

Minutes of September 13, 1993

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, September 13, 1993 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. Wheatley, Mrs. Hudson, Mr. Mills, Mr. Callaway, Mr. Jones-Attorney and Mr. Betts-Zoning Inspector III.

Motion was made by Mr. Wheatley, seconded by Mr. Callaway and carried unanimously that the minutes of August 30, 1993 be approved as circulated.

Case No. 5165 (cont'd.)--Allen Family Foods, Inc. - West side of Route 5, 0.4 mile south of U. S. Route 9 at Harbeson.

A special use exception to operate a protein recycling facility in an HI-1 Heavy Industrial District.

The Chairman announced that Case No. 5165 would be considered first on the agenda, because there were so many interested parties present.

Mr. Betts Reviewed the case.

Mr. Jones, Attorney, explained to the Board what they should consider when making their decision on this case. He made reference to the Zoning Code pertaining to hazardous uses.

Motion was made by Mr. Callaway that the special use exception be denied.

Motion died due to lack of a second.

Motion was made by Mr. Mills that the special use exception be granted with conditions. He stated his reasons and the conditions as follows:

Mr. Mills does not believe that the special use exception will substantially affect adversely the uses of adjacent and neighborhood properties. He believes the public health, safety, morals and general welfare will be protected and necessary safeguards will be provided for the protection of water areas and surrounding property and persons. Mr. Mills referenced the change of zone granted by the County Council, the proposed recycling facility, the size building to be constructed on the property and the existing poultry plant adjacent. He referenced testimony about environmental concerns with respect to the poultry plant in the past, however, since Allens purchased the plant the situation has improved according to D.N.R.E.C. comments. He feels the pollution control equipment, wastewater treatment facilities and odor abatement equipment to be installed will protect the surrounding area, and that State Regulatory Agencies

will ensure proper protection and protect from odor. He is not convinced the use will have a negative impact on traffic in the area, since the chicken waste will not have to be removed from the site. He does not believe the facility will reduce property values. Mr. Mills proposed the following conditions:

1. That only the products produced by Allens will be rendered.
2. All permits to be obtained by Allens for air and water discharges from the Delaware Department of Natural Resources and Environmental Control (DNREC) per 7 Delaware Code, Chapter 60, Section 6003 and regulations enacted thereunder.
3. In that any piece of odor, air or water pollution control equipment is off line either for maintenance or due to malfunction, raw material shall not be introduced to the process unit served by the control equipment.
4. Exterior doors shall be kept closed to further minimize escape of odors.
5. The raw material unloading area shall be enclosed and the air from the area shall be directed to the facility for scrubbing along with the facility air.
6. All air and water pollution control equipment operations shall be trained and certified in the proper operation of said equipment.
7. All air and water pollution control equipment shall be serviced and maintained in compliance with manufacturers recommendations.
8. All waste water shall be discharged through the on site waste water treatment facility.
9. All entrances and exists for vehicular traffic will comply with the regulations of the Delaware Department of Transportation (Del D.O.T.).
10. A landscaped earthen buffer will be created east of the location of the facility. Input of local residents will be considered in its design.
11. Should the plant become temporarily inoperable, the trucks not be allowed to park on the County road.

Motion was seconded by Mr. Wheatley and he added another condition as follows:

12. In the event the applicant is notified that this facility is in violation of any permits or regulation concerning air or water discharges, the operation of the facility shall cease until the violation is corrected.

Mr. Mills amended his motion to include the condition submitted by Mr. Wheatley.

Voting was as follows:

Mr. Mills voting in favor with conditions.  
Mr. Wheatley voting in favor with conditions.  
Mr. Callaway voting nay.  
Mr. McCabe voting in favor with conditions and due to reasons commented on and the fact the County Council voted in favor of the change of zone.



Mrs. Hudson did not participate in the decision making and did not vote.

Motion carried with three voting in favor, one voting against and one not voting.

Case No. 5166--David E. & Janet L. Warren - North side of Route 31,  
2,600 feet west of Route 568.

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. David & Janet Warren were sworn in and testified, requesting to place a 1956 two bedroom single-wide manufactured home on their property for their permanent residence. They testified that there are other manufactured homes in the area. In answer to the Board Mr. Warren stated that he is not aware of any other lots being created for manufactured homes.

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.

Case No. 5167--Robert & Martha Vincent - Southwest side of Route 20,  
2,300 feet northwest of Route 479.

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

The case was presented by Mr. Betts. Robert & Martha Vincent were sworn in and testified, requesting to place a manufactured home on their property on basis of hardship for Mrs. Vincent's father who is in poor health. They live in a house on the property. They need to place the manufactured home for her father to live in so she can care for him. They testified that there is a manufactured home park approximately 200 yards away.

The Chairman explained to the applicants that a hardship case must be renewed every two years and if the hardship ceases, the manufactured home would have to be removed.

Mr. Betts read a letter from a doctor referencing Mrs. Vincent's father's health.

Levin A. Williams, III, a neighbor, was sworn in and testified in behalf of the request.

There were no parties present in opposition.

Motion was made by Mr. Mills, 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. 5168 - This case was withdrawn.



Case No. 5169--Randolph J. & Lorrie A. Jones - South side of Route 523, on the southwest side of the intersection with Route 522A.

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. Randolph & Lorrie Jones were sworn in and testified, requesting to place a 28'x 56' manufactured home on property they are purchasing for their residence in Rumbridge Acres. They testified that there are other manufactured homes in the area, plus a manufactured home development.

Mr. Betts explained to the Board that the applicants had approval for a manufactured home on another lot in the development, but it would not perc. The applicants are purchasing another lot.

John Birch, who resides in Middletown, Ohio, but owns 39 acres behind the applicants property, was sworn in and testified in opposition. He testified that he opposes the whole Board and feels laws should be abided by. He stated that the manufactured home is already on the lot and the area is getting too many manufactured homes.

Mr. Jones, Attorney, explained the laws pertaining to manufactured homes and appearing before the Board.

Motion was made by Mrs. Hudson, seconded by Mr. Mills 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 the special use exception be granted, due to all of the manufactured homes located in the area.

Case No. 5170--Leroy K. Caldwell & Logan A. White - West side of Route 520, 1½ miles south of Route 18.

A special use exception to place a second manufactured home on farm.

The case was presented by Mr. Betts. Leroy Caldwell and Logan White were sworn in and testified, requesting to place a second manufactured home on their farm for a friend to reside in and help work on the farm. There had previously been two manufactured homes on the property, but one was removed. They stated there are other manufactured homes in the area and they live in the existing manufactured home.

John Sergovic, Attorney, stated he was present at the request of his secretary who is a neighbor of the applicants, to be of any help to them if needed.

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.



Case No. 5171--Domenic P. Ruggieri - South side of Route 277,  
1/4 mile east of Route 24, Lot 14 and part  
of 13, within Angola By The Bay.

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

The case was presented by Mr. Betts. Domenic Ruggieri was sworn in and testified, requesting a 6'6" variance from the front yard property line and a 9.6' variance from the rear yard property line for a garage and handicap ramp. Mr. Ruggieri stated he has an L-shaped rear porch due to a tree on his property. He has had to remove the tree and proposes to expand. The handicap ramp is for his wife who is disabled. The construction will be in line with what is there. He testified that he spoke to the Association and they were to send a letter. His property being Lot 14 and part-of Lot 13, within Angola By The Bay.

Mr. Betts stated that no correspondence had been received from Angola By The Bay Association.

Raymond Chedester was sworn in and testified in favor of the request, stating he is a neighbor and feels what Mr. Ruggieri does will be an asset to the neighborhood.

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. Callaway, seconded by Mrs. Hudson and carried unanimously that the variances be granted.

Case No. 5172--Flossie Greene - Northwest side of Route 232, 3/4 mile  
southwest of Route 226.

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

The case was presented by Mr. Betts. Flossie Greene was sworn in and testified, requesting to retain her manufactured home on her property for her residence. She read a prepared statement concerning her manufactured home. The property owned by her mother has to be sold, since her mother is now in a nursing home. She stated she has a lot and has invested money on the property and wants to remain there. She feels it will not adversely affect the neighborhood.

Mr. Betts explained that the manufactured home was placed on the property as an on farm permit, but the property has to be disposed of and has been subdivided for Ms. Greene and her brother to have lots.

Ms. Greene stated that the manufactured home has been on the property for five years and is a 1986, 14'x 70' unit.

Iona B. Highland was sworn in and testified in behalf of her sister's request. She stated that she is Power of Attorney for their



mother and is in favor of her sister keeping the manufactured home 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 special use exception be granted.

Case No. 5173--Richard K. & Judith S. Johnson - South side of Route 54, one mile west of Route One, Lot 23, Blk. 5, within Cape Windsor.

A variance from the side yard setback requirement.

The case was presented by Mr. Betts. Richard & Judith Johnson were sworn in and testified, requesting a 7' variance from the side property line, on Lot 23, Cape Windsor to replace a 12' wide unit with a 8' tip-out, with a 24' wide unit. To do this they need more space on the side. In answer to a question about the Cape Windsor Association, Mr. Johnson stated he had talked to Mr. Lampe.

Betty Ellis on the Board of Officers in Cape Windsor, was sworn in and testified in opposition, stating the Board wants to review the plans before they make a decision about the variance. Their next meeting of the nine member Board is October 4, 1993. At that time they will have to review and discuss the plans.

Motion was made by Mr. Callaway, seconded by Mr. Wheatley 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 that the case be tabled until the October 18, 1993 meeting to allow Cape Windsor time to review the plans, with Mr. Mills voting nay. Motion carried with four voting in favor and one against.

Case No. 5174--Racella Williams - East side of Route 535, 2 miles east of Route 13, Lot 11, 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. Racella Williams was sworn in and testified, requesting to place a 1987, 14'x 70' manufactured home on property she is purchasing, being Lot 11, Indian Village. She stated there are other manufactured homes in the area, the nearest being on each side of her property and in front of the property.

John Reynolds was sworn in and testified in behalf of the application. He stated he was present on behalf of the seller. He feels the property is an appropriate area for her.

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. 5175--Louis C. Phillips - North side of Poplar St., 800 feet south of Route 13A, Lot 182, within Woodland Heights.

A variance from the side yard setback requirement.

The case was presented by Mr. Betts. Michael Short was sworn in and testified on behalf of the application. The applicant requested an 8' variance from the side yard property line to construct a deck, with railing. He stated the deck will not be out any further than the existing structure. He presented a picture showing how the deck is to be constructed. He feels it will not obstruct any visibility.

Mr. Betts stated that the variance request should be 13', because it is a corner lot.

There were no parties present in opposition.

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

Case No. 5176--Geneva Plummer - North side of Route 231, 1 3/4 miles west of Route 30, Lot 3, within Evans Lots Subdivision.

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

The case was presented by Mr. Betts. Geneva Plummer and Charlie Scott were sworn in and testified. Ms. Plummer requested to place a 1973, 12'x 72' manufactured home on her father's property on hardship basis to be able to care for her father who is under doctor's care. She stated that her mother is deceased and her father lives on the property in a house. He needs her to care for him. She has two children and needs to live in the manufactured home.

Mr. Betts read a letter from a Doctor referencing Ms. Plummer's father's condition.

Mr. McCabe stated that a hardship approval must be applied for every two years and when the hardship ceases the manufactured home must be removed.

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

Case No. 5177--Barry Benson - Southwest side of route 78, 1,200 feet northwest of Route 490A.

A variance from the front yard setback requirement.

The case was presented by Mr. Betts. Barry Benson was sworn in and testified, requesting a 4'3" variance from the 30' front yard setback for a 19'x 20' carport. Mr. Benson stated that there is no other place on the property to put the carport without a variance. He stated he lives on a dead end street, on Lot 26, Patty Cannon Estates.

Mr. Betts stated that the carport is on the property. A permit was issued.

There were no parties present in opposition.

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 Mr. Wheatley, seconded by Mr. Mills and carried unanimously that the case be tabled until the next regularly scheduled meeting.

#### OLD BUSINESS

Case No. 5164 (cont'd.)--Gary G. Mason - South side of Route 277,  
 $\frac{1}{4}$  mile east of Route 24, Lot E-25, within  
Angola By The Bay.

A variance from the side yard setback requirement.

The case was reviewed by Mr. Betts.

After some discussion, motion was made by Mrs. Hudson, seconded by Mr. Callaway and carried unanimously that the variance be granted.

Case No. 5133 (cont'd.)--Clyde W. Schafer - South side of Route 54,  
one mile west of Route One, Lot 24, Blk. 5,  
within Cape Windsor.

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

Mr. Betts reviewed the case. He stated that the applicant does need a variance, because his garage is over 600 sq. ft. in size (24'x 26'). He had applied for a variance from the maximum lot coverage, but due to a change making Cape Windsor a subdivision he no longer needs that type variance, but a variance from the side yard. In response to the Board's question, Mr. Betts stated that if Mr. Schafer reduced the size of his garage to under 600 sq. ft. in size he could stay within the setback requirement and not need a variance.

Motion was made by Mrs. Hudson and seconded by Mr. Mills that the variance be denied, finding the size can be reduced to meet the setback requirements, with Mr. Callaway voting in favor. Motion carried with four voting in favor of denial and one voting against denial.



OTHER BUSINESS

Case No. 4921 & Case No. 4922 - Atlantic Investments  
Request for an extension.

Mr. Betts stated he had received a letter from John W. Cooper requesting a one year extension on Case No. 4921 & Case No. 4922.

After some discussion, motion was made by Mr. Callaway, seconded by Mrs. Hudson and carried unanimously that the request for a one (1) year extension on Case No. 4921 & Case No. 4922.

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

Meeting adjourned at 8:30 P. M.