MINTUES OF APRIL 16, 2001

The regular meeting of the Sussex County Board of Adjustment was held Monday evening April 16, 2001, at 7:00 P.M., in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00 P.M. with Chairman Callaway presiding. The Board members present were: Mr. Callaway, Mr. McCabe, Mr. Wheatley, Mr. Mills, 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. Wheatley, and carried unanimously to approve the Revised Agenda as circulated with the addition that Case No. 7402, application for Kenneth and Renee Lynch be discussed at the end of the Agenda. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of April 2, 2001 as circulated. Vote carried 5 – 0.

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

Case No. 7415 – Roy E. White and R. Allen White – east of U.S. Route 113, 450 feet north of Route 16.

A special use exception to place a billboard, a variance from the height requirement for signs, and a variance from the north side yard setback requirement.

Mr. Rickard presented the case. Mike Gilligan was sworn in with Bonnie Benson, Attorney, present on behalf of the application, requesting a special use exception to place a billboard, a 44-foot variance from the required 50-foot north side yard setback, and a 6-foot variance from the required 25-foot maximum height requirement for signs; that the billboard has been on the property for 15 years; that they would like to bring all Eller signs in compliance; that Eller Sign Company bought the billboard from Phillip Sign Company in September 1999; that they remodeled the sign, not replaced the sign; that they placed catwalks on the sign; that they received the Minutes from Case No. 6599, Universal Inc., from May 1998, which they based rebuilding the signs from the information stated in the Minutes; that they were told over the telephone from the Planning and Zoning Department that a permit was not necessary if they were only repairing the signs; and that the lease for this sign does not expire until 2002.

Mr. Callaway stated that he had received a telephone call from the applicant.

Mr. Berl explained to the applicant that once a non-conforming structure is taken down that it is no longer non-conforming.

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 case be taken under advisement. Vote carried 5 – 0.

At the conclusion of the public hearing, the Chairman referred back to this case. Motion by Mr. Wheatley, and carried unanimously that the special use exception and variances be **denied**. Vote carried 5 – 0.

Case No. 7416 – Michael Mixon – north of Route One, 800 feet southeast of Northeast Boulevard, Lot 4.

A special use exception to place a billboard, a variance from the height requirement for signs, a variance from the front yard and south side yard setback requirement.

Mr. Rickard presented the case. Mike Gilligan was sworn in with Bonnie Benson, Attorney, present of behalf of the application, requesting a special use exception to place a billboard, a 16-foot variance from the required 25-foot maximum height requirement for signs, and a 10-foot variance from the required 25-foot front yard setback, and a 255-foot variance from the required 300-foot south side yard setback requirement from a dwelling; that there is an easement on the property; that there is a possibility that the sign is no longer on the easement, but is willing to place the sign back in the easement; that the sign has been on the property for 10 years; that they rebuilt the sign, not replaced it; that the easement is only 10-foot from a dwelling; that they could meet all setback requirements, except for the 300-foot requirement from a dwelling; and that they submitted pictures.

Michael Mixon was sworn in and stated that he is in opposition to the application; that the billboard was removed from its original location; that the billboard is on his property; that Eller Sign Company left chunks of steel on his land and it damaged his tractor; that he has tried to contact Eller Sign Company with the problem but had no success; that he had to pick up the steel himself; that the billboard is unsafe; that there are electrical wires exposed; that there are large holes in the ground; and that he submitted a survey.

Howard Beecher, Jr. was sworn in and stated that he is in opposition to the application; that he submitted pictures; that he has lived in the area since 1977; that the sign has been on the property since 1991; that the sign is unsafe; that he thinks that Delaware Electric Co-op owns the easement; that trash blows on his property from the sign; and that the sign is an eyesore.

In rebuttal, Bonnie Benson, Attorney, submitted a copy of the easement; that the easement was possibly created in 1991; and that Delaware Electric Co-op does not own the easement.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the special use exception and variances be **denied**. Vote carried 5 – 0.

Case No. 7417 – Rebecca Burgess and Garin Hart – south of Route 9, 3,400 feet east of Route 5.

A special use exception to operate a bed and breakfast.

Mr. Rickard presented the case. Garin Hart and Carol Ceaver were sworn in and testified that they are requesting a special use exception to operate a bed and breakfast; that they are in the process of acquiring the property; that the size of the home is 4,000-square foot; that an Antique store is next door; that there is a bed and breakfast, Green Shutter Inn, in the area; and that the bed and breakfast would have a separate entrance.

By a show of hands, 2 parties were 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 special use exception be **granted**. Vote carried 5 – 0.

Case No. 7418 – Calvin L. Musser, III – east of Route 13-A, 879 feet south of Laurel Town Limits.

A variance from the side yard setback requirement for storage of poultry manure.

Mr. Rickard presented the case. Calvin Musser, III was sworn in and testified requesting a 35-foot variance from the required 50-foot south side yard setback for storage of poultry manure; that the lot is vacant; that he has 3 chicken houses; that the chicken houses have been there since the early 1960's; that he has refurbished the structures; that the size of the structure will be 40-foot wide with a 30-foot wide lean-to; that he would like to develop the 18 acres in the future; and that he does not want to place the manure on the 18 acres because he is afraid of contaminating the Chesapeake Bay.

Lorraine Douglas and Susan Veacock were sworn in and testified that they are in opposition to the application; that there is no proof of a hardship; that they bought their

property in 1993; that they submitted a map of the property; that Mr. Musser should not place the structure on the proposed area since he has ample space on the 18 acres; and that it is unreasonable that Mr. Musser wants to preserve his 18 acres.

Mr. Rickard read a letter from Lorraine Douglas and Susan Veacock in opposition to the application.

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

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

Case No. 7419 – Great Scott Broadcasting – west of U.S. Route 113, 500 feet south of Road 527.

A special use exception to place a mobile home type structure as a temporary office.

No one appeared on behalf of the application.

Motion by Mr. Mills, seconded by Mr. Wheatley, and carried unanimously that the special use exception be **denied** for lack of a record of support. Vote carried 5 – 0.

Case No. 7420 – Ronald J. and Karen F. Flick – west of Road 282, south side of Canter Avenue, Lot 8, within Arabian Corner Subdivision.

A variance from the front yard setback for a through lot.

Mr. Rickard presented the case. Ronald Flick and Michael Morrow, Builder, were sworn in and testified requesting a 4-foot variance from the required 40-foot front yard setback requirement for a through lot; that Mr. Flick has lived in the home for 7 years; that they would like to make improvements to the home; that a building permit was obtained; and that they submitted a picture of the home.

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**. Vote carried 5 – 0.

Case No. 7421 – The Bank of Delmarva, N.A. – southwest of Route One, corner southeast of Road 283, Pelican Square Shopping Center.

A variance from multiple wall signs.

Mr. Rickard presented the case. Edward Thomas and Gregory Fischer were sworn in and testified requesting a variance for multiple signs on the south side wall; that they need a second sign for traffic heading north on Route One; that the size of the sign is 35-square foot; that the size of the wall is 9'6"x12'; and that they submitted pictures.

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

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

Case No. 7422 – Richard Hahn – south of Route 22, Lot 20A, within Massey's Landing Mobile Home Park.

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

Mr. Rickard presented the case. Richard Hahn was sworn in and testified requesting a 4-foot variance from the required 20-foot requirement between units in a mobile home park; that he has lived there for 18 years; that he submitted a letter from Massey's Landing Park, Inc. in favor of the application; and that he is replacing the existing unit with a new unit.

Mr. Rickard read a letter from John and Nancy Protack, neighbors, in favor of the application.

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

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

Case No. 7423 – Armand J. Arseneau – east of Road 42, 800 feet south of Route 36.

A variance from the lot width requirement.

Mr. Rickard presented the case. Armand Arseneau and Robert Nash were sworn in and testified requesting a 106.67-foot variance from the required 150-foot lot width requirement; that he will keep 1.033 acres; that he would like to give 2.156 acres to his daughter; and that he would like to have a separate entrance.

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. Mills, 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. McCabe, and carried unanimously that the variance be **tabled until May 7, 2001**. Vote carried 5 – 0.

Case No. 7424 – Daniel Nelson – south of Route 18, 1,900 feet east of Road 561.

A variance from the lot width requirement.

Mr. Rickard presented the case. Daniel Nelson was sworn in and testified requesting a 32.35-foot variance from the required 150-foot lot width requirement; that he will be purchasing a 30 acre parcel of land; that Sandra Priestley presently has a home on the property, but she will be subdividing it out; and that he was told by George Shaw, DelDOT, that there should be no problems getting an approval for an entrance.

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

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 variance be **granted**. Vote carried 5 – 0.

Case No. 7425 – Chartan Solsnes – northeast of Route One, west of Terrace Road, Lots 8,9, and part of 42, within Silver Lake Manor Subdivision.

A variance from the rear yard and northeast side yard setback requirement.

Mr. Rickard presented the case. Carl Anderson, James Adkins, and Wroland Fraser were sworn in with Larry Fifer, Attorney, present on behalf of the applicants, requesting a 9-foot variance from the required 10-foot rear yard setback for a dwelling, a 3.7-foot variance from the required 5-foot northeast side yard setback for a shed, a 3.7-foot variance from the required 5-foot rear yard setback for a shed, and a 3.5-foot variance from the required 5-foot rear yard setback for a gazebo; that the home has been there since the 1940's; that they obtained a permit for an A-Roof and second floor storage because they had problems with the roof leaking; that the job was completed on December 15, 2000; that Franklin Bunting, Planning and Zoning Inspector, requested

a survey when they applied for a certificate of compliance; that Mr. Bunting sent a letter to Mr. Fifer noting that variances were needed for the dwelling, shed and gazebo; that they are willing to move the shed and gazebo in compliance; that they applied for the variance on March 2, 2001; that Mr. Solsnes died on March 12, 2001; that they were not aware of the problems until the certificate of compliance was applied for; that they built the A-Roof and second floor storage upwards and not outwards; that they removed an overhang that encroached into the setbacks; that lots 8,9, and part of lot 42 was created prior to zoning; that aluminum siding exists on the old structure and that vinyl siding exists on the new structure.

The Board stated to the applicants that a variance would not be needed for the dwelling since the new structure was only altered in height.

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

By a show of hands, 4 parties were in opposition of the application.

Robin Karman and June Morrissey were sworn in with Eric Howard, Attorney, present on their behalf, testifying that they are in opposition to the application; that they disagree with the ordinance; that the use is no longer a non-conforming use since they increased the size of the structure; that the new structure is legally incorrect; that a lawsuit has been filed to stop construction; that they submitted a petition with 12 signatures; that they submitted pictures, a survey, and a real estate sales agreement; that Ms. Karman purchased her home in April 1998; that she will be moving in the home permanently; that she was notified of the construction in November 2000 and immediately obtained an attorney; that her fence was taken down without permission; that they trespassed on her property to repair the home; that the home is too close to her home; that it decreases her property value; that her backyard is unusable because of the 2 story window looking down on her back yard; that there was ample room in the front of the property to build the addition; that a hardship does not exist; and that she is extremely concerned for the safety of her home; that Ms. Morrissey has lived there for 13 years; that the new 2 story addition has invaded her privacy; and that if affects her property value.

Mr. Rickard read a letter from Louis Alan Talley in opposition to the application.

Jerry Fisher was sworn in and testified that he is in opposition to the application; that he is an adjacent property owner; that he bought his property in 1971; that the home invades is privacy and his neighbors; and that the 1 inch property line problem occurred between 1980 and 1985.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the variances be **tabled until May 7, 2001 to see if a variance is needed**. Vote carried 5 – 0.

OLD BUSINESS

Case No. 7352 – Leslie Freeman, Sr. – north of Road 227, 2,048 feet northeast of Route 16, Lots 1,2, and 10, within George A. Metz Subdivision.

A special use exception for a determination of existence of a nonconforming use for three manufactured homes.

The Board discussed the case. Mr. Rickard advised the Board that the Court of Common Pleas rendered a decision on April 9, 2001 and that the State could not prove that the applicant was guilty of all charges.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the special use exception be **denied**. Vote carried 5 – 0.

Case No. 7405 – Goodland & Clearwater – north of Road 326, 1,450 feet north of Road 318.

A variance from the parking spaces and loading space requirement.

The Board discussed the case. Mr. Mills stated that if the variance were to be approved major parking problems would be created.

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

Case No. 7408 – Paul McIlvaine – east of Ocean Highway, east of Belle Road, Lot 31, within Bay View Park Subdivision.

A variance from the rear yard setback requirement.

The Board discussed the case.

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously that a **2-foot variance be granted, instead of a 9-foot variance**. Vote carried 5 – 0.

ADDITIONAL BUSINESS

Case No. 7402 – Kenneth and Renee Lynch – east of Route 26, 600 feet southeast of Road 346.

A variance from the square footage requirement for signs.

Mr. Rickard advised the Board that Renee Lynch is asking for reconsideration and permission to reschedule a public hearing.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that Renee Lynch be allowed to resubmit for an application for the variance, with the understanding that all appropriate fees shall have to be paid with the application. Vote carried 5 – 0.

Meeting Adjourned 10:00 P.M.