

Minutes of December 5, 1994

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, December 5, 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, Mrs. Hudson, Mr. Mills, Mr. Wheatley, Mr. Callaway, Mr. Jones-Attorney and Mr. Betts-Zoning Inspector III.

Motion was made by Mrs. Hudson, seconded by Mr. Callaway and carried unanimously that the minutes of November 21, 1994 be approved as circulated.

Case No. 5527--Clifford Edwards - North side of Lake Avenue, east of Route 618, Lot 6, within Lakewood.

A variance from the front yard setback requirement.

The case was presented by Mr. Betts. Clifford Edwards was sworn in and testified, requesting a 11'8" variance from the 30' front yard setback requirement, on Lot 6, within Lakewood. Mr. Edwards wishes to make an addition on his dwelling that will not extend out beyond what now exists. The existing dwelling now extends out beyond the 30' requirement. The addition will meet the side and rear yard setbacks. Mr. Edwards stated that there is no Association in the development.

James Patton was sworn in and questioned where the applicants parking will be. He feels there will be less parking with the addition.

Susan Winters was sworn in and testified and explained to Mr. Patton that they currently have three cars and will go back to two. She explained how the parking will be provided.

Mr. Patton questioned whether there will be increased traffic. He stated that he has no objection if the applicant continues as he does now.

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. 5528--William R. Taylor - South side of Route 246, 382 feet east of Route 243.

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 Taylor and Lenora Marie were sworn in and testified, requesting to place a manufactured home on their property for their grandson to live in. He explained that the property and manufactured home is currently in their name, but

is set-up in trust for their grandson when he reaches age 30. At that time the deed to the property and the manufactured home will be put in the grandson's name. Mr. Taylor stated he already has two other units for other grandsons on property in trust.

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

Case No. 5529--Victor C. Hill - South side of Route 16, at the intersection of Route 44.

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. Victor Hill, III was sworn in and testified, requesting to place a 1456 sq. ft. double-wide manufactured home on property for his use. Mr. Hill stated that there are other double-wide manufactured homes in the area as well as stick-built homes.

Deborah E. Spencer was sworn in and testified with questions about the size of the manufactured home and also voiced concern over the irrigation pond that exists on the property. She stated that the pond is 20' to 30' deep.

Mr. Jones, Attorney, explained that the Board can only consider the request for a manufactured home on the property not the irrigation pond.

Mr. Hill stated that the pond is not completely on his property, that part of it is on adjacent property. Mr. Hill also stated that he does not own the property as yet.

Ms. Spencer stated she is opposed to the requested manufactured home. She feels it will devalue properties in the area. She stated there are no double-wides on their side of the road. She stated concern about children around the pond. Ms. Spencer stated she has lived on her property for 12 years.

Mary Houston was sworn in and testified in opposition stating she owns a brick home and feels a manufactured home will depreciate her property.

Bill Farlow, brother-in-law of the property owner, William Wolters selling to Mr. Hill, was sworn in and testified in behalf of the application. He stated the property has been subdivided and approved by Planning and Zoning. He stated the pond has been on the property for 20 to 25 years. He stated that a fence could be put up for safety. He testified that at the present time there is insurance on the pond.

He stated that Mr. Wolters subdivided the property into six lots.

Mr. Hill stated he will put the manufactured home on a foundation and could enclose the pond with a fence.

Harriett Phyllis Ann Houston was sworn in and testified in opposition, stating she paid \$57,000.00 to put a brick home up and owns seven acres. she feels a manufactured home would also affect the sale of her property should she decide to sell.

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. Wheatley, seconded by Mr. Callaway and carried unanimously that the case be tabled.

Case No. 5530--Donald & Betty Gallimore - West side of Route 535,  
on the east side of Burton St., 100 feet  
east of Birch Lane, 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. Demmy Casta was sworn in and testified, representing the applicants, who requested to place a 28' wide by 70' or 60' manufactured home on property they are purchasing. He stated the manufactured home will be on a permanent block foundation. He explained where the manufactured home will be situated 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. 5531--Robert G. Diaferio - Southeast side of Turtle Dove Drive, 1,600 feet east of Dove Knoll Drive,  $\frac{1}{4}$  mile northeast of Route One, Lot 64, within Dove Knoll.

A variance from the side yard setback requirement.

The case was presented by Mr. Betts. Jeffrey W. Robinson, Agent from Beacon Homes, Inc., was sworn in and testified representing the applicant who requested a 2.2' variance from the 15' side yard setback, on Lot 64, within Dove Knoll. Mr. Diaferio explained that a modular home was placed on the property too close to the side property line. He stated that the mason put the foundation too close. He stated he had a letter from the developer stating no problems.

Mr. Betts read a letter from Herbert D. Mock, Environmental Control Coordinator, sent to Mr. Robinson. The letter expressed no opposition.

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. 5532--Harry O. Coxen - West side of Route 30, 300 feet north of Route 216.

A variance from the side yard setback requirement.

The case was presented by Mr. Betts. Harry Coxen, Mary Coxen and Thomas Hood were sworn in and testified, requesting a 3' variance from the 15' side yard setback for an existing house that was placed on the property in 1980. A recent addition on the house caused an encroachment into the setback.

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. 5533--James Elliott - North side of Route 492, 150 feet east of Route 492A.

A variance from the lot width requirement.

The case was presented by Mr. Betts. James Elliott and Amy Marie Elliott were sworn in and testified, requesting a 65' variance from the 150' frontage requirement to be 85' for a new lot, to construct a new home. They propose to sell the lot with their existing house. There will be no further subdividing on their property according to Mr. Elliott.

Calvin H. Baker was sworn in and testified that he would like the property resurveyed, because the applicant is going to be too close to him. He stated that he has no objection to the house being built and feels they can resolve between them to find the property markers.

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.

Case No. 5534--John H., Sr. & Yvonne R. Parker - South side of Route 334, north of Route 113, Lots 74-78, within Houston Acres.

A variance from the side yard setback requirement.

The case was presented by Mr. Betts.

There were no parties present representing this application.

The Chairman held the hearing open until the end of the meeting.

At the conclusion of the public hearings, the Chairman referred back to this case. There were no parties present representing this

case and no interested parties were present.

Motion was made by Mrs. Hudson, seconded by Mr. Callaway and carried unanimously that the variance be denied, due to no representation and the applicant cannot reapply for one (1) year.

Case No. 5535--Harry & Gladys Donovan - Southwest side of Route 620,  
¼ mile west of Route 36.

A variance from the front yard setback requirement.

The case was presented by Mr. Betts. Harry and Gladys Donovan were sworn in and testified, requesting a 3.1' variance from the 40' front yard setback for a dwelling that has been built. Mr. Donovan stated that he has a three pointed lot. Mr. Donovan stated he measured from the black top road instead of from the property line. They assumed the house was setting properly on the lot, but when a mortgage company requested a survey of the property for the sale of it, the encroachment was discovered. He also went by the curve in the road for the measurements.

Christian Willey was sworn in and testified and Barbara Willey affirmed. They were in opposition to the variance request. They had wanted to buy the property from the Donovan's. They stated that the applicants did not have surveys, did not have a surveyor and they do not want the house on the property. They stated that they do not like the looks of the house. They feel the house could have been situated differently.

Roland E. Willey, Jr. was sworn in and testified in opposition. He questioned if the house could be moved to meet the setback. He feels it could have been placed correctly.

Rymal Kenton affirmed, stating he is an Agent from Harrington Realty, who sold the house. He stated that he does not find the house unappealing. He feels it would be difficult for them to move the house, because it has a basement.

Mr. Donovan stated that the people in opposition wanted to buy the parcel. He stated he takes pride in his work and wanted to build a good 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 Mr. Callaway, seconded by Mr. Mills and carried unanimously that the variance be granted, finding the lot is unique and odd-shaped, the variance is necessary to enable use of the property, the hardship is due to unique conditions, an honest mistake was made, it will not alter the essential character of the neighborhood and the variance is the minimum that will afford the relief he needs.

Case No. 5536--Ella R. & Samuel R. Layton - South side of Route 405,  
1,400 feet east of Route 407.

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. Ella Layton was sworn in and testified and was represented by Brian Shirey, Attorney. Mr. Shirey explained that the applicants wish to place a double-wide manufactured home on their property for their residence. He stated there are other manufactured homes in the area.

Preston A. McCabe, neighbor, was sworn in and testified in behalf of the application. He stated that the applicants will help care for their parents also.

There were no parties present in opposition.

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

Case No. 5537--Russell & Sandra Brittingham - East side of Route 541,  
1,770 feet north of Route 536.

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. Russell Brittingham was sworn in and testified, requesting to place a manufactured home on their property for their use. They hope to purchase a new, 14'x 70' manufactured home. They hope in the future to build a home on the property. Mr. Brittingham stated there are other manufactured homes in the area, on either side of 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. 5538--Spencer Brittingham - West side of Route 240A, 1,400  
feet south of Route 238.

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. Spencer Brittingham was sworn in and testified, requesting to place a 1989, 14'x 70' manufactured home on his property for his use. He testified that there is another manufactured home adjacent to his property and woods on the other.

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. 5539--George Littleton - North side of Route 78, 1,100 feet west of Route 490A.

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

The case was presented by Mr. Betts. George Littleton was sworn in and testified, requesting to place a second manufactured home on his farm for an employee. He has four chicken houses on his property. The existing manufactured home is occupied by his father-in-law.

Mr. Betts read a letter in support of the application from Byard Layton.

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. 5540--Barbara V. Brown - South side of Route 20, one mile west of Route 485.

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 Brown and Janell Brown were sworn in and testified. Ms. Brown requested to place a new 60', in length, manufactured home for her own use. She questioned if she could place it on the property facing the road and meet the setbacks.

It was explained to Ms. Brown that in order to place the manufactured home as she wants it, she could only use a 48' manufactured home and meet the setbacks.

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. 5541--Joseph & karen Federer - East side of Route 297A, on the south side of Riverview Avenue, within Oak Orchard.

A variance from the side yard setback requirement.

The case was presented by Mr. Betts. Joseph Federer was sworn in and testified and was represented by Jim Fuqua, Attorney. Mr. Federer requested a 5' variance from the side property lines on Lot 16, Oak Orchard. Mr. Federer had a 8'x 34' manufactured home with a 8'x 24' porch on it. He wants to replace it with a 20'x 45' home to be used by the applicant and his family. Mr. Fuqua stated that the applicant purchased the property in 1990. He had obtained a permit that was renewed for an addition to his manufactured home, but Mr. Federer began construction of his house using that permit. He was told to stop construction by Planning and Zoning. Copies of a Tax Assessment

record, tax map and pictures were presented.

Mr. Federer stated that he was doing what he thought he was allowed to do. He hopes to complete the work in the spring. The height of the structure will be under the 35' requirement for height.

Mr. Fuqua referred to items in the Zoning Code referencing variance approval by the Board. He feels the use will not be out of character with the area.

Rosene & Paul Wagner were sworn in and testified in opposition, questioning the setbacks and voiced concerns about run-off going on their property. They questioned the septic and the use of the old permit.

Mr. & Mrs. Wagner were told that DNREC would have to deal with the septic and the applicant would need a new building permit.

Richard Miller was sworn in and testified in opposition concerned about septic and drainage.

Mr. Betts explained that the applicant needs DNREC approval before he can obtain a permit.

Ken Bender was sworn in and testified in opposition concerned about the septic, since the existing septic is for a manufactured home.

Charles Watson was sworn in and testified in opposition stating he feels people should be able to do what they want with their property, but he is concerned about the river, since the applicant does not have enough land to provide a proper septic system. He feels he would not be upgrading but enlarging the system.

Pictures were presented by the opposition.

Mr. Federer stated that the people in opposition do not live on his street.

Charles Purnell was sworn in and testified in opposition, complaining that he had not received his mailing notice about the hearing until just before the meeting, postmarked December 1, 1994. He also stated the other people had received theirs the same time. He feels this is short notice. He also feels the applicant has no respect for others and that he cannot build a home on a 30'x 80' lot.

Mr. Fuqua stated that the legal posting requirements were met. He stated the 30' lot exists and the applicant is replacing an eyesore. He stated the applicant will have to comply with State laws. The lot was not created by the applicant, and has requested the minimum amount of variance. He stated a structure cannot be built without a variance.

Mrs. Wagner questioned why the applicant cannot build the exact same size as what exists.

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 Mrs. Hudson, seconded by Mr. Callaway and carried unanimously that the case be tabled.

OLD BUSINESS

Case No. 5512 (cont'd.)--Dean Tingle - South side of Route 492, 1.4 miles east of Route 492A.

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 denied, finding the use will have an adverse affect on surrounding properties.

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

Meeting adjourned at 9:23 P. M.