

Minutes of May 2, 1994

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, May 2, 1994 in the Court of Common Pleas Court Room, 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, Mr. Mills, Mr. Callaway, Mr. Jones-Attorney and Mr. Betts-Zoning Inspector III.

Motion was made by Mr. Mills, seconded by Mr. Wheatley and carried unanimously that the minutes of April 18, 1994 be approved as circulated.

Case No. 5332--Brian W. & Lisa Ann Keech - Northwest side of Route 492, 3/4 mile east of Route 492A.

A special use exception to operate a kennel and a variance from the setback requirements for a commercial kennel.

The case was presented by Mr. Betts. Brian & Lisa Keech were sworn in and testified and represented by Robert Witsil, Attorney. The applicants requested to operate a kennel and requested a 155' variance and a 135' variance from the setback requirements for a commercial kennel. The applicants were violated by the Planning and Zoning Office because they had more than four dogs and needed to have approval for a kennel. Mr. Keech was not aware that approval was needed for the nine kennels he placed on his property. A survey was shown and explained. Mr. Keech testified that he trains hunting dogs and does some breeding. The amount of dogs on the property at one time is fifteen. He also has two house dogs. Letters from neighbors, Charlene Layton, Dean Luffman and Guy Sherman, were presented voicing no objections. Mr. Keech's property is long and narrow and there is no one location where the 200' setback from the boundary lines can be met. Mr. Keech has designed the dog houses, with ventilation, to control noise. The dogs are put inside every night. He feels the use will not diminish the neighbors property. Mr. Keech stated that there were no neighbors except Charlene Layton in the area when the kennels were placed on the property.

Charlene Layton was sworn in and testified in behalf of the application. Ms. Layton lives across the road and has been there approximately nine years. She stated she does not object to the application. She does not feel there will be a detrimental affect on the property and the noise does not bother she and her husband who works shift work.

Mr. Keech stated he has no plans to increase the size of the kennels, just enclose the existing kennels.

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 Mr. Mills, seconded by Mr. Callaway and carried unanimously that the special use exception and variances be granted.

Case No. 5333--K. C. 2, L. L. C. - South side of Route 243, 2,500 feet east of North Bedford Street Extended.

A special use exception to operate an asphalt mixing plant.

The case was presented by Mr. Betts.

Mr. Jones, Attorney, stated that since he is the Attorney for the Town of Georgetown and since the Town was to send a letter pertaining to this case, he felt there may be a conflict of interest, even though he had not discussed the case with the Town. After contacting the agent for the application, Mr. Joe Conaway, it was decided, Mr. Jones could advise and ask questions for the Board without a problem.

Joseph Corrado, Gary Holmwood and Joe Conaway, Agent were sworn in and testified, representing the application. The applicants requested to operate a state of the art bituminous and asphalt mixing plant on property zoned LI-2, and immediately adjacent to the conral tracks north of Georgetown and Donovan's Salvage operation. They seek to enter this market because of the large number of road construction jobs in this area. Mr. Conaway, Land Use Consulting Firm and Realtor, presented a packet of material and introduced the members of the firm. Mr. Conaway stated the property consists of 5.73 acres and no wetlands are on the site.

Mr. Sergovic, Attorney, objected to Mr. Conaway's statement about wetlands.

Mr. Conaway stated that there is wooded areas on the property and will provide a buffer. He presented and showed a plat of the property (5.73 acres), showing no wetlands.

Mr. Corrado explained how the plant will operate and the mixing is done. He stated that the plant can be fueled by propane or natural gas, diesel fuel or Number 2 oil. Pictures were presented. He stated he had a video showing how the plant works.

Mr. Conaway stated that the applicants property was rezoned in 1970 by County Council, to LI-2, with no opposition. He explained the number of uses permitted in this type of zoning according to the Zoning Code. He read some of the items permitted. He stated that the Board can put a time limit on the use and conditions. They would have to obtain all State, County and Federal permits. Mr. Conaway presented a book on the Corrado Group showing how they operate. A video was shown and submitted, showing how their asphalt plant is run and how asphalt is made.

John Sergovic, Attorney and John Messick, Attorney, who were present representing interested parties, objected to the video being submitted as evidence, since a tape cannot be questioned.

Mr. Jones, Attorney, for the Board of Adjustment, stated that the Board can accept the video and give it, its proper perspective.

Mr. Conaway stated that the plant will operate during daylight hours from March to December. He explained the route the plant traffic will take. He referenced the salvage yard and Town dump down the road and feels there will be no added impact to the area. He referenced the Land Use Plan and stated that the use will not affect adversely the uses of neighboring properties, or affect the farmland in the area. The use would be in keeping with the Land Use Plan and provide jobs. He stated that a trip to Edgemoor to see one of their plant operations would be welcomed.

Mr. Holmwood stated that noise would not be a problem since all equipment used to minimize noise. He explained how the noise would be handled and that plants today operate much quieter.

Mr. Corrado explained steam and updated plants. He explained that the plant will be controlled by two computers, and with the railroad line to import materials the truck traffic will be less.

John Sergovic, Attorney, representing Ronald Moore and James Tyler Attorney, representing Dot & Floyd Megee, questioned the height of the silos.

Mr. Corrado in answer stated that the height varies on the amount to be stored in them.

Mr. Sergovic questioned the aggregate storage.

Mr. Corrado stated that 10,000 tons on about five acres with stacks 35' high. He stated in reference to dust, that the stone used is washed and may create some dust. He stated that inspections would be done by Osha. He stated that there would be 30 to 40 truck loads a day, with a total of 70 going in and coming out per day.

Mr. Tyler questioned Mr. Corrado about the Edgemoor plant and how many trucks are used.

Mr. Corrado stated that there is an average of 40 trucks per day in and out. When questioned if employees wear respirators or ear protection he replied, no. He stated it would be a state of the art operation. He stated that government people are at the plant everyday from Del. D.O.T. They cannot ship without inspection of the mix itself. He feels that the time is right to put up the plant with Sussex County's growth period.

John Messick, Attorney, representing the Indian River School Board, asked questions about bag filters and how often they are changed, whether a trained manager will be on site to watch the operation daily, how wide the right-of-way is and if it will accommodate them. When recycling is done how it is broken up. He asked about noise, since the video is still shots.

Mr. Corrado stated filters can be changed in 3 to 4 years if taken care of. There will be a trained manager at the plant. The recycling is done by breaking up in two ways, millings and chunks, but there will be no dust problems, since they have water control. D.N.R.E.C. has to

test before operating and can come unannounced. Mr. Corrado stated, the cost of the plant will be \$2,000,000.00.

Scott Bradley, Attorney, representing Richard Lankford a property owner in the area, stated he saw a plant and it was dusty.

It was stated that there would hardly be any noise and the plant will be visable from the road, can see silos. Mr. Conaway also stated that woodland is on three sides.

Mr. Sergovic questioned Mr. Holmwood and referenced plants in the area as well as new projects in the area.

Mr. Holmwood testified that he is a registered Professional Engineering Consultant to Delaware Asphalt Association. He explained how testing for recycling is done.

Mr. Sergovic asked Mr. Conaway if he could give an appraisal value and questioned the wetlands on the survey.

Mr. Conaway stated as a licensed realtor he can give an opinion of value. He stated the wetland requirements will be met.

Mr. Messick questioned how the opinion of value was done.

Mr Conaway explained how he arrived at the value. He feels there will be no affect on values of land in the area.

Mr. Bradley stated that you cannot assess something not there.

John Ferguson, property owner in the area, was sworn in and testified, questioning Mr. Conaway if there had been a verbal appraisal done on his property two years ago. He stated that Mr. Conaway's appraisal was \$8,000.00 less than other realtors.

Floyd A. Megee was sworn in and testified and was represented by Jim Tyler, Attorney. He stated he owns property across the road from the proposed plant site. He stated he has a contract to sell the property to the Indian River School District to construct an elementary school. He stated that the school board would not purchase the property if the asphalt plant is permitted, since it would be too close to the school. The purchase price for the property is valued at \$12,800.00 per acre. The school district will purchase 13.2 acres from a 20 acre parcel. Mr. Megee will donate the remaining property to them. He stated that George Harrison, Board Member, had approached him about selling the property to the school district.

Claude E. Lester, Jr., Realtor, was sworn in and testified that he has been a resident of Georgetown for 30 years. He testified that an appraisal for the Megee property was done by the school board December 3, 1993 and the value of the property is \$12,800.00 per acre. His opinion of value if the plant is approved will be \$3,500.00 to \$4,000.00.

At this time Mr. Sergovic, Mr. Tyler, Mr. Messick and Mr. Bradley stated that since Mr. Conaway is not an Attorney he should not ask questions of anyone.

Mr. Jones stated that this is a public hearing and not a trial and since Mr. Conaway represents the applicants he can ask questions.

Mr. Conaway questioned Mr. Megee and Mr. Lester, and stated that the property to house the plant is presently zoned LI-2 and permits many different uses.

Mr. Lester stated that there could be the possibility that a child could get off the school property to see what is there.

Richard Lankford, property owner, was sworn in and testified in opposition and was represented by Scott Bradley, Attorney. Mr. Lankford stated he has lived in the area for three years, approximately 1/8 mile away. He presented three petitions of opposition (approximately 39 signatures). He testified that he has seen the hot mix plant in Gumboro and he has concerns about dust from unloading stone, trucks in and out, dusty procedure, noise, tractor trailer and dump trucks and front end loader. He feels there will be a lot of traffic in and out.

Mr. Betts read the petitions (they were alike) into the record.

Mr. Conaway questioned Mr. Lankford as to him objecting if they pave the parking area.

Mr. Lankford stated traffic would be a problem.

Ronald T. Moore, of Ron-Con Partnership, was sworn in and testified in opposition and was represented by John Sergovic, Attorney. Mr. Moore is opposed to the asphalt plant. He has a housing development in the area and feels he will suffer a loss in sales if the plant is permitted. He is concerned about dust and noise and feels it will have an adverse impact on the area.

Mr. Conaway questioned the type of development Mr. Moore will have and about the property already being zoned LI-2.

Mr. Moore stated the development will be moderate income housing and that he was not aware of the zoning change on the applicant's property.

Mr. Lester, Realtor, stated he has had people say they would not purchase property with the plant in the area.

Dick Moretti, Director of Business and Finance for the Indian River School District was sworn in and testified in opposition and was represented by John Messick, Attorney. Mr. Messick presented a petition with approximately 350 signatures of opposition; a petition of opposition from Easter Seals and a letter from Circle Investors Corp., John Hammond, President, David Tidwell, Secretary. They have an office complex nearby. Mr. Messick read the petitions and letter into the record. Also read and presented was a letter of opposition from the Town of Georgetown, Joseph Booth, Mayor.

Mr. Moretti stated that the Indian River School District had searched for property and two sites were considered, the Megee property and a site near Perdue Chicken Processing Plant. They decided on the Megee property and part of it is in Georgetown Town Limits (UR) and

part in the County (AR-1). The school district has a contract with the Megee's, but recommended the school not be built there if the asphalt plant is allowed. The school district has spent \$20,000.00 to \$25,000.00 to investigate the property. They want the property to have access to Town water and sewer. They were aware of the applicants property being zoned LI-2.

Mr. Conaway asked Mr. Moretti if he is aware that a chicken processing plant can be built on the LI-2 site, with the present zoning.

Mr. Moretti stated they were aware of the uses permitted in the LI-2 zoning.

Frederick Duncan, President of the School Board was sworn in and testified and read and presented a prepared statement in reference to the application.

David C. Doane, CPA (office) on North Bedford Street in Georgetown, was sworn in and testified in opposition, concerned about noise, odor, dust, emissions effect on employes and the adverse affect on the area.

David Tidwell was sworn in and testified in opposition stating the office complex where Easter Seals is located has 17 offices with approximately 200 employees, less than $\frac{1}{2}$ mile away. He fears some offices could close and the plant will have an adverse affect on the area. He was aware of the LI-2 zoning, but feels this use is heavy industry. He feels the use is not compatible to the area and is concerned about safety.

Mr. Conaway questioned Mr. Tidwell about the office complex.

Mr. Garcia, Registered Architect, was sworn in and testified and was represented by Mr. Messick, Attorney. Mr. Garcia specializes in school designs. Mr. Garcia expressed concerns about noise, dust, airborne particles and traffic concerns. He feels the plant would be detrimental to the property for the school.

Richard Worritz, Consulting Toxicologist, was sworn in and testified and was represented by Mr. Messick, Attorney. He presented copies of reports. He has concerns about dust, vapors and health hazard from fumes, such as eyes, nose, throat irritation and cancer.

Mr. Conaway questioned Mr. Worritz about vapors.

William Miller, Consulting Engineer, was sworn in and testified and was represented by Mr. Messick, Attorney. Mr. Miller testified that he is familiar with asphalt plants and stated they can be controlled. He referenced risks involved, potential emissions and operational problems.

When asked by Mr. Conaway if he would recommend a school being built next to an LI-2 Industrial Zoning, Mr. Miller stated no problem.

George Garrison was sworn in and testified in opposition stating he lives on North Bedford Street in front of the school site. He stated his wife is guardian for her mother who lives on Route 244. He stated the area is residential regardless of the zoning. He feels

there is no need for the use. He has concerns about traffic. He feels there are other sites near the railroad that would be more suitable and questioned why they did not choose the Industrial Park.

Hazel Jean West was sworn in and testified, stating that she is a candidate for an upcoming election for Mayor in Georgetown and read a letter into the record that she compiled opposing the request. The letter was submitted.

Truitt Jefferson was sworn in and testified in opposition and presented an Osha definition of asphalt fumes.

Mr. Sergovic presented a letter from Patty Deputy referencing a Felton Plant.

Mr. Jones, Attorney, read the letter into the record.

Mr. Conaway in rebuttal stated the plant will be a state of the art plant and run properly. He thanked the people from the Town of Georgetown for attending.

Motion was made by Mr. Mills, 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. After some discussion, motion was made by Mr. Wheatley, seconded by Mr. Callaway and carried unanimously that the case be tabled.

Case No. 5334--Nathaniel & Angela Purnell - Northeast side of Route 297, $\frac{1}{2}$ mile west of Route 296, Lot B-10, within Cordrey Development.

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. Nathaniel Purnell was sworn in and testified, requesting to place a 1994, 28' wide double-wide manufactured home on his property for his residence. He testified that there is another manufactured home in the area as well as modular homes.

There were no parties present in opposition.

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

Case No. 5335--Vivian D. Hammond - West side of Route 574, 750 feet north of Route 31.

A special use exception to place two (2) manufactured homes to be used as storage sheds.

The case was presented by Mr. Betts. Vivian Hammond was sworn in and testified, requesting to keep two manufactured homes on her property for storage. She stated that the manufactured homes are on the property. They were moved on the property two weeks ago, but are

not hooked up. They are used for storage only. She stores furniture and items belonging to family members, in the manufactured homes. The manufactured homes are 1960 or 1970 units.

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, with stipulations that the units be moved to meet the required setbacks from the property lines and fix them up.

Case No. 5336--Richard F. Dorber - North side of Route 22, 200 feet west of Route 22C, Lot 68, within Long Neck Village.

A variance from the setback requirement between units in a park (from the property line setback requirements).

The case was presented by Mr. Betts. Richard Dorber was sworn in and testified, requesting a 3' variance from the 5' setback requirement on Lot 68, Long Neck Village for a deck, he proposes to construct. He testified that he has the Park Association's consent. Mr. Dorber stated that there are other similar situations in the park.

There were no parties present in opposition.

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

Case No. 5337--Vernon Russell - West side of Route 527, one mile south of Route 18.

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. Betty Russell was sworn in and testified in behalf of the application. Mr. Russell requested to place a 1976, 12'x 60' manufactured home on property they are under sales contract to purchase. She testified that her father-in-law owns farmland around the property. There is another manufactured home in the area.

There were no parties present in opposition.

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

Case No. 5338--Ocean Wine & Spirits, Ltd. - South side of Route One, 250 feet west of Route 271.

A variance from the requirement for signs.

The case was presented by Mr. Betts. T. Theodore Jones was sworn in and testified representing Ocean Wine & Spirits, Ltd., who requested a variance of 186 sq. ft. from an on premise ground sign requirement of 150 sq. ft. to be 336 sq. ft. Mr. Jones has a billboard

on the property with advertising on one side and wants to put advertising on the other side (south bound side) to advertise his business. He feels it will not be a safety hazard or change the area.

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. 5339--Country Rest Home, Inc. - South side of Route 16,
on the east side of Route 585.

A special use exception for the additon of twenty-four (24) beds and five (5) retirement cottages for expansion of the existing convalescent home.

The case was presented by Mr. Betts. Mark Yoder affirmed and testified, representing Country Rest Home, Inc., who requested to add 24 beds and 5 retirement cottages for expansion of an existing convalescent home. Mr. Yoder showed a plot of what is on the property and where they plan to expand. They will have 56 intermediate care licensed beds. This request is an amendment to the special use exception granted for the convalescent home.

Mr. William F. Halderman affirmed and testified in favor of the application.

John Embleton affirmed and testified in favor of the application, stating he has been an employee of the convalescent home for six years. He feels it will be an asset to the community.

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. 5340--Kay Passwaters - West side of Route 585, 2,300 feet
north of Route 32.

A special use exception to operate a Day Care Center.

The case was presented by Mr. Betts. Kay Passwaters affirmed and testified requesting to expand a child care center. She has an existing child care center and wants to expand. She will hve 11 children plus 1 of her own. She will have one employee and a 12 year old to help her. She feels there is a need for the expansion. She has a waiting list.

There were no parties present in opposition.

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

Case No. 5341--Roger A. Cebula - Southwest side of Route 395, Lot
30, within Bayview Estates.

A variance from the fencing requirements for a swimming pool.

The case was presented by Mr. Betts. Roger Cebula was sworn in and testified and was represented by Jim Yori, Attorney. Mr. Cebula requested a variance from the fencing requirement for a swimming pool. He requested a variance to be unprotected by a fence on the northeast side of his pool by a 4' barrier, on Lot 30, Bayview Estates. It was stated that there is a 7' to 8' high bulkhead on the side of the property where he is requesting the variance. He stated a person would have to crawl up the bulkhead from the lagoon to get to the pool. Copies of plots and material was presented. He explained where the pool and fencing is to be. He feels it will not alter the neighborhood. He feels the minimum variance has been requested.

Mr. Betts read a letter he received from property owners in Bayview Estates, Ronald, Nancy and Anna Tysowksy in reference to the application.

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. 5342--Lynn Rios - West side of Route 42, 4,100 feet north of Route 592.

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. Lynn Rios was sworn in and testified, requesting to place a second manufactured home on property to be connected to the existing manufactured home to be used as one single family unit. The second manufactured home is setting on the property, but not hooked up. There will be only one kitchen, an A-Roof, vinyl siding all around and enclosed with skirting. She stated she has five children and needs more space.

Mr. Betts read a letter from Ms. Rios, father in favor of the application.

Daniel B. McCarthy was sworn in and testified in opposition, stating that there has been more than one family living on the property, plus trash and police have been called to the property at times. He testified that junk autos and other things were cleaned up this week. Mr. McCarthy stated he lives next door and that the Rios property has two families living on the property and the septic is designed for one family.

Ms. Rios explained that she has a girlfriend who has a child, living with her, because her girlfriend is homeless, but she will not be on the property permanently.

Gary Reed was sworn in and testified in favor of the request. He stated that he and Ms. Rios are trying to put the units together to live more comfortable. He stated they are trying to clean up the property.

Ms. Rios stated that she, Mr. Reed and her five children will live on the property.

Mr. Jones explained that the property is to be for one family only.

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. After some discussion, motion was made by Mr. Mills, seconded by Mr. Wheatley and carried unanimously that the special use exception be granted, with the stipulations that the units have an A-Roof, matching siding, enclosed with skirting and the work to be completed within one (1) year.

Case No. 5343--Robert L. Baker - Northwest side of Route 484, 2 miles south of Route 46.

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 L. Baker was sworn in and testified, requesting to keep a manufactured home on property for his mother's residence. The manufactured home has been on a 10 acre parcel and Mr. Baker wants to subdivide the property and retain his mother's manufactured home on a $\frac{1}{2}$ acre parcel. He showed a plot and how the property is to be subdivided.

Mr. Jones explained that his mother's name would have to be put on the deed to the property since it is the policy of the Board that the manufactured home and property be in the name of the person occupying the unit.

Eileen Baker was sworn in and testified and questioned that at such time their mother no longer occupies the manufactured home, could the property be sold.

The Board's reply was that the property could be sold.

There were no parties present in opposition.

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

OLD BUSINESS

Case No. 5326 (cont'd.)--Jessica Stevens - North side of Route 22, $\frac{1}{2}$ mile east of Route 22C.

A special use exception to operate a Day Care Center.

The case was reviewed by Mr. Betts.

Mr. Mills stated that since he was absent from the public hearing, he would not be voting on this case.

After some discussion, motion was made by Mr. Callaway, seconded by Mr. Wheatley that the special use exception be granted, with Mr. Mills not voting. Motion carried with three voting in favor and one not voting.

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

Meeting adjourned at 12:00 A. M.