

MINUTES OF DECEMBER 14, 2015

The regular meeting of the Sussex County Board of Adjustment was held on Monday, December 14, 2015, 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 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 – Planning and Zoning Manager, and Mrs. Jennifer Norwood – Recording Secretary.

The Pledge of Allegiance was led by Mr. Rickard.

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

Motion by Mr. Rickard, seconded by Mr. Mills, and carried unanimously to approve the Minutes and Finding of Facts for October 19, 2015 as circulated. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes and Finding of Facts for November 2, 2015 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. 11674 – Joseph Soriano, Jr. and Maryellen Soriano – seek variances from the rear yard, side yard, and front yard setback requirements (Section 115-25C, 115-183C, and 115-185F of the Sussex County Zoning Ordinance). The property is located on the west side of Taft Avenue approximately 50 feet south of Lighthouse Road. 911 Address: 38808 Taft Avenue, Selbyville. Zoning District AR-1. Tax Map No.: 5-33-20.14-73.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Ray Tomasetti and Jill Cizerski were sworn in and testified requesting a variance of 5.4 feet from the twenty (20) feet rear yard setback requirement for an existing dwelling, a variance of 8.3 feet from the twenty (20) feet rear yard setback requirement for an existing open deck, a variance of 0.6 feet from the five (5) feet side yard setback requirement for an existing shed, a variance of 1.9 feet from the five (5) feet front yard setback requirement for an existing dwelling, a variance of 5.6 feet from the ten (10) feet side yard setback requirement for an existing dwelling, a variance of 9.8 feet from the ten (10) feet side yard setback requirement for an existing set of steps, a variance of 9.2 feet from the ten (10) feet side yard setback requirement for an existing HVAC platform, a variance of 6.4 feet from the ten (10) feet side yard setback requirement for an

existing cantilevered window, and a variance of 3.5 feet from the ten (10) feet side yard setback requirement for an existing dwelling.

Mr. Tomasetti testified that he has personal knowledge of the Property; that he handled the settlement of the Property in 1985 for the previous owners; that an existing 1972 manufactured home was replaced in 1980 by the original owner; that in 1985 the Property was sold and the buyers did not obtain a survey; that the previous owner passed away two (2) years ago; that this dwelling was the previous owner's primary residence and he obtained proper permits for the deck, porch and shed on the Property; that the previous owners were unaware of any encroachments; that the Applicants purchased the Property earlier this year; that the survey completed on July 22, 2015 showed the encroachments; that the manufactured home is classified as a Class "C" dwelling with Assessment Division; that the lot is unique in size and measures 50 feet wide by 89 feet deep; that the difficulty was not created by the Applicants; that the home was placed by a prior owner in 1980; that the deck was placed in 1985; that the shed was placed in 1994; that the variances do not alter the essential character of the neighborhood; that other homes in the development are similarly situated on their lots; that the variances sought are the minimum variances to afford relief; and that there have been no previous complaints from neighbors or the Homeowners Association. Mr. Tomasetti submitted pictures of the Property to the Board to review.

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 stated that he would move that the Board recommend approval of Variance Application No. 11674 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is small and narrow lot which makes the Property unique;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicants;
4. The prior owners placed the structures on the Property;
5. There have been no complaints from neighbors about the structures;
6. The variances will not alter the essential character of the neighborhood; and
7. 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. 11675 – Mary Jean Owens – seeks a variance from the side yard setback requirement (Section 115-42B and 115-83 C of the Sussex County Zoning Ordinance). The property is located on the east side of East Lagoon Road approximately 780 feet north of Falling Point Road. 911 Address: 30864 East Lagoon Road, Dagsboro. Zoning District: GR. Tax Map No.: 1-34-6.00-143.01.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received two (2) letters in support of the Application and had not received any correspondence in opposition to the Application.

Mary Jean Owens was sworn in and testified requesting a variance of 6.5 feet from the ten (10) feet side yard setback requirement on the south side for a proposed deck and a variance of 1.5 feet from the five (5) feet side yard setback requirement on the south side for steps; that the Property is narrow; that to build the deck in compliance with the setback requirement would only allow the deck to be 6.5 feet wide and a deck that narrow would not be comfortable; that the proposed deck will measure 8 feet by 24 feet; that she did not create the exceptional practical difficulty because she did not create the lot; that the adjacent neighbor has no objection to the Application; that the property owner has no objection to the Application; that the proposed deck and steps will enhance the Property and will not alter the essential character of the neighborhood; that the proposed deck and steps will not impair the uses of neighboring and adjacent properties; that the variances requested are the minimum variances to afford relief; that the deck will remain uncovered; that the proposed deck will provide enough space for patio furniture and for individuals to navigate safely around the deck; that the existing trees on the south side lot will provide shade for the proposed deck; that there is no shade on the north side of the lot; that a septic system is located on the other side of the dwelling near the rear of her lot; that there is an existing paved walkway on that side of the dwelling as well; that there are five (5) septic systems to the rear of her property that service other lots in the park; that she did not want the deck on the same side as the septic systems to maintain accessibility to the systems; that the septic system is unusually large because it services multiple properties; and that occasionally odors come from the systems when there are issues.

The Board found that two (2) parties appeared in support of the Application.

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

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11675 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique in size as it is only 50 feet wide by 100 feet deep;
2. The Property is also unique due to the unusual septic system located on the Property;
3. The variances are necessary to enable reasonable use of the Property;

4. The exceptional practical difficulty was not created by the Applicant;
5. The variances will not alter the essential character of the neighborhood; and
6. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the reasons stated**. 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. 11676 – Robert Leshner – seeks a special use exception to place a billboard (Section 115-80C and 115-210A(3)(p) of the Sussex County Zoning Ordinance). The property is located on the south side of Long Neck Road across from Lingo Lane. 911 Address: 32564 Long Neck Road, Millsboro. Zoning District: C-1. Tax Map No.: 2-34-23.00-311.10.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Robert Leshner was sworn in and testified requesting a special use exception to place a billboard; that the Property is zoned C-1; that the proposed billboard will not alter the character of the neighborhood; that there are several billboards within 2 miles of the Property; that the proposed two (2) sided billboard will measure 10 feet by 20 feet; that the proposed billboard will not substantially adversely affect the uses of the neighboring and adjacent properties; that the proposed billboard will meet all the required setback, height, and square-footage requirements for a billboard; that the structure will have two to three poles to provide structural integrity; that there appears to be a market in the area for billboards; that another billboard owner in the area has customers waiting to advertise on its billboard; that he does not intend to have a billboard which is 300 square feet per side; that there are numerous commercial businesses in the area; that the proposed billboard will not be an LED sign; that the billboard will be a wooden sign with vinyl covering; that he will not use the billboard for a digital sign; that there is a holding pond on adjacent property; that the billboard would have no adverse effect on the holding pond; and that the proposed placement of the billboard is the only place he could place the sign without the need for a variance. Mr. Leshner submitted exhibits to the Board to review.

Frank Fullmer was sworn in and testified in opposition to the Application and testified that he would like to have the billboard placed fifty (50) feet further away from his property; that the proposed location will prevent his proposed billboard from meeting the three-hundred (300) feet separation requirement between billboards; that, after realizing he could apply for a variance from the separation requirement in the future, he had no further objection to the Application; and that the proposed billboard will not substantially adversely affect the uses of the neighboring and adjacent properties.

The Board found that two (2) parties appeared in support of the Application.

The Board found that one (1) party appeared in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Special Use Exception Application No. 11676 for the requested special use exception based on the record made at the public hearing because the uses does not substantially adversely affect the uses of the neighboring and adjacent properties. The Application was approved on the condition that the billboard would be no larger than 200 square feet per side and that the billboard be restricted to static advertising.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted for the reasons stated**. 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. 11677 – BAR-SGR, LLC, Cellco Partnership d/b/a Verizon Wireless – seeks a special use exception to place a telecommunication tower (Section 115-23C(17) and 115-194.2A of the Sussex County Zoning Ordinance). The property is located on the northwest corner of Zoar Road and Lawson Road. 911 Address: 24296 Lawson Road, Georgetown. Zoning District: AR-1. Tax Map No.: 2-34-15.00-10.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Sue Manchell, Michael Cleary, and Bryan Grevis were sworn in to testify about the Application. John Tracey, Esquire, presented the case to the Board on behalf of the Applicant and submitted exhibits for the Board to review.

Mr. Tracey stated that the Applicant is requesting a special use exception to place a telecommunications tower; that the proposed tower will be 145 feet tall with a 5 feet tall lightning rod; that the Property consists of approximately 70 acres; that the proposed tower will meet all zoning requirements and requires no variances; that the proposed tower will meet the lighting and fencing requirements; that the tower will fill a gap in coverage in the area; that the proposed tower will provide reliable coverage in the area; that there is a significant gap in coverage in the area; that the proposed tower is over 650 feet from the nearest structure; that the proposed tower will blend in with the tall trees on the Property; that the proposed tower site has Federal Aviation Administration (“FAA”) approval; that the emissions from the tower are 300 times below the Federal Communications Commission (“FCC”) maximum requirements; that there are no structures within a two (2) mile radius of proposed tower site to collocate; that the closest structures are over three (3) miles from the site and the Applicant is already located on those structures; that

the proposed tower will not substantially adversely affect the uses of the neighboring and adjacent properties; that the tower will not tax any resources; that the traffic related to the tower will be minimal as there will be generally only 1 trip to the site per month after it is constructed; that the tower will provide space for collocation for up to two (2) different providers; and that, when the Applicant conducts a Radio Frequency test, it is based on a worst case scenario.

Mr. Cleary and Mr. Grevis, under oath, confirmed the statements made by Mr. Tracey.

Mr. Grevis testified that cell phones operate with lesser wattage than older cell phones and additional cell towers are needed to catch the signal from the newer phones.

The Board found that two (2) parties appeared in support of the Application.

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

Mr. Mills stated that he would move that the Board recommend approval of Special Use Exception Application No. 11677 for the requested special use exception based on the record made at the public hearing because the use does not substantially adversely affect the uses of the neighboring and adjacent properties and the Applicant has demonstrated that it meets the telecommunication tower requirements.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the special use exception 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. 11678 – Gumboro Volunteer Fire Co. Inc., Cellco Partnership d/b/a Verizon Wireless – seeks a special use exception to place a telecommunication tower (Section 115-194.2A of the Sussex County Zoning Ordinance). The property is located on the southwest corner of Millsboro Highway and Shell Station Road. 911 Address: 37030 Millsboro Highway, Millsboro. Zoning District: C-1. Tax Map No.: 3-33-11.00-23.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Sue Manchell, Michael Cleary, and Bryan Grevis, who were still under oath, appeared to testify about the Application. John Tracey, Esquire, presented the case to the Board on behalf of the Applicant and submitted exhibits for the Board to review.

Mr. Tracey stated that the Applicant is requesting a special use exception to place a telecommunication tower; that the proposed tower will be 140 feet tall with a 5 feet tall lighting

rod; that the Property consists of approximately 7 acres and is improved with a fire company and related structures; that there is an existing tower on the Property; that the proposed tower will meet all zoning requirements and requires no variances; that the proposed tower will meet the lighting and fencing requirements; that the tower will provide space for collocation for at least two (2) other telecommunication providers; that there is currently a significant gap in coverage in the area; that the proposed tower will provide reliable coverage in the area; that the emissions from the proposed tower are 300 times below the Federal Communications Commission ("FCC") maximum requirements; that the proposed tower site has Federal Aviation Administration ("FAA") approval; that an existing tower used by the fire company and another carrier is located on the Property; that the lattice tower is 170 feet tall; that the existing lattice tower is not structurally sound enough to allow the Applicant to collocate their equipment; that the existing lattice tower cannot be modified to accommodate the Applicant's equipment; that there are no other structures within two miles of the Property which could accommodate the Applicant's equipment; that the proposed tower will be constructed to modern engineering standards and will accommodate two other carriers; that the Applicant will avoid the fire company's operation in placing the tower; that the proposed tower will be 275 feet from the nearest structure; that there are commercial businesses and a large grain operation in the area; and that the tower will not interfere with the fire company's signals.

Mr. Cleary testified that he is an engineer; that he worked with AT&T to install its equipment on the existing lattice tower; that the tower had already been modified and welded to accommodate AT&T's equipment; that the tower is at 99% capacity and any addition thereto would cause the tower to exceed its structural capacity; that the existing tower cannot be modified to accommodate an additional carrier; and that the existing tower was not originally designed as a telecommunications tower but was used for collocation by AT&T.

Mr. Cleary and Mr. Grevis, under oath, confirmed the statements made by Mr. Tracey.

The Board found that two (2) parties appeared in support of the Application.

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

Mr. Mills stated that he would move that the Board recommend approval of Special Use Exception Application No. 11678 for the requested special use exception based on the record made at the public hearing because the use does not substantially adversely affect the uses of the neighboring and adjacent properties and the Applicant has demonstrated that it meets the telecommunications tower requirements.

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

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

Meeting Adjourned 8:30 p.m.