

MINUTES OF AUGUST 27, 2001

The regular meeting of the Sussex County Board of Adjustment was held Monday evening August 27, 2001, at 7:00 P.M. in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00 P.M. with Chairman Callaway presiding. The Board members present were: Mr. Callaway, Mr. McCabe, Mr. Wheatley, Mr. Mills, Mr. Hudson, with Mr. Schrader – Assistant County Attorney, Mr. Rickard – Chief Zoning Inspector, and Ms. Jackson – Recording Secretary.

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously to approve the Revised Agenda with the exception to hear Case No. 7521 and Case No. 7522, American Cellular Network Company, LLC, at the end of the public hearings. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of August 6, 2001 as circulated. Vote carried 5 – 0.

Mr. Schrader read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing the cases.

Case No. 7523 – Nina Savage – southwest of Road 386, northwest side of Roosevelt Avenue, Lot 26, within Branch Acres Subdivision.

A variance from the front yard and rear yard setback requirement.

Mr. Rickard presented the case. Nina Savage was sworn in and testified requesting a 2.3-foot variance from the required 10-foot rear yard setback, and a 6-foot variance from the required 30-foot front yard setback requirement for a manufactured home; that she had a previous variance granted in April 2001; that she is concerned for the safety of her daughter; that it would not alter the character of the neighborhood; and that the new unit will be the same size as the existing unit.

Mr. Rickard read a letter from the residents of Polly Branch Acres, with 14 signatures, in opposition to the application.

The Board found that no parties appeared in support of or in opposition to the application.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the variance be **granted**. Vote carried 5 – 0.

Case No. 7524 – BPG Prop, LLC – southwest of Route One, 1,500 feet southwest of Road 270.

A special use exception to place a billboard, a variance from the maximum sign height requirement, a variance from the side yard setback requirement, and a variance from the setback requirement from a dwelling.

Mr. Rickard presented the case and submitted pictures and a site plan to the Board. Gary McCrea was sworn in with James Fuqua, Jr., Attorney, on behalf of the application, requesting a special use exception to relocate two (2) existing billboards to a new location on the same site, a 10-foot variance from the required 25-foot maximum sign height requirement, a 50-foot variance from the required 50-foot side yard setback requirement, and a 120-foot variance from the required 300-foot setback requirement from a dwelling; that the property is located adjacent to Burger King on Route One; that the property is currently under construction; that the size of the billboards are 31'10"x12'x4"; that they would like to tear down the existing billboards and erect the same size signs and locate them further back from Route One; that the billboards block the views of businesses in the area; that Burger King is in favor of relocating the signs; that they would like to stack the signs on top of each other, making the sign 35-foot in height; that they have made an agreement with Maplewood Subdivision to erect a 6-foot fence; that the signs would not have a negative impact on Maplewood Subdivision; and that the signs would not adversely effect the neighborhood.

Mr. Mills stated that the Board does not like to grant variances dealing with the height of signs; that it would set a precedent; and that he does not see the need for keeping the signs.

In rebuttal, James Fuqua, Jr., Attorney, stated they would not have a problem with placing the signs side by side, instead of stacking them; and that by keeping the signs, brings in a source of income for his client.

Mr. Rickard read 5 letters in favor of the application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be taken under advisement. Vote carried 5 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case.
No action was taken due to the lack of motion.

Case No. 7525 – Robert Norris – southeast of Road 321, east of corner of Acorn Drive and David Street, Lot 37, within Piney Grove Manor Subdivision.

A variance from the side yard setback requirement.

Mr. Rickard presented the case. Robert Norris was sworn in and testified requesting a 2.9-foot variance from the required 5-foot side yard setback for an 8'x12' shed; that the shed has been there since 1974; that he had a survey prepared on June 13, 2001, when he sold the home, and found that the shed was in violation; that the shed would collapse if it had to be moved; that he owned the property since 1973; that he did obtain a permit for the shed; and that his neighbors do not seem to be bothered by the shed.

The Board found that no parties appeared in support of or in opposition to the application.

Motion by Mr. Wheatley, seconded by Mr. Hudson, and carried unanimously that the variance be **granted**. Vote carried 5 – 0.

Case No. 7526 – Walter Moyer – north of Route 20, east side of Holly Road, Lot 65 and part of Lots 64 & 66, within Nanticoke Acres Subdivision.

A variance from the north side yard setback requirement.

Mr. Rickard presented the case. Walter Moyer was sworn in and testified requesting a 10-foot variance from the required 15-foot north side yard setback requirement for a 3 car garage; that he purchased the home 3 years ago; that he just moved into the home full time; that his neighbor is in favor of the application; that he is not aware of any covenant restrictions; that he could not place the garage on the south side of the property because of a septic system; that he does not want to attached the garage to his home; and that his neighbor is in favor of the variance.

The Board found that no parties appeared in support of or in opposition to the application.

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously that the case be taken under advisement. Vote carried 5 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the variance be **granted**. Vote carried 5 – 0.

Case No. 7527 – Marlin Schrock – north of Route 16, 1,017 feet east of Road 631.

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

Mr. Rickard presented the case and read a letter from Cynthia Zarraga, M.D. Marlin Schrock was sworn in and testified requesting a special use exception to place a manufactured home on a medical hardship basis; that the size of the unit is a 14'x70'; that the year of the unit is 1988; and that he would like to place the unit on a 2 acre parcel that he owns adjacent to his 5 acres parcel for his son, Joel Schrock.

The Board found that no parties appeared in support of or in opposition to the application.

Motion by Mr. Wheatley, seconded by Mr. McCabe, and carried unanimously that the special use exception be **granted for a period of 2 years**. Vote carried 5 – 0.

Case No. 7528 – Lighthouse Liquors Inc. – east of Route One, 1,200 feet north of Route 54, Lot 17, within L.P. Faucett, Inc. Subdivision.

A variance to place a second on premise sign.

Mr. Rickard presented the case. Rick Phillips and Ms. Kent were sworn in and testified requesting a variance for a second on premise sign; that the size of the sign will be 6'x7'; that the height will be 14-foot; that the sign will be placed on the southwest side of the property; that they will be upgrading the existing sign because it is difficult to read; and that the existing sign is 25-foot in height.

The Board found that no parties appeared in support of or in opposition to the application.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the variance be **granted**. Vote carried 5 – 0.

Case No. 7529 – Roland Shonts – south of Route One, south of Sea Air Avenue, Lot B-71, within Sea Air Mobile Home Park.

A variance from the separation requirement between units in a mobile home park.

Mr. Rickard presented the case and submitted pictures to the Board. Roland Shonts was sworn in and testified requesting a 10-foot variance from the required 20-foot separation requirement between units in a mobile home park to build a screen porch on an existing concrete pad; that the size of the porch will be 12'x21'; and that he submitted a drawing of the porch to the Board.

The Board found that no parties appeared in support of or in opposition to the application.

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously that the variance be granted. Vote carried 5 – 0.

Case No. 7530 – Raymond D. Hollinger – south of Route 54, south side of Taft Street, Lot 9, within Cape Windsor Subdivision.

A variance from the maximum fence height requirement.

Mr. Rickard presented the case. Raymond Hollinger was sworn in and testified requesting an 18-inch variance from the required 42-inch maximum height requirement for a fence; and that he submitted pictures to the Board.

The Board found that a variance was unnecessary.

Case No. 7531 – Taramino LLC – north of Route One, 2,200 feet west of Route 9.

A variance from the separation requirement between buildings for townhomes.

Mr. Rickard presented the case. John Stanton was sworn in and testified requesting a 1-foot variance from the required 40-foot separation requirement between buildings for townhomes; that he was the developer of the project; and that he had a survey prepared and found that it was in violation.

The Board found that no parties appeared in support of or in opposition to the application.

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the variance be **granted**. Vote carried 5 – 0.

Case No. 7521 – American Cellular Network Company, LLC – southeast of Laurel, 300 feet of Lone Cypress Road.

A variance from the maximum height requirement for a communication tower.

Mr. Rickard presented the case. Adrian Burton, Real Estate Project Manager for Cingular Wireless, Brock Riffel, Radio Frequency Engineer, and Daniel Jacobs, Civil Engineer, were sworn in with Shawn Tucker, Attorney, on behalf of the application, requesting a 50-foot variance from the required 150-foot maximum height requirement for a communication tower with a 100'x100' fenced in area; that the tower can accommodate up to 5 users; that warning lights will be installed every 50-foot on the tower; that they exhibited the amount of coverage the area receives without the tower and the increased coverage the area would receive once the tower is installed; that the tower

would meet the setback requirements; that the tower is designed to collapse down towards the ground into 1/3 pieces; that the tower is designed to handle up to 90 miles per hour wind and ice; that the lighting of the tower will not affect horizontal planes; that it takes 4 to 6 weeks for towers to be built; that the tower area will meet the minimum lot size requirement of 1 acre; that a 2 mile radius search for collocation had been done of the area; that the tower meets the FCC and FAA requirements; that advertising signs would not be placed on the site; that they submitted a site plan, a license exhibit, and letters from Paul Dugan, P.E. and Kenneth Foster, Ph.D., P.E. concerning exposure limits from the tower.

Kenneth Foster, Ph.D., P.E. was sworn in and testified stating that he has reviewed the site and found no concerns for any health problems from the tower.

By a show of hands, 2 parties were in favor of the application.

The Board found that no parties appeared in opposition to the application.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the case be taken under advisement. Vote carried 4 – 0. Mr. Wheatley was absent.

At the conclusion of the public hearings, the Chairman referred back to this case. Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the variance be **tabled until September 10, 2001**. Vote carried 4 – 0. Mr. Wheatley was absent.

Case No. 7522 – American Cellular Network Company, LLC – south side of Route 16, 500 feet west of Road 600.

A variance from the maximum height requirement for a communication tower.

Mr. Rickard presented the case. Shawn Tucker, Attorney, Adrian Burton, Brock Riffel, and Daniel Jacobs were present on behalf of the application. Mr. Tucker requested that all statements made by representatives of the application, Case No. 7521, be made part of the record for this application. It was noted that they are requesting a 45-foot variance from the required 150-foot maximum height requirement for a communication tower, instead of a 50-foot variance.

By a show of hands, 4 parties were in opposition to the application.

Ben Moran was sworn in and stated that he is in opposition to the application; that he lives across the street from where the tower is proposed; that a tower already exist in

the area and that there is no need for another tower; that he has concerns with lightning, harmful rays, and the structure falling down and harming someone.

Caroline Edwards was sworn in and stated that she is in opposition to the application; that she has concerns with the health problems to humans from the tower; and that there is no need for another tower.

In rebuttal, Shawn Tucker, Attorney, stated that there is a need for the towers, since the County is growing; that the tower complies with the County Ordinance; that the tower is designed to fall down towards the ground into 1/3 pieces; and that towers are grounded for lightning.

Mr. Rickard read 2 letters from Elfriede Retzlaff and Joseph Lofland, Jr. in opposition to the application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **tabled until September 10, 2001**. Vote carried 4 – 0. Mr. Wheatley was absent.

OLD BUSINESS

Case No. 7507 – Cellco Partnership D/B/A Verizon Wireless – west of U.S. Route 13, ½ mile south of Road 454-A.

A variance from the maximum height requirement for a communication tower.

The Board discussed the case.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **tabled until September 10, 2001**. Vote carried 4 – 0. Mr. Wheatley was absent.

OTHER BUSINESS

Case No. 7518 – Kmart 7725 – northeast of Route One, 1,800 feet northwest of Road 271.

A variance for multiple signs.
Request for rehearing.

Mr. Rickard read a letter from Phillips Sign Company explaining that Kmart did not notify them of the hearing and that they would like to reapply.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the request be **granted, but that they will have to reapply and pay the filing fee.**
Vote carried 4 – 0. Mr. Wheatley was absent.

Meeting Adjourned 10:57 P.M.