

MINUTES OF APRIL 22, 2024

The regular meeting of the Sussex County Board of Adjustment was held on Monday, April 22, 2024, at 6:00 p.m. in the County Council Chamber, Sussex County Administration Office Building, Georgetown, Delaware.

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

The Pledge of Allegiance was led by Mr. Chorman.

Motion by Dr. Carson, seconded by Mr. Warfel and carried unanimously to approve the amended agenda with the removal of Case No. 12924. Motion carried 5 – 0.

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

Motion by Mr. Williamson, seconded by Dr. Carson and carried unanimously to approve the Minutes for the February 19, 2024, meeting. Motion carried 5 – 0.

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

Motion by Mr. Hastings, seconded by Mr. Warfel and carried to approve the Findings of Facts for the February 19, 2024, meeting. Motion carried 5 – 0.

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

PUBLIC HEARINGS

Case No. 12925 John and Mary Denney seek a variance from the front yard setback requirement for a proposed addition (Section 115-34 of the Sussex County Zoning Code). The property is located South of Dot Sparrow Drive and East of Warbler Court within the Summercrest Subdivision. 911 Address: 34760 Dot Sparrow Drive, Rehoboth Beach. Zoning District: MR. Tax Parcels: 334-12.00-838.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support or opposition of the Application, and two (2) mail returns. The Applicants are requesting a 7.4 foot variance from the 30 foot front yard setback requirement and a 4.9 foot variance from the 30 foot front yard setback requirements for a proposed addition.

Mr. John Denney and Mr. Joseph Dashiell were sworn in to give testimony for this

application.

Mr. Denney testified that the notice they received noted the setback request on the front yard, but it is the side; that, administratively, what they thought was the side yard, is really a corner front yard; that they were unaware of the corner front setback requirements; that they were told their property was considered a through lot since they have road frontage on 2 sides; that, in 2013, they purchased the home in Summer Crest, a 98 home subdivision; that the side of their home on Warbler Court faces the homeowners association amenities and no residence; that the placement of the house is wedged in the rear and side of the property, leaving ample room on Warbler Court; that they have multiple surveys on file and none had ever noted a 30 foot setback; that he researched other setback cases in the community; that Case No. 11312 was an application for a variance for their front yard setback requirements on a corner property at the corner of Dot Sparrow and Mute Swan Lane; that the variance for Case No. 11312 was approved; that, looking at the survey, it seems that there is plenty of room to build on towards Warbler Court; that, in addition to their property line, there is roughly 10 feet of grass, sidewalk, and more grass to the edge of pavement; that the side of the house facing Warbler Court has no windows or natural light; that the addition would be considered a sun room with a lot of windows to allow for natural light; that Mr. Dashiell is a recommended contractor in the community; that plans were drawn up and, when surveyors came out to survey, they noted that the plans would encroach into the 30 foot corner front setback; that the addition will be 25 feet by 28 feet; that the lot is unique in the fact that the sunroom would face no other buildings and the area it faces is an open lot with amenities; that their lot is one of the smallest in the community; that the property could not be otherwise developed because of the proportionality and character of the surrounding homes; that the proposed addition will have the same roof line and be overall consistent with the size of the other homes in the community; that the hardship was not created by the Applicants due to them purchasing and not building the home; that it will not alter the essential character of the neighborhood but would enhance it; that they are prepared to file a request with the HOA architectural committee who have indicated that there should be no issue since the addition would be consistent in style, shape, and size to their home; that there have been no objections to their proposal from neighbors or the homeowners association; that Lot 69 has been built on recently; that there is no worry of obstruction of line of sight while driving; that a smaller sunroom would not work due to the aesthetics, furniture has been purchased and many grandchildren to accommodate; that the entry and exist will be out of the rear of the house; that the size of the addition could be smaller but it would cause some hardship; that the wooden platform noted on the survey was being removed or was already removed; that the property is on central water and sewer so no well or septic will be impacted; that the current house has an unfinished basement and loft; that finishing the basement would not suit their needs; that the home of 2,100 square feet is one of the smaller homes in the community; that the proposed size of the sunroom is the size needed to accommodate their needs; and that they did not build the house or choose the location of the home on the lot.

Mr. Sharp stated that Dot Sparrow Drive is considered the front yard and Warbler Court is considered the corner front; that the property line opposite Warbler Court is a side yard and the property line opposite Dot Sparrow is their rear yard, both with normal setbacks; that the corner front

of Warbler Court has increased setbacks per the original plot plan recorded for the subdivision; that normally, corner front yards have a setback requirement of 15 feet instead of the recorded 30 feet; that it is considered a corner front due to having road frontage; that a through lot is when there are approximately parallel streets on two sides of the property; that, in this case, if Lot 69 was a road, only then would it be considered a through lot, but that is not the case; that looking into Case No. 11312 is actually a through lot with road frontage on parallel sides of the property; and that, with the new ordinance in effect, they most likely would not need a variance due to the reduced setbacks applied.

Mr. Dashiell testified that the angles on the rear lot line and lot line along Warbler Court posed some challenges when designing the addition; that from the property line to the edge of pavement is roughly 11 feet; and that the side of the house facing Warbler Court is like looking at a blank slate with no windows.

Ms. Norwood stated that the increased 30 foot corner front setback was recorded on the plot when they created Summercrest; that they created the 30 foot requirement on both sides; that, if they were following what the County code requires, then one of the sides would typically get a 15 foot setback instead; and that, if this were a typical corner front situation, regarding the County regulations, the Applicants would not need to request a variance.

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

Mr. Chorman closed the public hearing.

Dr. Carson moved to approve the application with conditions for Case No. 12925 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to the building lot line restrictions;
2. The variances will not alter the essential character of the neighborhood;
3. The variances represent the minimum variances necessary to afford relief; and
4. Subject to the condition that the Applicants receive homeowners' association approval for the addition.

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

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

Case No. 12926 Keystone Novelties Distributors seeks a special use exception for a temporary tent sale (Section 115-80 of the Sussex County Zoning Code). The property is located Northwest of Sea Air Avenue and West of Tanger Boulevard within the Tanger Outlet Complex. 911

Address: 36470 Seaside Outlet Drive, Rehoboth Beach. Zoning District: C-1. Tax Parcel: 334-13.00.325.06

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 special use exception for a temporary tent sale. The Applicant is seeking an approval up to 3 years and the site has had prior approval for Keystone in 2021.

Mr. Rick Seary was sworn in to give testimony for this application.

Mr. Seary testified that Keystone has operated in the Tanger Outlets since 2021; that they have been moved from the original location on the parcel; that the set up will be essentially the same with a 20' by 40' tent, a storage container, cones for traffic, and caution tape to help direct people; that the tent will be set up in the single parking row by the road; that there have not been any complaints in the 3 years prior; that the Tanger Outlets signed a 2 year license to allow them to set up; that Tanger Outlets has security that monitors the grounds; that the product will be stored in the locked shipping container outside of operational hours; that the setup will occupy roughly 8 parking spots: the tent will occupy 5 parking spaces, the shipping container will occupy 2 parking spaces and a few others for buffer areas; that the hours of operation will be 9am to 9pm with the occasional 10pm closing time; that operating hours will follow the Tanger Outlet hours; that the tent will be secured with stakes on the side closest to the road and cement blocks on the other side; that Tanger Outlets require that the landlord has the choice to relocate the tent if they see fit; that the dates requested are for sales June 21, 2024, through July 4, 2024, with 3 days prior for setup and 10 days post-sale for removal; that there will be lighting throughout the tent but no outside lighting; that there will be no outside loudspeaker or music; and that there will not be any additional noise, vibrations, or smells.

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

Mr. Chorman closed the public hearing.

Mr. Hastings moved to approve the application with conditions for Case No. 12926 for the requested special use exception, pending final written decision, for the following reasons:

1. The proposed use will not substantially affect adversely the uses of neighboring and adjacent properties;
2. That, if the location of the tent is moved on this parcel, the Applicant would have to submit a new application;
3. That the dates of operation will be from June 21, 2024 through July 4, 2024 with setup available three (3) days prior to the sale and removal by July 10th; and
4. That the approval is valid for three (3) years.

Motion by Mr. Hastings, seconded by Mr. Warfel, carried that the **special use exception be**

approved with conditions for the reasons stated. Motion carried 5 - 0.

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

Case No. 12927 – Keystone Novelties Distributors seeks a special use exception for a temporary tent sale (Section 115-80 of the Sussex County Zoning Code). The property is located East of Sussex Highway. 911 Address: 20689 Sussex Highway, Seaford. Zoning District: C-1. Tax Parcel: 331-2.00-18.15

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 one (1) mail return. The Applicant is requesting a special use exception for a temporary tent sale.

Mr. Rick Seary who was previously sworn in was present to give testimony for this application.

Mr. Seary testified that this is a similar setup to the Tanger Outlets; that this setup would be at Barton’s Rentals in Seaford; that Keystone will setup in the parking lot off Route 13 with a storage unit; that the tent will be provided by Barton’s, staked on one side and weighted on the other side; that the dates of operation will be sales June 21, 2024, through July 4, 2024, with 3 days prior to setup and 10 days post-sale for removal; that hours of operation are 9am to 9pm; that there is no security detail at this location; that there will be lighting within the tent but no speakers or vibrations; that the anticipated traffic is minimal the first week with increased traffic leading up to the Fourth of July; that there will be approximately 10 parking spaces designated for customers; that the tent will be 20 feet by 40 feet in size; that the opportunity to setup was presented when Keystone asked them to supply tents for their sale; and that landscaping supplies are also sold on the site.

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

Mr. Chorman closed the public hearing.

Mr. Hastings moved to approve the application with modifications for Case No. 12927 for the requested special use exception, pending final written decision, for the following reasons:

1. The proposed use will not substantially affect adversely the uses of neighboring and adjacent properties;
2. That the approval is valid for three (3) years; and
3. That the dates of operation will be from June 21, 2024 through July 4, 2024 with setup available three (3) days prior to the sale and removal is to be complete by July 10.

Motion by Mr. Hastings, seconded by Dr. Carson, carried that the **special use exception be**

approved with conditions for the reasons stated. Motion carried 5 - 0.

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

Case No. 12930 Cynthia Stinger and Thomas Blackiston seeks a variance from the front yard setback requirement for an existing structure (Section 115-42 of the Sussex County Zoning Code). The property is located South and West of Poplar Avenue within the Evergreen Acres Subdivision. 911 Address: 31022 Poplar Avenue, Millsboro. Zoning District: GR. Tax Parcel: 233-5.00-259.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received eight (8) letters in support of the Application, zero letters in opposition to the Application, and one (2) mail returns. The Applicants are requesting a variance of 12.6 feet from the 30 foot front yard setback requirement for an existing shed.

Mr. Dennis Egbert and Ms. Cynthia Stinger Egbert were sworn in to give testimony for this application.

Mr. Egbert testified that it is his mistake that the shed was placed within the setback; that, when the Applicant received the setbacks, he instructed Ms. Egbert to measure 30 feet from the edge of pavement, not their property line; that they realized the mistake when they failed their inspection and applied for a variance; that he is in the process of moving from Swann Keys and purchasing Ms. Egberts' property; that he has 2 storage units and a shed so they purchased the shed to eliminate the need for the 3 other structures; that the shed could not be placed in the rear of the house due to an inground propane tank; that there is also a shed in need of repair and eventually replacement that is hard to get a vehicle to in order to maintain or replace; that, in order to place the new shed in the rear of the property, roughly \$5,000 worth of tree removal would need to be done; that there is also a sand mound behind the house that restricts a large area; that there is a flooding issue in the backyard; that an above-ground pool was put up in 2023 directly behind where the new shed was placed; that they have not had any complaints about the shed and its placement; that the shed is placed on a raised stone foundation to aid with drainage with a barrier around the gravel to contain it; that the location of the shed is on the highest point of the property and the rear yard is the lowest point of the property; that they became aware that the property line was not the edge of pavement; that there is roughly 8 feet from the property line to the edge of pavement; that Barnyard Escapes placed the shed with no regard to property lines or setbacks; that there is no homeowners association in the community; that a smaller shed would not have worked; that he had two (2) 10' by 20' storage units and the contents would not fit in the smaller shed he had so he needed to go bigger; that, when Ms. Egbert purchased the house in 2019, the real estate agent told them that there was no HOA in the community; that the sand mound is where the survey says it is; that the smaller shed in the rear could be set 5 feet from the property line due to the size; and that they have never had to pay any HOA fees.

Ms. Egbert testified that the people that provided the shed suggested they place the shed on a

gravel foundation; that the pictures submitted of the standing water were the result of a typical rain storm; that the flooding is so intense that it flooded out the sand mount pump; that it would cause financial hardship to place a shed in the back due to flooding and tree removal needed; that the inspector was the only person that said anything about setbacks and needing a variance since they were in violation; that Mr. Fassler expressed to her son that he put the fence up so that he would not have to see the sand mound; that the pool in question is a take-down, above ground pool that does not need to be permitted; and that there was no HOA fee when she bought the house and has never been asked to pay dues of any kind.

Ms. Norwood stated that only in-ground pools require a fence.

Mr. Paul Fassler and Mr. Edward Beuparlant were sworn in to give testimony in opposition to this application.

Mr. Beuparlant testified that he is the acting president of the homeowners association; that, according to the covenant, all sheds should be placed in the rear of the house; that swimming pools need fences around them and should not be in the side yard either; that he is not sure there is a permit for the pool; that there is a homeowners association but no attorney; that the shed does not look right to him; that he can not see it from his house because he lives around the corner; that, if he looks near his fence, he can see the shed and pool, with no fence around it, in the front yard; that HOA is needed when building or placing sheds and the Applicants never asked; and that it is his understanding that the homeowners association cannot be dissolved.

Mr. Fassler testified that, in 1997, there was a homeowner's association; that the flooding on Ms. Egbert's property is due to the continuous building in the area; that, when Ms. Stinger Egbert moved in, they removed all the trees when they installed the septic system; that there is additional building that is not noted on the survey and the two sheds that were moved onto the property January 30, 2024; that there was no approval for the swimming pool or trampoline on the property; that there is another property in the community with a shed in the front yard; that flooding is unique to the Applicants' property; that the Applicants just had the propane tank placed in the ground; that he disputes that there is a sand mound septic system in the rear of the house; that the septic tank is underground and the Applicants are able to run his car over it; and that he was confusing the placement of the propane tank and septic tank.

The Board found that no one appeared in support of the Application and two (2) people appeared in opposition of the Application.

Mr. Chorman closed the public hearing.

Mr. Warfel moved to approve the application for Case No. 12930 for the requested variance, pending final written decision, for the following reasons:

1. The property has unique conditions due to the flooding in the rear of the property;
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 practical difficulty has not been created by the Applicants;
4. The variance will not alter the essential character of the neighborhood;
5. That the variance represents the minimum necessary to afford relief; and
6. That it is noted that the Applicant's testimony is credible.

Motion by Mr. Warfel, seconded by Mr. Hastings, carried that the **variance be approved for the reasons stated**. Motion carried 5 – 0.

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

ADDITIONAL BUSINESS

Meeting adjourned at 7:30 p.m.