

Minutes of October 5, 1998

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, October 5, 1998 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:05 P. M. with Chairman McCabe presiding. The Board members present were: Mr. McCabe, Mr. Callaway, Mr. Mills, Mr. Hudson, Mr. Wheatley, Mr. Berl-Esquire, Mr. Rickard-Chief Zoning Inspector and Mrs. Talley-Recording Secretary. Vote 5-0.

Mr. McCabe asked for any additions or changes to the agenda. Hearing none, motion was made by Mr. Callaway, seconded by Mr. Wheatley and carried unanimously that the agenda for October 5, 1998 be adopted. Vote 5-0.

Motion was made by Mr. Mills, seconded by Mr. Wheatley and carried unanimously that the minutes of September 24, 1998 be approved as circulated.

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

Mr. McCabe announced that Case No. 6722 would be heard last on the agenda due to the nature of the case and possible time for hearing the case.

Case No. 6717--Debbie Moore & Old Line Homes - East of Road 553A,
2,800 feet south of Road 557.

A variance from the minimum lot width requirement.

The case was presented by Mr. Rickard. Charles J. Musser of Maryland, was sworn in and testified representing the application. The applicants requested a 20' variance from the 150' Lot width requirement to create a new parcel and two entrances are needed. Mr. Musser stated that the owner Robert Johnson's grandson will build a home on the site. The remaining parcel will have 130' of frontage. Mr. Musser stated that the home will be stick built.

Mr. Rickard stated that no correspondence had been received pertaining to this case.

There were no parties present in opposition.

Motion was made by Mr. Callaway, seconded by Mr. Mills and carried unanimously that the case be taken under advisement. Vote 5-0.

At the conclusion of the public hearings the Chairman referred back to this case. After some discussion, motion was made by Mr. Callaway, seconded by Mr. Mills and carried unanimously that the 20' variance be granted. Vote 5-0.

Case No. 6718--Chester H., Jr. & Sharon Porches - East of Route 13A, 1,016 feet north of Road 480.

A special use exception for commercial dog kennel; a variance from setback requirements.

The case was presented by Mr. Rickard. Chester H., Jr. & Sharon Porches of Seaford, were sworn in and testified, requesting a commercial dog kennel on less than five acres and a 144' variance from the front yard setback requirement; 187' variance from the west side yard setback requirement; 116' variance from the east side yard setback requirement and 26' variance from the rear setback requirement. A commercial dog kennel must be 200' from all lot lines. The applicants stated that they will use an existing building that has an apartment upstairs. Mr. Porches stated that the downstairs will be for the dog kennel and his son will occupy the upstairs apartment. He stated that there are residential homes on both sides of the property.

There were no parties present in opposition.

Motion was made by Mr. Callaway, seconded by Mr. Wheatley and carried unanimously that the special use exception and variances be granted as presented. Vote 5-0.

Case No. 6719--Edward & Marilyn Berlin - East of Route One, Camelback Drive, Lot 20, The Retreat Subdivision.

A variance from the front yard setback requirement.

The case was presented by Mr. Rickard. Edward & Marilyn Berlin were sworn in and testified and were represented by Norman Barnett, Esquire. The applicants requested a 6' variance from the front yard setback for 14' section of a deck and stairs to reach ground level. Mr. Rickard summarized the case by stating that there is an average setback done on the street.

Mr. Barnett stated that Mr. Berlin, a Washington, DC, Attorney, would present his case. Mr. Berlin stated that the lot Number 20, within The Retreat Subdivision, is odd in shape and that it borders on the east and west side by subdivision roads. The

narrowness of the lot makes it impossible to have decks on the north or south sides of the property. They propose to extend a portion of the second floor deck on the east side by 6'. They also request to permit a stairs to connect the deck with ground level. The only portion of the requested variance that would touch the ground would be the bottom of the stairs. The deck will be open and cantilevered and no pilings will go into the 30' setback area. It was stated that the Association is concerned about setting a precedent. It was stated that an open deck only would be accessible to the Association.

Mr. Rickard read a letter from John Sergovic, Esquire, in behalf of The Retreat Subdivision Homeowners Association, opposing the variance request.

There were no parties present in opposition.

Motion was made by Mr. Wheatley, seconded by Mr. Mills and carried unanimously that the case be taken under advisement. Vote 5-0.

At the conclusion of the public hearing, the Chairman referred back to this case. After some discussion, motion was made by Mr. Wheatley, seconded by Mr. Mills and carried unanimously that the case be tabled until the next meeting. Vote 5-0.

Case No. 6720--Sea Air Village - South of Route One, Lot D-67, Sea Air Village Mobile Home Park.

A variance from the side yard & rear yard setback requirements, and a variance from the separation requirement between units in a mobile home park.

The case was presented by Mr. Rickard. George R. Littleton of Milton, was sworn in and testified representing the application. The applicants requested a 1.5' variance from the side yard setback requirement and a 5' variance from the rear yard setback requirement for a new 16'x 70' manufactured home, with porch, placed on Lot D-67, within Sea Air Village, replacing the previous 12' wide unit. A variance is needed for the new unit that was placed on the property. Mr. Littleton stated that there is no problems with neighbors or the Sea Air Village Association.

Mr. Rickard stated that other variances have been approved in Sea Air Village.

There were no parties present in opposition.

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

Case No. 6721--Sea Air Village - South of Route One, Lot B-91, Sea Air Village Mobile Home Park.

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

The case was presented by Mr. Rickard. George R. Littleton of Milton, sworn in on Case No. 6720, represented this case also. The applicants requested a 2'6" variance from the 20' setback requirement between units on Lot B-91, within Sea Air Village. The applicants placed a new unit, with porch, on the lot replacing an old unit, and a variance is needed.

There were no parties present in opposition.

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

Case No. 6723--Victoria E. Martina - East of Route 54, Grant Avenue, Lot 4, Cape Windsor Subdivision.

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

The case was presented by Mr. Rickard. Victoria E. Martin of Salisbury, was sworn in and testified requesting a 5' variance from the side yard setback requirement of 10' and a 5' variance from the rear yard setback requirement of 20' from the rear yard setback, on Lot 4, within Cape Windsor Subdivision. The applicant wishes to replace an existing home with a new one. She wants to put the new home where the existing home is located. The lot is small and a variance is needed. A letter from the Association was presented.

Mr. Rickard read the letter presented from the Cape Windsor Association, John W. Weston, President of the Board of Directors, voicing no objections.

There were no parties present in opposition.

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

Case No. 6724--James Monihan & Beebe Medical Center - South of
Route 22, 650 feet east of Route 5.

A special use exception to place a manufactured home
for office.

The case was presented by Mr. Rickard. James Monihan was sworn in and testified requesting to place a temporary office trailer on site for approximately three months or until construction of a satellite office is completed. When the satellite office is completed the office trailer will be removed, which should be around the first of the year (1999).

There were no parties present in opposition.

Motion was made by Mr. Callaway, seconded by Mr. Mills and carried unanimously that the special use exception be granted for a period of six (6) months. Vote 5-0.

OLD BUSINESS

Case No. 6704 (cont'd.)--Country Rest Homes, Inc. - East of Route
One, corner intersection Road 206 south.

A special use exception for an assisted living
facility.

Mr. Rickard reviewed the case stating that it is to be a 35 bed assisted living facility.

Mr. Berl stated that the applicants do not need a Conditional Use, but should go for site review process if approved.

After some discussion, motion was made by Mr. Mills, seconded by Mr. Wheatley and carried unanimously that the special use exception be granted, with the stipulation that the applicants go through process of site plan review. Vote 5-0.

The Chairman reverted back to this case.

Case No. 6722--Dale, Jr. & Lora Collins - North of Road 368, 850
feet east of Road 365.

A special use exception to operate a day care
facility.

The case was presented by Mr. Rickard. Mr. Rickard read a letter sent to Sussex County Council from Robert West opposing this application.

Mr. Berl stated that he and the two Attorney's present for this case had discussed procedures for cross examination during the testimony and both Attorney's want to have opening and closing statements and want to cross examine witnesses directly, which will expedite matters.

Motion was made by Mr. Callaway, seconded by Mr. Wheatley and carried unanimously to adopt Mr. Berl's suggestion for the nature of cross examination during the hearing.

David Weidman, Esquire, was present representing the applicants who requested a special use exception to operate a day care center. Mr. Weidman stated that his wife Susan Weidman, Esquire had previously represented the applicants. He referred to the applicants previous meeting before the Board of Adjustment for the day care facility that was approved, but Superior Court denied the Board's decision. They are appealing the Courts decision and back before the Board for the day care facility on 2.93 acres of land. Mr. Weidman referred to the previous testimony at a previous hearing referring to Mr. McCabe being a friend of the applicants parents as bogus. He stated that the opposition does not want a day care facility approved. He stated that the Board must decide whether there have been substantial changes in the plan. He referenced Kollick vs Board of Adjustment. He stated that the applicants are requesting the same use but the plans are different.

Lora Collins of Frankford, was sworn in and testified in answer to questions from Mr. Weidman, and requesting to have a day care facility on the front portion of her property. She was granted permission from Planning & Zoning Commission to subdivide the property and signed an agreement with neighbor, Mr. Timmons, to extinguish any rights in her property. She stated that she has a degree in child care. A drawing of the proposal was submitted. She stated that the school bus will come into the parking lot to pick-up and let-off the children. She stated that the buses will be off the road; the play area for the children will be away from the road; parent parking will be in front and staff parking on the side of the building. A floor plan was shown of the day care, and where the classrooms will be, and she explained their location. She will decrease the size of the classrooms from six (6) to four (4). Mr. Charles Hudson, Head of Transportation for the school district reviewed the plan and accepted it according to Mrs. Collins. She also stated that she will have 85 children, lower than the 115 she previously applied for, which will cause fewer employees. She will operate from 6:00 A. M. to 6:00 P. M, Monday through Friday, with no evening or weekend hours. decreasing the time she previously applied for by 20%. By decreasing the hours and time there will be a decrease in the number of cars coming in

and out. She estimates that from 6:00 to 6:30, 4 to 5 cars; 7:00 to 7:30, group of after school children to catch school bus; 8:00 to 8:15, staggered; 8:15 to 9:00, staggered and 4:00 to 6:00, staggered. Pictures were shown to the Board of vehicles coming into the entrance. They have cleared away brush for better visibility. There are other businesses in the area such as dog kennel, golf course, and lots for sale. A traffic study was done, copy presented. It was suggested by Department of Transportation to put signs up referencing school bus stop. They fixed the dip in the road and the speed limit dropped to 40, since a speed study was done. The letter from Jean Logan, Highway Division was presented and a portion was read into the record stating the use will not have a detrimental impact on traffic. A Del, Dot letter was presented. Mrs. Collins stated that she has septic approval and the waste water will decrease with a smaller amount of children; Fire Marshall approval for the building and site; and also presented plans for landscaping with two rows of buffer trees between her property and the neighbor (Sheridan); she has a day care license; building permit and Board of Health approval, all which were presented. Waste water management and storm water approvals were presented.

Vincent Robertson, Esquire, present representing the opposition questioned Mrs. Collins in reference to the site plan; how the buses enter and exit; who owns the property; how many children, and ages. He questioned how the buses will enter and exit the property and if it is a 50' wide private road through adjacent property and who owns the land.

Mrs. Collins stated that the property is owned by Bake Timmons and she has an agreement to use it for commercial use. The ages of the children are 0 to 12 months there will be 8 children and 2 employees; 2 to 3 years, 10 two year old children and 12 three year old children, with 2 employees; 4 to 6 years, 30 children with 2 employees and 7 to 12 years, 25 children and 1 employee. She stated that this goes with State ratios.

Mr. Mills asked about the five parking spaces for nine employees on the side of the building.

Mrs. Collins responded that all the employees will not work the same time.

David Borek of Rehoboth, Appraiser, was sworn in and testified in behalf of the applications. He gave his credentials for appraising. He stated that he was asked to do a study for the applicants, copies were submitted. He summarized what his study consisted of and how he compiled his material and did his research.

He feels any new facility in the area will help values; not be a nuisance, be an asset and convenience to the people nearby; will not substantially adversely affect neighboring properties, and will not prohibit habitation. He stated that his analysis is his own unbiased opinion and he was paid by Mr. & Mrs. Collins.

Mr. Robertson questioned Mr. Borek asking who contacted him and what type of work he did.

Mr. Borek stated that the day care was explained to him and he was told that the court had overturned the Board's decision. His job was to do what he did, look at the property and other day care center and do research.

Mr. Robertson questioned the property value data.

Mr. Borek stated that values increased and explained the values through the years and how he reached his decisions on the material presented.

Frederick J. Winward of Frankford, was sworn in and testified in behalf of the application, stating he owns Resort Landscaping and Irrigation. He showed and explained a play showing how the landscaping and the type of landscaping, for the day care facility is to be done.

The Board took a five minute recess.

Mr. McCabe called the meeting back into session at 8:57 P. M.

Mr. Weidman presented letters signed by people in support of the application. By a show of hands there were 22 people present in support of the application.

Patricia Purdum of Bethany Beach, was sworn in and testified in behalf of the application stating that she had trouble finding a day care center until she found Mrs. Collins, and the facility is needed. She stated that there are younger families moving in the area and there is a lack of qualified day care facilities in the area.

Dawn Powell of Selbyville, was sworn in and testified in behalf of the application, stating that her child goes to Mrs. Collins now, but she spent time calling several day cares before she found Mrs. Collins. She stated that she is a postal worker with no set schedule and this made it hard for her to find qualified care for her child.

Mr. Rickard stated that there was a petition with 69 signatures and 16 letters presented, in support.

Vincent Robertson, Esquire, representing the opposition who were present, Heather Sheridan and Sandra Green. He questioned how many of the people present had children in the Collins day care. There were 10 people by a show of hands. He questioned how many people present have plans to use the day care. By a show of hands there were 7 people. Mr. Robertson provided a copy of a statement he had prepared and made reference to, also a letter from Susan Weidman, Esquire pertaining to the previous hearing and dated September 14. He asked if the application is a new special use or rehashing of the old one. He stated that the Collin's were denied by Superior Court and he does not believe the Board should accept the application. He made reference to several things that he feels have not changed from the previous special use exception, that was appealed through Superior Court. He referenced Judge Lee's decision and read from it; referenced the building permit with no changes and a copy of the building permit was submitted. The size of the 140'x 72' building is the same as at the original hearing. Pictures of the foundation already constructed were submitted. He stated that the foundation was constructed before the original application was approved/denied. He referenced a newspaper article in the Wave, saying that the applicants are going to do the same thing. He read from the article. He referenced the Joseph's cases that had been before the Board. He explained what a substantial change of circumstance can be. He feels the use is the same as presented at the original hearing and that the amount of children and number of hours is not significant change. He questioned how the Board can police the reduction of hours and the amount of children once approved. He feels the applicants can do as they want. He read from the Zoning Code referencing special use exceptions. He stated that there are no commercial uses and very little noise in the vicinity. He feels there will be a lot of cars along with school buses. He read from a DelACare report, and referenced Case No. 6333, June, 1997, previously before the Board involving a day care facility. A copy of the minutes from the case were submitted to refresh the Board's memory. Also submitted was a copy of a transcript from the previous hearing on the basis of what Collins said about the new building.

Heather Lisa Sheridan of Frankford, was sworn in and testified in opposition. She stated that she owns 5.6 acres adjacent to the day care property. She purchased the property in 1983 and moved there in 1986. She stated that she has a three story home on the property with a pond in front, pictures were presented. She estimated her property valued at \$225,000. She had a previous appraisal done. Aerial pictures were presented also. She

testified that she did not want to be near traffic and congestion. She wanted a nice quiet rural area. She stated that the day care will increase traffic and will cause a negative adverse effect on her property. She feels the Collin's have an option to go somewhere else. She stated that there is no street lighting at night; will affect her property values and accidents have occurred on the road. She also stated that three sides of the day care will have ponds next to it. Ms. Sheridan expressed concern about the waste water and stated that she is Director of Operations for Sussex county Engineering Department and is responsible for operating and maintaining the County's waste water facilities and there is no plan for central waste water to go down the road at this time. She stated that there is nothing substantially changed on the Collin's request since the last hearing. She stated that there is a curve at the entrance of the Collin's property and people zoom down the road. She feels the amount of children and the change of hours does not matter. She has concern about the privacy, does not fit in with the character of the area; will adversely affect the area, noise and privacy affected. She wants to end what has been going on for years.

Mr. Weidman questioned Ms. Sheridan, about the statement about value of property, since she is not with a real estate.

Ms. Sheridan stated that she does not know the effect the day care will have on her property value.

Mr. Weidman asked Ms. Sheridan if she would prefer chicken houses next to her, and questioned the hours she works.

Ms. Sheridan answered yes she would prefer chicken houses, and that she works 8:00 A. M. to 4:00 P. M. In answer to other questions asked by Mr. Weidman, she stated that she had an appraisal done on her property, there are single family homes in the area and no commercial businesses.

Sandra Green of Frankford, was sworn in and testified in opposition answering questions from Mr. Robertson. She stated that she lives approximately 200 feet from the Collins property. She stated that she is a resident and broker with Sea Coast Realty, Bethany Beach. She stated that she has a two story custom built home on her property valued at \$165,000 to \$175,000. She chose the property to be out of highly populated areas and wanted privacy. The type of neighborhood is single family and some agricultural uses. She voiced concerns about Road 368 being a dangerous road and with the day care facility it will add 300 or more vehicles per day. She has children and is concerned about their safety and the noise, since the building is to be a sheet metal building which

will generate noise. She does not feel chicken houses will have an adverse affect on the area. She read from Trice Valuations material that was presented. She stated that she did not know Mr. Borek. She presented copies of a real estate sales report for a home near another day care facility that has not sold yet. Data sheets of property for sale in the Lord Baltimore School District was presented. She feels the use does not conform with the existing area, will alter the character of neighborhood and have a negative affect on property values in the area.

Mr. Callaway questioned how close to the Collins property Ms. Green lives and her work hours.

Ms. Green stated that she is approximately 150 feet from the property of Collins and she works 2 days 11:00 A. M. to 5:00 P. M. or 8:00 A. M. to 3:00 P. M., with some weekend work. She stated that she is at home odd hours.

Mr. Weidman questioned the Trice Valuations statements, Sea Coast Realty listing owned by Louis Travalini that has been vacant a long time. That Mr. Travalini's daughter had lived on the property.

Mr. Robertson presented letters of opposition signed by people who live in the area.

Michael Scott Zukas was sworn in and testified in opposition, stating that he built a home on his property in 1986, which is on Road 368. He wants privacy, and he has witnessed two accidents on the road (curve) at the entrance. He stated that the day care goes against most of the people who live there. He voiced concern about the traffic and stated that chicken houses were never the issue.

By a show of hands there were 10 people present in opposition.

The people present stood and were given the oath by Mr. Rickard.

William C. & Mary Cannon testified in opposition, stating the same reasons for their opposition that were stated. They showed on the map where they live.

Rob Brendall, who lives 1/2 mile away on Road 368, testified in opposition, stating that the Collin's dreams should not be fullfilled and take theirs away.

Robert West testified in opposition, stating that he lives across from the day care property, and he wants it all to come to an end.

Mike & Dixie Zukas on Road 368 testified in opposition.

Mr. Rickard stated that there were 16 petitions in opposition.

Mr. Weidman in closing referenced a letter from Del, Dot in regards to traffic; Indian River School District letter; Trice Valuations; and referenced the Code pertaining to special use exception. He asked the Board to consider the plans for the use. He feels it is a misrepresentation by the opponents to say there are no changes. Amount of children and hours are to be decreased which will decrease traffic. He stated that the changes are substantial. He referenced Superior Court Findings and made reference to Berg vs Board of Adjustment in New Castle County. He stated that the Collins will scale down the day care facility. He feels the Board must consider if the use will substantially adversely affect the use of surrounding an neighboring properties, he feels it will not. He requested that the Board grant Mr. & Mrs. Collins the special use exception again.

Mr. Robertson in closing referenced letters presented. He stated that it will be a day care commercial facility and that it is not a matter of hours or children are limited, that the application is identical to permit the same thing, that everything is the same that has been submitted. He stated that it could set a precedent for other applications if approved.

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

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

Meeting adjourned at 10:50 P. M.