

Minutes of May 18, 1998

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, May 18, 1998 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. Mills, Mrs. Hudson, 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 April 20, 1998 be approved as circulated. Vote 5-0.

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

Case No. 6590--R. R.Bayside, Inc. - North Road 271, 568 feet east of Route One.

A special use exception for off-street parking.

The case was presented by Mr. Rickard. John Sergovic, Attorney, was present representing R. R. Bayside, Inc., who requested a special use exception to have off-street parking for buses that bring shoppers to the Rehoboth Outlets. The parking lot may also be utilized as an overflow automobile parking area. The County Zoning Code was referenced pertaining to parking. Mr. Sergovic stated that there are numerous buses that go to the outlets and there is a parking problem for them.

Jeff Clark, with Land Tech, Inc. in Ocean View was sworn in and testified showing and explaining the outlet layout and where the proposed parking will be located. He stated that there were 31 buses at the outlets after Thanksgiving at one time. The new parking area will accommodate 50 buses and will be the proper size with a turn radius that is needed for the buses. In answer to Mr. McCabe's question, Mr. Clark stated that there is a 80' right of way provided for the outlets per Del, DOT. He submitted comments from Mr. Brockenbrough, with the State.

Tricia Roel, from Arlington, Virginia, was sworn in and testified in behalf of this application. She stated that since 1996-97, there has been a 100% increase in bus traffic at the outlets, that bus traffic is popular, and they encourage it to eliminate more automobile traffic. A graphic was submitted showing the projected increase in bus traffic. She stated that cars park along Road 271 and Route 1, and the State Police feel it is a potential hazard. She stated that they had opened the new parking

lot and were told they needed approval, so it was closed down. A letter from the Conservation District was submitted. She feels the use will not adversely affect neighboring properties and it will be 175' back from Road 271. In answer to Mr. Mills question she stated that R. R. Bayside owns the property where the bus parking will be located. She stated that there are no future plans for additional property and that they only own the property on the plan shown.

Mr. Sergovic explained that R. R. Seaside owns property next to the site. He stated that they are trying to alleviate problems on Route 1 and feels the new parking lot will lessen them. He stated that the road going into the parking lot is a dead end road at the present time.

Roy Fritz, Art Shelley and Terrance H. Barkley were sworn in and testified.

Mr. Fritz stated that he is a member of the Board of Directors Homeowners Association in the Glade, that there are 130 homes in the Glade and he does not feel it will have a significant impact on Route 271. He referenced a letter he sent in concerning this hearing. He stated that with what he had seen at this meeting he has no opposition.

Mr. Bartley testified in opposition, reading from a prepared statement and giving his reasons for opposing the special use exception. He feels that what the applicants are asking for is not in accord with the County Zoning Code requirements. He feels that the applicants should only have the new parking lot if needed, but they have already met the parking requirements for the outlets, therefore, it is not needed for the outlet approval and they should not be before the Board. He referenced a previous variance hearing where the State Police was not mentioned pertaining to the parking. He feels they are asking for something the Board cannot do. He feels they should go to the County Council for a change in the laws. He feels it will have the same affect as a C-1 Zoning change.

Mr. Sergovic stated that all bus traffic will be through the existing entrance, that they are asking for relief from parking on the streets.

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

Mr. Rickard made reference to the letter received from Mr. Shelley and Mr. Fritz that was previously mentioned.

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 Mrs. Hudson and carried unanimously that the special use exception be granted, finding the use will be beneficial to the area, to provide additional parking, better safety provided, practical difficulties were shown and it will help relieve parking problems. Vote 5-0.

Case No. 6591--Jeffrey A. & Terri L. Portmann - East of Savannah Road, 1,331 feet north of Woodland Avenue, adjacent to New Castle Street, Lot 6, Oscar H. Warrington Subdivision.

A variance from the square footage for signs.

The case was presented by Mr. Rickard. Karen Emory Brittingham, who resides in Lincoln, was sworn in and testified, representing the application. The applicants requested a variance from the square footage for signs. They requested a 9 sq. ft. variance from the 6 sq. ft. sign for a home occupation. They are relocating from Milton to a proposed home occupation site on Savannah Road. The applicants have an Accounting Firm on Savannah Road. She presented a letter from Lawrence Lank, Director of Planning & Zoning commenting on the home occupation sign. Pictures were also presented. Ms. Brittingham stated that the sign will be a 36'x 60', 2 sided illuminated sign that will advertise the applicants business and the sign will meet the setback requirements. She stated that their sign will be consistent with other business signs in the area. The sign will advertise the business in a manner to accommodate traffic. She feels the sign will not impact the area.

Mr. Jones questioned whether the applicants can have a home occupation sign that is illuminated and that he is not sure what Mr. Lank meant in his letter referencing the illuminated sign.

Ms. Brittingham stated that the application requested a illuminated sign.

After checking the application, Mr. Rickard stated that it does not state illuminated sign.

Elwood Lynch and Gladys Lynch were sworn in and testified in behalf of the application, stating they have no objections to the requested sign. They stated that they have not noticed any other illuminated signs in the area except the Beebe Center sign.

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 until the next meeting and research be done on the issue of illumination. Vote 5-0.

Case No. 6592--William & Karen Bradford - Northwest of Road 594,
Lot 2, Country Glen.

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

The case was presented by Mr. Rickard. William & Karen Bradford were sworn in and testified, requesting a 4.4' variance from the 30' front yard setback to be 25.6' for an existing manufactured home, that was set by the previous owner, and a 3' variance from the 30' setback for an 8' deck, on Lot 2, within Country Glen. It was stated that they have been a resident of Country Glen for 11 years. When they went for closing a survey was needed and the encroachments were found. Mr. Bradford stated that there are other properties within Country Glen who have had variances.

There were no parties present in opposition.

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

Case No. 6593--Judy K. Greenwood - Southwest of Road 263, 300 feet
northwest of Route 18, E-22, Donovan/Smith
Mobile Home Park.

A variance from the separation requirement between units.

The case was presented by Mr. Rickard. Judy Greenwood was sworn in and testified requesting a 8' variance from the 20' setback requirements between units for a 10'x 12' shed on Lot E-22, within Donovan/Smith Mobile Home Park. She stated that the shed is a cottage type shed and is not on the property yet.

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. Vote 5-0.

Case No. 6594--Michael S. Teti, Jr. - South of Road 277, Lot 26,
Angola By The Bay.

A variance from the rear yard setback requirement.

The case was presented by Mr. Rickard. Michael Teti, Jr. and Frederick J. Tana, builder with A to Z Builders from Lewes, were sworn in and testified. Mr. Teti requested a 5' variance from the 20' rear yard setback on Lot 26, within Angola By The Bay for a 12'x 16' deck to be enclosed as a porch. Mr. Teti wants to put a roof over the deck and enclose it for comfort from insects. It was stated that there is a common area behind the property. Mr. Tana stated that he has built several homes in the development and that they are allowed to build into the common area with septic system. In answer to questions from the Board, Mr. Tana stated that the setbacks were on the building permit when it was obtained and quoted the setbacks.

Mr. Rickard stated that the deck can encroach into the setback 5 feet as long as it remains open, but once a roof is put over it and it is enclosed, the deck must conform to the original setback.

Mr. Mills questioned if the deck was completed and if so why did he put a roof over it when he was aware of the setbacks, and questioned if there is a Homeowners Association.

Mr. Tana stated that the deck was already done and a roof put on it, but they stopped so the enclosure is not completed.

Mr. Teti stated that the work is not completed. He stated that the Homeowners Association said it is ok as long as the Board approves it.

A petition with 11 signatures was presented in favor of the application.

Cathy Mason, who lives in Angola By The Bay, was sworn in and testified in opposition. She stated that she was upset when she saw the neighbors footings and thought they were to close, so she called the Planning and Zoning Office. She stated that all septic systems are required to be in the front yard. She stated that she has seen water standing and it has a septic smell. She stated that Donna Mowbray, Zoning Inspector, inspected the property and found the applicants were not within the setbacks. She stated that the permit setbacks were correct and feels according to the site plan the use could not be built. She stated that Mr. Teti does not live on the property. Pictures were presented. She stated that she feels the applicant should not be given the variance just to accommodate him, that he built wrong knowing the setbacks. She

asked the Board to reject the variance request. She also stated that one name on the petition has been rescinded and a letter was presented from that person.

Mr. Rickard read a letter from Robert D. Dorch, taking his name off the petition in favor of the application. He is opposed to the request.

Mr. Tana in answer to Ms. Mason stated that the property does not have a septic system as yet. He stated that he has built 199 homes in the development since 1997. He stated that the homes are not his.

Mr. Teti stated that he lives in Angola By The Bay, but this home is his brother-in-laws.

Mr. Rickard stated that the permit references the dwelling and a 14'x 16' screen porch and the rear yard setback as 20'.

Mr. Tana stated that the porch would be nice to have, since the property holds water and draws mosquitos.

Mr. Callaway stated that the use would be nice, but others may want larger structures and require more variances, and the setbacks were known.

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. Mills, seconded by Mr. Wheatley and carried unanimously that the variance be denied, finding the use will adversely affect the surrounding properties, the applicant has not met the requirements setforth for granting of a variance, the property is not unique and can be developed without a variance and the hardship was created by the applicant. Vote 5-0.

Case No. 6595--Donald Steelman, Edward Steelman, Gail Amemiya,
Heirs and Trustees - East of Road 267, 1/2 mile
northeast of Railroad.

A variance from the lot width requirement.

The case was presented by Mr. Rickard. Donald Steelman, who resides in Texas, Edward Steelman, who resides in Seaford and Gail Anemiya, who resides in Rockville, Maryland, were sworn in and testified requesting a 8.56' variance from the 150' lot width

requirement for Parcel B. The applicants were represented by Susan Weidman, Attorney. Ms. Weidman stated that the applicants are heirs of Flossie Steelman Roach. She submitted a copy of the will and testament. She stated that Gail Ememiya, daughter of Mrs. Roach is the Executor of the Estate. Her mother has been deceased approximately two years. She left a parcel of land approximately 5 acres in size with a house on it. She left the house with one acre of land to her daughter and the remaining property to be divided between her two sons (the applicants). They wish to subdivide the property and one parcel will have only 141.44' of road frontage, which is Parcel B. Parcel A will have 150' of road frontage. Ms. Amemiya wishes to keep her parcel with the house to eventually live in. The brothers wish to sell their parcels, but cannot do so until the will is settled. It was stated that when the will was made 150' of frontage for a lot was not in affect. Ms. Weidman stated that she feels it will be a hardship to the applicants if the variance is not granted.

Edward & Donald Steelman agreed with what had been stated. They stated that it will create an undo hardship without the variance. The will was made out in 1988.

Mr. Mills stated that if in the event Ms. Amemiya purchased all of the property from her brothers, a variance would not be needed.

Ms. Amemiya stated that her mother wanted all of them to have an inheritance and she is to have first option to buy the land willed to her brothers, but the will has to be settled first.

In answer to Mr. Mills question, Mr. Jones stated that he feels the will could be settled without a variance, but he does not know the details of the estate.

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 hearing, the Chairman referred back to this case. After some discussion, motion was made by Mr. McCabe, seconded by Mr. Wheatley and carried unanimously that the variance be granted, finding the use will not adversely affect the neighborhood and there are other smaller parcels in the area. Vote 5-0.

Case No. 6596--Anthony & Karen Milan - South of Route 54, Lot 20,
Edgewater Acres.

A variance from the rear yard setback requirement.

The case was presented by Mr. Rickard. Anthony & Karen Milan were sworn in and testified, requesting a 4' variance from the 20' rear yard setback requirement to build a 16'x 30' porch on the back of their home. The property being located at Lot 20, within Edgewater Acres. It was stated that Planning and Zoning had told them the setbacks of 30' from the front, 10' from the side and 20' from the rear property lines. They stated that their property markers are inside of the bulkhead and they were told the bulkhead is their property line. Mr. Milan stated that there are other structures in the development that go further into the rear yard setback than his.

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, finding the use will not adversely affect the neighborhood. Vote 5-0.

Case No. 6597--James F., Jr. & Kateryna M. Orth - South of Road
270A, Lot 20, Beachfield.

A variance from the side yard & rear yard setback requirements.

The case was presented by Mr. Rickard. James Orth was sworn in and testified, requesting a 9' variance from the rear and a 7' variance from the side yard setback requirements for a proposed garage, on Lot 20, within Beachfield. He stated that he will be consistent with the neighbors. He stated that his neighbor, John Coffman had been granted a variance on his property. He submitted a copy of a letter to the Beachfield Association. He feels it will not impact the property to the rear, since there is going to be an Elder Care Facility on the property behind them with a roadway and 20' buffer.

Mr. Rickard read a letter from the Homeowners Association Board of Directors, Bill Fifer, Vice President, voicing no objections.

There were no parties present in opposition.

Motion was made by Mr. McCabe, seconded by Mr. Mills and carried unanimously that the variances be granted, finding the use will not affect the neighbors. Vote 5-0.

Case No. 6598--James W. Harris - West of Road 312, Lot 44, Isaac W. Harman Subdivision.

A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. James W. Harris was sworn in and testified requesting a 4' variance from the east corner of the existing house, on Lot 44, within Isaac W. Harman Subdivision. Mr. Harris stated that the house is old and small and cut-up. He wants to improve it and square it off.

Mr. Mills pointed out that the variance requested is wrong according to the site plan submitted. It would be a greater variance request, since he is adding on almost to the front of the house. He needed to ask for the variance from the closest point. He questioned if the application has to be readvertised, since the variance will be more than 4'.

Mr. Jones stated that in not readvertising the application, the difficulty is that someone looking at it would not see the correct amount of variance needed.

Mr. Rickard stated that when the application is filled out the applicant puts the amount of variance needed on the application and once it is signed it is not changed by the personnel.

Mr. Harris stated that the builder filed the application.

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

Case No. 6599--Universal Outdoor, Inc. - West of Route 113, .4 miles south of Route 26.

A special use exception to replace existing billboard sign.

The case was presented by Mr. Rickard. Mr. Rickard gave some background on this case referencing pictures taken and asked the Board to view them. He stated that the question was whether the billboard is being rebuilt or replaced. He stated that the violation has been since September 25, 1997 and was sent to the constable's office for further action. They were told to come to the Board for approval. He stated that the Planning and Zoning Commission wants this case pursued due to property around it being C-1 General Commercial and wanting to make it AR-1 Agricultural Residential. He stated that there has been on going correspondence to this point.

Elizabeth Cottingham, from Salisbury, was sworn in and testified in behalf of this case and was represented by Michael DiCroche, Attorney. He stated that the applicants are requesting to replace an existing billboard sign. He stated that he was contacted in February and advised of the situation, which was postponed two times. He stated that they had purchased a pre-existing sign and it no longer can be built. Planning and Zoning was contacted and they were told no permit needed to replace a nonconforming structure. He feels it will be a hardship to the applicants. Mrs. Dulin, the property owner wants to have her property rezoned. He stated that they put steel poles on the billboard and they want to use the nonconforming use.

Ms. Cottingham stated that they have an on going lease with Mrs. Dulin. She stated that they had called Planning and Zoning and were told they could not be any higher than 32'. She stated that a soil test and survey had been done.

Mr. Callaway stated he understood they called to rebuild the sign and when they called again after the sign was constructed and talked to Mr. Rickard, he was told about the steel poles.

Ms. Cottingham stated that she called to rebuild a wood sign to steel.

Mr. DiCroche stated that they have State permits and the sign is not illuminated, it is the same size and not taller than before. He would like the applicants to be allowed to continue the nonconforming use.

Mr. Jones stated that the code has no language to rebuild or reconstruct. He explained a nonconforming use that when it is taken down and put up again the nonconformity ends.

Mr. DiCroche stated that the applicants thought they had permission or they would not have taken the sign down. He stated that they had relied on a governmental official for representation.

Mr. Rickard stated that the applicants did not rebuild the billboard, they replaced it.

There were no parties present in opposition.

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

The Board took a recess. At 9:30 P. M. the Chairman called the meeting back to order.

Case No. 6600--Rick Haden T/A Coastal Resorts Mgt. - East of Route One, Sea Colony.

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

The case was presented by Mr. Rickard. Richard Lewis Hayden of Bethany Beach, Delaware, was sworn in stating he is manager of this contract, and represented the applicants who requested a 35' variance from the 40' front yard setback requirement and a 5' variance from the 15' side yard setback requirement for a bus stop and boardwalk. Mr. Hayden stated that they no longer need the front yard variance and are asking for the 5' side yard variance only. He showed a site plan. He submitted letters from the Engineers Department and the Fire Marshall. He stated that they have been using their own shuttle in Sea Colony, and want to make it more accommodating to the people, by putting seats in and a aluminum canvas over it. He stated that there is a sewage discharge where they are putting the sidewalks and if there is ever a problem they will remove them at their expense.

There were five people present in opposition by a show of hands.

Kelly Gelof, Attorney, was present representing the opposition. Exhibits were presented. They asked to see the plans since there is a change in the variance request.

Dominic L. Alberti and Robert D. Faw, who reside in Middlesex Beach, were sworn in and testified in opposition.

Mr. Alberti stated that he is past president of the Board of Director's of the Middlesex Beach Association. He stated that their development owns their own roads, their own beach and have their own lifeguard. They are not in favor of people from Sea Colony being shuttled down to their beach. He stated that he lives full time at his residence and has owned it for 30 years. He feels the use places a hardship on them. He stated it would be a reasonable solution to change the location.

Mr. Faw stated that he built his home in 1985 and it is the last home on the beach going north before Sea Colony. He stated that he has seen an encroachment of people from Sea Colony on their beach. Their development, Middlesex Beach, has 130-245 lot owners.

He stated that they own their own beach and want to keep it private. He feels Sea Colony has too many people for their beach. He stated that they have put ropes, signs and fences up and they have been cut and torn down. He feels it will change the character of the beach to become public.

Mr. Rickard stated that the use is permitted if it is left open, but with the canvas roof a variance is needed. He also stated that they can have the walkway, if it is not over 6", without a variance. He stated that they can use everything else without a variance, except for the covering.

Mr. Hayden stated that they have been dropping people off for years at the same location. They just want a better bus stop.

Ms. Kelly stated that the use will encourage more people to use the beach at Middlesex Beach..

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

OLD BUSINESS

Case No. 6577 (cont'd.)--John H. & Elouise H. Cunnington - North of
Route 16, 300 feet northeast of Road 602.
A variance from the minimum lot width requirement.

The case was reviewed by Mr. Callaway.

Mr. Rickard stated that he had researched this case and found that a 50' right of way had been approved by Planning and Zoning, and variances had been granted on either side of the property.

After some discussion, motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the variance be granted. Vote 5-0.

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

Meeting adjourned at 10:19 P. M.