

MINUTES OF AUGUST 7, 2023

The regular meeting of the Sussex County Board of Adjustment was held on Monday, August 7, 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 - absent, Mr. Jordan Warfel, Mr. John Williamson, and Mr. Jeffrey Chorman. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Mr. Michael Lowrey– Planner III, and Ms. Amy Hollis – Recording Secretary.

The Pledge of Allegiance was led by Mr. Chorman.

Motion by Dr. Carson, seconded by Mr. Warfel and carried unanimously to approve the agenda as amended. Motion carried 4 – 0.

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

Motion by Mr. Williamson, seconded by Mr. Warfel and carried unanimously to approve the Minutes for the June 5, 2023, meeting. Motion carried 3 – 0.

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

Motion by Mr. Warfel, seconded by Mr. Williamson and carried to approve the Findings of Facts for the June 5, 2023, meeting. Motion carried 3 – 0.

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

OLD BUSINESS

Case No. 12842 – Anthony R. Noble seeks variances from the side and rear yard setback requirement for a proposed structure (Sections 115-25, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located on the northwest side of Fleatown Road approximately 1278 ft. west of Clendaniel Pond Road. 911 Address: 19375 Fleatown Road, Lincoln. Zoning District: AR-1. Tax Parcel: 230-13.00-121.09

Mr. Lowrey 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 record was left open at the meeting on July 10, 2023, for additional information to be submitted.

The Board found that the Applicant was not present.

Mr. Sharp stated that, per Sussex County Code § 115-208G, “Any applicant or appellant to the Board who fails to appear, or appear by agent, for a hearing before the Board shall be considered to have withdrawn its application or appeal. Whenever an applicant or appellant fails to withdraw an application or appeal as provided in Subsection **F** hereof or fails to appear, or appear by agent, for a hearing before the Board, an application or appeal substantially similar shall not be reconsidered sooner than one year after the previous failure to withdraw or failure to appear.”

Dr. Carson moved to deny the application for Case No. 12842 for the requested variances, pending final written decision, because the exceptional practical difficulty was created by the Applicant.

Motion by Dr. Carson, seconded by Mr. Warfel, carried that the **variances be denied for the reasons stated**. Motion carried 3 - 0.

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

PUBLIC HEARINGS

Case No. 12843 – William J. Smith III seeks a variance from the rear yard setback requirement for a proposed structure (Sections 115-25, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located on the southeast side of Branch School Road approximately 138 ft. from Sharptown Road. 911 Address: 34071 Branch School Road, Laurel. Zoning District: AR-1. Tax Map: 432-11.00-45.01

Mr. Lowrey presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of, no letters in opposition to the Application, and one (1) mail return. The Applicant is requesting a variance of 15 ft. from the 20 feet rear yard setback requirement for a proposed detached garage.

Mr. William J. Smith, III, and Ms. Julie Smith were sworn in to give testimony on this application.

Mr. Smith testified that they have a couple of structures on their property that they intend on removing; that they have a lot of equipment recently purchased for their business that they are trying to protect from the weather; that one side of their yard where he would like to place the proposed building has a septic issue; that the proposed location is the only spot on the property to place the building; that he is a handyman; that the carport is in the place of where they want to place the building; that the carports are open with no walls or doors and they are getting a lot of dirt and dust from the fields; that there is a shed towards the driveway that will be moved also; that the shed is used for the storage of their motorcycle; that, if the pole building works the way, he hopes that he would

potentially be getting rid of the shed in the future also; that the building is proposed in that location is to be able to get the equipment in and out of the pole barn because of their fence; that the fence is around the entire dwelling; that he is proposing to use the existing driveway to access the building; that, if he places the building 15 ft. off the property line, he would have to redo the fence and everything else in the backyard; that he is trying to keep it back as far as he can to still have a yard for their grandchildren and other things; that one of the pieces of equipment has a large trailer and setting the building farther back would not allow him to back the trailer to the building; that the property has a well located in the front; that there is no homeowners association approval needed; that the building dimensions are 30' by 40' by 14'; that 14 ft. is the height of the building; that behind their property are fields used for farming; that there will be no additional entrances on the property; that they built the house but its placement was determined by the placement of the septic system; that the shed all the way to the rear of the property will remain; that his handyman business does not have employees coming to the property; that he does not believe the drawing is to scale; that he cannot bring the building 15 ft. out from the property line because he has a 22 ft. trailer that has to be backed in and parked on the far right side of the pole barn; that placing the building any farther into the property would create a difficulty for him to back the trailer in; that the doors to the garage will be facing the driveway; that he is not trying to lose his entire yard; that the carports have been in place for about 3 years and no complaints; that he obtained permits for the carports and they met the required setbacks; that 30' by 40' is the minimum size to meet their needs; that they have a boat they will be putting and he plans on having a little workshop; that their boat is 20 ft. with a 27 ft. trailer; that he is trying to get everything from outside in the weather and put it under cover in the pole barn; and that placing the building farther back will give him more of a turning radius to get into the building.

Ms. Smith testified that they own Smith's Handyman Services out of Laurel; that they are trying to build a pole barn in order to protect their investment for the business; that they believe it will look much nicer than the carport that they have in place currently; that their next-door neighbors are in support of the Application; that this is their only way to protect their investment; that the other side of their yard is the drain field for the septic system; and that the error in the sizing of the building was her fault as she wrote it wrong on the Application.

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. 12843 for the requested variances, pending final written decision, for the following reasons:

1. The property does not have unique conditions;
2. The exceptional practical difficulty was created by the Applicant;
3. The Applicant has failed to demonstrate that he cannot develop the property within the Sussex County Zoning Code and without the need for a variance; and

4. The Applicant failed do demonstrate that the variance is necessary to enable the reasonable use of the property.

Motion by Mr. Warfel, seconded by Mr. Williamson, carried that the **variance be denied for the reasons stated**. Motion carried 3 - 1.

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

Case No. 12846 – Michael L. and Alison F. Miller seek variances from the corner front and rear yard setback requirements for a proposed structure (Sections 115-25, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located on the corner of North Aquarius Way and West Gemini Lane within the Cave Colony Subdivision. 911 Address: 7 N. Aquarius Way, Milton. Zoning District: AR-1. Tax Map: 235-21.00-53.00

Mr. Lowrey 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 three (3) mail returns. The Applicants are requesting a variance of 2 ft. from the 5 ft. rear yard setback requirement for a proposed shed.

Mr. Michael L. Miller and Ms. Alison F. Miller were sworn in to give testimony about their application.

Mr. Miller testified that they are here before the Board again for this property; they purchased this property in 2018; that, in 2019, they were before the Board for a variance for a shed that was never permitted; that, since that time, the shed has deteriorated and it no longer meets their needs; that he is seeking to get their lawn equipment out of his garage and into a larger shed; that this would require them to buy a longer shed with a bigger door so his riding lawn mower will fit; that the proposed shed is 9 ft. longer, some of which is actually a little porch that does not account for storage but is nice for someone to sit on; that, with the proposed shed, there is no maintenance; that their goal is to have a nice shed that will always look nice on the property rather than the one that is falling apart; that they would like to put their new shed in the same location as the existing shed; that the shed will still be within their fenced in yard; that the shed will be placed farther away from Gemini Lane and closer to their pool; that the shed will still be 3 ft. from the rear property line and be no wider because there is a concrete walkway on the other side of the shed; that they discovered at settlement for the property that the previous owners had no permit for the existing shed which required them to obtain a variance; that their neighbors have no opposition to the variance request; that the existing shed came with the property; that, based on the state of the existing shed, it has been there for quite a while; that freeing up the space in his garage, currently used for his lawn mower, will allow him to park his cars in the garage; that he also plans to store his outdoor furniture and seasonal stuff in the shed rather than the garage; that on the site plan where it says “Lot 5” is the location of their septic drain field; that they are unsure

of the exact location of the septic but have had two opinions on where it possibly could be; that the prior owner could not tell them exactly where the drain field is located; that they also have the tanks but are able to locate them because of the lids; and that everything on the lot has been placed in its location due to the shape of the lot and narrow building area.

Ms. Miller testified that their lot does not have a very deep building envelope.

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 approve the application for Case No. 12846 for the requested variances, pending final written decision, for the following reasons:

1. The variances will not alter the essential character of the neighborhood; and
2. The variances represent the minimum variances necessary to afford relief.

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

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

Case No. 12847 – Richard and Deborah Mead seek variances from the separation distance requirements for proposed structures (Sections 115-42 and 115-172 of the Sussex County Zoning Code). The property is located on the southeast side of Squirrel Road within the Bayshore Manufactured Home Park. 911 Address: 38333 Squirrel Road, Ocean View. Zoning District: GR. Tax Map: 134-9.00-94.01-14514

Mr. Lowrey presented the case and stated that the Office of Planning and Zoning received eight (8) letters in support of, zero in opposition to the Application, and seven (7) mail returns. The Applicants are requesting variances of 1.3 ft. and 1.4 ft. from the 20 ft. separation distance requirement between manufactured homes from the manufactured home located on Lot 204.

Ms. Deborah Mead was sworn in to give testimony for this application.

Ms. Mead testified that they are seeking a variance to build an 8 ft. wide deck; that the deck would encroach 1.5 ft. into the 20 ft. separation distance requirement; that their lot is only 40 ft. wide; that both homes have been in place for over 40 years; that a deck would not be possible without encroaching into the separation distance requirement; that this has not been created by the Applicant; that the variances will not alter the essential character of the neighborhood; that the majority of the homes on Squirrel Road have porches with awnings; that there have been many variances issued

within the park; that these are the minimum variances as they are asking for 1.5 ft. into the 20 ft.; that the deck will be 32 ft. in length; that the owner of the park wrote a letter in support; that her husband would have been here tonight but he was just released from the hospital after a recent cancer diagnosis; that her husband has trouble navigating steps and this would give him an easier access to go outside; that the neighboring dwelling most affected is owned by their daughter; that she believes that the neighboring house is about 4 ft. from the property line; that on the backside of the neighboring house is an electric meter with a line that runs to the end of their property; that on the backside of the manufactured homes you have a small space; that they tend to build off the fronts of their manufactured homes; that they have public water and sewer; that they park along the road; that the steps off the deck face towards the road; that the steps will be closer to the house rather than the end of the deck; that they looked at a smaller deck but it would not work for the size of their family and with the mobility issues of her husband; that her husband has acute leukemia and COPD; and that being outside is beneficial to his health but having to go up and down steps is a big deterrent for him.

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. 12847 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to the narrowness of the lot and the placement of the other manufactured homes;
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 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 4 - 0.

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

Case No. 12849 – Abraham L. Huyett seeks variances from the front and rear yard setback requirements for proposed and existing structures (Sections 115-42 and 115-182 of the Sussex County Zoning Code). The property is located on the northwest side of Thistle Lane within the Oak Meadows Subdivision. 911 Address: 27626 Thistle Lane, Millsboro. Zoning District: GR. Tax Map: 234-29.00-189.00

Mr. Lowrey 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 14 ft. from the 30 ft. front yard setback requirement for a proposed attached garage, and 5 ft. from the 5 ft. rear yard setback requirement for an existing woodshed.

Mr. Abraham L. Huyett and Ms. Tammy Huyett were sworn in to give testimony for this application.

Mr. Huyett testified that they are seeking a variance to build a garage on the front of their house; that they would like the garage to park his wife's vehicle in and provide additional storage for his equipment; that his equipment is currently outside and he does not want the neighbors to complain; that he has a cement mixer and masonry equipment; that all the structures were on the property when they purchased it with the exception of the detached garage; that the woodshed labeled on their plan is a lean-to; that the structure has 4 pressure treated poles in the ground with a tin roof over it and slatted ends and sits on the rear property line; that they do need HOA approval; that they have public sewer; that he believes the distance between the property line and the edge of paving at Thistle Lane is about 14 ft.; that he plans to put stone into the proposed garage for the driveway; that he does not own the 14 ft. between the property line and the edge of paving of the state road; that he has an additional 30 ft. between that grassy area and where his house is located; that he has not spoken with DelDOT about obtaining an entrance permit for a second driveway; that he questions how he would be able to place a garage in that location and use the existing driveway; that the woodshed is about 1 ft. off the side property line; and that the roads were turned over to the State.

Ms. Huyett testified that trying to alter the garage in the way being proposed would not work due to the placement of a tree in their front yard that they do not wish to remove; and that the homeowners association maintains the roads as far as plowing.

Mr. Huyett requested that he be allowed to withdraw the Application so that he can consult with DelDOT about the whether an additional entrance would be permitted.

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 Applicant's request to withdraw the Application and to refund of the application fee for Case No. 12849 since the Applicant has requested to withdraw the Application in the interest of reapplying after consulting with DelDOT regarding the need for additional entrance.

Motion by Mr. Warfel, seconded by Dr. Carson, carried that the **Applicant's request to withdraw the Application be granted.** Motion carried 4 - 0.

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

Case No. 12850 – Andre Burbage seeks a variance from the rear yard setback requirement for an existing structure (Sections 115-25 and 115-182 of the Sussex County Zoning Code). The property is located on the northwest side of Skyler Drive within the Villages at Herring Creek Subdivision. 911 Address: 34440 Skyler Drive, Lewes. Zoning District: AR-1. Tax Map: 234-18.00-419.00

Mr. Lowrey 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 four (4) mail returns. The Applicant is requesting a variance of 1.8 ft. from the 20 ft. rear yard setback requirement for an existing dwelling.

Mr. Andre Burbage and Ms. Dawn Burbage were sworn in to give testimony for this application.

Mr. Burbage testified that they are requesting a 1.8 ft. variance on the rear left corner of the house that they are building; that the unique shape of the lot made the placement of the house a bit tricky; that they like the lot because it had good width and depth on the right side but they knew the left side would be pretty tight; that they took particular attention to stake and re-stake the lot making sure that it was right but somehow between staking and the pouring of the foundation it ended up being off by 1.8 ft. even with the 2 ft. play area that they allotted for; that he has no idea how it got moved; that he relied on the builder to place the house; that he is the builder; that they had 3 surveys which they thought would be enough; that they have had no complaints from the neighbors; that they are at the drywall stage of the house; that it is just a corner of the house and not running the whole length; that it is a foundation piece and not able to be moved; and that they have public water and sewer.

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 approve the application for Case No. 12850 for the requested variance, pending final written decision, for the following reasons:

1. The property has unique conditions due to the shape of the lot;
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 variance will not alter the essential character of the neighborhood; and
4. The variance represents the minimum variance necessary to afford relief.

Motion by Dr. Carson, seconded by Mr. Warfel, carried that the **variance be granted for the reasons stated**. Motion carried 4 - 0.

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

ADDITIONAL BUSINESS

The Board discussed the request for a 12-month extension for Case 12853 Terry Weaver, Sr.

Motion by Mr. Williamson, seconded by Dr. Carson, to approve the extension for a period of one year. Motion carried 4 – 0.

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

Discussion Regarding Telephonic Participation

The Board discussed the possible removal of the telephonic participation option that was imposed during the Covid-19 pandemic.

Motion by Mr. Williamson, seconded by Dr. Carson, to approve the removal of the telephonic participation line. Motion failed 2 – 2.

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

Mr. Sharp referenced the State Law that states it is at the discretion of the Chairman to allow telephonic participation as an alternative option for participation.

The Chairman elected to no longer allow for telephonic participation effective after the conclusion of meetings which have already been advertised.

Meeting adjourned at 7:19 p.m.