

MINUTES OF DECEMBER 12, 2016

The regular meeting of the Sussex County Board of Adjustment was held on Monday, December 12, 2016, at 7:00 p.m. in the County Council Chambers, 2 The Circle, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Dale Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Brent Workman, and Mr. Norman Rickard, with James Sharp – Assistant County Attorney, and staff members Ms. Janelle Cornwell – Director Appointee and Mrs. Jennifer Norwood – Recording Secretary.

The Pledge of Allegiance was led by Mr. Rickard.

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

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously to approve the Minutes and Finding of Facts for October 3, 2016 as circulated. Motion carried 5 – 0.

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

PUBLIC HEARINGS

Case No. 11885 – Lyons, LLC – seeks a special use to place a telecommunications tower (Section 115-23C(17), 115-210C, and 115-194.2A of the Sussex County Zoning Code). The property is located on the southwest corner of Lewes-Georgetown Highway (Route 9) and Dairy Farm Road. 911 Address: 18186 Dairy Farm Road, Lewes. Zoning District: AR-1. Tax Map No.: 3-34-10.00-51.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application.

Shaun Paul, Sue Manchel, and Shawn Sacks were sworn in to testify about the Application. John Tracey, Esquire, presented the case to the Board on behalf of the Applicant.

Mr. Tracey stated that the Applicant is requesting a special use exception to place a telecommunications tower; that the proposed tower will be 140 feet tall including a 5 feet tall lightning rod; that the proposed tower will be located to the rear of the Property near trees; that there will be a gravel drive from Dairy Farm Road to access the tower site; that the tower will be over 1,200 feet from any neighboring dwelling and that dwelling is owned by one of the owners of the site where the tower will be placed; that the tower site will comply with the Sussex County Zoning Code requirements on setbacks, fencing, and lighting; that the Applicant submitted both a radio frequency report and interference report to show compliance; that the site is compliant with Federal Aviation Administration (“FAA”) guidelines and does not need to be lit per FAA

guidelines; that the emissions report shows the site complies with Federal Communications Commission (“FCC”) guidelines; that the radio frequency (“RF”) emissions from the site, even at full capacity, is 147 times below the FCC’s RF emission maximum level; that the proposed tower location is needed to fill a gap in coverage; that there are no other locations within two miles of the site which are available for collocation and will fill the gap in coverage; that there is only one facility within the two mile radius but it will not cover the gap in coverage and the structure is not structurally compatible with the antennae and equipment used by the Applicant; that the Applicant will contact FAA upon completion of the tower’s construction; that the proposed tower will not substantially adversely affect the uses of the neighboring and adjacent properties; that property values do not diminish outside of 600 feet of a tower; that the tower will not make any noise or require any services; and that the tower will be designed to accommodate two (2) other carriers.

Mr. Paul, under oath, affirmed the statements made by Mr. Tracey in reference to the reports submitted with the Application.

Mr. Sacks, under oath, affirmed the statements made by Mr. Tracey in reference to the tower site being code compliant.

The Board found that one (1) party appeared in support of the Application.

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

Mr. Rickard moved to approve Special Use Exception Application No. 11885 for the requested special use exception based on the record made at the public hearing because the use will not substantially adversely affect the uses of the neighboring and adjacent properties and otherwise meets the requirements for a telecommunications tower set forth in the Sussex County Zoning Code.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted for the reasons stated and that the site will meet the requirements in the Sussex County Zoning Code**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

Case No. 11886 – Terry Shenk – seeks a variance from the rear yard setback requirement (Section 115-25C of the Sussex County Zoning Code). The property is located on the west side of White Oak Road approximately 1,438 feet north of South Dogwood Drive. 911 Address: 30878 White Oak Road, Dagsboro. Zoning District: AR-1. Tax Map No.: 1-34-6.00-40.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application.

Terry Shenk was sworn in and testified requesting a variance of 8.33 feet from the twenty (20) feet rear yard setback requirement for a proposed manufactured home; that the Property is

unique because it is one of four lots in the subdivision that is shallower than other lots in the development; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code; that the proposed manufactured home is the shortest length manufactured home which will meet the age requirements for a manufactured home set forth by the County; that the exceptional practical difficulty was not created by the Applicant; that the lot was designed by the developer and the depth of the lot limits the length of a home which can be placed thereon; that the proposed unit will not alter the character of the neighborhood; that the development was originally designed a manufactured home community; that the original manufactured home, which was uninhabitable, has been removed; that the proposed manufactured home will be placed in the same location as the previous manufactured home; that the variance sought is the minimum variance to afford relief; that he can only place a singlewide manufactured home on the Property because the Property is less than $\frac{3}{4}$ acre; that the previous manufactured home was a 1985 model and the replacement manufactured home must be a newer model than the one being replaced; that he initially looked at a doublewide manufactured home which would probably fit within the building envelope but, when he contacted the Planning & Zoning Office, he was told that he had to replace it with a singlewide manufactured home; that a doublewide manufactured home would, however, limit the available area for a septic system and a doublewide manufactured home would require a larger drain field; that he placed a deposit on a singlewide manufactured home because he was told that he could not place a doublewide manufactured home on the lot; that the proposed manufactured home was the shortest singlewide manufactured home he could find; that the previous unit was damaged by a tree and had to be removed; that he considered turning the manufactured home but that did not leave enough room for the septic system and the well; that he believes the Property was previously serviced by a cesspool; and that he plans to install a new septic system on the Property.

Ms. Cornwell advised the Board that the Code requires that a singlewide manufactured home be replaced with a singlewide manufactured home that is a newer model.

Mr. Shenk submitted a copy of his septic system plan.

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

Mr. Mills moved to approve Variance Application No. 11886 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The narrowness of the Property and style of manufactured home available for this Property make it unique;
2. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
3. The variance is necessary to enable reasonable use of the Property;
4. The exceptional practical difficulty was not created by the Applicant;
5. The variance will not alter the essential character of the neighborhood;
6. The use will not be detrimental to the public welfare; and
7. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Rickard – yea, Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 11887 – B&K Investments, LLC – seek a variance from the side yard setback requirement (Section 115-34B of the Sussex County Zoning Code). The property is located on the west side of Bayberry Road approximately 617 feet south of Cedar Road. 911 Address: 38269 Bayberry Road, Selbyville. Zoning District: MR. Tax Map No.: 5-33-20.09-105.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application.

Charles Shade was sworn in and testified requesting a variance of 4.1 feet from the ten (10) feet side yard setback requirement on the north side for a proposed dwelling; that he is the construction manager for Clayton Homes; that he has a client who wants to place a new modular home on the Property, which is located in Keen-Wik; that the existing dwelling was in poor shape and had to be removed from the lot; that the proposed dwelling is a Cape Cod style; that the Property is unique because it is narrow; that the proposed dwelling will not fit on the Property due to the lot's narrowness; that the proposed home will enhance the character of the neighborhood; that the variance will not alter the essential character of the neighborhood; that the proposed home has gables and the Applicant wants the gables to face the canal; that the Applicant is unsure whether he will finish the second floor of the home when it is constructed; that the proposed dwelling will consist of approximately 1,515 square feet; that the dwelling will be on a block foundation and raised to comply with the flood zone requirements; that the Applicant wants the dormers to face the lagoon; that the Applicant does not need to turn the house; that the dwelling could be turned to fit within the building envelope; that other homes in the neighborhood are approximately 1,500 square feet in size; that a smaller house could fit on the lot; that Clayton Homes sells other models of homes but the Applicant chose the Cape Cod style home; that he does not think he can meet the standards for granting a variance; that the lot does not have severe flooding issues; that the Property is serviced by central sewer and water; and that the Property is a larger lot than other lots in the neighborhood as it approximately one-third greater than other lots.

The Board found that one (1) party appeared in support of the Application.

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

Mr. Rickard moved to deny Variance Application No. 11887 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The exceptional practical difficulty is being created by the Applicant;
2. The Applicant could turn the home to fit on the lot; and
3. The Property can otherwise be developed in strict conformity with the Sussex County Zoning Code.

Motion by Mr. Rickard, seconded by Mr. Mills, and carried unanimously that the variance be **denied for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Workman – yea, Mr. Rickard – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 11888 – Jeffrey Wyatt – seeks variances from the side yard setback requirement (Sections 115-42B, 115-181B, and 115-183C of the Sussex County Zoning Code). The property is located on the east side of Laws Point Road approximately 0.53 miles northeast of Swann Drive. 911 Address: 37074 Laws Point Road, Selbyville. Zoning District: GR. Tax Map No.: 5-33-12.12-4.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application.

Adam Rones, Jeffrey Wyatt, and Cynthia Wyatt were sworn in and testified requesting a variance of 5.5 feet from the ten (10) feet side yard setback requirement on the northeast side for a proposed dwelling and a variance of 3.8 feet from the ten (10) feet side yard setback requirement on the southwest side for a proposed dwelling, a variance of 7.8 feet from the ten (10) feet side yard setback requirement on the southwest side for proposed steps, platform, and HVAC system.

Mr. Rones testified that the Applicants propose to place a two (2) boxed modular home on the Property; that the Property is located in Swann Keys and is only forty (40) feet wide; that the development was designed as a mobile home park; that the development is transitioning from a mobile home park and homes are being replaced with larger dwellings; that the proposed dwelling is similar in size as other dwellings in the development; that the forty (40) feet wide lot makes the Property unique in size; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code and be consistent with the character and market value of the development; that the difficulty was not created by the Applicant since the Applicant did not create the size of the lot or setback requirements; that the Applicant only recently acquired the Property; that the variances will not alter the essential character of the neighborhood; that the proposed dwelling is consistent in design and orientation on the lot as other homes in the neighborhood; that the variances requested are the minimum variances necessary to afford relief; that the proposed dwelling is 28 feet wide; that a dwelling that is 24 feet wide would not be consistent with other homes in the neighborhood; that the previous single-wide manufactured home has been removed; that all single-wide manufactured homes are being replaced with dwellings; that the proposed dwelling will be on pilings as the Property has flooded at times; that the Cape Cod dwelling will consist of 1 ½ stories; that the Applicant discussed placing the steps, platform, and HVAC system elsewhere but the proposed location of the steps, platform, and HVAC system is consistent with the neighborhood; that the proposed porch cannot be centered with the dwelling since it is an integral part of the structure; and that the second floor will be unfinished.

The Board found that one (1) party appeared in support of the Application.

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

Mr. Mills moved to approve Variance Application No. 11888 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique as it is only forty (40) feet wide;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway - yea.

Case No. 11890 – Showfield Lewes, LP / Jack Lingo, Inc. – seeks a special use exception to use a manufactured home type structure as a sales office (Section 115-23A and 115-210A(1) of the Sussex County Zoning Code). The property is located on the east side of Show Jumper Lane approximately 213 feet north of Gills Neck Road. 911 Address: 18226 Show Jumper Lane, Lewes. Zoning District: AR-1. Tax Map No.: 3-35-8.00-1001.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application.

Nick Hammonds was sworn in and testified requesting a special use exception to use a manufactured home type structure as a sales office; that the proposed use will not substantially adversely affect the uses of the neighboring and adjacent properties; that the Showfield Subdivision is a 166 lot subdivision which is being developed off of Gills Neck Road near Lewes; that utilities have been recently installed for 49 lots; that the proposed unit will be placed on Lot 2 and used as a sales office until the model home is completed; that the model home will be built on Lot 1, which is the lot immediately adjacent to the site of the proposed sales trailer; that the Applicant is seeking an approval for one (1) year; that the unit will measure 12 feet by 48 feet and meet all the required setback requirements; that the developer owns the adjacent lots; that the nearest completed homes are located several hundred feet away; and that there will be landscaping and adequate parking available.

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

Mr. Mills moved to approve Special Use Exception Application No. 11890 for the requested special use exception for a period of one (1) year based on the record made at the public hearing because the use will not substantially adversely affect the uses of the neighboring and adjacent properties.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the special use exception be **granted for the reasons stated for a period of one (1) year**. Motion carried 5 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 11891 – 47 Harbor Road, LLC / PJ Pauley seek variances from the front yard and rear yard setback requirements (Section 115-25C, 115-182D and 115-183C of the Sussex County Zoning Code). The property is located on the west side of Harbor Road approximately 505 feet south of Holly Road. 911 Address: 47 Harbor Road, Rehoboth Beach. Zoning District: AR-1. Tax Map No.: 3-34-8.17-154.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received no letters of opposition to the Application and read one (1) letter of support into the record.

Matthew Toback was sworn in and testified requesting a variance of 0.6 feet from the thirty (30) feet front yard setback requirement for an existing dwelling, a variance of 11 feet from the thirty (30) feet front yard setback requirement for an existing set of steps, a variance of 18.2 feet from the twenty (20) feet rear yard setback requirement an existing structure, a variance of 16.5 feet from the twenty (20) feet rear yard setback requirement for an existing trash enclosure, a variance of 17 feet from the twenty (20) feet rear yard setback requirement an existing structure, a variance of seven (7) feet from the twenty (20) feet rear yard setback requirement for an existing structure, and a variance of 13.5 feet from the twenty (20) feet rear yard setback requirement for a proposed addition; that the Property is unique since the entire complex is non-conforming; that the Applicant is adding a handicap bathroom for his son; that the Property cannot be otherwise developed since the structures have existed prior to the Sussex County Zoning Code; that the difficulty has not been created by the Applicant; that the variances will not alter the essential character of the neighborhood; that other units in the community have made similar additions; that the proposed addition will be directly below the existing second floor deck and not extend any farther into the setback requirement than the existing footprint of the structure; that he believes the unit was constructed in the 1950s; that the original building and the second floor deck are partially located in the setback area; that neighboring properties have been developed in a similar fashion; that there was no other option to add the handicap bathroom to the unit; and that the variances requested are the minimum variances necessary to afford relief.

Ms. Cornwell advised the Board that there are no variances in the development but there may need to be other variances for neighboring properties; and that only one of the variances requested is needed for the proposed addition and the other requested variances are for the existing structures.

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

Mr. Mills moved to approve Variance Application No. 11891 for the requested variances based on the record made at the public hearing and for the following reasons;

1. The non-conformity of the existing structures makes the Property unique;
2. The variances are necessary to enable reasonable use of the Property;
3. The addition is for a handicapped person and is needed;
4. The exceptional practical difficulty was not created by the Applicant;
5. The variances will not alter the essential character of the neighborhood;
6. The use will not be detrimental to the public welfare; and
7. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Meeting Adjourned 8:23 p.m.