

Minutes of April 22, 1996

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, April 22, 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. Jones-Attorney, Mr. Betts-Zoning Inspector III and Mrs. Talley-Planning & Zoning Secretary.

Motion was made by Mrs. Hudson, seconded by Mr. Mills and carried unanimously that the minutes of March 25, 1996 and April 8, 1996 be approved as circulated.

Case No. 5956--Christine A. Serio - West side of Route 274, 1/2 mile south of Route 275, Lot 70, within Arnell Creek Subdivision.

A variance from the side yard setback requirement.

The case was presented by Mr. Betts.

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

Christine A. Serio and Frank J. Serio, the applicants father, were sworn in and testified. Ms. Serio requested a 13'5" variance from the 15' side yard setback requirement on Lot 70, Arnell Creek for a carport. Ms. Serio had previously been before the Board for a variance of 11'5", which was approved, for the same use. After the hearing she realized she had requested the wrong amount of variance needed. She is requesting 13'5" which makes it an additional 2' from the previous amount of variance requested. It was stated that the Arnell Creek Association has approved the variance. Ms. Serio stated everything is the same as previously presented except the size.

There were no parties present in opposition.

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

Case No. 5957--E. J. Steen - North side of Route 336, 1,708 feet east of Route 335A.

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

The case was presented by Mr. Betts. E. J. Steen was sworn in and testified, requesting to place a 1996, 16'x 70' manufactured home on his farm for his daughter. This will be the second manufactured home on the farm. The existing manufactured home is

occupied by a niece and nephew, Bethany and Shawn Winterbottom. They have been occupying the manufactured home since last fall. They do not work on the farm.

There were no parties present in opposition.

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

Case No. 5958--Richard & Michele Reed - South side of Route 279,
1/2 mile southeast of Route 277, within
Angola Crest I.

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

The case was presented by Mr. Betts. Richard and Michele Reed were sworn in and testified, requesting a 2'9" variance from the 20' setback requirement between units in a park, Angola Crest I. The applicants have replaced an existing manufactured home that is larger in size. They cannot meet the 20' setback between units. The unit is already on the property and the encroachment was found when inspected by Planning and Zoning. A letter from the nearest neighbor was submitted.

Mr. Betts read the letter presented from Howard Brewster, Sr. & Dora voicing no objections. Mr. Betts stated no other correspondence had been received.

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. 5959--Orland & Madeline Lewis - Northwest side of Route
17, 400 feet northeast of Route 385.

A variance from the minimum lot width requirement for three lots.

The case was presented by Mr. Betts. Glenn Gray, son-in-law, was sworn in and testified representing the applicants who requested a 27' variance from the 150' lot width requirement for three lots to be 123' on each lot. Mr. Gray stated his father-in-law wants to divide the property for family members. He stated there would be no problems with the neighbors.

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

Mr. Jones, Attorney, questioned whether or not there would be setback problems with the existing house.

Mr. Betts stated there should be sufficient room to meet the property line setbacks.

There were no parties present in opposition.

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

Case No. 5960--Troy D. Drohan - South side of Route 22, Lot 43,
within Massey's Landing Mobile Home Park.
A variance from the setback requirement between
units in a park.

The case was presented by Mr. Betts. Troy D. Drohan was sworn in and testified, requesting a 5'6" variance from the 20' setback requirement between units in a park on Lot 43, within Massey's Landing Mobile Home Park. Mr. Drohan proposes to place a 28'x 44' double-wide manufactured home on Lot 43, Massey's Landing Park, where a previous manufactured home existed. The new unit is longer and requires a variance. He stated it will not obstruct visibility and there are similar situations in the park.

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 variance be granted.

Case No. 5961--Robert F. Moyer, Jr. & Paula Murphy - South side of
Route 280, 228.36 feet west of Route 290
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. Robert F. Moyer, Jr. and Paula Murphy Moyer were sworn in and testified, requesting to place a new 28'x 54' double-wide manufactured home on a permanent foundation, on their property, for their residence. On either side of their property is a double-wide manufactured home and their parents Nanticoke Home.

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 Mrs. Hudson and carried unanimously that the special use exception be granted.

Case No. 5962--David L. & Georgia R. West

This case was withdrawn.

Case No. 5963--J. W. Shockley & Son, Inc. - East side of Highway
One, 700 feet northwest of Route 283,
Lot 1, lands of J. W. Shockley & Son.

A variance from the requirements for signs.

The case was presented by Mr. Betts. Louis W. Shockley, Jr. was sworn in and testified representing the application. He requested a variance from the requirements for signs. They request two additional wall signs and an awning sign. The property being Lot 1, J. W. Shockley & Son, Inc. Subdivision. The additional signage will be on lighted awning on front of Jiffy Lube Oil Change business and Car Wash. They also want signage on the side. There is another business and vacant lot on either side of the property.

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. 5964--Leona M. Gruver South side of Route 54, 1 mile
west of Route One, Lot 3, within Cape
Windsor.

A variance from the rear yard setback requirement.

The case was presented by Mr. Betts. Leona Gruver was sworn in and testified, requesting a 6' variance from the 20' rear yard setback requirement on Lot 3, Cape Windsor. A letter and pictures were submitted. Ms. Gruver wishes to put a roof over a deck and screen it in. She stated the Association approves of the request.

Mr. Betts read the letter presented from David Clogg voicing no objections.

Harold Hartman, member of the Cape Windsor Association, was sworn in and testified, stating they have no problems with the

variance request.

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. 5965--Bethany Resort Furnishings - At the intersection of
Route One and Route 51.

A variance from the front yard setback requirement.

The case was presented by Mr. Betts. Richard A. Smith was sworn in and testified representing the applicants who requested a 33' variance from the 40' front yard setback to construct a 20'x 18' semi-enclosed shed to house a small electric forklift to enable them to off-load furniture directly to the second floor of a warehouse. They have a two story furniture store with the second floor warehouse only access a set of steps. The double doors already exist. The use will not be noticeable due to a buffer.

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. Wheatley and carried unanimously that the variance be granted.

Case No. 5966--Wallace R. & Margaret Sheldon - North side of Route
9, 1/4 mile east of Route 265, Lot 39,
within Sea Spray Village.

A variance from the side yard setback requirement.

The case was presented by Mr. Betts. Wallace and Margaret Sheldon were sworn in and testified, requesting a 3' variance from the 10' side yard setback requirement on Lot 39, Sea Spray Village, for their dwelling. The house has been completed, but due to a survey error the house is too close to the side property line. They stated there is no Association in the development.

There were no parties present in opposition.

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

Case No. 5967--Patricia A. Martin - South side of N. Carolina Avenue, 150 feet east of Bay Shore Drive (Route 16A), Lot 6, within Broadkill Beach.

A variance from the front yard setback requirement.

The case was presented by Mr. Betts. Patricia A. Martin was sworn in and testified, requesting a 26.3' variance from the front yard setback requirement on Lot 6, Broadkill Beach for a house. The applicant is removing an old house and building a new one in its place. She stated that it is in the older section of Broadkill and the existing houses are built forward on the properties. She stated that the existing house to be removed has been there for 50 plus years.

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. Mills and carried unanimously that the variance be granted.

Case No. 5968--Steve Handlin - Northwest side of private road off Route 293, 1/4 mile northeast of Route 294.

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. Steve Handlin was sworn in and testified, requesting to place a 28'x 56' manufactured home on a permanent foundation on property he is purchasing for his own use. He will own the property. He testified that the adjacent lots are vacant. His parents have a manufactured home in the area on five acres. He stated there are no deed retrictions against manufactured homes.

Elizabeth Lickman was sworn in and testified in behalf of the application, stating the applicants property abuts up to her property and she has no objections to the manufactured home.

There were no parties present in opposition.

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

Case No. 5969--Raymond E. Collas - North side of Route 297A, 1/2 mile northeast of Route 297, Lot 36 and part of Lot 38, Cannon Street, within Fagen Development.

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

The case was presented by Mr. Betts. Raymond E. Collas was sworn in and testified requesting a 10' variance from the 30' front yard setback requirement and a 2' variance from the 10' side yard setback requirement for a new double-wide manufactured home to be placed on Lot 37 and p/o Lot 38 in Fagen Development. The unit will be placed on a solid foundation. It will replace a 12'x 50' unit now on the property. He stated that manufactured homes are on the adjacent lots, and the Association has no problems with the variance requests. He presented a letter.

Mr. Betts read the letter presented from neighbor Kim Miller who is in favor of the application.

Jeannie Palmateer was sworn in and testified in behalf of the application. She testified that she has owned the development since 1965 and is also President of the Homeowners Association and has no objections.

There were no parties present in opposition.

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

Case No. 5970--Donald Brierley - South side of William F. Street, 1/4 mile northeast of Route One.

A variance from the front yard setback requirement.

The case was presented by Mr. Betts. Donald Brierley was sworn in and testified, requesting a 6' variance from the 30' front yard setback requirement to be 24' for a dwelling already on the property. The applicant stated that the cottage was built approximately 25 years ago and is now too small since he is now living there year round. It was previously used as summer residence. He now needs more room. He testified that there is no Association.

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 Mrs. Hudson and carried unanimously that the variance be granted.

OLD BUSINESS

Case No. 5932 (cont'd.)--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.

Mr. Betts reviewed the case.

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

Case No. 5940 (cont'd.)--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, Attorney, reminded the Board that when voting on a special use exception they must consider whether the special use exception will or will not substantially affect adversely the uses of adjacent and neighboring properties. That is the standard that is set forth by law. In applying this standard, they must consider the character of the particular district, the conservation of property values, and the general and appropriate trend in character of land, building and population development.

The Board recognized the three (3) legal issues brought up at the public hearing.

1. Can the Board of Adjustment consider the proposed special use exception as temporary and conditional, for a period not to exceed 5 years, when the applicant has negotiated a 20 year lease with the Sussex County Council?

The Board's reply was yes, they may grant a special use exception for a maximum of 5 years. For this special use exception to continue after the 5 year period, the applicant would need to file a new application. There is no guarantee that a second application would be approved, after the initial approval period has expired. The Board is concerned with whether the proposed

special use exception is an appropriate use of land, not the length of the lease held by the applicant, or whether the applicant has entered into a wise business arrangement.

2. Is the asphalt batching plant special use exception limited to a temporary facility, associated with a particular road project only?

The Board's reply was no, the word "temporary" in the zoning code relates to the fact that a special use exception for an asphalt plant can be granted for a maximum of 5 years. It does not mean that the plant itself must be associated with a temporary use. Several other special use exceptions listed in the zoning code under the LI-2 District are not temporary in nature, such as commercial dog kennels, sawmills, riding academies and stables, and miniature golf courses.

3. Does pending Court of Chancery litigation prevent the Board from considering this application.

The Board's reply was no, they must consider the fact that this applicant apparently has a lease with Sussex County. The Board is not required to guess as to whether the lease may be ruled invalid at some point in the future. Futhermore, Sussex County, the owner of the property, has given permission for the application to be filed.

After some discussion, motion was made by Mr. Mills, seconded by Mr. Wheatley that the special use exception be granted, with the following conditions:

1. The applicant shall comply with all applicable Federal, State and local laws and regulations concerning the use of the site as an asphalt plant including laws and regulations concerning dust, odor, noise and waste materials.

2. All required Delaware Department of Natural Resources and Environmental Control (DNREC) permits will be obtained and all operations will be in compliance with said permits. In the event the applicant is cited with a permit violation by DNREC, operations shall cease until the violation is corrected and authority to operate is issued by DNREC.

3. The use shall be located on the 19.37 acre parcel of land in substantial conformity with the site plant which was submitted at the hearing, including location of improvements, paving and roadways on the site. The final site plan approval to be made by Planning and Zoning.

4. Wooded area located on the westerly side of the site shall remain undisturbed except for necessary pruning in order to provide a natural buffer.

5. All site improvements and storm water management improvements will comply with applicable laws and regulations of the Army Corps of Engineers and Sussex Soil Conservation District.

6. Maximum hours of operation of the asphalt production facility shall be limited to 6:00 A.M. to 6:00 P.M., Monday through Friday and 6:00 A.M. to 2:00 P.M., Saturday, and no Sunday hours. There is to be no extension of these hours.

7. Utilization of County Route 319, by trucks accessing the site shall be limited to the portion of County Route 319 from the site, past the EOC and main entrance, to the airport tower and to the entrance to the proposed access road over the All American Engineering property (only that portion of 319, which runs along the front from the site to the proposed road bordering the Industrial Park). The trucks cannot utilize the section of Route 319 which runs from the site in a northerly direction to Route 9, nor may they use the portion of Route 319 which runs from the location of the proposed access road back into the Town of Georgetown. The Industrial Park Boulevard is an industrial highway and trucks must utilize it. Trucks cannot use Route 9 through Georgetown as a through Route, except for local deliveries (except for that portion of Industrial Park Boulevard that runs through Georgetown).

8. The applicant cannot begin operations until it may utilize a direct access Route to County Road 318 (the Industrial Park Blvd.) which may include that portion of Route 319 which is directly in front of the Industrial Park. The design and construction of that road is at the total expense of the applicant and built to applicable State requirements for asphalt plant truck traffic.

9. Approval is limited to a period of five (5) years beginning on the date of filing of the decision with the Planning and Zoning Office.

10. The applicant shall comply with all requirements of Del. D.O.T. regarding any portion of Route 319 it uses and also the entrance approval to its site.

11. The proposed location of the use shall comply with all requirements and approval of F.A.A.

12. Delivery of materials by rail should be by way of a rail siding and not from the main tracks.

13. Cannot stockpile materials or locate structures over any sewer lines running through the property.

14. Well on-site for restrooms for their own use.

15. Pave the processing area, to prevent contaminates from going into the soil.

16. No building permit to be issued until all agency approvals are obtained.

17. The plant built by the applicant shall be limited to that referenced at the public hearing (Gencor Industries) or its technological equivalent.

18. The special use exception shall be conducted at all times in such a manner so as not to adversely affect the public health, safety, morals, general welfare or create a public nuisance or safety hazard and with a view to protecting neighborhood property values.

With Mr. McCabe voting nay, the motion carried with three voting in favor and one against.

Mr. Mills voted yea, with the conditions discussed. He feels the use will not adversely affect surrounding properties.

Mr. Wheatley voted yea, feeling they covered situations pretty clear and if adhered to he thinks the use will be a worthwhile project.

Mrs. Hudson voted yea, only with the conditions, because they will be helpful for the area and the people and beneficial to the people in the area, keeping traffic down to a minimal on Route 319 and keep the dust and noise down.

Mr. McCabe voted nay, he does not feel the location is a proper place for the asphalt batching plant, feels strongly for the opposition placed by the Town of Georgetown. He does not feel the applicants have proved their need.

Mr. McCabe stated that Board Member, Mr. Callaway was absent due to illness.

The findings for voting in favor were:

Finding the use will not substantially affect adversely the uses of adjacent and neighboring properties.

Finding they considered the character of the particular district, the conservation of property values and the general and appropriate trend, the character of land building and population in the area.

Finding the plant is a closed system and odor and dust are not released.

Finding that smoke is burned within the plant and is not released.

Finding noise from the plant will be minimal and the buffer of trees will protect area residents from noise, and the closest neighbor is 1/4 mile away.

Finding since the site is paved, preventing any components of the asphalt batching process from having contact with the soil, and therefore, is not a concern about contamination of the soil.

Finding that on-site well will provide water for restrooms, as well as dust control.

Finding the Town of Georgetown has zoned a concrete recycling facility on a nearby parcel in the past few years and the trend in the area is toward further industrial-type development.

Finding the property is zoned LI-2, Light Industrial, which allows for a wide variety of manufacturing, fabricating, processing, wholesale distributing and warehousing uses. The proposed asphalt batching plant is not out of character with uses permitted in the LI-2 District.

Finding the site is located in the Sussex County Industrial Park and Airport. The proposed asphalt batching plant is not out of character with uses at the Sussex County Industrial Park and Airport, which include propeller and jet airplanes taking off and landing.

Finding that other uses permitted in the LI-2 Industrial District, which do not need a special use exception, would have an equal or greater impact on the surrounding area than an asphalt batching plant.

Finding that according to the Coastal Sussex Land Use Plan, the Georgetown area is within a Development District. In addition, the Plan directs industrial-type development to the Sussex County Industrial Park and Airport.

Finding the asphalt batching plant will not have a negative effect on property values in the area. The proposed use will have no greater effect on surrounding properties than other uses permitted in the LI-2 Light Industrial District.

Finding the proposed plant is planned to be placed at a location on the site which will further minimize its effect on the surrounding area.

Finding a DNREC permit has been issued with respect to the proposed asphalt batching plant.

Finding that the technology of asphalt batching plants has improved in recent years. The proposed plant is computer controlled, thereby limiting the possibility for human error. It is not expected that the concerns of noise, odor, or pollution, normally associated with an asphalt batching plant, will be present at this site.

Finding that concern about the ability of the applicant to develop the eventual access road to the Industrial Park Boulevard is not a basis for denial. If the applicant is unable to build the access road, then the special use exception will cease.

Finding concern about the ability of the applicant to use the site, due to limitations imposed by the FAA, is not a basis for denial.

Finding if the applicant is unable to build the asphalt plant, due to its inability to meet requirements imposed by any governmental authority, then the asphalt plant will not be built.

Finding that roads which may not be used, are not structurally adequate for trucks even on a temporary basis and use of County Route 319 and other roads except those specifically allowed would substantially adversely affect the uses of adjacent and neighboring properties.

Finding that there are safety concerns to vehicular and pedestrian traffic on those roads which may not be used. Those roads are not built to necessary standards and there would be a negative affect on property values if trucks were to use those roads.

Case No. 5942 (cont'd.)--Conrad & Linda Carter - Northeast side of Route 492A, 154 feet north of Route 492.
A variance from the minimum lot width requirement.

The case was reviewed by Mr. Betts.

After some discussion, motion was made by Mrs. Hudson, seconded by Mr. Wheatley and carried unanimously that the variance be granted.

Case No. 5943 (cont'd.)--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 reviewed by Mr. Betts.

After some discussion, motion was made by Mr. Mills, seconded by Mr. Wheatley and carried unanimously that the variance and special use exception be denied, finding the use would substantially affect adversely the uses of adjacent and neighboring properties and traffic, and the applicant failed to meet the requirements for granting of a variance.

Case No. 5949 (cont'd.)--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 reviewed by Mr. Betts.

After some discussion, motion was made by Mr. Wheatley, seconded by Mr. Mills and carried unanimously that the special use exception be granted, finding the use will not substantially adversely affect the neighboring properties and will not obstruct traffic.

Case No. 5950 (cont'd.)--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 reviewed by Mr. Betts.

After some discussion, motion was made by Mrs. Hudson, seconded by Mr. Wheatley that the variance be denied, with Mr. McCabe voting in favor. Motion carried with three voting in favor

of denial and one voting against denial. Findings for the denial were, the applicant was told by the Planning and Zoning Office ahead of time before the structure was built, has not met the requirements for the granting of a variance and a house could be built to meet the setback requirements. Vote 3-1.

OTHER BUSINESS

Mr. Betts read a letter thanking the Board for their decision of approval for Edward J. Kay.

DISCUSSION

The Board discussed bus/shelter signs.

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

Meeting adjourned at 9:10 P. M.