

MINUTES OF FEBRUARY 5, 2024

The regular meeting of the Sussex County Board of Adjustment was held on Monday, February 5, 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. John T. Hastings, Mr. Jordan Warfel, Mr. John Williamson, and Mr. Jeffrey Chorman. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Ms. Jennifer Norwood – Planning and Zoning Manager and Ms. Marina Truitt – Recording Secretary.

The Pledge of Allegiance was led by Mr. Chorman.

Motion by Mr. Warfel, seconded by Dr. Carson and carried unanimously to approve the agenda. Motion carried 5 – 0.

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

PUBLIC HEARINGS

Case No. 12888 – Walls Sussex Properties, LLC seeks a special use exception to place a telecommunications tower and a variance from the height requirement for a telecommunications tower (Sections 115-25, 115-194.2, and 115-210 of the Sussex County Zoning Code). The property is located on the north side of Emory Walls Road approximately 1176 ft. from Seashore Highway. 911 Address: N/A. Zoning District: AR-1. Tax Parcel: 231-7.00-21.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. The Applicant is requesting special use exception for a telecommunication tower and an eight (8) foot variance from the 150-foot maximum height requirement for a telecommunications tower.

Mr. John Tracey, Esquire, was present to present the Application on behalf of the Applicant.

Mr. Tracey stated that the Application is for a 158 foot tall cell tower that includes a 5 foot lightning rod; that the proposed property is in the Agricultural Lands Preservation Foundation Program; that the primary objective of the tower is to help correct the critical lack of coverage along Route 404; that the demand for data and cellular usage is on a rise with a need for more coverage; that 70% of all 911 calls are from cell phones; that the tower will meet all FCC regulations; that the tower, at maximum output, will emit 3.7% of the maximum allowable RF emissions; that all code requirements have been met and there were no other structures within the area that could be utilized first for collocation as the nearest tower is already used by the Applicant; that the emissions report is well within the limits allowable; that there will be warning lights every 50 feet with a perimeter of landscaping and fencing around the structure; that the height variance is needed in order to have the most efficient communication with other cell towers in the area and in-home usage; that the existing

tree coverage in the area necessitates the height variance; that the RAV centers will be set at 148 feet tall; that, once the tower is up, there is no added traffic as the Applicant anticipates only one vehicle trip in and out per month to service to the tower; that there are no health concerns linked to cell towers and cancer; that the light pollution will be at a low level with there only being lights every 50 feet, per code, and at the entrance gate; that there are no additional setback requirements when building near a cell tower; that there is no interference of signals with other equipment and machinery; that the towers are built for collocation to occur in the future; that the proposed use will not substantially affect adversely the uses of neighboring and adjacent properties; that the tower is needed to provide adequate coverage in the area; and that the tower will not tax public resources.

Mr. Andrew Petersohn and Mr. Andrew Graubart were sworn in to testify about the Application.

Mr. Petersohn testified that the statements made by Mr. Tracey regarding the RF report, the information contained in the RF report and the functionality of the particular facility were accurate; that there is a significant area along Route 18 that has a gap in vehicle coverage; that the tower needs to be taller than 150 feet to fill the gap in coverage; that overbuilding the tower would do more harm than good for coverage; that the variance being requested is the minimum variance needed; that there are a limited number of properties that have the qualities needed to be able to put up a cell tower and fill the gap in coverage; that the proposed cell tower could potentially offer faster internet; and that the coverage radius of a tower is a mile to a mile and a half.

Mr. Tracey stated that the antenna will be slightly higher than 150 feet; that, to comply with the height requirement, the system would have to drop 10-15 feet; and that there are varying heights of towers nearby which range from 100 feet tall to 250 feet tall.

Mr. Graubart testified that the area is relatively flat with no high or low spots and that the statements made by Mr. Tracey regarding the civil engineering aspects of the Application were accurate.

Ms. Beth Walls was sworn in to give testimony in opposition to the Application.

Ms. Walls testified that there is no need for the tower, especially so close to homes, humans and wildlife; that they have access to high speed internet via Xfinity; that the Verizon support website has information posted that says, if a tower is too close to a home, it can cause poor performance; that her and some of the neighbors work from home and being that close to radiation 24/7 is a health risk to the humans, gardens, and wildlife; that she is concerned about the health risks such as: cancer, headaches, sleep issues, genetic abnormalities, reproductive changes, and memory deficits; that the proposed tower will cause a disturbance; that there are other towers in Georgetown; that the tower poses a forest fire risk; and that the tower will not help the area.

Ms. Kieran Quay was sworn in to give testimony about the Application. Ms. Quay had

questions about the Application and did not appear in support of or in opposition to the Application.

Ms. Quay testified that she only had neutral questions to present; that she lives nearby; that light pollution was a concern; that the towers having such a short coverage distance was a concern; that Verizon service in the area is non-existent; and she asked if there was potential for high speed internet.

Ms. Nancy Elliot was sworn in to give testimony about the Application. Ms. Elliot had questions about the Application and did not appear in support of or in opposition to the Application.

Ms. Elliot testified that she lives nearby; that she would love to have better service back in the woods on her property; that she has questions about the tower concerning her property and her place of work at McCabe's Mechanical (directly next door to the proposed tower); that she has concerns about the tower's effects on property values, building restrictions, safety, energy effects on expensive equipment and reasoning behind the tower site being moved closer to homes and businesses.

Mr. Tracey stated that the tower will have limited traffic with an average of one maintenance trip every 4-6 weeks; that the tower will emit nowhere near the maximum RF output allowable under FCC regulations; that the only lights are the lights on the tower every 50 feet and a security light; that studies have shown no property value impact from cell towers; that the tower will have no impact on setbacks; and that the tower will not interfere with other signals.

Mr. Tracey submitted exhibits to the Board to review.

Mr. Petersohn testified that high speed internet will probably be available as part of a national roll-out at some point; that, in cities, there are towers every few blocks but it is not uncommon for towers to be spaced every 1-2 miles in rural areas such as the property; that towers are installed on rooftops; that his RF study, using maximum exposure assumptions, evidence that the tower, at its maximum output would still be less than 4% of the maximum RF limit; that there is minimal to no interference between the cell towers and other equipment nearby; and that the towers run on 200 amp services, similar to a home.

Mr. Graubart testified that the facility will house a diesel-powered backup generator and will be unmanned on a daily basis and that the tower will be 725 feet from the nearest residence.

The Board found that one (1) person appeared in opposition of the Application, no one appeared in support to the Application, and two (2) persons appeared with neutral questions.

Mr. Chorman closed the public hearing.

Mr. Hastings moved to approve the application for Case No. 12888 for the requested special use exception and variance, pending final written decision, because the proposed use will not substantially affect adversely the use of the adjacent or neighboring properties.

Motion by Mr. Hastings, seconded by Dr. Carson, carried that the **special use exception and variance be approved for the reasons stated.** Motion carried 4 - 1.

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

Mr. Chorman stated that he did not believe the Applicant demonstrated that the property was unique, that the exceptional practical difficulty was not created by the Applicant, and that the tower would not alter the essential character of the neighborhood.

Case No. 12902 – David L. Banks Revocable Trust seeks a special use exception to place a telecommunications tower and a variance from the height requirement for a telecommunications tower (Section 115-25, 115-194.2, and 115-210 of the Sussex County Zoning Code). The property is located on the west side of Irons Lane approximately 588.7 feet north of Holts Landing Road. 911 Address: 30240 Irons Lane, Dagsboro. Zoning District: AR-1. Tax Parcel: 134-7.00-127.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. The Applicant is a special use exception for a telecommunications tower and a 24-foot variance from the 150-foot maximum height requirement for a telecommunications tower.

Mr. John Tracey, Esquire, was present to present the Application on behalf of the Applicant.

Mr. Tracey stated that the cell tower will be slightly taller than others due to the dense population of homes and trees to the north of the proposed site; that the Property is located near Cripple Creek and there are tall trees in the area that lead to dead zones; that the area is overloaded and there is a capacity issue in the neighborhood; that the demand for the tower is very high in the proposed area; that the tower will be dual purpose for a coverage site and capacity site; that there are no structures within 2 miles of the site which are suitable for collocation; that the tower, at maximum output, will have RF emissions at 3.1% of the maximum RF limit allowable by FCC regulations; that the tower will have lights, fencing, and landscaping up to code with the county regulations; that the tower will be 174 feet tall, and 168 feet tall with no lightning rod.

Mr. Andrew Petersohn who was previously sworn in, appeared to give testimony for the Application.

Mr. Petersohn testified that the height variance is needed to provide stronger coverage; that the tower needs to be taller for better in-building coverage; and that the Applicant is not able to provide

that coverage without the variance due to tree coverage in the area.

Mr. Tracey stated that there has been significant development in the area; that the tower produces no sounds, smells, or traffic; that the tower will have no adverse impact on neighboring properties; that the Applicant had difficulty finding a property with a willing landlord that would fit the Applicant's needs; that the difficulty finding a suitable property impacted the design of the tower; that the exceptional practical difficulty was not created by the Applicant but by neighboring uses; that the variance requested is the minimum variance needed to achieve the design goals; and that the tower would only need a special use exception if it was 150 feet tall.

Mr. Petersohn affirmed the statements made by Mr. Tracey as true and correct.

Mr. Petersohn testified that there are 2 alternate sites within 2 miles of the Property but the Applicant is already on those properties; that the tower would provide fixed wireless services to the neighboring properties in the area; that two alternate sites were available in the area but Verizon was already collocating on both locations; that Mr. Tracey was correct in characterizing and discussing any aspects of the RF reports; that the technology will continue to grow with the towers as they upgrade them, along with placing more towers along the grid to fill in gaps; and that the existing towers are being exhausted.

Mr. Jacob Minardi was sworn in to testify in support of the Application.

Mr. Minardi testified that anything Mr. Tracey testified about the civil engineering was accurately done so; and that the fenced area proposed surrounding the tower will be 50 feet by 50 feet.

Ms. Sue Manchel was sworn in to testify in support of the Application.

Ms. Manchel testified that the property is currently being used for auto body maintenance and a trucking facility; and that there are no other businesses in the vicinity to her knowledge, other than the golf course.

Mr. Tracey stated that there are poultry houses nearby and that the Applicant expects a 300% increase in demand by 2028; and that the tower will have one light above 150 feet and three lights in total.

Mr. Lincoln Davis was sworn in to testify in support of the Application.

Mr. Davis testified that he has resided in the nearby Bay Colony subdivision for more than 20 years with awful cell phone service; that the signal gets slightly better in the winter when the leaves fall; and that they need the service coverage in the area.

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

Mr. Chorman closed the public hearing.

Mr. Warfel moved to approve the application for Case No. 12902 for the requested special use exception and variance, pending final written decision, for the following reasons:

1. The property has unique physical conditions due to its location;
2. That, due to such physical circumstances or conditions, there is no possibility that property can be developed in strict conformity with Sussex County Zoning Code, and the variance is necessary to enable the reasonable use of the property;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variance will not alter the essential character of the neighborhood;
5. The variance represents the minimum variance necessary to afford relief; and
6. The special use exception will not affect substantially adversely the use of neighboring adjacent properties.

Motion by Mr. Warfel, seconded by Dr. Carson, carried that the **special use exception and variance be approved for the reasons stated.** Motion carried 5 - 0.

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

Case No. 12903 – Pot-Nets Homes, LLC seeks variances from the separation distance and rear yard setback requirements for existing structures (Sections 115-25 and 115-172 of the Sussex County Zoning Code). The property is located on the southwest side of Beach Plum Road within the Pot Nets Bayside Manufactured Home Park. 911 Address: 34362 Beach Plum Road, Millsboro. Zoning District: AR-1. Tax Parcel: 234-30.00-2.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support or opposition to the Application and ten (10) mail returns. The Applicant is requesting a variance of 5.51 feet from the 20 ft. separation distance requirement for a shed from the carport on Lot 468.

Mr. Lincoln Davis, who was previously sworn in, appeared to give testimony for the Application.

Mr. Davis testified that Lot 467 contains a newly constructed home with a detached 14' x 14' shed; that the new home and shed were built within the ten (10) foot setback lines but a pre-existing carport on the adjacent home site (Lot 468) is only 4.49 feet from the property line; that the encroaching carport on Lot 468 has been there for approximately 30 years; that, in order to bring Lot

467 into compliance with the Code, the owners of Lot 468 would need to remove their carport, potentially causing a hardship condition with the loss of a covered parking area; that the Applicant was not aware of any issues until the home and shed were constructed on Lot 467 and a certificate of occupancy was sought; that the proposed variance would be temporary as the homeowner's lease is not transferable and will expire upon sale or transfer of the home; that, once the Lot 468 homeowner's lease expires, Pot Nets would acquire the existing home and replace it with a newly constructed home within the correct setback lines; that the lease for Lot 468 started in 1967; that a trash can enclosure was removed from the shed to help bring it more into compliance; that the shed on Lot 467 is not able to be moved anywhere else on the lot due to underground infrastructure and landscaping; that the shed has a permanent foundation, which would make it very difficult to move; that the shed cannot be moved closer to the home due to future maintenance needs; that sheds are common in the neighborhood; and that the shed will be used to house a lawnmower.

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. 12903 for the requested variance, pending final written decision, for the following reasons:

1. The variance will not alter the essential character of the neighborhood; and
2. The variance represents the minimum variance necessary to afford relief.

Motion by Dr. Carson, seconded by Mr. Williamson, carried that the **variance be approved for the reasons stated.** Motion carried 5-0.

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

Case No. 12904 – Jay Kevin Green, Sr. seeks a variance from the front and side yard setback requirements for an existing structure (Sections 115-25, 115-182, and 115-183 of the Sussex County Zoning Code). The property is located on the southeast side of Greenhurst Farm Road approximately 1464.38 feet southeast of Woodyard Road. 911 Address: 11853 Greenhurst Farm Road, Greenwood. Zoning District: AR-1. Tax Map: 430-2.00-2.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of the Application, no letters in opposition to the Application, and one (1) mail return. The Applicant is requesting variances of 1.1 feet from the 15 feet side yard setback requirement on the north side for an existing shed and a variance of 40 feet from the 40 feet front yard setback requirement for an existing shed.

Mr. Jay Green was sworn in to give testimony for the Application.

Mr. J. Green testified that the Court of Chancery ordered the division of an 86 acre parcel of land between the 4 family members; that one of the buildings on the property sits one foot too close to the property line that is being created through the subdivision; that they are trying to allow each family member the same amount of road frontage; that the Court order is final as of 2022; that the equipment shed is being used for equipment and hay on the farm; that the older dilapidated buildings have been removed from the property; that the equipment shed is roughly 50 years old; that the shed is approximately 8 feet from the road; that there is a tax ditch to the rear of the property; and that the rear shed and poultry house have been removed.

Ms. Norwood stated that the shed has been on the property since 1958 per land records.

Mr. Lewis Green was sworn in to give testimony in support of the Application.

Mr. L. Green testified that the shed is roughly one foot off the side property line; that there are power poles/lines almost directly next to the front of the equipment shed, so roughly 8 feet from the shed to the road; that instead of tearing down the functional shed, they could acquire a variance to still use it; that a tax ditch runs through the back part of the property, pushing development towards the front of the property; that the property has been cleaned up recently; and that the shed was likely placed on the property in 1958.

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. 12904 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to the age of the buildings being in place before the enactment of the current zoning laws;
2. That, due to the physical conditions, the property cannot be developed in strict conformity with Sussex County Zoning Code, and the variances are necessary to enable the 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 represent the minimum variances necessary to afford relief.

Motion by Mr. Hastings, seconded by Dr. Carson, carried that the **variances be approved for the reasons stated.** Motion carried 5 - 0.

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

Case No. 12905 – Douglas K. and Irene F. Olson seek variances from the side yard setback requirements for a proposed structure (Sections 115-25 and 115-183 of the Sussex County Zoning Code). The property is located on the northwest side of North Acorn Way within the Village at Oakwood. 911 Address: 21350 North Acorn Way, Lewes. Zoning District: AR-1. Tax Map: 234-6.00-643.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support or opposition to the Application, and zero mail returns. The Applicants are requesting a variance of 2.6 ft. from the 10 ft. side yard setback requirement on the east side for a proposed attached shed.

Mr. Douglas Olson was sworn in to give testimony for the Application.

Mr. Olson testified he has resided in Oakwood Village for about 12 years; that he and his wife were one of the first couples to live there, now having one of the largest houses on the smallest lots; that almost all homeowners have detached sheds on their properties; that there is one area on his property that would fit an attached shed and that area is near the HVAC and generator; that the proposed shed will be architecturally consistent with the house and the siding will be the same; that the shed will be 4.5 feet deep to minimize intrusion; that there was not an original need for a shed but the need arose when the Applicant became handicapped; that the Applicant sold his pickup truck and bought 2 vehicles that need to be moved into the garage for safety reasons and the current contents of the garage will need to be moved into the shed; that the shed will be used for yard equipment; that the Applicants own electric vehicles and need the garage to plug in their cars for charging; that the need for a variance was discovered during the footing inspection for the base of the shed; that the home builder modified the house to the Applicant's specifications; that the architectural review committee has approved the request; that there is no room in the rear yard for the shed; that the Applicant owns one of the smaller lots in the community; and that, when the Applicant bought and built the home, he did not need a shed due to not being handicapped.

Mr. Olson submitted a photograph to the Board.

Mr. Neil Dignon was sworn in to give testimony in support of the Application.

Mr. Dignon testified that the tree line along the back of the Applicants' property is his property, so any encroachment would be towards his property; that he does not have a problem with it; and that he thinks the Applicants should have the shed.

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

Mr. Chorman closed the public hearing.

Mr. Warfel moved to approve the application for Case No. 12905 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to the property being developed before the applicant developed his disability;
2. That, due to the physical conditions, the property cannot be developed in strict conformity with Sussex County Zoning Code, and the variance is necessary to enable the reasonable use of the property;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance represents the minimum variance necessary to afford relief.

Motion by Mr. Warfel, seconded by Mr. Hastings, carried that the **variances be approved for the reasons stated.** Motion carried 4 - 1.

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

Mr. Chorman stated that he believed the exceptional practical difficulty was created by the Applicants.

ADDITIONAL BUSINESS

Meeting adjourned at 7:56 p.m.