

Minutes of April 8, 1996

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, April 8, 1996, in the Sussex County Court of Common Pleas, the 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 - Assistant County Attorney, Mr. Betts - Zoning Inspector III, and Mrs. Watkinson - Clerk.

Motion was made by Mrs. Hudson, seconded by Mr. Mills, and carried unanimously that the minutes of March 25, 1996, be approved as circulated.

Case No. 5941 -- John C. Dobson - west side of Route 571, 2/3 mile south of Route 16, Lot 1.

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. John C. Dobson was sworn in and testified that he proposes to place a 1981 manufactured home, 14 X 70, for his own use; that there is a manufactured home across the street; the adjoining property has a manufactured home; that there are several manufactured homes leading to Route 16.

There were no parties present in opposition.

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

Case No. 5942 -- Conrad and Linda Carter - northeast side of Route 492A, 154 feet north of Route 492.

A variance from the minimum lot width requirement.

The case was presented by Mr. Betts. Conrad Carter was sworn in and testified that he proposes to subdivide a lot that does not have 300 feet road frontage; that he lives adjacent to the lot; that the lot is currently vacant; that the lot when subdivided would create a 1.49 acre lot and a 4 acre lot; that his right-of-way is separate from these lots.

There were no parties present in opposition.

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

At the conclusion of the public hearing, the Chairman referred back to this case.

Motion was made by Mr. Callaway, seconded by Mr. Wheatley, and carried unanimously that this case be tabled, finding the Board needed to further evaluate the property.

Case No. 5943 -- Donald Derrickson - west side of Route One at the intersection of Route 283 (Postal Lane).
A variance from the requirements for signs and a special use exception to place two (2) off premise signs.

The case was presented by Mr. Betts. Donald L. Derrickson was sworn in and testified that he proposes to place two (2) off premise billboards; that he also needs a variance from the 300 feet requirement from a church.

Mable Granke was sworn in and expressed her concerns of the validity in reference to exceptional or undue hardship necessary for a variance; that due the time of year Route One will have increased traffic and diversion would mean less attention to driving and more attention to signs.

Don Wrestler was sworn in and testified that through personal experience he could testify to the increased traffic; that the area is an unsafe intersection; that the signs will distract drivers.

Richard H. Anthony was sworn in and testified that in addition to safety concerns an undue hardship does not exist; that there is nothing unique about the property; that the hardship is self-imposed.

There was no correspondence.

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

At the conclusion of the public hearing, the Chairman referred back to this case.

Motion was made by Mr. Wheatley, seconded by Mr. Callaway, and carried unanimously that this case be tabled, finding the need for further site review.

Case No. 5944 -- Richard A. and Donna M. H. Jones - northwest side of Route 407, 930 feet northeast of Route 405.
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. Donna and Richard Allen Jones and Kevin Schroeder were sworn in and testified that they propose to place a 1996 manufactured home, 28 X 68, with an A-frame roof on a permanent foundation; that there are five (5) other manufactured homes in the area; that there are three (3) manufactured homes on less than five (5) acres each; that several of the manufactured homes have been placed within the last year on small lots.

There were no parties present in opposition.

Motion was made by Mr. Callaway, seconded by Mr. Mills, and carried unanimously to permit the special use exception with the stipulation the unit be a doublewide on a permanent foundation.

Case No. 5945 -- Ronald Wright - west side of Route 638, 300 feet south of Route 40, Lot 3, within Redden Farms.
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. Ronald J. Wright and Ted Liszewski were sworn in and testified that Mr. Wright proposes to place a 1986 manufactured home, 14 X 70; that there are other manufactured homes in the area; that the adjoining lots are at least five acres and have manufactured homes; that there is a dwelling and chicken houses adjoining the property on the left; that new skirting will be used on the manufactured home.

Hugh George Phillips was sworn in and testified he bought five acres as required to place a manufactured home; that he plans to build a dwelling on the property; that his manufactured home is at least 210 feet from the front property line; presented a petition with thirty five (35) signatures opposing the application.

John C. Glanden was sworn in and testified that he also bought five acres to place a manufactured home; that he does not want a manufactured home on the 1/2 acre lot as requested.

Rita Fasano was sworn in and testified that she lives on Road 638 in Deer Haven; that she does not believe that a septic and well would meet standards due to the small lot size; that if approved this would open avenues for other manufactured homes in the area on less than five acres.

George G. Smith was sworn in and testified that he shares the same views as Ms. Fasano; that he also purchased five acres; also questioned the 100 feet requirement between the well and septic.

Anthony Fasano was sworn in and testified that he moved to the area approximately five years ago and purchased five acres to place a manufactured home; that he encouraged family members to also purchase property in the area; that the lots should be spacious to improve the appearance of the community.

Durwood W. Taylor, Sr. was sworn in and testified that this was a self-imposed problem; that there is a farm for sale in the area and encourage 1/2 acre lots for manufactured homes if this application was approved.

Sharon Ann Glanden was sworn in and testified that the deed stipulates 100 feet back from the road for front setback; that this manufactured home would be too close to the road; also expressed concerns about the septic and well.

Antoinette Hegesi was sworn in and testified that manufactured homes on small lots would be unsightly; that she moved to this area to avoid such situations.

Leo Maksymchok was sworn in and testified that Mr. Wright approached him in regards to building a dwelling on the lot however due to the size of the lot a manufactured home was the most feasible solution; that a manufactured home would be consistent with the area; that the lot would accommodate a septic and well.

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

At the conclusion of the public hearing, the Chairman referred back to this case.

Motion was made by Mr. Mills, seconded by Mr. Wheatley, and carried unanimously that the special use exception be denied, finding it would adversely affect the area.

Case No. 5946 -- Robin Collins - south side of Route 329, 1/2 mile east of Route 432.

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. Margaret Collins and Robin Collins were sworn in and testified that Robin Collins proposes to place a doublewide manufactured home, 24 X 44, on a permanent foundation on one acre of land; that there are other manufactured homes in the area; two (2) manufactured homes were recently placed in the area; that this manufactured home has existed on the farm for ten (10) years but one (1) acre will be subdivided for the manufactured home.

Motion was made by Mrs. Hudson, seconded by Mr. Callaway, and carried unanimously that the special use exception be granted with the stipulation the unit be a doublewide on a permanent foundation.

Case No. 5947 -- R & R Bayside - south side of Route One, at the intersection of Route 273.

A variance from the requirements for signs.

The case was presented by Mr. Betts. Marshall F. Jackson and James Mandoles were sworn in and testified that each sign would be 24 or 25 sq. ft.; presented pictures of typical Vanity Fair store signs throughout the United States; that this store will occupy the space of four (4) previous stores in the outlet; that the signs will be approximately 24" and will conform with existing signs in the area.

Joseph H. Keller was sworn in and testified that he is the landlord's representative and agent for the outlets; that the signs were necessary for name brand recognition; that the landlords approve of the application.

Motion was made by Mr. Mills, seconded by Mrs. Hudson, and carried unanimously that the variance for seven signs be approved, finding they would be in character with the area.

Case No. 5948 -- R. Dale Benson - south side of Route One, 500 feet northwest of Route 207.

A variance from the front yard setback requirement.

The case was presented by Mr. Betts. Dale Benson was sworn in and testified that the farm is used for produce; that an existing building is used to sell produce; that he proposes to add a roof that would protrude 14 feet into the required 40 feet front setback requirement; that the roof would protect the produce and the customers from the weather; that the roof would also improve the appearance of the building.

Motion was made by Mr. Callaway, seconded by Mr. Wheatley, and carried unanimously that the setback variance be approved.

Case No. 5949 -- George S. Isaacs - south side of Route 18, at the intersection of Route 484.

A special use exception to place an off premise sign.

The case was presented by Mr. Betts. George Isaacs was sworn in and testified that he proposes to place a two-sided 10 X 30 sign on Route 404; that the property was farmland; that there are no billboards within two or three miles; that the height would not exceed twenty five (25) feet.

There were no parties present in opposition.

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

At the conclusion of the public hearing, the Chairman referred back to this case.

Motion was made by Mrs. Hudson, seconded by Mr. Mills, and carried unanimously that this case be tabled.

Case No. 5950 -- Clearwater Land Ltd. - south side of Route 361,
1,500 feet northwest of Road 363, Lot 16,
within Newport Village, Clearwater.
A variance from the rear yard setback requirement.

The case was presented by Mr. Betts. Robert Harris was sworn in and testified that the lot is restricted in depth due to the sewer easement; that common area is adjacent to the lot; that the lot is an odd shaped lot; that construction on the building has begun although it was not started when the application was filed.

There were no parties present in opposition.

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

At the conclusion of the public hearing, the Chairman referred back to this case.

Motion was made by Mrs. Hudson, seconded by Mr. Callaway, and carried unanimously that this case be tabled.

Case No. 5951 -- Clifton Robert, II and Constance B. Parker - west
side of Route 113, 2,080 feet north of Route
400.
A special use exception to place an off premise
sign.

The case was presented by Mr. Betts. Clifton Parker was sworn in and testified that there is an existing off premise sign; that farmland and woods adjoin the property; that he wanted to upgrade the existing nonconforming sign; that he proposed a 300 sq. ft. one-sided sign.

Motion was made by Mr. Mills, seconded by Mrs. Hudson, and carried unanimously to take this case under advisement.

At the conclusion of the public hearing, the Chairman referred back to this case.

Motion was made by Mr. Callaway, seconded by Mrs. Hudson, and carried unanimously to grant the special use exception with the stipulation the sign be 300 sq. ft., finding it would not adversely affect the area.

Case No. 5952 -- Albert R. and Naomi D. Hamilton - south side of Route 74, 1,500 feet east of Route 434.
A special use exception to retain a manufactured home on a medical hardship basis.

The case was present by Mr. Betts. Naomi D. Hamilton and Constance Sue Martin were sworn in and testified that they were aware the special use would be for two (2) years only and that they would have to remove the manufactured home when the medical hardship ceased.

Mr. Betts presented a letter from Dr. Watson, Dickinson Medical Group, in reference to the medical need for supervision.

Motion was made by Mrs. Hudson, seconded by Mr. Mills, and carried unanimously that the special use exception be approved with the stipulation it be for a period of two (2) years.

Case No. 5953 -- Larry Michael Lucas - north side of Route 451, 1.38 miles west of Route 62.
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. Larry Michael Lucas was sworn in and testified that he proposes to place a 1996 doublewide manufactured home, 24 X 56, on a permanent foundation and with an A-frame roof; that there are other manufactured homes within 1/4 mile of this lot; that there is a dwelling on the adjoining lot.

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 with the stipulation the unit be a doublewide on a permanent foundation with an A-frame roof.

Case No. 5954 -- Earl J. Orth, III - east side of Route 238, 1,400 feet 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. Earl J. Orth, III was sworn in and testified that he proposes to place a 1996 manufactured home, 28 X 52, on a full basement; that there are other manufactured homes in the area.

There were no parties present in opposition.

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

Case No. 5955 -- Harry Crapper, et. ux. - north side of Route 207,
1,140 feet west of Route 211.

A special use exception to place a manufactured home in an AR-1 District on less than five acres for a permanent residence and a variance from the minimum lot width requirement.

The case was presented by Mr. Betts. Karen Emory Brittingham, Charles Murphy Associates, and Harry and Alberta Crapper were sworn in and testified that John Ingram currently owns the property; that there are two (2) manufactured homes on the property; that Mr. Ingram plans to replace his manufactured home with a doublewide in approximately six or eight months; that each brother would own a lot when subdivided; that two (2) wells and two (2) septic systems have been approved by Department of Natural Resources and Environmental Control; that each lot would have its own access; that he proposes to place a 1996 manufactured home on a permanent foundation.

John Ingram was sworn in and testified that he is aware of the application and agrees with the proposal; that it will improve the appearance of the property.

There were no parties present in opposition.

Motion was made by Mr. Mills, seconded by Mr. Callaway, and carried unanimously that the special use exception and variance be granted with the stipulation the unit be a 1996 manufactured home on a permanent foundation.

OLD BUSINESS:

Case No. 5932 -- R & L Enterprises, Inc. - east side of Route 13,
1/2 mile south of Route 40.

A special use exception to place an off premise sign in a C-1 District.

The case was reviewed by Mr. Betts.

Motion was made by Mrs. Hudson, seconded by Mr. Callaway, and carried unanimously that this case be tabled, finding the need to further evaluate the location.

Case No. 5933 -- Joseph Sekcienski - north side 298, 200 feet east of Route 24.

A special use exception to operate a bed and breakfast.

The case was reviewed by Mr. Betts. Mr. Betts informed the Board members that several letters in opposition have been received since the public hearing.

Motion was made by Mr. Callaway, seconded by Mrs. Hudson, with four (4) members voting in favor and one (1) abstaining due to being absent for the public hearing, to deny the special use exception, finding it would adversely affect the area, that it would be out of character with the area.

Case No. 5938 -- Wyoming Concrete Industries, Inc. - south side of Route 9, near Gravel Hill.

A special use exception to operate a concrete batching plant.

The case was reviewed by Mr. Betts. Mr. Callaway presented his concerns regarding the concrete batching plant (see attached copy).

Motion was made by Mr. Callaway, seconded by Mrs. Hudson, with four (4) members voting in favor and one (1) abstaining due to being absent for the public hearing, to deny the special use exception, for reasons stated.

Mr. McCabe asked for a roll call:

Mr. Mills, nay - for the dust, noise, reasons previously stated by Mr. Callaway.

Mrs. Hudson, nay - for increased traffic, adversely affects the area, reasons previously stated by Mr. Callaway.

Mr. Wheatley, abstain - was not present at public hearing.

Mr. Callaway, nay - for reasons previously stated.

Mr. McCabe, nay - for reasons previously stated.

It was the consensus of the Board the special use exception would adversely affect the area; that it would be out of character for the area; that it would not conserve the property values; that the majority trend in character is toward residential and agricultural uses.

Case No. 5940 -- County Seat Materials, L.L.C. - southeast side of
Route 319, 3,000 feet south of Route 18, at the
Sussex County Airpark.

A special use exception to operate an asphalt plant.

The case was reviewed by Mr. Betts.

Mr. Jones, Assistant County Attorney, presented the Board members with the applicant's proposed conditions if approved. Mr. Jones also presented the Board members with alternative conditions (hearing exhibit #20).

Motion was made by Mr. Wheatley, seconded by Mr. Callaway, and carried unanimously that this case be tabled, finding the need to review materials submitted.

OTHER BUSINESS:

Case No. 5566 -- Bernard Bowerman - One year time extension.

The case was reviewed by Mr. Betts.

Motion was made by Mrs. Hudson, seconded by Mr. Callaway, and carried unanimously that a one (1) year extension be granted.

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

Meeting adjourned 9:15 P.M.

BOARD OF ADJUSTMENT CASE NO. 5938

This
The is a special use exception to operate a concrete batching plant on a parcel on the south side of Route 9, near Gravel Hill. I have reviewed the evidence which was submitted at the public hearing, both in favor of the application and in opposition to the application. I have also reviewed the written statements submitted by the parties after the hearing.

When voting on a special use exception, the Board must consider whether the special use exception will or will not substantially affect adversely the uses of adjacent and neighboring properties. I have come to the conclusion that this proposed concrete batching plant will substantially affect adversely the uses of adjacent and neighboring properties. I have come to this conclusion for the following reasons:

1. I do not believe that a concrete batching plant is similar to other uses in the immediate area. The immediate area is primarily made up of farmland, residential properties, and a furniture store. I believe that the concrete plant could substantially affect those properties, because:

- a. It will result in a significant amount of additional truck traffic on Rte. 9, which could result in a safety problem for area residents.
- b. The truck traffic will add to an existing traffic problem on Rte. 9, especially during the tourist season.
- c. Heavy truck traffic could cause further deterioration to Rte. 9. There are apparently no planned improvements to

Rte. 9 in the near future.

- d. I am concerned that dust and noise from the plant will have a substantial adverse affect on the area. There was conflicting testimony at the hearing on the issues of noise and dust. Witnesses testified that dust and noise were a problem at another concrete batching plant operated by this applicant on Rte. 113. I was not able to determine that noise and dust would not be a problem at this new site.

2. I realize that there is a DelDOT maintenance yard on an adjacent property, which is a non-conforming use. I do not believe that the proposed concrete plant is necessarily similar to that yard. The maintenance yard is primarily a storage area for trucks and road materials. It does not involve the amount of truck traffic which is proposed to and from the concrete plant. It does not involve a manufacturing process, such as that associated with a concrete batching plant.

3. The applicant has suggested that the proposed plant will not generate a significant amount of truck traffic. This is something that the Board has no control over. Clearly, the more business the plant does, the greater amount of traffic there will be.

*
— 4. The applicant has stated that the State of Delaware will monitor issues such as dust, odor, noise and effect on water resources. This does not mean, however, that the Board can not consider those issues. Based on the conflicting evidence submitted at the hearing, I can not find that the proposed concrete batching

plant would not substantially affect adversely the uses of adjacent and neighboring properties, with respect to those environmental issues.

5. Finally, the applicant has provided a suggested list of conditions which the Board could place on the concrete batching plant. I am not convinced that those conditions would provide sufficient protection to neighboring properties. Conditions placed on a prior special use exception for a concrete batching plant for this same applicant on Rte. 113 were apparently not followed.

For these reasons, I am against the requested special use exception.