

ILLINOIS POLLUTION CONTROL BOARD

July 24, 1975

BRETHREN HOME OF GIRARD, INC.,)
 Petitioner,)
)
 v.) PCB 75-193
)
ENVIRONMENTAL PROTECTION AGENCY,)
 Respondent.)

OPINION AND ORDER OF THE BOARD (by Dr. Odell)

On May 7, 1975, Brethren Home of Girard, Inc. filed a Petition For Variance with the Illinois Pollution Control Board (Board). Petitioner sought a variance from the requirements of Rule 962 of the Board's Water Pollution Regulations (Chapter Three) in order to replace a 38-bed nursing home with a new 98-bed facility. Rule 962 of Chapter Three states:

- " 962 Standards for Issuance
The Agency shall not grant any permit
. . . unless the applicant submits adequate proof that the treatment works, pretreatment works, sewer, or wastewater source:
- (a) Will be constructed, modified, or operated so as not to cause a violation of the Act or of this Chapter, or has been granted a variance under Title IX of the Act; and
 - (b) Either conforms to the design criteria promulgated by the Agency under Rule 967, or is based on such other criteria which the applicant proves will produce consistently satisfactory results; and
 - (c) Conforms to all conditions contained in the Construction Permit, where applicable."

Based on data indicating overload of the receiving sewage treatment plant, the Illinois Environmental Protection Agency (Agency) had placed the City of Girard on restricted status by letter of February 19, 1974. The letter stated:

"The Girard Sewage Treatment Plant has a permitted

hydraulic capacity of .18 MGD or 1800 P.E. under Permit #1950-20. Our information indicates that the current population tributary to the Girard Sewage Treatment Plant is 1881 P.E.

"Unless this Agency receives additional information to cause us to revise the above comments and conclusions, we have no alternative but to place the Girard Sewage Treatment Plant on Restricted Status.

"Restricted Status means that this Agency will not approve Applications for Permit for Construction and operation of sanitary sewers tributary to the subject sewage treatment works until the above cited apparent violations of Permit and Water Pollution Regulation have been corrected."

The sewage treatment plant discharges into Hodges Creek which is tributary to Macoupin Creek.

Petitioner stated that construction of the nursing home would not be "completed for at least 120 days from the date hereof" which we construe to mean that construction will take at least 120 days from the time that the variance is granted. After completion, the facility is not expected to operate in excess of 60% of capacity for at least two years. Petitioner noted that the City of Girard has applied for federal and state funds to upgrade its treatment plant. Petitioner pointed out that the City's application for federal and state funds would be approved by early June, 1975. Construction should begin during summer 1976 with completion scheduled for summer 1977.

Petitioner argued that the denial of the variance would be an arbitrary or unreasonable hardship in that it "completely prevents the construction of the nursing home and denies to the residents of Macoupin County a sufficient number of nursing home beds to accommodate the needs of the Macoupin County area." Petitioner included an affidavit from the mayor of the City of Girard stating that the City Council has no objection to the "98 bed nursing home's being connected to the sewers of the City of Girard once same is constructed."

On June 9, 1975, the Agency recommended that the variance be denied. Samples collected during the last 12 months revealed the following levels of effluent from the City's sewage treatment plant:

	Range	Average
BOD (mg/l)	3-52	17
SS (mg/l)	10-38	22

In addition, the Agency stated that by-passing occurs at the plant during wet weather. Recent system upgrading has not produced significant changes in plant operations. Until the system is substantially upgraded, the sewer system will continue to be severely overloaded. The Agency confirmed that the City

has applied for state and federal funds to upgrade its sewage treatment plant. The Agency believed that the City's projected schedule for construction and completion was "plausible."

The Agency noted that the City was issued a final NPDES Permit (No. IL 0028932) on February 11, 1975. Interim standards were set at 30 mg/l for BOD₅ and 40 mg/l for SS until June 30, 1977, after which time 4 mg/l of BOD₅ and 5 mg/l of SS will have to be met. Present applicable Board standards under Rule 404 are 30 mg/l of BOD₅ and 37 mg/l of SS. The NPDES Permit contained the following compliance schedule:

Completion of Preliminary Plan	-
Progress Report	March 1, 1975
Completion of Final Plans	September 30, 1975
Commerce Construction	December 31, 1975
Progress Report	September 30, 1976
Completion of Construction	June 30, 1977
Operational Level Attained	June 30, 1977

The Agency stated that the present nursing home "has an occupancy rate of 65-70%." Although Petitioner's facility is the only one in Girard, there are several other nursing homes located approximately five miles away. An official from the Planning and Construction Section of the Illinois Department of Public Health told the Agency that the Springfield-Girard planning area currently shows a need for 85 "sheltered care" beds.

A Department of Public Health letter of July 15, 1975, which was received by the Board on July 17, indicated that the Brethren Home of Girard "cannot possibly upgrade to Intermediate Care Services." On July 17 the Board received a letter from the Mayor of Girard stating that "The present (Brethren Home) is approximately seventy years old. It is not feasible for a building of this age and structure type to be upgraded, to be in compliance with present life-safety codes. . . . The City of Girard has been approved for a grant to enlarge and upgrade our sewage disposal facilities. We are progressing with this program as rapidly as possible. . . . The Brethren Home's request for a variance permit should be given every possible consideration."

An Amended Recommendation from the Agency was received by Board on July 22, 1975. The Agency had received copies of the two above letters, which the Board received on July 17, and additional information concerning hardship, especially with regard to financial arrangements. In a letter of July 21, 1975, Mr. Marc E. Fuchs, attorney for the Brethren Home stated that they have secured \$925,000 in financing from the Farmers Home Administration for the construction of this new \$1,050,000 home. "He further stated that the Farmers Home Administration was concerned that construction of the new home be commenced in the near future. Mr. Fuchs stated that the funds committed for this project could be reallocated if immediate progress is not made on this project. Mr. Fuchs also stated that it was highly unlikely that the home could

again secure the very favorable interest rate of 5 percent." In the light of the additional information, the Agency recommended that the variance be granted with certain conditions.

The Board agrees that the Petitioner has shown sufficient hardship that this variance should be granted. Although some sewage overloading will continue for a limited period, the benefits of the new home convince us that the overall interests of the community are best served by granting this variance. The Board decided not to limit occupancy of the new home to 38 people as suggested by the Agency because such a limitation might impair finances. However, the Brethren Home should not overload the Girard sewage treat facilities more than is necessary before they are upgraded. Although the City of Girard is required to comply with the conditions in its NPDES Permit, the City is not a party in this proceeding and, therefore, these conditions cannot be included in this case.

This Opinion constitutes to findings of fact and conclusions of law of the Board.

ORDER

IT IS THE ORDER of the Pollution Control Board that:

Brethren Home of Girard, Inc. is hereby granted a Variance from the requirements of Rule 962 of the Water Pollution Regulations, subject to the condition that the existing 38-bed facility shall be immediately disconnected from the Girard sewer system upon completion of the new 98-bed facility.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 24th day of July, 1975, by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board