



## BOARD OF ADJUSTMENT

AGENDAS & MINUTES

### MINUTES OF August 18, 2008

The regular meeting of the Sussex County Board of Adjustment was held on Monday August 18, 2008, 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. Dale Callaway, Mr. Ronald McCabe, Mr. John Mills, Mr. Brent Workman and Mr. Jeff Hudson, with Mr. Richard Berl – Assistant County Attorney and staff members, Mr. Norman Rickard and Mrs. Kelly Passwaters – Recording Secretary.

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously to approve the Revised Agenda as circulated. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously to approve the Minutes of the August 4, 2008 meeting. Vote carried 5 – 0.

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

### PUBLIC HEARINGS

**Case No. 10221 – AT & T Mobility, Inc.-** east of U.S. Route 113, 2,100 feet south of Road 213.

A special use exception to erect a telecommunications tower.

Mr. Rickard presented the case. Cliff Shaffer, Alec Norris and Andrew Erbaeu were sworn in along with Pamela Scott, Attorney, and testified requesting a special use exception to erect a telecommunications tower; that the case was previously approved in May 2006; that the telecommunications tower will measure 150-feet in height; that there is currently a gap in coverage in that portion of Sussex County; that the monopole has been designed to accommodate at least two (2) additional carriers; that the ground equipment will be surrounded by a minimum six (6) foot fence; and that the monopole will have warning lights placed every fifty (50) feet of elevation and will meet all applicable requirements of the FCC and FAA.

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted since it will not substantially affect adversely the uses of adjacent and neighboring properties**. Vote carried 5 – 0.

**Case No. 10222 – Donovan Salvage Works, Inc.** – northwest of Road 243, 1,200 feet south of Road 244.

A special use exception for secondary aluminum smelting.

Mr. Rickard presented the case. Marc Scheuring and Wilma Williams were sworn in and testified requesting a special use exception for secondary aluminum smelting; that they are planning on purchasing equipment for the industrial activity of secondary aluminum smelting; that they will have to receive Federal and State approval; that an afterburner is required to prevent pollutants; that the furnace will be inspected the EPA; that they are not aware of any complaints that have been filed against the company; and that the furnace will be placed in a new building.

Marion Hendricks was sworn in and testified in opposition to the application and stated he is concerned with pollution problems; that there is an elementary school just south of the property; that they are trying to clean up the neighborhood; and that since All-State has taken over there has been an increase in traffic and junk along the roadways.

Christine Williamson was sworn in and testified in opposition to the application and stated that she is worried about the health concerns that the smelting operation could cause.

Peggy Trott was sworn in and testified in opposition to the application and stated that she lives less than 100-feet from the operation; and that she is afraid that the heat generated from the furnace will melt the siding on neighboring homes.

Wanda Isler was sworn in and testified in opposition to the application and stated that she has concerns with increased traffic; that she is also concerned about possible health risks; that she doesn't want to see increased junk along the roadways; and that there could be an increase in noise.

Marvin Abbott was sworn in and testified in opposition to the application and stated he lives next door to the salvage yard; that there are trucks in and out all hours of the day and night; and that it needs to remain a residential area.

In Rebuttal, Mr. Scheuring stated they submitted a proposed location; and that there is currently industrial activity taking place on the site.

Derek Sickler was sworn in and testified stating that the furnace will be located towards the back on the property; and that the property is surrounded by trees.

The Board found that 3 parties appeared in support of the application.

The Board found that 8 parties appeared in opposition to the application.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the case be **left open for a report on sound levels**. Vote carried 5 – 0.

**Case No. 10223 – Alan and Denise Waller-** east of Road 497, 2,300 feet south of Route 24.

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

Mr. Rickard presented the case. Alan Waller and John Ferguson were sworn in and testified requesting a 68-foot variance from the required 150-foot height requirement for a tower; that he is applying for a personal radio tower to be used for Amateur Radio; that the tower will be used for federally licensed stations K3TKJ and W3DOG; that the tower will be enclosed by a fence; and that the tower has already been constructed for one (1) year.

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted since it is unique, since it will not alter the essential character of the neighborhood and since it is the minimum variance to afford relief**. Vote carried 5 – 0.

**Case No. 10224 – J & K Rentals, Inc-** north of Road 207 (Fitzgerald Road), 200 feet west of U.S. Route 113.

A special use exception to place a manufactured home type structure as an office.

Mr. Rickard presented the case. Randy Duplechain was sworn in and testified requesting a special use exception to place a manufactured home type structure as an office; that they are currently utilizing a home as an administrative office; that they would like to consolidate their cash customer office and bring it next to their administrative office; that the current building is in Del-Dot's right of way and cannot be replaced; that it will use the existing septic system; and that the manufactured home will measure 24' x 57'.

The Board found that 2 parties appeared in support of the application.

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

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted since it enables reasonable use of the property, since it will not alter the essential character of the neighborhood and since it is the minimum to afford relief.** Vote carried 5 – 0.

**Case No. 10225 – Z3 LLC-** southwest of Route 18 (Cannon Road).

A variance from the minimum lot size requirement to place a manufactured home and a variance from the maximum age requirement of a manufactured home.

Mr. Rickard presented the case. Jim Olsen and Richard Martin were sworn in and testified requesting a 3,303-square foot variance from the required 32,670-square foot requirement for a mobile home and a nine (9) year variance from the required five (5) years old or newer requirement for a mobile home; that they would like to replace the existing dwelling with a mobile home; that the mobile home will be made a class “C”; that they received a violation notice that the home was placed illegally; and that it would cost too much money to renovate the existing home on the property.

Melissa Thibodeau, Sussex County Zoning Inspector, was sworn in and testified stating that she received a complaint about the mobile home being placed without a permit in May 2008; that she called on May 3, 2008 and spoke to Bridget and stated it was being stored and must be removed within 15-30 days; that a violation notice was sent by certified mail on June 6, 2008; that when the mobile home was not removed within in the specified time it was turned over to the Constables office for action; and that the mobile home appears to have water damage.

In Rebuttal, Mr. Olsen stated that he was advised that the mobile home could stay until the Board of Adjustment makes a decision.

Eugina and Norris Givens were sworn in and testified in opposition and stated that the mobile home is in bad shape; that the existing home can be renovated; that there are trash dumpsters on the property; and that other people are using them for personal use.

The Board found that 1 party appeared in favor of the application.

The Board found that 2 parties appeared in opposition to the application.

Mr. Rickard stated the office received 2 letters in opposition to the application.

Motion by Mr. Workman, 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. Motion by Mr. Workman, seconded by Mr. Hudson, and carried unanimously that the variances be **denied since it does not meet the standards for granting a variance**. Vote carried 5 – 0.

**Case No. 10226 – Host Rental Property, Inc.-** northeast of U.S. Route 113, 900 feet southeast of Route 20.

A variance for a second ground sign.

Mr. Rickard presented the case. James Hostelley was sworn in and testified requesting a variance for a second ground sign; that the entrance to his office is located at the back of the building; that his office is located on the second floor; and that a second ground sign would allow customers to easily find his business.

The Board found that 3 parties appeared in support of the application.

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

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the variance be **granted since it meets the standards for granting a variance**. Vote carried 5 – 0.

**Case No. 10227 – Eugene Stowell-** northeast of Road 412, 3,900 feet southeast of Road 433.

A variance from the minimum acreage requirement to place a manufactured home on a farm.

Mr. Rickard presented the case. Eugene Stowell was sworn in and testified requesting a variance to place a manufactured home on less than 10 acres; that he would like to hire a farm tenant to ease the work load on his wife; that he has not purchased the manufactured home yet; that the chicken houses have been on the property for approximately 30 years; and that the manufactured home would be placed behind the existing garages.

James Parker was sworn in and testified in opposition to the application and stated that the farm is very well kept; that the farm was sold to the applicant by his parents; that the contract states that no manufactured homes are to be placed on the property; that the garage has two (2) apartments with one currently being rented; that the applicant rents a farm building for commercial use; that the neighborhood is all stick built homes; that the

adjacent property owners are in opposition to the application; and that a manufactured home would decrease the property value.

Mary Beth Parker was sworn in and testified in opposition to the application and stated that there is a stove in the garage apartment that the applicant's mother lives in.

Betty Parker was sworn in and testified in opposition to the application and stated that she does not want to see a manufactured home placed on the property; and that there is a mobile home park less than 1 mile away and the farm tenant could live there.

Merrill Parker was sworn in and testified in opposition to the application and stated that there is a commercial activity being conducted on the applicant's property.

In Rebuttal, Mr. Stowell stated that farm help is needed in case something happens to the chickens; and that there is a manufactured home down the road.

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

The Board found that 8 parties appeared in opposition to the application.

Mr. Rickard stated the office received 1 letter in opposition to the application.

Motion by Mr. Hudson, seconded by Mr. McCabe, 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. McCabe, and seconded by Mr. Workman, and carried unanimously that the case be **tabled until the September 8, 2008 meeting**. Vote carried 5 – 0.

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### **The Board took a 5-minute Recess**

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**Case No. 10228 – Lou's Auto Repair-** east of U.S. Route 113, 600 feet southeast of Route 20.

A special use exception to use a manufactured home type structure for commercial use and a variance from the front yard setback requirement.

Mr. Rickard presented the case. Leslie and Lou Chapel were sworn in and testified requesting a special use exception to use a mobile unit for a snowball business and a 42-foot variance from the required 60-foot front yard setback requirement; that they purchased a camper to use for a snowball business; that it is used to attract customers for the business that is currently on the property; that the camper is a 1968; and that it is only open for business Monday through Friday from 11:00 a.m. to 6:00 p.m.

The Board found that 2 parties appeared in support of the application.

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception and variance be **granted since it will not substantially affect adversely the uses of adjacent and neighboring properties, since it will not alter the essential character of the neighborhood, since it is unique and that it only be used for the snowball business.** Vote carried 5 – 0.

**Case No. 10229 – Franklin S. Bennett-** south of Route 26, 1,259 feet east of Route 17, being Lot 2.

A special use exception for a double-stacked billboard and a variance from the front yard setback requirement.

Mr. Rickard presented the case. Franklin Bennett was sworn in and testified requesting a special use exception to place a double-stacked billboard and a 15-foot variance from the required 25-foot front yard setback requirement; that the case was previously approved in April for a single stacked billboard; that it will measure 12' x 24'; and that it will measure 288-square feet per panel.

The Board found that 1 party appeared in support of the application.

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

Motion by Mr. Workman, 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. Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the special use exception and variance be **granted since it will not substantially affect adversely the uses of adjacent and neighboring properties, since it will not alter the essential character of the neighborhood and since it enables reasonable use of the property.** Vote carried 4 – 0. Mr. McCabe did not participate in the voting.

**Case No. 10230 – Boys & Girls Club of Delaware-** southeast of Road 297, 425 feet southeast of Route 24.

A special use exception to place a manufactured home type structure as a classroom.

Mr. Rickard presented the case. Millie Charnich and George Krupanski were sworn in and testified requesting a special use exception to place a mobile home for a classroom; that they would like to relocated the mobile home; that it would allow for additional programming for children; that it would measure 24' x 36'; that it would allow

for more quality program; and that there are currently no plans to build a permanent structure.

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

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the special use exception be **granted since it will not substantially affect adversely the uses of adjacent and neighboring properties**. Vote carried 5 – 0.

**Case No. 10231 – Joseph B. Hicks and Barbara E. Griswold-** north of Road 389, 422 feet south of Route 54.

A variance from the minimum square footage requirement for a parcel.

Mr. Rickard presented the case. Joseph Hicks and Doug Annand were sworn in and testified requesting a 9,460.7-square foot variance from the required 32,670-square foot lot size requirement; that he would like to subdivide the parcel; that the manufactured home will be removed on the created lot; that the lot will be cleaned up and possible be sold; that his office is located on the front of the parcel; that the rear of the shed will be removed to meet setback requirements; that he purchased the property 5 years ago; and that the manufactured home is currently being rented.

The Board found that 1 party appeared in support of the application.

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

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the variance be **granted since it will be an improvement to the property and since it will not alter the essential character of the neighborhood**. Vote carried 5 – 0.

**Case No. 10232 – Edwin Jacobsen-** east of road 357, east of Marshy Hope Way, being Lot 30 within W. Glyn Newton development.

A variance from the rear yard setback requirement.

Mr. Rickard presented the case. Edwin Jacobsen was sworn in and testified requesting a 0.9-foot variance from the required 10-foot rear yard setback requirement; that a new dwelling was constructed and the deck does not meet the rear setback requirement; and that it would cause a hardship to remove a portion of the deck.

The Board found that 1 party appeared in support of the application.

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



Motion by Mr. McCabe, seconded by Mr. Workman, and carried unanimously that the variance be **granted since it will not alter the essential character of the neighborhood and since it is the minimum variance to afford relief.** Vote carried 5 – 0.

**Case No. 10233 – Jessica S. Valentino, Trustee-** north of Road 279B, south of Gull Drive, being Lots 53 and 59 within Joy Beach development.

A variance from the rear yard setback requirement.

Mr. Rickard presented the case. John and Jessica Valentino were sworn in and testified requesting 10-foot variance from the required 20-foot rear yard setback requirement for a 2<sup>nd</sup> floor deck; that the deck was installed by Home Depot; that it replaced the existing deck; that it measures 8' x 38'; and that the property line is in the canal.

Lora Thomas was sworn in and testified stated that she is a Representative from Home Depot; that US Remodelers actually constructed the deck; that they had never done any work in Sussex County before; and that they did not read the setback requirements on the application.

Mr. Rickard stated the office received 2 letters in support of the application.

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

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the variance be **granted since it enables reasonable use of the property, since it is unique and since it will not alter the essential character of the neighborhood.** Vote carried 5 – 0.

### **OLD BUSINESS**

**Case No. 10142 & Case No. 10200- Edwin Jacobsen-** east of Road 357, west of Marshy Hope Way, being Lot 41 within W. Glyn Newton's development.

A special use exception to place a windmill.

The Board discussed the cases, which have been tabled since July 21, 2008.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted since it will not substantially affect adversely the uses of adjacent and neighboring properties.** Vote carried 4 – 0. Mr. McCabe did not participate in the voting.

**Meeting Adjourned @ 10:30 P.M.**