



BOARD OF ADJUSTMENT

AGENDAS & MINUTES

MINUTES OF FEBRUARY 28, 2011

The regular meeting of the Sussex County Board of Adjustment was held on Monday, February 28, 2011, 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, Mrs. Susan Isaacs – Chief Zoning Inspector, and Mrs. Jennifer Norwood – Recording Secretary.

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of February 7, 2011 as circulated. 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. 10758 – Rachel Hughes – east of 273A (aka Bald Eagle Road), east of Crazy Lane, being Lot B Section AA within Bay Vista development.

A variance from the rear yard setback requirement.

Mrs. Isaacs presented the case. Rachel Hughes was sworn in and testified requesting a 2-foot variance from the required 10-foot rear yard setback requirement for a 2nd-floor enclosed porch; that she has lived on the property for 10-years; that a survey done for settlement showed the encroachment; that when she purchased the property the survey did not show any encroachments; that the Certificate of Compliance was issued in error in 1987; that she made changes to the property to meet the flood zone requirements; and that all the building permits have Certificate of Compliances issued.

The Board found that 5 parties 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. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted**. Vote carried 5 – 0.

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Case No. 10759 – John Hutson – east of 285 (Beaver Dam Road), corner of Beaver Dam Road and Oak Crest Drive, being Lot 112 within Oak Crest Farms development.

A variance from the front yard setback requirement for a through lot.

Mrs. Isaacs presented the case. Mr. Hutson was sworn in and testified requesting a 27-foot variance from the required 40-foot front yard setback requirement for a through lot for an existing shed; that the shed measures 8'x 10'; that he obtained a building permit and the Homeowner's Association's approval for the shed; that the wrong setback requirements were listed on his building permit; that the Zoning Inspector made him aware of the encroachment; that there is an existing sunroom on the rear of the dwelling; that there are underground wires, access panels to access under the dwelling and HVAC units which will not allow him to move the shed into compliance; that the dwelling was originally a model home for the development and has no garage; that there are similar sheds in the development; and that he submitted pictures.

The Board found that 4 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 variance be **granted since it was not created by the Applicant**. Vote carried 5 – 0.

Case No. 10760 – Daleann Al-Hamed – east of Route One (aka Coastal Highway) South of Willet Road, being Lot S-7 within Ocean Village Development.

A variance from the front yard setback requirement.

Mrs. Isaacs presented the case. Daleann Al-Hamed was sworn in and testified requesting a 16-foot variance from the required 30-foot front yard setback requirement for an existing deck; that she hired a builder to construct her deck; that during construction the Homeowner's Association contacted her that she did not have their approval; that she was advised to attend one of the Homeowner's Association's meetings; that she attended a meeting and because the deck was already completed they advised her to handle it with the County; that she did not realize her front yard property line was

further back from her neighbor's front yard property lines; that her deck does not protrude further than the neighboring properties dwelling; and that she built the ground up to keep the deck under 30-inches from grade.

Tom Healy was sworn in with Willard Scott, Attorney, and testified in opposition to the application; that he is the Chairman for the Architectural Review Board; that the deck goes across the entire front of the dwelling; that they feel the deck also encroaches

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the side yard setback requirement; that the Homeowner's Association advised the Applicant a building permit must be obtained; that due to the cul-de-sac the Applicant's property line is setback further than the neighbor's; that he has been on the Board for several years and there have been no other variances requests in that period of time; that he had also advised the Applicant what she needed to submit when having construction done and had given her a copy of the form she needed to submit plans with her construction plans; and that they do not feel the Applicant has met her burden of proof to meet the standards for granting a variance.

In rebuttal, Daleann Al-Hamed, stated that her property is odd shaped due to the cul-de-sac which makes it unique; that the location of the deck is the only place for outdoor space; that the deck is similar to other decks in the neighborhood; and that due to the age of the dwelling it never had an outdoor space added.

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

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

Mrs. Isaacs stated that the office received 1 letter in opposition to the application.

Motion by Mr. Mills, seconded by Mr. Workman, 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, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until February 21, 2011**. Vote carried 5 – 0.

Case No. 10761 – Clear Channel Outdoor – east of U.S. Route 13, 2050 feet south of Road 452.

A special use exception to place a billboard, a variance from the maximum size requirement and height requirement for a billboard.

Mrs. Isaacs presented the case. Nancy Chernoff was sworn in and testified requesting a special use exception for a billboard, a 156-foot variance from the required

300-square-foot maximum square footage requirement, a 26.12-foot variance from the required 50-foot side yard setback requirement and a 5-foot variance from the required 25-foot maximum height requirement for a billboard; that the Board approved this billboard and variances in July 2008; that the billboard was never constructed due to the economy; that the double-sided billboard will be on a steel mono-pole structure; that the height variance is needed so the billboard can be seen over the existing trees; and that there are other billboards in the area.

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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. Mills, seconded by Mr. McCabe, and carried unanimously that the special use exception and the variances be **granted**. Vote carried 5 – 0.

Case No. 10762 – Sara Costello – southwest of Route 54, northeast of Roosevelt Avenue, being Lot 17 within Cape Windsor development.

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Sara Costello was sworn in and testified requesting a 5-foot variance from the required 10-foot side yard setback requirement for a proposed dwelling; that the lots are very small in this development; that the existing home encroaches 5-foot from the side yard setback requirement; that they also wanted a 5-foot rear yard variance, however it was not included in the request; that they will meet the required rear yard setback requirement so they would not have to reapply.

Kathy King Cikota was sworn in and testified in opposition to the application; and stated that she has been a long time resident of the community; that the proposed dwelling will greatly impact the community; that her father lives at 38868 Grant Avenue; that his lot will be directly effected by this variance; and that she is opposed to a 5-foot variance.

In rebuttal, Sara Costello, stated that the variance is needed for 2nd and 3rd floor decking; that all units in the development have a 5-foot side yard setback; that the proposed home will set farther back on the lot than the existing home; that the height of the proposed dwelling will not exceed the maximum height requirement; and that there are numerous similar dwellings in the development; that they did not create the lot sizes; and that they have the Homeowner's Association approval for the proposed dwelling.

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

The Board found that 1 party appeared in opposition to the application.

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until March 7, 2011**. Vote carried 5 – 0.

Case No. 10763 – Dave Costello – southwest of Route 54, northwest of Grant Avenue, being Lot 31, within Cape Windsor development.

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A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Dave Costello was sworn in and testified requesting a 5-foot variance from the required 10-foot side yard setback requirement for a proposed dwelling; that the lot measures 40'x 120'; that the existing home encroaches 5-foot on the side yard; that the proposed dwelling will be approximately 4,000-square-foot and will be 3-stories; that they did not create the lot size; that there are numerous dwellings like this one in the area; and that it will not alter the character of the neighborhood.

Kathy King Cikato was sworn and testified in opposition to the application and stated that the surrounding property owners did not receive notice of the hearing; that she submitted 2 letters of opposition; that the property was not posted 30-days in advance of the hearing; that the proposed dwelling will block light to other properties; and that this variance will impact the views of neighbors and their property values.

In rebuttal, Dave Costello, stated that they are not asking for a rear yard variance; that he submitted a survey showing the location of the previous home; and that 95% of the dwellings in the development have a 5-foot variance.

The Board found that 4 parties appeared in support of the application.

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

Mrs. Isaacs read a letter of opposition into the record.

Motion by Mr. McCabe, seconded by Mr. Mills, and carried unanimously that the case be **tabled until March 7, 2011**. Vote carried 5 – 0.

Case No. 10764 – Sea Breeze, LP – south of route One, northwest of Atlantic Avenue, being Lot E64 within Sea Air Mobile City Mobile Home Park.

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

Mrs. Isaacs presented the case. Cindy Surface was sworn in with David Hutt, Attorney, and testified requesting a 3.8-foot variance from the required 20-foot separation requirement between units in a mobile home park; that the park was developed in the mid 1960's; that the lots are less than 3,800-square-foot in size; that the existing unit had to be removed due to a roof collapse from last year's storms; that the proposed unit will measure 14'x 56'; that the existing unit measured 14'x 60' with an addition; that the proposed shed will measure 8'x 12'; that the property is unique since it was created

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before Zoning; that the lot cannot be otherwise developed without a variance request; that there are similar units in the park; that it was not created by the Applicant; and that this is the minimum variance to afford relief since it will have less impact than the previous unit.

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

Case No. 10765 – Blue Horizons, LP – southwest corner of Ocean Highway and Delaware Avenue.

A variance from the front yard and side yard setback requirements.

Mrs. Isaacs presented the case. John Anderson, Tom Anderson and Mike Mullan were sworn in and testified requesting a 16.40-foot variance from the required 60-foot front yard setback requirement, a 11.40-foot variance from the required 15-foot side yard setback requirement and a 5-foot variance from the required 10-foot side yard setback requirement for proposed 2nd floor addition and new roof; that a portion of the existing building had a flat roof that collapsed a few months ago; that due to the need to repair they wish to build a second floor to the existing building; that the additional space will be for storage and an apartment; that the proposed addition will not encroach any further than the existing building; that the variance is needed due to the fact that they are building up on the property; that the existing building was built prior to setback changes in the Zoning Ordinance; that the building cannot be built in strict conformity due to the existing building and setback changes; that the variance is needed to improve the property; that it will not adversely affect surrounding properties; that with the variance they can increase their storage area for the existing business; and that they have created 3 additional parking spaces.

The Board found that 7 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. McCabe, and carried unanimously that the variances be **granted since it meets the standards for granting a variance**.
Vote carried 5 – 0.

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Case No. 10766 – David Calvert – southwest of Road 597, north of 50' easement.

A special use exception to place a multi sectional manufactured home that is more than five (5) years old.

Mrs. Isaacs presented the case. David Calvert was sworn in and testified requesting as special use exception to place a multi sectional manufactured home that is more than five (5) years old; that when the property was subdivided he was assured he could place a double-wide manufactured home on the property; that he purchased a unit built in 2000; that when he came to obtain the placement permit he was informed the unit could not be over 5-years old; that the unit is in excellent condition; that there are several manufactured homes in the area; that he and his family own the adjacent properties; and that he submitted pictures of the unit.

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. Mills, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted since it meets the standards for granting a special use exception**. Vote carried 5 – 0.

Case No. 10767 – Amy R. Fries and Mark L. Eisenhower – south of Route One, northwest of Dodd Avenue, being Lot 12 Block B within Ann Acres development.

A variance from the side yard and rear yard setback requirements.

Mrs. Isaacs presented the case. Amy Fries and Mark Eisenhower were sworn in with Eric Howard, Attorney, and testified requesting a 5-foot variance from the required 10-foot side yard setback requirement for relocation of a dwelling, a 4.76-foot variance from the required 5-foot setback requirement and 1.15-foot variance from the required 5-foot rear yard setback requirement for an existing shed; that the existing dwelling was built in the 1950's; that the Applicant wishes to subdivide the two lots and relocate the dwelling on Lot 12; that the existing dwelling measures 34'x 34'; that due to the lot size

and size of the existing dwelling it cannot be placed on the lot without a variance; that the existing shed has also been on the lot since the 1950's; that the variance is needed on the interior lot line for the dwelling; that they want to sell the vacant lot; that they have spoke to neighbor's and have found no objection to the application; that the variance will not alter the character of the neighborhood; and that it is the minimum variance to afford relief.

The Board found that 4 parties appeared in support of the application.

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

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

Case No. 10768 – 19366 Coastal Hwy, LLC – south of Briarhook Road, One Third west of Hensley Road.

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

Mrs. Isaacs presented the case. Finley Cable and Michael Manlove were sworn in and testified requesting a 36-foot variance from the required 60-foot front yard setback requirement and a 4-foot variance from the required 5-foot rear yard setback requirement for proposed solar panels; that the existing building and communications tower leave a limited amount of space to place the proposed solar panels; that the property is a triangle shaped property that creates uniqueness; that a large portion of the property is unusable due to the shading concern from the communications tower; that the property cannot otherwise be developed due to reasons already mentioned; that there will not be a negative affect to the surrounding property owners; that it is the minimum variance to afford relief; and that they submitted documents.

The Board found that 7 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. McCabe, and carried unanimously that the variances be **granted since it meets the standards for granting a variance**. Vote carried 5 – 0.

Case No. 10769 – Cello Partnership D/B/A Verizon Wireless – south of Briarhook Road, one third feet west of Hensley Road.

A special use exception to place telecommunications monopole, a variance from the warning lights requirement that shall be placed every 50 feet of elevation.

Mrs. Isaacs presented the case. Ken Farrell, Sue Manchel and Andrew Petersohn were sworn in with John Tracy, Attorney, and testified requesting a special use exception to place a telecommunications monopole and a variance from the warning lights requirement that shall be placed every 50 feet of elevation; that the variance from the lighting requirement is not needed now and the tower will comply with the lighting

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requirements; that the pole will be 145-foot tall with a 5-foot lightning rod at the top; that the proposed tower will meet all required setback requirements; that the tower is needed to expand the need for more coverage in this area; that there are no other tall structures to collocate on; that there will be a 40'x 40' fenced in compound area at the base of the proposed tower; that due to the existing irrigation system on the farm this is the best location for the tower on the property; that the tower is over 1,000-feet from any other structure in the area; that the tower will provide 2 other providers to collocate; and that the tower will have no substantial effect or adverse effect on adjacent properties.

Randall Handy was sworn in and testified in opposition to the application and stated that he lives in the area and has no problem with his cell phone service; that he feels the tower is being located to close to the road; that he is concerned the tower will take out existing power lines if were to ever fall; and that the property was not posted correctly.

Richard Miller was sworn in and testified in opposition to the application and stated that the tower will cast a shadow on the adjacent property; that the type of irrigation system on the property can be adjusted to accommodate the tower at another location on the property; that he feels the tower should blend in with the area rather than be so close to the road; and that the location of the posting was not a good place to pull over and read the sign.

Dorothy Miller was sworn in and testified in opposition to the application and stated that she feels the tower will hurt the surrounding property values; that she would rather see corn than a tower in the fields; and that the property description for the hearing was misleading and she thought the tower was going up further down the road and felt more information should have been made available.

In rebuttal, Ken Farrell, stated that the tower will be 75-foot from the road which is in compliance with the setback requirements for a tower; that if the tower were to fall it is designed to collapse upon itself; and as far as casting a shadow the tower is only 4 to 5-foot in diameter at the base and approximately 2 to 3-foot in diameter at the top of the tower.

In rebuttal, Andrew Petersohn, stated that the proposed location is on the fringe of coverage in that area; that the tower is designed to cover a wider area from that location and does not indicate there is a coverage problem in the immediate vicinity of the proposed location of the tower; and that due to the data growth of phones today the noise floor rises and shrinks availability during peak times.

Sue Manchel stated that she did speak to other property owners in the area for possible site locations for the proposed tower; and that the proposed location is in the

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Agricultural Preservation Program; and that this location does not create major changes to the existing farm operation that already exists.

In rebuttal, Richard Miller, stated that he worked for Verizon for 45-years and feels they can add antennas to existing towers and increase the coverage; and that the tower can be moved further west to get the coverage they are after.

In rebuttal, Randal Handy, stated that he still feels the tower will be too close to the road; and that there is still the issue that the property was not posted correctly.

In rebuttal, Andrew Petersohn, stated that adding resources to existing towers will in now way enhance coverage where it is needed; and that there are strict government regulations on where these towers can be located.

In rebuttal, Richard Miller, stated that the Applicant is selling the Board a bunch of goods; and that the testimony is all smoke and mirrors.

The Board found 1 party in support of the application.

The Board found that 3 parties appeared in opposition to the application.

Mrs. Isaacs read 2 letters of opposition to the application.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case be **tabled until March 21, 2011**. Vote carried 5 – 0.

Case No. 10770 – Francois Reverdy and Nancy Tankelson – east of Route One, northeast corner of Fisher Street and Josephine Street, being Lot 25 Block B within Dodd's Addition Development.

A variance from the front yard and side yard setback requirements.

Mrs. Isaacs presented the case. Francois Reverdy, Nancy Tankelson, Grant Dockety and Curtis Sparrows were sworn in and testified requesting a 22-foot variance

from the required 30-foot front yard setback requirement, a 7.3-foot variance from the required 15-foot side yard setback requirement and a 6-foot variance from the required 10-foot side yard setback requirement for a proposed dwelling; that they plan to retire to the area; that the property is too small for a permanent residence; that he is an avid gardener and does not wish to lose the existing backyard; that the proposed dwelling cannot be built in strict conformity; that the variance will enable reasonable use of the property; that it will not alter the character of the neighborhood; that the proposed dwelling will not protrude any further into setback than existing the non-conforming

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dwelling; that the existing shed will be removed; that this is the minimum variance to afford relief; and that they submitted pictures.

The Board found that 5 parties appeared in support of the application.

Mrs. Isaacs stated that 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. McCabe, and carried unanimously that the variances be **granted since it meets the standards for granting a variance**.

Vote carried 5 – 0.

Case No. 10771 – Albert J. and Patricia Riedinger – north of Maryland Avenue.

A variance from the front yard setback requirement.

Mrs. Isaacs presented the case. A.J. Riedinger was sworn in with John Sergovic, Attorney, and testified requesting a 3.6-foot variance from the required 21.5-foot average front yard setback requirement for a balcony/deck; that the Board granted a variance to raise the existing dwelling and to center the dwelling on the lot; that the variance request did not include steps on the front of the dwelling; that the Applicant applied for a variance in 2006 for the steps and was denied; that the Applicant re-applied for a variance from the front yard setback requirement for a proposed deck; that the Board denied the variance based on the fact it was not substantially different from the variance request in 2006; that the decision of the Board was reversed by Superior Court; that they submitted pictures and court findings into the record; that the variance will not alter the character of the neighborhood; and that it is the minimum variance to afford relief.

Dom and Leslie Marra were sworn in and testified in opposition to the application and stated that they feel the Applicant has been granted previous variances and should have to build within those parameters; that they feel the request is not correct and should actually be requesting 5-foot variance; that the pictures submitted on other streets in the development should not be considered; that the Applicant does not meet the standards for

granting a variance; that the property is no longer unique in size due to the variances granted in 2003; that there is no hardship since a deck can be built in the rear of the property; that it was created by the Applicant; that it will alter the character of the neighborhood; that the Applicant will still have reasonable use of the property without a deck on the front; that letters the Applicant submitted in support are from deceased property owners and owners that no longer live in the development; and that they submitted pictures.

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Mrs. Isaacs stated that the office received 1 letter in support of the application.

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

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

Mrs. Isaacs stated that the office received 1 letter in opposition to the application.

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until March 21, 2011**. Vote carried 5 – 0.

OTHER BUSINESS

Case No. 10757 – AT & T – east of Route One, 100 feet north of Jefferson Bridge Road.

A special use exception for a telecommunication tower.

Mr. Berl stated to the Board that the Attorney's on both sides made a decision to incorporate all the previous case records for the upcoming hearing on March 21, 2011.

Meeting Adjourned 12:30 a.m.