

Minutes of April 6, 1998

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, April 6, 1998 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:03 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 minutes of March 16, 1998 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.

Case No. 6548--William A. & Shirley E. Herbster - West of Sussex Road, 450 feet south of Indian River, Lot 6, Indian River Acres.

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

The case was presented by Mr. Rickard. William & Shirley Herbster were sworn in and testified, requesting a 9' variance from the 10' side yard setback for a proposed garage, a 5' variance from the 30' front yard setback for a proposed 12'x 24' porch and a 7' variance from the 20' rear yard setback for an extension to an existing deck. The property is located on Lot 6, within Indian River Acres. Mr. Herbster stated that he bought the property in 1981 and the lot is 50'x 100' in size. He stated that his deed states that the garage has to be attached to his dwelling. He wants the porch on the front of the dwelling and have a water front deck. He stated that the existing deck was on the dwelling when he bought it and he needs to make it larger. He stated that there is no problems with the neighbors, he referenced a letter in the file.

Mr. Rickard stated that the existing dwelling also encroaches into the rear setback.

Mr. Mills questioned the dwelling being in violation and not detected.

Mr. Herbster stated that he has a Certificate of Compliance from the County. The dwelling was built in 1981 by Bob Roselle from Ocean View. He stated that he owns repairing rights 15' into the water according to his deed.

Mr. Rickard stated that could explain why the Certificate of Compliance was issued, due to the 15' in the water.

Donald Bell, next door neighbor, was sworn in and testified in behalf of the application. He feels that due to the lot size Mr. Herbster is limited to what he can do and he feels the additions will be an improvement to the property.

There were no parties present in opposition.

Mr. Rickard read a letter from next door neighbors Sandra & Charles Lyons, Jr. in favor of the application.

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

Case No. 6549--Master Buyers Service - East of U. S. Route 113,
.4 miles south of Road 380.

A variance from the front yard setback requirement for automotive sales display.

The case was presented by Mr. Rickard. Steven Joseph Cropper, Sr. was sworn in and testified representing this application. The applicants requested a 25' variance from the 25' front yard setback requirement to sell used cars. Mr. Cropper stated that the business has existed since 1988 and a tree line forest blocks the view of the cars on display. He stated that he has heard no complaints, there are no houses nearby and the cars will cause no visual obstruction.

There were no parties present in opposition.

Motion was made by Mrs. Hudson, 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 Mrs. Hudson and carried unanimously that a 25' variance be granted for used vehicles only. Vote 5-0.

Case No. 6550--Carol L. Spencer - South of Road 565, 100 feet
west of Conrail right of way.

A variance from the road frontage requirement.

The case was presented by Mr. Rickard. Carol Spencer Dize and Isaac Dize were sworn in and testified. Ms. Dize requested a 8' variance from the 150' road frontage for a new lot. She stated

that there is a 1986 double-wide manufactured home on the property and she proposes to build a house on the new lot and keep the double-wide unit for her parents. She stated that there was a different variance request on this property in 1990 and was denied.

Mr. Jones explained the new laws pertaining to double-wide manufactured homes on 3/4 acre parcels and the 5 year age limit on the unit. Mr. Jones stated that there has never been another case like this presented to the Board and he would have to research it.

Ms. Dize presented 4 plans to the Board to be considered and wants the plan that meets the County's needs.

Mr. Rickard questioned if the applicant would be able to meet the 15' setback requirement.

Ms. Dize stated that she thought the setback requirement was 10', but would meet the setbacks required..

There were no parties present in opposition.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the case be tabled until the next meeting to give the Attorney time to do research. Vote 5-0.

Case No. 6551--Beverlyn J. Wieland - East of U. S. Route 13, corner of Rod 454A.

A variance from the front yard setback requirement for automotive sales display.

The case was preented by Mr. Rickard. Beverlyn J. Wieland and Paul Wieland were sworn in and testified and were represented by John Sergovic, Attorney. The applicant requested a 25' variance from the 25' front yard setback requirement for an auto sales diaplay. Mr. Wieland stated that the buisness is nonconforming and started in 1968. He stated that they have always had customer parking in front of the buildings. He stated that there is a 60' garage, house and smaller garage on the property. He wants to keep the vehicles up front to keep an eye on them, since he has had some burglaries. He feels the use will have no impact, visual or economical impact on the area. It was stated that two storage trailers that have been on the property since 1968 are to be removed.

There were no parties present in opposition.

Motion was made by Mrs. Hudson, seconded by Mr. McCabe 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 a 25' variance be granted for used vehicles only. Vote 5-0.

Case No. 6552--Allen F., Jr. & Kelly J. Lathbury - West of U. S.
Route 113, corner intersection south of
Road 402B.

A variance from the front yard setback requirement for display of sheds and automotive sales display.

The case was presented by Mr. Rickard. Allen F., Jr. & Kelly J. Lathbury were sworn in and testified, requesting a 40' variance from the 40' front yard setback requirement for sheds for retail sale and a 25' variance from the 25' front yard setback requirement for used car display. Mr. Lathbury stated that they are limited on depth of the property, which is approximately 120' deep and due to septic location. He stated that they have operated since 1984 and it is the only place they can place the sheds and cars.

Alex Schriver and Stanley J. Cazinski, Jr. were sworn in and testified that they are partners in the auto sales on adjoining property lot. It was stated that they have pulled the cars back from the curb, but want the cars out to the curb. Mr. Schriver stated that if the cars are placed back from the curb they would not be seen.

Mr. Lathbury stated that the property line is at the curb. He stated that they were violated and tried to comply by moving back 6'.

There were no parties present in opposition.

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

At the conclusion of the public hearing, the Chairman referred back to this case. After some discussion, motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that a 40' variance be granted for the sheds and a 25' variance be granted for used vehicles only. Vote 5-0.

Case No. 6553--Avis C. Mannino - South of Route One, Lot 1, Block
6, Breezewood.

A variance from the front yard setback requirement.

The case was presented by Mr. Rickard. Louis Manino, husband of the applicant was sworn in and testified and was represented by Barbara Cherix O'Leary, Attorney. The applicant requested a 17" variance from the 30' front yard setback for a porch that was constructed on the front of a dwelling, located on Lot 6, within Breezewood. Mr. Manino explained that they did not create the setbacks, it is property his wife inherited. A copy of a survey dated August 8, 1977 was submitted for the record showing the dwelling was on the property in 1977. The dwelling is on a dead end street and the last dwelling on the street. It is their feeling there will be no adverse impact on the neighborhood, since there are other homes with similar setbacks. It was stated that there is no objections from the neighbors and the minimal amount of variance has been requested. It was stated that everything else on the property complies with the setbacks.

There were no parties present in opposition.

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

Case No. 6554--William Sullivan - Route 22, Lot 1000, Pot Nets
Bayside.

A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. William Sullivan was sworn in and testified requesting a 1' variance from the 10' side yard setback requirement on Lot 1000, Pot Nets, Bayside. The applicant proposes to build a sunporch and a variance is needed. There is an existing 8' deck on the property that is in compliance and was there when the unit was bought in April, 1997. Mr. Sullivan wants to put a sunroom on now. He stated that there are no objections from anyone in the neighborhood or Pot Nets.

Mr. Rickard read a petition with 13 signatures in favor of the application and a letter from Richard DeWitt, Pot Nets, voicing their approval.

Charles F. Attala, next door neighbor, was sworn in and testified in favor of the application.

There were no parties present in opposition.

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

Case No. 6555--Sean Mullins, Howard Mullins, Gene Mullins, & Craig Mullins - West side of Route 113, 1,250 feet north of Road 377.

A variance from the front yard setback requirement for automotive sales display.

The case was presented by Mr. Rickard. Eugene Mullins and Sean Mullins were sworn in and testified, requesting a 25' variance from the front yard setback requirement for auto sales display. They want to move the cars closer and stated that they have approval from the Highway Department to use their right of way. They stated that they have never been issued a citation.

Mr. Rickard read a letter into the record from the Department of Transportation, Charles Baynum, Roadway Dev. & Control Manager and Allan Redden, South Dist. Engineer giving their approval to use excess right of way to display vehicles.

There were no parties present in opposition.

Motion was made by Mrs. Hudson, seconded by Mr. McCabe 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. McCabe, seconded by Mr. Mills and carried unanimously a 25' variance be granted for used vehicles only. Vote 5-0.

Case No. 6556--James E. Showen - Southwest of Quillen Road, south of Bay Road Extended, Lot 40, Suburban Development.

A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. Neil Stevenson was sworn in and testified representing the applicant who requested a 8' variance from the 10' side yard setback requirement on Lot 40, within Suburban Development for a proposed addition. Mr. Stevenson stated that he previously owned the property which has a Japanese style dwelling with removable walls and is extremely exposed on the south side. He stated that Spring Lake Highrise has been constructed next to the property and has a 9' high fence between the properties.

Mr. Mills questioned if Spring Lake had approval for the 9' fence.

Mr. Rickard stated that he would have to do research to find out about the approval for the fence.

Mr. Stevenson stated that it is the only thing they can do to modify the situation, since the dwelling is designed to have removable walls and look out onto a garden.

James Showen was sworn in and stated that he agrees with what Mr. Stevenson had stated. They will make the property somewhat the same as it was. He stated that Spring Lake will not be able to see the addition.

There were no parties present in opposition.

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

Case No. 6557--Thomas M. & Wanda J. Dowling - Northwest of Road 562, west of Route 34.

A special use exception to place four (4) on farm manufactured homes.

The case was presented by Mr. Rickard. Thomas & Wanda Dowling were sworn in and testified, requesting to have four manufactured homes on their farm for members of their family or employees.

Mr. Rickard stated that the Inspector, Mrs. Rafail, found the illegal manufactured homes on the property. Only one unit had a permit.

Mr. Dowling stated that they purchased the property approximately 6 or 7 months ago and are in the race horse business. They are currently living in one of the manufactured homes. They have three children and one employee. Sixty acres of the property is tillable, 14 to 15 acres is in wooded section. Mr. Dowling stated that the four manufactured homes will be in the wood section. There will be a total of five (5) manufactured homes on the farm. He stated that two of the children work on the farm full time, the third child is parttime and the employee is full time. He stated that the unit he lives in is a 1983-85, 14' and the others are 1993, 14'x 60' with one being brought from Harrington. They currently have 11 of their own horses on the property. The manufactured homes are on the property now. He stated that the manufactured homes are not lived in.

Arethea Ellen Evans, Bonnie Workman and Gary Killman were sworn in and testified in opposition. Ms. Evans spoke for herself and her family. She stated they have lived on the road for 62 years and they do not want any problems with neighbors. She asked to see where the manufactured homes are to be placed. She feels horse raising draws other people. She stated that two family members live in homes. There is one double-wide manufactured home and one other unit no one lives in. She stated that the area consists of more stick built homes.

Mr. Dowling stated that where the manufactured homes are to be placed is 250' to 300' back in the woods on Road 562. He stated that there is no house within 1000 feet.

Ms. Workman stated that she has a historic home and a catering business and her property is across the road from the applicants property. She wants the applicants to abide with the rules as they do. She stated that the manufactured homes are lived in and hooked up. She questioned if some of the land is in wetlands where the applicants want the manufactured homes. She opposes the manufactured homes on the farm for workers and migrate workers.

Mr. Killman questioned that without the variance no more that two manufactured homes are permitted. He stated that he has 15 acres and when he built his home his property included wetlands. He does not think the applicants property will perc. He presented pictures of the homes within 1/2 mile radius each way of the property. He is opposed to manufactured homes in any form of variance. Ms. Workman presented letters of opposition.

Mr. Rickard read the letters of opposition into the record from E. Brent & Carla Workman, Gary & Carla Killman and Carol Loockerman Johnson.

Mr. Dowling in rebutal stated that the only manufacturd home being lived in is theirs, and the property has been perced. He stated that the Workman's used to till the land and now they are no longer needed. He stated that there is no other reason to put the units in the woods except they farm the land.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the case be tabled until the next meeting. Vote 5-0.

At the end of the public hearings, motion was made by Mr. Wheatley, seconded by Mrs. Hudson and carried unanimously that Case No. 6557 be reopened for further discussion. At the conclusion of the discussion, motion was made by Mr. Mills,

seconded by Mrs. Hudson and carried unanimously that the case be tabled until the next meeting. Vote 5-0.

Case No. 6558--Joseph Aceto - Northeast of Route 22, 1,400 feet southeast of Road 298.

A special use exception to the parking and loading requirements.

The case was presented by Mr. Rickard. Robert Nash, with Charles Murphy's Office, was present representing the applicant who requested a special use exception to the parking and loading requirements. The site plan was approved November 25, 1997. The applicant is proposing to build an office building. There is a dwelling on the site and he plans to remodel it as office space. He will provide 24 parking spaces on the site and use another site for the remaining parking. The special use is needed to comply with DelDot's requirement of a shared entrance and eliminate two existing entrances.

There were no parties present in opposition.

Motion was made by Mrs. Hudson, seconded by Mr. McCabe and carried unanimously that the special use exception be granted. Vote 5-0.

Case No. 6559--Janet B. Coombes - East side of Road 240, 1,560 feet south of Road 16.

A special use exception for a third on farm manufactured home.

The case was presented by Mr. Rickard. Janet Coombes was sworn in and testified requesting a third manufactured home on her farm for her son to live in. She stated that Ralph Benson and his son farm the property. She has a daughter who lives in an existing manufactured home and she lives in a manufactured home on the property. She stated that one manufactured home will be a 28'x 68' double-wide unit, and the other units will be a 1986, 14'x 70' and a 1995, 16'x 80' manufactured home. She stated that she had the property laid out for subdividing, but has never recorded it. The property remains in her name. Her daughter will have 5 acres and her sons will be on the 12.01 acre parcel.

Mr. Jones stated that the property needs to be clarified, since it is mapped out on the tax map and there are new laws pertaining to the amount of property for a manufactured home.

Mr. Rickard stated that the property still remains in the applicants name since there are no new parcel numbers assigned,

There were parties present in opposition.

Motion was made by Mr. McCabe, seconded by Mrs. Hudson and carried unanimously that the case be tabled until the next meeting, to be researched. Vote 5-0.

Case No. 6560--Clark's Garage, Inc. & Gary Clark - West of Route 113, 1,000 feet south of Road 401.

A variance from the front yard setback requirement.

The case was presented by Mr. Rickard. Gary Clark was sworn in and testified requesting a 25' variance from the 25' front yard setback requirement to be "0" setback for used car display. Mr. Clark stated that he has a blocked view all around his property. He stated that his property line is 72' off the shoulder of the road. He wants to bring the display out to the edge of the road.

Mr. Mills explained that there can only be a variance from the property lines.

Mr. Jones stated that the Board cannot grant a variance off of the property line.

Mr. Clark stated that he has owned the business since 1952 and it has always been an auto business.

It was explained to Mr. Clark that he would have to go to the State for out of property line setback.

Karen Clark was sworn in and testified in favor of the application, stating that they are not sure where the property lines are, that most of their property lines go beyond the power lines. They were told that a survey would be best to find out where their property lines are.

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. Mills, seconded by Mrs. Hudson and carried unanimously that

a 25' variance be granted for used vehicles only. Vote 5-0.

Case No. 6561--County Bank - South of Route One, 1,350 feet east
of Road 271.

A variance from the front yard setback requirement
for off premise sign.

The case was presented by Mr. Rickard. Richard Derrickson was sworn in and testified requesting a 20' variance from the 25' front yard setback requirement for and off-premise sign. Mr. Derrickson stated that he had appeared before the Board on January 5, 1998 for the same sign, but found he had not requested enough variance. He thought he had requested all that he needed at the last hearing, but he had not figured in the 25' front yard setback. The sign is for a motel.

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. Vote 5-0.

The Board took a 5 minute recess.

The Chairman called the Board meeting back into session at 9:07 P. M.

OLD BUSINESS

Case No. 6523 (cont'd.)--Charles E. & Barbara V. Hearn - Southwest
side of Road 78, 270 feet southeast of
Road 487.

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

Mr. Callaway reviewed the case.

After some discussion, motion was made by Mr. Mills, seconded by Mr. McCabe and carried unanimously that the case be tabled until the next meeting. Vote 5-0.

OTHER BUSINESS

Case No. 6223--Dora L. Bell - East side of Route 54A, 1/2 mile
northeast of Route 113.

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

Request for a time extension.

Mr. Rickard read a letter into the record from Dora Bell
addressed to Mr. McCabe requesting a time extension for her Board
approval granted April 9, 1997. She has to remove an unwanted
house and needs more time. She is requesting a time extension to
December 31, 1998.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and
carried unanimously that a time extension be granted to Case No.
6223 to December 31, 1998. Vote 5-0.

Case No. 5860--County Development Association, L.L.C. - North side
of Route One, 2,920 feet west of Route
271.

A variance from the requirements for signs.

Request for time extension.

This request was withdrawn.

Proposed Rules of the Board of Adjustment.

It was the consensus of the Board to decide on a date for a
meeting to discuss the Proposed Rules of the Board of Adjustment.

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

Meeting adjourned at 9:40 P. M.