

MINUTES OF APRIL 18, 2022

The regular meeting of the Sussex County Board of Adjustment was held on Monday, April 18, 2022, at 6:00 p.m. in the County Council Chamber, Sussex County Administration Office Building, Georgetown, Delaware. The teleconference system was tested during the meeting by staff to confirm connectivity.

The meeting was called to order at 6:00 p.m. with Chairman John Williamson presiding. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings - absent, Mr. Jordan Warfel, and Mr. John Williamson. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, Mr. Vince Robertson - Assistant County Attorney, and staff members Ms. Jennifer Norwood – Planning and Zoning Manager, Mr. Chase Phillips – Planner and Ms. Amy Hollis – Recording Secretary.

The Pledge of Allegiance was led by Mr. Williamson.

Motion by Dr. Carson, seconded by Mr. Warfel and carried unanimously to approve the agenda. Motion carried 4 – 0.

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

Motion by Mr. Chorman, seconded by Mr. Warfel and carried unanimously to approve the Minutes for the February 21, 2022, meeting. Motion carried 4 – 0.

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

Motion by Mr. Warfel, seconded by Dr. Carson and carried unanimously to approve the Findings of Facts for the February 21, 2022, meeting. Motion carried 4 – 0.

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

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. 12677 –Stephanie McEntaffer seeks variances from the front yard setback and side yard setback requirements for existing and proposed structures (Sections 115-34, 115-182, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located on the south east side of Shore Drive approximately 150 ft. north of Carey Street. 911 Address: 9043 Shore Drive, Milford. Zoning District: MR. Tax Parcel: 230-17.00-11.00

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 a variance of 3.7 ft. from the 5 ft. side yard setback requirement on the north side for a proposed porch on existing deck and a variance of 2.2 ft. from the 30 ft. front yard setback requirement for an existing shed.

Mr. Sharp recused himself and left Council chambers.

Mr. Robertson served acting counsel for the Board.

Ms. Stephanie McEntaffer and Mr. Donald McEntaffer were sworn in to give testimony about the Application.

Mr. McEntaffer testified that the shed is existing and they were unaware of the setback requirement; that other sheds in their neighborhood are placed in similar fashion and the approval of their variance will not alter the neighborhood; that it is a stick built, anchored shed with windows; that there is a deck on the front of the home, the septic and drain field which is a mound system, and the DNREC no build line which restrict building on their property; that the placement of the shed is the only functionable location on their property; that the perimeter of their deck has been restructured to support the porch; that the main entrance of the house is on the north side; that their parents are elderly and have mobility issues, which determined their placement of the porch and entryway; that he believes their parcel and a neighboring parcel were previously owned by the same individuals when these structures were erected; that they are putting a roof over the existing deck; that they were violated which led them to the Board of Adjustment; that their contractor was The Great Outdoors, and his name is Chris; that the structure is existing now as framed without the screens and the roof needs to be completed; that the shed does not have a permanent foundation and is on a rock bed; that the shed cannot be placed anywhere else on the property; that there is a small garage under the house, which contains a laundry room, home gym, and storage; that they downsized by half when buying this property; that the porch was constructed on the build line; that they need no further DNREC approvals for the shed or porch; that the porch will have a pitched roof, as does the roof of the dwelling; that they are planning to place a gutter system on the roof to help with water runoff; and that they planted beach grass on their property to counteract the erosion.

Ms. McEntaffer testified that the deck was existing when they purchased the property; that the deck was built on the property line and not in compliance with the 5 ft. setback; and that the contractor's last name is Russell.

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

Mr. Williamson closed the public hearing.

Mr. Chorman moved to approve Case No. 12677 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to the exceptionally small buildable area;
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 nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare; and
5. The variances represent the minimum variances necessary to afford relief.

Motion by Mr. Chorman, seconded by Mr. Warfel, carried unanimously that the **variances be granted for the reasons stated.** Motion carried 4 – 0.

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

Case No. 12679 –Water’s Edge Church seeks variances from the front yard setback requirement for proposed structures (Section 115-83.8 and 115-182 of the Sussex County Zoning Code). The property is located on the east side of Reynolds Road and the southwest side of Broadkill Road at the intersection of Reynolds Road and Broadkill Road (Rt. 16). 911 Address: 13275 Reynolds Road, Milton. Zoning District: CR-1. Tax Parcel: 235-15.00-7.01

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 variances of 33.52 ft., 36.52 ft., 26.41 ft. and 35.51 ft. from the 60 ft. front yard setback requirement along Route 16 for a proposed church.

Mr. Tim Willard, Esquire, stated that he represents Water’s Edge; that Water’s Edge is a Wesleyan congregation derived from the Methodist Church; that the Church has sold their former location which is now a food pantry; that the proposed location was formerly a feed store; that the property is unique due to the existing encroachment of the present structures; that they are proposing to demolish the current buildings and move the proposed structures back making it more in compliance; that the lot is an oddly shaped corner lot; that the majority of the rear is dedicated to the existing septic system; that the variances are intended to bring the property more into compliance with code and facilitate the necessary functions of the Water’s Edge Church; that the congregation is ever growing; that the entire front build and pitched roof would be removed, and the kitchen which is a separate building; that the first three (3) buildings will be removed; that DelDOT will allow one entrance to remain, one will be removed, and another will be added; that DelDOT is instituting a Right-of-Way; that they are working on an architecturally pleasing structure which would not adversely affect the neighboring properties; that the proposed structure would be a great addition to the neighborhood; that they are intending to improve what is existing in a minimal way on a

nonconforming property; and that they plan to use the tiny bit of open area will be used as field for their congregation.

Mr. Tim Wilson was sworn in to give testimony about their Application.

Mr. Wilson testified that the statements of Mr. Willard are true and correct; that they derived their name from Joshua 1:9; that they outgrew their former location; that they purchased this property and refer to it as their promise land; that himself and assistant pastor collectively came to the name of the church; and that this is the minimum necessary to provide for their congregation.

Mr. Allen Decktor was sworn in to give testimony about the Application.

Mr. Decktor testified that he is a professional engineer with Pennoni Associates; that the open space is to the right of the building houses the septic field; that the existing septic system is sufficient for the proposed structures; that they plan to use the same parking as existing currently; and that there are not any future plans at the moment other than what is proposed.

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

Mr. Williamson closed the public hearing.

Dr. Carson moved to approve Case No. 12679 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to the exceptionally small buildable area;
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 variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare; and
4. The variances represent the minimum variances necessary to afford relief.

Motion by Dr. Carson, seconded by Mr. Warfel, carried unanimously that the **variances be granted for the reasons stated**. Motion carried 4 – 0.

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

Mr. Sharp returned to Council chambers and resumed as counsel for the Board. Mr. Robertson left Council chambers.

Case No. 12683 – Gary Alexander seeks a variance from the rear yard setback requirement for a replacement structure (Sections 115-25, and 115-183 of the Sussex County Zoning Code). The property is located on the west side of Sussex Road within the Indian River Acres Subdivision. 911 Address: 30143 Sussex Road, Dagsboro. Zoning District: AR-1. Tax Parcel: 134-7.00-34.00

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 nine mail returns. The Applicant is requesting a 2 ft. variance from the 5 ft. rear yard setback requirement for a replacement deck.

Mr. Gary Alexander and Ms. Laura Alexander were sworn in to testify about their application.

Mr. Alexander testified that the Applicants need a variance to rebuild their deck after having their bulkhead replaced due to erosion; that the Applicants had to remove a portion of their deck for the construction of the bulkhead repair; that the Applicants had to remove an approximate 4 ft. section; that the Applicants were unaware they would need a variance to rebuild; that the pool is exposed at the moment due to the lack of decking; that the Applicants are asking for the minimum but would like to still be able to walk around the pool; that the Applicants bought the property in its current status but have had to make repairs; that the deck existed when they purchased the property but it had a certificate of compliance; that the variance will not alter the neighborhood but will add to the character; that the pool is 4 feet deep and is partially in-ground; that the Applicants previously received approval for a variance for a shed; that the bulkhead issue was a safety concern; that the Applicants will be expanding their deck on the north side but not in the rear yard setback; that they are requesting the variance into the rear yard but the deck will be no closer to the rear yard than the prior deck; that the deck will be 3-4 feet wider; that the contractor said 4 ft. due to the joists; that no HOA approval is needed; that the previous deck was existing when the property was purchased; that the deck is about 16 inches above grade; and that the steps to the deck will comply with the setback.

Ms. Alexander testified that it is the minimum to replace what was existing; that there is no property to the rear of them as it is a lagoon; that they had to repair the bulkhead due to erosion of soil into the lagoon; that the Applicants submitted a letter from a neighbor in support; that they need the extra deck to place chairs and be able to walk around the pool; and that they will be removing the flower bed adjacent to it and be placing the deck.

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

Mr. Williamson closed the public hearing.

Mr. Warfel moved to approve Case No. 12683 for the requested variance, pending final written decision, for the following reasons:

1. The property has unique conditions due to the deteriorating bulkhead;
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 Applicants;
4. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare; and
5. The variance represents the minimum variance necessary to afford relief.

Motion by Mr. Warfel, seconded by Mr. Chorman, carried unanimously that the **variance be granted for the reasons stated**. Motion carried 4 – 0.

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

Case No. 12678 –Mehwish Aziz seeks a variance from the maximum fence height requirement for an existing fence (Sections 115-25, 115-182, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located on the southwest side of Walnut Point Lane within the Collins Creek Estates. 911 Address: 31155 Walnut Point Lane, Ocean View. Zoning District: AR-1. Tax Parcel: 134-8.00-318.00

Mr. Phillips 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 one (1) mail return. The Applicant is requesting a 2.5 ft. variance from the 3.5 ft. maximum fence height requirement for an existing fence.

Ms. Mehwish Aziz was sworn in to give testimony about her application.

Ms. Aziz testified that she resided in New York; that she obtained the permit and provided it to the contractor to build the fence; that she was not there when the fence was constructed; that an inspector was at her property and indicated that the fence should not be there; that she verified on the permit that the fence could be located there but the height was the issue; that she brought the front yard section of fence into compliance; that her neighbor has no objection to the fence due to his dogs roaming her property; that she has had previous issues with dogs in the past; that the fence was erected for privacy and safety reasons; that the entire side and rear yard portions of the fence are 6.5 ft. tall; that the fence is 6 ft. tall but with the poles it is measured at 6.5 ft. by the inspector; that the fence is located on the property line; that the issue is with the fence along Lot 6 to the south of the lot; that the contractor, Jamie Landscaping out of Maryland, installed the fence; that the neighbor's dogs would be able to enter her property if the fence was any lower in the area needing a variance; that the neighbor's dogs are kind of aggressive; that there are no visibility issues due to the placement of the fence; that there is a gap between the fence and edge of paving of about 2-3 ft.; that she provided the

permit to the contractor with the conditions; that the fence installed was the intended fence she was seeking; that there is no HOA approval required; that the neighbor in support of the fence is the owner of the dogs and her adjacent neighbor; and that the lot was previously vacant before she bought it and constructed her home.

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

Mr. Williamson closed the public hearing.

Dr. Carson moved to approve Case No. 12678 for the requested variance, pending final written decision, for the following reasons:

1. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare; and
2. The variance represents the minimum variance necessary to afford relief.

Motion by Dr. Carson, seconded by Mr. Warfel, carried unanimously that the **variance be granted for the reasons stated.** Motion carried 4 – 0.

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

Case No. 12680 – Renata Grabiak seeks variances from the side yard setback requirement for a proposed pool with walkway (Sections 115-42, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located on the south side of Arrowhead Drive within the Pine Crest Terrace Subdivision. 911 Address: 30033 Arrowhead Drive, Ocean View. Zoning District: GR. Tax Parcel: 134-9.00-156.00

Mr. Phillips 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 one mail return. The Applicant is requesting variances of 4 ft. from the 10 ft. side yard setback requirement on the east side for a proposed pool and 5 ft. from the 10 ft. side yard setback requirement on the east side for a proposed walkway. Mr. Phillips also noted that staff granted an administrative variance of 1 ft. from the side yard setback of 10 ft. on the east side for proposed pool; and that the neighbor's pool was issued a CO in 2007.

Ms. Renata Grabiak was sworn in to give testimony about his application.

Mr. Sharp and Mr. Phillips discussed the variances being requested.

Ms. Grabiak testified that they are in the process of building a pool measuring 30 feet by 14

feet; that they need to have 4 ft. walking area around the pool for safety reasons; that they would need the variance in order to have the distance needed between the pool and the house for walking; that the pool has to be elevated; that the pool will be 2 ft. above the ground; that there is a 3 ft. walking space between the house and the back of the property; that the neighbors also have a pool and have no objection to the pool or its placement; that the pool will be 6 ft. from the property line to the water of the pool; and that the elevated walkway around the pool will go to the property line.

Mr. Sharp asked for clarity on the variances being requested.

Mr. Phillips stated that the variance needed for the walkway is 10 feet from the side yard.

Ms. Grabiak testified that there are steps to the rear of the property from the pool also.

Mr. Sharp stated that, essentially, the Applicant proposes an elevated deck with steps around the pool; that a variance will be needed from the rear yard for the steps and deck as well; and that a variance from the side yard is also needed for the steps.

Ms. Grabiak testified that, without the variance, they will not be able to have a safe walkway around the pool for her family; that there is limited space in their back yard; that there is no other place to put the pool; that the pool will not adversely affect the value of the property or the adjacent properties; that the property is very narrow and adjacent to the canal thereby limiting their buildable area; that her pool will not affect the neighbors or their properties; that the neighbor's pool is elevated 2 feet above the ground; that they applied for the administrative variance and found that to be insufficient; that they are asking for the minimum to construct the pool with walkway as explained; that the pool measures 14 feet by 30 feet; that the pool is a prefab, fiberglass pool and will be fitted with an automatic cover; that a smaller pool would be a different shape and unable to have an automatic cover; that they are unable to put a pool completely in the ground due to the property being in a flood zone; that the neighbor's patio is raised and the proposed patio would be concrete and meet up to the neighbor's patio; that her neighbor's patio is concrete; that she did not construct the house; that they purchased the property in 2013; that she believes the septic system may be in the front yard but she is unsure as they did not consider placing the pool there; that she does not know how many other neighbors have pools; that the pool will be 7 feet from the house; and that between the deck and the stairs to the house is almost 4 ft.

Mr. Phillips confirmed that the pool will be 7 feet from the house.

Ms. Grabiak testified that the deck around the pool needs to be 4 ft. for safety reasons as recommended by the pool company; that the drawing with the larger shaded area is the drawing which the Board should use; that the steps go off the walkway; that the shed on the mapping system has been removed; and that her neighbor's patio is raised 2 ft. and constructed of concrete, which is the same she has proposed but she could use wood for her deck.

Mr. Phillips stated that the other drawing referred by the Applicant shows 9 feet from the pool to the stairs.

Mr. Sharp noted that this property does not benefit from the small lot ordinance.

Ms. Grabiak testified that they looked at other pools and none of which would be able to use an automatic cover; that this pool was recommended by Pools & Spas Unlimited; that they have small grandchildren and would prefer an automatic cover for an extra level of safety; that they use the rear yard, facing the canal, to entertain guests and their family; that there is a fence between her back yard and the neighbor's back yard; that the fence is 6 ft. tall; and that she is planning to fence in her rear yard as required.

Mr. Phillips stated that the neighbor's patio received a CO in 2007 but no variance; that a rear yard variance is needed based on the survey relied upon by the Applicant; and that no rear yard variance was advertised for this Application because staff relied on a different survey presented by the Applicant.

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

Mr. Williamson closed the public hearing.

Mr. Chorman moved to deny Case No. 12680 for the requested variances, pending final written decision, for the following reasons:

1. The property does not have unique conditions which has created an exceptional practical difficulty;
2. That the Applicant has failed to demonstrate that the property cannot be developed in strict conformity with Sussex County Zoning Code;
3. That the Applicant has failed to demonstrate that the variance is necessary to enable the reasonable use of the property;
4. The exceptional practical difficulty was created by the Applicant;
5. The variances do not represent the minimum variances necessary to afford relief.

Motion by Mr. Chorman, seconded by Dr. Carson, carried unanimously that the **variances be denied for the reasons stated**. Motion carried 4 – 0.

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

Case No. 12681 – Sean Merlonghi seeks a variance from the side yard setback requirement for a proposed pole building/garage (Sections 115-25, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located on the northwest side of New Lane within the New Road

Estates Subdivision. 911 Address: 5 New Lane, Lewes. Zoning District: AR-1. Tax Parcel: 335-8.00-591.00

Mr. Phillips 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 10 ft. variance from the 15 ft. side yard setback requirement for a proposed pole building.

Mr. Gary Merlonghi was present on behalf of applicant Mr. Sean Merlonghi and was sworn in to testify.

Mr. Merlonghi testified that the Applicant is out of the country and had difficulty calling into the call-in number.

RECESS 7:44 – 7:50 pm

After the recess, Mr. Sharp confirmed that the Applicant had tried to call into the meeting but had difficulty doing so.

Mr. Chorman moved to leave the record open and be heard first at the next meeting for Case No. 12681 for the requested variance, for the following reasons:

1. Mr. Merlonghi attempted to call in on multiple occasions as he is out of the country but was unable to get through.

Motion by Mr. Chorman, seconded by Mr. Warfel, carried unanimously that the **record be left open for the reasons stated**. Motion carried 4 – 0.

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

ADDITIONAL BUSINESS

There was no additional business.

Meeting adjourned at 7:54 p.m.