

Minutes of September 19, 1994

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, September 19, 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. Betts-Zoning Inspector III.

Motion was made by Mr. Callaway, seconded by Mr. Wheatley and carried unanimously that the minutes of September 12, 1994 be approved as circulated.

Case No. 5452--Beverly Breeding - Southeast side of Route 545, .96 mile west of Route 594.

A variance from the front yard setback requirement.

The case was presented by Mr. Betts. Beverly Breeding and Randy Wroten were sworn in and testified. Ms. Breeding requested a 1' variance from the 40' front yard setback requirement for a patio. The end of the patio encroaches into the setback. Mr. Wroten stated that Ms. Breeding hopes to put a A-Frame over the patio within a year or so.

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. 5453--Gerald L. Allen - Northeast side of Route 285A, 2,500 feet northwest of Route 277.

A variance from the front yard setback requirement.

The case was presented by Mr. Betts. Gerald Allen was sworn in and testified, requesting a 16' variance from the 40' front yard setback requirement for his dwelling. Mr. Allen testified that he had to put an extensive elevated mound septic system on his property. When he measured for the dwelling he miscalculated and measured from the road. He stated that to move the dwelling would cause a severe hardship due to drainage problems. He stated that when it rains the water would drain and go under his house.

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, due to the location of the septic system and the slope of the property could cause drainage problems.

Case No. 5454--John & Sandra Fisher - North side of Burton St., 400 feet west of Beech Lane, Lot 5, 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. John and Sandra Fisher were sworn in and testified, requesting to place a 1982, 14'x 69' manufactured home on property they are purchasing for their use. They stated there are other manufactured homes in the area.

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. 5455--Cynthia & Rodney McBroom - South side of Route 220,  
1,750 feet northwest of Route 221.

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. Cynthia McBroom was sworn in and testified, requesting to place a 1988 or 89, 14'x 75' manufactured home on property she is under sales contract to purchase for her use. She testified that there are other manufactured homes in the area, one diagonally across the road.

V. George Carey was sworn in and testified in opposition and presented a petition to be read into the record.

Mr. Betts read the petition of opposition presented with 24 signatures.

Mr. Carey stated he was before the Board in April when the applicant applied at another location in the same area and was denied. He stated that strip development is a threat to farmers. He also stated that the existing manufactured homes are on five acres. He feels this manufactured home will be out of character with the area, since it is an agriculture area.

Karen Carey Wilkerson was sworn in and testified in opposition, stating the existing manufactured homes are on a farm for rental to the farmers farm help. She expressed concern about trash that exists, septic, water quality and feels it will ruin farmland and be an eyesore.

Francis Drury was sworn in and testified in opposition stating he is not opposed to the applicant only the manufactured home. He stated they are cleaning up the area and to permit the manufactured home will destroy what they have accomplished. He opposes strip development.

O. Joseph Penuel, owner of the property, was sworn in and testified in behalf of the applicants. He stated that this property has never been farmed or tilled, that there had been a house on the property that burned down. He stated that he has problems renting/selling property because of chicken house odors from other property. He believes the applicants will take care of the property and clean

it up.

Mr. Carey stated he fears strip development with farming and is against the manufactured home in an agricultural area.

James A. Wilkerson was sworn in and testified in opposition, stating that the names on the petition presented are in close proximity to the property. He stated he opposes for the same reasons stated and on the petition.

Dale W. Carey was sworn in and testified in opposition, stating he is against strip development. He farms his property and wants to keep the farm as it is.

Motion was made by Mr. Callaway, seconded by Mr. Wheatley that the special use exception be granted, with Mr. Mills, Mr. McCabe and Mrs. Hudson voting nay. The special use exception was denied with three voting in favor of denial and two voting against denial. The reasons for denial were: The use will adversely affect the neighborhood, the area is primarily farmland and no new manufactured homes have been put in the area, and strip development will hurt the area.

Case No. 5456--John H. Myer - North side of Route 560, 381 feet west of Route 562.

A special use exception to place a wildlife pond on less than five acres.

The case was presented by Mr. Betts. John H. Myer was sworn in and testified, requesting to place a 75'x 100' wildlife pond on his property on less than five acres. It will be located behind his house in a wooded area. There will be no fencing. He stated that there are no homes within  $\frac{1}{4}$  mile from his property. He showed and explained the location of where the pond is to be. The pond will be used for wildlife and fish. He stated he has no small children.

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. 5457--Nancy L. Zimmerman - South side of Route 279,  $\frac{1}{4}$  mile south of Route 277, Lot 18, within Angola Neck Acres.

A variance from the front yard setback requirement.

The case was presented by Mr. Betts. Nancy L. Zimmerman was sworn in and testified, requesting a 8.4' variance from the 30' front yard setback on Lot 18, Angola Neck Acres, for a porch that is already built. The encroachment was found when the property was surveyed to be put up for sale. The porch has been on the property approximately 10 years. The lot is odd shaped and on a cul-de-sac.

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, due to the odd shape of the lot.

Case No. 5458--Carlton Brown - West side of Route 485, 414 feet south of Route 20.

A special use exception to place a manufactured home to be used as a storage shed.

The case was presented by Mr. Betts. Carlton Brown was sworn in and testified, requesting to use a 14'x 70' manufactured home as a storage shed for storage of lawn equipment such as lawn mower. He stated there will be no electric in the unit and no one will live in it. The unit has been on the property approximately 7 to 8 months.

Anthony James Brooks, William Purcell Briggs and John E. Oliver were sworn in and testified in opposition.

Mr. Brooks stated the applicant does not live on the property, he rents it out. There are two manufactured homes on the property, counting the one for storage, and he has seen no lawn mowers on the property.

Mr. Briggs prefers a shed to be put on the property for storage instead of the manufactured home. He feels it creates problems with the neighbors.

Mr. Oliver questioned who will use the manufactured home for storage, he believes there are three manufactured homes on the property. He stated two have been there approximately three years. He questioned who will take care of the area around the storage manufactured home.

Mr. Brown stated the storage manufactured home will be used by the renter of the property and that there are only two units on the property. The third unit is on a separate lot.

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 Mrs. Hudson, seconded by Mr. Callaway and carried unanimously that the special use exception be denied, finding the use will adversely affect the community. There is another manufactured home on the property and questioned the need for a storage structure that large on rental property.

Case No. 5459--Barbara Ridge - Route 39B, one mile north of Route 39, Lot 15, within Bayshore Estates.

A special use exception to operate a Bed and Breakfast Inn.

The case was presented by Mr. Betts. Barbara Ridge and Thomas Ridge were sworn in and testified and were represented by James Fuqua, Attorney. Mrs. Ridge requested to operate a Bed and Breakfast Inn

in her dwelling, located on Lot 15, Bayshore Estates, Prime Hook. Mr. Fuqua stated that the dwelling is Mrs. Ridge's permanent residence and she will reside there and operate the Bed and Breakfast. An exhibit was presented, Southern Delaware Magazine Article, pertaining to the Ridge residence. They propose to have a limit of two bedrooms to be used, that will house two people per room. The dwelling has three bedrooms and three bathrooms, but one bedroom will be used by Mr. & Mrs. Ridge. There will be a continental breakfast served, but no sit down lunch or dinner will be served. A picnic basket could be prepared. There is to be no addition or construction done on the dwelling. There will be a 21"x 39" sign only with the name of the Bed and Breakfast on it, "The View". It will not advertise as a Bed and Breakfast. Mr. Fuqua stated there are marsh and wetlands and the bay on either side of the property. He stated the area is residential with rentals in the area, 22 to 24 in the summer. He stated that there will be no noise because Mrs. Ridge will be living there. He feels there will be no impact to the area or to wildlife. The only additional traffic will be two vehicles. Mrs. Ridge has a large parking area, to provide five on site parking spaces. The dwelling has sewer and central water. They feel there is a need for a Bed and Breakfast in the area. There will be a two or three day average stay mostly weekends. A petition with 48 signatures of neighbors in support was presented. Mr. Fuqua referenced letters of support and character references in the file to be exhibits. He read a letter in favor from Mary Slattery addressed to Mr. Lawrence Lank. The letter was submitted for the record. He also referred to a letter from Anthony Ruszkowski in opposition that was received, and presented a note from Mr. Ruszkowski withdrawing the letter. Mr. Fuqua in referencing private deed restrictions stated the Board has no jurisdiction or authority to address private restrictions. He stated the use will remain residential and more controlled than renting property. He feels there will be no adverse affect on the area. He referenced things permitted as Home Occupation and submitted the definition according to the Zoning Code. Mr. Fuqua submitted seven conditions he hopes the Board will attach if approved. They are as follows: 1) There shall be no more than two (2) quest bedrooms available to the public, with a maximum of four (4) quests. 2) Meals will be available only to quests, not the general public. 3) There shall be no cooking facilities of any nature permitted in a quest room. 4) The operation of the bed and breakfast shall be subject to on site supervision by the owners. 5) No commercial signs shall be permitted, with the exception of one sign stating "The Views", no more than 21"x 39". 6) Off street parking shall be provided for at least five (5) vehicles. 7) The special use exception shall be limited to the operation of the applicant, Barbara Ridge, and shall terminate upon transfer of her ownership. Mr. Fuqua stated the Code permits six rooms and they will have no more than two. The noise and traffic will be less extensive than renting homes. Mrs. Ridge stated the Bed and Breakfast will be a supplement to their income.

After a question by the Board, it was stated that 20 names on the petition live there year round.

Mr. Betts gave a summary of the letters received in opposition from Bernard J. Conaway, Albert & Rose Cavalieri, Anthony Ruszkowski, Gorman & Hazel Brooks and Joseph McFaul.

Mr. Betts gave summary of the letters received in support from Lewes Chamber of Commerce, JoAnne LaMere, Executive Director; Town of Milton, Florence Balentine, Administrative Assistant; June Riggin; Ann & Charles Darling; James J. Toevs; Daniel Webster; Milton Chamber of Commerce, Charles Fleetwood, President; Cynthia & Matthew Golminiak; Amanda Lucks, Owner of The Inn at Canal Square; Tony Boyd Heron, Owner of Capt. William Russell House; Delaware State Chamber of Commerce, John Burris, President, and limited support from Robin and Richard Weiner. Also referenced character reference letters from V. George Carey, Sen. Thurman Adams and Sen. Robert Voshell. A letter from the Sussex County Convention and Tourism Commission, Cynthia Small, Executive Director, apologizing for advertising a Bed and Breakfast before the hearing.

Charles Ulrich was sworn in and testified in behalf of the application, referencing, renters, cars, being better maintained.

Anthony Donald Boyd Heron was sworn in and testified that he has a Bed and Breakfast in Milton and feels there is a need for as many Bed and Breakfast's as they can have for tourism away from the Ocean areas, to show other areas of the County. He feels Bed and Breakfast's have an upper market of guests and they don't get rowdy.

June Riggin was sworn in and testified in behalf of the application. She stated that she lives in Prime Hook Beach. She feels the Ridge's home is very upscale and an asset to the area, and will increase the property values.

Jim Tees was sworn in and testified questioning what happens if the property is sold.

Mr. Fuqua stated that one of the conditions presented states that the use be limited to the operation by the applicant and will terminate upon transfer of her ownership.

Mr. Jones, Attorney, stated that the Board can impose conditions if approved.

Craig Karsnitz, Attorney, was present and represented Theodore W. Jones, who was sworn in and testified in opposition. Copies of deed restrictions were presented. He feels the property will be hard to police in regards to using only two rooms. He referenced property being sold and the continuation of the use.

Mr. Jones explained his property and where he owns. Pictures of the roadway (access) were presented and explained. He explained concern about parking. Mr. Jones read a prepared statement, referencing restrictions and reasons of opposition. He also stated Milford made reference before the use is approved.

Mr. Karsnitz made reference to letters that had been received and the Bed and Breakfast violation of deed restrictions.

Ronald Vernon Goodwin was sworn in and testified in opposition. He presented a copy of the tax map and listed property owners. He feels the use is a business and that Mrs. Ridge was aware of the deed restrictions, and referenced a deed signed by Mrs. Ridge. He also stated that the access road and beach to mean high tide are private owned. He feels the Board does not have the right to approve

a commercial use on a private road. He does not want the patrons of the Bed and Breakfast Inn to trespass on private property. He showed a map of the Prime Hook area, the map being from DNREC. Mr. Goodwin feels the use will have a detrimental affect on the area and will set a precedent for more business's to come. He also made mention of a quote in the Southern Delaware Magazine Article presented, made by the Ridge's as saying, "Will sleep 13 people".

Joseph McFaul was sworn in and testified that the area is residential with no commercial. He stated the only protection they have is the County. He stated reasons of opposition as traffic, parking, access to the property and from the property, one way street in and out with limited use, change of ownership and feels it does not work to put a business in a residential area. He feels property will deflate.

Alice Hornberger was sworn in and testified in opposition, preferring to keep the area as it is. She feels the use will not go away if precedent is set.

Karen Ulrich was present and affirmed. She stated she is in favor of the Bed and Breakfast. She is owner of a Bed and Breakfast in Lewes. She feels property rentals are also a business and it is done in the area. She feels the quality of people are different in a Bed and Breakfast. She feels the applicants will have a quality Bed and Breakfast.

Mrs. Riggins stated that there are a number of properties in Prime Hook that are rented, some all summer with as many as 10 to 15 people.

Lisa G. Jones, daughter of Theodore Jones, was sworn in and testified in opposition, for the same reasons previously given. She stated that she does not live in Prime Hook.

Mr. Fuqua in rebuttal stated it is to be a two bedroom Bed and Breakfast. He also stated they have right to use the road, that a maximum of two cars will be added. He referenced it is for residential purposes, and also referenced Wayne Jones, nephew of Theodore Jones as one of the signatures on the petition in support. He feels the Board must deal with the facts and not emotions.

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. Callaway, seconded by Mrs. Hudson that the special use exception be denied, with Mr. McCabe voting in favor. Motion carried with three voting in favor of denial and one voting against denial. Vote being 3 to 1.

The reasons for denial were: An increase in traffic, will substantially adversely affect the immediate properties, private beach, private road, patrons would trespass on private property and on private road regardless of restrictions, a commercial nature more than a private nature.

Mr. Mills, Board Member, left the meeting for the remainder of the evening, during Case No. 5459, for personal reasons.

Case No. 5460--Joseph & Evelyn Poole - East side of Route 275,  
200 feet south of Route 276.

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. Joseph Poole was sworn in and testified, requesting to place a 1994 or 95, 28'x 50' double-wide manufactured home on property they are purchasing for their own use. They testified there are two other manufactured homes in the area down the road and there is no one within 200' of where they propose to locate. They feel a new manufactured home will keep the property up.

Donnie Evita Witke was sworn in and testified in behalf of the request. She stated she will live in the area in the future and has no objections.

Robert Witsil, Attorney, was present and represented Glenden Jackson, Sonya Jackson and Raymond Dechene who were sworn in and testified in opposition. Mr. Witsil referenced the tax map and ownership of the property. He stated the applicants have not yet purchased the property. He feels the manufactured home will have a detrimental affect on the property values. Property value statement, survey and pictures were presented. He stated there are no manufactured homes on Route 275. He presented Finding of Facts he had prepared.

Mr. Jackson stated he has lived on the property in a stick-built house for 14 years. He stated there are no other manufactured homes in the immediate area. He feels a manufactured home does not hold the value like a stick-built home. He feels the owner of the property is planning to subdivide the property further and more manufactured homes could come into the area. A letter of opposition from Vasilios Kopsidas was presented.

Mr. Dechene stated his property has an appraised value of \$98,000. He is currently a student, but will be living there. He feels the manufactured home will have an adverse affect on his property. He feels the noise and dust and the possibility of further development could be detrimental to his property.

Mr. Witsil feels the property owner should apply for a GR District for what they want.

Mrs. Poole stated she has no control over what her mother (the property owner) plans to do with the property.

Arthur Lee Jones, affirmed, and spoke in opposition to the manufactured home.

Mr. Betts read the letter of opposition presented.

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 Mrs.

Callaway, seconded by Mr. Wheatley and carried unanimously that the special use exception be denied, finding the use will have an adverse affect on the immediate area and only one other manufactured home in the immediate area. The Finding of Facts were adopted as presented.

Case No. 5461--Robert Alexander West side of Marlinton Road,  
 $\frac{1}{4}$  mile south of Route 358, Lot 31, Sec.  
1, within Cedar Landing.

A variance from the front yard setback requirement.

The case was presented by Mr. Betts. Roy Joseph, Building Contractor, was sworn in and testified, representing the applicant, who requested a 18.1' variance from the 30' front yard setback for a house to be constructed on Lot 31, Cedar Landing. He stated that if the dwelling is cut down in size it will affect the layout and look of it. It was stated that if the deck was removed a smaller variance would be needed. He stated there is an Association in Cedar Landing.

Mr. Betts stated that no correspondence had been received from the Association.

There were no parties present in opposition.

Motion was made by Mr. Callaway, seconded by Mr. Wheatley and carried unanimously that the variance be granted, due to the odd shape of the lot and will not have an adverse affect on the area.

Case No. 5462--John D. & Mary A. Vittek - North side of Route 382,  
 $\frac{1}{2}$  mile west of Route 381, Lot 10, within  
Swann Estates.

A variance from the rear yard setback requirement.

The case was presented by Mr. Betts. John & Mary Vittek were sworn in and testified, requesting a 4' variance from the rear yard setback of 20' to be 16', for a sunroom, on Lot 10 in Swann Estates. They stated that because of odors related to farming, they cannot sit outside. They would like to construct a sunroom.

Mr. Betts read a letter in support from Lenny & Mary Holland.

There were no parties present in opposition.

Motion was made by Mr. Wheatley, seconded by Mr. Callaway and carried unanimously that the variance be granted, finding the use will not adversely affect the area.

Case No. 5463--Thomas & Miriam Reed - North side of Route 297,  
500 feet east of Route 308, Lot 21, within  
Indian Town Farms.

A variance from the front yard setback requirement.

The case was presented by Mr. Betts. Thomas Reed was sworn in and testified, requesting a 4.2' variance from the front property line

setback of 30' to be 25.8', for an existing pumphouse on Lot 21, Indian Town Farms. The pumphouse has been on the property approximately 16 years and Mr. Reed wishes it to remain at its present location. The encroachment was found due to the property being sold.

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.

Case No. 5464--Holly Carmack -West side of Route 376, one mile north of Route 377.

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. Holly Carmack was sworn in and testified, requesting to place a manufactured home on her property for her son to live in. She stated her sons name will be put on the deed to the land. She stated there are no other manufactured homes in the immediate area and she will not live on the property. There are stick-built homes in the area.

Gregg McCabe was sworn in and testified in opposition stating the manufactured home will be inconsistent with the character of the neighborhood, and with farmland there, it could cause problems.

Anna M. Davis was sworn in and testified that she inherited her mothers property located in the area and to have a manufactured home so close to her property could cause problems if she decides to live there or sell it.

Julius Airey, owner of property directly across the road, was sworn in and testified in opposition, stating that the property has a house on it now, that would create two residences. He stated that Ms. Carmack rents the house out. He feels the use will decrease property values in the area.

Ms. Carmack stated she is subdividing the property.

Helen & Paul Hudson were sworn in and testified in opposition, stating they own property across the road. They feel if permitted more could come. They feel it will degrade their property. Mrs. Hudson stated there is nothing personal against the applicant, but she agrees with what has been said.

Ruth Ann Burton was sworn in and testified in opposition, stating a manufactured home is not needed in the area. Nothing personal against the applicant.

Motion was made by Mrs. Hudson, seconded by Mr. Wheatley and carried unanimously that the special use exception be denied. finding there are no other manufactured homes in the area, the use will adversely affect the area and they agree with the statements of opposition made.

Case No. 5465--Jack Lingo, Inc. - Realtor - Northeast side of Route One, 200 feet southeast of Route 270A.

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

The case was presented by Mr. Betts. Bill Lingo, Vice President of Jack Lingo, Inc., was sworn in and testified, representing the application. The applicant would like to place a billboard on their property to advertise their business. The sign will be placed on Route 1. He testified the billboard is needed to be able to compete with other Realtors. They will advertise on both sides of the billboard. He testified there are other billboards on the property, but none within 300 feet.

There were no parties present in opposition.

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

Case No. 5466--Barbara Eckert, Administratrix of the Estate of Paul F. Newlin - Southwest of Route 5, ¼ mile northwest of Route 306A, Lot 7, Subdivision of Lands of Harbeson and Marian Warrington.

A variance from the side yard setback requirement.

The case was presented by Mr. Betts. Barbara Eckert was sworn in and testified and was represented by Norman Barnett, Attorney. The applicant requested a 2.1' variance from the side yard setback on Lot 7, Lands of Marian Warrington. Mr. Barnett stated the variance is needed for a garage that has been on the property since 1972. The encroachment was discovered when the applicant went to sell the property.

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.

Meeting adjourned at 10:43 P. M.