

Minutes of January 5, 1998

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, January 5, 1998 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:06 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. Mills, seconded by Mrs. Hudson and carried unanimously that the Old Business on the agenda be heard before the public hearings, hearing Case No. 6479, then Case No. 6459 and then go on with the agenda.

Motion was made by Mrs. Hudson, seconded by Mr. McCabe and carried unanimously that the minutes of December 15, 1997 be approved as circulated.

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

OLD BUSINESS

Case No. 6479 (cont'd.)--Melvin L. Joseph - North side of Route 322, 3,300 feet west of Route 432.

A special use exception requesting a change of conditions attached to Special Use Exception No. 5663 to permit access to the asphalt plant from Road 323, and to delete the condition requiring closure of the access from Road 322 to the sand plant.

The case was reviewed by Mr. Callaway. He stated that each of the requests should be discussed and acted on separately.

Mr. Jones reviewed the conditions imposed at the public hearing in 1995. Mr. Jones stated that there is a request for the removal of two conditions and the Board could handle them separately and vote separately.

Mr. Callaway stated that they would consider the sand plant condition first.

Mr. Wheatley made a motion to remove the sand plant condition.

Mr. Mills stated that before motions were made there should be a discussion for the first request to change the conditions attached to delete the condition requiring closure of the access from Road 322 to the sand plant. He stated that they originally made the condition because they felt that additional traffic would adversely affect traffic further back.

Mr. Wheatley stated that he believes the Board should remove the condition with respect to the truck traffic to and from the sand plant operation. He stated that he could not find that the condition has a direct relation to the operation of the asphalt plant. He moved that the Board remove the condition which requires the sand plant trucks to terminate their use of Road 322 and instead only use Route 113.

Mr. Mills questioned how they could keep asphalt trucks from going out road 322. He assumed they do not want asphalt trucks going out that road. He does not think it fair to have truck traffic back there, certainly not additional traffic. He feels there would be nothing to restrict asphalt trucks from going out the sand plant road.

Mrs. Hudson stated that she understood when they made the conditions, they made them with the stipulation that they would pass the asphalt plant providing the two stipulations be put on the approval. She feels that when they approved the asphalt plant they were the conditions to approve it.

Mr. Mills agreed with Mrs. Hudson stating that he is not convinced it will not adversely affect other properties.

Mr. Callaway stated that he felt the stipulations were put on because there was feelings they could not distinguish between an asphalt plant truck and a sand plant truck.

Mr. McCabe feels a physical barrier or berm be erected to keep trucks from going in that direction. He stated that the trucks will have separate scales so when they leave the scales they should have a barrier to keep them from going in that direction. It was stated that from the legal view point the condition they imposed is not directly related to the asphalt plant.

Mrs. Hudson stated that both plants were included in the conditions.

Mr. Mills stated that he had not heard any testimony to convince him they should change the conditions otherwise.

Mr. Callaway stated that it was an asphalt plant hearing and they incorporated the sand plant, he questioned if they were right to do that.

Mr. Mills stated that the decision was made right or wrong. He stated that it was obvious that the majority of the Board feels the condition should be removed. He strongly suggested that the condition not be removed without a condition of a berm or something that will definitely keep the asphalt trucks from going out the sand plant road.

Mr. Wheatley stated that he put the statement made by Mr. Mills into a motion.

Mr. McCabe seconded the motion if the condition that a physical berm or cement barrier be constructed to prevent asphalt trucks from entering Route 322.

Mrs. Hudson stated that they still have the same problem that they cannot tell sand plant trucks from asphalt trucks.

Mr. Jones stated that it would be up to the Planning and Zoning Office to enforce the trucks entering Route 322.

Mr. McCabe stated that it would be the County's responsibility to monitor it.

Mr. Mills questioned if there would be a problem with them doing that.

Mr. Rickard stated that the County could spot check, but they could not put someone out there everyday. He feels the public will let them know.

Mr. Wheatley moved to remove the condition that requires sand plant trucks to terminate their use of Road 322 and instead use only Route 113.

Mr. McCabe seconded the motion with the condition that there be a physical barrier constructed to prevent asphalt trucks from utilizing the same road to Road 322.

Mr. Callaway asked for a roll call stating their reasons for their vote.

Mr. Mills voted nay - he feels they originally put conditions on there for a reason and hasn't been shown to him why they should change.

Mrs. Hudson voted nay - she is still convinced that there is difficulty establishing the difference between sand plant trucks and asphalt trucks and should not be allowed to use that route because of peoples safety and welfare and she would not have voted for the sand plant to be approved if they had not put the conditions on it.

Mr. McCabe voted yea - for the reasons stated before and he feels it was legally wrong on imposing on the asphalt end of it. The two are separate cases.

Mr. Wheatley voted yea - per his statements previously made.

Mr. Callaway voted yea - for the reasons stated earlier.

Motion carried with three voting in favor and two voting against. Vote 3-2.

Mr. Jones reviewed the second matter which is the asphalt plant condition for which the applicant has asked the Board to amend.

The applicant requested that a change of the condition made to special use exception No. 5663, to permit access to the asphalt plant from Road 323.

Mr. Mills stated that he feels they should uphold and maintain this condition. He stated that primarily they did not want asphalt trucks on county roads when they made the condition. The only suggested deterrent for truck traffic is a no left turn sign. He does not feel that they will do it, certainly not when Route 113 is very busy in the summer and when trucks are backed up 10 to 20 deep. He feels they will not sit there and wait, they will turn left, sign or no sign. He feels it extremely adversely affects surrounding properties on the proposed connection to Road 323 which is only a few feet from one ladies house and runs up behind a subdivision. He feels the Board should deny the request to lift the condition and traffic should go directly to Route 113 as originally made the conditions for.

Mr. Callaway stated that he feels when the conditons were put on they said access out to Route 113 and did not specify how to do it.

Mr. Mills stated that they originally stated go directly to Route 113. There was concern about traffic and day care's, and dangerous traffic and safety problems.

Mr. Wheatley stated the major concern expressed at the public hearing involved trucks turning left on County Road 323. This could be resolved by constructing a concrete barrier to prevent any truck from making a left turn. He feels there is no way a truck can make a turn if a barrier is there.

Mrs. Hudson questioned how the people that use the road would get out. She stated that they use the road everyday and asked what the people would do.

Mr. Wheatley stated that Del, DOT has to be told that the state has to be told that. He stated that the barrier won't be in their way, its a deterrent to keep trucks from making left turns.

Mr. Mills asked about the lady who bought the home to retire in, he questioned if they thought it will adversely affect her property.

Mr. McCabe stated that the main people it affects are the Carmine's. He stated the the applicant will have to put up a 10' high barrier to protect them from fumes and noise.

It was agreed that the barrier would not completely protect the Carmine's from noise.

Mrs. Hudson stated that it would affect other people as well. She stated that the applicant does not show sufficient reasons why they cannot go directly to Route 113 and that there is a way a road can go directly to Route 113 and not affect those people.

Mr. McCabe felt it only touches the Carmine's property.

Mr. Mills feels it will adversely affect anyone in the development. He stated as far as the landing strip issue, they can't Mr. Joseph put the road across the runway. He stated if the runway is there for emergency use, it is no different than landing at the Industrial Park.

Mr. McCabe stated that he thinks they will find in the Land Mark Engineers Survey that the State Highway says, they will not approve an entrance any other place.

Mr. Mills stated that there was no trouble putting the road in where Mr. Joseph has it now. He does not feel there will be any problem getting any entrance put in anywhere else on Route 113, except it may cost more money.

Mrs. Hudson said the they are allowing him to come out now there he wants to use it.

Mr. Mills stated that he did not recall the state saying they will not allow an entrance anywhere else on Route 113. He feels they are trying to minimize, but not saying they won't allow it. He feels there are other places they can cross over Route 113 without adversely affecting surrounding properties, and that it is Mr. Joseph's option who uses the landing strip.

Mr. Mills made a motion to maintain the condition. He believes the Board should maintain the condition with respect to the asphalt plant trucks having access directly to Route 113. He stated that when he voted for the special use exception for Mr. Joseph to have the asphalt plant requiring the asphalt plant trucks to go directly to Route 113 and not utilize populated County roads was a significant factor in his decision. There has been insufficient evidence in his opinion presented which would cause him to change his mind and he has not heard sufficient evidence to convince him the asphalt plant trucks can not cross Mr. Joseph's runway. He stated that he has also not heard sufficient evidence that trucks cannot go around the runway and still access Route 113 without the necessity of first using County Road 323. The reasons why the conditions were first imposed was to avoid asphalt plant trucks using neighborhood roadways and if the Board removes the condition and allows the asphalt trucks to use Route 323, those trucks will be emptying out onto the road which will be immediately to the populated neighborhood area. He is not convinced the Board has been presented with sufficient reasons to remove the condition and believes removal of the condition will substantially adversely affect the adjacent neighboring properties and therefore, cannot support removal of the condition.

Mrs. Hudson seconded the motion.

A roll call was taken with the reasons for their vote.

Mr. Mills voted yea - for the reasons stated previously to maintain the condition.

Mrs. Hudson voted yea - for the same reasons and due to the fact the asphalt plant was approved with the conditions and does not feel they should be removed.

Mr. McCabe voted nay - for reasons previously stated.

Mr. Wheatley voted nay - for reasons previously stated.

Mr. Callaway voted nay - for reasons given previously.

Mr. Jones explained to the Board that they had voted and defeated the motion made by Mr. Mills.

Mr. Wheatley made a motion to remove the condition requiring the trucks from the asphalt plant access directly to Route 113.

Mr. McCabe seconded the motion with the condition that a permanent wooden fence 2" thick and a minimum of 10' tall be installed for the entire length of the Carmine property and a cement barrier be erected 15' to 20' so trucks cannot turn left on Route 323. He feels that with a 15' barrier, trucks cannot turn left. Highway approval, signage and berm at the other end. The berm separating the two operations.

Mrs. Hudson voted nay - for the same reasons stated when the motion was made to deny it.

Mr. Mills voted nay - feels it will adversely affect surrounding properties.

Mr. Wheatley voted yea - for reasons stated.

Mr. McCabe voted yea - for reasons stated.

Mr. Callaway voted yea - for the stipulations so stated.

Motion carried with three voting in favor and two voting against. Vote 3-2.

Case No. 6459 (cont'd.)--Joseph R. Hudson - North side of Route 264 & Road 258, southwest of Route One.

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

Mr. Callaway reviewed the case.

After some discussion, motion was made by Mr. McCabe, seconded by Mr. Wheatley and carried unanimously that the special use exception be granted with the following conditions:

1. One security guard for every 250 people.
2. No over night camping.
3. No more than four (4) events per year.
4. A 6' chain link fence be installed on three (3) sides of the property out to Route One.
5. No alcohol permitted on the grounds.
6. All traffic use Route One.
7. Adequate portable bathroom facilities.
8. One day events.
9. Events to be from 9:00 A. M. to 11:00 P. M.
10. Provide adequate parking.
11. No punkin Chunkin.
12. Provide parking and traffic control.
13. Maximum of 20,000 people per event.
14. Approved for a period of one (1) year.

It was the finding of the Board that the use will not substantially adversely affect adjacent properties. Vote 5-0.

The Board took a five minute recess.

Case No. 6481--Ruby Tuesday, Inc. - North side of Route One,
adjacent to the northwest side of K-
Mart service road.

A variance from the requirements for signs.

The case was presented by Mr. Rickard. Robert W. Nash, Land Surveyor with Charles D. Murphy, was sworn in and testified representing Ruby Tuesday, Inc. who requested a variance to have two wall signs on their restaurant. They have one free standing sign now and want two wall signs. One on the front of the restaurant and one on the side. They will be standard Ruby Tuesday signs with their logo on them.

There were no parties present in opposition.

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

Case No. 6490--Terrance H. Bartley - North side of Route One,
1,500 feet west of Route 271, Ocean
Outlets, Seaside.

Appeal of the decision of the Planning and
Zoning Commission Staff for issuance of a
building permit for a restaurant.

Mr. Rickard stated that he had received a letter on January 5, 1998 from Mr. Bartley requesting the withdrawal of his application, due to personal reasons and he could not attend.

Mr. Jones explained to the Board that a withdrawal has to be received two business days prior to the meeting and a cause must be shown, to accept it without a vote. He stated that the Board needed to vote on this request to withdraw.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously to allow Case No. 6490 to be withdrawn, due to personal reasons. Vote 5-0.

Case No. 6491--Martha C. Wagner - Sandalwood Drive, 1,412 feet southeast of Road 271, Lot 14, within Sandalwood.

A variance from the side yard setback requirement.

The case was presented by Mr. Rickard.

Mr. Jones disqualified himself from this case due to a possible conflict of interest.

Martha C. Wagner was sworn in and testified and was represented by Daniel Myers, Attorney. Ms. Wagner requested a .78' variance from the side yard for a residence and a 2.7' variance from the side yard for an open deck. The property is located on Lot 14, within Sandalwood. Mr. Myers stated that the house is a stick built house and was built by the predecessor of the property. He stated that there is no objection from the Homeowners Association. In answer to questions from Mr. Myer, Ms. Wagner stated that the property had been built on prior to her buying it. It was built by a builder and finished by her late husband. She was not aware of an encroachment. The deck is open to the sky and the house is custom built. She stated that it would be difficult to move the dwelling. She has no objections from the neighborhood. A letter was submitted from the Association in Sandalwood.

Mr. Rickard read the letter submitted and signed by the President, Vice President and Secretary of the Association in favor of the requested variances.

Mrs. Hudson questioned when the house was built.

Mr. Wagner stated that the house was built in 1986.

There were no parties present in opposition.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the .78' and 2.7' variances be granted. Vote 5-0.

Case No. 6492--Kim Lefever - South side of Blue Boulevard, 150 feet east of Road 298, Lot L37, within Shawn's Hideaway.

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

The case was presented by Mr. Rickard. John David Fink was sworn in and testified representing the applicant who requested a 4.5' variance from the 20' setback requirement between units on Lot L37, within Shawn's Hideaway. The applicant proposes to build a covered porch. Mr. Fink stated that the lots on either side of Ms. Lefever are 50' and the people have built to 5' from the lines, therefore, a variance is needed to build the porch.

Mr. Mills questioned if Mr. Link was the contractor and if the porch has been started.

Mr. Link stated that he is the contractor and he has not started building the porch as yet.

There were no parties present in opposition.

Motion was made by Mrs. Hudson, seconded by Mr. Mills and carried unanimously that a 4.5' variance be granted. Vote 5-0.

Case No. 6493--Geraldine Ferraro - North side of Blue Boulevard, 1/2 mile east of Road 298, Lot R1, within Shawn's Hideaway.

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

The case was presented by Mr. Rickard. John David Link sworn in on Case No. 6492 represented this case also. The applicant requested a 8' variance from the 20' setback requirement between units in a park, being Lot R1, within Shawn's Hideaway. Mr. Link stated that this lot is the last lot in the park and where the septic has to be the unit has to be so many feet away. He stated the unit will be 14' wide.

Mr. Mills stated that on the application it stated a 12' unit will go on the property and asked if the applicant could go with a 12' unit.

Mr. Link stated that they would go with a 12' wide unit for the variance.

There were no parties present in opposition.

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

Case No. 6494--County Bank - South side of Route One, 1,350 feet east of Road 271.

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

The case was presented by Mr. Rickard. Richard H. Derrickson was sworn in and testified, requesting to place an off-premise sign and a 110' variance from the 300' setback requirement between off-premise signs. The proposed sign will be 190' from an existing sign. The sign will be placed on County Bank property for the Holiday Inn. Mr. Derrickson stated that he is Chairman of the bank building. The Holiday Inn is approximately 300 feet back from Route One and a sign is needed closer to Route One to advertise it. The existing sign it will be closer to is on the Exxon property and advertises Dover Downes. It would be hard to see a sign on the building.

There were no parties present in opposition.

Motion was made by Mr. Mills, seconded by Mr. McCabe and carried unanimously that the special use exception and a 110' variance be granted. Vote 5-0.

Case No. 6495--Earl & Ruth Trincia - South side of Poplar Drive, at the east side of the intersection of Poplar Court, Lots 41 and 42, within Angola By The Bay.

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

The case was presented by Mr. Rickard. Earl Trincia was sworn in and testified requesting a 1.3' variance from the 5' rear yard setback requirement for an existing 10'x 12' shed on blocks and a 5' variance from the front yard setback requirement of 30', to place a new 14'x 24' shed on the property. Pictures were presented and explained. It was stated that there is a vacant lot to the rear of the property. Mr. Trincia stated that the shed is too

heavy to move and is on blocks and the house was built in 1983, with a septic tank close by. The property is located on Lots 41 & 42 within Angola By The Bay and Mr. Trincia stated that there is vacant property to the rear of his lots.

There were no parties present in opposition.

Motion was made by Mrs. Hudson, seconded by Mr. Mills and carried unanimously that a 1.3' variance from the rear yard and a 5' variance from the front yard setback requirements be granted. Vote 5-0.

Case No. 6496--Philip E. & Gloria A. Blevins - East side of Surfside Drive, 460 feet north of Route One, Ocean Boulevard, Lot 22, within Gulls Nest.

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

The case was presented by Mr. Rickard. Susan Weidman, Attorney, was present representing the applicants who requested a 0.7' variance from the 30' front yard setback requirement and a 0.3' variance from the 10' rear yard setback requirement on Lot 22, within Gulls Nest. The applicants had a deck built and the setbacks are needed due to an error by the contractor.

Michael L. Wilgus, Real Estate Broker, with Wilgus Associates, was sworn in and testified that he was the broker for the Blevins and sold them the property November 20, 1997. The property is 10 years old and the contractor was Robert Anderson, who they believe is not in business anymore. It was not known who hired him.

Ms. Weidman stated that the house would be destroyed to move it. It is located on ocean front property.

There were no parties present in opposition.

Mr. Rickard stated that he had received a letter of opposition from Brian W. Brooke and Ann H. Brooke.

Motion was made by Mr. McCabe, seconded by Mr. Wheatley and carried unanimously that a 0.7' variance from the front property line and a 0.3' variance from the rear property line be granted. Vote 5-0.

Case No. 6497--Stanley R. Osborn - Southwest side of Route 54,
south of Garfield Avenue, Lot 22, Blk. 2,
within Edgewater Acres.

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

Mr. Rickard stated that he had received a letter dated January
4, 1998 from Mr. Osborn who requested to withdraw his application
because he is not going to buy the property.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and
carried unanimously to allow Case No. 6497 to be withdrawn for good
cause. Vote 5-0.

OTHER BUSINESS

Case No. 6155--Dyer, McCrea Ventures, L.L.C. East side of Route
270A, 580 feet north of Route One.

A special use exception to operate an assisted
living facility.

Time Extension.

Mr. Rickard stated that he had received a letter from the
applicants requesting a one year extension on their special use
exception.

Motion was made by Mr. McCabe, seconded by Mr. Wheatley and
carried unanimously to grant a one (1) year extension to Case No.
6155. Vote 5-0.

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

Meeting adjourned at 9:10 P. M.