

MINUTES OF SEPTEMBER 14, 2015

The regular meeting of the Sussex County Board of Adjustment was held on Monday, September 14, 2015, at 7:00 p.m. in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Dale Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, and Mr. Norman Rickard. Mr. John Mills and Mr. Brent Workman were absent. Also in attendance was James Sharp – Assistant County Attorney, and staff members, Ms. Janelle Cornwell – Planning and Zoning Manager, and Mrs. Jennifer Norwood – Recording Secretary.

The Pledge of Allegiance was led by Mr. Rickard.

Motion by Mr. Hudson, seconded by Mr. Rickard, and carried unanimously to approve the Revised Agenda as circulated. Motion carried 3 – 0.

Motion by Mr. Rickard, seconded by Mr. Hudson, and carried unanimously to approve the Minutes and Finding of Facts for July 20, 2015 as circulated. Motion carried 3 – 0.

Motion by Mr. Rickard, seconded by Mr. Hudson, and carried unanimously to approve the Minutes and Finding of Facts for August 3, 2015 as circulated. Motion carried 3 – 0.

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

PUBLIC HEARINGS

Case No. 11628 – James L. Coxton – seek variances from the side yard and front yard setback requirements (Section 115-42B and 115-182D of the Sussex County Zoning Ordinance). The property is located on the west side of Quillen Road approximately 183 feet south of Canal Road. 911 Address: 20590 Quillen Road, Rehoboth Beach. Zoning District: GR. Tax Map No.: 3-34-19.12-36.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of the Application. Ms. Cornwell read one (1) letter of opposition into the record.

James Coxton was sworn in to testify about the Application. Shannon Carmean-Burton, Esquire, presented the case to the Board on behalf of the Applicant.

Mrs. Burton stated that the Applicant is requesting a variance of 2.5 feet from the ten (10) feet side yard setback requirement on the west side of the property for an existing dwelling, a variance of 6 feet from the ten (10) feet side yard setback requirement on the west side of the property for an existing HVAC, a variance of 1.8 feet from the thirty (30) feet front yard setback requirement for an existing dwelling, a variance of one (1) foot from the ten (10) feet side yard

setback requirement for an existing porch, and a variance 0.8 feet from the thirty (30) feet front yard setback requirement for an existing set of steps; that the Applicant purchased the Property in 2005; that side yard variances were approved by the Board in 2005 for a proposed dwelling; that the Applicant thereafter constructed a dwelling on the Property; that a Certificate of Compliance was issued for the dwelling in 2006; that the Applicant believed that the improvements were in compliance with the Sussex County Zoning Code; that the Applicant recently entered into a contract to sell the Property and a survey completed for settlement showed the encroachments; that the Applicant was not aware of the encroachments prior to the 2015 survey; that the Property is unique in shape and size; that the Property has a slanted property line and is narrow; that the Property cannot otherwise be developed since the dwelling has been on the lot without issue since 2006; that the exceptional practical difficulty was not created by the Applicant and is due to the uniqueness of the Property; that a significant portion of the dwelling would have to be removed in order to bring the dwelling into compliance with the Sussex County Zoning Code; that the Applicant obtained the necessary permits and approvals after construction of the dwelling and reasonably believed that the dwelling was constructed per the Code; that the variances do not alter the character of the neighborhood; that the use is not detrimental to the public welfare; that there have been no prior complaints from the neighbors; and that the variances requested are the minimum variances to afford relief. Mrs. Burton submitted copies of the Certificate of Compliance issued by Sussex County in 2006.

Mr. Coxton, under oath, confirmed the statements made by Mrs. Burton. Mr. Coxton testified that there have no changes made to the Property since 2006.

The Board found that one (1) party appeared in support of the Application.

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

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11628 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique in shape and the Certificate of Compliance was issued in 2006;
2. The variances are necessary to enable 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 are the minimum variances necessary to afford relief.

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

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

Case No. 11629 – The Jefferson School – seeks a special use exception to place two (2) temporary manufactured home type structures for classrooms (Section 115-23A and 115-210A(1) of the Sussex County Zoning Ordinance). The property is located on the north side of Wilson Road approximately 1,390 feet west of Sand Hill Road. 911 Address: 22051 Wilson Road, Georgetown. Zoning District: AR-1. Tax Map No.: 1-35-10.00-16.00.

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

Connie Hendricks and Michael Glick were sworn in and testified requesting a special use exception to place two (2) manufactured home type structures for classrooms. Mr. Glick testified that the classrooms are needed due to an increase in enrollment at the Jefferson School; that the Applicant needs additional space to accommodate the students; that the structures will be used temporarily until additions to the school are complete; that the closest residence is approximately four hundred (400) feet from the proposed classrooms; that the neighbors have no objection to the Application; that the Applicant received approval from the State Fire Marshal for the structures; that the classrooms will be needed for approximately three (3) years while the Applicant undergoes a capital campaign and constructs the permanent additions; and that the units will be adjacent to an existing parking lot.

Ms. Hendricks testified that the units will be used for music, health, and Spanish classes; that there will be no students spending an entire school day in the units; that one (1) unit will be used as two (2) classrooms and one (1) unit will be a full classroom; that the surrounding properties are residential and the Redden State Forest is nearby; and that the area around the Property is heavily wooded.

The Board found that one (1) party appeared in support of the Application.

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

Mr. Rickard stated that he would move that the Board recommend approval of Special Use Exception Application No. 11629 for the requested special use exception for a period of three (3) years based on the record made at the public hearing because the use does not substantially adversely affect the uses of neighboring and adjacent properties.

Motion by Mr. Rickard, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted for a period of three (3) years and for the reasons stated**. Motion carried 3 – 0.

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

Case No. 11630 – Dawn Anderson – seek variances from the front yard and side yard setback requirements (Section 115-34B and 115-182D of the Sussex County Zoning Ordinance). The property is located on the west side of Bayberry Lane approximately 1,325 feet south of Cedar Road. 911 Address: None Available. Zoning District: MR. Tax Map No.: 5-33-20.13-63.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of the Application. Ms. Cornwell read one (1) letter of opposition into the record.

Dawn Anderson and Michael Cummings were sworn in and testified requesting a variance of five (5) feet from the thirty (30) feet front yard setback requirement for a proposed dwelling, a variance of five (5) feet from the ten (10) feet side yard setback requirement for both sides for a proposed dwelling, and a variance of four (4) feet from the five (5) feet front yard setback requirement for a proposed set of steps. Mr. Cummings testified that the proposed dwelling meets Keenwik Subdivision setback requirements as set forth in the deed restrictions; that other houses in the neighborhood are similarly situated; that the Property is short in depth and is limited in the rear yard due to the neighborhood's setback requirements; that the lot measures 50 feet by 84 feet making it unique in size; that the majority of dwellings in the development have a five (5) feet side yard setback and a twenty-five (25) feet front yard setback; that the variances are necessary to enable reasonable use of the Property; that the exceptional practical difficulty was not created by the Applicant; that the variances will not alter the essential character of the neighborhood as the dwelling will be constructed pursuant to the allowable setbacks within the community's deed restrictions; that the Applicant does not seek to exceed the setback requirements set forth in the deed restrictions; that the variances are the minimum variances to afford relief; that the lot consists of only 4,400 square feet; that the proposed two-story dwelling will be on pilings in order to comply with the flood zone requirements; that the dwelling will be 2,200 square feet in size; that the HVAC will be placed at the rear of the Property; that the rear yard has flooded in the past; that there will be no stairs on the side or rear of the Property; and that the building envelope significantly limits the ability to construct a reasonably sized home on the lot. The Applicant submitted pictures, letters of support and a copy of the recorded covenants.

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

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

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11630 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique in size as it is only 50 feet wide by approximately 88 feet deep;
2. The variances are necessary to enable 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 sought are the minimum variances to afford relief.

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

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

Case No. 11631 – James Brittingham & Donna Brittingham – seeks a variance from the front yard setback requirement (Section 115-25C of the Sussex County Zoning Ordinance). The property is located on the north side of Beauchamp Lane approximately 285 feet east of Beaver Dam Road. 911 Address: 21647 Beauchamp Lane, Harbeson. Zoning District: AR-1. Tax Map No.: 2-34-10.00-103.12.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of the Application and had not received any correspondence in opposition to the Application.

Neil Dickerson, Donna Brittingham, and James Brittingham were sworn in and testified requesting a variance of 14.4 feet from the thirty (30) feet front yard setback requirement for an existing dwelling. Mr. Dickerson testified that a Certificate of Compliance was issued for the dwelling in 2012; that a recent survey completed for settlement showed the encroachment; that the dwelling was built in 2012 and there have been no changes, additions, or modifications to the Property since the Certificate of Compliance was issued; that the Applicants are selling the Property; that Beauchamp Lane is a crush and run road which is an access road for three properties; that Beauchamp Lane is maintained by the owners of those properties; that Beauchamp Lane is not fifty (50) feet wide; that the dwelling is approximately thirty-five (35) feet from the edge of the lane; that the dwelling faces Beaver Dam Road; that Beauchamp Lane is located to the side of the dwelling; and that the variance does not alter the character of the neighborhood.

James Brittingham testified that the existing well and septic system limited the placement of the dwelling; that the septic system was originally installed but DNREC required that the septic system be moved because they had overlooked the location of a well on a neighboring parcel; and that the septic system is located in front of the dwelling and the well is to the rear of the dwelling.

Brooke Brittingham was sworn in and testified in opposition to the Application and testified that the Property is not unique in size; that the Property is large enough for the Applicants to construct the dwelling in compliance with the Sussex County Zoning Code; that her property is located across from Beauchamp Lane; that the Applicants have created their own difficulty; that the variance alters the character of the neighborhood; that she has tried to sell her house but has received complaints about the location of her dwelling as compared to other dwellings in the neighborhood – specifically the Applicants’ dwelling; that she was not aware of the encroachment

until receiving notification of the public hearing; that she built her dwelling in 2011; that her dwelling is the only one along Beauchamp Lane that does not face Beaver Dam Road; that lot 120.01 is undeveloped; and that the dwelling on lot 120.00 faces Beaverdam Road.

The Board found that three (3) parties appeared in support of the Application.

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

Motion by Mr. Hudson, seconded by Mr. Rickard and carried unanimously to take the case under advisement. Motion carried 3 – 0.

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

At the conclusion of the public hearings, the Chairman referred back to this case. Motion by Mr. Hudson, seconded by Mr. Rickard, and carried unanimously that the case be **tabled until October 5, 2015**. Motion carried 3 – 0.

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

Case No. 11632 – Fiore Properties, LLC – seeks a special use exception to operate a bed and breakfast inn (Section 115-23C(14) and 115-210A(3)(o) of the Sussex County Zoning Ordinance). The property is located on the east side of Beaver Dam Road approximately 1,500 feet north of Holly Mount Road. 911 Address: 20415 Beaver Dam Road, Harbeson. Zoning District: AR-1. Tax Map No.: 2-34-10.00-103.10.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of the Application and had not received any correspondence in opposition to the Application.

Bamdad Bahar was sworn in and testified requesting a special use exception to operate a bed and breakfast inn; that he purchased the Property from a bank; that a contractor built the dwelling for his family but abandoned the Property; that the existing dwelling has ten (10) bedrooms which made it difficult for the bank to sell; that the dwelling was in poor condition at the time he acquired it; that he rented the dwelling to large families for a few years; that the last tenant had to be evicted; that he now lives in the dwelling; that he rents the six (6) bedrooms in the basement of the dwelling; that he advertises the rentals on Airbnb; that the Property is well maintained; that he has operated as a bed and breakfast for approximately one (1) year; that he has received positive reviews from his guests; that the operation is a positive addition to the neighborhood; that that he was not aware special use exception approval was required; that he applied immediately after being notified of the violation; that he also has not taken any new reservations since being aware of the violation; that there is adequate parking available to the guests; that there have been no structural changes to the Property since his purchase; that he serves

continental breakfast to the guests; that no other meals are prepared for the guests; that there are not any cooking facilities in the individual rooms; that most guests stay on the weekends only; that there is no traffic or noise issues related to the inn; and that the use does not substantially adversely affect the uses of the neighboring and adjacent properties.

James Brittingham was previously sworn in and testified in support of the Application; that the prior owner junked up the Property; that numerous dumpster loads were needed to clean the Property up; that the Applicant maintains the Property very well; that the use of the Property does not negatively impact the surrounding neighborhood; and that the guests at the inn are very quiet.

Mr. Bahar submitted exhibits for the Board to review.

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

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

Motion by Mr. Rickard, seconded by Mr. Hudson, and carried unanimously that the case **be tabled until October 5, 2015**. Motion carried 3 – 0.

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

Case No. 11633 – Kevin Gavaghan – seek variances from the side yard setback requirement (Section 115-42B of the Sussex County Zoning Ordinance). The property is located on the southeast side of Laws Point Road, approximately 0.52 miles north of Swann Drive. 911 Address: 37072 Laws Point Road, Selbyville. Zoning District: GR. Tax Map No.: 5-33-12.12-3.00.

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

Bryan Elliott of Integrity Builders was sworn in and testified requesting a variance of 3.5 feet from the ten (10) feet side yard setback requirements on both sides for a proposed dwelling, and a variance of seven (7) feet from the ten (10) feet side yard setback requirement for a proposed set of steps, HVAC, and gas tank; that the undersized lot is only forty (40) feet wide making it difficult place newer style homes on the Property; that the Applicant plans to retire and live on the Property full time; that the community was originally developed for smaller, single-wide mobile homes and has evolved to a community of larger, stick-built homes; that the dwelling will not alter the character as the neighborhood as it will be similar to others in the neighborhood; that the proposed dwelling is under 2,000 square feet in size; that the proposed dwelling is in keeping with the neighborhood; that the difficulty was not created by the Applicant; that the variances are the minimum necessary to afford relief; that the lot is long and very narrow; and that the survey submitted allows for minor adjustments during construction.

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

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11633 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The narrow forty (40) feet wide lot make the Property unique;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances sought are the minimum variances necessary to afford relief.

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

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

Case No. 11634 – Ockel Acres, LLC – seeks a special use exception to place a telecommunications tower (Section 115-23C(17) of the Sussex County Zoning Ordinance). The property is located on the north side of East Redden Road and on the west side of Donovan Road. 911 Address: 17120 Ockels Lane, Milton. Zoning District: AR-1. Tax Map No.: 2-35-24.00-1.05.

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

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

Mr. Tracey stated that the Applicant is requesting a special use exception to place a telecommunications tower; that the proposed tower will meet all zoning requirements and requires no variances; that the proposed tower will meet the lighting requirements; that the tower will provide space for collocation; that the traffic related to the tower will be minimal as there will generally need only 2 trips to the site per month; that the tower will require minimal services; that the tower will be accessed by an existing driveway; that Verizon Wireless is required to provide reliable coverage; that the proposed tower will provide reliable coverage in the area; that there is currently a significant gap in coverage in the area; that there is a tower approximately 1.7 miles from the proposed site but it would not cover the gap in coverage; that the emission from the proposed tower are 350 times below the Federal Communications Commission (“FCC”) maximum requirements; that the proposed tower will not substantially adversely affect the uses of the neighboring and adjacent properties; that the proposed tower site is isolated and will be between 1,500 and 3,000 feet away from any residential properties; that the Property is heavily wooded;

that the proposed tower site has Federal Aviation Administration (“FAA”) approval; that the proposed tower is not within the flight path of the nearby airstrip; that the proposed tower will be 145 feet tall with a 5 feet tall lightning rod; that there will be a six (6) feet high fence surrounding the tower and equipment; and that there is not a wetland issue with the site.

Mr. Tsoukalas and Mr. Gavin, under oath, confirmed the statements made by Mr. Tracey.

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

Mr. Rickards stated that he would move that the Board recommend approval of Special Use Exception Application No. 11634 for the requested special use exception because the use does not substantially adversely affect the uses of the neighboring and adjacent properties and the Applicant has demonstrated that it meets the telecommunication tower requirements.

Motion by Mr. Rickard, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted for the reasons stated**. Motion carried 3 – 0.

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

OLD BUSINESS

Case No. 11612 – 19366 Coastal Highway, LLC – seek a special use exception to replace an existing billboard and variances from the side yard setback, the separation from another billboard, height, the distance from public lands and maximum square footage requirements for a billboard (Section 115-159.5B(2), 115-159.5B(3), 115-159.5C, and 115-210A(3) of the Sussex County Zoning Ordinance). The property is located on the west side of Coastal Hwy. (Route 1) between Miller Road and Airport Road. 911 Address: 19366 Coastal Highway, Rehoboth Beach. Zoning District: C-1. Tax Map No.: 3-34-13.00-325.29.

The Board discussed this case, which has been tabled since August 17, 2015.

Motion by Mr. Rickard, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until October 5, 2015**. Motion carried 5 – 0.

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

Meeting Adjourned 9:20 p.m.