

Minutes of October 5, 1992

The regular meeting of the Sussex County Board of Adjustment was held after due notice on October 5, 1992, 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. Wheatley, Mrs. Hudson, Mr. Mills, Mr. Callaway, Mr. Jones-Attorney and Mr. Betts-Zoning Inspector III.

Motion was made by Mr. Wheatley, seconded by Mrs. Hudson and carried unanimously that the minutes of September 28, 1992 be approved as circulated.

Case No. 4912--Ethel Breasure - Southeast side of Route 321, $\frac{1}{2}$ mile northeast of Route 322.

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

The case was presented by Mr. Betts.

There were no parties present in behalf of this case. The case was referred back to at the conclusion of the public hearings.

Ethel Breasure was sworn in and testified requesting to place a 1976 or 1977, 12' x 65' manufactured home on her property on basis of hardship for her daughter, daughter's fiance, and her daughter's two children to live in and also help with taking care of her father who is disabled and also help with taking care of the chickens, while Mrs. Breasure works to provide income. Mrs. Breasure stated that she has septic approval.

Mr. Betts stated that a letter had been received from a doctor referencing Mr. Breasure's health.

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

Case No. 4913--Allen's Auto Sales - Southwest side of Route One, 436 feet northwest of Route 276.

A variance from the front yard setback requirement.

The case was presented by Mr. Betts. Allen Houghy was sworn in and testified, requesting a 24' variance from the 25' setback requirement from the front yard property line. Mr. Houghy stated that he has a used car business on the property and needs the variance to be able to display cars. He can only have one row of cars and therefore, he has to put a display in the rear of the property where there is a 11'x 11' building on the property that also does not allow too much display. By not being able to

display more cars and closer to the front property line, he loses customers, because they will not go in the rear of the property. He has 50 vehicles on the property. Because of the display in the rear, he has been bothered with theft and destruction to his automobiles. There is also a business next to his property that blocks the view and causes a hardship to him. The variance would help his business.

There were no parties present in opposition.

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

Case No. 4914--Boardwalk Builders, Inc. - East side of Route One,
3/4 mile north of Route 360, Lot 20,
within The Preserve.

A variance from the height requirement.

The case was presented by Mr. Betts. Patricia Hamilton, builder, was sworn in and testified, representing Boardwalk Builders, Inc., who requested a 1.93' variance from the height requirement for a house on Lot 20, The Preserve. Ms. Hamilton stated that an error was made when the dwelling was designed for a first floor elevation of 10 feet. The building permit notes the requirement for the elevation is 9', but the design error was not noted until construction was completed. Ms. Hamilton stated the 10' elevation was provided by telephone conversation with the Planning and Zoning Office. The building permit was correct. There are separate roofs on the dwelling. The midpoint of the upper roof exceeds the height requirement. To correct the error would mean raising the house and cut-off pilings or re-do the roof. It would be up to the builder to correct the error. It was pointed out even with the 10' elevation the house would be in violation.

Mr. Betts read from letters sent in favor of the variance and sent from: Richard Huberman, M.D., Richard Bishop, Rocco and Nancy Ortenzio, John and Sally Christensen, Carol Bliss, John W. Bigelow, DDS, Tony Coelho, Ron and Betsy Brino, Michael Mooney, and Gerald E. Gilbert.

Jennifer McCann was sworn in and testified representing Thompson Architects who did the design for the house. She testified in behalf of the requested variance.

There were no parties present in opposition.

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

Case No. 4915--Tony & Theresa Barcola - East side of Route 274,
1,000 feet southwest of Route One, Lot 49,
within Pine Valley Mobile Home Park.

A variance from the setback requirement between units in a park.

The case was presented by Mr. Betts. Tony and Theresa Barcola were sworn in and testified, requesting a 5' variance from the variance between units on Lot 49, Pine Valley Mobile Home Park. A 20' setback is required. Mr. Barcola stated that he had a 12'x 20' room addition on his manufactured home and added a 12'x 12' room addition to accommodate his grandchildren and for storage. More living space is needed. The addition will be no closer than what exists. Mr. Barcola stated that there are two sheds on the property, one of which will be removed, the other put at a different location. The addition that exists is also in violation. It has been on the property for approximately four years and the violation was discovered when he went for a permit for the new addition.

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 variance be granted, with the stipulation that the two sheds on the property be removed.

Case No. 4916--Earl S. Norwood - North side of Route 302, 1.1 miles east of Route 48.

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

The case was presented by Mr. Betts. Earl S. Norwood was sworn in and testified, requesting to place a 3rd. manufactured home on farm owned by Betty Miller, one of John Harmon Hrs. He stated that there are two other manufactured homes on the property occupied by Mrs. Miller's son and the other owned by her brother. The house on the property is occupied by Mrs. Miller. None of the occupants work on the farm and Mr. Norwood will not work on the farm either. Mr. Norwood is a distant relative. He stated that there are five owners of the property.

Mr Jones, Attorney, explained the Zoning Code which states that a manufactured home on a farm must be occupied by a employee or immediate member of the family.

Thomas Harmon, one of the owners of the property, was sworn in and testified in opposition. He explained that the property will be split into five parcels and he has not given his consent for Mr. Norwood to live on the property. He asked that the case be tabled until the property subdivision is completed.

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. Mills, seconded by Mrs. Hudson and carried unanimously that the special use exception be denied, finding that Mr. Norwood is not a immediate family member.

Case No. 4917--Patrick D. & Patti Davidson Gallagher - West side of Route 18, at the intersection with Route 263, Lot 29, within Savannah Place.

A variance from the side yard setback requirement.

The case was presented by Mr. Betts. Patrick Gallagher was sworn in and testified and was represented by Tom Stumpf, Attorney. Mr. Gallagher requested a 5' variance from the side property line of 15' to be 14.5' for a garage. Mr. Stumpf stated that the applicant had a dwelling and unattached garage on the property, being Lot 29, Savannah Place. He connected the house and garage with a breezeway, making the garage too close to the side property line. Once attached to the house it becomes a part of the house and the setbacks are greater. He stated it would cause an economical hardship to remove or replace the garage.

There were no parties present in opposition.

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

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Case No. 4918--Richard Earl Tucker - South side of Route 54, 3,000 feet east of Route 389.

A special use exception to operate a golf driving range.

The case was presented by Mr. Betts. Richard Tucker was sworn in and testified and was represented by Larry Fifer, Attorney. Mr. Tucker requested a special use exception to operate a golf driving range. Mr. Fifer stated that the property is currently agriculture and Mr. Tucker has a sales contract contingent on the approval tonight. Mr. Tucker stated he will be involved with the management of the range, that there will be no traffic increase, no fencing, will be lighted for use at night and that the nearest dwelling is approximately 1000' away. He is not aware of any development proposed for the area. The property will contain 15 acres. He stated that there will be no double decking and the lighting will face the field away from the neighboring areas.

Joe Conaway, Agent for the seller, was sworn in and testified in behalf of the application. He stated that the owners, Buntings Nurseries, owns surrounding property and they do not oppose the requested use. He stated they have not received any calls or complaints.

There were no parties present in opposition.

Motion was made by Mrs. Hudson, 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 Mr. Wheatley, seconded by Mr. Mills and carried unanimously that the special use exception be granted for a period of five (5) years.

Case No. 4919--Pearley M. Thomas - East side of Route 576, 1,850 north of Route 31.

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

The case was presented by Mr. Betts. Pearley Thomas was sworn in and testified, requesting to continue the use of her 10'x 50' manufactured home on her property as a permanent residence. Ms. Thomas stated that the manufactured home was placed on her property as emergency permit last December (1991). She would like the manufactured home to remain as her residence, at least until she can rebuild the home that was destroyed by fire. She has started to remove the remains of the burned house, but a portion with the bathroom and the foundation remain. She questioned whether she could add on to the manufactured home if she chooses to keep it there rather than rebuild.

Cornell Thomas was sworn in and testified in behalf of the requested manufactured home. He stated that she wants to rebuild but because of insurance problems she may not be able to, therefore, she would want to stay in the manufactured home.

It was explained to the applicant that if she rebuilds, the manufactured home (if approved) would have to be removed when the house is completed.

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 Mr. Wheatley, seconded by Mrs. Hudson and carried unanimously that the special use exception be granted, with the stipulation that the manufactured home be placed according to County requirements, that it is hooked-up to proper septic system and work must be completed within two years to the house if rebuilding is to be done, at which time the manufactured home will then be removed.

Case No. 4920--Kenneth Charles Hudson - Southwest side of Route 20, 175 feet northwest of Route 446.

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. Kenneth Hudson was sworn in and testified, requesting to place a 1993, 14'x 80' manufactured home on property that will be deeded to him by his parents, for his

residence. He testified that there are other manufactured homes in the area, one being directly across the road. He sometime in the future when the manufactured home is paid for, plans to build a home.

Deborah Hudson, mother, was sworn in and testified in behalf of the application explaining that they are giving their son the land. She lives in a house next to 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. 4921--Atlantic Investments Group, Inc. - Southwest side of Route 54, abutting Roosevelt Avenue, within Cape Windsor.

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

The case was presented by Mr. Betts. Jeff Clark, Land Tech, Inc., was sworn in and testified representing the application. They are requesting a special use exception to operate a Bed and Breakfast Facility for this case and Case No. 4922.

Mr. Jones, Attorney, stated that both cases would be heard together and all testimony would be incorporated into Case No. 4922.

Mr. Clark presented an exhibit illustrating the property on a larger scale. He explained what is in the area. The property is located on the southwest side of Route 54, abutting Roosevelt Ave. in Cape Windsor, and the only access to the property is by boat. The applicants have an agreement with Jerry Adkins to use his boat dock. There will be 12 parking spaces available to the people staying in the Bed and Breakfast. They will be carried to the site by boat to stay. On site well and waste water systems will be provided. There will be no change in the zoning which permits two single-family houses. There will be six sleeping rooms and one room for management for a total of seven (7) rooms. He stated it will be very upscale and a quiet operation. Only a continental breakfast will be served. The use complies with all wetland agencies and Mr. Adkins has approval to light the channel. There will be someone on the site at all times, as well as a boat for any emergency. There will be no cooking facilities in the rooms. There is no intention of people using individual boats. The water will be controlled by the Coast Guard. He stated that it will be a unique experience and costly to build. A letter from Skip Valliant with Sea Coast Realty was read into the record by Mr. Jones.

Mr. Betts referenced letters of opposition received from: Georgette and Harry Eck, Edward Manley, and Curtis & Barbara Vargo.

Betty Ellis was sworn in and testified in opposition stating she is a on the Board of Directors of Cape Windsor. She presented 10 letters and a petition with 158 signatures of residents who live nearby.

John Mack was sworn in and testified in opposition, representing Cape Windsor Community Association. He referenced property owners and quick claim deeds of the property. He stated that the applicants do not have access to their property without crossing their lands. They have been unable through negotiations to reach an agreement for using their property. He referenced harassment by the applicants, rejected contracts and they feel the applicants can not be trusted. He submitted material into the record relating to the property. They oppose the request even if fencing were available. He stated that there is no navigable water and no channel for the type boats they want to use.

Mrs. Ellis questioned whether some type of licensing is required to transport people.

By show of hands there were 30-plus people present in opposition.

Frank C. Chuttsman was sworn in and testified questioning if the use is going to be operated 12 months. He questioned how the fire department could respond if there is a fire and if storms come, will the County be held responsible if someone dies, if it is approved.

Mr. Clark stated that it is not initially for year round operation.

Ruth Cox-Duchesne was sworn in and testified questioning restrictions and licensing requirements.

Ruth Markle was sworn in and testified explaining how the boats would have to go out in the bay and in the canals because you cannot go direct.

John Kearney was sworn in and testified, questioning the type of septic system to be used and how it would be pumped out.

Mr. Clark stated in answer that the system would be whatever D.N.R.E.C. approves. He also stated they could not agree on an offer from Cape Windsor because of the cost. He stated that the channel was dredged by the State and he has a document to that affect. He stated that electric and telephone would be provided. As for the fire safety, he will have to have agency approvals. He stated that they propose to construct two-story structures on pilings.

Mr. Mack stated that County Employee, Russ Archet, has stated that the applicant cannot hook to County sewer without proper approvals.

Jack Cooper was sworn in and testified questioning how long Mr. Mack has lived in Cape Windsor.

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. 4922--Atlantic Investments Group, Inc. - Southwest side of Route 54, abutting Roosevelt Avenue, within Cape Windsor.

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

This case was presented at the time Case No. 4921 was presented. Jeff Clark sworn in on Case 4921 also represented this case.

All testimony on Case No. 4921 is incorporated into this case.

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. 4923--Wyneeta A. Jones - Northwest side of Route 277, 1,400 feet northeast of Route 280-B.

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 withdrawn prior to being heard.

OLD BUSINESS

Case No. 4903 (cont'd.)--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 reviewed by Mr. Betts.

Mr. Jones explained that after reviewing Mr. Justice's Conditional Use, he found the approval was to permit chicken houses on less than five acres. Therefore, the Board cannot approve the special use exception for a second on farm dwelling according to the Zoning Code.

After some discussion, motion was made by Mrs. Hudson, seconded by Mr. Mills and carried unanimously that the special use exception be denied, finding by law the Board is not allowed to approve a second manufactured home on a farm of less than five acres.

Case No. 4909 (cont'd.)--Lloyd T. Morris - Northwest side 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 reviewed by Mr. Betts.

After some discussion, motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the special use exception be granted for placement of a double-wide manufactured home only, with a permanent foundation, finding that a double-wide manufactured home better fits the area and conforms better with the homes in the area.

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

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously to reopen the meeting for discussion of Cases 4921 and 4922.

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

Meeting adjourned at 9:40 P.M.