

## MINUTES OF APRIL 3, 2023

The regular meeting of the Sussex County Board of Adjustment was held on Monday, April 3, 2023, 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 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, Mr. Vince Robertson, Esquire – Assistant County Attorney, and staff members Ms. Jennifer Norwood – Planning and Zoning Manager, and Ms. Amy Hollis – Recording Secretary.

The Pledge of Allegiance was led by Mr. Chorman.

Motion by Mr. Warfel, seconded by Dr. Carson and carried unanimously to approve the agenda as amended. Motion carried 5 – 0.

The vote by roll call; Mr. Williamson – yea, Mr. Hastings – yea, Dr. Carson – yea, Mr. Warfel – yea, and Mr. Chorman – 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. 12809 – Alan R. and Pamela K. Siek** seek variances from the front yard setback requirements for existing and proposed structures (Sections 115-42 and 115-182 of the Sussex County Zoning Code). The property is a through lot located between Daisey Road and Bay Road within the Rehoboth Manor Subdivision. 911 Address: 20638 Daisey Road, Rehoboth Beach. Zoning District: GR. Tax Map: 334-19.12-43.01

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support or in opposition to the Application and zero mail returns. The Applicants have submitted a request to withdraw their application. As part of the request to withdraw, the Applicants submitted an average setback survey which allows them to build without the need for a variance.

Ms. Mackenzie Peet, Esquire, was present on behalf of the Applicants.

Mr. Warfel moved to approve the request for withdrawal of the Application for Case No. 12809 as the Applicants have shown good cause for withdrawal of the Application.

Motion by Mr. Warfel, seconded by Dr. Carson, carried that the **Application be withdrawn for the reasons stated**. Motion carried 5 – 0.

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

**Case No. 12810 – JKJ Properties LLC** seeks a special use exception to place an off-premises electronic message center (Sections 115-80, 115-83.6, 115-159.5, and 115-161.1 of the Sussex County Zoning Code). The property is a lot located on the north side of Beach Highway approximately 725 ft. west of Spruce Road. 911 Address: 16505 & 16507 Beach Highway, Ellendale. Zoning District: CR-1. Tax Map: 230-26.00-6.02

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 an off-premises electronic message center sign.

Mr. Sharp recused himself and left Council Chambers.

Mr. Robertson served as Counsel for the Board.

Mr. James Weller, Jr., Mr. Lynn Rogers, and Mr. Mark Davidson were sworn in to give testimony about the Application.

Mr. Davidson testified that he is a land planner with Pennoni Associates located just outside of Milton, Delaware; that he is representing the application of JKJ Properties, LLC, and Mr. Weller, who is also the owner of Wellers Utility Trailers located in Bridgeville; that Mr. Weller also hosts a news talk show on the radio and is a long-time business owner in the area; that Mr. Weller helps promote events, organizations, and small businesses in Sussex and Kent County; that also with them tonight is Mr. Rogers of Rogers Sign Company located in Milton, Delaware; that the Applicant requests a special use exception to provide for adjustments in the relative location of uses and building to promote usefulness for the regulations and to supply the necessary elasticity to their efficient operations; that special use exceptions are limited as to locations described in the Zoning Code and special yard and height exceptions are permitted by the terms of the regulations; that this project is located on the north side of Beach Highway at parcel 230-26.00-6.02; that Mr. Weller owns the property to the east of the subject parcel, which is also zoned CR-1 or Commercial Residential; that the property is currently leased to Dry Zone who occupies the large building and have parking for their trucks on site; that there are no wetlands on the property; that the property is in flood zone X; that this property is located on Beach Highway, which is a major collector highway; that, according to the 2019 Comprehensive Plan, Route 16 or Beach Highway is a major east-west corridor within Sussex County; that they are asking for an off-premises electronic message center; that the front yard setback is 40 ft.; that they are proposing a front yard setback of 51 ft. because of the highway's major collector designation they will in the future have a required 80 ft. right of way which is currently at 60 ft.; that Mr. Weller will have to dedicate an additional 10 ft.; that, with the front right-of-way setback being 40 ft., they are currently showing the property

to be 51 ft. off the existing right-of-way as it exists today; that this allows them that additional footage when Mr. Weller is asked for it; that the sign's proposed location will meet the setback requirements for an off-premises sign; that the property is encumbered by tax ditches along the north and west property lines; that the proposed location is well outside of the tax ditch easement on the property; that the sign will meet the setback requirements from dwellings, churches, schools, and public lands; that the location of the on-premises sign is approximately 320 ft. from the proposed location; that the requirement states a distance of 50 ft. which they exceed; that Beach Highway only has two travel lanes eliminating some of the requirements specified for four lane roads; that the sign is greater than 5,000 ft. from any additional signs on their side of the highway within the area of the property and the requirement is only 600 ft.; that the maximum sign height is 25 ft. tall which is shown on their plan to be the height requested; that the maximum square footage area is 600 square feet or 300 square foot per side; that the plan they submitted confirms they will meet that requirement; that the Code says a single off-premises sign structure shall support no more than one sign per side which is what they are proposing; that the Code states that electronic message centers shall not be erected within 1,200 feet of another off-premises sign; that they are more than 5,000 ft. away from another electronic message center which is located on Route 113 and also owned by his client, Mr. Weller; that the sign meets all of the DelDOT requirements for separation distance; that they have submitted a letter of no objection from DelDOT; that their sign will meet all of the requirements for placement; that Mr. Rogers is here to answer any questions about the sign itself and its day-to-day operations; that the standard for special use exceptions is that it will not substantially adversely affect the uses of adjacent and neighboring properties; that the subject site is adjacent to another commercially zoned property, poultry houses, and vacant properties; that the placement of the sign will not substantially increase the hazard from fire or other dangers to this property or adjacent properties; that it will not otherwise impair the public health, safety, comfort, morals, or general welfare of the public, nor will it diminish or impair property values within the neighborhood or unduly increase in public expenditures; that the approval of the special use exception will not constitute a hazard to the safe and efficient operation of vehicles upon the state highway; that this approval would not alter the zoning ordinance and only applies to this particular application under consideration; that there could be a potential for subdivision in the future but right now the sign would be placed on a property of six acres; that the goal here is for Mr. Weller to be able to place the sign; that he thinks the tenants of Dry Zone have inquired about purchasing a portion of the property which, if that is the case, they would subdivide; that, in that event, they would meet all of the requirements; and that Mr. Weller also owns the neighboring property which has a house on it and is rented.

Mr. Weller testified that construction would depend on the delivery of steel; that it could be 90 to 120 days; and that they hope sooner but with the way steel is right now they do not know.

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

Mr. Chorman closed the public hearing.

Mr. Williamson moved to approve the application for Case No. 12810 for the requested special use exception, pending final written decision, because the use will not substantially affect adversely the uses of adjacent and neighboring properties.

Motion by Mr. Williamson, seconded by Mr. Hastings, carried that the **special use exception be granted for the reasons stated.** Motion carried 5 - 0.

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

Mr. Sharp returned to Council Chambers.

**Case No. 12807 – Michael and Amanda Bendett** seek variances from the maximum fence height requirements for proposed structures (Sections 115-25 and 115-185 of the Sussex County Zoning Code). The property is located on the north side of Omar Road within the Ida Jane Farm Subdivision. 911 Address: 32849 Omar Road, Frankford. Zoning District: AR-1. Tax Parcel: 134-11.00-40.12

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 Applicants are requesting variances of 2.5 ft. and 1.5 ft. from the 3.5 ft. maximum fence height requirement for a proposed fence.

Mr. Michael Bendett and Ms. Amanda Bendett were sworn in to give testimony about the Application.

Mr. Bendett testified that they are seeking variances of 2.5 ft. and 1.5 ft. from the Code for fence height; that they are looking to put a 6 ft. tall vinyl privacy fence in their front yard; that they technically have 3 front yards because of the private road that curves around their property; that their actual front yard is on Omar Road with the others on Ida Jane Lane; that, on the Omar Road front yard, they would like to put the 6 ft. tall vinyl privacy fence to shield from the noise and traffic; that they have a dog who they rescued and only has one eye and is extremely skittish; that their dog does not do well with the cars passing their property; that they are hoping that putting up a privacy fence of 6 ft. tall will help to relax him and create a safe space for their son to play also; that, along the Ida Jane front yard, they are looking to install a 5 ft. tall aluminum picket style fence; that they are switching the style and height of the fence for this section of yard due to the potential visibility issues on Ida Jane Lane; that a 5 ft. fence is the lowest they believe they can go for their dog to not be able to jump it; that they did not want to go 6 ft. tall or be asking for too much; that the two fences will meet on the right side of their property; that their dog is a rescue; that they believe that, if he was scared enough and was running, he could clear a lower fence; that their goal is to provide a safe environment for their dog and son while minimizing the impact of what the code allows; that their son just turned 16 months old; that being on Omar Road with a 50 MPH posted speed limit they would feel more comfortable with him playing in the yard with a fence as opposed to playing in an open

yard; that the house was existing on the property when they purchased the property; that their house is to the west of the old pig farm located on Omar Road; that they spoke to the neighbors directly behind them who had no opposition; that the neighbors liked that they chose a picket style fence as they have the same on their property; that they were not able to speak to the neighbors on either side of them as those lots were recently purchased but have not been built upon yet; that their neighbors they spoke with submitted a letter in support of their application; that the dirt road indicated on the survey is not well defined and he is not aware of any easement; that, on the east side of the property, the elevation is uneven, there are tree stumps and downed logs, which makes it not as desirable of an area for their dog or son to play; that the property was purchased and developed by the prior owners; that he would say that along the western and rear of their property that there is at least 6 ft. between their property and the edge of the road; that they would keep the fence 6 to 12 inches in from their property line; that he would agree that Ida Jane Lane is not a 50 ft. road but rather 20 maybe 30 ft.; that they have well and septic on the property; that the septic is located on the east side and the well on the west side; that, if they brought the fence in more, it would be over top of their septic mound; that the trees to the rear of their property were planted by the neighbors behind them and are a part of the private road; that the private road behind them is owned by the 3 property owners who have access off it; that Ida Jane Lane is a minimally traveled road; and that they chose the aluminum picket style fence to maximize visibility along that road.

Ms. Bendett testified that, if the dog is skittish enough, he can jump quite high; and that their son just started walking so they are trying to create a safe space for him outside.

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

Mr. Chorman closed the public hearing.

Mr. Williamson moved to approve the application for Case No. 12807 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique physical conditions due to its irregular shape;
2. The exceptional practical difficulty was not created by the Applicants;
3. The variances will not alter the essential character of the neighborhood; and
4. The variances represent the minimum variances necessary to afford relief.

Motion by Mr. Williamson, seconded by Dr. Carson, carried that the **variances be granted for the reasons stated**. Motion carried 5 – 0.

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

**Case No. 12808 – Tony Rife** seeks variances from the front yard setback requirement for proposed structures (Sections 115-42 and 115-182 of the Sussex County Zoning Code). The property is located

on the west side of East Lagoon Road within the Dogwood Acres Subdivision. 911 Address: 30811 East Lagoon Road, Dagsboro. Zoning District: GR. Tax Map: 134-6.00-119.00

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 one (1) mail return. The Applicant is requesting variances of 12 ft. from the 30 ft. front yard setback requirement for a proposed porch, 14 ft. from the 30 ft. front yard setback requirement for proposed steps, and 9 ft. from the 30 ft. front yard setback requirement for the proposed dwelling.

Mr. Tony Rife was sworn in to give testimony on the Application.

Mr. Rife testified that his primary residence is in New Oxford, Pennsylvania, with the subject property being his secondary residence; that he is seeking to build a house on the property at 30811 East Lagoon Road; that he is two years into the process of trying to place a house on this property; that he is seeking a 12 ft. variance from the front yard setback requirement; that this property was two parcels which has been combined into one lot; that, in 2021, the septic tank on his mother's property collapsed and they had to replace it; that he ended up having problems with his property also; that there were two trailers, a 1968 model and a 1972 model, located on the properties; that, in January, his mother agreed to sell him her property and he then combined them; that combining the lots provided them with an opportunity to build a house; that they went through the process of finding a builder and learned about their setbacks; that they have the lagoon to the rear of the property; that the houses in Dogwood Acres were constructed prior to the roads which creates an issue with building today; that there is carport on the property that will also be removed; that this carport received a variance a long time ago when his grandfather owned the property; that he does not want to have to move the existing septic system because it was just installed in 2021; that there is 9 ft. from the property line to the road which they maintain; that they will still be 27 ft. back from the road to the foundation of the house; that the setbacks for the neighborhood make it difficult to build new houses; that there are other houses in the neighborhood that are closer than what he is requesting; that he owns the property to the left also; that a house five properties away from them received a variance to be closer to the road than he is requesting; that his lot is flat; that his property is located in a flood zone; that he has never experienced flooding on his property; that his property is up higher than the properties across the lagoon; that the property has been in his family for 40-50 years and, during that time, they have not seen any flooding; that this is his third attempt at designing the home how he wants it; that house is going to be L shaped so as to wrap around the septic system; that there is a garage included in the plans for the house; that he is going to use the concrete pad to the right of the house to park the boats; that the septic system was installed on the property to the left; that, when the septic went on the property to the right, there was not enough room to put a new system; that there is no drain field because it is a holding tank; that he has two wells on the property but plans on using the well on the right side; that existing on the property today is a trailer, carport, and two sheds; that the garage is built into the house and will be front facing; that the concrete pad will be 24 ft. wide and he is thinking 26 ft. long; that he was told the house has to be 2 ft. from the holding tank; that he stopped the planning of the house

to see about the variance and then will be finalizing drawings but what is shown is what they agreed upon; that the builder had him stop because they realized at the survey that they did not comply with the 30 ft. front yard setback; that he wants to do this right; that he has been through this process for the past two years and went through multiple builders to find a house that fits this lot; that they have done a lot of work to find a house that not only fits the lot but is appealing to the neighborhood; that the house has to be elevated 4 ft. because of the flood zone; that the proposed house will be approximately 4 ft. closer to the road than the existing trailer; that he did not look into averaging the front yard setback as an option; that he will actually be farther away from the road than a number of houses near his; that the neighborhood is a mixture of homes, some of which are falling apart and need to be replaced; that a lot of these trailers are from the 1960s and 70s; that this is just an average home replacing the two trailers that were previously there; and that he would not have been able to build this home prior to combining the two lots.

Mr. Larry Mayo was sworn in to give testimony in support of the Application.

Mr. Mayo testified that he owns property across the street and to the north; that the property directly across the street from him sits probably 5 ft. from the road; that his father owned the property prior to him; that he bought it in 1970 before there was a building code; that they all used to just be trailers; that the property across from him used to be a travel trailer that the owner basically put walls around and tore out the inside; that this particular trailer was parked right on the road, which has been the case with a lot of these properties; and that what Mr. Rife is proposing is a blessing in their neighborhood.

Ms. Janice Tunell was sworn in to give testimony in support of the Application.

Ms. Tunell testified that she is a resident in Dogwood Acres and the President of the voluntary homeowners association; that she built her house in 2006 and sought approval for a variance after the front porch encroached into the setback by 3 ft.; that she believes what he is trying to do is great; that they have a lot of development going on in their neighborhood; that they are encouraging the residents to seek approval for variances before construction rather than after; that we will likely see other variance requests in the near future for Dogwood Acres; that they have looked into public water and sewer and they are not included in the five or ten year plan; that she does not think that some of their older residents would be able to afford to connect to public water and sewer if it were to become available; that their development is changing; that it used to be seasonal only but more residents are coming down full time; that those residents are looking to replace the 1950s and 60s trailers with new homes; that she applauds their efforts; that she feels it increases their property values and helps to get rid of some of the questionable neighbors; that there are 162 lots in Dogwood Acres with the smallest lots being 50 feet x 100 feet; that there may be 30 lots that have not been developed; that she lives across the lagoon from Mr. Rife and can say that they have also never really experienced flooding; that they were in the flood plain when they built but no longer are; and that there are parts of the neighborhood that are still in a flood zone.

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

Mr. Chorman closed the public hearing.

Dr. Carson moved to approve the application for Case No. 12808 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to the lagoon and the location of the septic;
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; and
4. The variances represent the minimum variances necessary to afford relief.

Motion by Dr. Carson, seconded by Mr. Warfel, carried that the **variances be granted for the reasons stated**. Motion carried 3 - 2.

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

### **ADDITIONAL BUSINESS**

#### **Case No. 12515 – RC Marshall, Inc. – Time Extension**

Ms. Norwood explained the request and stated that the Applicant requests an additional one year extension.

Motion by Mr. Warfel, seconded by Mr. Hastings, to approve the extension for a period of one year as good cause has been shown. Motion carried 5 – 0.

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

**Meeting adjourned at 7:21 p.m.**