

## MINUTES OF AUGUST 6, 2018

The regular meeting of the Sussex County Board of Adjustment was held on Monday, August 6, 2018, at 7:00 p.m. in the County Council Chambers, 2 The Circle, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman John Mills presiding. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills and Mr. Brent Workman. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Ms. Janelle Cornwell, Planning and Zoning Director, Mr. Jamie Whitehouse – Planning Manager, Ms. Christin Headley – Recording Secretary and Ms. Ann Lepore – Clerk II.

The Pledge of Allegiance was led by Mr. Mills.

Motion by Ms. Magee, seconded by Mr. Mears, and carried unanimously to approve the agenda as circulated. Motion carried 5 – 0.

Motion by Ms. Magee, seconded by Mr. Callaway, and carried unanimously to approve the Minutes and Findings of Facts for May 21, 2018. Motion carried 5 – 0.

Motion by Mr. Callaway, seconded by Mr. Mears, and carried unanimously to approve the Minutes and Findings of Facts for June 4, 2018. Motion carried 5– 0.

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

### OLD BUSINESS

**Case No. 12165 – Tilcon Materials, Inc.** seeks a special use exception to have an asphalt batching plant (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located on the west side of Joseph Ln., approximately 1,745 feet north of Bunting Rd. 911 Address: 22351 Joseph Ln., Georgetown. Zoning District: AR-1. Tax Parcel: 133-6.00-53.09

Mr. Mears was absent for the July 9, 2018 hearing, therefore he recused himself and left Chambers.

David Schnackenberg and Jay Miller were sworn in to testify about the Application.

Ms. Cornwell presented the case and stated that this case was previously left open for Planning Commission recommendation.

Mr. Sharp stated that this case was left open for the Board to receive documentation from the applicant. He stated that the Board members should have received the documentation and had time to review it, and that Board members could ask questions of the applicant pertaining to the documentation provided.

Mr. Miller testified that there were no violations against the Applicant.

Motion by Mr. Callaway, seconded by Ms. Magee, and carried unanimously **to close the hearing**. Motion carried 4-0

Mr. Mills opened for discussion. There was very little discussion, Ms. Magee noted that the applicant had provided all information requested.

Motion by Ms. Magee, seconded by Mr. Callaway, and carried unanimously that **the special use exception be granted for a period of five (5) years because it will not substantially adversely affect the uses of neighboring properties**. Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Mr. Mears returned to Chambers.

**Case No. 12169 – Furniture & More** seeks a special use exception to place a tent for special events (Sections 115-80 & 115-210 of the Sussex County Zoning Code). The property is located on the west side of Beacon Dr., north of Lighthouse Rd. 911 Address: 38993 Beacon Dr., Fenwick Island. Zoning District: C-1. Tax Parcel: 134-23.00-3.04

Mr. Sharp stated that this case was left open for deliberation by the Board to determine a decision.

Mr. Mears stated that there is an existing parking problem and that this tent creates a dangerous situation.

Mr. Sharp stated that the Board should consider if the existence of the tent during the time that the applicant is seeking creates a substantial adverse effect on neighboring adjacent properties.

Ms. Magee asked if the Board could request information to find out if the tent encroaches onto the easement to the development in the rear.

Mr. Sharp stated that the record is closed for this hearing and additional submissions could not be admitted until the case was reopened for another public hearing.

Ms. Cornwell stated that if the case is reopened for another public hearing, it would have to be advertised again and that the earliest available date for a public hearing would be at least two months from now.

Motion by Mr. Callaway to table the case to a future meeting. There was no second. Mr. Callaway withdrew the motion.

Motion by Ms. Magee to open the case for another public hearing so the Board can request information regarding the easement to the subdivision in the rear.

Mr. Sharp asked the Board and specifically, Ms. Magee how critical is this information to determining a decision regarding if this case would substantially adversely affect the uses of neighboring adjacent properties.

Following this discussion, Ms. Magee withdrew the motion to open another public hearing on this case.

Motion by Ms. Magee, seconded by Mr. Mears, and failed to deny the request for a **special use exception as it will substantially adversely affect the uses of the neighboring adjacent properties**. Motion failed 2-3

The vote by roll call; Mr. Workman – nay, Ms. Magee – yea, Mr. Mears - yea Mr. Mills – nay, and Mr. Callaway – nay.

Motion by Mr. Callaway, seconded by Mr. Workman, and carried that **the special use exception be granted for a total of sixteen (16) days during Memorial Day and Labor Day for a period of one (1) year with the tent placed next to the building because it will not substantially adversely affect the uses of neighboring properties**. Motion carried 3 – 2.

The vote by roll call; Mr. Workman – yea, Ms. Magee – nay, Mr. Mears – nay, Mr. Mills – yea, and Mr. Callaway – yea.

### **PUBLIC HEARINGS**

**Case No. 12174 – Gerald Richardson** seeks a variance from the minimum lot width requirement for a proposed subdivision (Section 115-34 of the Sussex County Zoning Code). The property is located on the south side of Omar Rd., approximately 662 ft. west of Powell Farm Rd. 911 Address: 34152 Omar Rd., Frankford. Zoning District: MR. Tax Parcel: 134-11.00-89.00

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received no correspondence in support of the Application or in opposition to the Application and zero mail returns. The applicant seeks a variance of 26.64 ft. for lot frontage for a proposed subdivision.

Gerald Richardson was sworn in to testify about the application.

Mr. Richardson testified that he would like to subdivide his property to build a home for his son; that the property is unique because it is so narrow, the narrow end fronts on County Road 54 which results in limited road frontage and makes compliance with chapter 115-34A of the County code impossible; further the property is 2.89 acres which is large for a property with only one dwelling; it cannot be otherwise developed as county code requires road frontage of 150 ft.; the current property has 273.36 ft. of frontage and the property cannot be otherwise developed without a variance to allow a parcel with a road frontage of 123.36 ft.; that this situation was not created by the applicant as this was the lot size and shape when purchased; this request will not alter the essential character of the neighborhood nor will it substantially adversely affect the uses of adjacent properties; and that there are numerous properties in the area zoned MR which have road frontage of less than 150 ft. He testified that he is requesting the minimum variance amount of 26.64 ft. which will allow the creation of parcel A of 1.25 acres which is shown on the survey.

Mr. Richardson testified that he did not try to purchase additional land; that DelDot determined the placement of the driveway for the new lot if approved and the location would not allow for a shared driveway; that all setbacks requirements would be followed; and that the existing shed will be removed.

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

Mr. Mears moved to approve Variance Application No. 12174 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to its size and shape;
2. The variances are necessary to enable reasonable use of the property;
3. The exceptional practical difficulty has not been created by the Applicants because they purchased the property as is;
4. The variances will not alter the essential character of the neighborhood because there are similar variances in the neighborhood; and
5. The requested variances are the minimum variance necessary to afford relief.

Motion by Mr. Mears, seconded by Mr. Callaway, and carried unanimously that the **variance be granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Mears – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 12175 – Carlos Martins** seeks variances from the front yard, corner front yard, and rear yard setback requirements for proposed structures (Section 115-34 & 115-182 of the Sussex County Zoning Code). The property is located on the northeast corner of Todd Dr. and Hassel Ave. in the Bayview Park development. 911 Address: 34956 Todd Dr., Bethany Beach. Zoning District: MR.

Tax Parcel: 134-20.12-6.00

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received no correspondence in support of the Application or in opposition to the Application and zero mail returns. The applicant seeks a variance of 0.39 ft. rear yard setback for the second-floor deck; a variance of 4.51 ft. corner front setback for the house and a variance of 12 ft. front yard setback for the steps.

Bryan Elliott was sworn in to testify about the Application.

Mr. Elliott testified that he is representing the property owner, Carlos Martins; that the property is unique because of its small square footage; it backs up to a canal; and the lot lines are not perpendicular which creates setback issues; that it cannot be otherwise developed due to the odd shape of the lot; a variance is needed to enable a reasonable use of the property in order to build a home to match the character of neighboring properties; it was not created by the property owner; it will not alter the essential character of the neighborhood but will enhance it; the variances being requested are the minimum to afford relief.

Mr. Elliott testified that the house has not been built; that the house will be on pilings as it is in a flood zone and as the steps will be coming from a height of nine (9) feet, therefore it was necessary for the request for the front yard setback variance; that there has been a small change to the survey due to new ordinance regarding setback for small lots, the side yard setback is now 5 ft.; and that the HVAC system will be on the left side of the house and will not encroach into the setback.

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

Paul Reiger was sworn in to give testimony.

Mr. Reiger questioned Mr. Mills ability to administer oaths; he recited the new ordinance to the Board; that the applicant should build a smaller house; and that he does not live in this neighborhood.

Mr. Sharp stated that the revisions to code were adopted in March to address the undersized lots; there was a reduction of setbacks for those lots; as part of that ordinance one is not to build in the setbacks but would not prohibit one from requesting a variance from those setback requirements as this applicant has; the applicant still has to meet the five standards; there is not a hardship standard but an exceptional practical difficulty standard.

Mr. Mills asked if there was anyone else in opposition to this application.

Keith Steck was sworn in to give testimony.

Mr. Steck asked about Mr. Workman's term. Mr. Mills cautioned Mr. Steck to testify to his objection to this case. Mr. Steck left the podium.

Mr. Callaway moved to approve Variance Application No. 12175 for the requested variances as the applicant has met all the standards.

Motion by Mr. Callaway, seconded by Mr. Mears, and carried unanimously that the **variances be granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Mears – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 12176 – Rosell Rivera** seeks variances from the front yard setback requirement for existing structures (Section 115-25 & 115-182 of the Sussex County Zoning Code). The property is located on the south side of English Rd., approximately 230 ft. east of Curley Dr. 911 Address: 19412 English Rd., Millsboro. Zoning District: AR-1. Tax Parcel: 333-3.00-1.06

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received no correspondence in support of the Application or in opposition to the Application and zero mail returns. The applicant seeks a variance of 4.9 ft. front yard setback for the house; a variance of 8 ft. front yard setback for the house and a variance of 4.2 ft front yard setback for the house.

Erlin Rivera and Rosell Rivera were sworn in to testify about the Application.

Mr. Erlin Rivera testified that he is here as a translator for the applicant, his uncle, Rosell Rivera. He testified that there was no uniqueness to this property.

Mr. Mills explained the required standards necessary to receive approval for the requested variances.

Mr. Erlin Rivera testified that he would like additional time to prepare his case.

Mr. Callaway moved, seconded by Mr. Mears, and carried unanimously to **leave case open to give the applicant additional time to prepare and that the case be moved to the end of the agenda**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 12177 – Robert Hickman Properties** seeks a variance from the minimum lot width requirement for a proposed subdivision (Section 115-25 of the Sussex County Zoning Code). The property is located on Irons Ln., approximately 721 ft. north of Holts Landing Rd. and on Holts Landing Rd., approximately 1,253 ft. of Irons Ln. 911 Address: N/A. Zoning District: AR-1. Tax

Parcel: 134-7.00-153.00

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received no correspondence in support of the Application or in opposition to the Application and zero mail returns. The applicant seeks a variance of 10.81 ft. for lot frontage for a proposed subdivision.

Dawn Hickman and Ethan Hickman were sworn in to testify about the Application.

Ms. Hickman testified that the frontage of their property is 139.19 ft, a variance of 10.81 ft. is needed to meet the 150 ft requirement for frontage onto a county road; that the property is unique because it does not have the required 150 ft. frontage; it cannot be otherwise developed without this variance; this was not created by the applicant as the lot is vacant except for a chicken house which will be removed; it will not alter the essential character of the neighborhood as it will be a single-family next to another single-family home; and will improve the essential character of the neighborhood by removing the dilapidated chicken house; and that they are requesting the minimum variance amount of 10.81 ft. which will allow them to build their home on this property.

Ms. Cornwell stated that the property in question it is the entire area of the parcel that fronts on Irons Ln.

Mr. and Mrs. Hickman testified that they are not creating any less road frontage on Irons Ln. but that they are carving out the back piece and creating a one-acre lot out of this larger parcel; the remainder of the larger parcel will have road frontage on Holt's Landing Rd. and will not be landlocked; that the house will be serviced by well and septic if the variance is approved but that it is not currently on the property; all setback requirements for the proposed dwelling will be met..

The Board found that one person appeared in support of and none in opposition to the Application.

Glen Hickman was sworn in to give testimony.

Mr. Hickman testified that the frontage of the mobile home next to the applicant's property is 100 ft. and the frontage of his property which is across the street is 160 ft.; and that he supports this application.

Ms. Magee moved to approve Variance Application No. 12177 for the requested variance based on the record made at the public hearing and for the following reasons:

- 1 The Property is unique due to its size and shape;
2. The variances are necessary to enable reasonable use of the property;
3. The exceptional practical difficulty has not been created by the Applicants;
4. The variances will not alter the essential character of the neighborhood; and
5. The requested variances are the minimum variance necessary to afford relief.

Motion by Ms. Magee, seconded by Mr. Mears, and carried unanimously that the **variances be granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Mears – yea, Mr. Mills – yea, and Mr. Callaway – yea.

The Board took a six (6) minute recess.

**Case No. 12178 – Mandil Family, LLC** seeks variances from the side yard and rear yard setback requirements for proposed structures (Sections 115-25 & 115-183 of the Sussex County Zoning Code). The property is located on the west side of Harbor Rd., approximately 60 ft. south of S. Rodney Dr. in North Shores development. 911 Address: 37 Harbor Rd., Rehoboth Beach. Zoning District: AR-1. Tax Parcel: 334-14.05-13.00

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received no correspondence in support of the Application or in opposition to the Application and zero mail returns. The applicant seeks a variance of 19.4 ft. rear yard setback for a proposed shed; a variance of 12.7 ft. rear yard setback for the proposed steps; a variance of 15 ft. side yard setback for the proposed shed; and a 9.7 ft rear yard setback for the proposed landing.

Jean Brolund and Patty McDaniels were sworn in to testify about the Application.

Ms. McDaniels testified that the biggest change being requested is to create a landing that will meet code; that the property is unique because it is approximately 21 ft. wide by 100 ft. deep and was developed in the 1970s; there is an existing shed and outdoor shower which is characteristic of the neighborhood; the request to extend the landing to meet code and to extend the shed for additional storage; the shower would need to be moved to allow for the extension of the storage shed; the lot is so small that there is not enough space to build within the setbacks; the conditions were not created by the applicant as it is almost as it was when originally purchased; the proposal is in keeping with the neighborhood as several residents have larger storage sheds.

Ms. Cornwell stated that similar variances have been granted in this neighborhood.

Ms. McDaniels testified that all buildings would be inside the fence; that the variance for the outdoor shower was overlooked but also required and therefore would need a variance of 19.4 ft. rear yard setback for a proposed outdoor shower and a variance of 0.6 ft. side yard setback for the proposed outdoor shower in addition to the originally requested variances.

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

Mr. Callaway moved to approve Variance Application No. 12178 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The variances are the minimum that will afford relief and are the least to the modification possible.

Motion by Mr. Callaway, seconded by Mr. Workman, and carried unanimously that the **variances be granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 12179 – Colonial East, L.P.** seeks a variance from the side yard setback requirement for a proposed structure (Section 115-25 of the Sussex County Zoning Code). The property is located on the north side of Lewes-Georgetown Hwy., approximately 741 ft. east of Minos Conway Rd. 911 Address: 30769 Lewes-Georgetown Hwy., Lewes. Zoning District: AR-1. Tax Parcel: 334-5.00-166.00

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received one letter in support of the Application or none in opposition to the Application and zero mail returns. The applicant seeks a variance of 9.79 ft. side yard setback for a proposed building.

Steve Class was sworn in to testify about the Application. David Hutt, Esquire, was present on behalf of the Applicant, presented the Application, and submitted exhibits for the Board to review.

Mr. Hutt stated that included in the notebook are forty-one (41) copies of letters of support from neighboring residents; that Colonial East, L. P. owns the pool house for the Sussex East and Sussex West communities and that currently there is no shower area; this request is to add a shower area to the pool and the only area suitable to place the showers would be on the east of the building; and the entire community comprises of three tax parcels which have internal lot lines making this request necessary; that the property is unique because though it functions as one community there are internal lot lines; the variance is necessary to enable reasonable use of this property but will benefit all the community; the historical make up of these properties created this situation and not the applicant; it will not alter the essential character of the neighborhood and the nearest neighbor who is not a member of this community is over 500 ft from the proposed building; this is the minimum variance that will afford relief.

Mr. Class affirmed the statements made by Mr. Hutt as true and correct.

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

Mr. Mears moved to approve Variance Application No. 12179 for the requested variance for the following reasons:

1. The uniqueness of the property is created by the internal lot lines;
2. It cannot be developed otherwise without the variance due to the internal lot lines;
3. This was not created by the applicant but by the historical assembly of the parcels;
4. It will not alter the essential character of the neighborhood because the pool house will essentially build the character of the neighborhood and advance an amenity for its residents; and
5. It is a minimum variance because the applicant and the architect worked hard to keep the shower areas as small as possible.

Motion by Mr. Mears, seconded by Mr. Callaway, and carried unanimously that the **variance be granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Mears – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Ms. Magee left chamber during the case and was unavailable for the vote.

**Case No. 12180 – Brian & Alice Lisiewski** seek variances from the front yard and rear yard setback requirements for a proposed structure (Sections 115-25, 115-182, & 115-183 of the Sussex County Zoning Code). The property is located on the west side of Sussex Rd., approximately 456 ft. north of the intersection with Kent Rd. and New Castle Rd. in Indian River Acres development. 911 Address: 30165 Sussex Rd., Dagsboro. Zoning District: AR-1. Tax Parcel: 134-7.00-30.00

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received no correspondence in support of the Application or in opposition to the Application and two mail returns. The applicant seeks a variance of 11 ft. front yard setback for the proposed steps.

Bryan Elliott was previously sworn in to testify about the Application.

Mr. Elliott testified that the property is unique because the lot is narrow and shallow, it is on a canal and in a flood zone; it cannot be otherwise developed due to the unique condition of the lot and the home will have to be raised; a variance is needed to enable a reasonable use of the property to allow for front steps leading to the front door; it was not created by the property owner; it will not alter the essential character of the neighborhood but will enhance it; the variances being requested are the minimum to afford relief due to the home having to be raised.





