

Minutes of March 4, 1996

The regular meeting of the Sussex County Board of Adjustment was held Monday evening March 4, 1996 in the County Council Chambers, Room 115, Courthouse, Georgetown, Delaware.

The meeting was called to order at 7:00 P. M. with Chairman McCabe presiding. The Board members present were: Mr. McCabe, Mr. Mills, Mrs. Hudson, Mr. Wheatley, Mr. Callaway, Mr. Jones-Attorney, Mr. Betts, Zoning Inspector III.

Motion was made by Mr. Mills, seconded by Mr. Callaway that the minutes of February 12, 1996 be approved as circulated, with Mrs. Hudson and Mr. Wheatley abstaining, due to their absence from the meeting. Motion carried with three voting in favor and two not voting.

Mr. McCabe read a statement pertaining to how the Board of Adjustment meetings are conducted.

Case No. 5892--W. Arnold & Ruth H. Steele - North side of Route 48,
200 feet east of Road 297.

A special use exception to place a manufactured home in an AR-1 District on less than five acres for a permanent residence.

The case was presented by Mr. Betts. Ruth Steele was sworn in and testified and was represented by Scott Bradley, Attorney. Mr. Bradley stated that the applicants were requesting to keep a manufactured home on property they inherited, that has been on the property more than 22 years. He referenced the Zoning Code pertaining to special use exceptions with respect to manufactured homes. The manufactured home is a single family unit. Mrs. Steele stated she inherited the property from Mr. Pierce 1 1/2 years ago with the manufactured home already on it. The surrounding land consists of woods, farmland and Dogwood Manufactured Home Park. She stated there are no other neighbors and there have been no complaints about the manufactured home. In answer to Mr. McCabe's question, Mrs. Steele stated she does not know who will live in the manufactured home. Mr. Bradley stated the applicants plan to sell the property and wants to keep the unit on the property and sell at a later date.

Mrs. Hudson questioned if the applicants plan to rent the manufactured home until it is sold.

Mrs. Steele replied, she does not know if the manufactured home will be rented.

Mr. McCabe explained that the policy of the Board when approving manufactured homes has been that the person occupying the manufactured home must have ownership to the unit as well as the property. They are not approved for rental.

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 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 special use exception be granted with the stipulations that the manufactured home cannot be rented and the occupant of the manufactured home must also be the deed holder.

Case No. 5893--ArLOW W. & Anna M. Durham - North side of Route 64,
1/4 mile east of Route 70.

A special use exception to place a manufactured home in an AR-1 District on less than five acres for a permanent residence.

The case was presented by Mr. Betts. ArLOW and Anna Durham were sworn in and testified, requesting to place a new 28'x 48' double-wide manufactured home on property for their use. They testified that there are other double-wide and single-wide manufactured homes in the area.

There were no parties present in opposition.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the special use exception be granted for a new double-wide manufactured home on a permanent foundation.

Case No. 5894--Dennis & Wendy Moore - East side of Route 113,
1.2 mile north of Route 207.

A variance from the side yard setback requirement.

The case was presented by Mr. Betts.

There were no parties present representing this application.

The Chairman left the hearing open until the end of the meeting.

At the end of the public hearings, the Chairman referred back to this case. There were no parties present in behalf of the application. There were no interested parties present in favor or against.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the variance be denied, due to lack of representation and the applicants cannot reapply for one (1) year.

Case No. 5895--Gary Ricketts - South side of Road to Dublin Hill, 1,350 feet south of Route 31, across from Route 576.

A special use exception to place a manufactured home in an AR-1 District on less than five acres for a permanent residence.

The case was presented by Mr. Betts. Gary Ricketts was sworn in and testified, requesting to place a 1989, 14'x 55' manufactured home on property for his permanent residence. He testified there are other manufactured homes in the area.

Mr. Mills questioned the property being land locked as it appears on the tax map.

Mr. Betts explained that the lots are legal and recorded before zoning.

There were no parties present in opposition.

Motion was made by Mr. Wheatley, seconded by Mr. Mills and carried unanimously that the special use exception be granted.

Case No. 5896--Roy V. & Kay P. Jones - West side of Hastings Drive, 670 feet south of Route 499, Lot 7, within Dogwood Acres.

A variance from the side yard setback requirement.

The case was presented by Mr. Betts. Roy & Kay Jones were sworn in and testified, requesting a 2.78' variance from the side yard setback of 5' on Lot 7, within Dogwood Acres, for a shed. The shed is already on the property and has been there for a few years. The applicants stated they bought the property in 1964 and a few years later built a shed they thought was within the required setbacks. They now want to sell the property and when a survey was done the shed encroachment was found.

There were no parties present in opposition.

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

Case No. 5898--Collin Avenue Realty Trust - East side of Pierce Avenue, 90 feet north of Beach Avenue, 662 feet east of Route One, Lot 15, within Indian Beach Surf Club.

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

The case was presented by Mr. Betts. James McInerney was sworn in and testified representing the application. He requested a 20'10" variance from the front yard setback and a 10' variance from the side yard setback. The applicant proposes to construct a house on Lot 15, within Indian Beach Surf Club. He stated that adjacent to his property an identical request was approved in 1984. The neighbor has the same setback. He testified his lot is unique and close to the ocean. He testified that Tony Pratt of Beach Preservation had written a letter in support. Pictures were presented. There are sand dunes that add protection to the property. There will be sufficient access and parking. He stated that the property is vacant now and he will place the house similar to Lot 16.

Mr. Betts read a letter voicing no opposition from Anthony B. Pratt, Beach Preservation. Also, a letter of opposition from Nancy M. and William A. Bruce.

Lawrence Radanovic was sworn in and testified in opposition. He stated he owns Lot 11, two lots eastward of the applicants property. He also is President of the North Indian Beach Community Association. He opposes as himself and President. He feels the variance request will be a disaster. He feels the dunes will be damaged and to destroy the dunes would place his and other properties in jeopardy and could cause a domino affect.

Mr. Betts stated the dwelling will be 9'2" from Pierce Avenue and 0' from the side property line.

Mr. Radanovic referenced density, access and feels the use will give a hotel atmosphere to the area. He feels it will be a severe hazard to the area. He questioned where the dunes will end up since they are moving landward each year.

Mr. Jones, Attorney, explained that the only issue before the Board is the variance request. He explained that a house can be built on the property

Mr. McInerney stated he will not harm the dune and would gladly withdraw the side yard variance request and adhere to the County requirements. His request will be for the front yard variance only. Mr. McInerney read from a letter received from Mr. Robert Henry, Department of Natural Resources. He stated that without the front yard variance he will not be able to build according to DNREC. He read from the 1984 Finding of Facts approval for the adjacent property. Mr. McInerney stated he will build a two-story house.

John MacNab was sworn in and testified in opposition stating he is a permanent resident. He voiced concern about the dune line. He stated he has watched the area erode and become more vulnerable to storms. He stated fill is brought in every year but erosion happens. He stated that the dune is protection for all the beach. He feels a larger structure should not be built. He is concerned about density.

Bob Kasmarsak was sworn in and testified that he has a contract to purchase adjacent property and is concerned about the traffic and dunes. He explained where his access would be if he builds. He questioned how many dwellings can be built.

Mr. McInerney stated his house will not interfere with the dune protection.

Mr. Jones, Attorney, questioned what the buildable line would be if the variance is not granted.

Mr. McInerney stated the buildable line is 55' front yard and 30' off Pierce Ave. It would not be buildable according to DNREC.

Motion was made by Mrs. Hudson, seconded by Mr. Callaway 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, to give Board Members a chance to re-visit the property.

Case No. 5899--Dennis Littleton - Southeast side of Route 54,
295 feet northeast of Route 369.

A variance from the minimum lot width requirement
and a variance from the side yard setback
requirement.

The case was presented by Mr. Betts. Dennis Littleton and

Sally Littleton were sworn in and testified, requesting a variance of 100' from the 150' road frontage for a new lot and a 4' variance from the side yard setback requirement to build a new log home for their use. It was stated that there is farmland and woods surrounding the property.

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

There were no parties present in opposition.

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

Case No. 5900--George & Janet Campbell - East side of Route 348A,
700 feet north of Route 26.

A special use exception to place a second
manufactured home on farm.

Mr. McCabe excused himself from this hearing due to a possible conflict of interest. He turned the meeting over to Vice Chairman Mills.

Mr. Betts presented the case. George & Janet Campbell were sworn in and testified, requesting to place a second manufactured home on farm. There was a replacement permit obtained for an existing manufactured home, but the existing manufactured home was never removed. The applicants wish to keep the unit on the property as a second manufactured home on farm. It will be occupied by their daughter. The new 14'x 70' unit will be occupied by their son who is disabled. Both are single-wide units. The applicants have a 25,000 capacity chicken house on the farm. They live on the farm in a house. Their daughter will help with work on the farm.

Mr. Betts read letters in support from Donald Klima & Judy Walter. A petition of opposition with 13 signatures was read into the record.

There were no parties present in opposition.

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

At the conclusion of the public hearings, Vice Chairman Mills referred back to this case. After some discussion, motion was made by Mrs. Hudson, seconded by Mr. Callaway that the case be tabled, with Mr. McCabe abstaining. Motion carried with four voting in

favor and one not voting.

Mr. Mills turned the meeting back over to Mr. McCabe.

Case No. 5921--Lynn C. & Shirley M. Baynum - East side of U.S.
Route 13, 0.4 mile north of Route 534.
A variance from the minimum lot width requirement.

The case was presented by Mr. Betts. Lynn C. Baynum was sworn in and testified, requesting a 100' variance from the 150' road frontage to subdivide property into three commercial lots and leave a 50' wide access to the remaining land in the rear. Mr. Baynum stated he purchased the property for investment and retirement. Mr. Baynum stated he will sell all three parcels and keep the rear property for himself.

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

There were no parties present in opposition.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the variance be granted as presented.

Case No. 5922--Ocean Wines & Spirits, Ltd. - West side of Route
One, at the intersection of Route 271.
A variance from the side yard and the front yard setback requirements.

The case was presented by Mr. Betts. T. Theodore Jones and David Dutton were sworn in and testified representing the application. They requested a 5' variance from the north side property line and rear yard setback of 5' to be 0', to construct an addition to their existing building. Plans were shown and explained. It was stated that additional storage space is needed. The building was constructed in 1971 and was purchased by the applicant in 1977. The existing building was built almost on the property line and they want to continue with the same building line.

There were no parties present in opposition.

Motion was made by Mr. Callaway, seconded by Mrs. Hudson and carried unanimously that the variances be granted.

Case No. 5923--Michael & Deborah Clay - South side of Route 585,
170 feet east of Route 487A, Lot 5,
within Heather Glen.

A special use exception to place a manufactured home
in an AR-1 District on less than five acres for a
permanent residence.

The case was presented by Mr. Betts. Michael Clay and Ted
Liszewski were sworn in and testified representing the application.
The applicants requested to place a 1987, 28'x 60' double-wide
manufactured home on property they are purchasing from Mr.
Liszewski, Lot 5, Heather Glen, for their use. It was stated the
manufactured home will be placed on a permanent foundation.
Pictures were presented. It was also stated that there are other
manufactured homes in the area.

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

There were no parties present in opposition.

Motion was made by Mr. Wheatley, seconded by Mr. Callaway 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. Callaway, seconded by Mr. Wheatley and carried unanimously
that the special use exception be granted for a 1987 or newer
double-wide manufactured home on a permanent foundation.

Case No. 5924--Martha Lawrence - South side of South Bradford St.,
215 feet east of Route 531, south of Route
533, Lot 3, within Middleford Acres.

A special use exception to place a manufactured
home in an AR-1 District on less than five acres
for a permanent residence.

The case was presented by Mr. Betts. Martha Lawrence and
Kevin Schroder were sworn in and testified, requesting to place a
1995, 28'x 68' double-wide manufactured home on Lot 3, Middleford
Acres, for the applicants use. The unit will be placed on a
permanent foundation. Pictures were presented. Ms. Lawrence
stated there are no other manufactured homes in the area.

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

Mr. Mills questioned if the deed restrictions permitted a

manufactured home to go on the property.

Ms. Lawrence & Mr. Schroder stated they had already checked the deed.

There were no parties present in opposition.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the special use exception be granted for a 1995 double-wide manufactured home on a permanent foundation.

Case No. 5925--Patricia Nock Pettit & Hilton Mills - North side of
Route 262, 1,800 feet west of Route 290.
A special use exception to place a second
manufactured home on a medical hardship basis.

The case was presented by Mr. Betts. Patricia Nock Pettit & Hilton Mills were sworn in and testified, requesting to place a second manufactured home on their property on medical hardship basis. Ms. Pettit stated she needs to be near and look after her mother who is ill and needs around the clock care and cannot be left alone. The manufactured homes are 14'x 60' and 14'x 70' in size.

Mr. McCabe explained to the applicants that if the application is approved it must be reapplied for every two years and should the hardship cease to exist the manufactured home must be removed.

Teresa Winstead Finney was sworn in and testified in opposition. She complained about the way the applicants property looks. She wants the property kept neater, she complained about trash, drug activity, dog activity and septic situation

Mr. McCabe explained that she would need to contact the different agencies that would handle the complaints she has, that the Board could only consider the placement of the manufactured home.

Mr. Betts stated that both manufactured homes are already on the property and the applicant's are correcting a violation.

Lena Winstead was sworn in and testified in opposition agreeing with her sister who previously testified. She is concerned about the applicant's cesspool and trash.

Janice Beckett was sworn in and testified in opposition stating she is concerned about fire hazard and feels the

manufactured homes are too close together.

Mr. McCabe stated that the manufactured homes will have to meet the setback requirements.

Mr. Betts stated there is no setback requirement for the distance between units.

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. Callaway, seconded by Mrs. Hudson and carried unanimously that the special use exception be granted on the basis of hardship for a period of two (2) years.

OLD BUSINESS

Case No. 5919 (cont'd.)--Charles P. Sewell - East side of Route 549, 560 feet north of Route 551.

A variance from the minimum lot width requirement.

The case was reviewed by Mr. Betts.

Mr. Jones stated (per request of the Board), that there is a deed from Gilbert Jacobs, the last surviving joint tenant, to Yvonne S. & William Street, dated October 5, 1995.

After some discussion, motion was made by Mr. Callaway, seconded by Mr. Mills that the variance be granted, with Mrs. Hudson and Mr. Wheatley abstaining, due to their absence at the public hearing. Motion was carried with three voting in favor and two not voting

Case No. 5920 (cont'd.)--Irma C. Pittman - East side of Route 351, 725 feet south of Route 349.

A special use exception to expand a non-conforming use and a variance from the setback requirements for a chicken house.

The case was reviewed by Mr. Betts.

A letter from Mr. Jones to the Board explained (per the Board's request), that the applicant had met the non-conforming use requirements to apply to the Board.

After some discussion, motion was made by Mr. Mills, seconded

by Mr. Callaway that the special use exception and variance be granted, with the stipulation that the chicken house be no closer than 185' from the neighbors house and the chicken house doors be on the end, with Mrs. Hudson and Mr. Wheatley abstaining, due to their absence at the public hearing. Motion carried with three voting in favor and two not voting.

DISCUSSION

Case No. 5881 - Christine Serio

Mr. Betts stated that the applicant had previous approval from the Board for a 3.5' variance from the side yard setback. She now finds that she needs 2' more. Should she reapply for another variance or could the amount of variance previously applied for be extended?

Mr. Jones stated that a new application should be applied for and readvertised.

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

Meeting adjourned at 9:11 P. M.