

MINUTES OF APRIL 4, 2022

The regular meeting of the Sussex County Board of Adjustment was held on Monday, April 4, 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, 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. Jamie Whitehouse – Planning and Zoning Director, and Ms. Amy Hollis – Recording Secretary.

The Pledge of Allegiance was led by Mr. Williamson.

Motion by Mr. Warfel, seconded by Mr. Chorman and carried unanimously to approve the agenda. 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.

Motion by Mr. Hastings, seconded by Mr. Warfel and carried unanimously to approve the Minutes for the February 7, 2022, meeting. 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.

Motion by Mr. Chorman, seconded by Dr. Carson and carried to approve the Findings of Facts for the February 7, 2022, meeting. 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.

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

OLD BUSINESS

Case No. 12644 – Orlando Figueroa seeks a variance from the front yard setback requirement for a proposed garage (Sections 115-42 and 115-182 of the Sussex County Zoning Code). The property is located on the north side of Weigelia Drive approximately 340 ft. east of Wilson Hill Road. 911 Address: 15421 Weigelia Drive, Georgetown. Zoning District: GR. Tax Parcel: 231-3.00-24.00

Ms. Norwood stated that this case was left open at the previous hearing on February 7, 2022, for the limited purpose to allow for a new survey to be submitted to the Planning and Zoning Department by March 31, 2022, and to allow for public comment on the survey only. Ms. Norwood stated that the survey was submitted into the record and shows that the Applicant needs variances of 14 feet and 20 feet from the 30 feet front yard setback requirement for a proposed garage.

Mr. Chorman recused himself from discussion on this application.

The Applicant was not present.

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

Mr. Williamson closed the record.

Mr. Hastings moved to deny the application for Case No. 12644 for the requested variances, pending final written decision, for the following reasons:

1. The variances are too extreme in nature;
2. The structure could cause a safety issue due to the obstruction of view from the road;
3. The property does not have unique physical conditions; and
4. The variances will alter the essential character of the neighborhood and will substantially or permanently impair the appropriate use or development of adjacent property and will be detrimental to the public welfare.

Motion by Mr. Hastings, seconded by Dr. Carson, carried that the **variances be denied for the reasons stated**. Motion carried 3 – 1.

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

PUBLIC HEARINGS

Motion to Amend Agenda, moving Case No. 12674 George Jefferson Jr., to the just before the scheduled recess, made by Mr. Warfel, seconded by Mr. Chorman, carried that the Agenda be amended. 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.

Case No. 12676 – Herbert Reynolds seeks variances from the front yard setback, side yard setback, rear yard setback, maximum lot coverage and separation distance setback requirements for a proposed structure (Sections 115-25, 115-172, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located on the north side of Jasper View Lane within the Massey's Landing manufactured home park. 911 Address: 37269 Jasper View Lane, Millsboro. Zoning District: AR-1. Tax Parcel: 234-25.00-31.00-8874

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received two (2) letters in support of the Application, zero (0) letters in opposition to the Application, and zero (0) mail returns. The Applicant is requesting a 5 ft. variance from the 5 ft. front, west side, and rear yard requirements for a proposed detached garage, a 7.18 ft. variance from the 20 ft. separation requirement between structures in a manufactured home park, and a 13% variance from the 35% lot coverage or 870 sf. over the 35% lot coverage allowable in a manufactured home park. All variances pertain to a proposed garage on the west side of the lot.

Mr. Herbert Reynolds was sworn in to give testimony about his application.

Mr. Reynolds testified that he just recently retired from two (2) businesses restoring cars and selling parts which he has been doing such for most of his life; that he wants to be able to work on his own vehicles but not as a mechanic for others; that this was not his first choice of options for a structure as other options were not feasible; that he looked at raising his house but a structural engineer said he could not do that; that he has also looked at offsite options which would not work for him either; that he wants to store vehicles which he has had since his high school days; that he is downsizing from his current home in Middletown to this location; that he had a 40 feet by 60 feet shop at his prior house; that he has support from his neighbors; that he would take care of any maintenance of his structure on an "as needed" basis; that his lot is unique due to the sewer pump and telephone pole at his front yard; that he purchased the lot as it is now; that he would have laid the property out differently; that his neighbors have garages also; that a smaller garage would not allow him the ability to do what he is attempting; that all structures on the property were existing when he purchased; that the neighbors directly next to him would be the only persons affected; that he asked for no overhang on the roof towards the neighbor's property; that he would have to be on his neighbor's property to maintain this structure; that two (2) of his neighbors have multi-car garages; that his lot has issues with flooding from the canal; that the garage would be a one (1) story structure but he is unsure of the exact height; that the garage will have a pitched roof; that he could probably make the garage smaller by about five (5) feet; that his proposed garage would run the whole width of his property; that his neighbor's bump out is a living room or fun room; that his shed is already located in the neighbor's view line of the lagoon; that the shed measures 12 feet by 10 feet; that a garage measuring 20 feet by 20 feet would not allow him to conduct himself in the way he would like; that, if the pumphouse and telephone pole were not there, he could place his garage there with less need for variance; that there is 7.41 feet from the edge of paving of Jasper View Lane to the front property line; that the telephone pole appears to be 10 to 15 feet from the road; that he could do 10 ft. less, 5 ft. on the front and the rear; that his home has no entrance from the front, it is from the rear

with steps on the side; that his runoff would go to the lagoon; and that the lagoon crests over the bulkhead.

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 deny the application for Case No. 12676 for the requested variances, pending final written decision, for the following reasons:

1. The property does not have unique conditions which have created an exceptional practical difficulty; and
2. The property can be developed in strict conformity with Sussex County Zoning Code and the variances are not necessary to enable the reasonable use of the property.

Motion by Mr. Warfel, seconded by Dr. Carson, carried that the **variances be denied for the reasons stated**. 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

Case No. 12673 – Bryan Jones and Maggie Jones seek a variance from the front yard setback for a proposed addition to an existing structure (Sections 115-34, 115-182 and 115-185 of the Sussex County Zoning Code). The property is located on the northeast side of River Road approximately 0.19 miles east of Layton Davis Road. 911 Address: 31614 River Road, Millsboro. Zoning District: MR. Tax Parcel: 234-34.10-80.00

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 (0) mail returns. The Applicants are requesting a 20.3 ft. variance from the 40 ft. front yard setback requirement for a proposed structure.

Mr. Bryan Jones and Ms. Phyllis Saunders were sworn in to give testimony about their application.

Ms. Saunders testified that she and her husband purchased the property 22-23 years ago; that the home was built in 1940 and is a brick home; that they bought it “as is” but upgraded the utilities; that the house is considered a 1 ½ story home due to the 4/12 pitch of the roof and the upstairs is very narrow; that the upstairs was unfinished until about five (5) years ago; that she also owns the property across the street; that her parents lived across the street and she now resides there with her mother who has Alzheimer’s disease; that she sold this property to her son and his wife; that the upstairs bathroom is very tiny and has just a shower due to the structural integrity of the upstairs being unable

to accommodate a tub; that the downstairs bathroom is functional as it stands and they would like to keep it that way; that the property was originally three (3) lots which are shallow in nature; that they will be building the addition towards the driveway; that, to add the bathroom to the bedroom, this is the only possible location; that the house itself is an odd shape; that the bathroom is the smallest to accommodate their needs; that the addition will not impede the view for any neighboring properties; that their property was removed from the flood zone about ten (10) years ago; that the property is serviced by town sewer and a well; that neighbors directly adjacent to the property do not oppose the request; that the rear of the property is bulkheaded; that the bulkhead is on their property; and that building off of the rear of the home would not be practical, due to the buildable area, lack of structural stability, and the placement of the well.

Mr. Jones testified that the main reasons for the addition is that his family is growing; that he grew up in that house and lived through the practical difficulties of the current design; that the upstairs bathroom is too small for his use; that the room they will be attaching it to has no closet space; that he keeps his work clothes separate from his personal leaving his wife with no closet space; that the additional bathroom would assist with privacy as the other downstairs bathroom is used by any and all guests; and that the slope from the house to the river is about 3-4 ft. and the rear yard cannot be developed due to the slope.

Ms. Norwood clarified that there is a discrepancy on the building permit for the front yard setback; and that the front yard setback requirement is actually 40 ft.

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

Mr. Williamson closed the public hearing.

Mr. Hastings moved to approve the application for Case No. 12673 for the requested variance, pending final written decision, for the following reasons:

1. The property has unique conditions due to the exceptionally small buildable area and slope of the yard;
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. Hastings, seconded by Dr. Carson, carried that the **variance be granted for the reasons stated**. 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.

Case No. 12675 – Yong J. Park, et al seeks a variance from the 200 ft. poultry building setback requirement from a residence (Section 115-20 of the Sussex County Zoning Code). The property is located on the southeast side of Mount Pleasant Road at Scala Lane. 911 Address: 31312 Mount Pleasant Road, Laurel. Zoning District: GR. Tax Parcel: 432-7.00-2.00

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 (0) mail returns. The Applicant is requesting a 71.3 ft. variance from the 200 ft. separation requirement for a poultry house from a neighboring dwelling.

Mr. Steve Adkins and Mr. Yong J. Park were sworn in to give testimony about this Application.

Mr. Adkins testified that Mr. Park is looking to separate the chicken house from the farm; that there were two (2) chicken houses on the property but one has been removed; that the permit was pulled for the chicken houses in 1979; that, at the time the chicken houses were placed on the lot, there was a mobile home; that there is now a house on the lot which was built a prior owner; that the property was in compliance at the time the buildings were constructed; that the lot was surveyed and proposed to be the minimum relief necessary to be in compliance with code; that the Applicant has not created the issue; that there is no development to be done but a separation of the property; that the chicken house is still under an agricultural loan and is still a functioning poultry house; that the property cannot be subdivided without a variance; that he does not believe the poultry house will remain in use much longer; that the neighborhood is an agricultural area with other poultry houses nearby; that the rear of the property is accessed from Scala Lane which has been added as an ingress / egress of 50 ft. wide to accommodate for the trucks to enter and exit; that he does not believe there to be any other dwellings close enough to require variance; and that the house is greater than 200 feet from the houses to the west and that there are trees to the east.

Mr. Park testified that he does not plan to rebuild a chicken house once the existing poultry house is removed.

Ms. Norwood clarified that the existing chicken house is about 45' from the side property line currently based on the survey.

Mr. Bruce Hill was sworn in to give testimony about the Application.

Mr. Hill testified that he believed the Mr. Park was going to put a new poultry house up; and that he is okay with the proposed plans.

Ms. Joyce Steven was sworn in to give testimony about the Application.

Ms. Steven testified that she was concerned about the proposal; that she now understands the Applicant's plan; that their lots back up to these lots; and that she does not object to it.

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

Mr. Williamson closed the public hearing.

Dr. Carson moved to approve Case No. 12675 for the requested variance, pending final written decision, with the condition that the Applicant obtain site plan approval from the Planning and Zoning Commission 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 that the **variance be granted with conditions for the reasons stated**. 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

Mr. Sharp recused himself and left the Council chambers.

Mr. Robertson stepped in as acting counsel.

Case No. 12674 – George Jefferson Jr. seeks a variance from the front yard setback requirement for a proposed shed (Sections 115-25 and 115-182 of the Sussex County Zoning Code). The property is a through lot located on the north side of Overbrook Court and the south side of Cannon Road within Clearbrooke Estates Subdivision. 911 Address: 4 Overbrook Court, Seaford. Zoning District: AR-1. Tax Parcel: 331-1.00-145.00

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 a 20 ft. variance from the 40 ft. front yard setback for a proposed shed on a through lot.

Mr. George Jefferson Jr. was sworn in to give testimony about his Application.

Mr. Jefferson testified that he seeking a variance to place a shed consisting of 380 square feet in the right rear of his property; that the property is unique due to the size and shape of the lot; that he would like to place the structure 20 ft. off the property line from Cannon Road rather than 40 ft. setback requirement; that he would like to place a pool, patio, barbeque area, and hot tub on the lot and placement of the shed will hinder his options for his yard; that his property line is 19 ft. off the road; that there are other homes with sheds and a swimming pool that are closer to Cannon Road than 40 ft.; and that he has HOA approval.

The Board found that one (1) person appeared in support of and no one appeared in opposition to the Application.

Mr. Williamson closed the public hearing.

Mr. Warfel moved to approve the application for Case No. 12674 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 variance is necessary to enable the reasonable use of the property;
3. The exceptional practical difficulty was not created by the Applicant;
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 Dr. Carson, carried that the **variance be granted for the reasons stated.** 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

RECESS 7:16 pm – 7:21 pm

Mr. Sharp returned as counsel for the Board.

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

Mr. Warfel recused himself and left the Council Chambers.

Case No. 12668 - Jill Biden seeks variances from the maximum fence height requirement for proposed fences (Sections 115-25, 115-182, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located on the east side of Far View Road within the North Shores Subdivision. 911 address: 32 Far View Road, Rehoboth Beach. Zoning District: AR-1. Tax Parcel: 334-8.17-55.00

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received no correspondence in support of and one (1) letter in opposition to the Application and one (1) mail returns. The Applicant is requesting a 3 ft. variance from the 7 ft. maximum height requirement for a fence along side and rear property lines, a 6.5 ft. variance from the 3.5 ft. maximum height requirement for a fence in a front yard setback requirement, and a 0.5 ft. variance from the 3.5 ft. maximum height requirement for a fence in a front yard setback requirement.

Mr. Harvey Ryan was sworn in to give testimony about their Application.

Mr. Ryan testified that he is the CEO of Turnstone Holdings and is present on behalf of Dr. Jill Biden, the owner of the property; that the property is located in the North Shores subdivision; that the Applicant is seeking variances from the maximum fence height requirement to permit a 10 ft. tall fence with stone columns on the side and rear of the property and a 4 ft. tall stone wall along the front of the property; that the property is unique in its size, shape and topography which create difficulties in security to the standards as determined by the U.S. Secret Service; that no other property in this area has been surveyed for this level of security; that an exceptional practical difficulty exists due to the property's unique conditions; that the property cannot otherwise be developed; that the security measures identified by the U.S. Secret Service cannot be implemented without the variance; that developing the property in strict conformity with the Sussex County Zoning Code will not meet the U.S. Secret Service mandates; that the variances are necessary to enable the reasonable use of the property to its owner and the U.S. Secret Service's functional needs; that the property was purchased prior to the U.S. Secret Service security standards being necessary; that the Applicant has not caused any of the conditions that require these variances; that the U.S. Secret Service has requested this variance after an extensive survey to determine the appropriate level of security for the owner; that the variances will not alter the essential character of the neighborhood or impair the appropriate use or development of adjacent property or be detrimental to the public welfare; that the HOA has approved the variances after presentation for public comment from the adjacent neighboring property owners; that the fence will be constructed to the community standards; that the property is not located at a corner; that the requested changes will not create a hazard to vehicular traffic; that these variances are the minimum variances necessary to afford the relief necessary; that the variances represent the least modifications of the regulations at issue; that the variances represent the minimum variances needed to meet the U.S. Secret Service security standards; that the Applicant respectfully requests approval for the above reasons; that there are no slopes to the property which create a natural barrier; that there is seasonal vegetation to the rear of the lot and there is a small drop-off to the marsh area; that the fence will not go to the marsh line as shown on the survey; and that the property line to edge

of paving of Far View Road appears to be about 20 ft. +/-.

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

Mr. Whitehouse stated that, using the scale shown on the survey, there is a gap of 15-16 feet from the edge of paving of Far View Road and the front property line.

Mr. Sharp clarified that the variance stays with the property not the owner; and that there is a Federal Act in regards to the ownership of these types of matters known as the Presidential Protection Act.

Mr. Williamson closed the public hearing.

Dr. Carson moved to approve the application for Case No. 12668 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; and
5. The variances represent the minimum variances necessary to afford relief.

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

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

ADDITIONAL BUSINESS

There was no additional business.

Meeting adjourned at 7:34 p.m.