

## MINUTES OF MARCH 12, 2001

The regular meeting of the Sussex County Board of Adjustment was held on Monday evening March 12, 2001, at 7:00 P.M., in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00P.M. with Chairman Callaway presiding. The Board members present were: Mr. Callaway, Mr. McCabe, Mr. Wheatley, Mr. Mills and Mr. Hudson, with Mr. Berl – Assistant County Attorney, Mr. Rickard – Chief Zoning Inspector, and Ms. Jackson – Recording Secretary.

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously to approve the Revised Agenda as circulated. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of February 12, 2001 as circulated. Vote carried 5 – 0.

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

Case No. 7374 – George Coverdale – northeast of Road 270-A, southeast of Route One.

A variance from the rear yard setback requirement.

Mr. Rickard presented the case. David Lurty and Bryan Ware were sworn in and testified requesting a 3.5-foot variance from the required 5-foot rear yard setback requirement for an addition to the Airport Motel, which has been converted into four (4) apartments; that eight (8) rooms existed in the motel; and that the addition will be for two (2) more apartments.

The Board found that no parties appeared in opposition to the application.

Motion by Mr. McCabe, seconded by Mr. Wheatley, and carried unanimously that the case be taken under advisement. Vote carried 5 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously that the variance be **granted**. Vote carried 5 – 0.

Case No. 7375 – Julie Schroeck – west of Road 348, west of Sawmill Drive, Lot 47, within Bay Colony Subdivision.

A variance from the south side yard setback requirement.

Mr. Rickard presented the case. Julie and Joseph Schroeck were sworn in and testified requesting a 2-foot variance from the required 10-foot south side yard setback

requirement for a cantilever window; that she was told that a Bay window could encroach 24 inches into the setback; and that the Homeowner's Association was in favor of the application.

The Board found that no parties appeared in opposition to the application.

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the variance be **granted**. Vote carried 5 – 0.

Case No. 7376 – Christian L. Anderson – west of Road 84, 1,390 feet south of Road 368.

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

Mr. Rickard presented the case and read a letter from Victor deJesus, M.D. Christian Anderson was sworn in and testified requesting a special use exception for a medical hardship basis for himself; that the size of the unit will be a 14'x66'; that the unit is a 2000 Fleetwood; that his mother will also reside on the property; and that he will check an existing shed on the property for violations.

The Board found that no parties appeared in opposition to the application.

Motion by Mr. Wheatley, seconded by Mr. McCabe, and carried unanimously that the special use exception be **granted for 2 years**. Vote carried 5 – 0.

Case No. 7377 – Ralph and Elaine Gilgenast – west of Route 54, west of Oyster Bay Lane, Lot 142, within Keenwick West Subdivision.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. Ralph and Elaine Gilgenast were sworn in and testified requesting a 6-foot variance from the required 30-foot front yard setback requirement to extend the front two (2) bedrooms; that the sizes of the existing bedrooms are 10'x11' and 11'x11'; and that 20 years ago a Ms. Johnson placed the home on the property; and that she had problems placing it on the property and had to have a variance.

Mr. Rickard read a letter from Marie Summers, President of the Homeowner's Association, dated March 6, 2001, in opposition to the application.

The Board found that no parties appeared in opposition to the application.

Motion by Mr. McCabe, seconded by Mr. Wheatley, and carried unanimously that the variance be **tabled until March 19, 2001**. Vote carried 5 – 0.

Case No. 7378 – Linda B. Ward – north of Road 261, west of Red Mill Avenue, Lot B, within Carsyljan Acres Subdivision.

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

Mr. Rickard presented the case and read a letter from Beshara Helou, M.D. and Bonnie Hofstetter, M.D. Linda Ward was sworn in and testified requesting a special use exception to place a manufactured home on a medical hardship basis for her daughter; that her daughter and her husband can no longer pay rent where they are living; that with her illness it is hard for her daughter to keep a job; and that her daughter does not have children.

By a show of hands, 3 parties were in favor of the application.

By a show of hands, 1 party was in opposition to the application.

Thomas Baker as sworn in and testified that he is in opposition to the application; that he has concerns with the possibility of the unit being rented out; that he had concerns with the sewer; that his sister has the same illness as Ms. Wards daughter; and that his sister was able to work and retire with the illness.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be taken under advisement. Vote carried 5 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Motion by Mr. Mills, seconded by Mr. Wheatley, and carried unanimously that the special use exception be **denied because there is insufficient evidence of a medical hardship**. Vote carried 5 – 0.

Case No. 7379 – Marcos Bautista and Ana M. Delgado – west of Road 270-A, northwest of South Drive, Lot 7, Block J, within Truvalde Acres Subdivision.

A variance from the front yard setback requirement.

Mr. Rickard presented the case. David Fox was sworn in and testified requesting a 6-foot variance from the required 30-foot front yard setback for a multi-sectional dwelling and permanent foundation; that an existing 10'x60' structure was moved off the

property; that he submitted a copy of the Subdivision restrictions; and that the new unit will meet the required setbacks of the subdivision restrictions.

The Board found that no parties appeared in opposition to the application.

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the variance be **granted due to the odd shape of the lot**. Vote carried 5 – 0.

Case No. 7380 – Judy Stellini – east of Road 49, west of Cherry Court, Lot 42, within Angola By The Bay Subdivision.

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

Mr. Rickard presented the case. Judy and Nick Stellini were sworn in and testified requesting a 3.3-foot variance from the required 30-foot front yard setback requirement for an existing open porch and a 2.4-foot variance from the required 20-foot rear yard setback requirement for an existing screen porch; that they purchased the property in 1994 from her parents; that they recently sold the property to Pamela Eckert; that violations were found when a survey was completed; and that they submitted the original permits to the Board.

By a show of hands, 1 party was in favor of the application.

The Board found that no parties appeared in opposition to the application.

Motion by Mr. Wheatley, seconded by Mr. McCabe, and carried unanimously that the variances be **granted due to the odd shape of the lot**. Vote carried 5 – 0.

Case No. 7381 – John C. Jones – north of U.S. Route 13, 800 feet northeast of Oak Lane Drive.

A variance from the southeast side yard setback requirement.

Mr. Rickard presented the case. John C. Jones was sworn in and testified requesting a 12-foot variance from the required 15-foot southeast side yard setback requirement for a 30'x40' detached garage, instead of a 3-foot variance; that the reasoning for the variance is so that the garage will line up with his driveway; and that a horse pasture is on the southeast side of the property.

By a show of hands, 3 parties appeared in favor of the application.

Motion by Mr. McCabe, seconded by Mr. Wheatley, and carried unanimously that the case be taken under advisement. Vote carried 5 – 0.

At the conclusion of the public hearings, the Chairmen referred back to this case. Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that he variance be **tabled until March 19, 2001**. Vote carried 5 – 0.

Case No. 7382 – Eller Media, Co. – north of U.S. Route 13A, intersection north of Road 545.

A special use exception for a billboard, a variance from the front yard setback requirement, a variance from the square footage for a sign, and a variance from the height requirement for a sign.

Mr. Rickard presented the case. Robert Witsil, Attorney, was present on behalf of his client FED Investments, LLC requesting a special use exception for a billboard, a 3.5-foot variance from the required 25-foot front yard setback, a 600-square foot variance from the allowable 300-square foot per side or facing of a sign, and a 7-foot variance from the required 25-foot maximum height requirement; that Eller Media, Co., represented by Betsy Cottingham is the tenant and owner of the sign; that the original sign is non-conforming; that he submitted photographs to the Board; that he submitted a sign correction form, dated September 3, 1999; that in September 1999 Philip Sign Company transferred the sign to Eller Media; that in October 1999 Eller Media redesigned the sign; that Eller Media did not acquire a permit or special use exception because they thought they could replace the sign if they used the same materials; that the sign has not increased in size; that the sign has catwalks and that Eller Media, Co. is willing to remove them; that if the catwalks are removed then all they would need to apply for is a special use exception for a billboard; and submitted an exhibit that includes:

1. A chronology of events relating to Phillips Sign Co., Eller Sign Co., Marty's Mobile Homes, Inc. and FED Investments, LLC Ownership.
2. Photographs of the sign.
3. Finding of Facts prepared by Robert V. Witsil, Jr., Attorney.
4. An application for a sign permit from Department of Highways and Transportation.
5. A violation notice from Planning and Zoning, dated November 17, 1999.
6. A special use exception application, dated March 7, 2000.
7. A letter from Marty's Mobile Homes, Inc. to Bud Rickard, dated December 1, 1999.
8. A map of where the sign is constructed.
9. A letter from Besty Cottingham to Bud Rickard, dated October 28, 1999.
10. A letter from Bud Rickard to Besty Cottingham, dated November 6, 1997.

11. Pages 2 & 3 referencing Case No. 6599 for Universal Outdoor Inc. from Delmarva Reporting.
12. A copy of Section 115-160(f) referencing non-conforming uses.
13. A copy of Elements of Equitable Estoppel Delaware Law.

Betsy Cottingham was sworn in and testified that all the statements Mr. Witsil made were true and correct; that Eller Media, Co. have had no complaints by neighbors; that she was under the impression that she could rebuild the sign if the same materials were used; that she met with Mr. Rickard, Chief Zoning Inspector, Mr. Lank, Director of Planning and Zoning, and Mr. Berl, County Attorney, to see what she needed to do about the sign in violation; and that James Fuqua, Jr., Attorney, was to handle the special use exception hearing for her, but in August 2000 he sent her checks back to her.

By a show of hands, 2 parties were in opposition to the application.

Edmond Walls was sworn in and testified that he is in opposition to the application; that his wife owns the farm next to the sign; that paper blows off the sign; that he was told the sign was going to be removed; that when the sign was replaced, he called DeDot to ask what was going on; and that the sign is a hazard.

Motion by Mr. Mills, seconded by Mr. Wheatley, and carried unanimously that the case be taken under advisement. Vote carried 5 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Motion by Mr. Mills, seconded by Mr. Wheatley, and carried unanimously that the special use exception and variances be **denied because it adversely affects neighboring properties and does not meet the required County regulations.** Vote carried 5 – 0.

Case No. 7383 – Rehoboth Mall Limited Partnership – southeast of Route 24, 900 feet southwest of Route One.

A special use exception for a reduction of the required parking for a commercial shopping center.

Mr. Rickard presented the case. Glenn Weinberg and Randy Duplechain were sworn in and testified requesting the reduction of the required parking spaces for a commercial shopping center; that they propose to delete 48 parking spaces along Truitt's Midway Development; that they submitted a survey; that the site plan was approved on June 8, 2000; that they will be planting a row of Leyland Cypress trees along Truitt's Midway Development; that on October 20, 2000 they received a letter from David Racine and Jim Yingling regarding a 1985 agreement and alleged that they were violating the agreement; that they were unaware of an agreement; that Wal-Mart will not have any

problems with the Revised Site Plan and the loss of 48 parking spaces; that on January 1, 2001 they received a copy of the 1985 agreement by Mr. Malkiewicz, Attorney, finally executing a settlement agreement with the following stipulations:

1. That all parking calculations and requirements for Rehoboth Mall shall be satisfied if the parking spaces are constructed in accordance with the Revised Plan.
2. That the 48 spaces shall not have to be replaced elsewhere (whether now or in the future).
3. That for all purposes of applicable zoning or other codes and/or regulations, the 48 spaces shall be counted as existing by the County in all future parking calculations.

By a show of hands, 11 parties were in favor of the application.

Michael Malkiewicz, Attorney, was present on behalf of Truitt's Midway Development stating that a total of 25 families are effected by this special use exception; that the relief would be beneficial to the Truitt's Midway Development; and that it would not set a precedent if the special use were granted.

David Racine was sworn in and stated that the best possible resolution has now been made.

The Board found that no parties appeared in opposition to the application.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the special use exception be **granted with the following stipulations:**

- 1. That all parking calculations and requirements for Rehoboth Mall shall be satisfied if the parking spaces are constructed in accordance with the Revised Plan.**
- 2. That the 48 spaces shall not have to be replaced elsewhere (whether now or in the future).**
- 3. That for all purposes of applicable zoning or other codes and/or regulations, the 48 spaces shall be counted as existing by the County in all future parking calculations.**

Vote carried 5 – 0.

Case No. 7384 – Colonial East – east of Route One, east of Lantern Lane, Lot 20, within Colonial East Mobile Home Park.

March 12, 2001

Minutes

Page 8

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

Mr. Rickard presented the case. John Starke was sworn in and testified requesting a 5-foot variance from the required 20-foot separation requirement between units in a mobile home park.

The Board found that no parties appeared in opposition to the application.

Motion by Mr. Wheatley, seconded by Mr. Mills, and carried unanimously that the variance be **granted**. Vote carried 5 – 0.

Case No. 7385 – Dennis Hastings – north of Route 26, south of Lakeview Drive, Lot 8, within Banksville Park Subdivision.

A variance from the east side yard setback requirement.

Mr. Rickard presented the case. Dennis Hastings was sworn in and testified requesting a 2.5-foot variance from the required 5-foot east side yard setback requirement for a floating deck, instead of a 2-foot variance; that the size of the deck is a 8'x20'; and that the property on the east side of his property is a recreational area.

The Board found that no parties appeared in opposition to the application.

Motion by Mr. McCabe, seconded by Mr. Wheatley, and carried unanimously that the variance be **granted because it does not affect any adjoining property owners**. Vote carried 5 – 0.

Case No. 7386 – David Robinson, M.D. – west of Route One, 1,050 feet north of Road 283.

A variance for an additional on premise sign.

Mr. Rickard presented the case. Walter Bryan was sworn in on behalf of the applicant and testified requesting a variance for an additional on premise sign; that he submitted a picture of the site; that they leased a new office in the old Midway Office and Art Supply Building; that customers are having a hard time locating the office; that the sign will no interfere with the sewer; that they will be taking down the phragmites and plant a new flower bed for better visibility; that they propose an 8'x10' sign; and that they will be the required setbacks.

The Board found that no parties appeared in opposition to the application.

Motion by Mr. Mills, seconded by Mr. Wheatley, and carried unanimously that the variance be **tabled until March 19, 2001**. Vote carried 5 – 0.

Case No. 7387 – Edward Richard and Patricia L. Ludhardt – northeast of Road 391, west of Swann Drive, Lot 13, within Swann Keys Subdivision.

A variance from the southwest side yard setback requirement.

Mr. Rickard presented the case. Edward Richard and Patricia L. Ludhardt were sworn in with Ray Tomasetti, Attorney, requesting a 6.4-foot variance from the required 10-foot southwest side yard setback requirement to enclose an existing deck; that they submitted pictures and a letter from a neighbor in favor of the application; that the deck has been there since 1997; and that the reasoning for enclosing the deck is for safety reasons, so that their grandchildren could not wonder off to the lagoon.

Mr. Rickard read a letter from the Homeowner's Association in opposition to the application.

The Board found that no parties appeared in opposition to the application.

Motion by Mr. McCabe, seconded by Mr. Wheatley, and carried unanimously that the variance be **tabled until March 19, 2001**. Vote carried 5 – 0.

#### Old Business

Case No. 7357 – Tilcon Delaware, Inc. – a private drive 0.6 mile southwest of Road 323, 1,500 feet north of Road 322.

Renew a special use exception for an asphalt batching plant.

The Board discussed the case. Mr. Mills stated that Tilcon Delaware, Inc. is operating the plant better than what was proposed at the original hearing. Mr. Rickard stated that he visited the site at least four (4) times and found nothing wrong with the operation.

Motion by Mr. Wheatley, seconded by Mr. McCabe, and carried unanimously that the special use exception be **granted for a period of five (5) years**. Vote carried 5 – 0.

Case No. 7370 – George and Martha Daebeler – north of Road 279-B, north of Mallard Drive, Lots 71, 76, ½ of 66, within Joy Beach Subdivision.

A variance from the rear yard setback requirement.

The Board discussed the case. Mr. Rickard submitted a survey to the Board; and that the applicants are requesting a 10-foot variance from the rear yard setback requirement.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the variance be **granted. The Board requested that a letter be sent to New Dimensions, Builders.** Vote carried 5 – 0.

Meeting Adjourned 10:15P.M.