

## **MINUTES OF AUGUST 21, 2023**

The regular meeting of the Sussex County Board of Adjustment was held on Monday, August 21, 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, 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. 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.

Motion by Mr. Williamson, seconded by Mr. Warfel and carried unanimously to approve the Minutes for the June 26, 2023, meeting. Motion carried 5 – 0.

The vote by roll call; Mr. Hastings – yea, Dr. Carson – yea, Mr. Warfel – 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 June 26, 2023, 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. 12851 – Brent and Lisa Hershey** seek variances from the 100 ft. separation distance requirement for proposed structures for commercial housing of hogs (Sections 115-20 and 115-25 of the Sussex County Zoning Code). The property is located on the south side of Broadkill Road approximately 1813 ft. west of Reynolds Road. 911 Address: 14374 Clydes Drive, Milton. Zoning District: AR-1. Tax Map: 235-15.00-26.07

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 a variance of 34 ft. from the 100 ft. separation distance requirement for a proposed addition to a commercial hog house.

Mr. Brent Hershey was sworn in to give testimony on this application.

Mr. Hershey testified that the Applicants acquired this property in 2017; that, at that time, they did a remodeling project and added some buildings; that it was an empty property that they changed over to a hog farm; that they added the middle building and remodeled the other 2 buildings; that it is currently a 1,400 sow birthing farm; that California and Massachusetts passed regulations stating that anyone selling meat into their states must have more room to house the hogs; that New Jersey just passed similar legislation 3 weeks ago; that they think 7-9 additional states will have this on the books in another year or so; that, basically, the industry is being told to give the animals more room; that this farm was a partial open pen system that had 570 crates in the old style system of gestational crates; that, in 2017, a law was passed that was then appealed in 2022 to the Supreme Court who issued a ruling in May stating that they are not going to return the law, meaning that the new regulations will apply moving forward; that they have the opportunity to sell pork to California and Massachusetts if they give them more room; that using the existing building footprint they would drop from 1,400 sows to 1,000; that, if they can put a small addition on the one building that is proposed, the farm drops from 1,400 sows to 1,200; that, either way, they will be reducing their number of sows but the addition allows them to keep more; that they are requesting the variance because in planning for this they realized that they would be encroaching into the 100 ft. separation distance for the building from the property line; that they need a variance of 34 ft.; that they find themselves in a situation where the industry is changing; that this requires them to have more roof space and square footage for the sows so they do not have to shrink the farm; that this does a couple things for their farm, one of which being allowing them to keep another full-time employee; that they have already cut apart the sow crates that they were using and converted them in to sow condos; that their sows are all in larger pens that they can move around; that the crates were 2 ft. by 7 ft. and now they are 6 ft. by 7 ft. for each sow; that the sow condos are used for breeding and handling of animals; that, once they are bred, they move to a pen of eight sows; that, when the farm was built, it was to the standard of 20 square feet per sow but the new law requires 24 square feet per sow; that the addition will be 80 feet wide by 100 feet; that, years ago, the sows were kept outside; that the addition is 101 ft. by 81 ft. on the outside; that they will have exactly 66 ft. to the property line; that they will still be shrinking by 16%; that, by expanding the existing building, it allows them to retain more staff and allow more flexibility for staff to have time off; that the property was created by the Betts family; that there have been variances issued for the structures on the property prior to his ownership; that the neighboring property is still owned and farmed by the Betts family who does not oppose the expansion of the building; that it was previously a pig farm that went through a bankruptcy and sat empty for 3 years; that they own farms in Pennsylvania and have for 40 years now; that they had a fire and their birthing barn burned down leaving them with 2,000 pregnant sows with no place for their babies; that, in 2 weeks' time, they got the operation running and trucked in the sows to birth the babies who were then sent back up to their primary farm; that this location allowed them to recover and ultimately led them to purchase the property, remodel, and revitalize it, and have been in operation since 2017; that a lot of the regulations come from Europe but the states have been adopting these same regulations; that the laws vary from state-to-state, some of them stating that if you house animals in their state and

others that, if you sell into their markets if you do not meet the standards; that there have been no complaints his aware of about their operation; that they tore down the original building and expanded it; that in the back left corner of the property, they put in a freezer unit for their composting; that they have 10 freezers, all of their compost goes in the freezers, and then is trucked to Virginia allowing them to have a cleaner property; that there are 2 lagoons at the rear of the property; that the water is pumped into the first lagoon, with the second being an overflow which gets pumped out onto the surrounding farmland; that they empty the first one once a year in the spring; that they cover about 140 acres of ground a year they cover with fertilizer for crop growing; that they cannot expand the building in the other direction due to the location of the lagoons; that they cannot expand to the side due to the location of propane tanks; that the proposed addition will be consistent with the roof line, flow of the operation, and feeding models; that their only option is to expand the front or not to do it; that there is a conditional use in effect; and that there have been no violations of the conditional use permit.

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

Mr. Chorman closed the public hearing.

Mr. Hastings moved to approve the application for Case No. 12851 for the requested variance, pending final written decision, for the following reasons:

1. The property has unique conditions due to the lagoons in the back and the shape of the property;
2. That, due to the physical conditions, the property cannot be developed in strict conformity with Sussex County Zoning Code;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variance will not alter the essential character of the neighborhood as the area is used for farmland; 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 approved 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. 12852 – Fred W. Hertrich III** seeks variances from the landscape buffer requirement in the Combined Highway Corridor Overlay Zone (CHCOZ) for existing and proposed structures (Sections 115-82 and 115-194.1 of the Sussex County Zoning Code). The property is located on the east side of Sussex Highway (Route 13) at the corner of Bethel Concord Road. 911 Address: 26953 Sussex Highway, Seaford. Zoning District: C-1. Tax Map: 132-7.00-66.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application, and zero mail returns. The Applicant is requesting a variance of 20 ft. from the 20 ft. landscape buffer requirement within the Combined Highway Corridor Overlay Zone (CHCOZ) for existing and proposed structures.

Mr. Fred W. Hertrich, III, was sworn in to give testimony about the application.

Mr. Hertrich testified that the Applicant seeks a variance from the Sussex County Highway screening for the final landscape plans for a buffer that is now required for new businesses on Route 13; that the real issue is that this project has been there for 40 years; that it is a retail automobile business; that frontage and visibility from the highway is very important; that they are opposed to the buffer requirement because it would change the complexion of the business that they have; that another thing that was not discussed at their Planning and Zoning Commission meeting was that their septic field is the entire length of the property along Route 13; that they have looked at all avenues as far as building this separate building; that somewhere the interpretation got lost because this is not a new business but rather an expansion of their service facility at Frederick Ford; that, with the change in the industry with the electric vehicle (EV) requirements and the sizes of entry doors, they either had to modify their existing building or build a new one; that the existing building posed some problems due to the location of the fire lane in relation to the body shop; that they cannot infringe on the fire lane so it limits their expansion of the existing building; that the proposed building will be set back farther from the highway than any of the existing buildings; that the property consists of 23 acres; that there have been no changes within a ¼ mile of the facility other than a building that they built to the north of the subject property; that there has not been much development in the area; that the vegetative buffer requirement would span the entire property line along Route 13 for which they are seeking a variance; that they have landscaping but no vertical vegetation or trees; that they use the area, within the requirements of the Highway Department, to showcase vehicles out on the grass outside of the septic fiend periodically; that, in addition to the septic field, there is also a north-south pipeline or gas line that runs from Louisiana to New York and has a transformer that downloads gas because of the pressure on that line which is located on their property; that any kind of vegetative buffer is going to prohibit parking of vehicles and the ability for people to see them as they drive down the highway; that the septic field runs from the northern corner of the property along Route 13 to the northern entrance and then again south of the northern entrance off Route 13; that the attorney from the Planning Commission quoted a paragraph and the Commission kept talking about it being a new business but it is not; that the trees depending on the height would also cause a visual disturbance coming in and out of the property; that the entrances because of their width have been approved with the construction of the new building but only because they overbuilt those entrances originally; that visibility is a big concern because coming in you are decelerating off the highway and going out you are trying to merge with high speed traffic; and that the proposed building will be to the north of the existing showroom and body shop in the area that currently is used for parking but is outside of their existing fire lane.

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 approve the application for Case No. 12852 for the requested variance, pending final written decision, for the following reasons:

1. The property has unique conditions due to the location of the septic fields;
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; and
5. The variance represents the minimum variance necessary to afford relief.

Motion by Mr. Warfel, seconded by Mr. Williamson, carried that the **variance be granted for the reasons stated**. Motion carried 5 - 0.

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

**Case No. 12854 – Clavier Property Holdings LLC** seeks variances from the landscape buffer requirement in the Combined Highway Corridor Overlay Zone (CHCOZ), the lot area per dwelling unit, side yard, and rear yard setback requirements for a proposed structure (Sections 115-82, 115-183, 115-188, and 115-194.1 of the Sussex County Zoning Code). The property is located on the corner of Coastal Highway (Route 1) and Ann Avenue within the Ann Acres Subdivision. 911 Address: 20968 Coastal Highway, Rehoboth Beach. Zoning District: C-1. Tax Map: 334-20.13-27.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received two (2) letters in support of, six (6) letters in opposition to the Application, and six (6) mail returns. The Applicant is requesting variances of 890 sq. ft. from the 3,630 sq. ft. requirement per dwelling unit, 5 ft. from the 10 ft. side yard setback requirement on the southwest side, and 20 ft. from the 20 ft. landscape buffer requirement within the Combined Highway Corridor Overlay Zone (CHCOZ) for proposed townhomes.

Mr. Mark Clavier was sworn in to give testimony for this application.

Mr. Clavier testified that he is seeking a density variance; that the lot consists of 10,000 square feet; that he would need an additional 890 square feet of property to construct 3 townhomes; that the property has the density to build 2.75 units making them short by 0.25 of a unit; that looking at the

property to the north of them which has condos and the property to the south which also has condos, both of which are over the density limit; that the property is zoned C-1 and they could do commercial activity by right; that they feel townhomes would be more consistent with the neighborhood rather than a commercial building; that the variance for the additional square footage would allow them to get a third unit; that they want to turn the townhomes to face Ann Avenue so they enter from Ann Avenue rather than Route 1; that they would like to have 3 townhomes instead of 2 townhomes because it just makes more sense for them; that, looking at the surrounding properties, it is primarily residential and condos; that it appears that a lot of the properties were developed by doing their own thing with some houses as close to 13 ft. from the highway and some back a little farther; that they are trying to be more consistent with what is currently there; that there is currently no building on the property; that the previous building was demolished; that the proposed townhomes will probably be about 3,000 square feet; that they would be building the townhomes within the setbacks which is why the depth of the building is not shown; that they did not want to spend a ton of money drawing up plans to have to scrap them and start over; that he knows the front setback is 30 ft. and he thinks that the rear is 10 ft.; that the lot is currently vacant; that there is a fence that goes on the west side and south side of the property and is on the property line; that it is not unique as far as what they want to but they are just trying to kind of follow the plan of what everyone else has done in the past; that they will likely sell the townhomes; that there are a lot of rentals in that area; that he thinks the townhomes would better suit the area over a liquor store or something like that; that, if their variances were denied, they would still be able to build 2 townhomes but they are so close to being able to construct 3 townhomes; that they could potentially also build 2 houses; that, if they do not build there, it could eventually end up being commercial; that, if they were to sell the property, it could be developed in a number of ways; that a neighbor called them the other day to ask about their plans and was happy to hear that they were proposing townhomes; that they purchased the property about a year and a half ago; that it was previously a hair salon; that one of the plans submitted was the previous SoDel plan for a proposed office building which was approved but never constructed; that the previous structure on the property was roughly 15 ft. from the front porch to the front property line; that Planning and Zoning suggested they ask for the CHCOZ buffer variance but they are really here for the density; that there is so much variety of structures and placement of structures in this area; that he was not aware of any letters of opposition; that they can develop the property within the bound of the Zoning Code; that, if they were to place 2 houses on the property, they would like to position them towards Ann Avenue but originally the lots were facing Route 1; that the townhomes to the south were built in the 1970s maybe and the ones to the north in the 1980s; and that he is surprised that many people would oppose the residential use which he feels fits the area.

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

Mr. Chorman closed the public hearing.

Dr. Carson moved to deny the application for Case No. 12854 for the requested variances, pending final written decision, for the following reasons:

1. The property does not have unique conditions as it is a vacant lot;
2. That the Applicant has failed to demonstrate that the property cannot be developed in strict conformity with Sussex County Zoning Code;
3. The variances are not necessary to enable the reasonable use of the property;
4. The exceptional practical difficulty was created by the Applicant; and
5. The variances will alter the essential character of the neighborhood.

Motion by Dr. Carson, seconded by Mr. Hastings, carried that the **variances be denied 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. 12855 – Carolyn Colucci** seeks variances from the side yard setback requirements for existing and proposed structures (Sections 115-42 and 115-183 of the Sussex County Zoning Code). The property is located on the northwest side of Pintail Drive within the Swann Keys Subdivision. 911 Address: 37009 Pintail Drive, Selbyville. Zoning District: GR. Tax Map: 533-12.16-19.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application, and zero mail returns. The Applicant is requesting variances of 1.8 ft. from the 5 ft. side yard setback requirement on the north side for a proposed deck and 1.1 ft. from the 5 ft. side yard setback requirement on the north side for an existing shed.

Mr. Evan Hickey and Ms. Carolyn Colucci were sworn in to give testimony for this application.

Mr. Hickey testified that he is representing Ms. Colucci as the contractor; that they are requesting a variance for her property to build a deck off the side of the structure of her house; that they are requesting a variance of 1 foot 4 inches from the 5 ft. setback from the side property line; that there was a previous deck that had a variance and was 8 foot 5 inches; that the previous deck has been torn down; that the property is shallow and skinny; that they are requesting the variance to have adequate space on the deck; that the proposed deck will be an 8 ft. deck; that, while on the property, he has noticed that the rear corner in which the deck will be closest to gets really wet and is not usable for entertaining; that the extra space on the deck is to give the property owner more usable space on her property; that the neighbors have variances on their properties; that the neighbors have decks that encroach upon their setbacks and are a couple feet away from their fence; that a smaller deck would not work for the space; that they are already requesting less of a variance than the previous deck; that the plan is to have the deck go 8 ft. out, continue down the length of her property to her current steps which will be used and to add a railing; that he did not ask why she needed a deck this size; that he was operating off his own opinion of a couch being 88 inches with allowing for placement options and possible future development; that the yard always appears to be extremely wet; that the deck will

be up to the sliding door, which he believes is 4-5 courses of block, and he would say it is about 48 to 54 inches; that it will be the same height as the previous deck; that he can still see the joists from the deck that was removed; that the ground level deck has also been removed; and that he is not familiar with any other structures or variances on the property.

Ms. Colucci testified that she married her husband who owned the property; that he passed away from cancer and she bought the property; that all of the structures were there at that time; that the shed is set due to its age; that she is surprised to find out that it is not 5 ft. from the property line; that her lot is very unique in that the house was placed in the middle of the lot; and that she has a backyard that she cannot use because it is constantly flooded.

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. 12855 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to the flooding;
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 Mr. Williamson, seconded by Mr. Warfel, carried that the **variances be granted for the reasons stated**. Motion carried 5 - 0.

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

### **ADDITIONAL BUSINESS**

**Meeting adjourned at 7:06 p.m.**