

Minutes of August 5, 1996

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, August 5, 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. Callaway, Mr. Mills, Mrs. Hudson, Mr. Wheatley, Mr. Jones-Attorney, Mr. Betts-Zoning Inspector III and Mrs. Talley, Planning and Zoning Secretary.

Motion was made by Mrs. Hudson, seconded by Mr. Wheatley and carried unanimously that the minutes of July 15, 1996 be approved as circulated.

Case No. 6062--John & Barbara Choma - South side of Route 277,
1/2 mile east of Route 24, Lot 29, within
Angola By The Bay.

A variance from the rear yard setback requirement.

The case was presented by Mr. Betts. John & Barbara Choma were sworn in and testified, requesting a 4.8' variance from the 20' setback requirement to be 15.2' on Lot 29, within Angola By The Bay. The applicants propose to construct a 12'x 18' porch on the property. They have not decided if the porch will be enclosed or screened. They testified that there is common area to the rear of the property and the addition will not obstruct the view from other properties. They stated that the Angola By The Bay Association is aware of the variance request, but they are waiting for the Board's decision.

There were no parties present in opposition.

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

Case No. 6063--Greenwood Country Retirement, Inc. - Southwest side
of Route 16, 950 feet east of Route 585.

A special use exception to add a twenty (20) bed assisted living complex and eleven (11) additional retirement homes to the existing convalescent home.

The case was presented by Mr. Betts. Byron H. Jefferson was sworn in and testified, stating that he is the Engineer working for the applicants. Mark Yoder present representing the application affirmed. Mr. Yoder stated that he now has five (5) homes on the property and has people interested in more. He proposes to put an additional retirement home on the property for a total of six (6) homes. He recently purchased approximately 31 acres and will put 10 additional retirement homes and a 20 bed assisted living complex

on the property. He showed a plot of the land and explained where the homes and complex will be. He will build as he sells the homes. He stated that this will no doubt be the last phase. He testified that he wants to be there for the peoples needs. The existing homes are full. Mr. Yoder presented a letter from an occupant of one of his homes. He stated that the building will be done in stages. He sells life leases to the people who live in the homes.

Mr. Betts in answer to the Board's question, stated that the site plan has to approved by Planning and Zoning.

Mr. Jefferson stated that the site evaluation for the septic system has been submitted to the State.

Mr. Betts read the letter presented from Lassell R. Comegies in favor of the request by Mr. Yoder.

There were no parties present in opposition.

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 adversely affect the neighborhood and the use is needed.

Case No. 6064--Edward Castillo - South side of Route 244, 700 feet west of Route 243, Lot 12, within County Seat Gardens.

A variance from the front yard setback requirement.

The case was presented by Mr. Betts. Edward Castillo and Ramone were sworn in and testified, requesting a 15' variance from the 30' front yard setback requirement on Lot 12, within County Seat Gardens. Mr. Castillo stated that his first name on the application should be Eduardo and not Edward. The applicants request the variance for a 14'x 76' manufactured home. It was stated that no other variances have been granted in the development. It was stated that there is no Association in the development.

Mr. Betts stated that the applicants lot is a through lot with two frontages.

There were no parties present in opposition.

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

Case No. 6065--Irma C. Pittman - East side of Route 351, 725 feet south of Route 349.

A variance from the setback requirements for a commercial poultry house.

The case was presented by Mr. Betts. Irma C. Pittman and John Pittman were sworn in and testified, requesting a 4' variance from the 200' setback requirement from a dwelling not located on the premises for a poultry house. It was stated that the applicant had a previous variance request hearing and it was granted, but she did not request enough variance.

Mr. Betts stated that on February 12, 1996, the applicant was granted a variance for the same situation, but a mistake was made when measured and she did not request enough variance. She needs an additional 4 foot.

Patrick Acri, neighbor, was sworn in and testified in opposition and was represented by Joe Raskauskas, Attorney. Mr. Acri moved to the area two years ago, but was never bothered by odor from the poultry houses, until this summer. The poultry house is closest to his house. It was stated that the odor is so strong that he cannot enjoy the outdoors at his home, nor can he keep the windows open on his house. He feels that the applicant has put fans in the poultry house and this keeps the odor blowing in his direction. He also stated that the poultry house is larger and closer to his house. He stated that he has talked to Mr. Pitman and the Inspector, Mr. Rickard about the size of the poultry house and being too close to his house.

Mr. Raskauskas stated that the area is zoned MR and does not permit poultry houses, but the applicant had the houses there before and is grandfathered in. He stated that the applicant has a nonconforming use in an MR District, but has almost doubled the size and the poultry houses are twice as large as before. He feels the applicant should knock down the 4', since there is nothing unique about the property, the property being 6 acres, can be developed without a variance, the hardship was created by the applicant, and was told but continued to build anyway. He feels the applicant should not be allowed to expand.

Mr. Jones, Attorney, questioned how many poultry houses there are.

Mr. Pittman stated that only one poultry house is in question. The houses are setting on an angle and they are larger.

Mr. Raskauskas stated that the poultry house was 18' and is now 36'. He feels she was allowed to double the size of the

poultry house.

Mr. Betts stated the applicant was allowed to appear before the Board for an expansion of a nonconforming use.

Mr. Jones stated that the only issue before the Board is the variance requested on this application.

Mr. Raskauskas stated that Mr. Acri is not opposed to the poultry houses as they existed, but opposes making them larger.

Mr. Acri stated that the poultry house is larger and closer to his house.

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 Mrs. Hudson and seconded by Mr. Callaway that the variance be granted, with Mr. Mills voting nay. Motion carried with four voting in favor and one voting against. Vote 4-1.

Case No. 6066--Richard H. & Carla Johnson - Northwest side of Route 535, 1/4 mile northeast of Route 534, Lot 21, 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 and a variance from the side yard setback requirement.

The case was presented by Mr. Betts. Richard and Carla Johnson were sworn in and testified, requesting to place a 28'x 76' manufactured home on a permanent foundation on property they own, being Lot 21, within Indian Village, for their own use. They also requested a 3' variance from the side yard setback requirement of 15' to be 12'. The variance is needed to be able to place the manufactured home on the lot. They testified that there are other manufactured homes in the development, the closest being on either side of their property. They stated that the unit will not fit without the variance.

There were no parties present in opposition.

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

Case No. 6067--James N. & Nancy M. Brittingham - North side of
Route 451, 557.93 feet east of Route
13.

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. James & Nancy
Brittingham were sworn in and testified, requesting to place a 26'x
40' or 24'x 40' manufactured home on property they are purchasing
for their own use. They stated that there are other manufactured
homes in the area, plus state owned land across the road. They
testified they will put the manufactured home on a permanent
foundation. A vacant house on the property will be removed.

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 for
a double-wide manufactured home on a permanent foundation.

Case No. 6068--F. Richard & Victoria J. Weaber - North side of
Route 46, 400 feet south of Route 526,
Lot 28, within Deep Pines Subdivision.

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.

There were no parties present to represent this case.

The Chairman held the case open until the end of the meeting.

At the conclusion of the public hearings, the Chairman
referred back to this case. There were no parties present in
behalf of or to represent this case. The applicants requested to
place a manufactured home in an AR-1 District on less than five
acres.

Motion was made by Mr. Mills, seconded by Mrs. Hudson that the
case be denied.

Motion was made by Mr. Mills, seconded by Mrs. Hudson to
reopen the case for interested parties that were present.

Joseph Robertson was sworn in and testified in opposition

presenting a petition with signatures of opposition. He stated that the applicants knew the land was zoned AR-1. He questioned the moratorium that the County Council has put in affect and if it pertained to this type of application.

Mr. Jones, Attorney, explained that the moratorium is in affect for Change of Zones, Conditional Uses and Subdivisions, not special use exceptions.

Mr. Robertson feels the manufactured home will have a negative impact on surrounding properties. He would like to keep the area as it is.

Steven Clayton Cannon was sworn in and questioned if the application is denied would the applicants need to wait one year to reapply.

It was stated that since the applicants had failed to appear to present their case, they would have to wait one year to reapply on this property.

Clyde Richard Mellon was sworn in and testified in opposition, stating the law states five acres is needed for a manufactured home in this area. He feels it will have a negative impact on the area. He stated that there are 17 more lots in the development and others could apply. It will set a precedent.

Betty Richardson was sworn in and testified that she owns property adjacent to the applicants and to allow the manufactured home would change the character of the area and would adversely affect property in the area.

Gary Raymond West was sworn in and testified in opposition, stating that the manufactured home would reduce property values and set a precedent for more to come.

Charles Hopkins was sworn in and testified in opposition, stating that all homes in the area are stick-built and the manufactured home will decrease the value.

Mary Elizabeth West, wife of Gary West, was sworn in and testified in opposition stating that they have a brick ranch home, and feels other manufactured homes will follow if this is permitted, and will change the character of the neighborhood.

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

due to the failure of the applicants to appear and present their case, the opposition presented and the applicants cannot reapply for a period of one (1) year.

Case No. 6069 - This case was withdrawn.

Case No. 6070--Gary E. Black - West side of Route 13, 820 feet south of Route 583.

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. Gary E. Black and Jamie Lee Black were sworn in and testified, requesting to place a 1985, 14'x 70' manufactured home on their property for their own use. It was stated that there are other manufactured homes in the area, one within 1/4 mile. There is a house on an adjacent lot and farmland across the road. Pictures were presented.

Loretta Black and Marilyn Lee Perrigan were sworn in and testified in behalf of the application, stating that Mr. Black's property was left to him by his grandmother and he has just gotten married and wants to move his manufactured home on the property. It was stated that there is a manufactured home on a road near the property.

James A. Martin was sworn in and testified in opposition, stating that he lives in the area and has a \$150,000 home on his property. He feels the manufactured home will devalue his home. He presented a letter from the owner of a child care facility across the road from the applicants property. He stated that the existing manufactured homes are not in the immediate area. He feels an older single-wide manufactured home will devalue his property. He would not be opposed to a new double-wide manufactured home being placed on the property.

Mr. Betts read the letter of opposition presented from Pam Washington.

Loretta Black, aunt of the applicant, stated that his grandmother left him the property and he needs the manufactured home to live in.

Clarence J. Black, father of the applicant, was sworn in and testified in behalf of the application. He explained where the manufactured home is to be located, and that there is nothing wrong with the manufactured home his son owns.

Ms. Perrigan stated that the applicant wants to put a home on the property someday, but cannot do now. He needs a place to start. She stated that the land has been in the family for 28 years and she feels the applicant should have an opportunity to make a start.

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

Case No. 6071--Phyllis C. Brown - North side of Route 488, 1,600 feet east of Route 489.

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. Phyllis C. Brown was sworn in and testified, requesting to place a second manufactured home to be connected to the existing manufactured home on her property to become one single family unit.

Gregory L. Hignutt was sworn in and testified in behalf of the application stating that the applicant wants to connect the two manufactured homes together on a solid foundation with an A-Roof and matching siding. He stated that it would take about one year to complete it. He testified that there are other manufactured homes in the area. It was stated that the existing manufactured home is 14'x 66' and the second manufactured home is 14'x 70', both are 1987's. There will be one kitchen and one living unit.

Eric Cox was sworn in and questioned the time limit and if the work is not completed within that time, what will happen.

Mr. Betts stated that if approved for a period of one year, the work would have to be done within that time or removed.

Mr. Cox stated the applicant has changed manufactured homes three times. He stated that he has no opposition with the condition attached to complete the work within one year. Mr. Cox stated he lives in a single-wide manufactured home with an addition on it.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and

carried unanimously that the special use exception be granted, with the stipulations, that 14'x 66' and 14'x 70' (1987) manufactured homes be connected together with one kitchen, A-Roof, permanent foundation, matching siding, one single-family unit and to be completed within one (1) year.

Case No. 6072--Jasper & Corby Thomas and Donald J. Green -

Northwest side of Route 74. one mile
east of Route 447, Lot 12, Pinewoods II.
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. Donald J. Green, Realtor, was sworn in and testified, requesting to place a double-wide manufactured home on property he owns being Lot 12, within Pinewoods II. Mr. Green stated that the property was approved for a manufactured home in 1994, but the applicant at that time failed to put the manufactured home there. Mr. Green purchased the property to sell. He stated that the manufactured home will be placed on a permanent foundation.

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 for a double-wide manufactured home on a permanent foundation, and the occupants name must be on the deed to the land as well as the manufactured home.

Case No. 6073--Ceylon S. & Cynthia S. Reinard - Northwest side of
Route 285, 1,365 feet southwest of
Church Street.

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. Ceylon Reinard was sworn in and testified, requesting to place a 14'x 70' or 16' manufactured home on their property for their own use. The manufactured home has not been purchased yet. It will possibly be a new unit, but would not be junk. It was stated that there is a single-wide manufactured home an adjacent property.

There were no parties present in opposition.

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

Case No. 6074--Keith Mitchell - South side of Route 329, 1/4 mile west of Route 432.

A special use exception to place a manufactured home in an AR-1 District on less than five acres for a permanent residence.

The case was presented by Mr. Betts. Keith and Roger Mitchell were sworn in and testified, requesting to place a 28'x 66' double-wide manufactured home on a block foundation for Keith Mitchell to live in. Roger Mitchell stated that the manufactured home has been on the property for 13 years as on farm. He is transferring approximately one (1) acre, with the manufactured home on it, to Keith Mitchell, his son. Since the manufactured home will no longer be on farm, Board approval is needed for the manufactured home to remain on the property. Prepared material was presented.

Gary Lee Conaway, neighbor, was sworn in and testified in behalf of the application, stating that he owns surrounding land and has no problem with the manufactured home.

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

Case No. 6075--Donald Derrickson - Southwest side of Route One, 25 feet northwest of Postal Lane (Road 283).

A special use exception to place an off-premise sign.

The case was presented by Mr. Betts. Donald Derrickson was sworn in and testified, requesting to place an off-premise sign on property to direct traffic to a motel, which is on adjacent property, not to exceed 150 sq. ft. in size. Mr. Derrickson subdivided 6 1/2 acres into three (3) lots. The sign is to be placed on the 3rd. lot. A hearing for the sign is needed because the property is being subdivided.

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 for an off-premise not to exceed 150 sq.ft. per facing.

Case No. 6076--Clarence R. Adams - East side of Route 455B, 1/2 mile south of Route 30.

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. Clarence Adams and Peggy Ann Adams were sworn in and testified, requesting to place a manufactured home on their property for their use. They testified that they do not have the manufactured home as yet, but prefer a single-wide unit. They stated that the unit will be a good one, but they do not know what the year will be. It was stated that there are other manufactured homes in the area.

There were no parties present in opposition.

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

OLD BUSINESS

Case No. 6050 (cont'd.)--Russell C. & Susan B. Trout - East side of Route 357, one mile north of Route 358, Lot 90, within Quillen's Point.

A variance from the front yard setback requirement on a through lot.

The case was reviewed by Mr. Betts, stating that the property is on a through and corner lot.

After some discussion, motion was made by Mrs. Hudson and seconded by Mr. Callaway that the variance be granted, with Mr. Wheatley voting nay. Motion carried with four voting in favor and one against. Finding that the lot is irregular in shape, will not have a negative impact on the surrounding properties, unable to build at a different location due to the septic, the hardship was not created by the applicant, will not alter the character of the neighborhood and will represent the minimum variance that will afford relief. Vote 4-1.

Case No. 6052 (cont'd.)--J.E.B. Enterprises, Inc. - Northeast side
of Route 13, 1/2 mile south of Route 40.
A variance from the requirements for signs.

Mr. Betts stated that this application is being readvertised
for a future meeting.

Case No. 6057 (cont'd.)--Marlene & Stephanie Roca - Southeast side
of Route 358, 1/4 mile west of Route 357,
Lots 2 and 3, within Elmer Cox
Subdivision.

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

The case was reviewed by Mr. Betts.

After some discussion, motion was made by Mr. Callaway,
seconded by Mr. Mills and carried unanimously that the special use
exception be granted, with the stipulations, that the units have a
permanent foundation, A-Roof, matching vinyl siding and the work be
completed within one (1) year.

Case No. 6061 (cont'd.)--John & Judith Baine - South side of Route
492, 700 feet west of Laurel Town Limits,
Lot 5, within Little Creek Acres.

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.

After some discussion, motion was made by Mr. Callaway,
seconded by Mr. Mills and carried unanimously that the special use
exception be granted for a new double-wide manufactured home on a
permanent foundation, finding the placement of a manufactured home
will not substantially affect adversely the neighboring properties.
Vote 5-0.

The Board also recommended that a letter be sent to Mr.
Sizemore, Realtor, reprimanding him about a letter he sent out
pertaining to manufactured homes being permitted in Little Creek
Acres.

OTHER BUSINESS

Mr. Betts stated that he had received a letter requesting a rehearing for Case No. 9894, Dennis Moore.

Mr. Jones, Attorney, stated that the Board could not consider the letter since it was not properly put on the agenda. He stated the request should be put on the agenda at the next meeting.

DISCUSSION

The Board discussed having extra meetings to cover the heavy amount of applications that have been received. It was decided that an extra meeting be held in October.

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

Meeting adjourned at 9:08 P. M.