

Minutes of September 28, 1992

The regular meeting of the Sussex County Board of Adjustment was held after due notice on September 28, 1992, in the County Council Chambers, Room 115, Courthouse, Georgetown, Delaware.

The meeting was called to order at 7:03 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 Mrs. Hudson, seconded by Mr. Wheatley and carried unanimously that the minutes of September 14, 1992 be approved as circulated.

Case No. 4900--Norman C. Pemberton - East side of Route 350, 200 feet south of Route 349.

A variance from the side yard setback requirement.

The case was presented by Mr. Betts. Norman Pemberton was sworn in and testified, requesting an 8' variance from the 10' side yard setback to be 2', on Lot 50, within Banks Acres. Mr. Pemberton built an attached garage to his home a few years ago and now finds it is too close to the side property line. The house was constructed on an angle therefore, the garage was built on an angle. The lot is odd shaped. A petition with neighbors signatures was presented in favor of the variance.

Mr. Betts read a letter from Mildred Edmondson in behalf of the variance. The petition presented with 13 signatures was also read by Mr. Betts.

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, due to odd shape of the lot.

Case No. 4901--Joseph Patrick Pfeifer - Northeast side of Route 224, 1,850 feet southeast of Route 594, Lot 13, within Willow Point.

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 Pfeifer was sworn in and testified, requesting to place a 14'x 70' (probably a 1988), manufactured home on property he is purchasing for his residence. The property being Lot 13, within Willow Point.

Mr. Betts read six letters of opposition to this case and Case No. 4906 (to be heard) in the same area, from H. Grier Stayton, Robert F. McCartney, Lillie L. McCartney, G. Scott Rose, Irene Webb and Marie Smith.

Arthur J. Schroeder was sworn in and testified stating that when he bought his property he was told he could not put a manufactured home on the property. He stated there are two single-wide manufactured homes across the street. He stated that he is not opposed but concerned.

The applicant stated he plans to put an addition on the manufactured home that will conceal it looking like a manufactured home.

George Scott Rose was sworn in and testified in opposition, stating he is approximately  $\frac{1}{4}$  mile away. He testified how the property was subdivided and that the lots are long in size, also that 8 lots remain that would be eligible for manufactured homes if this one is approved. He feels that the area was not intended to be a strip of manufactured homes.

Ralph J. Kahoe, Jr. was sworn in and testified in opposition stating he owns a farm approximately  $\frac{1}{2}$  mile away from the development. He opposes manufactured homes going in the area. He feels the law is for five acres to place a manufactured home and if they are going to allow less they should not have the law.

Andrea Perpetua was sworn in and testified in behalf of the request. She explained that she has a septic system on her lot (Case No. 4906) and will request to place a 28'x 60' manufactured home on her lot. She feels it will be comparable to homes in the area. She is in favor if it is not permanent.

Mr. Pfeifer stated he will purchase two lots, put a manufactured home (if approved) on one lot and construct a home on the other. When he has the home completed, he will move in it and sell the manufactured home. He asked to at least have the manufactured home granted for one (1) year to give him time to build his home and he will only purchase one lot.

Motion was made by Mr. Wheatley, 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 Mr. Mills, seconded by Mr. Callaway and carried unanimously that the special use exception be denied, finding the manufactured home would adversely affect the uses on adjacent and neighboring properties, devalue the stick-built homes and the property can be utilized in other ways.

Case No. 4902--Todd Michael Clark - South side of Route 471, 600 feet west of Route 431.

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. Todd Michael Clark was sworn in and testified requesting to maintain his manufactured home

on property less than five acres for his residence. Mr. Clark stated that the manufactured home has been on his father's 13 acres as on farm manufactured home. His father is giving him one acre of land with the manufactured home on it. Board approval is needed to keep the manufactured home on the property. The manufactured home has been on the property for nine years. He stated that there are other manufactured homes in the area.

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, due the unit being on the property for nine years, that there are other manufactured homes in the area and it will not affect the area.

Case No. 4903--Nathaniel Justice - North side of Route 417, 700 feet east of Route 417A.

A special use exception to place a manufactured home in an AR-1 District as a second on farm residence.

The case was presented by Mr. Betts. Nathaniel Justice was sworn in and testified, requesting to place a second manufactured home on property 2.49 acres with chicken houses as an on farm unit for his father to live in and help with the chickens. Mr. Justice had a Conditional Use approval for the chicken houses on 2.49 acres, approved by the Planning and Zoning Commission. Mr. Justice does not live on the property. There is an existing house and a manufactured home that is a rental unit on the property now.

Mr. Jones, Attorney, stated that because the Planning and Zoning Commission permitted by Conditional Use, the chicken houses to be considered on farm of less than five acres, does not give the Board the right to grant the unit as on farm, since the Zoning Code states a farm of five (5) acres or more. He stated he needs to know what the Conditional Use states.

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. Wheatley and carried unanimously that the case be tabled to give Mr. Betts time to research the Conditional Use.

Case No. 4904--Geraldine W. Burris - Northwest side of Route 600, on the northeast side of the intersection with Route 599.

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. Harold R. Burris was sworn in and testified, representing the applicant who requested to

place a 12'x 65' or larger and 1985 or newer manufactured home on her property for her residence. He testified 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.

Case No. 4905--Barbara Ayers - Southeast side of Route 365, 2,200 feet northeast of Route 353.

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. Barbara Ayers was sworn in and testified, requesting to place a 1985, 14'x 65' manufactured home on property she is purchasing for her residence. She stated there are other manufactured homes in the area.

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. 4906--Romy & Andrea Perpetua - Northeast side of Route 224, 2,550 feet southeast of Route 594, Lot 9, within Willow Point.

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. Romy Perpetua was sworn in and testified. Andrea Perpetua sworn in on Case No. 4901 also testified. They requested to place a manufactured home on Lot 9, within Willow Point.

Mr. Jones, Attorney, stated that all evidence presented on Case No. 4901 will be incorporated into this case.

Mrs. Perpetua stated that all the neighbors opposing the cases are within  $\frac{1}{4}$  to  $\frac{1}{2}$  miles of their property. She stated that the manufactured homes across the road are on five acres. She testified that they will keep their manufactured home in good appearance. They feel that some manufactured homes are built as well as some dwellings. They have their septic system installed. Mr. Perpetua stated that due to cost, if they build a home, it will be smaller than the 28'x 60' double-wide manufactured home they propose to put on the property. The unit will be on a permanent foundation. They propose to add decks.

Mr. Rose who was sworn in on Case No. 4901, spoke in opposition to this case. His testimony on Case No. 4901 was incorporated into this case. He stated that the comments made were not directed at the applicants. He feels a manufactured home will encourage more to come.

Motion was made by Mr. Callaway, 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 Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the special use exception be denied, finding the manufactured home would adversely affect the uses on adjacent and neighboring properties, devalue the stick-built homes and the property can be utilized in other ways.

Case No. 4907--Rudolph & Alice L. Johnson - West side of Route One, on the north side of the intersection of Route 276.

A variance from the front yard setback requirement.

The case was presented by Mr. Betts. Rudolph & Alice Johnson were sworn in and testified, requesting a 30' variance from the 40' front yard setback for a display for their business, which is new and used furniture. Mr. Johnson stated that the business has been there for 12 years and the display is beneficial to their business. They were before the Board and denied a smaller variance at a previous hearing. They keep their business open all year and the display outside weather permitting. They close at 5:00 P. M. They do not feel that their display interferes with traffic. A petition of signatures of customers was submitted.

Keith Parsell was sworn in and testified in behalf of the application stating that he too is a business man and he feels the applicant has a small parcel of land and needs the variance. He has purchased things from the applicants and always feels they are not open when there is no display. The property is small and borders three roads.

Jane Brady, Attorney, was present and testified in behalf of the variance, stating she has purchased things from the applicants and that their display does not interfere with traffic.

Robert Kreager, who works for Sussex County Community Action, was sworn in and testified in behalf of the request. He encourages the type of business the applicants have.

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. 4908--Robert Bower - West side of Route 225, 3,000 feet south of Route 211.

A special use exception to expand a non-conforming use and a variance from the front yard setback requirement.

The case was presented by Mr. Betts. Robert Nash was sworn in and testified, representing the applicant, who requested a 12'

variance from the 40' front yard setback requirement and a special use exception to expand a non-conforming use. The applicant has a service station and wants to add a 16'x 32' addition to keep vehicles inside. This is their first extension.

Mr. Betts stated that an extension to a non-conforming use can have a floor area not to exceed 25% of the existing use, therefore, the applicant would only be allowed 463.45 sq. ft. and not the 512 sq.ft. applied for.

Mr. Jones, Attorney, also stated that the cost of the extension cannot exceed 50% of the replacement value of the existing building.

Mr. Nash stated it would not exceed 50% of the replacement value and he assumed Mr. Bower could reduce the size of the addition. Mr. Nash stated that a side yard variance is also needed, but is not on the application.

Mr. Jones explained to Mr. Nash that the Board could not consider the side yard variance since it had not been advertised. The applicant would have to reapply.

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 for a maximum of 463.45 square feet and the variance requested be granted.

Case No. 4909--Lloyd T. Morris - Northwest of Route 277, 500 feet northeast of Route 287, Lot 2B, within Joseph L. Morris 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. Lloyd T. Morris and Laura Morris were sworn in and testified, and were represented by Jane Brady, Attorney. The applicant requested to place a 14'x 70' manufactured home on his property for his permanent residence. Ms. Brady stated that Mr. Morris had previously been before the Board for approval to place a manufactured home on another lot, but found he could not safely situate the manufactured home on the property, which is near water. He now proposes to place a manufactured home on Lot 2B, with Joseph Morris Subdivision. He stated that he owns the property and has septic approval. He proposes to sell the previously approved manufactured home. He stated that there are five other manufactured homes in the area.

Marjorie Kreiper was sworn in and testified questioning how long Mr. Morris intends to live in the manufactured home, since he is moving out of a double-wide into the single-wide. She stated he had proposed to move out of the area.

Mr. Morris stated he cannot sell the property so he wants to move from his double-wide into his single-wide.

Sandra Zanks was sworn in and testified in opposition, stating that she has a house in the area. They have a single-wide manufactured home they are moving off as soon as they have completed their home. She feels a single-wide manufactured home will devalue their home, and she is concerned whether Mr. Morris will stay in the manufactured home. She does not want the area to look like a manufactured home park.

Joseph Zanks was sworn in and testified in opposition, stating he is building a \$100,000.00 home and will eliminate his manufactured home. He opposes a single-wide manufactured home.

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 case be tabled.

Case No. 4910--William J. & Michele R. McCabe - West side of Route 82, 264 feet south of Route 411.

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 J. & Michele McCabe were sworn in and testified, requesting to place a new 28'x 60' manufactured home with foundation on their property for their permanent residence. They stated there are three other manufactured homes in the area, the furthest is 500' away.

There were no parties present in opposition.

Motion was made by Mr. Callaway, seconded by Mr. Mills that the special use exception be granted, with Mrs. Hudson not voting. Motion carried with four voting in favor and one not voting.

Case No. 4911--Kerry & Crystal King - West side of Route 535, 1/2 mile south of Route 46, Lot 8, 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. Kerry King was sworn in and testified, requesting to place a 1980, 14'x 70' manufactured home on property they are purchasing being Lot 8, within Indian Village, for their permanent residence. He stated there are other manufactured homes in the area. The applicants were previously denied their request for a manufactured home at this location, for failure to appear at the meeting. They requested and were granted a rehearing.

There were no parties present in opposition.

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

OLD BUSINESS

Case No. 4887 (cont'd.)--DMDY Limited - Southeast side of Route 350,  $\frac{1}{2}$  mile east of Route 349, Lot 7, within Denton Woods.

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

The case was reviewed by Mr. Betts.

Mr. Jones, Attorney, responded to the Attorney's remarks about the building permit and setbacks that were brought out at the public hearing.

After some discussion, motion was made by Mr. Wheatley and seconded by Mr. Callaway that the variance be denied, with Mr. McCabe voting in favor. Motion carried with four voting for denial and one voting in favor. Findings for denial were: Th applicants did not meet the requirements for the granting of a variance, they can use the property and meet the setbacks by making the dwelling smaller, there is nothing unique about the property, could have repositioned the dwelling and the builder should have known the setbacks.

Case No. 4896 (Cont'd.)--Marion McConnell Lassen, et.al. - West side of Hall Avenue, 500 feet east of Route One, Lot 16, within The Chancellery.

A variance from the side yard setback requirement.

The case was reviewed by Mr. Betts.

Mr. Jones, Attorney, stated that he has determined the property to be on a corner lot. He referenced the Zoning Code.

After some discussion, motion was made by Mr. Wheatley, seconded by Mr. Callaway and carried unanimously that the variance be granted, due to the unique physical conditions causing the unnecessary hardships, the owner did not create the hardship, the essential character of the neighborhood will not be affected by granting a five foot variance, corner lot next to open area, and they are requesting the minimum amount of variance.

OTHER BUSINESS

Case No. 4533--Clifford Lyon

Mr. Betts stated that a request had been received asking for an amendment to Mr. Lyon's variance approval on October 7, 1991. Mr. Lyon had requested a 5'6" variance on Lot 7W, Rehoboth Bay Park. They wish to adjust the variance to be 6'2".

After some discussion, motion was made by Mrs. Hudson, seconded by Mr. Mills and carried unanimously to amend the variance for Case No. 4533 to 6'2".

Case No. 4532--Stephen & Kelli McCulloch

Mr. Betts read a letter from James Griffin, Attorney, in behalf of Stephen & Kelli McCulloch, requesting a one (1) year time extension for their variance that was approved on October 7, 1991.

After some discussion, motion was made by Mrs. Hudson, seconded by Mr. Wheatley and carried unanimously that a one (1) year time extension be granted for Case No. 4532, provided the stipulation has been carried out.

DISCUSSION

Jerry Edge

Mr. Betts told the Board that he had spoken with Mr. Edge and he was told the manufactured home has a buyer and it is to be removed. A notarized statement to that affect is to be submitted by Jerry Edge, by October 1, 1992.

Meeting adjourned at 9:28 P. M.