

MINUTES OF DECEMBER 13, 2021

The regular meeting of the Sussex County Board of Adjustment was held on Monday, December 13, 2021, 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 John Williamson presiding. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, and Mr. John Williamson. Mr. John T. Hastings and Mr. Jordan Warfel were absent. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, Mr. Vince Robertson - Assistant County Attorney, and staff members Ms. Jennifer Norwood – Planning and Zoning Manager, and Ms. Ann Lepore – Recording Secretary.

The Pledge of Allegiance was led by Mr. Williamson.

Motion by Dr. Carson, seconded by Mr. Chorman and carried unanimously to approve the agenda. Motion carried 3 – 0.

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

Motion by Mr. Chorman, seconded by Dr. Carson and carried unanimously to approve the Minutes for the October 18, 2021, meeting. Motion carried 3– 0.

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

Motion by Dr. Carson, seconded by Mr. Chorman and carried to approve the Findings of Facts for the October 18, 2021, meeting. Motion carried 3 – 0.

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

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

OLD BUSINESS

Case No. 12627 – Jack & Jeanine Zaccara seek a variance from the rear yard setback requirement for a proposed structure (Sections 115-34 and 115-183 of the Sussex County Zoning Code). The property is located on the southwest side of Falmouth Way within Coastal Club Condominiums. 911 Address: 31339 Falmouth Way, Lewes. Zoning District: MR-RPC. Tax Parcel: 334-11.00-394.00

Ms. Norwood presented the case and stated that the Board left this open for the staff to review the Application further; that staff has determined that a variance is not required as the Applicants will be able to meet all setbacks; and that the Applicants have submitted a request to withdraw Case No. 12627 along with a request to ask for the application fee to be refunded.

Motion by Dr. Carson, seconded by Mr. Chorman, carried unanimously that the **Application be withdrawn, and the Application fee be refunded to the Applicants.** Motion carried 3 – 0.

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

PUBLIC HEARINGS

Case No. 12631 – Deena A. Dorey seeks variances from the side yard setback requirement for an existing structure (Sections 115-25, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located at the north side of Indian Town Road approximately 0.48 mile east of Revel Road. 911 Address: 23745 Indian Town Road, Millsboro. Zoning District: AR-1. Tax Map: 133-20.00-74.02

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 9.14 ft. and a 9.71 ft. variance from the 15 ft. side yard setback requirement on the west side for an existing detached structure.

Mr. Sharp recused himself and left Council Chambers. Mr. Robertson was present for this case.

Ms. Deena A. Dorey was sworn in to give testimony about the Application.

Ms. Dorey testified that she hired a contractor to build a pole building on her property to store a boat; that she got the permit from Sussex County; that she went to work and, when she got home, the pole building was complete; that, when a County Inspector came to the property, she was informed that it was too close to the property line; that there is a septic that would prevent the pole building from being moved; that there are many other pole buildings in the area so this will not alter the essential character of the neighborhood; that it was not created by the Applicant but by the contractor, Aaron Esh from Pennsylvania; that she will provide the name and address to the Planning and Zoning Department; that there have been no complaints from neighbors; that the floor of the barn is concrete; and that there are no steps or doors on the same side as the requested variance.

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

Mr. Williamson closed the public hearing.

Mr. Chorman moved to approve Case No. 12631 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to the placement of the septic system;

2. That, due to the unique 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 Applicant;
4. The variances represent the minimum variances necessary to afford relief and represent the least modifications of the regulations at issue; and
5. A letter be sent to the contractor giving information regarding Sussex County Code setbacks and regulations.

Motion by Mr. Chorman, seconded by Dr. Carson, carried unanimously that the **variances be granted for the reasons stated**. Motion carried 3 – 0.

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

Mr. Sharp returned to Council Chambers.

Case No. 12632 – Nicholas J. Flomp, Jr. seeks variances from the side 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 Lavinia Street approximately 425 ft. northeast of Sand Hill Road. 911 Address: 15749 Lavinia Street, Milton. Zoning District: AR-1. Tax Parcel: 235-20.00-13.03

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received one letter in support of and none in opposition to the Application and zero mail returns. The Applicant is requesting variances of 5.15 ft. and 4.73 ft. from the 15 ft. side yard setback requirement on the east side for a proposed pole building.

Mr. Nicholas J. Flomp was sworn in to give testimony about the Application.

Mr. Flomp testified that he hired a contractor (Eastern Shore Pole Building) to build a pole barn on his property; that they laid out the location for the building; that his contractor brought to his attention that there was a setback issue; that the property is unique because of the location of the septic field as it limits access to the rear of the property; that he cannot drive over the septic system; that the power cable runs along the driveway and across to the rear of the home which further limits the placement of the pole building; that there is 120 foot tall oak tree on the property that he does not want to remove; that there is a well pump near that tree as well; that, if the pole building was put next to the tree, the roots of the tree would likely damage the building and concrete floor; that the property line runs at an angle; that the driveway is not parallel to the side property line; that this property is not in a subdivision but is near farmland; that he purchased the property with the dwelling in its current location; that the proposed pole building will not alter the essential character of the neighborhood and will not be visible from the road; that he spoke with a neighbor who seemed supportive of the request but he was not definite; that the proposed pole building will be used as a two-car garage and also for storage of yard tools and equipment; that the structure is also needed for safety reasons; that he works

on centrifuges for wastewater; that he wants the garage so that his wife can park in the garage at night when he travels for work; that the existing shed will be removed; and that the variances requested are the minimum variances to afford relief but that, if it can be pushed back to lessen the variance, then he will do so.

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

Mr. Williamson closed the public hearing.

Dr. Carson moved to approve Case No. 12632 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. Chorman, carried unanimously that the **variances be granted for the reasons stated.** Motion carried 3 – 0.

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

Case No. 12633 – Brent Beaver seek variances from the front yard setback requirement for existing structures (Sections 115-25, 115-182, and 115-185 of the Sussex County Zoning Code). The property is located at the northeast side of East Redden Road approximately 0.20 miles northeast of DuPont Highway (Rt. 113). 911 Address: 18932 East Redden Road, Georgetown. Zoning District: AR-1. Tax Map: 135-6.00-10.03

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 16 ft. from the 40 ft. front yard setback requirement for existing steps on a deck, a variance of 20 ft. from the 40 ft. front yard setback requirement for an existing deck and a variance of 13 ft. from the 40 ft. front yard setback requirement for an existing dwelling.

Mr. Brent Beaver was sworn in to give testimony about the Application.

Mr. Beaver testified that he purchased the property at a sheriff's sale in August 2021 with the intent to make improvements; that he changed his mind and is now selling the property; that he has made no additions or improvements to the property; that the deck was added in 1996 and did not receive a certificate of compliance; that the encroaching structures are situated similarly to the front yard as a deck on neighboring lands; that he purchased the property "as is"; that there is a gap between the edge of paving and the front property line; that the deck measures 18 feet wide by 12 feet deep; that the septic system is located to the rear yard near the center of the property; that he is unsure how old the dwelling is; and that the location of the steps and deck do not cause visibility issues for vehicles

traveling on East Redden Road.

Ms. Norwood noted that there is approximately 20 ft. between the edge of paving and the property line; that the dwelling was added to the Application for completeness as the County has no record of its age; and that neighboring homes are non-conforming dwellings.

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

Mr. Williamson closed the public hearing.

Mr. Chorman moved to approve Case No. 12633 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to the age of the home;
2. The exceptional practical difficulty was created by the age and not created by the Applicant; and
3. The variances will not alter the essential character of the neighborhood.

Motion by Mr. Chorman, seconded by Dr. Carson, carried unanimously that the **variances be granted for the reasons stated.** Motion carried 3 – 0.

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

Case No. 12634 – Mark & Nancy Keyasko seeks variances from the side yard setback requirement for an existing structure (Sections 115-34, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located at the northeast side of South Carolina Avenue approximately 88 ft. northeast of North Bay Shore Drive. 911 Address: 9 South Carolina Avenue, Milton. Zoning District: MR. Tax Map: 235-4.13-5.00

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 zero mail returns. The Applicant is requesting a 2.2 and a 2.5 variance from the 5 ft. side yard setback requirement on the west side for an existing garage.

Mr. Mark Keyasko was sworn in to give testimony about the Application.

Mr. Keyasko testified that he owns a modest bungalow in Broadkill Beach; that he plans to raise that garage above grade as the insurance company will not insure anything below the level of the house; that the garage will remain in the same footprint; that he raised the dwelling 11 years ago but was unable to raise the garage at that time; that there will be additional storage above the garage; that the house measures 23 feet by 23 feet with a small porch; that the hot water heater for the house is located in the garage; that the septic system is behind the garage; that there are other utilities near

the garage as well so it cannot be located elsewhere on the property; that he has the support of neighbors; that he purchased the property in 2001 and it was vacant for many years prior to his purchase; that the garage will match the house and will have fireproof siding and will have solar panels; that it will be salt box in shape and is a small structure measuring 12 ft. by 20 ft.; that the property is served by a septic system and public water; that he works in the radiant heat business; that he is concerned that insurance will drop coverage unless he raises the garage; that this is a high risk area; that there are no flooding issues on the property, but if the garage creates any run off to the neighboring property, he will install a gutter; that he believes the house was built in 1955; that the garage may be the same age as the house due to the material used; that he believes the garage was built prior to 1970; that the garage will be raised 4 feet on one side and 8 feet on the other side; that the garage will not present visibility issues for neighbors; that the garage will slope; that there will not be any steps that encroach into the setbacks; and that the garage should drain in a similar fashion to the prior garage.

Mr. Keyasko submitted a drawing for Board Members review.

The Board found that Mr. Paul May testified in support of the Application.

Mr. May testified that he lives in the neighborhood; that there is no flooding on the subject property; that there is a fence between the property; and that this will improve the neighborhood.

The Board found that Mr. Daniel Kopp testified in support of the Application.

Mr. Kopp testified that the dwelling on this property was built in 1955 and was originally a fishing shack; that Mr. Keyasko has improved the dwelling; and that raising the garage will improve the neighborhood.

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

Mr. Williamson closed the public hearing.

Dr. Carson moved to approve Case No. 12634 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique 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, seconded by Mr. Chorman, carried unanimously that the **variances be granted for the reasons stated.** Motion carried 3 – 0.

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

Case No. 12635 – Michael Milligan seeks a variance from maximum fence height requirement for an existing fence and a variance from front yard setback requirement for an existing structure. (Sections 115-25, 115-182 and 115-185 of the Sussex County Zoning Code). The property is located on the east side of Jestice Farm Road approximately 810 ft. north of Pepper Pond Lane. 911 Address: 31531 Jestice Farm Road, Laurel. Zoning District: AR-1 Tax Parcel: 232-19.00-12.02

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 27.2 ft. variance from the 40 ft. front yard setback requirement for an existing shed and a 1.5 ft. variance from the 3.5 ft. maximum height requirement for an existing fence.

Mr. Michael Milligan was sworn in to give testimony about the Application.

Mr. Milligan testified that he improved the entrance to his property with a metal gate measuring 20 feet wide and brick pillars which are 5.5 ft. tall; that the fence is electric and has a keypad for emergencies; that he was unaware that he needed a variance for the shed; that the shed is on skids and can be moved into compliance; that there have been no complaints about the gate and pillars; that the gate and pillars do not cause any visibility issues for vehicles travelling on Jestice Farm Road; that there is approximately 10 feet from the edge of paving to the property line; that the fence is on the property line but cars entering the property do not block traffic when waiting for the gate to open; that he did not get a permit for the gate; that, when he submitted a permit for another project, it was noted by the County that he did not have a permit for the gate; that there are two lights which are on from dusk to dawn so it is visible at night; that this is necessary for security as the pole building on the property has been broken into twice; that the pole building stores cars and tools; that there are two entrances to the property but the second entrance is not used as it is at the tax ditch line; that the tax ditch influenced the location of the fence; that there are trees on the property also; that the gate is used approximately eight times a day; that there is a pending Conditional Use Application on file with the County for a towing business; that the gate is used for his personal and business uses; that, even if the conditional use is denied, he will need the fence; that the brick pillars cannot be moved; that there is enough room for a tow truck with car to wait at the gate without protruding out onto the road; and that the shed will be brought into compliance with the Code.

During the testimony of Mr. Milligan, it was noted that a variance of 2 ft. is required not 1.5 ft. as originally noted.

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

Mr. Williamson closed the public hearing.

Mr. Chorman moved to approve Case No. 12635 for the requested variance for the fence and gate but deny the variance for the shed, pending final written decision, for the following reasons:

1. The variance for the fence will not alter the essential character of the neighborhood; and
2. The variance for the fence represents the minimum variance necessary to afford relief.

Motion by Mr. Chorman, seconded by Dr. Carson, carried unanimously that the **variance application be approved in part and denied in part for the reasons stated.** Motion carried 3 – 0.

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

Case No. 12636 – Ralph & Susan Galbreath seek variances from the front yard setback requirements for proposed structures (Sections 115-34 and 115-182 of the Sussex County Zoning Code). The property is located at the northeast side of Indian Queen Lane with the Blackwater Village Subdivision. 911 Address: 34020 Indian Queen Lane, Dagsboro. Zoning District: MR. Tax Map: 134-11.00-337.00

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 6.9 ft. variance from the 30 ft. front yard setback requirement for an existing porch and a 11.0 ft. variance from the 30 ft. front yard setback requirement for existing steps.

Mr. Ralph Galbreath and Mr. Thomas Bowden were sworn in to give testimony about the Application.

Mr. Bowden testified that he is the Applicant's contractor; that he has recently opened his business; that this project coincided with the birth of his daughter and he was not on site for nine days; that putting the roof on the porch made it non-compliant and, therefore, a variance is required; that this encroachment was discovered by a County inspector when inspecting a neighbor's dwelling; that work has ceased pending the outcome of this hearing; that the placement of the dwelling is pushed to the front of the property due to the location of the septic system located adjacent to the rear of the dwelling; that the porch was added in July 2021; that the steps have not yet been added; and that the porch cannot be built without a variance.

Mr. Galbreath testified that the house was built in 1991; that he wanted to make improvements to the property by adding a new roof, siding, and porch; that the Applicants are hoping to get approval so that they can continue with the construction; that he retained Mr. Bowden to build the porch; and that he later learned of the encroachment.

Ms. Norwood stated that the pool, shed, and deck were issued certificates of compliance in error so an administrative variance was granted for those structures.

Mr. Bowden testified that, if the steps were moved, it would not be symmetrical and would be out of character for the neighborhood; that the porch has an "A" frame with four posts; that the

steps will line up with the frame of the porch; and that he spoke with the president of the homeowners' association and the structures have been approved.

Mr. Galbreath testified that there is approximately 10 feet from the edge of paving to the property line; that the porch and steps will not cause any visibility issues on Indian Queen Lane; that the location of the septic system creates the practical difficulty as the system takes up most of the rear yard; that he received approval from the homeowners' association to build a porch on the dwelling; that there are three letters of support from neighbors; that he is improving the house; that he needs the covered porch to provide cover when he enters the house during inclement weather; that he relied on his contractor to follow County Code; and that he thought the structures could be built in compliance with the Code.

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

Mr. Williamson closed the public hearing.

Dr. Carson moved to approve Case No. 12636 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. Chorman, carried unanimously that the **variances be granted for the reasons stated**. Motion carried 3 – 0.

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

ADDITIONAL BUSINESS

There was no additional business.

Meeting adjourned at 7:39 p.m.