

Minutes of May 15, 1995

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, May 15, 1995 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. Mills, Mrs. Hudson, Mr. Wheatley, Mr. Callaway, Mr. Jones-Attorney and Mr. Betts-Zoning Inspector III.

Motion was made by Mrs. Hudson, seconded by Mr. Mills that the minutes of May 1, 1995 be approved as circulated, with Mr. Callaway abstaining. Motion carried with four voting in favor and one not voting.

Case No. 5659--Joseph P. & Sherry L. Trageser - On Arnell Road at the intersection with Route 274, Lot 1, Addition 1, within Old Landing Subdivision.

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

The case was presented by Mr. Betts. Joe Trageser and Debra Reed, Realtor, were sworn in and testified. Mr. Trageser was also represented by Doug Marshall, Attorney. Mr. Marshall stated that the applicants were requesting a 2.9' variance from the front yard setback requirement and a .2' and .3' variance from the side yard setback requirements for an existing dwelling, with garage and porch. The property is located at Lot 1, within Old Landing Subdivision. The porch is located on the front of the dwelling and encroaches into the setback. Mr. Trageser stated that the house was built in 1986 by a contractor he hired. The violation was discovered when he went to settlement on March 31, 1995.

Debra Reed, Realtor, stated that the variances requested will not alter the essential character of the area, will not substantially or permanently impair the adjacent property, will not be detrimental to the public welfare and she also feels the variances are the minimum that will afford the relief needed. The front yard variance is needed due to the porch roof.

Jennifer and Dean Irely were sworn in and testified that they are the contract purchasers of the property. They want to buy the house and would like the variances granted.

Robert Marshall was sworn in and testified in favor of the application, stating he owns property on three sides of the applicants and has no objection.

There were no parties present in opposition.

Motion was made by Mr. Wheatley, seconded by Mrs. Hudson and carried unanimously that the variances be granted, finding the use will not adversely affect the neighborhood.

Case No. 5660--Mark & Diana Smith - North side of Route 535,
1/4 mile northeast of Route 534, within
Indian Village.

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. Mark & Diana Smith were sworn in and testified, requesting to place a new 68'x 26' double-wide manufactured home on their property located in Indian Village. They testified there are other manufactured homes in the area and woods on either side of their property. Mr. Smith stated that the manufactured home has been placed on the property. He stated they were unaware a hearing was needed. The manufactured home has been on the property since April 5th., 1995. He said he had spoken to his neighbors within 200' and they are not opposed. Mr. Smith stated that there is a pole shed on the property for which they have a permit. He explained to the Board the amount of property he owns. He was questioned about a record plot of the land.

Michael McGroerty, Attorney, was present in behalf of Edward Krewatch lands. He questioned the maintenance of the road and feels the applicants should pay their share of the road maintenance. He stated it should be in the deed.

Mr. Betts stated that there is no recorded plot yet, but the applicants can apply before the plot is recorded to see if a manufactured home can go on the property. Mr. Betts also read a letter from property owner George Mercado in opposition to a zoning change or any change.

There were no parties present in opposition.

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

At the conclusion of the public hearings, the Chairman referred back to this case. After some discussion, motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the case be tabled, until they can see a plot plan or survey of the property.

Case No. 5661--Bruce Samuel & Susan Ann Hastings - North side of
Route 535, 1/4 mile northeast of Route 534,
Lot 23, within Indian Village.

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. Bruce Samuel & Susan Hastings were sworn in and testified, requesting to place a three bedroom, 1986, 14'x 70' manufactured home on their property, being Lot 23, Indian Village. They testified there are other manufactured homes in the area, five within 100'.of their property.

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.

Case No. 5662--John T. & Sandra L. Fisher - North side of Route 535, $\frac{1}{2}$ mile northeast of Route 534, Lot 12, within Indian Village.

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 & Sandra Fisher and son John William Fisher were sworn in and testified, requesting to place a 14'x 60' manufactured home on their property, Lot 12, Indian Village. They testified there are other manufactured homes in the area. They stated that the property size is approximately 300'x 245', that the property was surveyed.

There were no parties present in opposition.

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

At the conclusion of the public hearings, the Chairman referred back to this case. After some discussion, motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the case be tabled until they can see a plot or survey of the property.

Case No. 5663--Melvin L. Joseph - North side of Route 322, 3,300 feet west of Route 432.

A special use exception to operate an asphalt batching plant.

The case was presented by Mr. Betts. Dick Kirk, Attorney, was present representing Mr. Joseph. He stated that the applicant proposes to operate an asphalt batching plant on his property, that is now used for a sand and gravel business. Mr. Kirk stated that there is not an asphalt batching plant in Sussex County and there is a need for one with all of the road work and growth going on in Sussex County. He stated that Mr. Joseph now has to go to Maryland, which means dollars go out of Delaware. It would also mean trucks would have fewer miles to go and that means lower costs. He feels the location is perfect for the plant, since it is 5 acres in the middle of 400 acres of land. Also, the raw material used in asphalt is produced on site, since it is a sand and gravel business now. There is already truck traffic now so that would not add much to the burden. Mr. Kirk showed a tax map of the property and explained the proposed use location.

Melvin L. Joseph was sworn in and testified, answering questions asked by Mr. Kirk. He testified he lives in Stockley adjacent to the property where the asphalt batching plant is to go. He showed where he lives on the tax map. He testified there is a market for asphalt in Sussex County. He now hauls asphalt from Maryland. He stated that the past year and part of last year there were 100 to 125 loads. He testified the sand and gravel business has been in operation $3\frac{1}{2}$ years and operates from 7:00 A.M. to 3:30 P.M. Mr. Joseph stated that

his trucks use Road 322, a single access road into the property, stating he cannot go across his runway to use Route 113. The access road is large enough for two trucks to pass. He stated there is not as much traffic with asphalt as with sand and gravel. He stated there have been no violations against him for dust. His hours of operation is an 8 hour day and may go longer, but asphalt cannot be laid in the dark. They start in April and cannot put asphalt down when it freezes. He stated the truck usage will be the same or less. The trucks used will be the same as used for sand and gravel. DNREC approval is needed to construct and use the business. Mr. Joseph stated he has a daughter and son who lives in the area. He stated he has visited people in the area from the State Hospital road almost to the race track. He stated he had a petition with approximately 101 signatures on it and had received a letter from people he does not know who are in favor of the asphalt batching plant. The petition was presented into the record.

Mr. Mills, member of the Board, asked if the affidavit presented had the location of the people and where they live.

Mr. Joseph in answer to the question stated several are in the vicinity of the property and some employees signed it also.

Ronald Clark, C.M.I. Assoc., was sworn in and testified in behalf of the application. C.M.I. manufactures construction and hot mix asphalt plants. C.M.I. manufactures a machine that mixes 300 ton per hour. They have plants installed in New Jersey and another in Alexandria, Virginia. The equipment manufactures asphalt, aggregate (rock, gravel, sand) is put in the mixer, dried, heated and mixed. The concept allows pollutants to be absorbed in the drum itself. The equipment in New Jersey has been tested by EPA and passed by New Jersey whose standards are more strict than EPA. C.M.I. makes a video, which was shown. Mr. Clark stated that the equipment also can handle RAP, reclaimed asphalt products. There is a safety feature, where if there is a problem the machine will shut down. As far as noise is concerned, the loudest part is inside the drum, 90 decibels. He stated there are no other loud parts other than standard machine type noises. He stated that odor would be no worse than that emitted when asphalt is laid. Mr. Clark stated the bag house efficiency is like a big vacuum cleaner, you must keep the bags in good condition. They can be cleaned one or two times then replaced. He explained the system.

Mr. Mills questioned the combustion efficiency of the burner, when its total and complete is that 100 percent or 95 plus?

Mr. Clark stated they monitor the combustion so that the adjustments of the burner are continuously changed to get 100 percent combustion and the way that they introduce the air stream in the hydrocarbons the other pollutants into the draft and into the combustion area its done, at the very end of the combustion. Its not going through the burner or mix with the fuel because, also as they introduce RAP or this reclaimed material, we are also drying that material behind the burner head so we're going to get a steam or water off that material. If it would go through and mix with the fuel they are going to inhibit the combustion of the fuel.

Mr. Mills, questioned that for the most part computer study monitoring gives 100 percent combustion. He questioned the bag house efficiency.

Mr. Clark stated the bag house efficiency per say is nothing more than a huge vacuum cleaner that takes the dust particles out of the gas stream prior to being expelled into the atmosphere. Has to monitor and maintain the bag house to keep the bags in good condition. As long as bags are in good condition your going to see, not say, 100 percent efficiency. He thinks the State of Delaware now allows for a batch plant, 30 some pounds of material to be expelled into the atmosphere per hour. At the same rate of production that this equipment now, they are less than 6% of that.

Mr. Mills stated 6% of 30 pounds.

Mr. Clark stated standard recommended EPA particulate emission right now is .04 grains per dry cubic feet of air. Mr. Clark stated he can show test results that their particulate emission is .00, anywhere from 1 to 9.

Mr. Mills stated, almost non existant.

Mr. Clark stated he thinks so.

Bruce Hartman, Unionville, PA, an Environmental Engineering Consultant, was sworn in and testified in behalf of the application. He stated he had visited the site on this day with a meter to read decibel levels at full operation, the reading at plant weigh station was between 70 to 80 decibels, Route 113, 75 to 85 decibels, east of the plant at property line 60 to 70 decibels, north of the plant-homes by drainage ditch 50 to 60 decibels, with a lot of noise picked up by wind velocity. He stated an asphalt plant would only increase noise by one (1) decibel point 80 feet from the site. He explained there would not be a chance of hazardous substance being released. He explained that aggregate is heated in 30,000 gallon tank and if there was release the product would cool and turn into a molasses/tar like substance and not go anywhere. No. 2 fuel is used to fire the burner. It is safer than a gas station with tanks below, according to Mr. Hartman. The heating oil is the same as heating a warehouse. He does not know but feels airborne pollutants would be minor. He explained and showed graphic chart depictions.

Mr. Mills questioned that at 300 tons per hour, how many tons does each truck hold?

Mr. Joseph stated 20 ton capacity trucks are licensed for scales, so they won't run over.

Mr. Clark stated the plant will run periodically and probably run 200 to 250 tons per hour, could mean a dozen loads an hour.

Mr. Joseph stated there would be 300 ton per hour maximum.

Mr. Malkiewicz, Attorney, was present representing the Concerned Citizens for Quality of Life, 100 to 150 families that surround the property and oppose the asphalt batching plant. He requested to be able to cross-examine the previous people who had testified. The request was granted.

Mr. Joseph responding to Mr. Malkiewicz's questions, stated that the plant will be a stationary type plant, permanent in nature. He stated there are two asphalt plants in Delaware that sell asphalt. The one in Gumboro, IA Construction, he testified is too high in price. He buys over the Delaware line in Maryland. He stated that he does own the airport adjacent to his proposed asphalt plant site, if he wanted he could close down the runway and put a road across the property to

Route 113.

Ron Clark responded to questions from Mr. Malkiewicz, stating he is District Manager for C.M.I. and does have a financial interest to sell an asphalt plant to Mr. Joseph. He stated they have not signed an agreement with Mr. Joseph. He testified that if 300 ton of asphalt per hour was run, it would mean 2,000 ton per day. In answer to the question pertaining to RAP, Mr. Clark stated that RAP is reclaimed asphalt. He does not know if Mr. Joseph will use RAP. He stated the plant has the capability to recycle, but Mr. Joseph has not asked for recycled equipment. He stated he has never discussed RAP support equipment with Mr. Joseph. He stated the drum is 42' long, 8'3" in diameter at one point and 7'3" at another point. The silo dimension is approximately 55' in height.

Mr. Mills questioned if the efficiency would change without RAP.

Mr. Clark stated the total tons per day would never change.

Mr. Joseph responding to Mr. Malkiewicz, stated that he had not considered RAP, not really knowing about it. He does not feel he would use it at this point.

Mr. Mills asked Mr. Joseph if there would be a problem if the use were approved to put limitations about recycling.

Mr. Joseph stated there would be no problem if he could come back to the Board at a later time, should he want to.

Mr. Hartman responded to questions from Mr. Malkiewicz. He stated he did field measurements with a digital sound level meter, calibrated over the weekend by Dr. Bernard Tange with the Springfield Group. He stated the meter will range high and low range, fast and longer time. He questioned that all of his data was based on that machine. It was the only piece of equipment used for noise, he did not add to or subtract from. He testified that the microphone was not protected from the wind, which should be done if the wind velocity is over ten meters per second. He was after the general range of decibels.

Mr. Mills questioned if by not protecting the microphone, would it harm or fail the equipment?

Mr. Hartman stated it would not. After responding to questions from Mr. Malkiewicz about the wind velocity, Mr. Hartman stated he, Mr. Malkiewicz, could go to any airport and check their data.

Rebecca Breasure, who lives on Route 322, was sworn in and testified in opposition. She cited it would be a nuisance, create dust, noise and odor. She feels the asphalt plant would adversely affect property values and cause adverse health affect. She feels traffic would be hazardous and feels there is no compelling need for the plant. She referenced three other applications previously applied for by Mr. Joseph, but withdrawn. She feels it is not right for the neighborhood. Ms. Breasure stated that an asphalt plant next to a residential neighborhood is not the right place for it to go.

Mr. Kirk, Attorney, cross examined Ms. Breasure, and in response to Mr. Kirk's questions, Ms. Breasure stated that she can not see the existing sand and gravel plant from her home and would not be able to see the asphalt plant if it is no taller. She would be able to see it if trees were cut down. She stated no doctor has told her it is dangerous to health and she has not checked with a realtor about property values.

William James Mallory, Jr. was sworn in and testified in opposition, stating he can see the sand and gravel plant from his house and hears the noise. He stated the noise begins at 6:30 A.M. and does not quit at the time stated by Mr. Joseph. He testified the trucks coming out of the plant sometimes do not stop at the end of the road, and sand sometimes falls off the trucks. He feels it is a hazard to children. He questioned if the Fire Company could handle an asphalt fire if there should be one. He stated he does not want to smell asphalt and questioned why they should suffer because Mr. Joseph does not want to pay the price at Gumboro's existing asphalt plant. He also stated he has a problem now with the diesel fuel on the side of his house from the existing trucks. He feels there is no need for an asphalt plant at this location.

In answer to questions from Mr. Kirk, Mr. Mallory stated his house is 4½ years old. That the condition he now deals with are from a sand and gravel plant, not asphalt. He would still have some conditions but they would get worse.

Kenneth Ray Stevens, who lives on Route 113, approximately ¼ mile from Mr. Joseph's property, was sworn in and testified in opposition. Mr. Stevens stated he has worked in construction for 13 years and asphalt can be used into the winter months if the weather holds out. He stated he cannot imagine a plant without using RAP. He referenced traffic and the hours of operation since road work is sometimes done at night. He questioned what would happen if Mr. Joseph sold the plant, could it become larger and is there a guarantee that a plant with less capabilities will not be put on the property. In answer to Mr. Malkiewicz's questions, he stated the testimony he gave was his views alone, and not the States or the company he works for.

Randall Humphries, who lives on Route 322, was sworn in and testified in opposition, stating he works for an interstate plant and he has had to be at work at 5:00 A.M. and works some nights. He feels he does not need an asphalt plant in his back yard. He stated he is in a fire company and what could happen with an accident at the plant and should asphalt leak out, a car exhaust could ignite it.

Curtis Ayres who lives on Route 322, was sworn in and testified in opposition, stating he lives adjacent to the existing sand and gravel plant. He stated he is also a Real Estate Agent and property values have gone down since the sand and gravel plant has come into the area. He stated there are 60 homes on the block and it is unsafe for children to ride bicycles on the street. Mr. Ayres referenced taxes on the property paid by Mr. Joseph. In answer to Mr. Malkiewicz's questions, he stated he has been a Realtor for 3½ years and if the asphalt plant is approved he believes property values will go down. In response to Mr. Kirk, Mr. Ayres stated there have been only five sales in the area in the past year.

Cathy Fleetwood Hockersmith was sworn in and testified in opposition, citing hours of operation for the plant, trucks not covered and not wanting hazardous materials in the community. She stated she purchased property from Mr. Joseph for her daughter to live on, but now does not want her to live there. She stated she suffers from sinus problems and was told by her doctor to stay away from pollutants. She also stated that her mother had died from cancer and does not want anything to cause further health problems to anyone. She asked Mr. Joseph to consider and think of the people and not the dollars. She also referenced the video that was shown, stating she saw no houses or day care centers near the plant. She does not agree with

the asphalt plant anywhere. She would hate to see Sussex County ruined for financial gain.

Dorothy S. Bisby who lives on Route 322, was sworn in and testified in opposition. She referenced being run off the road by trucks and her husbands allergies. She feels an asphalt plant will make them worse. She also stated his doctor said it would be injurious to his health.

Theresa Hammond Vickers, who lives on Route 322, was sworn in and testified in opposition, citing serious allergies that cause her heart problems. She agreed with the previous testimony given. She presented a letter from Dr. Joel Temple referencing her health. Mr. Kirk questioned Ms. Vickers as to whether or not her doctor had visited an asphalt plant to see how many fumes there are. She stated he had not.

Sharon Ayres was sworn in and testified in opposition, stating she has a 7 year old son who has lost his hearing in one ear and she has to provide protection from noise for his good ear. She has an 11 year old son, not allowed to ride a bike on the road. She has had her main box torn down by trucks (not Mr. Joseph's). There is a lot of truck traffic on the road according to Ms. Ayres. Her property borders Mr. Joseph's property.

Frederica M. Norris was sworn in and testified in opposition, stating she lives 300 yards from the plant site. She cited noise, odor, truck traffic and pollutants. She referenced and read from the zoning Code, pertaining to hot mix asphalt plants. She also read from a prepared statement. She referenced her sister who is a environmentalist and her sister said, that there is polyairomatic hydrocarbans in the air from asphalt. She does not want any more cancer causing agents in the air.

Mr. Kirk objected to hear say. He also asked Ms. Norris to locate her property.

Mr. Malkiewicz presented exhibits to the Board Members and Counsel. Also presented a Sussex County Delaware map of the area in question, a Sussex County Land Use Map showing housing projects and explained color charts and what they represented. He presented a petition of signatures of people who oppose the use, all of the signatures except one live within $\frac{1}{2}$ mile of the property, the one signature lives in Millsboro, 5 to 7 signatures are husband and wife, with one duplicate. He referenced expensive homes in the area, taxes on the property and presented property tax records. He presented a book of prepared material to the Board. He stated that heavy industry should not locate next to residential. He referenced AR-1 and AR-2 zonings, and special use exception, referencing asphalt plant approval for 5 years, but through testimony the plant would be permanent. He stated it would be arbitrary and comprecious to allow a permanent plant. He referenced several sections of the Zoning Code. He stated a property plan should have been presented to the Secretary of the Board. The plan presented does not give the size or dimensions of the plant. He requested that the Board Members give reasons for their vote. He referenced special use exceptions in the Ordinance. Mr. Malkiewicz stated that one of the principle things to be recorded was wind and it was not done. He feels the Board cannot rely on the engineering testimony given. He feels something better could have been presented. He referenced the height since the Ordinance does not pertain to heights more than 35'. He questioned site plan requirements.

Mr. Jones, Attorney, questioned Mr. Betts, Secretary of the Board, if a site plan is required. Mr. Betts stated a site plan is required for conditional use and change of zone.

Mr. Malkiewicz referenced and read from the material he had presented to the Board, pertaining to site plan, families in the area and the runway. He stated that there would be 250 tons per hour, 8 hours per day, total 2,000 tons per day, with 100 truck trips leaving 200 trips just for asphalt in addition to trucks now. He submitted color photos and described what they were. He feels Mr. Joseph could shut his airport and he could also buy asphalt from Gumboro. He referenced recycled process, that Mr. Joseph may do it in the future if not now. He feels the use will adversely affect the neighborhood. He referenced a letter from the Department of Transportation to Glenda Scott, Chairperson of the Organization, also a letter from Delaware Asphalt Paving Assoc. A letter of June 20, 1994, State of Delaware Del. D.O.T. dualization of Route 113. He does not feel a permit should be given, but if it is there should be conditions put on it, such as; hours, days, months of operation, hours 8:00 A.M. to 3:30 P.M., Monday through Friday, no weekends or Federal Holidays, no lights to cast a light off the property and include no trucks arriving at the facility until 8:00 A.M. and all trucks out by 3:30 P.M., one (1) year limit to the plant, non-transferable, no lease/sales, no recycled asphalt activities on site, no railroad deliveries, no crushing or screening activities. He stated the Ordinance allows the Board to put conditions on approval. A portion of a transcript presented in 1994, another asphalt plant use analogy of testimony by Ed Lester for this case was presented.

A letter from Karen Adams providing petitions with three (3) signatures of people who take their children to day care was presented.

In summary Mr. Malkiewicz asked the Board to weigh the credibility of people testifying. He stated that this is not a popularity contest that Mr. Joseph has a good business reputation, but he is a contractor with an application. He testified the Board must not consider the need for asphalt, but will it adversely affect the people. He asked the Board to vote no for the application.

There were several people by show of hands who were in opposition to the case.

Glenda W. Scott was sworn in and testified in opposition. She read from a prepared statement, referencing the Zoning Code. She stated the use is not appropriate for the Zoning Districts AR-1 and AR-2. Ms. Scott also told of her asthmatic heart problems. She read and presented a note from Dr. Richard J. Sommers referencing her health.

In rebuttal Mr. Kirk questioned Ms. Scott about how the measurement was done pertaining to the petition of signatures within $\frac{1}{2}$ mile.

Ms. Scott explained and showed on the map stating it was her estimate and not measurement.

Mr. Malkiewicz asked Ms. Scott to show the entrances to the plant.

Mr. Kirk asked that the medical testimony be disregarded since there was not expert testimony, and some statements made. He stated that the residents have a gripe, but they already have a sand and gravel plant there.

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

OLD BUSINESS

Case No. 5648 (cont'd.)--Bryan Hurd & Traci Walls - East side of Route 621, at the intersection on the east side of Route 635.

A variance from the minimum lot width requirement.

Mr. Betts reviewed the case.

After some discussion, it was decided they could vote on the requested variance and if Counsel finds the remaining parcel needs a variance they would be notified.

Motion was made by Mr. Mills, seconded by Mr. Wheatley that the variance be granted, with Mr. Callaway abstaining. Motion carried with four voting in favor and one not voting.

Case No. 5657 (cont'd.)--Calvin Adams - East side of Route 113, 770 feet north of Route 244.

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 reviewed by Mr. Betts. He reported to the Board as requested, that the lot in question is a legal lot approved by Lawrence Lank, Director of Planning and Zoning and recorded.

Motion was made by Mrs. Hudson, seconded by Mr. Wheatley that the special use exception be granted, with Mr. Callaway abstaining. Motion carried with four voting in favor and one not voting.

OTHER BUSINESS

Case No. 5541--Joseph & Karen Federer

Request for a rehearing.

Counsel will look into reasons presented to rehear the case.

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

Meeting adjourned at 12:20 A.M.