decided that a placement survey should be done to show where the applicants property lines are and to make sure they are requesting the correct amount of variance.

Motion was made by Mr. Mills, seconded by Mr. Wheatley and carried unanimously that the case be tabled and the applicants present a placement survey of their property.

OLD BUSINESS

Case No. 5529 (cont'd.)--Victor C. Hill South side of Route 16,  
at the intersection of Route 44.

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. Wheatley, seconded by Mr. Mills and carried unanimously that the special use exception be granted, finding the use will not affect the neighborhood and due to the fact there are several other double-wide manufactured homes in the area.

Case No. 5541 (cont'd.)--Joseph & Karen Federer - East side of Route  
297A, on the south side of Riverview  
Avenue, within Oak Orchard.

A variance from the side yard setback requirement.

The case was reviewed by Mr. Betts.

After some discussion, motion was made by Mrs. Hudson, seconded by Mr. Callaway and carried unanimously that the case be tabled.

OTHER BUSINESS

Case No. 5534 - Joseph H., Sr. & Yvonne R. Parker  
Request for rehearing.

Mr. Betts stated that a letter had been received from Mr. Parker requesting a rehearing on Case No. 5534, explaining his reasons for not appearing at his original hearing.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that Mr. Parker be allowed to reapply and pay the fee for a new application.

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

Meeting adjourned at 9:54 P. M.