

Minutes of June 1, 1998

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, June 1, 1998 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 6:58 P. M. with Chairman Callaway presiding. The Board members present were: Mr. Callaway, Mr. McCabe, 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 Mr. McCabe and carried unanimously that the minutes of May 18, 1998 be approved as circulated. Vote 4-0.

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

Case No. 6601--Riverview Associates - South of Yacht Basin Road,
3,800 feet west of Road 357.

A variance from the rear yard setback requirement.

The case was presented by Mr. Rickard. There were no parties present representing this case. The Chairman stated that the case would be heard at the end of the agenda to give the applicant or a representative time to appear.

At the end of the public hearings, the Chairman referred back to this case. Theodore Simpler, from Seaford, was sworn in and testified representing this application. The applicants requested a 10' variance from the 10' rear yard setback requirement to build a boathouse and deck. Their rear yard setback line is along the water. Mr. Simpler stated that Riverview Associates own the property and it is surrounded by water on the south and west sides. He stated that the applicants could meet the setbacks if they put a detached boathouse and deck, but they want to attach it and they have to meet the greater setback, therefore, a variance is needed.

There were no parties present in opposition.

Motion was made by Mr. McCabe, seconded by Mr. Wheatley and carried unanimously that the variance be granted, finding the use will not affect anyone and there is no reason to separate the use from the house, since the house has been there for a long time. Vote 4-0.

Case No. 6602--Nicholas C. Silwonuk - South of Route 54, Lot 11,
Mason Dixon Mobile Home Park.
Variance from separation requirement between units
in a mobile home park.

The case was presented by Mr. Rickard. Nicholas Silwonuk was sworn in and testified, requesting a 10' variance from the 20' setback requirement on Lot 11, within Mason Dixon Mobile Home Park for a proposed screened 12'x 28' deck. He stated that there are others in the park with similar or lesser distances from the property line. He stated that this is his vacation home. There is no Homeowners or Park Association, according to Mr. Silwonuk.

Mr. McCabe stated that there are others in the park similar and that this is an old park.

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 4-0.

Case No. 6603--William & Kathleen Kaufhold - Southwest of Pinewater Drive, southeast of Multiflora Drive, Lot C-13, Pinewater Farm.
Variance from front yard setback requirement.

The case was presented by Mr. Rickard. William & Kathleen Kaufhold were sworn in and testified requesting a 6' variance from the 30' requirement for an 8' awning to be put on their garage. Their property is at Lot C-13, Pinewater Farm.

Mr. Jones pointed out that the application stated a 6' variance but the drawing shows 8'. He questioned the amount of variance needed.

The applicant stated that a 6' variance should do. He showed a building plan.

There were no parties present in opposition.

Mr. Rickard read a letter of support from the adjacent property owners, Samuel, Jr. & Linda Sloan.

In answer to Mr. McCabe's question, Mr. Kaufhold stated that Lot 15 is vacant.

Motion was made by Mr. Mills, 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. Wheatley, seconded by Mr. McCabe and carried unanimously that the variance be granted. Vote 4-0.

Case No. 6604--Wright Properties of Seaford, L.L.C. - Route 18 and U. S. Route 13 South.

Variance from the front yard setback requirement for automotive sales display.

The case was presented by Mr. Rickard. Robert D. Wright was sworn in and testified representing Wright Properties of Seaford, L.L.C. and was represented by Scott Bradley, Attorney. The applicants requested a variance from the front yard setback for auto display to park vehicles. They want to park the vehicles 5 1/2 feet into the 25 foot setback. A 25' front yard setback is required and they want to be 19 1/2 feet from the front. Mr. Bradley stated that the applicants have a auto showroom and sales lot and have operated at this location for over 20 years. They request a 15' setback from the corner property. He stated that the vehicles will not interfere with traffic or neighboring properties. There will be no problem with visibilitiy.

Mr. Wright stated that the statements made by Mr. Bradley are true, that they have been on the property for over 20 years. He stated that he had talked with Wayne Thornton, with Del, DOT and there will be curbing.

Mr. Bradley stated that the property is unique, it cannot otherwise be developed, needs a variance, the hardship was not created by the applicant, it will not alter the character of the neighborhood and it is the minimum variance needed.

There were no parties present in opposition.

Motion was made by Mr. Mills, seconded by Mr. Wheatley and carried unanimously that the variance be granted, finding the applicants meet all of the requirements for the granting of a variance. Vote 4-0.

Case No. 6605--Rojan-595 LLC - Southwest of Route One, 1,995 feet southeast of Road 274.

A variance for second wall sign.

The case was presented by Mr. Rickard. Dale McCallister, with Kent Sign Company, was sworn in and testified representing the applicants who requested a variance to have a second wall sign. The wall sign will be placed on the south side of the building for Blockbuster Video. A picture was presented. The sign will be put on the side of the building on Airport Road. Mr. McCallister stated that years ago they were told that if they had a second entrance a second wall sign was permitted without going before the Board. He found out that this was not true and the second door was removed. He does not know where the information came from.

There were no parties present in opposition.

Motion was made by Mr. McCabe, seconded by Mr. Wheatley and carried unanimously that the variance be granted. Vote 4-0.

Case No. 6606--Rehoboth Professional Center - Northeast Route 1
intersection Route 1-A, Lots 1, 2, 8, & 9,
Lincoln Park.
Variance for second wall sign.

The case was presented by Mr. Rickard. Eric Steven McDowell from Smyrna, was sworn in and Dale McCallister, with Kent Signs, sworn in on the previous case, were representing this case. The applicants requested a second wall sign for S R Computers Rehoboth, Inc. (leasee). They propose to have a second wall sign on the north side of their building in conformity to others they have. The sign will be 32 sq. ft., the same as on the front of the building.

Mr. Rickard stated that when facing the building the sign will be on the south side.

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 4-0.

Case No. 6607--R. & R. Bayside, Inc.- West of Route One, north of
Road 274.
Variance for second wall sign.

The case was presented by Mr. Rickard. Frederick L. Phillips, Jr. from Seaford, was sworn in and testified, representing the applicants and Nike Factory Store, who requested a variance to allow a second wall sign for their corner store in the Ocean

Outlets. Mr. Phillips stated that the store faces Route 1 and inside the shopping center. It will have neon channel letters, the same as on the front of the store. It will be 2' in height and 11 1/2" in length.

There were no parties present in opposition.

Motion was made by Mr. Mills, seconded by Mr. McCabe and carried unanimously that the variance be granted. Vote 4-0.

Case No. 6608--R. & R. Bayside, Inc. - West of Route One, north of Road 274.

Variance for second wall sign.

The case was presented by Mr. Rickard. Larry Holding from Milton, with Rogers Sign Co., was sworn in and testified representing this application. Mr. Holding stated that the applicants were requesting a second wall sign for DKNY at the Rehoboth Outlet Center 2. It will have neon channel letters, be 2'x 5' and go on the west side of the building.

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 4-0.

Case No. 6609--Michael C. Neal, Trustee - Southwest of Route One, 1,240 feet south of Road 268.

Variance for second wall sign.

The case was presented by Mr. Rickard. Larry Holding, from Milton and with Rogers Sign Co., sworn in on the previous case, represented this case. He requested a second wall sign advertising Hurd Windows, stating that it will be the second on premise sign. He stated that it will be on the north elevation side of the building. It will be a 12'x 16' electrical neon sign. He stated that they already have a channel neon advertising sign for Delaware Cedar.

There were no parties present in opposition.

Motion was made by Mr. Mills, seconded by Mr. Wheatley and carried unanimously that the variance be granted. Vote 4-0.

Case No. 6610--Donna & Glen McCandless - Northeast of Road 312,
north of Souix Drive, Lot 11, Warwick
Park.

Variance from the side yard setback requirement.

The case was presented by Mr. Rickard. Donna & Glen McCandless were sworn in and testified, requesting a 6' variance from the 15' side yard setback on Lot 11, within Warwick Park.

Mr. Rickard stated that the Inspector's remarks on the application state that the shed in violation on the lot will be corrected.

Mr. McCandless stated that the surveyor laid out the block work and Nanticoke Homes placed the home too close to the side yard. He stated that there was no Nanticoke Home representative present. Letters from neighbors in support were presented.

By a show of hands there were seven people present in support of the application. Patrick C. Miller, from Millsboro, was sworn in and testified in behalf of the application. He stated that he owns Lot 47 and has no problem with the mistake made. He feels the applicants had no control over the error made. He stated that he was upset that the Homeowner's Association had paid Attorney fees to oppose the application. He stated that others in the development have had variances.

Mr. Rickard read the correspondence from Robert & Bonnie Miller and George J. Sahitskey voicing no objections.

Steven J. Miller, from Millsboro, was sworn in and testified that he was in favor of the application, stating that he has property next to the applicants. He sees no problem with the variance and that others have had variances.

The applicants stated that the home has been on the property for approximately three months.

Eric Mooney, Jr., Attorney, was sworn in and testified representing the Homeowner's Association who are opposed to the variance request. He stated that they wish to go on record as being opposed to the variance, that the house is a little bigger than anticipated. He stated that it is bigger than the plans submitted to the Association on February 19, 1997. The initial plan was submitted to the Architectural Committee.

Mrs. McCandless stated that the Board had a copy of the final placement survey submitted.

Motion was made by Mr. Mills, seconded by Mr. McCabe and carried unanimously that the variance be granted, but will not take precedent over the Homeowner's Association. Vote 4-0.

Case No. 6611--Dawn M. Long - South of Road 554, 1/4 mile Road 560,
Lot 2, Bucks Run.

Attach two manufactured homes to make one unit.

The case was presented by Mr. Rickard. Dawn M. Long was sworn in and testified requesting to attach two manufactured homes to make one unit for additional space, for her step-mother to live in. She stated that the unit will be 14'x 70' in size, but she has not yet purchased it. It will be placed perpendicular to the one existing. Ms. Long stated that there will be an A-Roof, same siding on both, on a permanent foundation and there will be only one kitchen. When asked by Mr. McCabe how long it will take to complete the project, she stated that she should have it completed within one year. It was stated that there are others in the area that are attached and her unit will be way back off the road.

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 be granted, with the stipulations that it be a 14'x 70' unit; one common A-Roof; same siding on both; permanent foundation and to be completed within one (1) year. Vote 4-0.

Case No. 6612--Steve Murphy - East of Route 113, north and south of
Road 54A.

A variance from the front yard setback requirement for automotive sales display; special use exception to place a manufactured type structure for a sales office.

The case was presented by Mr. Rickard. Steve Murphy from Laurel, was sworn in and testified requesting a 25' variance from the 25' front yard setback requirement for automotive sales display and a special use exception to use a mobile home type structure for a sales office. It was stated that the mobile home type structure will be a 1989, 12'x 33' office trailer and he has all permits. It was stated that the cars have been moved back 5'. Mr. Murphy stated that the property is odd shaped and next to Vines Creek. He stated that he has a septic and is putting a fence up on the property line. He wants his entrance off of Road 54A. He stated that the area is wooded and a trailer park is in the area. He also

stated that he was not aware of the setback when he put the display on the property.

Mr. Mills questioned if Mr. Murphy had checked the height requirement for his fence.

Mr. Murphy stated that he is next to Vines Creek.

By a show of hands there were four people present in opposition.

Wesley Hayes, Jr., Jeanette Hayes and Alice Godwin Smith, all from Frankford, were sworn in and testified in opposition.

Mr. Hayes stated that there are 10 vehicles there now and he has concerns about what they will bring to the community. He stated that the applicants have a lot of old and antique cars. He considers them to be junk. He also expressed concern about the bad curve on the road. He questioned where the entrance will be since the applicant is now on both sides of the road.

Alice Smith stated that she has lived on the road for 36 years and she feels the use is unsafe, since children ride bikes on the road. She feels the applicant does not need to put the junk cars so close to the curves and there is no shoulder. She would like these things considered.

Jeanette Hayes stated that she lives on Road 54A and feels the applicant does not have anything to offer their community and that he has junk cars on the property. She stated that she thought there was always notice to do something on the property.

Mr. Jones stated that a used car lot is permitted by law in C-1 zoning.

Mr. Murphy stated that he purchased the property last July, 1997, as commercial property. He stated that he sells antique cars and is not putting some of them there until he has an office. He feels the fence will offer security.

Mr. Rickard stated that the property has always been C-1 General Commercial and the property was posted May 4, 1998.

Mr. Hayes stated that he his son was killed on the road and with the trees (wooded area) a person cannot see until they are on it. He feels there is not room for what the applicant is doing.

Mr. Murphy stated that he changes tires and does mechanical work and he has cleaned up the trash that was on the property.

Mr. Mills stated that the Board can only consider the variance for the parking of the cars and the law requires they be back 25' from the front property line.

Mr. Rickard referenced what is permitted in the Code referring to auto sales.

Ms. Smith stated that she came to discuss the safety for their children, that there is no shoulder and if they are riding bikes, there is no place for them to go, and there are too many cars on the road.

Mr. Jones explained that the Board cannot stop the applicant from having car sales, since it is permitted in the Code under C-1 General Commercial zoning.

Mr. Hayes stated that they are opposed to the application.

Mr. Murphy stated that there is a ditch on both sides of the property all the way down the road and there is no place for the children to ride their bikes. He stated that is a very dark area and he is putting up lights.

Motion was made by Mr. Mills, seconded by Mr. McCabe and carried unanimously that the case be tabled until the next meeting to give them time to revisit the site and evaluate what was said.

Later in the evening, Mr. Mills made a motion to reopen this case for further discussion. The motion was seconded by Mr. McCabe and carried unanimously to reopen this case. Vote 4-0.

Mr. Mills requested that the Board be provided with a list of existing variances approved by the Board pertaining to automobile display and keep it current to have before them at the meetings.

Motion was made by Mr. Mills, seconded by Mr. McCabe and carried unanimously that the case be tabled until the next meeting. Vote 4-0.

Case No. 6613--John H., V, & Alicia B. Tennent - Seaside Avenue,
Lot 23, Bethany Village.
variance from the front yard setback requirement.

The case was presented by Mr. Rickard. John H. Tennent was sworn in and was represented by Scott Bradley, Attorney. Mr. Tennent requested a 6" variance from the front yard setback requirement of 30', on Lot 23, within Bethany Village. Mr. Bradley stated that the applicants own a 11,235 sq. ft. lot with a two story home on pilings, and has been that way for several years. They had a survey done and found the construction error in the front yard setback. He feels the use will not impact the area and that it is the minimum variance requested.

Mr. Tennent stated that the statements made by Mr. Bradley were true. He added that the house has been on the property for 12 years and is for sale. He was not aware of the encroachment until the survey was done. He stated that he did not create the error.

There were no parties present in opposition.

Motion was made by Mr. Wheatley, seconded by Mr. McCabe and carried unanimously that the variance be granted. Vote 4-0.

Case No. 6614--Helen Dukes - East of Road 357, corner northeast of Assawoman Canal.

Variance from the minimum lot width requirement.

The case was presented by Mr. Rickard. Thomas Dukes, from Springfield, PA, was sworn in and testified representing his mother, Helen Dukes stating he is Power of Attorney for her. He stated that his mother requested a 44.92' variance from the minimum lot width of 150' for a lot on a public road. Mr. Dukes stated that his mother wants to sell a portion of her property. He stated that the neighbor wants to purchase 95' of her property and incorporate it into his existing property as an extension.

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, with the stipulation that there be no separate entrance and the property be combined with the existing to become one lot. The Board found that the use will not adversely affect anything in the area. Vote 4-0.

Case No. 6615--Jean Charits - Southwest of Kelly Circle, 450 feet southeast of Lee Boulevard, Lot 5, Hastings Estates.

Variance from the front yard setback requirement.

The case was presented by Mr. Rickard. Mr. Jean Charits from Seaford, was sworn in and was represented by Valentine Miller a Minister, from Greenwood, who affirmed. Mr. Charits stated that he does not speak good english and Mr. Miller would speak for him. Mr. Miller stated that a mistake had been made when a double-wide was placed on the property, being Lot 5, within Hastings Estates, and a Certificate of Compliance could not be issued because of an error. He stated that the applicant had been trying to correct it for his sister, whose life savings have been spent to move her from Florida. He stated that the house cannot be moved back due to the solid foundation and it would be a hardship to move it.

Mr. Charits stated that the septic system is too close to the house and it is on a block foundation already set up. He stated that the septic system was put in after the property was purchased and he never knew about the property line.

Mr. Mills questioned who determined where the septic system was to be placed and the manufactured home placement.

Mr. Charits stated that his sister has six children and they tried to do everything properly. He stated that he has permits and was told to be 30' from the front, but there is 11' from the fence and he thought the setback was from the fence to the house. He stated that he had purchased the home from Oakwood Homes. The home was turned the long way and he knew nothing about property lines. He just told them where he wanted it.

By a show of hands there were six people present in opposition.

David Michael Stidham, Lot 3, Hastings Estates, was sworn in and testified in opposition. He stated that the applicant knew well in advance and was told the double-wide did not have enough room. He was shown where the stakes were. He stated that the property was already fenced in when the applicant bought it and was shown the fence was over the line. He stated that he is opposed to the whole thing. Pictures were presented. He feels they have room between their homes and the applicant wants to be too close to his property line. He also feels there will be too many living in the unit.

Mr. Jones explained that the Board can only consider the variance from the property line.

Kathleen Shawl, from Seaford, was sworn in and testified in opposition. She stated that her property faces the applicants property and that she has two lots directly across from him. She

feels if he puts another manufactured home on the property she would not be able to sell her property, because of the way the mobile homes are placed. She feels the manufactured home and fence are too close. She is opposed to being too close to the property lines. She feels the rules are made for everyone and should not be broken.

Mr. Rickard stated that it is a legal lot and the survey markers on the property.

Mr. Charits stated that he bought two lots and has a big yard. The survey was done by Mr. Miller.

Motion was made by Mr. Wheatley, 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 Mr. McCabe and carried unanimously that the case be tabled until the next meeting, to give the Board time to revisit the site. Vote 4-0.

The Board took a recess. Mr. Callaway recalled the meeting to order at 9:03 P. M.

OLD BUSINESS

Case No. 6591 (cont'd.)--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 reviewed by Mr. Callaway.

Mr. Rickard stated that after his research, home occupation signs are not to be illuminated according to the Zoning Code.

After some discussion, motion was made by Mr. Mills, seconded by Mr. McCabe and carried unanimously that the variance be granted, for the size of the sign only, not to be illuminated. Vote 4-0.

Case No. 6599 (cont'd.)--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 reviewed by Mr. Callaway.

Lawrence Lank, Director of Planning & Zoning, clarified his letter pertaining to the Change of Zone and Board issue. Action was deferred until the Board reviewed the site.

After some discussion, motion was made by Mr. Mills, seconded by Mr. Wheatley and carried unanimously that the case be tabled until the next meeting. Vote 4-0.

Case No. 6600 (cont'd.)--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 reviewed by Mr. Callaway.

Mr. McCabe stated that he had looked at the site again and they are already busing in people. He feels they only want to improve the bus stop and cover it. He feels the use will not affect anyone directly.

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 anyone anymore that it is now. Vote 4-0.

OTHER BUSINESS

Frank & Barbara Hogan & Frank & Barbara Travaglini - West of Elmwood Avenue, Lot 9 & 10, Angola By The Bay.

A variance from the rear yard setback requirement.

Request for a rehearing.

Mr. Rickard read a letter from Schab & Barnett, Attorney's representing the applicants, requesting a rehearing for their variance request. No one appeared at the public hearing and the

case was denied. It was stated that the Attorney had not been notified.

Mr. Rickard read a copy of the notice sent to the applicants notifying them of their hearing date, which states that it is not the Planning & Zoning's responsibility to notify Attorney's who are to represent the people unless it is stated on the application.

Motion was made by Mr. Mills, seconded by Mr. McCabe and carried unanimously to rehear the Case and a new fee be paid by the applicants. Vote 4-0.

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

Meeting adjourned at 9:44 P. M.