

Minutes of April 4, 1994

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, April 4, 1994 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. Wheatley, Mrs. Hudson, Mr. Mills, Mr. Callaway, Mr. Jones-Attorney and Mr. Betts-Zoning Inspector III.

Motion was made by Mrs. Hudson, seconded by Mr. Mills and carried unanimously that the minutes of March 21, 1994 be approved as circulated.

Case No. 5313--Mary Ann Sharpe - South side of Route 263, $\frac{1}{4}$ mile west of Route 9, Lot A-3, within Donovan/Smith Mobile Home Park.

A variance from the setback requirement between units in a park.

The case was presented by Mr. Betts. Mary Ann Sharpe was sworn in and testified, requesting a 1' variance from the 20' setback requirement between units in a park, being Lot A-3 in Donovan/Smith Mobile Home Park. She proposes to replace a 10'x 55' manufactured home with a 1979, 14'x 60' unit and a variance is needed to meet the 20' requirement between units. She testified that there is no problem with the park or her neighbors.

Mr. Betts stated that no correspondence has 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 variance be granted.

Case No. 5314--Marine Associates - Route One, on the southeast side of Spring Drive, within Spring Lake Development and 250 feet west of Road 272B (Old County Road).

A Variance from the maximum length requirement for multi-family dwellings.

The case was presented by Mr. Betts. Coleman Bunting, Jr. was sworn in and testified representing Marine Associates and was represented by David Hackett, Attorney. The applicants requested a variance of .25' from the maximum of 165' for the length requirement for multi-family dwellings. The Code allows a maximum of 165' in length and the applicants have built to 162.25' in length, located in Spring Lake. Mr. Hackett showed plans of the condominiums and explained what exists. Mr. Bunting the builder, answered questions pertaining to the construction of the building that is already built.

When the error was discovered, it was too late to correct it. Mr. Bunting stated that the property was staked out by a surveyor and he also had brick layers on the property. The part of the building encroaching is a pop-out section of the building. When the condominium documents were prepared by surveyors the error was discovered. The structure will not cause any other setback violation. They testified that there is all condominiums on the property and across the street there are single family dwellings. They feel to allow the variance will not alter the area and it would be costly to have to tear out that portion of the building that is three stories high. They feel they have asked for the minimum amount of variance to be able to correct the encroachment.

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

There were no parties present in opposition.

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

Case No. 5315--Ted Drummond - South side of Route 209, 680 feet northwest of Route 209A.

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. Theodore Drummond was sworn in and testified, requesting to keep a manufactured home on property that has existed since 1959 for his permanent residence. Mr. Drummond testified that his brother previously owned the property and is now deceased, but left him a parcel of land less than five acres with his manufactured home on it. The manufactured home was placed as on farm and since the property has become subdivided less than five acres, Board approval is needed to continue to keep the manufactured home on it. Mr. Drummond plans to replace the existing unit with a newer unit. He testified that the remaining lots are vacant, but that there are other manufactured homes in the area. He testified that there are two units across the street that are unoccupied. He testified that the vacant lots are for sale.

Mr. Betts read a letter from S. G. Ashley in favor of the special use exception request.

There were no parties present in opposition.

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

At the conclusion of the public hearings, the Chairman referred back to this case. Motion was made by Mr. Callaway, seconded by Mr. Wheatley and carried unanimously that the special use exception be granted, finding that the manufactured home has existed on the site since 1959, but it does not mean approval for the remaining lots for manufactured homes.

Case No. 5316--G. Bernadette Kollock - North side of Route 334,
800 feet south of Route 333.

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. Gertrude Bernadette Kollock and Ernest Kollock were sworn in and testified, requesting to place a 14'x 66', 1980 manufactured home on property she is under sales contract to purchase for her residence. They testified that there are other manufactured homes in the area. Mr. Kollock owns the land but it will be deeded to Ms. Kollock.

There were no parties present in opposition.

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

Case No. 5317--Dominic A. DeGuiseppe - South side of Route 54, on
the north side of Cedar Road, Lot 11,
within Keen Wik Subdivision.

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

The case was presented by Mr. Betts. Dominic A. DeGuiseppe was sworn in and testified requesting a 5' variance from the 10' side yard setback and a 5' variance from the 30' front yard setback to build a garage on Lot 11, within Keen Wik. Mr. DeGuiseppe stated that he wants to place a 2 car garage on his property and there is no other place on the property to place it. A letter was presented from the Keen Wik Association.

Mr. Betts read a letter from the Association, Mr. William P. Wolfe, stating that they approved the front yard variance request but did not approve the side yard variance.

Mr. Jones, Attorney, explained to the applicant that there are two different requirements that he has to meet, the County and the Association for setbacks.

Louis Friedner was sworn in and testified in behalf of the application, stating that he lives next door and he feels what the applicant proposes will enhance the area.

There were no parties present in opposition.

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

Case No. 5318--Joseph A. Sekcienski, Sr. - At the end of a private
road on the north side of Route 298, 200
feet east of Route 24.

A variance from the side yard setback requirement.

The case was presented by Mr. Betts. Joseph Sekcienski, Sr. was sworn in and testified, requesting a 10' variance from the 15' side yard setback requirement for a garage over 600 sq. ft. in size. Mr. Sekcienski stated that he had tried to purchase the property next door, but the owner would not sell it. He stated that he lives in a wooded area. He stated that he could not build the garage in the rear because of a swimming pool and the property goes down hill. He also has sidewalk around the house. To bring the garage down closer to the front would leave no parking. He testified that he could build the garage smaller (24'x 24') that would meet the setbacks, but he wants to use a portion of the garage for a storage area.

Mr. Betts read correspondence from Mrs. Marcia Cleveland who owns the property adjacent that Mr. Sekcienski had tried to purchase. She is opposed to the application.

Mr. Sekcienski stated that Mrs. Cleveland has property in Rehoboth and does not reside on the property adjacent to him.

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

It was realized that the people present interested in this case had not been given a chance to respond.

Virgil E. Banks who owns adjoining the applicant was sworn in and testified that he has no objection to the applicants request. He feels it will not affect the area.

Patricia Sekcienski, wife of the applicant, was sworn in and testified in behalf of the application, stating that Mrs. Cleveland has not been in person to see her property in years and the property had not been kept up. She stated that the garage could not be placed anywhere else on the property.

Mr. Sekcienski stated that only a corner of the garage would encroach into the setback.

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.

At the conclusion of the public hearings the Chairman referred back to this case. After some discussion, motion was made by Mrs. Hudson, seconded by Mr. Mills and carried unanimously that the variance be denied, finding the applicant had not met the requirements for the granting of a variance.

Case No. 5319--Danny F. Collins - East side of Route 415, 250 feet east of Route 413.

A variance from the setback requirements for a poultry house.

The case was presented by Mr. Betts. Danny F. Collins was sworn in and testified, requesting a 25' variance from the 50' side yard setback for a poultry house. Mr. Collins proposes to build two poultry houses and wants to someday put a third one on the property. Placing the two poultry houses in the proposed location will allow him to put a third one at a later time. He stated that relatives surround his property.

There were no parties present in opposition.

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

Case No. 5320--Harold J. & Anita M. Snyder - North side of Route 22, on the northwest side of Rudder Road, $\frac{1}{2}$ mile west of Route 22C, Lot 3, within Sea Farers Village.

A variance from the side yard setback requirement.

The case was presented by Mr. Betts. Harold Snyder was sworn in and testified and was represented by Norman Barnett, Attorney. The applicants requested a variance of 3' from the 15' side yard setback requirement on Lot 3, Sea Farers Village, for a dwelling that was built approximately 5 years ago. The house was built by previous owners and the applicants bought the property not realizing the error until they went to settlement. The dwelling a Nanticoke Home was encroaching into the side yard setback.

Mr. Betts stated that the building permit for the dwelling was issued in 1987 with the correct setbacks.

Mr. Albert Apicella, neighbor, was sworn in and testified in favor of the application.

Mr. Weldon H. Grubb was sworn in and testified in favor of the application stating that he also lives next to the applicant.

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. 5321--Wayne Burroughs - North side of Route 48, $\frac{1}{4}$ mile southwest of Route 302A, Lot 1, within Holly Leaf Estates.

A special use exception to place a second manufactured home to be connected to the existing manufactured home to be used as one single family unit.

The case was presented by Mr. Betts. Wayne Burroughs was sworn in and testified, requesting to place a second manufactured home to be connected to his existing manufactured home to add more living space. The units will have only one kitchen, A-Roof and will be wrapped in vinyl siding. A foundation will be placed also. He hopes to complete the work within one year or less. When it is finished there will be only one unit.

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

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 be granted, with the stipulations that there be an A-Roof over the units, identical siding on both units and a foundation, the work to be completed within two (2) years.

Case No. 5322--Miguel Jimenez - North side of Route 42, .23 mile south of Route 16.

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. Miguel Jimenez and Julia Jimenez were sworn in and testified, requesting to place a 1972, 14'x 72' manufactured home on property they are under sales contract to purchase for their residence. They testified that there are other manufactured homes in the area. The nearest across in front of the property they are purchasing. The manufactured homes in the area are on five acre parcels.

David Callahan was sworn in and testified in opposition, stating that he still holds the deed to the property the applicants are purchasing. The property was being sold to another party that is paying Mr. Callahan, but he still holds the deed. The party paying for the property proposes to sell to the applicants. When Mr. Callahan sold the property he stipulated that only a double-wide manufactured home be placed on it. Mr. Callahan is opposed to the request.

William White was sworn in and testified in opposition and presented pictures of homes and manufactured homes in the area. He has concerns about the low area in regards to septic. He is opposed to anymore manufactured homes going in the area on less than five acres.

John C. Eby was sworn in and testified in opposition to a manufactured home on less than five acres. He feels another manufactured home will contaminate wells. He also feels the property cannot take more sewers and drain fields, and it could end up a health hazzard.

Mrs. Jimenez stated that there is no water standing on the lot they are purchasing.

There were six (6) people present in opposition by a show of hands.

Mr. Eby stated that there should not be anymore property sold as one acre parcels.

The Chairman in response stated that this Board had no control over the size of property.

Motion was made by Mr. Callaway, 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. Wheatley, seconded by Mr. Callaway and carried unanimously that the special use exception be denied, finding that the owner of the property does not agree with the requested use of the property.

Case No. 5323--Tower Communications - North side of Route 13, 700 feet north of Route 534.

A variance from the requirements for signs.

The case was presented by Mr. Betts. Charles Leon Towers was sworn in and testified, requesting a 50 sq. ft. variance from the 100 sq. ft. requirements for signs to be 150 sq. ft. Mr. Towers presented a sketch of the finished product. Because of the staggering of buildings in the area, he needs to have the sign to advertise his business. He wants to create something different to draw attention so his business can grow.

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. 5324--Wyoming Concrete Industries, Inc., William J. De Mond
Mondi - West side of Route 113, 1,460 feet north of Road 323.

A special use exception to operate a concrete batching plant.

The case was presented by Mr. Betts.

Mr. Mills, Mr. Wheatley and Mr. Callaway presented material they had received from Charles Murphy's Office pertaining to this hearing. Mrs. Hudson had not received any material. Mr. McCabe had forgotten to bring his material.

William J. DeMondi was sworn in and testified, representing Wyoming Concrete Industries, Inc. and was represented by James Fuqua, Attorney. The applicants requested to operate a temporary concrete batching plant to provide materials necessary for the construction of Phase 2 and 3 of the dual highway on Route 113. Mr. Fuqua stated that the property contains approximately 4 acres and explained the location. He referenced the Zoning Code pertaining to special use exceptions. He stated the plant is only temporary but is needed to dualize the highway from Georgetown to Milford. The plant will be used only for the road project.

Karen Emory Brittingham with Charles Murphy's Office, was sworn in and testified in behalf of the application. She stated that the material given to the Board members was the same material that was presented at the informal meeting held at the Lincoln Community Center prior to the meeting tonight. She explained the

area and what will take place on the property. She stated that the property is owned by David & Carolyn Wilson and will be centrally located for Phases 2 and 3 of the dualization of the highway. She testified that the property was originally a commercial site and that there are no wetlands at this particular site. She explained and showed buffers around the property. There will be one entrance to the site. She stated that the concrete has to be delivered in 30 minutes or it will be refused. She stated that the operation will be monitored by other agencies and permits obtained. There will be product silos, mixer and aggregate bin on the property. The concrete is poured onto trucks and delivered to the site. They will only operate when actual crews are there. There will be days they will not operate at all.

Mr. DeMondi explained the plant north of Georgetown that is being used for the highway in that area and is a staging plant for the whole operation. He stated that their plant is different, it will supply concrete to the actual job. There will be no storing of trucks on the site, only vehicles for operating the site. He explained what the State requires now in regards to cement mixer. The mixer is incorporated into the plant and the cement is put into dump trucks that must be delivered within 30 minutes to the site. It is a stiff mix. There are strict State laws regarding this. He stated that there is an existing commercial well on the site to provide the water needed. There are no generators on site producing noise. He stated that there will be limited dumping and loading, sand, stock piling and digging stone. He testified there will be no odors, all natural materials used. He stated that when the work is completed the plant will be removed to another site. The use will be dedicated to the dual highway only and pouring will be July thru December. He stated it was told that it would take six months, but they are requesting at least one year, since it could run over. The State could pull the plug on pouring because of weather. They will have an office trailer on the site and 5 employees to staff the plant. There will be no need for sewer on the property, a Port-o-John will be provided for the employees. He stated the company has been in business for 30 years and has permanent plants in various locations. There will be security fence around the property. The site has power and water. The hours depend on the general contractor and when they are ready for the concrete.

Mr. Fuqua presented exhibits from the Department of Transportation, Wyoming Concrete Industries, Inc. and Title 7 (State Law) Sec. of the Delaware Code. He submitted five conditions and read them into the record that could be considered if approved. He feels it will not substantially adversely affect the neighbors with the time limit requested, since noise from the project itself already exists. They are leasing the site for one year.

Mr. Betts referenced correspondence from William Bell, letters and a petition regarding the application.

William D. Bell was sworn in and testified in opposition. He presented a petition, letters and copies of material pertaining to their concerns. The batching plant will affect the developments of Hudson Pond Acres, Sussex Woods and Hudson Mill. He expressed concerns about noise, trucks, air pollution in regards to health and respiratory problems. He does not want an industrial concrete plant

in their community. He read from his prepared material. He referenced the meeting held at the Lincoln Community Center and told of questions asked at that meeting. He is concerned about traffic congestion and about accidents. He feels there will be a tremendous bottle neck and that another location could be found. He referenced the petition from the people of the development.

Mary Emory was sworn in and requested to see a copy of the petitions and questioned how Mr. Bell obtained the names.

Mr. Jones, Attorney, stated that the opposition was being heard and they would come back to her.

Robert Green was sworn in and questioned the amount of dump trucks needed. He expressed concern about stress in the area, school buses, inconvenience of people and feels it is the worst possible location for the plant. He stated he would not see the plant but his neighbors will see it and hear it. He is concerned about getting out on to the highway. He feels a location that will affect the least amount of people is more appropriate.

Joseph B. Linemyer was sworn in and testified he is in support of previous statements made. He referenced what is in the area now. He has concerns about the time limit and water quality. He feels a study should be done for dangers to the water.

Daniel Morton was sworn in and testified in opposition. He feels the people most involved will look at the plant are approximately 200 feet away from it. He stated that he has been around this type of plant before and expressed concern about dust and noise and he does not want to look at it. He wants to sell his property and feels he won't be able to. He has children with asthma problems and feels the dust will aggravate this. He feels it won't enhance his property values.

Louis A. Kish was sworn in and testified that this would be the worst location, since the area is residential and growing. He stated that the plant will be about 200' from his lot line. He feels the dust will affect seniors and children with respiratory problems. He questioned night time operation and noise.

Charles Thompson was sworn in and testified concerned about the traffic going in and out and health problems. He feels the tower site is a better location. He is in favor of dualizing the highway but not the plant at this location.

Mr. Bell stated that cleaning of the equipment should be taken under consideration. He too is in favor of dualization but not the location.

There were 32 people present in opposition by a show of hands.

Mrs. Emory questioned the petition and stated she feels it is misrepresentation.

Mr. Fuqua stated that the petition is basically objecting to traffic. He stated that the purpose of dualizing the highway is to correct traffic problems. He stated that there will be more

truck traffic no matter where the plant is located and this will be the most logical place where the work is done. He also stated that noise will be there anyway. He stated that DNREC will make sure problems pertaining to health are regulated and the plant will be monitored. He stated that this is a Department of Transportation project and this will be a temporary project. He read from a court case by Chancellor Allen. He also added the 30 minute time period begins when the water is added to the mix.

Mr. DeMondi stated that some security lighting will be on site.

Motion was made by Mr. Wheatley, 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 Mr. Wheatley seconded by Mr. Callaway and carried unanimously that the special use exception be granted with the following conditions:

1. No sale of concrete other than in connection with Route 113 dualization project. (DELDOT No's 88-013-04 and 88-013-02)
2. Facility will comply with regulations of Delaware Department of Natural Resources and Environmental Control (DNREC).
3. No storage of third party vehicles or equipment will be permitted on site.
4. This approval shall be for a period of one year terminating on April 4, 1995.
5. Upon expiration of Special Use Exception, all equipment shall be promptly removed from property.

Reasons for voting in favor of the special use exception were stated as follows:

Mr. Wheatley - Is in agreement with the conditions presented, feels DNREC will be there to regulate at all times.

Mr. Callaway - Feels the applicants addressed the issues of being the traffic, presented the plan as far as safety, dust and noise. Was concerned, but they are working with DNREC and will have the permits. He feels the opposition raised a lot of issues but had nothing to challenge it with on the issues they raised. They had nothing to show on the traffic impact study, nothing on how much dust there was going to be or if it would cause any problems. He feels the placement of this plant on this site is necessary due to the location of the work on 113 and 30 minute time limit as mentioned by the applicants. Safety concerns that the opposition brought up would exist no matter where the batch plant was placed on 113. State Agencies, primarily DNREC will handle the issues of noise, dust, pollutants. He feels the one year time limit placed on this special use exception will do a lot to limit the negative affect on the people in the area.

Mr. McCabe - He goes along with Mr. Callway reasons as mentioned. He feels the objectors had legitimate concerns, but going to be there regardless whether the batch plant is down the road a mile or not. The people most affected are the ones within 200 yards of the plant. He feels it is as good a spot as they are

are going to find.

Mrs. Hudson - All people along there are being inconvenienced right now and the sooner they can get it finished the better it will be for all of them. They are inconvenienced now. This will not make way to their inconvenience, but will help to allivate the inconvenience the sooner they get it finished. She adopted Mr. Callaway's findings.

Mr. Mills - Adopts Mr. Callaway's findings. There is going to be noise regardless for these people. As far as particulate in the air the fact the governing bodies or the safety important ammenities of government can't do that good a job, a mile or two down the road is not going to do any good or make any difference. If there is any particulate that does become airborne it is going to be in that same vicinity and have the same adverse affect if there would be one. He thinks to save time and expedite the project this is the safest location.

OTHER BUSINESS

Case No. 5041 - Patricia & Robert Smith
Request for an extension.

Mr. Betts stated that he had received a letter from the Smith's requesting an extension of one year on their application that was granted by the Board.

Motion was made by Mrs. Hudson, seconded by Mr. Callaway and carried unanimously a one (1) year extension be granted to Case No. 5041.

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

Meeting adjourned at 10:24 P. M.