

Minutes of June 1, 1992

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, June 1, 1992 in the County Council Conference Room, Courthouse, Georgetown, Delaware.

The meeting was called to order at 7:00 P.M. with Chairman McCabe presiding. The members present were: Mr. McCabe, Mr. Stuchlik, Mrs. Hudson, Mr. Carey, Mr. Wheatley, Mr. Jones-Attorney (arriving at 7:36 P.M.), Mr. Lank-Director and Mr. Rickard-Zoning Inspector.

Motion was made by Mr. Stuchlik, seconded by Mr. Carey and carried unanimously that the minutes of May 18, 1992 be approved as circulated.

Case No. 4724--Enos & Carrie Green - West side of Route 525, one mile south of Route 18.

A special use exception to place a second manufactured home to be connected to the existing manufactured home to be combined into one single-family unit.

The case was presented by Mr. Rickard. Enos & Carrie Green were sworn in and testified, requesting to place a second manufactured home on their property to connect to their existing manufactured home to become one unit. The manufactured homes are approximately 14'x 60' in size and the year is 1983. They propose to tie the manufactured homes together with a flat roof, add siding and skirting. There will be one kitchen when completed. They hope to complete the work within six months.

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 with the stipulation that the improvements be completed within six (6) months.

Case No. 4725--Mrs. Clifton J. Daisey - South side of Route One, 320 feet east of Route 274.

A variance from the requirements for signs.

The case was presented by Mr. Rickard. Norma Daisey was sworn in and testified requesting a variance of 600 sq. ft. from off-premise sign requirement of 600 sq. ft. to be 1200 sq. ft. and a variance from the 300' from a dwelling of other ownership setback requirement. The applicant has a billboard and proposes to rent one side for advertising purposes. The billboard has been on the property for several years. The laws have changed since the billboard was constructed and the variances needed.

There were no parties present in opposition.

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

Case No. 4726--Angeline F. Beauchamp - North side of William Street, 600 feet east of Newton Street.

A variance from the five acre requirement for a fish farm.

The case was presented by Mr. Rickard. Angeline & George Beauchamp were sworn in and testified, requesting a variance from the five acre requirement for a fish pond. Mr. Beauchamp started the pond to help with drainage. He is in a C-1 Commercial District and now proposes to raise and sell catfish. A petition with signatures of people living near the area was presented voicing no objections.

George R. Smallwood next door neighbor, was sworn in and testified in favor of the fish pond. He testified that he has no problems with the pond and feels it adds to the community.

There were no parties present in opposition.

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

Case No. 4727--George R. & Barbara E. Prentiss - North side of Route 54,  $\frac{1}{2}$  mile west of Route One, Lot 27, Block 3, within Cape Windsor.

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

The case was presented by Mr. Rickard. George Prentiss was sworn in and testified, requesting a 3.29' variance from the 5' side yard setback to be 1.71' and a variance of 13.03' from the 20' setback requirement between units to be 6.97' for an accessory structure on Lot 27, Cape Windsor. The applicants purchased the property in 1986, obtained a permit for a breezeway, the footing was put in, in error. The breezeway being too close to the shed that was on the property when purchased. The Zoning Inspector found the encroachment.

There were no parties present in opposition.

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

Case No. 4728--Walter & Irene Cates - North side of Bridgeway Dr., Route 277,  $\frac{1}{4}$  mile east of Route 24, Lot 15, Blk. V, within Angola By The Bay.

A variance from the side yard setback requirement.

The case was presented by Mr. Rickard. Alan Keith Zorger property owner, was sworn in and testified and was represented by James Fuqua, Attorney. The applicants requested a 1.2' variance from the 10' side yard setback on Lot 15, Angola By The Bay. Mr. Fuqua stated that when a new survey was done for settlement between

Mr. Zorger and the applicants, an encroachment was discovered. The house on the property is encroaching into the side yard setback. A copy of the survey showing the house and setbacks was presented. A letter that was sent to the neighbors Mr. & Mrs. Free's from Mr. Fuqua was read into the record, for which a copy was presented to the Board. The applicants request that the house remain as it has existed.

Mr. Zorger explained how the house was built on the property, how the measurements were taken, and testified that he staked the corners, but believes the error took place when the footers were poured. The dwelling was built in 1986. He testified that Angola By The Bay approved the construction. He feels there are unique physical circumstances due to the lot shape. To correct the error a portion of the house would have to be cut-off. A minimum variance has been requested.

Mr. Lank read a letter into the record from Donnelly & Peggy Free who are concerned about the impact the variance would have on their property.

There were no parties present in opposition.

Motion was made by Mrs. Hudson, seconded by Mr. Stuchlik and carried unanimously that the variance be granted, due to the shape of the lot.

Case No. 4729--A to Z Signs by Judy - West side of Route 396, at the intersection of Route 54.

A variance from the requirements for signs.

The case was presented by Mr. Rickard. Judith Bischoff was sworn in and testified in behalf of the application, requesting a variance from the 300' setback from a dwelling for a sign and a 194' variance from the 300' sign setback from dwelling to be 106'. Ms. Bischoff presented copies of the sign to show what they look like. The signs 4'x 4' will be on an 8' pole. They will be 6' off the ground with lattice work around the bottom.

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. 4730--Fentiki Island Golf - East side of Route One, at the intersection of Fenwick Avenue.

A variance from the requirements for signs.

The case was presented by Mr. Rickard. C. Freddie & John L. Selby were sworn in and testified, requesting a variance of 3'7" from the setback requirements of 25' to be 21'5" for a sign. The sign will be internally lighted and 9' above grade, and will not be a safety hazard.

There were no parties present in opposition.

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

Case No. 4731--Satirios Bardalis - Northeast side of Route 394, 940 feet southeast of Route 493A, Lot 2, within Rio Rico Estates.

A variance from the side yard setback requirement.

There were no parties present in behalf of this application.

An Ordinance adopted by the County Council states that, when any applicant fails to appear or appear by agent for a hearing before the Board, the application shall be considered to be withdrawn.

After some discussion, motion was made by Mr. Carey, seconded by Mrs. Hudson and carried unanimously that the variance be denied and cannot be re-applied for for one (1) year.

Case No. 4732--James L. Johnson - Northwest side of Route 526, at the intersection of Route 525.

A special use exception to place a second manufactured home to be connected to the existing manufactured home to be combined into one single-family unit.

The case was presented by Mr. Rickard. James Johnson was sworn in and testified, requesting to connect a second manufactured home to an existing manufactured home to become one unit. He now lives in a 14'x 65' manufactured home and proposes to connect a 12'x 45' manufactured home to the existing unit to become one structure. He proposes to put siding, skirting and A-Roof over both units. He testified the work should be completed within 7 to 8 months, but would like one year to complete it if approved.

There were no parties present in opposition.

Motion was made by Mr. Stuchlik, seconded by Mr. Wheatley and carried unanimously that the special use exception be granted, with the stipulation that there be siding, skirting and A-Roof put on the manufactured homes and the work be completed within one (1) year.

Case No. 4733--James Santiago King, Sr. - Southeast side of Route 42, 596 feet northeast of Route 595.

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. Rickard. James Santiago, Sr. was sworn in and testified, requesting to place a 14'x 56' manufactured home on property he is purchasing from Dale Wheatley for his residence. There are other manufactured homes in the area as well as stick-built homes.

Pete Wolf, Joseph Woytke and Verna Wolfe were sworn in and testified in opposition, questioning the location of the nearest manufactured home in the area to Mr. King's property. They oppose another manufactured home being permitted in the area.

Dale Wheatley, owner of the property, was sworn in and testified in behalf of the case, stating that there are five manufactured homes located to the north of the property and two located to the south of the property.

Deborah Ann King was sworn in and testified in behalf of the application, stating there are other manufactured homes located in the area and to their locations.

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

Case No. 4734--Caesar & Judy Serrano - Northeast side of Route 595, 600 feet southeast of Route 42.

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. Richard. Caesar & Judy Serrano were sworn in and testified, requesting to place a 1992, 28'x 60' double-wide manufactured home on property for their residence. They testified that there are other manufactured homes in the area on Route 42, but none on Route 595 where their property is located. They stated they own the adjacent lot also. There is a small cape cod home across the road from them and a modular in the area.

Joseph Woytke, Pete Wolfe and Verna Wolfe sworn in on the previous case (No. 4733) testified in opposition to this case. Mary Woytke and Nanie McClure Webb were sworn in and testified in opposition also. They cited a decrease in property values, too close to their properties and opposed to any more manufactured homes going in the area.

Mrs. Serrano testified they would put the manufactured home on a foundation and when completed it will look like a conventional home.

Dale Wheatley sworn in on the previous case (No. 4733) testified in behalf of this case. He is the seller of the property. He testified that he told the applicants they could not put a manufactured home on the property without approval, but could put a modular home on the property.

Motion was made by Mr. Stuchlik, seconded by Mr. Carey 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. Carey, seconded by Mr. Stuchlik and carried unanimously that the special use exception be denied, finding the manufactured home would be out of character with the immediate surrounding area and fear devaluation of area properties.

Case No. 4735--James R. & Helen A. DePrisco - South side of Route 54,  $\frac{1}{4}$  mile west of Route One, Lot 14, within Mason-Dixon Mobile Home Park.

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

The case was presented by Mr. Rickard. James & Helen DePrisco were sworn in and testified, requesting a 4'7" variance from the 20' setback requirement between units to be 15'5", on Lot 14, Mason Dixon Mobile Home Park, to construct a deck on their manufactured home. They testified there is no other place to put the deck and meet setbacks. They will eventually enclose one half of the deck for a screen room or sunporch. They stated that there are other decks similar in the park.

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, due to another being like it nearby.

Case No. 4775--Melvin Joseph Construction Co., Inc. - East side of Route 318, 500 feet southeast of Route 432.

An appeal of the Director's decision concerning the property described as a non-conforming borrow pit operation.

The case was presented by Mr. Rickard. Melvin Joseph was sworn in and testified and was represented by David Rutt, Attorney.

Mr. Jones, Attorney, stated that since this application is an appeal to the Director's decision concerning property Mr. Joseph has claimed that the site has been used as a non-conforming borrow pit, it would be best to have Mr. Lank, Director, testify first to explain how he arrived at his decision.

Mr. Lank presented a prepared memo (see attached) to the Board members, Mr. Rutt and Mr. Joseph. He read his memo into the record referencing letters written, aerial photographs and tax map copies. Mr. Lank stated that it is his opinion that there is no active borrow pit on the property. He inspected the site known as the Toomey Farm, with Mr. Joseph and Edward Montague and found no borrow activity, only test boring sites. In answer to Mr Jones questions concerning borrow pits and the Ordinance, Mr. Lank stated that in 1968 when zoning began there was an Interim Ordinance with no borrow pit references. The Ordinance with borrow pits came into affect January 1, 1971. Mr. Lank was sworn in and testified that what he

said and what would be said by him is the truth in his opinion.

David Rutt referenced Mr. Lank's presentation. He questioned Mr. Joseph about his borrow pit. Mr. Joseph testified that the borrow pit has been active without a two year interruption. He stated he has owned the property since 1965-66 and dirt has been excavated prior to 1968, used on and off the site. Affidavits from people attesting to the use of the property were presented.

James Baxter, Jr. was sworn in and testified in behalf of the case, stating he has owned a farm in the area since 1946, but does not live there. He testified that to the best of his knowledge he thinks dirt has been moved since 1965. He testified that he does not oppose the use and feels it should be allowed. When asked by Mr. Jones to identify the location of the pit, he stated that on the southeast side of branch is a hole that has been dug.

C. Kenneth Carter, Surveyor, was sworn in and testified in behalf of the applicant. He testified that he has not been all over the site, but to where the location is. He stated it is easterly along the branch. He stated that to his recollection there has been a borrow pit since 1969. He referenced aerial photographs. Mr. Carter testified that he cannot answer if the pit has been used with no two year interruption.

James Middleton was sworn in and testified that he lives in the area, known as the Ponderosa Farm for approximately 30 years. He testified that he has been employed for 36 years by Mr. Joseph. He stated that the borrow pit in question has been used at least 30 years and does not recall a two year period when it was not used. He stated that the property is located on the branch side.

John L. Briggs was sworn in and testified that he owns property next to Mr. Joseph's land and has no objection to what he wants to do.

Glenda W. Scott was sworn in and testified offering suggestions for stipulations to be put on the property.

Mr. Jones stated that the hearing being held was not for the granting of a new borrow pit only to establish the existence of a non-conforming borrow pit, and a non-conforming borrow pit can only expand to a rate it has expanded in the past.

Mr. Rutt rebutted the testimony presented, referencing affidavits and people present testifying to the borrow pits use.

Mr. Jones stated that one letter/affidavit presented from Oliver Hill, referenced the wrong farm.

William Lee Hughes was sworn in and testified in opposition, stating that he has recently built a new home in front of the property in question and opposes the borrow pit use. He testified that when he purchased the property, he did not see nor look for a borrow pit, but for the past year he has seen no activity.

Mr. Carter stated how far the Hughes property is from where the pit is, and that he has a land plan, but did not bring it to

the meeting.

Mr. Lank testified that there may have been digging on the property in the past, but not since zoning. He testified that the only thing he saw on the property was test boring and ditch, no recent excavating.

At the close of the hearing Mr. Lank left the meeting and room and had no participation in the hearing decision.

Motion was made by Mr. Wheatley, 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. Wheatley, seconded by Mrs. Hudson and carried unanimously to overrule the Director's decision, finding the existence of the borrow pit, not to exceed  $9\frac{1}{2}$  acres and located where the site is indicated on the tax map presented to the Board. The Board set that the exact location of the site will be pursuant to the site plan prepared by the applicant.

Meeting adjourned at 9:35 P. M.