

MINUTES OF MARCH 4, 2019

The regular meeting of the Sussex County Board of Adjustment was held on Monday, March 4, 2019, at 7:00 p.m. in the County Council Chambers, 2 The Circle, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Acting Chairman Dale Callaway presiding. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Williamson and Mr. Brent Workman. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Mr. Jamie Whitehouse – Planning Manager, Ms. Samantha Bulkilvish, Planner, and Ms. Ann Lepore – Recording Secretary.

The Pledge of Allegiance was led by Mr. Callaway.

Motion by Ms. Magee, seconded by Mr. Workman, and carried unanimously to approve the agenda. Motion carried 4 – 0.

Mr. Williamson abstained from voting on previous Minutes and Findings of Fact as this was his first Board of Adjustment meeting.

Motion by Mr. Workman, seconded by Ms. Magee, and carried unanimously to approve the Minutes and Findings of Facts for the December 17, 2018, meeting. Motion carried 3 – 0.

Motion by Ms. Magee, seconded by Mr. Workman, and carried unanimously to approve the Minutes and Findings of Facts for the January 7, 2019, meeting. Motion carried 3 – 0.

Motion by Ms. Magee, seconded by Mr. Workman, and carried unanimously to approve the Minutes and Findings of Facts for the January 28, 2019, meeting. Motion carried 3 – 0.

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

PUBLIC HEARINGS

Case No. 12267 – Michael S. Mears seeks variances from the rear yard setback requirements for an existing structure. (Sections 115-25 and 115-185 of the Sussex County Zoning Code). The property is located on the north side of Paradise Rd. approximately 0.25 mile west of Governor Stockley Rd. 911 Address: 22159 Paradise Rd., Georgetown. Zoning District: AR-1. Tax Parcel: 133-10.00-10.16

Mr. Whitehouse 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 seeking variances of 10.9 ft. and 10.8 ft. from the required 20 ft. rear yard setback for a pole building with a footprint in excess of 600 square feet.

This application was considered by the Board at the meeting held on February 4, 2019, and the public hearing was left open. The Applicant's builder, Delmarva Pole Buildings, was subpoenaed to attend tonight's meeting.

Mr. Williamson recused himself from this hearing as he was not a member of the Board when the case was first considered.

The Board found that no one appeared in answer to the subpoena. In addition, no one appeared in support of or in opposition to the Application.

Ms. Magee moved to approve Variance Application No. 12267 as the Applicant has met all five standards for granting a variance and that the contractor, not the Applicant, obtained the permit.

Motion by Ms. Magee, seconded by Mr. Workman, and carried unanimously that the **variances be granted for the reasons stated**. Motion carried 3 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, and Mr. Callaway – yea.

Case No. 12279 – Eugene & Terry Hansen seek a variance from the side yard setback requirement for a proposed structure. (Section 115-42 the Sussex County Zoning Code). The property is located on the southeast side of W. Haven Wood Dr. approximately 189 ft. north of Silver Fox Dr. within the Fox Haven subdivision. 911 Address: 32353 West Haven Wood Dr., Frankford. Zoning District: GR. Tax Parcel: 533-11.00-537.00

Mr. Whitehouse 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 a variance of 3 ft. from the required 10 ft. side yard setback on the northeast side for a proposed porch.

Mr. Eugene Hansen was sworn in to give testimony about the Application.

Mr. Hansen testified that he wishes to build a screened porch onto his home; that the property is unique as it is a pie-shaped lot measuring approximately 97 ft. wide at the front and 25 ft. wide in the rear; that this is the only place where a screened porch could be placed as there are sliding doors on the home that would open onto the porch; that the property cannot otherwise be developed; that the exceptional practical difficulty was not created by the Applicants; that the builder indicated that a porch could be added to the home even by a different contractor; that Lisa Hess of Ryan Homes showed an incorrect property line and, therefore, this request for a variance was not created by the applicant; that the variance will not alter the character of the neighborhood as there are many covered porches in the subdivision; that it is a minimum variance requested to allow for a 12 ft. by 16 ft. screened porch; that there are wetlands to the rear of the property; that the neighbor on the northeast side has no objection to the request; that Ryan Homes went off the

wrong property stakes; that the home was built in October 2017; that the steps will be towards the middle of the house and will not encroach into the setback; and that the chimney limits the placement of the porch as well.

Mr. Whitehouse confirmed that the drawing submitted by the applicant was to scale.

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

Ms. Magee moved to approve Variance Application No. 12279 for the following reasons:

1. The lot is pie-shaped and, therefore, unique in design;
2. The property cannot otherwise be developed;
3. The need for the variance was not created by the Applicants;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance requested is a minimum variance to afford relief.

As part of her motion, Ms. Magee also directed a letter be sent from counsel to Ryan Homes.

Motion by Ms. Magee, seconded by Mr. Workman, and carried that the **variance be granted for the reasons stated**. Motion carried 4 - 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Williamson – yea, and Mr. Callaway – yea.

Case No. 12280 – Jeffrey E. Kraus seeks a variance from the maximum fence height requirement for an existing structure (Sections 115-25 and 115-185 of the Sussex County Zoning Code). The property is located on the north side of Fenwick Cir. in the Fenwick West subdivision, also on the south side of Zion Church Rd., approximately 290 ft. east of New Rd. 911 Address: 37592 Fenwick Cir., Selbyville. Zoning District: AR-1. Tax Parcel: 533-12.00-220.00

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received three letters in support of and none in opposition to the Application and one mail return. The Applicant is requesting a variance of 2.5 ft. from the required 3.5 ft. height requirement for an existing fence in the front yard of a through lot.

Mr. Jeffrey Kraus was sworn in to give testimony about the Application.

Mr. Kraus testified that the fence is 6 feet tall; that the property is unique because it is a through lot and has two fronts with setbacks of 40 feet on both sides which he was not aware when he purchased the property; that he considers the fence to be located in his rear yard; that this situation was not created by the Applicant as there was an existing fence when he purchased the property; that he did not get a permit as he assumed that he did not need one as he was replacing the original fence

with the same footprint; that a neighbor obtained a variance for fence height; that the fence is set back 10 feet from the property line; that the fence is back far enough so as not to impede sight lines for neighbors entering Zion Church Road; that the property is located in Fenwick West; that he uses the subdivision entrance to access the property; that it will not alter the essential character of the neighborhood as many of the neighbors also have similar fences; that there are no objections from neighbors; that the Applicant has no direct access to Zion Church Road; that the old fence was a metal, chain link fence which was shorter than this fence; and it is necessary to have a 6 ft. fence to protect his dogs from the traffic on Zion Church Road which has a speed limit of 50 mph.

Rebecca Kraus was sworn in to give testimony in support of the Application. Mrs. Kraus testified that the fence has been in place for about seven years; that the neighbors have commented on the improvements that have been made; and that the fence helps keep the dogs safe.

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

Mr. Workman moved to approve Variance Application No. 12280 for the following reasons:

1. The variance is necessary to enable the use of the property;
2. The variance will not alter the essential character of the neighborhood as there was a fence there before;
3. The fence will help with the Applicant's dogs and keep the noise of traffic down; and
4. The variance requested is the minimum variance to afford relief.

Motion by Mr. Workman, seconded by Ms. Magee, and carried unanimously that the **variance be granted for the reasons stated.** Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Williamson – yea, and Mr. Callaway – yea.

Case No. 12281 – Tyrone A. Tull seeks variances from the front yard setback requirements for existing structures (Sections 115-42, 115-182 and 115-183 of the Sussex County Zoning Code). The property is located west side of John J. Williams Hwy. (Rt. 24) approximately 170 ft. north of Autumn Rd. 911 Address: 26142 John J. Williams Hwy., Millsboro. Zoning District: GR. Tax Parcel: 234-23.00-185.00

Mr. Whitehouse 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 a variance of 4.45 ft. from the required 40 ft. front yard setback requirement for an existing dwelling due to a proposed acquisition of land by the Delaware Department of Transportation.

Tyrone Tull and Terri Lawson were sworn in to give testimony. Ken Feaster, Deputy Attorney General representing Delaware Department of Transportation, presented the application on behalf of the Applicant.

Mr. Feaster stated that Mr. Tull has owned the property since 2004; that the need for the variance was created by DelDOT when they acquired some of Mr. Tull's property to widen Rt. 24; that the property is unique because it did conform to setback requirements until the acquisition of some of the property to the front of Mr. Tull's home; that the property cannot otherwise be developed as the home is already in place on the property and the variances are necessary to enable continued use of the property; that, if not for DelDOT's acquisition, Mr. Tull would be able to use the property in compliance with the Code; that the Applicant has not caused the exceptional practical difficulty; that the difficulty was created by DelDOT; that the variances will not alter the essential character of the neighborhood; that the road improvements will benefit the public at large; that the variances requested are the minimum variances necessary to afford relief and bring the property back into compliance with County Code; and that DelDOT supports Mr. Tull's Application.

Ms. Lawson testified that this portion of the project will stretch from Mount Joy Rd. down to Bay Farm Rd. intersection and work is expected to begin in May 2019; that work will be completed incrementally; and that most of the widening will be used for curbing and sidewalks on Mr. Tull's property.

Mr. Tull testified that the deck and steps are open and that the shed will be moved into compliance with the Code. Mr. Tull affirmed the statements made by Mr. Feaster as true and correct.

Mr. Whitehouse stated that a variance of 13.45 feet from the 40 feet front yard setback requirement is needed for the existing deck and a variance of 15.45 feet from the 40 feet front yard setback requirement is needed for the existing set of steps.

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

Ms. Magee moved to approve Application No. 12281 variances from the required 40 ft. front yard setback for 13.45 ft. for the deck; 15.45 ft. for the steps; and 4.45 ft. for the house for the following reasons:

1. This is a unique situation caused not by the applicant but by DelDOT encroaching on the property for the greater good of the State of Delaware and Sussex County;
2. The property cannot otherwise be developed;
3. The variances will not alter the essential character of the neighborhood;
4. The curbing and sidewalk will be an improvement; and
5. The variances requested are the minimum variances necessary to afford relief.

Motion by Ms. Magee, seconded by Mr. Williamson, and carried unanimously that the

variances be granted for the reasons stated. Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Williamson – yea, and Mr. Callaway – yea.

Case No. 12282 – Janki & Bidyawattie Ramnath/New Cingular Wireless PCS, LLC d/b/a AT&T Mobility seeks a special use exception to place a telecommunications tower, an interpretation of County Code and variances from the maximum fence height for a proposed structure and from the maximum height for a proposed telecommunications tower (Sections 115-23, 115-179 115-194.2, 115-210 and 115- 227 of the Sussex County Zoning Code). The property is on a through lot located on the northwest side of Oneals Rd. approximately 160 ft. west of Sussex Hwy (Rt. 13). and on the south side of Easter Ln. approximately 204 ft. west of Sussex Hwy. (Rt. 13). 911 Address: 27718 Oneals Rd., Seaford. Zoning District: AR-1 Tax Parcel: 132-7.00-24.00

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received one letter in support of and none in opposition to the Application and zero mail returns. The Applicant is seeking a special use exception for a proposed 150 ft. tall monopole with a 6 ft. lightning rod, and a fenced compound with associated ground-based equipment. The Applicant is also requesting a variance of 6 ft. from the required 150 ft. height limit to allow for the proposed lightning rod above the monopole.

Mr. Whitehouse noted that since the Application was submitted, Planning & Zoning staff have discussed the request for an interpretation of the Code and a variance form the maximum height for the fence and have determined that this is no longer required.

Shaun Paul, Paul Chan, and Christopher Lash were sworn in to give testimony. Jonathan Jordan, Esquire, presented the Application on behalf of the Applicant.

Mr. Jordan distributed exhibit booklets to Board members. Mr. Jordan stated that he would summarize the exhibit booklets that were handed out; that tab 7 shows the existing coverage and in the center where the proposed tower would be shows a lack of reliable coverage; that tab 8 shows what the coverage is expected to be if this tower was built; that the tower is designed to work with other AT&T antennae; that the increase in cell phone usage has necessitated this request; that 80% of all 911 calls are made from cell phones and approximately 60% of houses do not have landlines; that, in order to achieve the coverage shown on tab 8, the antennas need to be mounted at 150 ft. with a 6 ft. lightning rod; that, as such, a height variance of 6 ft. is requested; that, in addition to the coverage, this tower would also help with the off-load from existing sites when they are at excess capacity; that tab 9 shows the electromagnetic exposure analysis at 0.6% of the applicable FCC standards; that tab 11 shows an FAA report which shows that the FAA would not require the tower to be lit but, per Sussex County Code, the tower will be lit at every 50 ft.; that the site would be visited once per month and will not generate noise, traffic or other adverse effects on surrounding or neighboring property; that the tower will benefit the community by providing reliable cell phone service; that there is no

visual impact on the community; that there will be space on the tower for two additional carriers; that the minimum setback will be 75 ft. which is more than the 50 ft. required by Sussex County Code; and that the subject property is about 5 acres and the neighboring property is also owned by the same owner.

Sean Paul testified that the data shown on tab 7 is collected from the end users and that AT&T has predicted what the coverage will be with the new tower; that cell phone usage has increased and many people use cell phones in lieu of their personal computers; that he uses industry standard software and AT&T data to determine reliable coverage; that the analysis also takes into consideration clutter in the area; that AT&T prefers not to build towers; that the tower will result in significantly improved coverage in the area and will help address growing demand; and that this tower will also allow for First Net to be deployed for public safety.

Christopher Lash testified about the capabilities of First Net and that, in case of an emergency, first responders would get first access to service.

Mr. Paul testified that the nearby radio tower is not strong enough for their equipment.

Mr. Jordan stated that the tower will accommodate at least 2 other carriers.

Mr. Paul, Mr. Lash, and Mr. Chan affirmed Mr. Jordan's presentation as true and correct.

Mr. Jordan stated that the tower will not substantially affect adversely the uses of neighboring and adjacent properties; that the variance requested is the minimum variance to afford relief; that most jurisdictions do not include the lightning rod in the height calculation; that 150 feet is needed for coverage; that the topography and clutter are the reasons the tower needs to be taller; that the tower needs to communicate with other towers; that there would be a drop in coverage with a shorter tower; and that some antennae are greater than 150 feet tall in the area.

Mr. Paul testified that most antennae in the area are taller than 150 feet; that the closest tower is 3.4 miles away which is another reason the tower needs to be taller; that 150 feet gives optimal coverage; that the closest tower is 153 feet tall plus the lightning rod and the 149 feet is where the center of the antennae is located.

The Board found that six people appeared in support of and no parties appeared in opposition to the Application.

Ms. Magee moved to approve Application No. 12282 for the following reasons:

1. The proposed tower will not substantially adversely affect the uses of adjacent and neighboring properties;
2. The proposed tower meets the standards of 115-194.2 of Sussex County Code;

3. The Applicant has met the standards for a variance;
4. The property is unique;
5. The property cannot otherwise be developed,
6. The need for the variance was not caused by the Applicant;
7. The variance will not alter the essential character of the neighborhood; and
8. The variance requested is the minimum variance requested to afford relief.

Motion by Ms. Magee, seconded by Mr. Workman, and carried unanimously that the **special use exception and the variance be granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Williamson – yea, and Mr. Callaway – yea.

Case No. 12283 – TowerNorth Development, LLC seeks an interpretation of County Code and variances from the maximum fence height for a proposed structure and from the maximum height for a proposed telecommunications tower (Sections 115-23, 115-179, 115-185, 115-194.2 and 115-227 of the Sussex County Zoning Code). The property is located on the west side of Sam Lucas Rd. approximately 476 ft. south of Cave Neck Rd. 911 Address: 25754 Cave Neck Rd., Milton. Zoning District: AR-1. Tax Parcel: 235-20.00-54.00

Mr. Whitehouse 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 a variance of 45 ft. from the maximum height requirement of 150 ft. to allow a telecommunications monopole of 195 ft. in height. The Applicant is also requesting a variance of 1 ft. from the required 7 ft. fence height requirement. Mr. Jordan stated that County Code 115-185(c) allows the Planning & Zoning Director to approve fence height in commercial, industrial or agricultural uses, screening or tennis courts. After a short discussion, it was decided that the only variance needed is for the tower height.

David Grigonis was sworn in to give testimony. Shaun Paul, Paul Chan, and Christopher Lash were previously sworn in and may also offer testimony on this Application. Jonathan Jordan, Esquire, presented the Application on behalf of the Applicant.

Mr. Jordan distributed exhibit booklets to Board members. He stated that the special use exception has already been granted for this location, therefore, the presentation will focus on the height variance.

Mr. Paul testified that the need for this tower is two-fold; that the first purpose of the tower is to provide capacity relief for an existing AT&T site at Milton West and the second purpose is to pick up incremental coverage in areas that previously had little or no coverage; that the other tower is at a “point of exhaust”; that the height requested is the minimum height required to provide the off-load of capacity to the adjacent tower at Milton West which is currently considered as being

over-extended; that the software analysis take into consideration clutter and topography; that, if the spectrum is exhausted, the Applicant cannot meet its demand; that this sector is at an exhaustion point; that the topography and clutter between sites play a large impact on the height requested; that, if the height variance is not approved, it would mean having to look for additional sites to potentially put up an additional tower; that this tower is two miles from the Milton West tower; that the Milton West tower is 191 feet tall and is another reason the tower needs to be this tall; that, if the proposed tower needed to be off-loaded, it would not require that another tower will need to be that tall; that there is a significant difference in the ability to accommodate its users from this tower if the tower were 145 feet tall instead of 195 feet tall; that the Applicant is trying to minimize the need to come back for relief in the future; that the coverage provided by a 145 feet tall tower would be unacceptable to the market and would not be optimal; and that a tower of 195 feet is needed to relieve congestion and meet AT&T's criteria for in-building coverage.

Mr. Grigonis testified that it is 195 ft. monopole with a 4 ft. lightning rod with a total height of 199 ft.

Mr. Jordan stated that towers previously were allowed to be 300 feet tall until the Code was changed.

Mr. Paul testified that most towers are on monopole structures; that development in the area may be the reason for the clutter; and that the Applicant is trying to minimize the number of sites while providing service.

The Board found that six people appeared in support of and no parties appeared in opposition to the Application.

Ms. Magee moved to approve Variance Application No. 12283 for a proposed monopole at the height of 199 ft. finding that the application met the standards for meeting a variance.

Motion by Ms. Magee, seconded by Mr. Workman, and carried unanimously that the **variance be granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Williamson – yea, and Mr. Callaway – yea.

Meeting was adjourned at 9:03 p.m.