

## MINUTES OF APRIL 8, 2024

The regular meeting of the Sussex County Board of Adjustment was held on Monday, April 8, 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 Mr. Hastings, seconded by Dr. Carson and carried unanimously to approve the agenda. 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.

Motion by Mr. Williamson, seconded by Mr. Hastings and carried unanimously to approve the Minutes for the February 5, 2024, meeting. 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.

Motion by Mr. Warfel, seconded by Dr. Carson and carried to approve the Findings of Facts for the February 5, 2024, meeting. 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.

### PUBLIC HEARINGS

**Case No. 12919 – Southstar L.P.** seeks a special use exception for a concrete batch plant (Section 115-40 of the Sussex County Zoning Code). The property is located northwest of Coverdale Road. 911 Address: 20956 Coverdale Road, Bridgeville. Zoning District: GR. Tax Parcel: 430-23.00-82.02

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received three (3) letters in support of the Application, zero letters in opposition of the application, and zero mail returns. The Applicant is requesting a special use exception for a concrete batch plant. Staff noted that the Board of Adjustment has approved three (3) previous special use exceptions at this location.

Mr. Kyle Murray was sworn in to give testimony for this application. James Fuqua, Esquire,

appeared on behalf of the Applicant.

Mr. Fuqua stated that this is an application to renew a special use exception for an existing concrete batching plant; that the original application was approved in 2009 and received renewal approvals in 2014 and 2019; that the batch plant is still operating in the same manner but with new ownership; that the property is located 1 mile south of Route 18 on Coverdale Road; that the Applicant would like the renewal period to run through October 8, 2029; that this plant has been in operation since 2010 with approximately 15 onsite employees and roughly 15 indirect employees; that there are, on average, roughly 10 to 15 trucks that leave the site daily; that the plant provides concrete for construction in the area; that the site has a large berm along the road frontage that is full of vegetation, acting as a sound, sight, and dust buffer; that the property used by the batch plant consists of 9.7 acres; that the concrete batch plant portion of the property is surrounded by a large sand excavation site which was created in the 1960s and only a small part of the entire property is used for the batch plant operation; that the plant operates in compliance with DNREC's air quality permits and regulations; that there have not been any complaints with the site since 2019 brought to their attention; that the Board has found on three other occasions that the use of the plant does not substantially affect adversely the uses of other properties in the area; that, since the original hearing, nothing has changed; that the sand from the neighboring sand pit is not used in the concrete production; that the sand pit is a non-conforming use and has not been abandoned.

Mr. Murray testified that everything Mr. Fuqua has said was true and correct to his knowledge; that the infrastructure, equipment, and all has remained the same; that the plant generally operates Monday through Friday, with the occasional weekends; that the sand pit is a separate operation from the batch plant; that the Applicant receives deliveries; that there is no concrete crushing on the site; that the plant is centrally located on the property; that the Applicant maintains a DNREC permit and there have been no violations of that permit; and that there have been no complaints about the use brought to their attention.

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

Mr. Chorman closed the public hearing.

Mr. Williamson moved to approve the application Case No. 12919 for the requested special use exception for a period of five (5) years, pending final written decision, because the special use exception will not substantially affect adversely the uses of neighboring and adjacent properties.

Motion by Mr. Williamson, seconded by Mr. Hastings, carried that the **special use exception be approved for a period of five (5) years 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.

**Case No. 12920 – Elizabeth Russell** seeks a variance from the front yard setback requirement for a proposed structure (Section 115-82 of the Sussex County Zoning Code). The property is located Northeast of Coastal Highway and West of Carolina Street within the Killens Addition Subdivision. 911 Address: 38435 Carolina Street, Dewey Beach. Zoning District: C-1. Tax Parcels: 334-20.09-168.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of the Application, zero correspondence in opposition of the Application and one mail return. The Applicant is seeking a 4 foot variance from the 30 foot front yard setback requirement.

Mr. Ralph Timmons was sworn in to give testimony for this application.

Mr. Timmons testified that he works for Hickory Hill Builders, who is remodeling the Applicant's home; that the house is 65 years old and is located in the Forgotten Mile south of Rehoboth; that there is currently a front stoop where the proposed structure will be placed; that the proposed structure will not be any wider or stick out any farther than the current stoop; that the entrance is 4 feet deep with 3 steps; that the porch is 6 feet deep; that the shed will measure 6 feet by 8 feet; that the fireplace is 2 feet by 3 feet; that the proposed structure will house a fireplace for the house and storage for outdoor items; that there are a few other upgrades happening to the older home to add functionality and curb appeal; that the other upgrades to the home fit within the setback requirements; that Route One is the front yard and Carolina Street is the corner front with the driveway access from Carolina Street; that this is one of, if not the smallest lots, in that area; that he did not see if the shed could fit somewhere else but the Applicant and architect had worked out plans before he came along; that Hickory Hill Builders did not build the fence on her property; that, due to safety concerns, they are shifting the front entrance of the house to the side; that the lot is unique in the fact that the house was a two-story home, moved from the Rehoboth Boardwalk, the top floor was removed and set on the lot next door, creating two homes; that the neighbors are on board with the remodeling; that the proposed addition will not block the visibility of traffic from Carolina Street to Route 1; that there is no homeowners association to get approval from; that there is septic and central water; and that neighboring property had land taken as part of eminent domain proceedings and he is not sure if this property had similar treatment.

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

Mr. Chorman closed the public hearing.

Dr. Carson moved to approve the application for Case No. 12920 for the requested variance, pending final written decision, for the following reasons:

1. The property has unique physical conditions;
2. The variance will not alter the essential character of the neighborhood; and

3. The variance represents the minimum variance necessary to afford relief.

Motion by Dr. Carson, seconded by Mr. Hastings, carried that the **variance be approved for the reasons stated**. Motion carried 5 - 0.

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

**Case No. 12921 – Christopher Gotwols** seeks a variance from the side yard setback requirement for a proposed structure (Section 115-42 of the Sussex County Zoning Code). The property is located East of Blue Bill Drive within the Swann Keys Subdivision. 911 Address: 37062 Blue Bill Drive, Selbyville. Zoning District: GR. Tax Parcel: 533-12.16-193.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support or opposition to the Application, and zero mail returns. The Applicant is seeking a 4.5 foot variance from the 5 foot side yard setback requirement on the north side for a proposed shed.

Mr. Christopher Gotwols was sworn in to give testimony for this application.

Mr. Gotwols testified that his goal with requesting the variance is to improve the aesthetics, safety, and storage on his property; that the current shed on the property is only inches away from the house; that he uses the current shed to store lawn equipment, gasoline, and other items; that the current shed is much smaller than what he needs; that his intentions with the proposed structure will be to move it farther away from the house; that the new shed will be new, structurally sound, and bigger to accommodate his needs; that many others in the neighborhood have the same exact shed so it will go along nicely with the flow of the neighborhood; that the proposed structure will be approximately 10 feet by 16 feet instead of the current 10.2 feet by 6.2 feet shed; that he has spoken with his neighbors and everyone is fine with the addition of a new shed; that the people across the street (tax map parcel no. 533-12.16-171.00) have the same shed positioning (Board Case Number 12530 for a 4 foot variance from the 5 foot setback requirement); that no homeowners association approval is required since the shed installation would not need a crane; that maintenance of the shed would not be an issue, even being 6 inches off the property line; that the roof will have a gambrel peak allowing the rain water to run down the side of the shed instead of onto his neighbor's property; that a narrower shed could potentially work; that the proposed shed would be built on site; that the proposed shed would be set on gravel or concrete blocks; that the structure would be used to store gasoline cans, lawn equipment, and eventually medical equipment such as wheelchairs, walkers, and beds, for when his mother and mother-in-law come to town; that the shed would not be anchored down in any way; that his current shed that is roughly 7 feet away from the water's edge is not elevated and has rarely been flooded; that the suggestion of two smaller sheds instead of one larger one would not work; that the trailer in front of the boat is currently used for storage and a shed would look much nicer; that the proposed shed could not go where the boat and trailer are since the propane tanks are there and need

to be serviced regularly; that the propane company walks around the boat and trailer to service the tanks currently; that he did not consider placing the shed in the rear yard because of the location of the sunroom; that he does not have a garage; and that most lots in the neighborhood measure 50 feet wide.

Ms. Norwood noted that a variance of 4 feet from the 5 feet side yard setback requirement was granted in Case No. 12530.

Mr. Sharp stated that the Small Lot Ordinance was passed in 2018; that the number of variances for this particular community has plummeted in a large respect since the ordinance was put into effect to address the fact that communities, like Swann Keys, have 50 foot by 100 foot lots; and that lots were previously held to larger setback requirements.

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

Mr. Chorman closed the public hearing.

Mr. Warfel moved to deny the application for Case No. 12921 for the requested variance, pending final written decision, for the following reasons:

1. The property does not have unique physical conditions as the lot size and conditions are typical for the community;
2. That there is possibility that the property can be developed in strict conformity with Sussex County Zoning Code, and the variance is not necessary to enable the reasonable use of the property;
3. That there is room on the property for a shed without the need for a variance;
4. The exceptional practical difficulty was created by the Applicant because of the size wanted;
5. The variance will alter the essential character of the neighborhood because the property is not unique and the variance will encourage neighbors to want the same variances in the future; and
6. The variance does not represent the minimum variance necessary to afford relief as he is able to build a smaller shed.

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

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

**Case No. 12922 – C & U Hudson Farms, LLC** seeks a variance from the minimum lot width requirement for a parcel (Section 115-25 of the Sussex County Zoning Code). The property is

located South of Hudson Drive and north of Deer Run Road. 911 Address: 36555 Hudson Road, Selbyville. Zoning District: AR-1. Tax Parcels: 533-10.00-80.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received zero letters in support or opposition of the Application and zero mail returns. The Applicant is requesting a 38.92 foot variance from the 150 foot lot width requirement for a parcel.

Ms. Janice Marvel and Mr. Dennis Marvel were sworn in to give testimony for this application.

Ms. Marvel testified that the property is a Century Farm purchased by her grandfather in 1906; that the trust her parents set up had stipulations and terms on how the property was to be divided among the heirs; that her parents wanted the property divided along the tax ditch that runs along the center of the property; that, with the property being split at the tax ditch, that leaves a shorter road frontage than what is required by the County; that there is currently a mobile home on the property with an existing driveway which will not change; that there is a barn on Parcel 2 that has a circle driveway that will be staying too; that the division of property will not be adding or taking away any entrances; and that there have been no complaints from any neighbors.

Mr. Marvel testified that the tax ditch is approximately 25 to 30 feet wide; and that there is a maintenance easement on each side of the tax ditch so the reduced road frontage is not taking away any of the property.

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 for Case No. 12922 for the requested variance, pending final written decision, for the following reasons:

1. The property has unique physical conditions due to the tax ditch separating the property at an angle;
2. That, due to such physical circumstances or conditions, there is no possibility that property can 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; and
4. The variance represents the minimum variance necessary to afford relief.

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

**Case No. 12923 – Kimberly and Jeffrey Hamer** seek a variance from the front yard setback requirement for a proposed structure (Section 115-25 of the Sussex County Zoning Code). The property is located West of Country Club Road. 911 Address: 709 Country Club Road, Rehoboth Beach. Zoning District: AR-1. Tax Parcels: 334-19.00-18.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received one letter in support of the Application, zero opposition to the Application, and one (2) mail returns. The Applicants are requesting a 10.1 foot variance from the 40 foot front yard setback requirement for a proposed dwelling.

Mr. Cliff Mumford and Ms. Kimberly Hamer were sworn in to give testimony for this application.

Mr. Mumford testified that he is an engineer with Davis, Bowen, and Friedel; that the Applicants are requesting a variance from the front yard setback requirement in order to move a home onto this property; that the property is roughly 50 feet by 100 feet and consists of just over 5,000 square feet; that the variance requested would allow the home to aesthetically be in line with the neighboring home; that the front of the property is 42.67 feet wide and the rear is 59.60 feet wide; that the property is pie-shaped; that the property is unique as it was created before the 40 foot setback requirement was established; that the house was built in 1970; that the hardship of the lot size and 40 foot setback requirement were not created by the Applicants; that the reduced front yard setback requirement will not alter the essential character of the neighborhood, as the closest existing adjacent house has the same front yard setback; that the home could be moved back to the rear setback line to minimize the front setback variance needed but it would no longer be in line with the neighboring house and would not be as aesthetically pleasing; that the neighboring home to the north faces a different road; that the home would be connected to central water and sewer; that the driveway will be in the front; that there is an additional 5-10 feet from the front property line to the edge of paving of Country Club Road; that there is an easement for Parcel 2 but the house will not affect that easement; and that the overhead powerlines also limit placement of the house.

Ms. Hamer testified that she is a realtor; that the proposed house that they are proposing to move to the lot is a very nice modular home that the previous owner built; that the house has hardy plank siding and is beautiful; that the home is being moved from a lot from downtown Rehoboth Beach; that the addition of the proposed home will not adversely impact the neighborhood; that the home will not adversely affect property values in the neighborhood; that the hope with moving the house is to keep the home out of the landfill and provide their son with affordable housing; that they have talked to one of the neighbors that butt up to the rear of the property but not next door; that there is no easement on this property for the properties behind it; that the placement of the home will be pretty exact; that the footers will be set, the home elevated, moved and set; that the home could be

placed 2 feet closer to the rear property line thereby relieving 2 feet in the front; that getting the powerline / power pole relocated would be way too expensive; and that there will be two entrances into the house and an HVAC unit that fall within the respected setbacks.

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

Mr. Chorman closed the public hearing.

Mr. Warfel moved to approve the application for Case No. 12923 for the requested variance with modification, pending final written decision, for the following reasons:

1. The property has unique physical conditions due to its shape and size;
2. That, due to such physical circumstances or conditions, there is no possibility that property can be developed in strict conformity with Sussex County Zoning Code, and the variance, as modified, is necessary to enable the reasonable use of the property;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variance, as modified, will not alter the essential character of the neighborhood;
5. The variance, as modified, represents the minimum variance necessary to afford relief; and
6. The variance be modified to 8.1 feet from the 40 foot front yard setback.

Motion by Mr. Warfel, seconded by Mr. Hastings, carried that the **variance be approved with modification for the reasons stated.** Motion carried 4 - 1.

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

### **ADDITIONAL BUSINESS**

**Meeting adjourned at 7:32 p.m.**