



Board of Adjustment
Agendas & Minutes

MINUTES OF JUNE 27, 2005

The regular meeting of the Sussex County Board of Adjustment was held on Monday evening June 27, 2005, at 7:00 p.m. in the County Council Chambers, County Administrative Building, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Callaway presiding. The Board members present were: Mr. Callaway, Mr. McCabe, Mr. Mills, Mr. Workman and Mr. Hudson, with Mr. Berl – Assistant County Attorney, Ms. Hudson – Zoning Inspector, II and Mrs. Norwood – Recording Secretary.

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of June 20, 2005 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.

Case No. 9111 – Donna Love – south of Road 308, 2,015 feet east of Road 309.

A variance from the minimum lot size requirement to place a multisectioal manufactured home.

Ms. Hudson presented the case. Donna Love affirmed and testified requesting a 3,760-square-foot variance from the required 32,670-square-foot lot size requirement to place a multisectioal manufactured home; that the proposed unit will be a double-wide; that the unit will be for her mother; that they cannot afford a modular dwelling; that there are other manufactured homes in the area; and that there is a septic system on the property.

By a show of hands 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. Hudson, and carried unanimously that to take the case under advisement. Vote carried 5 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the variance be **granted since it will not alter the character of the neighborhood.** Vote carried 5 – 0.

Case No. 9112 – Robin Guinta – south of Road 548, 359 feet west of Road 552, being Lot 8.

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A variance from the side yard setback requirement.

Ms. Hudson presented the case. Robin and Ford Verdery were sworn in and testified requesting a 14-foot variance from the required 15-foot side yard setback requirement for a proposed detached garage; that the detached garage will measure 26'x 40'; that due to the existing swimming pool and septic system the proposed location is the only available on the lot; that they recently remodeled their existing attached garage to accommodate their day care business; that the proposed garage will line up with the existing paved driveway; that they will probably place stone down the side of the garage adjacent to their neighbor; and that their neighbor has no objection to the application.

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to take the case under advisement. Vote carried 5 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously to **table this application until the next regular meeting to allow the Board time to review the site.** Vote carried 5 – 0.

Case No. 9113 – Barbara Klein and Dorothy Neumann – northwest of Route 16, southeast of Louisiana Avenue, being Lot 31, Block K within North Shores development.

A variance from the front yard setback requirement.

Ms. Hudson presented the case. Barbara Klein and Dorothy Neumann were sworn in and testified requesting a 22-foot variance from the required 30-foot front yard setback requirement for a proposed dwelling; that the lot is 50'x 100'; that there is wetlands to the rear of the property; that the proposed dwelling will be on pilings; and that the variance will allow them to build a 3-bedroom dwelling.

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

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously to take the case 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

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variance be **granted for the 22-foot variance from the front yard setback requirement since it meets all the standards for granting a variance.** Vote carried 5 – 0.

Case No. 9114 – William Blasius – south of Route One, southeast of Atlantic Avenue, being Lot F-15 within Sea Air Mobile City Mobile Home Park.

A variance from the separation requirement between units in a mobile home park and a variance from the side yard setback requirement.

Ms. Hudson presented the case. William Blasius was sworn in and testified requesting a 9-foot variance from the required 20-foot separation requirement between units in a mobile home park and a 3-foot variance from the required 5-foot side yard setback requirement; that the proposed shed will measure 8' x 12'; and that there are numerous variances in the mobile home park.

The Board found that no parties appeared in support of or 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. 9115 – Clinton E. Yoder, Sr. – north of Route 18, .5 mile west of U.S. Route 13.

A variance from the minimum lot width requirement.

Ms. Hudson presented the case. Clinton Yoder affirmed and testified requesting a 3-foot variance from the required 150-foot lot width requirement for a parcel and a 100-foot variance from the required 150-foot lot width requirement for a parcel; that his existing dwelling is towards the front of the property; that the proposed lot would be to the rear of his dwelling; that his property is close to the town limits of Bridgeville; that there are numerous developments and proposed developments in the area; that he will plant trees on the lot to create a buffer between the properties; that the lot is narrow and

long in size; and that he feels if his lot were just 2-foot longer he would not need to apply for a variance.

William Gulledge was sworn in and testified in opposition and stated that he owns the adjacent property; that he is opposed to a second dwelling being built that close to his property; that he feels the rules and regulations should remain in place; and that he submitted a letter from the developer.

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Ms. Hudson read the letter from the developer into the record.

By a show of hands, 1 party appeared in opposition to the application.

Motion by Mr. Workman, seconded by Mr. McCabe, and carried unanimously to take the case 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. Workman, and carried unanimously that the variances be **denied since it does not meet the standards for granting a variance.** Vote carried 5 – 0.

Case No. 9116 – Frank and Jane Leja – northeast of Road 48, east of Patterson Place Drive, being Lot 10 within Patterson Place development.

A variance from the front yard setback requirement.

Ms. Hudson presented the case. Frank and Jane Leja were sworn in and testified requesting a 12-foot variance from the required 30-foot front yard setback requirement for an existing screen porch; that the porch measures 6'x 8'; that he built and obtained the building permit; that the porch makes entering and exiting the home easier; and that the Homeowner's Association is in support of the application.

By a show of hands 2 parties appeared 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 to take the case under advisement. Vote carried 5 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the variance be **granted since it will not alter the character of the neighborhood.** Vote carried 5 – 0.

Case No. 9117 – Willard J. Hayes – east of U.S. Route 13, 4,345 feet north of Route 54.

A special use exception to retain a manufactured home for a sales office.

Ms. Hudson presented the case. Willard Hayes was sworn in and testified requesting a special use exception to retain a manufactured home for a sales office; that when he applied for the first special use exception he had only 60-days to move from the

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previous location; that he was approved for a 2-year period; that the entire process to get the unit set up took about 9-months; that he has plans to build a permanent structure on the property; that the initial move was more costly than he anticipated; and that he would like to extend the special use exception for a minimum of 2-years.

By a show of hands 2 parties appeared in support of the application.

By a show of hands 3 parties appeared in opposition to the application.

Kelly Hales and Drummond Wisnewski were sworn in with Michael McGroerty, Attorney, present on behalf of the application, and testified in opposition to the application and stated that the Applicant was opened for business in October 2003, less than six (6) months from the date of the Finding of Facts from the first hearing; that any delays in opening were created by the Applicant; that the Applicant has never shown any plans of the proposed permanent structure; that the Applicant has not submitted any evidence to the cost of the move; that he placed a carport on the property without the proper building permits; that there are signs on the property without any permits; that the landscaping the Board stipulated in the first hearing was not completed; that the cars on display for sale are not parked within the permitted area; that the Applicant has other means of income; that he has bought and sold property since the first hearing; and that this use adversely effects the surrounding properties.

In rebuttal, Willard Hayes, stated that he did not see any reason to plant permanent trees or bushes for a temporary structure; that his income should not be relevant to this case; that the site has been checked and approved by the Zoning Inspector; that his plan has been revised in relation to where he can park cars for display; and that he feels he has tried to be a good neighbor.

Motion by Mr. Workman, seconded by Mr. McCabe, and carried unanimously to take the case 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. McCabe, and carried unanimously that the special use exception be **denied since it substantially and adversely affects the neighborhood.** Vote carried 5 – 0.

Case No. 9118 – Anthony F. Tomczak – north of Route 54, southeast of Canvasback Road, being Lot 20, Block D within Swann Keys development.

A variance from the side yard setback requirement.

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Ms. Hudson presented the case. Anthony Tomczak was sworn in and testified requesting a 2-foot variance from the required 10-foot side yard setback requirement for a proposed manufactured home; that the existing unit measures 14'x 50'; that the proposed unit will measure 24'x 48'; that the proposed unit will be within the same footprint as the existing unit and porch; that the shed will remain in the same location; that the Homeowner's Association was not pleased with the proposed plan; that the Homeowner's Association advised him to apply to the Board of Adjustment; and that there are numerous variances in the development.

By a show of hands 1 party appeared in support of the application.

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

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the variance be **granted since there have been numerous variances granted in the development and since it will not alter the character of the neighborhood.**

Vote carried 5 – 0.

Case No. 9119 – Kim Jones – north of Road 565, 1,546 feet west of Road 638.

A special use exception to place a manufactured home on a medical hardship basis.

Ms. Hudson presented the case. Kim Jones was sworn in and testified requesting a special use exception to place a manufactured home on a medical hardship basis; that her parcel is 2 ½ acres in size; that she plans to build a single-family dwelling on the property; that her Aunt will live in the unit; that her Aunt has full custody of her 10-year old grandson; that she needs help nearby due to severe migraines; that she is currently building a 20'x 40' pole building; that the unit will run parallel to the driveway; that the unit measures 14'x 70'; that she is not sure of the year however the unit is in good condition; that she hopes to purchase a lot nearby and build a dwelling for her aunt; that this is just a temporary use in order to give her aunt the care she needs; and that there is no business on the property at this time.

By a show of hands 1 party appeared in support of the application.

By a show of hands 10 parties appeared in opposition to the application.

Ms. Hudson stated that the office received a petition with 14-signatures in opposition to the application.

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Alma Garlin was sworn in and testified in opposition to the application and stated that she was first to purchase property from the developer; and that the developer assured her there would be no manufactured homes placed in the area.

Thurman Hicks was sworn in and testified in opposition to the application and stated that he is the developer of the property; that all the lots were sold with the verbal understanding that there would be no manufactured homes on the lots; and that he plans to develop the interior lots to complete the subdivision.

Dave Ludwig was sworn in and testified in opposition to the application and stated that he is the adjacent property owner; that he recently built a new dwelling on the property; that the Applicant will operate their business out of the pole building; that he feels the manufactured home will not be used for her aunt; and that he does not understand why the aunt cannot live in the proposed dwelling.

Jason and Jennifer Clagg were sworn in and testified in opposition to the application and stated that they currently have a contract of sale for a dwelling they recently built; that they are concerned the approval of a manufactured home on the nearby property will jeopardize their contract; that they are concerned about the year of the proposed unit; and that the funds from the sale of this dwelling are needed to support their handicapped son.

Terry Lowe was sworn in and testified in opposition to the application and stated that he lives around the corner from the property; that he does not have a problem with the manufactured home; and that he is concerned about the construction business.

Thurman Hicks, added that he just sold the lot to the Applicant in April 2005; that the Applicant never mentioned needing a manufactured home for her aunt; and that he feels she could allow room for them in her proposed dwelling.

In rebuttal, Kim Jones, stated that the proposed office for her construction business was discussed with the developer; that there will only be a minimal amount of traffic from their customers; that the customers will mainly be dropping off paperwork and picking out cabinets and paint color; that the septic system for the pole building can be used for the proposed unit; that the unit will provide privacy for her 53-year old aunt;

that she has 5-children of her own; that when her aunt has her migraines she can send her grandson over to the her house; that this is just a quick solution to move her aunt closer to help with her care; that she wants to purchase a proposed lot from the developer that is adjacent to her property; and that they plan to erect a fence around the property.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the case be **tabled until July 11, 2005**. Vote carried 5 – 0.

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Case No. 9120 – Anthony Johnson and Wilson Catts – southeast of Hebron Street (Road 273), northeast of Harmon Street, being Lot 6, Block 1 within Shockley Subdivision.

A variance from the front yard setback requirement.

Ms. Hudson presented the case. Anthony Johnson and Wilson Catts were sworn in and testified requesting a 20-foot variance from the required 60-foot front yard setback requirement for a proposed warehouse; that warehouse will measure 40'x 50'; that the warehouse will be used to store umbrellas, chairs for their beach concession business; that they will also store a tractor and beach cleaner in the warehouse; that most buildings in the area are only 10 to 15-feet from the front yard property line; and that they submitted a letter in support of the application.

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

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

The Board recessed for 10-minutes.

Mr. Callaway stated to the Board that the Applicant for Case No. 9127 – Kimberly L. Ridge has requested to be heard immediately after the recess due to a medical emergency.

The Board asked the remaining Applicant's if there was any objections to hearing the case immediately following the recess and that there were no objections.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously to hear Case No. 9127 – Kimberly L. Ridge immediately following the recess.

Case No. 9127 – Kimberly L. Ridge – south of Road 270A, west of Timberline Drive, being Lot 1 within Piney Glade development.

A variance from the side yard setback requirements.

Ms. Hudson presented the case. Kimberly Ridge and Casey Leary were sworn in and testified requesting a 1.11-foot variance from the required 10-foot side yard setback requirement for a proposed manufactured home; that she purchased the unit from Atlantis Homes; that the surveyor led them to believe that the existing unit had to be removed

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prior to a location survey being done for the proposed unit; that the property is not square; that the side property line runs narrow towards the rear of the property; that she currently has nowhere to live; that the unit is on the sales lot at Atlantis Homes; and that this branch of Atlantis has only been before the Board on one other occasion.

The Board found that no parties appeared in support of or 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. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted**. Vote carried 5 – 0.

Case No. 9121 – Sarah K. Beall – northeast of Route One, southeast of Anna B. Street, being Lot 12, Block E within Dodd's Addition development.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. Bill Schab, Attorney, present on behalf of the application, testified requesting a 0.1-foot variance from the required 10-foot side yard setback requirement for an existing dwelling; that in 1999 the survey showed the dwelling met the setback requirements; that a survey done in November 2004 for settlement showed the encroachment; that the surveyors could not explain how they came up with a difference; that the variance will have no adverse effect to the community; that it would create an extreme hardship to the Applicant; and that it is the minimum variance to afford relief.

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

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the variance be **granted since it will not alter the character of the neighborhood**. Vote carried 5 – 0.

Case No. 9122 – Paul Matassa, Gary M. Hiltz, Melissa A. Hiltz and Rennert C. Hiltz

– north of Route 24, northeast of Bryn Mawr Drive, being Lot 131, Section 1 within Maplewood development.

A variance from the rear yard setback requirement.

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Ms. Hudson presented the case. Bill Schab, Attorney, present on behalf of the application, testified requesting a 0.8-foot variance from the required 20-foot rear yard setback requirement for an existing dwelling; that the dwelling was built in the 1990's; that a survey done for settlement in November 2004 showed the encroachment; that the rear property line runs at a slight angle; that there will be no adverse effect to the neighborhood; that there would be an extreme hardship to the Applicant to move the dwelling into compliance; and that this is the minimum variance to afford relief.

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

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

Case No. 9123 – Matthew D. and Deborah S. Stone – north of Road 270A, west of Shady Ridge Drive, being Lot 22 within Shady Ridge development.

A variance from the front yard setback requirement.

Ms. Hudson presented the case. Bill Schab, Attorney, present on behalf of the application, testified requesting a 0.5-foot variance from the required 30-foot front yard setback requirement for an existing dwelling; that a survey done in 1986 showed no encroachments; that a second survey was done in 2004 for settlement; that the second survey showed the encroachment; that the same surveying company did both surveys; that the measurements were done from different corners of the dwelling; and that the application meets all the standards for granting a variance.

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

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

Case No. 9124 – Cingular Wireless, LLC – south of Road 78, 190 feet northwest of Road 490A.

A special use exception to place a telecommunications tower.

Ms. Hudson presented the case. Andrew Petersohn, Tom Zolnar, and Susan Tierney, were sworn in with Pamela Scott, Attorney, on behalf of the application and

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testified requesting a special use exception to place a telecommunications tower; that the tower will be 180-foot in height; that the proposed location is a 22-acre parcel zoned AR-1; that the tower will meet all the required setback requirements; that the tower will be approximately 1,500-feet from the Woodland Ferry Road; that there will be a 60'x 60' fenced in compound area around the base of the tower; that there will be an equipment shelter; that the tower will provide space for two other carriers; that they will have the required lighting per the Zoning Ordinance; that the tower will eliminate a gap in coverage in the area; that there are no other sites within the 2-mile radius to collocate; that they submitted a health study; that the tower meets all the FCC requirements; that they submitted the telecommunications act; and that 50% of all 911 Emergency calls come through on cellular phones.

Rob Witsil, Attorney, on behalf of the opposition, stated that the Applicant has not provided evidence that they cannot collocate outside the 2-mile radius.

Bayard Layton was sworn in and testified in support of the application and stated that he is the property owner of the proposed site; that due to poor coverage in the area the tower is greatly needed; and that he submitted a petition with 196-signatures in support of the application.

Rob Witsil stated that there is a deed restriction on the property that does not allow the construction of a tower or any structures that are not residential.

Jesse and Holly Conaway were sworn in and testified in opposition to the application and stated that they are the adjacent property owners and that they submitted a petition with 70-signatures from property owners within the vicinity of the tower in opposition to the application.

Bayard Layton stated that his petition was taken around the neighborhood and all the signatures are from people within the vicinity that have poor service.

Jesse Conaway stated that his family has owned the property since the 1740's; that he plans to build a dwelling on the property; that his father was born and raised on the property; that the trees in the area are only 45-feet tall; that the tower will adversely effect the view from the river; that this is a very historical area; that the lights will also

hinder the spectacular views of the area; and that there are crop dusters that fly low in the area.

Holly Conaway stated that she went door to door within the 2-mile radius and obtained the signatures; that the tower will be devastating to her family; and that they submitted paperwork.

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In rebuttal, Andrew Petersohn, stated that they have exhausted all other means for reliable coverage to the area; that to go outside the 2-mile radius will not address the coverage gap; that the search ring is based on complaints and software used to determine where there are gaps in coverage; that the software shows all dropped calls in certain area; that the software indicates whether the call was lost due to someone disconnecting the call or whether there was a lost call due to not enough coverage in that area; and that they would certainly collocate due to cost rather than erecting a new tower.

By a show of hands 3 parties appeared in opposition to the application.

Tom Darby was sworn in and testified in opposition to the application and stated that he has lived in the area for 3-years; that he will see the tower from his deck; that he does have Cingular cellular service; that he does not get service from his home; that he purchased a new phone with the understanding it would provide better service; and that he feels the towers should be shared.

Freddie Adkins was sworn in and testified in opposition to the application and stated that he is a 28-year resident; that he loves the quiet area; that he also enjoys the fact that there are no street lights in the area; that he will be effected by the lighting on the tower; and that he is concerned for his health.

George Jacobs was sworn in and testified in opposition to the application and stated that he has cellular service with Verizon; that he has no trouble with his service in that area; and that a tower should not be erected in a residential area.

In rebuttal, Pam Scott, stated that the opposition has not provided any expert testimony for their concerns; that general concerns are not significant reasons to deny the application; and that the lighting on the tower is strictly to comply with the County Ordinance.

In rebuttal, Andrew Petersohn, stated that although there may be some towers in the area they still may not be able to use them; that some towers would still be too low to gain any coverage; that other towers are already at full capacity; that to build a tower taller to cover a greater area also creates problems; that the higher you go the more

chance of interference with other frequencies; and that Cingular is striving to have the best coverage in this area.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until July 11, 2005**. Vote carried 5 – 0.

The Board recessed for 10-minutes.

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Case No. 9125 – Cingular Wireless, LLC – south of Route 54, 1,100 feet west of Road 390.

A special use exception to place a telecommunications tower.

Ms. Hudson presented the case. Andrew Petersohn and Susan Tierney were sworn in with Pamela Scott, Attorney, on behalf of the application, and testified requesting a special use exception to place a telecommunications tower; that the tower will be 150-foot in height; that the parcel is 30-acres and zoned AR-1; that the tower will meet all the required setback requirements; that the tower will be 363-feet from Lighthouse Road; that there will be a 60' x 60' fenced in compound; that there will be an equipment shelter; that the tower will accommodate two other carriers; that there will be the required lighting on the tower; that the tower is needed to cover a gap in coverage; that there are no available sites to collocate; that they submitted a health study; that they submitted pictures; and that this is the least intrusive solution to cover the gap in coverage.

By a show of hands 2 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 special use exception be **granted since it will have no adverse effect to the neighborhood**. Vote carried 5 – 0.

Case No. 9126 – Cingular Wireless, LLC – south of Route 524 (German Road), 0.5 mile north of Route 20 (Concord Road).

A special use exception to place a telecommunications tower.

Ms. Hudson presented the case. Andrew Petersohn and Susan Tierney were sworn in with Pamela Scott, Attorney, on behalf of the application, and testified requesting a special use exception to place a telecommunications tower; that the proposed tower will be 200-foot in height; that the proposed location is a 2.43-acre parcel zoned AR-1; that the tower will be 67-foot from all property lines; that the tower will be 98-foot from

German Road; that the tower is needed to fill a gap in coverage; that there will be a 60'x 60' fenced in compound on the site; that there will be an equipment shelter; that the tower will accommodate two other carriers; that the tower will have the required lighting; that the reason for the extended height is to provide coverage for the entire 4-mile area; and that they submitted health studies and pictures.

By a show of hands 2 parties appeared in support of the application.

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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 be **granted since it will not substantially effect the surrounding neighborhood.** Vote carried 5 – 0.

Meeting Adjourned 11:55 p.m.