

## MINUTES OF DECEMBER 11, 2023

The regular meeting of the Sussex County Board of Adjustment was held on Monday, December 11, 2023, 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. 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 as amended. 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 October 2, 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 Dr. Carson and carried to approve the Findings of Facts for the October 2, 2023, meeting. 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.

### OLD BUSINESS

**Case No. 12867 – Robert R. Kump** seeks variances from the rear yard setback for a proposed structure (Sections 115-34 and 115-183 of the Sussex County Zoning Code). The property is located on the northeast side of Sunburst Path within the Peninsula Subdivision. 911 Address: 26961 Sunburst Path, Millsboro. Zoning District: MR. Tax Map: 234-30.00-27.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of, no correspondence in opposition to the Application, and zero mail returns. The Applicant is requesting variances of 6.7 ft. and 6.5 ft. from the 10 ft. rear yard setback requirement for a proposed porch. The record was left open on October 2, 2023, for the submission of a site plan showing the location of the porch.

Mr. Robert R. Kump, Ms. Laura Kump, and Mr. Frank Tharby were sworn in to give

testimony on this application.

Mr. Kump testified that, after the last meeting, they went back to McCrone for an updated survey which showed that the structure is over the property line; that they intend on fixing the encroachment but wanted to discuss with the Board prior to any modifications to the existing structure; that, on the other side of their property line, is community property; that the chairman of the committee, Eric Blaker, sent in a letter after review of the recent survey; that the letter states that, so long as the structure is on their own property, the committee would be in support; that 3.5 ft. would be plenty of room for them to maintain their property without being on the common area; and that the steps will be against the wall of the house.

Ms. Kump testified that they submitted their project to the architectural review committee, and it received approval with no objections from the neighbors.

Mr. Tharby testified that they have two alternatives to resolve the encroachment; that he has been in contact with the HOA president, Eric Blaker, who knew that the addition was over the property line and in the common area; that Mr. Blaker has been supportive from the beginning; that one alternative is to 45 the corner of the deck and the other is to remove the structure, cut 17 inches off and then rebuild from there; that, as it stands now, the roof and deck are up, which makes one option more costly than the other; that both options will still require a variance as they will encroach into the setback but will no longer be over the property line; that, to cut the corner off at a 45-degree angle, will place the structure back on their property; that, if they go with the 45-degree angle option, they will take it back approximately 4 ft. making them about 3 ft. 7 inches from the property line; that the more expensive option was to take the entire roof down and rebuild from there; that they are going to measure back an equal distance on both sides from the corner and cut them at a 45-degree angle; that they already have one spot on the house that is similar to which they are going to mimic that with the porch so that everything matches; that the stairs off the addition will run parallel to the house and do not project into the rear yard; that they were unsure which option they were going to proceed with but they will get back with McCrone to measure it out when they are finished; and that the rear property line is on an angle which creates some of the issues with the need for variances.

Ms. Norwood stated that, based on the Applicant's newest proposal, the Applicant needs a variance of 6.5 feet from the 10 feet rear yard setback and a variance of 6.73 feet from the 10 feet rear yard setback.

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. 12867, as amended, for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to being on a cul-de-sac forcing the placement of the house back;
2. That, due to the physical conditions, the property cannot be developed in strict conformity with Sussex County Zoning Code, and the variances, as modified, 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. Warfel, seconded by Mr. Hastings, carried that the **variances, as amended, be approved for the reasons stated.** Motion carried 3 - 2.

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

### **PUBLIC HEARINGS**

**Case No. 12886 – Destiny LLC** seeks a special use exception for an off-premises electronic message center (Sections 115-80, 115-81, 115-159.5, 115-161.1, and 115-210 of the Sussex County Zoning Code). The property is located on the northeast side of Parsonage Road approximately 30 ft. from Coastal Highway. 911 Address: 35859 Parsonage Road, Rehoboth Beach. Zoning District: C-1/GR. Tax Parcel: 334-13.00-5.00

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 two (2) mail returns. The Applicant is requesting a special use exception to convert one side of an existing, non-conforming off-premises sign into an off-premises electronic message center.

Mr. Jason Dean was sworn in to give testimony on this application.

Mr. Dean testified that there is a billboard structure on the property that was originally permitted in 2004; that the property is adjacent to Route One and Parsonage Road which is situated between Fins and the Rehoboth Diner; that the structure is 12' x 48', double-sided, with an overall height of 25 ft.; that they have a letter of no objection from DeIDOT for the conversion to an electronic message center; that only the north facing side of the billboard is proposed to be digital; that it must be 1,000 ft. from a DeIDOT controlled intersection, which means that the south facing side is not eligible for conversion because of the location of Parsonage Road; that the north facing side is only visible from Route One; that there are no concerns for the residential neighborhood off Parsonage Road; that the structure meets all the separation distance requirements; that, in 2016, setbacks relating to billboards were changed to 40 feet from 25 feet but this structure has been there since 2004; that, in 2021, they also removed two non-conforming off-premise signs; that Section 115-161.2 of the Sussex County Zoning Code states that conversion of non-conforming off-premise signs to be off-

premise electronic message centers is prohibited unless the applicant is replacing two or more non-conforming off-premise signs with a single electronic message center, which is exactly what they are proposing to do with the existing structure; that the current structure is 25 ft. from the front property line which met the setback at the time it was approved; that the structure will remain the same size of 12' x 48'; that the south facing side will remain static and the north facing side, if approved, will become digital; that the electronic message center will also meet all of the specifications of a digital billboard because it is federally regulated; that has brightness controls built into the software, as well as a safeguard that will shut the sign down if there is a malfunction; that the image will change in less than one second with no animation per the federal regulations; that they had a pre-development meeting with Ms. Norwood and Mr. Whitehouse where that section of Code was brought to their attention; that the off-premise non-conforming signs were removed when the site was being redeveloped in or around 2021; that the gap in time between the removal and this application was due to the County being overwhelmed with applications and the client deciding to hold off; that, when applying for the building permit, he knew that the existing signs were legally non-conforming; that, at the time the original structure was built, in 2004 it was still Beach Haven and mini golf then the new shopping center was built which realigned that whole intersection; that they are seeking to use modern technology to do what was previously done by men and a truck; that this method is more efficient by sending a signal digitally rather than having someone sit on the side of Route One; that the main reason to go digital is the ease of use from the customer and the economic development component in the Route One area; that, in 2016, the setback for signs was change to 40 ft. from 25 ft.; that this structure predates almost everything around it; that the billboard has not moved and the size is not changing; that they are just adding the digital to one side facing Route One; that he has been recommending a cleanup of the sign ordinance now that they have had 7 years to chew on it and see where the problems are and are not; that the picture showing the previous non-conforming signs was dated 2019 and he knows that the property was developed in 2021 but he does not know exactly when they were removed; that he was also not aware of the two year statute of limitations and it was not discussed in their pre-development meeting; and that, if they were aware, they would have worked more diligently to fall within that window.

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. 12886 for the requested special use exception, pending final written decision, because the proposed use 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 granted 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. 12887 – Joshua Valliant** seeks variances from the front yard setback requirements for existing and proposed structures (Sections 115-25 and 115-182 of the Sussex County Zoning Code). The property is located on the southeast side of Wilgus Cemetery Road approximately 650 ft. from Honeysuckle Road. 911 Address: 34278 Wilgus Cemetery Road, Frankford. Zoning District: AR-1. Tax Parcel: 533-6.00-109.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of, zero in opposition to the Application, and zero mail return. The Applicant is requesting variances of 14.6 ft. and 13.4 ft. from the 40 ft. front yard setback requirement for the proposed porch, and 5.4 ft. from the 40 ft. front yard setback requirement for the existing non-conforming dwelling.

Mr. Joshua Valliant was sworn in to give testimony for this application.

Mr. Valliant testified that he purchased this house and has been fixing it up over the past several years; that he has lived there with his wife and two young children; that it is an old, really charming, farmhouse that is over 100 years old; that he did not look into the setbacks but he thought that it was 30 ft. not 40 ft.; that there was originally a small brick porch and roof leading to the front door; that, when he redid the house, he did everything from the siding, roofing, and the foundation; that he is just looking to try to add that original last piece of character to their house and build a nice little front porch with a covered roof that would attach underneath the upstairs window; that he believes that there is an additional 15 ft. between his front property line and the edge of paving at Wilgus Cemetery Road; that they have well and septic on the property; that, due to the age of the house, it is very low to the bottom on the existing front door; that it is about 15 inches to the top of the grade; that, if the variance is granted and he is able to construct the front porch, he will also grade the front yard more to make sure that it slopes away and he does not need a step there as the platform will probably be around 4 inches below the front door; that the driveway is a half-circle that goes around the house; that this will not impact visibility from the road but will make the house look complete; that it will add great character and he knows that the neighbors will love it; that the only neighbor really affected submitted a letter in support; that the previous porch on the house was a 4 or 5 foot wide brick platform; that, when he began renovations and removed the aluminum siding behind it, you could see that there was originally a small A-frame structure above it; that he removed the original base and all that is left is the footings; that they are currently using the side and back door for ingress and egress; that the reason he is asking for an 8 ft. porch rather than a 6 ft. is for the aesthetic and so it fits with the architecture style; that, when he installs the columns, an 8 ft. porch will leave the correct amount of space to walk once the door is opened; that he is not sure if he is going to use a 6 x 6 post or a 4 x 4 wrapped with a column but either way they are going to be around 10 inches in diameter; that he is trying to be historically accurate; that the replacement siding mimics the old aluminum siding; that the house is white with a black roof; that they are trying to keep the historical charm; that he would also consider the porch a little bit of a safety barrier for his kids from Wilgus Cemetery Road; and that the well is located in the front yard and the septic is in the rear.

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

Mr. Chorman closed the public hearing.

Mr. Hastings moved to approve the application for Case No. 12887 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to the age of the house and being built before setbacks;
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 but will likely improve the neighborhood; and
5. The variances represent the minimum variances necessary to afford relief.

Motion by Mr. Hastings, seconded by Mr. Williamson, carried that the **variances be approved for the reasons stated.** Motion carried 5 - 0.

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

**Case No. 12889 - Abraham L. Huyett** seeks variances from the front, side, and rear yard setback requirements for proposed and existing structures (Sections 115-42, 115-182, 115-183, and 115-185 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

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received five (5) letters in support of, zero in opposition to the Application, and two (2) mail returns. The Applicant is requesting variances of 14 ft. from the 30 ft. front yard setback requirement for the proposed attached garage, 4 ft. from the 5 ft. side yard setback requirement for the existing lean-to, and 3.6 ft. from the 5 ft. side yard setback requirement for the existing lean-to. The Applicant previously was before the Board for Case No. 12849 on August 8, 2023, at which time he was permitted to withdraw the application to consult with DelDOT about an entrance permit. A DelDOT entrance approval was submitted with new Application.

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

Mr. Huyett testified that they are seeking the variance in the front for a garage to store his wife's vehicle and to provide additional space in their other garage; that they are also seeking to change the look of their house because it does not look like a house; that, if approved, the placement of the garage will change the roof line and aesthetically look more like a house; that their house has multiple roof lines which have caused a lot of problems with leaks; that he would like to solve that problem by changing the whole look of the house; that the lean-to is covering his firewood and he believed that it was better than a tarp; that he drew the site plan; that he did not get a survey done so as to not waste his time if their request was denied; that he does not know where he would move the wood shed to on his property; that they have owned this home for 20 years; that the shed was in pieces on the property and he fixed it up; that he placed the garage in the rear; that he put the pavers, covered deck, lean-to, and sidewalk to the shed throughout the 20 years; that they have public sewer and water; that they have 14 ft. between their property line and Thistle Lane; that the proposed garage will measure 18' x 24'; that they will be removing the tree in the front of their yard if this is approved; that he submitted a photo of the neighbor's house with garage which he is aesthetically trying to match; that their DelDOT entrance permit was approved; that the house is as it was when they purchased it but the garage in the rear was added about 10 years ago; and that the garage in the rear is to keep his masonry equipment out of view and keep the property looking nice.

Ms. Huyett testified that they have tried tarps before and they flapped, ripped apart, accumulated water on top, and set off motion detectors; that they have plans to redo the shingles on the whole house so, if this was approved, they would wait until the addition was finished; that they have landscaping all down their property limiting where they could move it to; that their house was a trailer that other people built additions on year by year; that the gap is where the trailer previously was but the inside had been gutted and replaced with drywall; that they are trying to build on to the front of the house to make it look more like a home and not a trailer; and that they staked out the proposed new driveway's location which was inspected by DelDOT.

Mr. William Richter Jr. was sworn in to give testimony in support of this application.

Mr. Richter testified that he lives next door to the Huyetts; that he is in support of this application; that the alternative to the lean-to would be a pile of wood with a tarp of which there are several in the neighborhood; that the variance for the proposed garage is only going to add to the house and make it more aesthetically pleasing; and that Mr. Huyett's work is impeccable and would blend in with the house.

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

Mr. Chorman closed the public hearing.

Dr. Carson moved to approve the application for Case No. 12889 for the requested variances, pending final written decision, for the following reasons:

1. The property has pre-existing conditions;
2. The variances will not alter the essential character of the neighborhood; and
3. The variances represent the minimum variances necessary to afford relief.

Motion by Dr. Carson. The motion failed for a lack of second.

Mr. Warfel moved to deny the application for Case No. 12889 for the requested variances, pending final written decision, because the exceptional practical difficulty was not created by the Applicant rather than the uniqueness of the property.

Motion by Mr. Warfel, seconded by Mr. Hastings, failed that the **variances be denied for the reasons stated**. Motion failed 2 - 3.

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

Mr. Williamson moved to approve in part and deny in part the application for Case No. 12889 for the requested variances, pending final written decision, for the following reasons:

1. The Applicant has met the criteria for the lean-to so the lean-to should be approved; and
2. The exceptional practical difficulty as it pertains to the garage is being created by the Applicant so the variance for the garage should be denied.

Motion by Mr. Williamson, seconded by Mr. Hastings, carried that the **variance for the garage be denied and the variance for the lean-to be approved 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. 12890 – Geoffrey S. Piotroski** seeks a variance from the maximum fence height requirement (Sections 115-25, 115-182, and 115-185 of the Sussex County Zoning Code). The property is located on the corner of Lighthouse Road and Monroe Avenue within the Edgewater Acres Subdivision. 911 Address: 38940 Monroe Avenue, Selbyville. Zoning District: AR-1. Tax Map: 533-20.19-16.00

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 3.5 ft. from the 3.5 ft. maximum height requirement for a fence.

Mr. Glenn Mandalas, Esquire, was present on behalf of the Applicant.



Mr. Mandalas stated that he is representing Mr. Piotroski who owns the property located at 38940 Monroe Avenue; that this lot is closest to Route 54; that this lot has been developed with a pool house and a pool structure; that the property is located within the AR-1 Agricultural Residential Zoning District; that they are here seeking to construct a 95-foot-long stone wall parallel to Route 54 that would be 7 ft. in height; that Section 115-185 C of the Zoning Code only allows construction of a wall 3.5 ft. in height which is what brings them here tonight; that they are seeking a variance of 3.5 ft. in height for a proposed wall; that the traffic on Route 54 can be very heavy and frequently backs up due to the many restaurants in the area; that they are seeking the variance in order to buffer Mr. Piotroski's property more than it currently is; that the exceptional practical difficulty here is created by the fact that Route 54 is constructed at an elevation quite a bit higher than the subject property; that the difference in elevation ranges from 18 inches to 4.5 feet along Route 54; that they are also seeking the additional buffer due to the increase in construction in the area; that there is a lot of dust and noise coming off of Route 54 and where the pool is located this creates problems for him and his family; that when the road backs up there is a lot of hollering and heckling from some of the cars; that there are existing trees along Route 54 but it does not provide the buffering that they are seeking; that there is a fence that runs behind the trees and this wall would be taking the place of that fence; that the fence will be straight along the existing row of arborvitaes; that the existing fence is 4 ft. in height to meet the pool code requirement; that, if approved and they construct the wall, it will be about a foot higher than the guard rail along Route 54; that this will not obstruct any views; that there are a number of fences in the area that are similar in height, some of which are located along side and rear yards, but shows that this will fit the character of the area; that the proposed wall will not be very close to Monroe Avenue as it will actually be about 33 feet from the intersection of Monroe and Route 54; that, based on the survey from 2019, if the fence was installed as shown then, that it would be located on the property line; that the trees may have been placed prior to DeIDOT's acquisition of the property; that the columns are 7 ft. tall where the rest of the fence is 6 ft. 4 inches; that the elevation changes which are unique to this property create an issue that is not faced by the interior lots on Monroe Avenue; and that the main building is on the interior lot where the pool is located on the exterior lot that was combined with it.

Mr. Geoffrey S. Piotroski was sworn in to give testimony on his application.

Mr. Piotroski testified that he believes they will be putting a traffic light in once they build the 70 homes across the street; that the buffer will also assist with lights shining into his property; that the proposed wall will be along the same line where the existing fence is but the black railing will still be from the wall to the bulkhead; that the aluminum fence will remain for if there needs to be any work done to the bulkhead; that he will leave the trees because they assist with buffering and are aesthetically pleasing for the neighborhood as well; that this fence will not block the view from Monroe Avenue getting on to Route 54 more than the existing condition does; that the portion of property dedicated to DeIDOT was done prior to his purchase of the property; that the house was built prior to his purchase also; that the trees are on the property line; that the proposed wall will be in the same location that the previous variance for the fence was issued; that he is proposing a continuation

of the existing stonework; that the trees have been there for years and years; that the pool was built in 2020 after the variance was granted; that the trees were there in 2013; that the building was an existing duplex when he purchased the property; that he did plant some trees to fill in the gaps; that he estimates that the road is 2.5 to 3 feet above his property; that he is not concerned with the wall creating any issues with drainage; that the front of his property is usually where water collects; that there is no homeowners association; that, when he installed the pool and everything around it, he was not a full-time resident but over the last couple of years they have been spending more time here compounded with the influx of new residents it has showed this issue; that he bought the main building in 2006; that he purchased the second property in 2013; that, since he purchased the properties, the traffic has definitely increased; and that the primary relief he is seeking is protection from dust, litter, noise, and lights.

Mr. Piotroski affirmed the statements made by Mr. Mandalas as true and correct.

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

Mr. Chorman closed the public hearing.

Mr. Hastings moved to approve the application for Case No. 12890 for the requested variance, pending final written decision, for the following reasons:

1. The property has unique conditions due to the elevation of Route 54 beside it;
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. 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.

### **ADDITIONAL BUSINESS**

**Meeting adjourned at 7:49 p.m.**