

Minutes of December 20, 1993

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, December 20, 1993 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 Mrs. Hudson, seconded by Mr. Mills and carried unanimously that the minutes of November 15, 1993 be approved as circulated.

Case No. 5243--Hercules T. & Angela Avello - South side of Route 54, one mile west of Route One, Lot 23, within Cape Windsor.

A variance from the side yard setback requirement.

The case was presented by Mr. Betts. Hercules Avello was sworn in and testified, requesting a 3' variance from the 10' side yard setback to replace an existing home on Lot 23, within Cape Windsor. The new home will go where the existing home is located. Mr. Avello presented letters from nine people voicing no objections. He testified there is no letter from the Cape Windsor Homeowners Association.

Mr. Betts read a letter from Victor Figallo in favor of the variance. Mr. Betts stated the remaining 8 letters were the same with different signatures, all in favor.

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. 5244--Dukes Boat Sales - South side of Route 22, 1.4 mile east of Route 22C.

A special use exception to place a manufactured home to be used as a sales office.

The case was presented by Mr. Betts. Orland Dukes was sworn in and testified in behalf of Dukes Boat sales and was represented by Bill Chasanov, Attorney. The applicants requested to continue to use a manufactured home for a sales office (previously approved for 5 years in 1988). Mr. Chasanov stated that there have been no complaints about the manufactured home and the need is still the same.

There were no parties present in opposition.

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

Case No. 5245--Richard Volkman - South side of a private dirt street, 1,800 feet west of Route 347, 1,800 feet north of Route 349.

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. Anna & Richard Volkman were sworn in and testified, requesting to place a 1993, double-wide manufactured home on their property for their permanent residence. There is a 50' right-of-way, which includes a 12' easement to the property. They testified that there are other manufactured homes in the area.

Donald K. Miller, Land Surveyor, was sworn in and testified in behalf of Raymond Banks. Mr. Miller testified that Mr. Banks owns property adjacent and is not opposed to the manufactured home only to the right-of-way to the property, claiming the 12' road is on his property. He wants all of the 50' right-of-way to be on the Volkman property.

Mr. Betts stated that the expanded road was approved by the Planning and Zoning Commission.

Mr. Jones, Attorney, explained that the only issue before the Board is the manufactured home, that an easement dispute is between the two parties.

There were no parties present in opposition to the manufactured home.

Motion was made by Mr. Mills, seconded by Mr. Wheatley and carried unanimously that the special use exception be granted, finding the use will not adversely affect surrounding area neighbors.

Case No. 5246--Gracynthia E. Mills - East side of Route 574, 1,300 feet north of Route 31.

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. Gracynthia Mills was sworn in and testified, requesting to place a 1994, 14'x 70' mahufactured on her property for her residence. Ms. Mills testified that there are other manufactured homes in the area plus homes that have been moved on lots and remodeled.

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, finding the use will not adversely affect the neighborhood.

Case No. 5247--Dennis I. Sampson - North side of Route 451, 1,180 feet west of Route 463.

A special use exception to place a second manufactured home to be attached to the existing manufactured home to be used as one single family unit.

The case was presented by Mr. Betts. Dennis I. Sampson was sworn in and testified, requesting to place a second manufactured home on property to attach to an existing manufactured home to become one unit. There will be only one kitchen and one family living in the unit. Mr. Sampson stated he will start the work in the spring and will put an A-Roof and matching siding on the manufactured homes.

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 Mrs. Hudson, seconded by Mr. Wheatley and carried unanimously that the special use exception be granted, with the stipulations that identical siding be put on both units, an A-Roof over the units, contain one living unit and to be completed within two (2) years.

Case No. 5248--Allen Petroleum Corp. - West side of Route 13, on the south side of the intersection of Route 28.

A variance from the rear yard setback requirement.

The case was presented by Mr. Betts. John Tamasi was sworn in and testified representing Allen Petroleum Corp. who requested a 14' variance from the 30' rear yard setback requirement to erect a refrigeration unit (reach-in box) to their existing non-conforming building. They propose to construct the addition in the requested location, because on the south side of the building there is a septic field, also the traffic pattern to the rear of the building will produce more sales. Mr. Tamasi stated that there are houses adjacent to the property. The current building is setting over the setback line. The condensor unit will be ground level and it will sound like an air conditioner running. They hope to fence the immediate area around the addition for the noise to go up and not out.

Madelyn Dykes, lives on the south side of the property owned by Allen Petroleum, was sworn in and testified in opposition citing noise. She stated there is enough noise from the property now. She also stated that people use the property now for a bathroom.

Elmer Steele, adjacent property owner, was sworn in and testified in opposition, citing noise, bathroom problems and stated there is a pollution problem on the property. Mr. Steele also stated that a septic vent is close to where the refrigeration unit will go. He also stated that there is electrical problems now in the area. Pictures were presented.

Mr. Tamasi stated that D. P. & L. had been contacted and the transformer has been replaced and upgraded. He stated they are cleaning the property up which may take in excess of one year. He also stated they are aware of the public problem and have installed lights.

In answer to a question from the Board asking if a privacy fence would help the neighbors, Mrs. Dykes and Mr. Steele stated a fence would cut-down on their view and they feel would not correct the problem.

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

Case No. 5249--Byard B. Layton - North side of Route 496, 0.31 mile west of Route 493, proposed subdivision of "White Owl Landing".

A variance from the lot size requirement.

The case was presented by Mr. Betts. Donald K. Miller, Land Surveyor, was sworn in and testified representing Byard Layton, who requested a variance of 21,780 sq. ft. ( $\frac{1}{2}$  acre) from the minimum of one acre required in a conservation zone to develop a 27 lot residential subdivision. Mr. Miller stated that Mr. Layton purchased the land for a subdivision in February, 1993. The preliminary subdivision was plotted but never recorded. All of the lots were not one acre in size. Planning and Zoning informed the applicant that any lot within 100' of a conservation zone has to be one acre. There are 19 lots less than one acre and a variance is needed. Planning & Zoning Commission has approved the subdivision subject to variance approval from the Board.

Mr. Betts read a letter into the record from Shane Abbott, Planner II, with the Planning & Zoning Office, referencing Planning and Zoning approval.

A letter of opposition was submitted and read by Mr. Betts from Phil Carpenter, Environmental Scientist with the Division of Fish and Wild Life.

Phil Carpenter was sworn in and testified in opposition stating that 16 through 21 lots border on State property. He referenced lots within 100 yards of wild life hunting area. He stated there would be a problem even if the lots were larger.

Mr. Jones, Attorney, explained that Mr. Carpenter's concerns regarding the subdivision should be adressed to the Planning and Zoning Commission. He explained that the Board can only consider the variance request.

Robert Gano with the Fish and Wild Life was sworn in and testified in opposition, stating the use will have an impact on

the wild life area. He also stated that the more dwellings and occupants the more disruption to wild life.

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 Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the variance be denied, finding the applicant failed to meet the requirements for the granting of a variance of one acre lot size.

Case No. 5250--Kerry B. Coldiron - South side of Route 54, 500 feet south of Roxana Fire Station, Lot 5, within Teaberry Woods.

A variance from the side yard setback requirement.

The case was presented by Mr. Betts.

There were no parties present representing this case.

Due to interested parties being present the Chairman opened the hearing. Mr. Coldiron requested a variance from the side yard property line on Lot 5, within Teaberry Woods.

Anna Lee Gray was sworn in and testified in opposition. She stated that the development has restrictions and the applicant is in violation of those restrictions with the carport he built. She stated he did not have development approval for the carport. She also stated that the carport has been removed and the property sold.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the variance be denied, finding the applicant failed to appear and present evidence.

Case No. 5251--Carrie E. Hurst - East side of Route 524, one mile south of Route 46.

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

Mr. Betts stated that he had received a letter from Mrs. Hurst requesting her hearing be tabled, due to her doctor being away and being unable to obtain a letter explaining her illness. She would attend if needed.

The Chairman requested her presence since there were interested parties present.

At the conclusion of the public hearings, the Chairman referred back to this case.

The case was presented by Mr. Betts. Carrie Hurst was sworn in and testified, requesting to place a manufactured home on her property on hardship basis. Mrs. Hurst stated that she lives on

the property in a double-wide manufactured home and wants to place another unit on the same property for her daughter to live in and look after her. Mrs. Hurst testified that she suffers from depression and asthma, is under doctor's care and on medication and some one has to care for her and drive her about. The unit is on the property but not being lived in.

Mr. Betts stated that her doctor, Dr. Richard Sherman, is out of town until December 29.

Charles D. Marshall, who lives in Georgetown, was sworn in and testified in behalf of Mrs. Hurst, stating he has known her for 7 years and supports her.

Joanne Soule, Peggy Ann Hurst, daughter, and Russell Hurst, son, were sworn in and testified in behalf of the application.

Louise Radja and Mr. Radja were sworn in and testified in opposition, stating that Mrs. Hurst had said she would up-grade her manufactured home and property. She stated that there are restrictions on her property. She testified that there are problems with the Hurst's and have been violent incidences. She stated that the Hurst property has much debri, cars and a motor home on it. She stated that no one lives in the motor home, but several people live in the Hurst home. Mr. Radja is concerned about water problems.

Mrs. Hurst testified there has been disagreements with the neighbors. She stated that presently her daughter, grandchildren, plus her five children and a sister live in the double-wide manufactured home. Her sister is finding an apartment.

Mr. Jones, Attorney, stated that the Board cannot consider private deed restrictions and two unlicensed vehicles are permitted on the property.

Mrs. Radja suggested a fence be put up on the property.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the case be tabled to await a doctors letter and the hearing be left open.

Case No. 5252--Vera K. Swadley - West side of Route 357, 600 feet north of Route 358.

A variance from the lot width requirement.

The case was presented by Mr. Betts. William B. Warrington was sworn in and testified, representing Ms. Swadley, who requested a variance of 91' from the 150' width requirement for a new lot. The applicant wishes to sell a lot with a house on it with 150' of frontage, retaining the remainder of the frontage 59.15' as an entrance to the rear acreage for farming. The access will be used for farm equipment to get to the rear 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 variance be granted.

Case No. 5253--Clara D. Holloman - South side of Route 283, 900 feet west of Route 283A.

A variance from the lot width requirement.

The case was presented by Mr. Betts. Clara Holloman was sworn in and testified, and was represented by Bryan Dolan, Attorney. Ms. Holloman requested a 50' variance from the 150' lot width to subdivide a separate lot for an existing dwelling and a recreation center. Mr. Dolan stated that Mrs. Holloman's husband, now deceased, and Mr. Willard Nennstiehl were in a business deal dispute. The property contains a house and a business on it. Ms. Holloman feels in order to solve the problem the property should be subdivided creating a lot with the dwelling and a lot with the recreation center. A survey is to be done in agreement to all parties. The dividing line proposes 100' frontage for each parcel. There are separate driveways now in existence for each lot. He stated that Mr. Ninnstiehl is concerned about the existing structures meeting the setback requirements when the property is subdivided.

Mr. Betts stated that the existing structures have to meet the setback requirements when the property is subdivided.

Tina Marie Wright who lives on Route 283 was sworn in and testified for herself and her sister Elaine Beideman. She stated they are in favor of the application and they have never had any problems. They have adjoining property.

Jim Yori, Attorney, was present representing Mr. Nennstiehl. He referenced a letter that was presented to the Board. He stated that Mr. Nennstiehl's concern is whether the recreation/restaurant building will meet the setback requirements and provide enough parking to be able to continue the use.

Mr. Dolan stated that the survey they now have does not show the existing buildings with the setbacks. A new survey is to be done.

There were no parties present in opposition.

Motion was made by Mr. Mills, seconded by Mr. Wheatley and carried unanimously that the case be tabled, so the applicant can present a complete survey and the record is to be left open to allow Mr. Yori an opportunity to comment.

Case No. 5254--Veronica L. Williams - Northwest side of a private road, 300 feet southwest of Route 313, south of Route 24, Lot A, within Edgar F. Morris Heirs 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. Veronica Williams was sworn in and testified, requesting to place a 1982, 14'x 70' manufactured home on property she is buying, being Lot A in Edgar Morris Heirs Subdivision. She stated there are other manufactured homes in the area less than one mile away. Adjoining property is owned by family members. She stated there is a 50' right-of-way to her 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, finding the use will not adversely affect the neighborhood.

#### OLD BUSINESS

Case No. 5230 (cont'd.)--Decoy, Inc. - East side of Bunting Avenue, 50 feet south of Delaware Avenue, within the unincorporated part of Fenwick Island.

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

Mr. Betts read correspondence from the applicant requesting to withdraw his application.

Motion was made by Mrs. Hudson, seconded by Mr. Callaway and carried unanimously to allow the applicant to withdraw the application and to allow the applicant to re-apply without paying the fee.

Case No. 5242 (cont'd.)--Warwick Park Owners Association,-Inc.- South side of Comanche Circle, 275 feet west of Apache Avenue, Lot 4, Block A, within Warwick Park.

An appeal of the Director's decision concerning the placement of a manufactured home on a temporary emergency basis.

Mr. Jones referenced a memo he had presented to the Board with his findings and research.

After some discussion, motion was made by Mr. Wheatley, seconded by Mr. Mills and carried unanimously to uphold the Director's, Mr. Lank's decision permitting the emergency permit for one (1) year and deny the appeal, finding Mr. Lank had the right to issue the emergency regardless of the deed restrictions and that he followed the Zoning Code 115-224.

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

Meeting adjourned at: 9:08 P.M.