

Minutes of August 28, 1995

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, August 28, 1995 in the County Council Chambers, Room 115, Courthouse, Georgetown, Delaware.

The meeting was called to order at 7:00 P. M. with Chairman McCabe presiding. The Board members present were: Mr. McCabe, Mr. Mills, Mrs. Hudson, Mr. Wheatley, Mr. Callaway, Mr. Jones - Attorney, Mr. Betts - Zoning Inspector III, Mr. Lank - Director, and Mrs. Watkinson, Clerk.

Motion was made by Mr. Wheatley, seconded by Mr. Mills, and carried unanimously that the minutes of August 21, 1995 be approved as circulated.

Case No. 5771--Hayward P. Henry - south side of Route 486, 400 feet west of Route 486A.

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. Hayward P. Henry was sworn in and testified that he proposes to place a 28 X 72 manufactured home; that he is replacing the previous dwelling due to a fire and will use the existing basement; that a church exists to the right; that to the left side of the property is vacant; that a manufactured home exists to the rear of property; that there is a manufactured home down the road.

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 with the stipulation that the unit be a doublewide on a permanent foundation.

Case No. 5772--William R. and Wendy J. Bingham - north side of Route 54, 715 feet east of Route 455.

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

The case was presented by Mr. Betts. William R. Bingham, Jr. and Wendy J. Bingham were sworn in and testified that they have two (2) new poultry houses and one old poultry house on the property; that the new poultry house is existing; that they own the adjoining property. Mr. Bingham presented a survey indicating the poultry house was not in compliance with setback requirements.

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. 5773--Bert McDonald - north side of Route 58, at the intersection of Route 396.

A special use exception to place an off premise sign.

The case was presented by Mr. Betts. Albert McDonald was sworn in and testified that he proposes a 18 X 24 directional sign; that he has permission from the property owner to place the sign; that the purpose of the sign is to advise people of his business and to increase patronage.

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 since there is not anticipated impact on the surrounding area.

Case No. 5774--Albert C. Leifheit - northwest side of Route 363, $\frac{1}{4}$ mile north of Route 367.

A variance from the front yard setback requirement.

The case was presented by Mr. Betts. Albert Charles Leifheit, Jr. was sworn in and testified that he proposes to build a porch on his dwelling; that he has reduced the size from 12' to 10' due to the front setback; that he plans to place a roof over existing steps; that the adjoining houses are closed than his to the front property line.

There were no parties present in opposition.

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

Case No. 5775--Fraternal Order of Police, Sussex County Lodge No. 2 Inc. - south side of Route 9, $\frac{1}{2}$ mile west of Route 258.

A special use exception to place a manufactured home for use as a meeting place.

The case was presented by Mr. Betts. Michael Walls was sworn in and testified that the Fraternal Order of Police proposes to place a 24 X 65 doublewide manufactured home for a meeting place; that it will have a kitchen; that it will be for Fraternal Order of Police use only; that there will be twelve to fifteen people meeting once a month; that there is a manufactured home across the street.

There were no parties present in opposition.

Motion was made by Mr. Callaway, seconded by Mr. Wheatley, and carried unanimously that the special use exception be granted since no negative impact is anticipated for surrounding area.

Case No. 5776--Charles T. and Brenda M. Workman - northeast side of Route 473, at the intersection with Route 446.

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

The case was presented by Mr. Betts. Brenda and Charles T. Workman were sworn in and testified that the proposed site is the only appropriate place to locate a poultry house; that the proposed site is 14' from rear property line; that farm land adjoins the property; that there are two (2) manufactured homes currently on the

property.

There were no parties present in opposition.

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

Case No. 5777--Mary Jane Clogg - south side of Route 346, 150 feet west of Route 346B, Lot 2.

A special use exc 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. Mary Jane Clogg was sworn in and testified that she proposes to place a 12 X 65 manufactured home; that there is a manufactured home to the rear of site; that there is a manufactured home to the right of the property.

There were no parties present in opposition.

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

Case No. 5778--William and Sharon Bailey - east side of Route 495, 50 feet north of Route 497, Lots 2 and 3, within May's Delight 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. William and Sharon Bailey were sworn in and testified that they propose to place a new 28 X 64 doublewide on one lot; that there is a poultry farm adjoining on one side of the property.

Ted Liszewski, developer, was sworn in and testified that the applicants purchased two (2) lots.

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 with the stipulation the unit be a doublewide on a permanent foundation.

Case No. 5779--Daniel A. Jacobs, Jr. - west side of Route 562, 2,000 feet north of Route 31, Lot 5, within Dublin Hill 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. Beatrice and Daniel Aaron Jacobs, Jr. were sworn in and testified that they propose to place a new 28 X 66 manufactured home; that the lot is 150' X 221'; that the unit will have a permanent foundation; that there are approximately six (6) to eight (8) manufactured homes in the area.

There were no parties present in opposition.

Motion was made by Mr. Callaway, seconded by Mr. Wheatley, and carried unanimously that the special use exception be granted with the stipulation that the unit be a doublewide on a permanent foundation.

Case No. 5780--Edward J. Kaye - west side of Route 525, 1,500 feet north of Route 526.

A special use exception to operate an asphalt batching recycling plant.

The case was presented by Mr. Betts. Edward Kaye and Kenneth Aschee were sworn in, James Fuqua, attorney, represented the applicants. James Fuqua stated that the plant will be located on a 214 acre parcel; that it would use recycled materials that are already on the site; presented diagram of machinery.

Kenneth Aschee distributed a leaflet detailing the machinery and process used for the operation; and testified that any dust generated will be captured in the bag house; that dryer temperature will not exceed 300°; that any particle emissions will be returned to the asphalt; that there would be a low level of noise; that there would be some smell but not on a regular basis; that there would not be any obnoxious odor; that there would be computer operated controls; that there would be very little environmental hazard due to a spill as asphalt hardens immediately; that there would be containment facility around fuel oil tank; that the elevator height would be 58'.

Edward Kaye testified that operating hours would be 6:00 A. M. to 6:00 P. M. during months of March thru October, 7:00 A. M. to 5:00 P. M. November thru February, 7:00 A. M. to 12:00 P. M. on Saturdays, and no Sunday operation; that the operation would be in existing pit; and that the plant would have low visibility from the road.

James Fuqua noted that fuel would have to be stored on the property; that the applicant realizes that storage of fuel is prohibited under the conditional use approval.

Timothy Duker was sworn in and testified that the plant would affect approximately fifty (50) people on Route 525; that he visited two (2) plants and observed dust and noise; that the plant would generate increased traffic, noise, and dust; that hazardous materials may be brought into the area; that the use would need higher voltage; that the use may become rodent infested due to the material piles; that he believes it would be a death warrant for the community.

Ronald A. Matthews was sworn in and testified that he is a resident in the area; that there has been complaints on the current business; questioning the containment of transportation; and that he believes it would be degradation of the land.

Mattie D. Burton was sworn in and testified that she believes there is enough business in the area; that the trucks will be a nuisance; that the plant will result in a increase in traffic; that the exhausts will linger in the air; and presented a list with eighteen (18) signatures in opposition of the application.

Eric Biber, representative for Delaware Nature Conservancy, read a letter on behalf of the Conservancy stating their concerns and requesting a time extension before the Board makes a decision in order to make their own study.

Calvin James Doyle was sworn in and stated his concerns about his family's health; that there already is enough dust and traffic.

Marlee Mervine, representative for Delaware Adopt A Wetlands Program, was sworn in and presented their concerns about impact and contamination of the wetlands; the effect the plant would have on the planned expansion of the existing canoe trail.

Lisa Jo Frech, representative for Nanticoke River Watershed Preservation Committee, stated the Committee concerns in reference to keeping the Nanticoke River one of the cleanest rivers; that they are trying to aid the return of shad; and that they second the concerns of the Delaware Nature Conservancy.

James Fuqua, attorney, responded that the dryer was only for removal of moisture in the materials; that the materials needed are permitted and already stored on the proposed site; that there is no indication the plant would be conducive to health concerns; that there would not be ground water discharge; that the fuel oil would be contained if there was a spill; that he would answer any questions presented.

There were eighteen (18) parties present in opposition.

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

At the conclusion of the public hearings, the Chairman referred back to this case.

Motion was made by Mr. Mills, seconded by Mrs. Hudson, and carried unanimously to table this case so that Mr. Jones, attorney, could review the on-site fuel storage concern.

Case No. 5781--Millard and Josephine Daugherty - north side of Route 404, 1,200 feet east of Route 569.

A special use exception to place a manufactured home on a medical hardship basis.

The case was presented by Mr. Betts. Josephine Matthews Daugherty and Millard L. Daugherty were sworn in and testified that they propose to place a 1987 14 X 70 manufactured home on their daughter's property; that Mrs. Daugherty has respiratory illnesses.

Mr. Betts presented a letter from R. H. Beckert, M.D. referencing the need for care.

There were no parties present in opposition.

Motion was made by Mr. Callaway, seconded by Mr. Wheatley, and carried unanimously that the special use exception for a medical hardship be granted for a period of two (2) years.

Case No. 5782--Francis B. Smith, Jr. - south side of Route 632,
1,650 feet southeast of Route 36, Lot 27,
within Mill Run 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. Francis B. Smith, Jr.
was sworn in and testified that he proposes to place a new 28 X 60
doublewide manufactured home on a permanent foundation; that across
Route 36 there is an abandoned three tier poultry house; that the
property is approximately 500' from a sawmill; that there is a single
wide manufactured home on Route 36; that there are woods across from
the property.

Robert Mitchell was sworn in and testified that he is not
opposed to the application but is concerned about future development.

Motion was made by Mr. Mills, seconded by Mr. Wheatley, and
carried unanimously that the special use exception be granted with
the stipulation the unit be a doublewide on a permanent foundation.

Case No. 5783--Wheatley Farms, Inc. - northeast side of Route 46, on
the southwest side of Sunnydale Lane, Lot 62,
within Clearbrooke Estates.

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

The case was presented by Mr. Betts. Dale Wheatley was sworn in
and testified that the building permit had incorrect setbacks listed;
that the problem surfaced when he applied for a certificate of com-
pliance; and that this is a through lot.

There were no parties present in opposition.

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

Case No. 5784--Donna M. Reid - south side of Donald's Drive, on the
west side of the intersection with Route 309,
 $\frac{1}{2}$ mile south of Route 304, within Hitchens
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. Donna and James Reid
affirmed and testified that there is now a 1985 14 X 70 manufactured
home on the property; that there is a dwelling on the property that
will be removed or destroyed.

Motion was made by Mrs. Hudson, seconded by Mr. Callaway, and
carried unanimously that the special use exception be granted with
the stipulation the house be removed within one (1) year of manu-
factured home occupancy.

Case No. 5785--Geri Ludlam and Connie Heindel - east side of Route 258,
 $\frac{1}{8}$ mile south of Route 88.

A variance from the front yard setback requirement.

The case was presented by Mr. Betts. Joel David Leidy represented the applicants. Mr. Leidy stated that the proposed porch would extend 6' from the house; that it would encroach 4½' into setback; that it would not hinder visibility; and that the adjoining lots are vacant.

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

Old Business

Case No. 5672 (cont'd)--Malone's Bayside Marina - north side of Route 22, one mile east of Route 22C, Lot 8 Oyster within Malone's Bayside Marina.

A variance from the setback requirement between units in a park and variance from the minimum square footage of a manufactured home in a park.

Mr. Betts advised the Board that the surveyors were working at the site and that a survey should be available in the near future.

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

Case No. 5673 (cont'd)--Malone's Bayside Marina - north side of Route 22, one mile east of Route 22C, Lot 10 Clam, within Malone's Bayside Marina.

A variance from the setback requirement between units in a park and a variance from the minimum square footage of a manufactured home in a park.

Mr. Betts advised the Board that the surveyors were working at the site and that a survey should be available in the near future.

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

Case No. 5674 (cont'd)--Malone's Bayside Marina - north side of Route 22, one mile east of Route 22C, Lot 10 Harbor, within Malone's Bayside Marina.

A variance from the minimum square footage of a manufactured home in a park.

Mr. Betts advised the Board that the surveyors were working at the site and that a survey should be available in the near future.

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

Case No. 5769--Robin Dennis - east side of Route 583, 484 feet east of Penn Central Railroad, 0.3 mile from 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.

Motion was made by Mr. Callaway, seconded by Mr. Wheatley, and

carried unanimously that the special use exception be granted, finding it would not adversely impact the area.

Chairman McCabe presented a thank you card from Mrs. Norma Talley.

Meeting adjourned at 9:40 P. M.