

Minutes of June 15, 1998

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, June 15, 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, Mr. Wheatley, Mr. Jones – Assistant County Attorney, Mr. Lank – Director, and Mr. Rickard – Chief Zoning Inspector.

Motion was made by Mr. Mills, seconded by Mr. Wheatley, and carried unanimously that the minutes of June 1, 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. 6580 -- Edward J. Timmons, Sr. – Southeast corner of U.S. Route 113 and Road 83 and Northeast of Old Road 334.

A variance from front yard setback requirement for manufactured home sales display.

The case was presented by Mr. Rickard. Edward J. Timmons, Sr. was sworn in and testified, requesting a 20' variance from the 40' setback requirement for manufactured home displays from U.S. Route 113, and Road 83. He stated that he loses 1.24 acres of land with the 40' setback, and only 0.62 acre of land with the 20' setback; that the 20' setback provides 2.0 acres of usable display space; and that his tenant is a large mobile home sales dealership.

Mr. Timmons submitted a series of photocopies which included some calculations on the lose of area to setbacks; a copy of a portion of the Sussex County Tax Map for the area; two (2) sketches of the site colored to show the setbacks; a Delaware Department of Transportation Division of Highways Road Closure drawing for Old Road 334; and a Delaware Department of Transportation Right of Way Plot.

There were no parties present in support of or in opposition to this application.

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. McCabe, seconded by Mr. Wheatley, and carried unanimously that the variance be granted for manufactured home displays. Vote 4 – 0.

Case No. 6616 – Herb Woodland, Jr. – West of U.S. Route 113, 4,800 feet north of Road 244.

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

The case was presented by Mr. Rickard. Herb Woodland, Jr. was sworn in and testified, requesting a 35' variance from the 40' setback requirement for display for sheds for sale from U.S. Route 113. He stated that the sheds are delivered to the site from an out of state vendor; that only one entrance serves the site; that the area to the rear of the display area is cut over woods and needs to be cleared to move the display back from the front property line; and that he should be able to conform within 30 days.

Mr. Mills stated that he had received a telephone call from a Mr. Louis Thibault, Jr. in reference to this application and that he wants the record to show that he will not be considering any comments made by Mr. Thibault during the telephone conversation, only the comments presented during this hearing process.

Louis Thibault, Jr. was sworn in and testified in opposition to the application, and stated that he is the owner of K & L Sales, Incorporated, that he has operated the business for 15 years; that he employs 11 people; that he has tried to comply with all State and County laws while operating his business; that the applicant has been in violation on several locations; that the applicant has been operating his business in

violation since starting the business on this site; that rules and regulations should be the same for all people; that a safety concern exists at the site since he has seen loaded trucks parked on the shoulder of U.S Route 113 waiting to get onto the site; and that he request that the application be denied.

Motion was made by Mr. McCabe, seconded by Mr. Mills, and carried unanimously to table action on this application for 30 days. Vote 4 – 0.

Case No. 6617 – Robin & Charles Brittingham – North and south Road 471, 1,150 feet west of Road 431.
A special use exception to use a manufactured home for storage.

The case was presented by Mr. Rickard. Charles W. and Robin Brittingham were sworn in and testified requesting to convert a manufactured home for storage only. Mr. Brittingham stated that he proposes to convert a 10' by 50' mobile home that exist behind his shop building into a storage building; and that no electric, no sewer, and no water will be provided to the unit.

There were no parties present in opposition.

Motion was made by Mr. Wheatley, seconded by Mr. McCabe, and carried unanimously that the special exception be granted since no adverse impact is anticipated on the neighborhood. Vote 4 – 0.

Case No. 6618 – Theresa Gears – Bay Drive, Lot 22, Rehoboth Bay Mobile Home Park.
A variance from the separation requirement between units in a mobile home park.

The case was presented by Mr. Rickard. Theresa Gears was sworn in and testified requesting a 2'-6" variance on one side and a 2'-0" variance on the other side from the 20' separation requirement between units within the Park. She stated that she has resided in the park for approximately 20 years.

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.

Case No. 6619 – Norma L. Knowles – west of Road 505, 750 feet northwest of Road 76.
A special use exception to attach two manufactured homes to make one unit.

The case was presented by Mr. Rickard. Allen Knowles and Norma L. Knowles were sworn in and testified requesting to attach two (2) manufactured homes together to form one unit. Mr. Knowles stated that one (1) of the units measures 14' by 60' and one (1) unit measures 14' by 76'; that an A-frame roof will be built over the units immediately; that matching siding will be installed within approximately one year; that a pier foundation will be provided and then skirting will be installed; and that the attached units will be converted into one living unit with one kitchen.

There were no parties present in opposition.

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

1. An A-frame roof shall be installed immediately.
2. Siding of the same type and color shall be installed within one year.
3. A block foundation shall be installed within three years.

Case No. 6620 – Romayne B. Seward – South of Road 277, Lot 26, Angola By The Bay.
A variance from the side yard & rear yard setback requirements.

The case was presented by Mr. Rickard. Romayne B. and Howard Seward were sworn in and testified requesting a 0.5' variance from the 10' side yard setback requirement and a 0.8' variance from the 15' rear yard setback requirement for an open unenclosed deck. Mrs. Seward stated that they have had six (6) surveys performed and that based on the latest survey they need the requested variances; that they escrowed funds at settlement to cover relocation of the deck if the variance is not granted; and that it will be a physical and financial hardship to have to relocate the deck.

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. 6621 – Dale A. & Gail M. Botluk – Northwest of Road 273, Shankland Court, Lot 114, Kings Creek Country Club.
A variance from the rear yard setback requirement.

The case was presented by Mr. Rickard. Dale and Gail Botluk were sworn in and testified that they were requesting a 3' variance from the 20' rear yard setback requirement for two (2) bump-outs on their deck. Mr. Botluk stated that the house was built in 1990; that the decks conflict with private restrictions; that the Homeowners Association has no objection; and that the deck is two (2) steps above grade.

The Board discussed the request and found that since the deck is located at the first floor level and does not exceed 4' above grade the deck may encroach the setback requirement.

There was a consensus of the Board that no action was necessary and that a refund should be processed.

Case No. 6622 – Linda & Raymond Adkins, Jr. – North of Sand Dollar Road, 400 feet west of Salty Way Road.
A variance from the front yard setback requirement.

The case was presented by Mr. Rickard. Linda and Raymond Adkins, Jr. affirmed and testified that they were requesting a variance of 3' from the 30' front yard setback requirement for a porch addition. They stated that the County requires a 30' setback and that the KeenWik West Subdivision requires 25' setback; that they are building a new roof on their home and want to add a 6' porch; that a recent survey indicates that the house is 32' setback from the front property line, and requested a 4' variance.

Mr. Jones discussed the variation of a 3' to a 4' variance, and noted that the application stated that a 3' variance was being requested, and that a new public hearing may be necessary for a 4' variance.

Mr. Joseph Roland Ward, a neighbor, was sworn in and testified that he has no objection and that the addition will be an improvement to the community.

Mr. Rickard read a letter of opposition from Claymont John Rankin.

Mr. Claymont John Rankin was sworn in and testified in opposition to the application and stated that he has never been contacted by the applicants; that the applicants ignore the homeowners association; that the private restrictions require a 25' setback from the front property line; and that the applicants are non-paying member of the homeowners association.

Mr. Jones discussed private restrictions and covenants in general.

Mr. Charles Richardson was sworn in and testified that he has no objection to the variance requested; that the rules of the association come second to the recorded covenants; and that the covenants require approval of all construction by the homeowners association's architectural review committee.

Mrs. Adkins, previously affirmed, stated in rebuttal that they cannot submit plans to the association until they know if the variance is granted.

Motion was made by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the variance of 3' be granted. Vote 4 - 0.

Case No. 6623 - Long Neck Car Care, Inc. - North of Road 23, 0.53 mile east of Road 298.

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

Jesse and Julia Ellis Hall were sworn in and testified that they are requesting a 25' variance from the required 25' setback for vehicle sales display. They stated that a plumbing business is located on one side and doctors offices are located on the other side; that no negative impact should be created on the visibility from neighboring properties; that that have been in business on the site for 7 years as an auto repair and body shop, and that they have been selling cars for 4 years; that a violation notice was received and that the zoning inspector advised them that they may apply for a variance; that 2 to 4 vehicles will be displayed during business hours only; and that they would like to move their parking lot forward to create a larger parking area.

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 for display vehicles for sale during business hours only and that no more than 4 vehicles are displayed at any one time within the 25' setback area. Vote 4 - 0.

Case No. 6624 - Barbara Michels - Northwest of Route 54, Laws Point Road, Lot 48, Shady Park.

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

The case was presented by Mr. Rickard. Ronald E. Gray was sworn in and testified that he is present on behalf of the applicant and on behalf of Shady Park, Inc. and that they are requesting a variance of 3' from the 20' separation requirement between units in the park. Mr. Gray stated that he is the developer of Shady Park; that the park was started in 1970; that the home was recently set on lot 48; that a 24' doublewide unit was intended and that a 28' doublewide unit was delivered; that County sewer is available; and that, if and when, the home on lot 47 is moved out, compliance will be maintained.

There were no parties present in opposition.

Motion made by Mr. McCabe, seconded by Mr. Mills, and carried unanimously that the variance be granted.

Case No. 6625 – Community Lutheran Church – South of Road 382, intersection north of Route 54.
A special use exception to place a manufactured home for office and classrooms.

The case was presented by Mr. Rickard. David William Bartges and Charles Levine were sworn in and testified requesting to place a manufactured home for an office and classrooms. They stated that they are working with their national church to design the church structure; that a church in New Castle County recently utilized the unit; that the 1986 unit is 14' by 70'; that there are 3 separate non-connected rooms with paneled walls; that the unit is designed as classrooms, not living quarters; that the unit will be placed next to the church; and that a petition was presented to the neighbors, with no known objections.

Mr. Rickard read the petition submitted for the record.

There were no parties present in opposition.

Motion made by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the special use exception be granted for a period of 4 years.

Case No. 6626 – Wilber Bruce & Diane Camper – Southeast of Road 206, 1,000 feet south of Road 205.
A variance from the side yard and rear yard setback requirements.

The case was presented by Mr. Rickard. Wilber Bruce Camper was sworn in and testified that he is requesting a 15' variance from the required 20' rear yard setback requirement and a 5' variance from the required 15' side yard setback requirement for an addition to his garage. Mr. Camper stated that he wants to add on to his garage; that a 14' by 12' shed has been removed; that a 14' by 12' shed is proposed to be removed; that a 16' by 40' addition to the garage is proposed; and that the adjoining land to the rear of the site is wooded.

Allen Lee Pierce, a neighbor, was sworn in and testified in support of the application and stated that he has no objection to the intended addition.

There were no parties present in opposition.

Motion made by Mr. McCabe, seconded by Mr. Wheatley, and carried unanimously that the variance be granted since there will be no adverse effect on neighboring properties. Vote 4 – 0.

Case No. 6627 – Sports Complex, Inc. – Southeast of Road 273, 250 feet southwest of Route One.
A special use exception for a petting zoo.

The case was presented by Mr. Rickard. Francis J. Gonzon was sworn in and testified that they are requesting Pony rides and an animal exhibit. Mr. Gonzon stated that they have spent approximately \$250,000.00 improving the amusement area; that there was little to nothing on the site for small children; that they propose to have an animal exhibit and a pony ring for pony rides; that the use will be seasonal from Memorial Day weekend to Labor Day weekend; that Jay and Dawn Beach, petting zoo owners presently operating from their farm on Road 275, will provide the animals and will care for the animals and facilities; that the petting zoo will contain 12 animals, i.e. ponies, llama, goats, sheep, etc...; and that no more than 2 ponies will be on the site for riding.

Mr. Jones stated that the Code provides that the maximum time limit for this type of use is 5 years.

Motion was made by Mr. Mills, seconded by Mr. Wheatley, and carried unanimously that the special use exception be granted for a period of 5 years, and that the approval shall be valid from May 1 through September 30, each year.

Case No. 6628 – Old Navy Outlet Store – South of Route One, 400 feet north of Road 273.
A variance from the requirements for signs.

The case was presented by Mr. Rickard. Larry E. Holding, of Rogers Sign Company, was sworn in and testified that the applicant is requesting a variance of 50 square feet from the maximum allowed 100 square feet for a wall sign and that a second wall sign of 100 square feet be permitted.

There were no parties present in opposition.

Motion made by Mr. Mills, seconded by Mr. Wheatley, and carried unanimously that the application be approved as submitted. Vote 4 – 0.

Case No. 6629 – David F. Malozi – Northeast of Road 349, north of Brush Hook Road, Lot 9, White's Neck Village.
A variance from side yard setback requirements.

The case was presented by Mr. Rickard. David and Debra Malozi were sworn in and testified that they are requesting a variance of 2.5' from the required 5' side yard setback on the corner side of their lot. They stated that the variance will permit them to retain their existing shed, and that their lot is heavily wooded.

There were no parties present in opposition.

Motion made by Mr. McCabe, seconded by Mr. Wheatley, and carried unanimously that the variance be granted since there is no anticipated affect on the neighbors. Vote 4 – 0.

Case No. 6630 – Laura F. Venables, Trustee – North of Route 24, ¾ mile east of U.S. Route 13.
A variance from the front yard setback requirement.

The case was presented by Mr. Rickard. Will A. Stacy was sworn in and testified that the applicants are requesting a 5' variance from the required 30' front yard setback requirement. He stated that the Venables' family is growing; that the Venables' have expanded their dwelling where possible; that the 5 nearest property owners support the application; and that the remodeling will include a new kitchen on the rear of the dwelling, and a new bedroom on the front of the dwelling.

There were no parties present in opposition.

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

OLD BUSINESS

Case No. 6599 – Universal Outdoor, Inc. – West of Route 113, 0.4 mile south of Route 26.
A special use exception to replace an existing billboard sign.

The case was reviewed by Mr. Callaway.

Mr. Rickard stated that he and Mr. Lank measured the sign on June 10, 1998 and found the sign to be 34' above grade; that the representative of the applicant stated that the sign was 32' high; and that the Code only allows a 25' height.

The case was discussed.

Motion was made by Mr. Wheatley, seconded by Mr. Mills, and carried unanimously that the special use exception be denied since the sign does not comply with the Code in its present condition; since the sign is not non-conforming since it was replaced instead of repaired; and since the height exceeds the allowable 25' height limitation by 9', which substantially impacts the use of adjacent and neighboring properties. Vote 4 - 0.

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

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

The case was reviewed by Mr. Callaway.

Mr. Mills stated that the site is approximately 0.4 mile from the nearest residence.

The case was discussed.

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

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

A variance from front yard setback requirement.

The case was reviewed by Mr. Callaway.

The case was discussed. It was noted that the unit was placed by measuring to the fence, which was over the property line.

Motion was made by Mr. Wheatley, seconded by Mr. McCabe, and carried unanimously that the variance be granted since there should be no adverse impact on the surrounding area. Vote 4 - 0.

OTHER BUSINESS

Mr. Callaway advised the Board that Donald Ralph, a past Planning and Zoning Commission member, had passed away.

Mr. Callaway reminded the Board that a special meeting is scheduled for June 29, 1998 to discuss rules and procedures of the Board.

Mr. Rickard provided the Board with some statistics on used car sales facilities variances and corrections.

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

Meeting adjourned at 9:28 P.M.