

MINUTES OF DECEMBER 9, 2024

The regular meeting of the Sussex County Board of Adjustment was held on Monday, December 9, 2024, at 6:00 p.m. in the County Council Chamber, Sussex County Administration Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Jeffrey Chorman presiding. The Board members present were Dr. Kevin Carson, Mr. Shawn Lovenguth, and Mr. John Hastings. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Ms. Jennifer Norwood – Planning and Zoning Manager, and Ms. Hannah Wyatt – Recording Secretary.

The Pledge of Allegiance was led by Mr. Chorman.

Motion by Dr. Carson, seconded by Mr. Hastings and carried unanimously to approve the agenda as amended to remove Case No. 13022. Motion carried 4 – 0.

The vote by roll call; Mr. Lovenguth – yea, Mr. Hastings – yea, Dr. Carson – yea, and Mr. Chorman – yea.

Motion by Mr. Hastings, seconded by Mr. Lovenguth and carried unanimously to approve the Minutes for the October 7, 2024, meeting. Motion carried 4 – 0.

The vote by roll call; Dr. Carson- yea, Mr. Hastings- yea, Mr. Lovenguth- yea, and Mr. Chorman- yea.

Motion by Dr. Carson seconded by Mr. Lovenguth and carried to approve the Findings of Facts for the October 7, 2024, meeting. Motion carried 4 – 0.

The vote by roll call; Dr. Carson- yea, Mr. Hastings- yea, Mr. Lovenguth- yea, and Mr. Chorman- yea.

Motion by Dr. Carson seconded by Mr. Hastings and carried to approve the Amended Finding of Facts for Case No. 12976. Motion carried 4-0

The vote by roll call; Dr. Carson- yea, Mr. Hastings- yea, Mr. Lovenguth- yea, and Mr. Chorman- yea.

Motion by Mr. Hastings seconded by Dr. Carson and carried to approve the Amended Finding of Facts for Case No. 12944. Motion carried 4-0

The vote by roll call; Mr. Hastings- yea, Dr. Carson- yea, Mr. Lovenguth- yea, and Mr. Chorman- yea.

PUBLIC HEARINGS

Case No. 13017 – Cellco Partnership (Verizon Wireless) seeks a special use exception to place a telecommunications tower (Section 115-40, 115-194.2, and 115-210 of the Sussex County Zoning Code). The property is located on the west side of Cedar Neck Road. 911 Address: 30430 Cedar Neck Road, Ocean View. Zoning District: GR and B-1. Tax Parcel: 134-9.00-67.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received a 24 signature opposition petition and 3 opposition letters, 0 letters of support, and two mail returns.

Mr. John Tracey, Esquire, appeared on behalf of the Applicant.

Mr. Tracey stated that this is a 135 foot tall telecommunication pole and that includes a 5 foot lightning rod on top; that the property is located northwest of Cedar Neck Road and north of Ocean View; that the property consists of 1.1 acres; that there is a commercial business on the property; that the property is zoned GR in the rear yard and B-1 in the front yard; that the area is a mix of commercial and residential zoning with dense residential direction in all directions from the area; that property across the street is zoned C-1; that the location on this property allows them to establish the use without having to receive any variances as the tower will be compliant with the setbacks and the fencing as well as lighting requirements; that the tower will be located to the rear of the property; that the tower will not infringe with the trees or the wetlands; that the Applicant has a license with the FCC; that there is increased demand for the services of internet, text, and phone calls; that the facility in this area is overtaxed; that this tower is needed due to capacity and coverage issues in the area; that there are gaps in coverage in the area; that the RF design report showed that in the last half of 2023 that 76% of all adults and 86.8% of children lived in wireless only homes; that, since the Covid-19 pandemic, the demand has increased greatly due to people working from home or students studying from home; that there is something he considers the concert affect, where you have 20,000 people in the same place trying to all do the same thing but are unable to due to the network being at capacity; that emergency responders also depend on this network as they have these devices in the emergency vehicles and 70% of all calls made to 911 are from cellular devices; that the Applicant prefers to collocate where possible but there are not many tall structures in the area; and that there are numerous sites in the area that may have been a better choice but the property owners were not willing to put the tower on their property.

Mr. Andrew Peterson was sworn in to give testimony for this application.

Mr. Peterson testified that, in order to provide adequate service for subscribers, Verizon has to have strong enough signal, so coverage has to be there for radio resources available for whatever the demand is; that the site is a dual purpose as it addresses capacity and coverage; that the Applicant is looking to improve in-building coverage; that he shows the coverage on the slideshow they provided; that there is a small tower nearby which provides limited coverage; that there are no available tall sites within 2 miles that will meet the Applicant's needs that the Applicant is not already

using; that the Applicant is already on a water tower within 1 mile of the site; that the tower will improve in-building coverage; that there are 2 sites within 1 mile but they are overburdened; that residential areas north, west and south are lacking the in- building coverage; that the proposed site is going to provide three sets of antennas that will provide stronger service; that the other two sectors are in a state of exhaustion due to the demand for service in this area; that service will improve at the other sites by lessening the load; that the other sites are in a chronic state of exhaustion; that there are too many users on the network which leads to unreliable calls, texts, and streaming services; that there will be a light every 50 feet on the pole to abide by the light requirements; that the tower, at maximum output, will emit 4.7% of the maximum RF output allowable under federal regulations; that the maximum output assumes 24/7 usage with maximum exposures and ground reflections; and that, even with the worst case scenario of the upper limit assumptions, the tower will be just 4.7% of the maximum RF output allowed.

Mr. Tracey stated that, if the RF limits are not exceeded, per the Telecommunications Act of 1996, the Board cannot take into consideration health considerations from the tower.

Mr. Peter Albono was sworn in to give testimony for this application.

Mr. Albono testified that the tower will measure 135 feet tall with a 5 feet lighting rod; that the pole will comply with all setback regulations; that the tower will not infringe upon any wetlands; that the tower will have maintenance every 4-6 weeks; that the tower will be fenced in; that the tower will be lighted to meet the Sussex County Zoning Code; and that the tower will be located 45 feet from the rear property line.

Mr. Braxton Dees was sworn in to give testimony for this application.

Mr. Dees testified that he is an appraiser; that he looked at the articles and studies regarding cell towers and powerlines; that the articles and studies show there is very minimal, if any, impact on property values; that they did a local analysis of sales data and they looked at subdivisions that were near cell towers; that they find two properties that are similar the only difference between the two is the distance from the cell tower and they look at the differences in sale prices; that the studies show there is not a substantial difference if a property is close to a tower; that some properties have higher values and others have lower values; that he looked in Sussex County, Delaware, and Worcester County, Maryland; and that he agrees with the findings in the New Castle County study and the ABA article that cell towers fall into the background.

Ms. Susan Manchel was sworn in to give testimony for this application.

Ms. Manchel testified that she reached out to numerous property owners in the area to see if they were interested in hosting the cell tower; and that most people would not respond or they had other plans with their property.

Mr. Tracey stated that federal law applies to the RF emissions; that the tower will meet the RF standards and is safe; that the Applicant explored alternate sites; that the Applicant has no authority to condemn properties for their towers; that the good sites have been taken; that there is increased demand in the area; that the Applicant has to go where people are located; that the tower will not substantially affect adversely the uses of neighboring and adjacent properties; that the tower projects no smell or noise; that the tower will have little vehicular traffic related to its operation; and that the tower meets the Code requirements.

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

Mr. Chorman closed the public hearing.

Mr. Hastings moved to approve the application for Case No. 13017 for the special use exception, pending final written decision, because the proposed tower will not affect adversely the uses of neighboring and adjacent properties.

Motion by Mr. Hastings, seconded by Dr. Carson, carried that the **special use exception be approved for the reasons stated**. Motion carried 4 - 0.

The vote by roll call; Mr. Lovenguth – yea, Dr. Carson – yea, Mr. Hastings – yea and Mr. Chorman – yea.

Case No. 13018 – Milad and Jennifer Bahrami seek variances from the front yard setback requirement for a proposed structure (Sections 115-34, 115-42, and 115-182 of the Sussex County Zoning Code). The property is located on the northwest side of Ocean View Place within the White Creek at Bethany Subdivision. 911 Address: 30867 Ocean View Place, Ocean View. Zoning District: MR. Tax Map: 134-8.00-583.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received one letter of support of the Application, no correspondence in opposition to the Application, and one mail return. The Applicants seek variances of 6.9 feet, 7.99 feet, and 5.93 feet from the 30 feet front yard setback requirement for a proposed covered first-floor deck with a second-floor deck.

Mr. Milad Bahrami and Ms. Jennifer Bahrami were sworn in to give testimony for this application.

Ms. Bahrami testified that they want construct a 10 foot deck on the front of their property which they purchased in March 2023; that the property is located in White Creek at Bethany; that they would like to add additional outdoor living area that would be appealing to the neighborhood and allow them to enjoy the water views; that their lot has an unusual shape that limits the available outdoor improvements; that they have more building restrictions because they have a tax ditch in the rear yard as well as wetlands so they cannot build in the back of the property any farther; that the

addition will not negatively affect the neighborhood and that they designed it to compliment the aesthetics of the neighborhood; that their home is the only one in the neighborhood that does not have a deck in the front yard; that all the surrounding neighbors approve of the addition and think it would add to the character of the neighborhood; that the HOA also supports the request; that the property is located on a cul-de-sac; that there is a gap between the edge of paving of the cul-de-sac and the front property line; that the property is served by water and sewer; that the Applicants did not build the house; and that they cannot built on the south side due to the existing layout of the house

Mr. Bahrami testified that there is a gap between the front property line and the edge of paving of the cul-de-sac.

Mr. Sharp asked if the deck is going to be open or closed.

Ms. Bahrami testified that the deck on the bottom is open and there is one on the second floor as well so it looks as though there is a cover over the bottom deck but neither one is enclosed; and that there are no plans to screen in the first-floor deck.

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

Mr. Chorman closed the public hearing.

Dr. Carson moved to approve the application for Case No. 13019 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique physical conditions;
2. The variances will not alter the essential character of the neighborhood; and
3. The variances represent the minimum variances necessary to afford relief.

Motion by Dr. Carson, seconded by Mr. Hastings, carried that the **variances be approved for the reasons stated**. Motion carried 4-0.

The vote by roll call; Mr. Williamson – yea, Dr. Carson – yea, Mr. Lovenguth – yea, and Mr. Chorman – yea.

Case No. 13020 – Michelle Kinsey seeks variances from the side yard setback requirement for existing structures, (Sections 115-25 and 115-183 of the Sussex County Zoning Code). The property is located on the south side of Lincoln Ave within the Cape Windsor Subdivision. 911 Address: 38827 Lincoln Drive, Selbyville. Zoning District: AR-1. Tax Map: 533-20.14-32.00.

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received eleven letters of support to the Application, no correspondence in opposition to the Application, and one mail return. The Applicant seeks a variance of 3.1 feet from the 5 feet side yard setback

requirement on the south side for an existing deck and steps and a variance of 2.3 feet from the 5 feet side yard setback requirement on the south side for an existing deck and steps.

Ms. Michelle Kinsey was sworn in to give testimony for this application.

Mr. Charles Armbruster, Esquire, appeared on behalf of the Applicant.

Mr. Sharp provided the Board with a history of the variance history for this property.

Ms. Kinsey testified that she bought her house in 2014; that there was a deck on the property when they bought it; that, in 2022, the deck had rotted and needed to be replaced; that the steps were there when they bought the house and they replaced the steps at the same time as the deck; that they built the new set of stairs using the same footprint of the old steps; that the new deck is also built off of the old deck footprint; that almost all of the houses in the neighborhood have similar decks and steps off their houses; that the lots are very narrow so it is common in this neighborhood to be beyond the setbacks; that the builder that put the deck and steps in did not inform her of the permit process so at this time there is no permit for the steps and deck, however, if the variance is approved Ms. Kinsey knows that she must obtain a permit for the structures; that the owner of Lot 50 supports the request; that there have been no complaints about the structures; that the structures are uncovered; that the structures are used for ingress and egress to the home; and that the structures can be maintained while remaining on the property.

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

Mr. Chorman closed the public hearing.

Dr. Carson moved to approve the application for Case No. 13020 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique physical circumstances or conditions;
2. The variances will not alter the essential character of the neighborhood; and
3. The variances represent the minimum variances necessary to afford relief.

Motion by Dr. Carson, seconded by Mr. Hastings, carried that the **variances be approved for the reasons stated**. Motion carried 4-0.

The vote by roll call; Mr. Lovenguth – yea, Dr. Carson – yea, Mr. Hastings – yea, and Mr. Chorman – yea.

Case No. 13021 – Michael Allison seeks variances from the rear yard setback for a proposed structure (Sections 115-34 and 115-183 of the Sussex County Zoning Code). The property is located on the northeast side of Ensign Crest within the Bay Crossing Subdivision. 911 Address: 34945 Ensign

Crest, Lewes. Zoning District- MR. Tax Map: 334-6.00-1517.00.

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received five letters of support to the Application, no correspondence in opposition to the Application, and zero mail returns. The Applicant seeks a variance of 1.5 feet from the 20 feet rear yard setback requirement for a proposed screen-in porch and a variance of 6.5 feet from the 20 feet rear yard setback requirement for a proposed screen-in porch.

Mr. Michael Allison was sworn in to give testimony for this application.

Mr. Allison testified that he bought his house in January of 2024 in Bay Crossing; that they put in the paver patio soon after they bought it with the idea of closing it in at some point; that the patio measures 16 feet by 17 feet; that he spoke to the HOA architect and they told him that he just barely impeded on the twenty foot setback and that he would need to apply for a variance; that his lot is unique as the lot is on a cul-de-sac so it is not like most of the lots in the development which are rectangularly shaped; that the variances are needed to enable reasonable use of the property; that it is reasonable and customary in the community to use an existing patio as a template for a future screened-in structure; that the difficulty is not being created by the Applicant because he bought the house already built and because the lot an irregular lot; that they will not meet the setbacks with the addition; that the variances will not alter the character of the neighborhood but that it will be similar to other structures in the neighborhood; that neighbors support the request; that it is the minimum variance without having to tear out part of the patio; that the chimney exhaust will be extended into the roof of the addition; that a neighbor on the cul-de-sac was in a similar situation and constructed a deck to avoid the variance; that, if the addition was in line with the existing bump-out, no variance would be needed; that they always intended to build the addition; that, when they did the paver patio, he was unaware of the retention line; that they would not build a smaller addition; that are only 2 cul-de-sacs in the neighborhood and there are approximately 4 houses on cul-de-sacs; that they get quite a few bugs in the backyard which is another reason they wanted to add the enclosed porch on so that they can enjoy the outdoors without the bugs being a problem; that the bedroom is on the other side of the house; that they did not build the house; that there will be no steps from the addition; that, with the bump-out for the fireplace, the addition would be too tight if built in compliance with the Code; that the living area is located off the area where the proposed porch is to be located; and that there is an existing door in this location.

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

Mr. Chorman closed the public hearing.

Mr. Hastings moved to deny the application for Case No. 13020 for the requested variances, pending final written decision, for the following reasons:

1. The property can otherwise be developed in strict conformity with the Sussex County Zoning Code

Motion by Mr. Hastings, seconded by Mr. Lovenguth, carried that the **variances be denied for the reasons stated.** Motion carried 4-0.

The vote by roll call; Mr. Lovenguth – yea, Dr. Carson – yea, Mr. Hastings – yea, and Mr. Chorman – yea.

ADDITIONAL BUSINESS

Meeting adjourned at 7:30 p.m.