

Minutes of August 29, 1994

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, August 29, 1994 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, Mr. Wheatley, Mrs. Hudson, Mr. Callaway, Mr. Jones-Attorney and Mr. Lank-Director.

Motion was made by Mrs. Hudson, seconded by Mr. Mills and carried unanimously that the minutes of August 15, 1994 be approved as circulated.

Case No. 5431--Clarence A. Passwaters - South side of Route 224,
 $\frac{1}{2}$ mile east of Route 214.

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

The case was presented by Mr. Lank. Clarence Passwaters and Retha Coffman were sworn in and testified representing the applicant who requested to place a manufactured home on basis of hardship. Ms. Coffman presented a letter from a doctor referencing Clarence Passwaters health. She stated that the manufactured home has been on the property since 1980. The property has been subdivided and the manufactured home is on a separate parcel. The applicant lives in a dwelling on a separate parcel and the manufactured home will be occupied by a tenant who will care for Mr. Passwaters. Mr. Passwaters dwelling has been on the property since 1975.

Mr. Lank read the letter presented from the doctor.

The Chairman explained that if the application is approved it will have to be reapplied for every two years and when the hardship ceases to exist the manufactured home will have to be removed.

Bill Eastburn was sworn in and testified in behalf of the application stating there are other manufactured homes in the area.

Carol Passwaters (sister), was sworn in and testified in behalf of the application, stating she works shift work and needs someone there to help care for her brother.

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 on the basis of hardship for a period of two (2) years.

Case No. 5432--Ronald L. & Wanda Layton - North side of Route 471,
1,600 feet west of Route 432, Lot 4.

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. Lank.

Mr. Jones, Attorney, made reference to Case No. 5435 to be heard and at the same location on a different lot. He requested that in the interest of time and similarity, both hearings be combined and heard at the same time.

John Sergovic, Attorney representing the applicants of both Cases No. 5432 and 5435 and Mr. Mears (the seller of the property), had no objection to the request made by Mr. Jones.

Mr. Jones incorporated testimony by the applicants and the opposition, and evidence from Cases 5388, 5425 and 5429 heard at previous hearings.

Mr. Sergovic had no objection.

The applicants Wanda Layton (Case No. 5432) and Shelly Wilson (Case No. 5435) were sworn in and testified.

Mrs. Layton presented a diagram, because in addition to placing a manufactured home on the property they request to put two manufactured homes together to become a double-wide. It will be one unit, for one family with one kitchen. Both units are 14'x 70' in size.

Ronald Layton was sworn in and testified referencing the roof and block foundation to be put on the manufactured home. They will use the same siding on both units.

Donald Murray, father of Shelly Wilson, was sworn in and testified, stating that his daughter is trying to get a Nanticoke modular home, but until they are able to do so, they want to live in a 14'x 60' manufactured home to eliminate park rent. They hope to do so within two years.

Mr. Sergovic referenced the Board's decision on Case No. 5380. He also presented a declaration of restrictive covenants he has prepared for Mr. Mears to be recorded. The covenants is for the back 40+ acreage and will restrict no manufactured homes to be placed on the property unless it contains five acres. Also referenced original lettes from three other lot owners, two indicating they are to put modulars on the property. All applicants are seeking housing units in a mixed neighborhood.

Crystal Conaway was sworn in and testified in opposition questioning how binding Mr. Mears covenants will be, since at a previous hearing Mr. Mears was not going to develop the remaining property.

Mr. Sergovic stated that the covenants bind Mr. Mears and his heirs.

Patricia Oliphant was sworn in and testified in opposition. She feels the Board should uphold the spirit of the Zoning and protect unrestrictive land use.

Granville Conaway was sworn in and testified in opposition, stating the property owners in the area oppose 100 percent. He

feels the Board should consider the requests very thoroughly. He feels there has to be a stop somewhere. He feels the property values will be hurt.

Gary Conaway was sworn in and testified in opposition stating that he was told by a Realtor that there are trailer lots available

Michael Betts was sworn in and testified in opposition and presented copies of his Finding of Facts from his Board of Adjustment hearing, into the record. He was approved for a manufactured home and had an agreement with Mr. Mears to build a home within five years and he has built a home.

Robert J. Timmons, owner of a 47 acre farm adjacent to the applicants, was sworn in and testified in opposition. He feels they should go with five acres.

Mr. Jones, Attorney, stated that what the opposition stated at previous hearings is incorporated in to these hearings.

Mr. Lank read a letter of opposition from Donna Wootten.

Mr. Sergovic summarized, stating the majority of the objections is to strip developing. The applicants want to live in housing units they can afford.

Dorothy Conaway was sworn in and testified in opposition stating the applicants could stay in a park until they can build.

Shelly Wilson stated that it costs \$200.00 a month in a park.

Mr. Betts stated that he worked hard to build a home and he does not want his land to depreciate. He feels the other people can do the same to be able to build. He had to clear his land.

Rodney Mears was sworn in and testified in behalf of the application. he stated that the applicants want the same start that Mr. Betts had.

Ed Wilson was sworn in and testified in opposition, stating that the land has been cleared for the people purchasing it, they just have to do the rest.

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. Mills and carried unanimously that Case No's. 5432, 5435, 5388, 5425 and 5429 be tabled, to give Mr. Jones time to review the covenants presented from Mr. Mears.

Case No. 5433--Joseph G. Melchiorre - North side of Route One, one mile south of Route 88.

A special use exception to replace a nonconforming manufactured home.

The case was presented by Mr. Lank. Joseph Melchiorre was sworn in and testified, requesting to replace a nonconforming 10'x 50' manufactured home with a 12' x 60' manufactured home in a commercial district (C-1). Mr. Melchiorre is living in the 10'x 50' unit until his home is completed, which should be in two weeks. After moving out of the manufactured home he would like to keep it on the property to use as an office for his swimming pool business or let employees live in it. Mr. Melchiorre stated that down the road he will put a building on the property and remove the manufactured home. The kitchen will remain.

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, finding the applicant is updating what exists.

Case No. 5434--William McKay - South side of Route 297, 2,000 feet west of Route 305.

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

The case was presented by Mr. Lank. Shirley Mackey was sworn in and testified, representing the applicant, who is seeking to place a manufactured home on property on the basis of hardship. The manufactured home is a 1983, 14'x 70' unit. Mrs. Mackey has a home on the property.

Mr. Lank read a letter from a doctor referencing Matilda Andrews, the patient.

The Chairman explained that if approved it will have to be reapplied for every two years and when the hardship ceases the manufactured home will have to be removed.

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 on the basis of hardship for a period of two (2) years.

Case No. 5435--Shelly Wilson - North side of Route 471, $\frac{1}{2}$ mile west of Route 432, Lot 6.

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

This case was presented with Case No. 5432. The testimony from people in favor and in opposition is incorporated into this hearing. Also incorporated into this case is testimony by the applicants and the opposition and the evidence from Cases 5388, 5425 and 5429, heard at previous hearings.

This case was taken under advisement with Case No. 5432 by motion made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously.

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. Mills and carried unanimously that Case No's. 5432, 5435, 5388, 5425 and 5429 be tabled, to give Mr. Jones time to review the covenants presented from Mr. Mears.

Case No. 5436--Greggo & Ferrara, Inc. - East side of Route 243,
at the intersection on the north side of
Route 246.

A special use exception to operate a concrete batch plant.

The case was presented by Mr. Lank. Nick Ferrara and Myles Bennett were sworn in and testified representing the application. Mr. Bennett stated that they are requesting to operate a concrete pugmill (not a batch plant) on State lands where there is presently a borrow pit. The pugmill is needed to provide concrete for the Route 113 project between Georgetown and Milford. The site for the pugmill was suggested by Del. D.O.T. The operation will be 30 to 35 days over a period of one year. Mr. Bennett stated that the pugmill will be portable, mixing soil and cement, a dry mixture for direct paving. There are two different Del. D.O.T. projects 02 and 04, according to Mr. Bennett. He stated that presently there are approximately 20 trucks per day taking borrow out of the pit, and there will be no more additional truck traffic from the pugmill. They will operate six days a week from 6:00 A.M. to 6:00 P.M. depending on the amount of day light. They hope to be completed within one year, by September, 1995. The noise will be from a cat. diesel engine, which the pugmill operates on. They will produce 175 to 200 tons per day. Silo emissions permit is obtained from D.N.R.E.C and will be regulated by them. He stated there is already large equipment being utilized now on the property.

Andrew Abele was sworn in and testified in opposition, stating that there are 30 trucks going in and out from 5:30 A.M. He stated he lives 25' away from the well site. He objects to it being proposed so close to his home. He expressed concerns for safety since he has two small sons. He wishes they could place it further from his home.

Mike Callaway was sworn in and testified in opposition and presented a petition with signatures in opposition to the application. He objected to the location and why another location in existence now for Route 113 could not be used.

Mr. Bennett in response explained that they are two different jobs.

Glenn Eskridge was sworn in and testified in opposition. He previously owned the property. He expressed concern about truck traffic, since Perdue and King Cole trucks already use the road.

David Rementer was sworn in and testified in opposition stating he listens to a pump run 24 hours a day now. He objects to the traffic,

devaluing the neighborhood properties and dust.

Ed West was sworn in and testified in opposition stating he is directly in front of the borrow pit. He stated trucks travel too fast and need to be controlled.

Mr. Ferrara stated that after completion Del. D.O.T. has another project to replace top soil and wetland plants.

Mr. Bennett stated that the truck traffic will continue with or without the pugmill because of the borrow pit being there.

Linda Wilson was sworn in and testified in opposition, stating she lives in front of the wetlands and her property was flooded with water. She opposes everything on the property, motor running all night, traffic and danger for children.

Mr. Bennett stated that any residual materials will be cleaned up and hauled away.

Anna Abele was sworn in and testified in opposition, stating that the contractor does take care of the road and wets it down when it is dry, but she stated her house shakes, she is concerned about her grandchildren, noise and truck traffic.

The Chairman explained that the Board has no control where the pugmill is placed on the property, they just need to decide whether a pugmill should go on the property or not.

Linda Callaway was sworn in and testified in opposition, questioning what guarantee they would have on the time period and expressed concern about dust.

Mr. Jones, Attorney, explained that the Board can put a time limit on the use if approved.

Mr. Bennett stated that the State owns the property and the road (Route 113) cannot be finished without the pugmill. To put it out on the highway would be a traffic hazard.

Mr. Ferrara stated that they would like to have a time period of 18 months, because of the uncertainty of the weather. He also stated that there would be 4 to 5 loads of cement the days they operate.

Motion was made by Mr. Callaway, 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 Mr. Callaway and carried unanimously that the special use exception be granted for a period of 18 months, limited to Del. D.O.T. contracts 02 and 04 for the U.S. Route 113 project only as referred to by the applicants.

OLD BUSINESS

Case No. 5388 (cont'd.)--Michael Townsend, Sr. - North side of Route 471, ¼ mile west of Route 432, Lot No. 5.

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 Mrs. Hudson, seconded by Mr. Mills and carried unanimously that the case be tabled. The decision was reached during Case No. 5432.

Case No. 5425 (cont'd.)--Mark Brittingham & Lisa Webb - North side of Route 471, 1,000 feet 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.

Motion was made by Mrs. Hudson, seconded by Mr. Mills and carried unanimously that the case be tabled. The decision was reached during Case No. 5432.

Case No. 5429 (cont'd.)--Lorne Brasure - North side of Route 471, $\frac{1}{4}$ 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.

Motion was made by Mrs. Hudson, seconded by Mr. Mills and carried unanimously that the case be tabled. The decision was reached during Case No. 5432.

OTHER BUSINESS

Case No. 5181 - Alexander & Rita Walters
Request for an extension.

Mr. Lank read a letter from the Walters requesting a 2 year extension on their case to place a manufactured home in an AR-1 District approved by the Board on September 20, 1993.

After some discussion, motion was made by Mr. Callaway, seconded by Mr. Mills and carried unanimously that a one year extension be granted for Case No. 5181.

Meeting adjourned at 9:11 P. M.