

MINUTES OF DECEMBER 11, 2017

The regular meeting of the Sussex County Board of Adjustment was held on Monday, December 11, 2017, 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 Dale Callaway 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 – Director of Planning and Zoning, Mrs. Jennifer Walls – Planning Manager, and Ms. Christin Headley – Recording Secretary.

The Pledge of Allegiance was led by Mr. Callaway.

Motion by Mr. Mills, seconded by Ms. Magee, and carried unanimously to move Case No. 12065 to the beginning of the public hearings and approve the Revised Agenda as Amended. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously to approve the Minutes and Finding of Facts for October 2, 2017. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously to approve the revised Minutes and Finding of Facts for Case No. 11942 to correct a typographical error. Motion carried 5 – 0.

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

PUBLIC HEARINGS

Case No. 12065 – Emory Lee Wiley - seeks a special use exception to use a manufactured home type structure to accommodate a person with an emergency or hardship situation (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located on the west side of Puseys Road, approximately 600 feet north of the intersection of Road 472 and Puseys Road. 911 Address: 31030 Puseys Road, Millsboro. Zoning District: AR-1. Tax Map No.: 1-33-18.00-18.02.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. Ms. Cornwell advised the Board that the existing dwelling is uninhabitable and the County is working with the owners to remove the home and that an emergency permit to place the manufactured home was issued due to the inhabitable state of the existing dwelling. The existing home fell into disrepair due to a storm.

Jane Wiley was sworn in and testified requesting a special use exception to use a manufactured home type structure for a medical hardship.

Mrs. Wiley testified that the Property is located in a rural area on a dead-end road; that the Property consists of 6.2 acres and they own a neighboring property as well; that the manufactured home is a brand-new manufactured home; that she plans to live in the home; and that she is on disability.

Mr. Mills asked if there is another dwelling still located on the Property.

Ms. Cornwell explained that the medical hardship being requested can be approved with an annual renewal letter as the Property is not required to have another dwelling located for the special use exception to be available.

Mrs. Wiley testified that she will not have a problem obtaining the renewal letter from her doctor as she is in regular contact with him; that she is aware that the special use exception can only be approved for a period of two (2) years and is renewable annually thereafter; that there are many manufactured homes in the neighborhood; that the existing house on the Property is in disrepair and will be removed; that the Applicants have been living in a camper since August 2017 and have been awaiting the manufactured home; that she spoke with her neighbors and they support the Application; and that the previous home was destroyed by storms.

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

Mr. Mills moved to approve Special Use Exception Application No. 12065 for the requested special use exception for a period of two (2) years based on the record made at the public hearing and because the use will not substantially adversely affect the uses of the neighboring and adjacent properties.

Motion by Mr. Mills, seconded by Ms. Magee, and carried unanimously that **the special use exception be granted for a period of two (2) years and for the reasons stated.** Motion carried 5 – 0.

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

Case No. 12062 – Frank Costango - seeks variances from the front yard setback requirement (Section 115-34 of the Sussex County Zoning Code). The property is located on the east side of Surrey Road approximately 200 feet south east of the intersection of West Buckingham Drive and Surrey Road. 911 Address: 5 Surrey Road, Rehoboth Beach. Zoning District: MR. Tax Map No.: 3-34-19.00-957.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. The Applicant seeks a variance of 4.6 feet from the thirty (30) feet front yard setback requirement and a variance of 7.6 feet from the thirty (30) feet front yard setback requirement for a proposed addition.

Frank Costango was sworn in to testify about the Application and submitted pictures into the record for the Board to review.

Mr. Costango testified that he seeks to add a front porch to an existing dwelling; that the curvature of the front boundary line creates a unique situation; that the existing home takes up the majority of the building envelope; that the rear yard is wooded; that the Applicants purchased the Property with the dwelling in its existing condition and did not place the dwelling so close to the front property line; that the proposed addition will add charm and appeal to the home and neighborhood; that the addition will improve the neighborhood; that neighbors have indicated support of the Application; that he considered moving the steps to the side of the home; that the dwelling has existed since the 1980s; that the addition to the front of the home will add curb appeal to the dwelling; that the house is a brick house and has been painted; that the house looks out of place compared to the neighboring properties; that the owners bought the house over a year ago; that the house has been remodeled; that the front part of the home is the primary access to the home; that there is no coverage available from inclement weather over the front access; that the existing structure cannot be remodeled because it is brick; that there is over ten (10) feet from the edge of paving of the adjacent Surrey Road to the front property line; that the owners have discussed the addition with their neighbors and no one objected to the project; that there is a garage used for storage and it has an access to the home; and that the owners wish to have a usable deck.

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

Mr. Workman moved to approve Variance Application No. 12062 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique due the shape of the front property;
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;
5. There are other similar porches in the neighborhood;
6. The requested variances are the minimum variances necessary to will afford relief; and
7. The variances represent the least modifications of the regulation at issue.

Motion by Mr. Workman, seconded by Mr. Mears, and carried that the **variances be granted for the reasons stated**. Motion carried 3 – 2.

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

Case No. 12063 – Thomas W. Garasic - seeks a variance from the front yard setback requirement (Section 115-42 of the Sussex County Zoning Code). The property is located on the west side of Bennett Drive, approximately 600 feet south of the intersection of Sherwood Forest and Robin Hood Loop. 911 Address: 32346 Bennett Drive, Millsboro. Zoning District: GR. Tax Map No.: 2-34-23.00-200.01.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of the Application and read the letter into the record, and no correspondence in opposition to the Application. Mrs. Walls advised the Board that a building permit was issued but no

certificate of compliance was issued. The Applicant seeks a variance of 3.3 feet from the thirty (30) feet front yard setback requirement for an existing dwelling.

Thomas Garasic was sworn in and testified about the Application.

Mr. Garasic testified that house was measured at 40 feet from the road; that he owns two lots; that he measured from the pilings to the edge of the road and that this distance measured 10 feet; that he assumed there was a setback of 10 feet from the road to the front property line; that he placed the home 40 feet from the road; that the house lines up perfectly with the house next door on Lot 16; that the house on the adjacent property is slightly askew; that there are large trees in the rear yard and he placed the home closer to the front yard; that, if the distance from the road to the front property line was 10 feet as he thought, there would be no encroachment; that the home is 3.3 feet too close to the road; that all electric, plumbing, sewer, and gas utilities are installed and would be difficult to reinstall; that the encroachment is not noticeable; that he pulled the permit for the home; that he relied on Danny Dorfman to place the home; that he staked out the location for the home; that the Property was previously vacant; that he subdivided the Property from a larger parcel; that he owns the adjacent parcel (Lot 16) as well; that the home on Lot 16 meets the setback requirements; that he has a septic in the side yard; that the Property is serviced by city water; that the home is located on footers; that the home could be moved but the footers and utilities would have to be reinstalled; that he would have to trim some trees to move the home towards the rear yard; that he discussed the matter with some neighbors and they do not object to the variance; that the concrete monument marking his property is located in the right-of-way; that he had a survey prior to placing the home; that the survey did not show the distance from the front property line to the edge of paving; and that he knew where his property lines were located.

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

Motion by Mr. Mills, seconded by Ms. Magee, and carried unanimously that the Application be **tabled until December 18, 2017**. Motion carried 5 – 0.

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

Mr. Garasic requested the opportunity to make an additional comment.

Motion by Mr. Mills, seconded by Mr. Mears, and carried unanimously to reopen the public hearing. Motion carried 5 – 0.

Mr. Garasic testified that there is currently a tenant living on the Property, a family with a child and that the Property is rented out.

Motion by Mr. Mills, seconded by Ms. Magee, and carried unanimously that the Application be **tabled until December 18, 2017**. Motion carried 5 – 0.

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

Case No. 12064 – Joseph Donovan & Tina Donovan - seek a variance from the front yard setback requirement (Section 115-34 of the Sussex County Zoning Code). The property is located on the south side of Bryan Drive, in the rear of the Midway Estates subdivision off Coastal Highway (Route 1). 911 Address: 82 Bryan Drive, Rehoboth Beach. Zoning District: MR. Tax Map No.: 3-34-6.00-305.00.

Ms. Magee recused herself from this case and left the Chambers.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. The Applicants seek a variance of 1.7 feet from the thirty (30) feet front yard setback requirement for an existing dwelling.

Joe Donovan and Donald Crawl were sworn in to testify about the Application. Veronica Faust, Esquire, presented the case on behalf of the Applicants.

Ms. Faust stated that the Property is identified as Lot 104 in Midway Estates, which is an older development located behind the Midway Theater; that Mr. Donovan acted as the general contractor for the home; that the dwelling was built in 2014 and a Certificate of Occupancy was issued; that the Applicants were unaware of the encroachment at that time; that the Applicants entered into a contract to sell the Property to Mr. Crawl and a survey obtained by Mr. Crawl showed the encroachment; that the dwelling is 45 feet from the edge of paving of the adjacent road; that the adjacent road is 19 feet wide but the right-of-way is 50 feet wide; that the Property is zoned Medium Residential; that the dwelling encroaches into the front yard setback by 1.7 feet; that the Property is located partially on a curve which makes the Property unique; that Mr. Donovan retained a mason to lay the foundation and he believes that the mason measured from the edge of pavement; that it is difficult to tell from the naked eye that the home is in the violation of the front yard setback requirement; that the Applicants have received no complaints about the encroachment; that it would be impractical to move the home; that the dwelling appears to be in line with the neighboring houses; that the variance will not alter the essential character of the neighborhood; and that the variance requested is the minimum variance necessary to afford relief.

Mr. Donovan affirmed the statements made by Ms. Faust as true and correct.

Mr. Donovan testified that his neighbors have expressed no concerns about the variance.

Mr. Crawl testified that he is purchasing the Property; that he has had 3-5 conversations with the neighbors; and that the neighbors have had no issues with the encroachment and have been complimentary of the house.

Mr. Donovan testified that he pulled the building permit; that he now obtains a pin-drop survey when building homes; that the Property is served by County sewer and public water; that only a portion of the house encroaches into the setback area; and that the portion of the house which encroaches into the setback area is the attached garage.

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

Mr. Mears moved to approve Variance Application No. 12064 for the requested variance based on the record made at the public hearing and for the following reasons:

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

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

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

Case No. 12066 – J.G. Townsend, Jr. & Co. - seeks a special use exception for a convalescent home, nursing home, and / or homes for the aged (Section 115-23 of the Sussex County Zoning Code). The property is located on the south side of Plantation Road, approximately 600 feet south east of the intersection of Postal Lane and Plantation Road. 911 Address: None Available. Zoning District: AR-1. Tax Map No.: 3-34-12.00-52.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of the Application and no correspondence in opposition to the Application. Mrs. Walls read the letter of support into the record.

Ms. Magee also recused herself from this case and remained outside the Chambers.

Doug Motley, Ring Lardner, and Nick Hammonds were sworn in to testify about the Application. David Hutt, Esquire, presented the case on behalf of the Applicant and submitted exhibits for the Board to review.

Mr. Hutt stated that the Applicant is requesting a special use exception for a proposed assisted living facility; that Mr. Hammonds and Mr. Motley are the principals of Plantation Partners; that Ring Lardner is the engineer on the project from Davis, Bowen, and Friedel; that the Property is zoned AR-1; that the proposed use will not adversely affect neighboring properties; that the presentation is not a site plan review; that, if the special use exception is approved, the Applicant will go through with the site plan review process with state and local agencies and the Planning & Zoning Commission; that the Property consists of 10.39 acres and is located south of the intersection of Cedar Grove Road and Plantations Road; that the Property is owned by J.G. Townsend Jr. & Son; that Cedar Grove Road was recently realigned to match up with Postal Lane on the other side of Plantations Road; that J.G. Townsend owns properties on two sides of the Property; that the J.G. Townsend property totals 124 acres; that HKLS, LLC, owns one of the properties to the north of the Property; that HKLS, LLC, supports the Application; that the Property also borders Plantation Road on one side; that there are several residential communities, doctors' offices, physical therapy offices, a church, and emergency medical services facilities; that Beebe

Medical has a nearby facility as well; that there is a mixture of uses in the area; that there are no wetlands or flood plains on the Property; that the soils on the Property are appropriate for this facility; that the Property is located in the State Strategies Investment Level 2 area; that the Property is located in the Environmentally Sensitive Development Overlay Zone where development is anticipated and encouraged; that the Property will be serviced by County sewer and central water from Tidewater Utilities; that the project has been submitted to the PLUS process with state agencies; that a cemetery is located on or near the Property and the cemetery has been examined by an archeologist to ensure no roads or entrances disturb the cemetery; that no traffic impact study needs to be performed; that the proposed use will result in fewer than 50 vehicular trips in any hour and fewer than 500 vehicular trips a day; that the Delaware Department of Transportation (“DelDOT”) determined that the traffic impact from the facility will be “negligible”; that there will be two access points for the site pending the site plan review process; that storm water management will be located on site as approved by the Sussex Conservation District and the Delaware Department of Natural Resources & Environmental Control (“DNREC”); that the proposed building will consist of 160,000 square feet with 144 units; that the facility will meet the height, area, and setback requirements; that the proposed building will be 60 feet from Plantation Road even though only a 40 feet front yard setback is required; that the Applicants plan to maintain the goal of an upscale retirement facility; that the building is proposed to be three stories tall; that the population has increased in this area of Sussex County; that there is ample room for parking on the site; and that 99 parking spaces will be provided even though only 74 spaces are required through the Sussex County Zoning Code.

Mr. Motley testified that the Applicant researched the market for aging-in-place; that there is a growing demand for these services and a lack of facilities; and that the occupancy of most existing facilities is around 100%.

Mr. Hutt stated that there will be no negative impact on property values indicated by research on an existing Assisted Living Facility; and that the facility will provide an economic benefit to the area.

Mr. Lardner testified that he performed the site engineering and coordination work.

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

Mr. Hutt stated that the facility will not emit noise, light, or odors other than what would normally be seen with residential uses.

Mr. Motley testified there will be downward lighting and landscaping throughout the site.

Mr. Lardner testified that the parking requirements stated earlier in the presentation were derived from the Sussex County Code.

Mike Robertson was sworn in and testified with concerns about the Application. Mr. Robertson testified that he is concerned about the traffic and the drainage requirements.

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

and that one person appeared with concerns about the Application.

Mr. Mills moved to approve Special Use Exception Application Number 12066 for the requested special use exception based on the record made at the public hearing and because the use will not substantially adversely affect the uses of the neighboring and adjacent properties. Mr. Mills, as part of his motion, approved the proposed Findings of Fact and Conditions as presented by the Applicant.

Motion by Mr. Mills, seconded by Mr. Mears, and carried unanimously that the **special use exception be granted for the reasons stated and that the Findings of Fact and Conditions as presented by the Applicant be adopted**. Motion carried 4 – 0.

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

The Board took a five (5) minute recess. After the recess, Ms. Magee returned to the Chambers.

OLD BUSINESS

Case No. 12056 – Jere F. Danz & Sally L. Danz - seek a variance from the side yard setback requirement (Section 115-25 of the Sussex County Zoning Code). The property is located on the northeast side of Hudson Street Extension, in the Creek Falls Farm subdivision off of Hudson Road. 911 Address: 403 Hudson Street Extension, Milton. Zoning District: AR-1. Tax Map No.: 2-35-22.00-551.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. This case was continued from the hearing held on November 20, 2017. The Applicants request a variance of 1.8 feet from the fifteen (15) feet side yard setback requirement on the north side for an existing pole building.

Sally Danz was sworn in to testify about the Application. Thomas Carney, Esquire, presented the case on behalf of the Applicants.

Mr. Carney stated that the pole building connects to the existing driveway on the Property.

Mrs. Danz testified that the Applicants purchased the Property in June 2006; that the pole barn is used to house their boat, fishing, and crabbing equipment; that Delmarva Pole Building Supply built the structure; that the contractor secured the building permit; that the Applicants believed the pole building was to be constructed 16 feet from the side yard property line; and that the builder made a calculation error.

Mr. Carney stated that the exceptional practical difficulty was not created by the Applicants; that the Applicants are selling the Property and a survey showed the encroachment; that the Property is unique due to the location of the driveway; that the contractor made an error; that the building

permit and a certificate of compliance were issued by the County; that the pole building does not threaten the character of the neighborhood; that the variance requested is the minimum variance necessary to afford relief; that he submitted a contractor schematic and building permit into the record; and that the pole barn was placed in its location due to the existing driveway.

Mrs. Danz testified that she expected her contractor to place the pole building in compliance with the Sussex County Zoning Code; that she was told by her contractor that it would be placed 16 feet from the side yard property line; that the Property is served by well and septic; and that the septic is in the front yard and the well is located behind the pole building.

Mrs. Danz affirmed the statements made by Mr. Carney 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. 12056 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Applicants relied on their builder and the builder has created the exceptional practical difficulty;
2. The Property is unique;
3. The exceptional practical difficulty has not been created by the Applicants;
4. The variance will not alter the essential character of the neighborhood;
5. There are other pole buildings in the neighborhood; and
6. The requested variance is the minimum variance necessary to will afford relief.

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

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

Meeting Adjourned 9:12 p.m.