

MINUTES OF DECEMBER 14, 2020

The regular meeting of the Sussex County Board of Adjustment was held on Monday, December 14, 2020, 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 Chair Ellen Magee presiding. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, Mr. John Williamson. Mr. Brent Workman - Absent. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney and staff members Mr. Jamie Sharp – Director of Planning and Zoning, Ms. Jennifer Norwood - Planning and Zoning Manager, and Ms. Ann Lepore – Recording Secretary.

The Pledge of Allegiance was led by Ms. Magee.

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

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

Motion by Mr. Williamson, seconded by Mr. Chorman, and carried unanimously to approve the Minutes for the October 5, 2020, meeting. Motion carried 4 – 0.

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

Motion by Dr. Carson, seconded by Mr. Chorman, and carried to approve the Findings of Facts for the October 5, 2020, meeting. Motion carried 4 – 0.

The vote by roll call; Mr. Williamson – yea, Dr. Carson – yea, Ms. Magee – 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 case.

Chair Magee read the mask policy.

OLD BUSINESS

Case No. 12489 – Rehoboth Inn JK, LLC seeks variances from the front yard and rear yard setback requirements for existing and proposed structures (Sections 115-82, 115-182 and 115-183 of the Sussex County Zoning Code). The property is located on the southwest side of Coastal Highway (Rt. 1) approximately 153 ft. southeast of Washington Street. 911 Address: 20494 Coastal Highway,

Rehoboth Beach. Zoning District: C-1. Tax Parcel: 334-19.08-176.00

The Board discussed the case which had been tabled at the November 16, 2020 meeting.

Mr. Williamson moved to approve Case No. 12489 for the variances as the property has unique physical properties; that the exceptional practical difficulty was not created by the Applicants; that the variances will not alter the essential character of the neighborhood; that they are the minimum variances to afford relief; and that the variances will enable the reasonable use of the property.

Motion by Mr. Williamson, seconded by Dr. Carson, carried that the **variances be granted for the reasons stated**. Motion carried 3 – 1.

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

Case No. 12493 – Yekaterina Barg seeks variances from the side yard setback requirements for existing structures (Sections 115-42 and 115-183 of the Sussex County Zoning Code). The property is located on the south side of White Pine Drive within the Pines at Long Neck Subdivision. 911 Address: 136 White Pine Drive, Millsboro. Zoning District: GR. Tax Parcel: 234-23.00-859.00

The Board discussed the case which had been tabled at the November 16, 2020 meeting.

Mr. Chorman moved to approve Case No. 12493 for the variances as the property has unique physical properties; that the exceptional practical difficulty was not created by the Applicants; that the variances will not alter the essential character of the neighborhood; that they are the minimum variances to afford relief; and that the variances will enable the reasonable use of the property.

Motion by Mr. Chorman, seconded by Mr. Williamson, failed as three votes are necessary for granting a variance. Motion failed 2 – 2.

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

PUBLIC HEARINGS

Case No. 12464 – Coastal Services, LLC seeks a variance from the side yard setback requirement for proposed and existing structures. (Sections 115-42, 115-74, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located on the west side of Cedar Neck Road at the Hickman Road intersection. 911 Address: 30430 Cedar Neck Road, Ocean View. Zoning District: GR/B-1. Tax Parcel: 134-9.00-67.00

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received

no correspondence in support of or none in opposition to the Application and one mail return. The Applicant is requesting variance of 7.5 ft. from the 10 ft. side yard on the GR portion of the property and 17.5 ft. from the 20 ft. side yard on the B-1 portion of the property for a proposed storage building. Mr. Whitehouse noted that a Conditional Use 2239 was approved on October 27, 2020 by County Council for a general contracting business.

The Board found that Ms. Mackenzie Peet, Esq., was present on behalf of the Applicant, Coastal Services, LLC.

Ms. Peet stated that George Elliott is the owner of Coastal Services; that Coastal Services handles a wide variety of services including plumbing, HVAC, electrical work, general contracting and power washing; that the business has been in operation in Sussex County for more than twenty years; that no variance is needed for the deck because it is located at ground level; that the Applicant is requesting side yard variances to place a 6,720 sf pole barn; that there is a need for indoor storage for the business; that there are five neighbors who support this Application; that Mr. Elliott has agreed to install privacy fencing between his property and the lands of Colleen Sagers; that a building permit has been obtained for the fencing; that a conditional use permit for a general contracting business was granted for this property as well; that the business has operated from the B-1 portion of this property for a number of years; that Mr. Elliott purchased the GR portion and combined both lots into one parcel; that the business, Coastal Services, was a permitted use in the B-1 district but needed the conditional use permit for the GR district; that the proposed pole barn will provide storage for work equipment and materials; that the building will improve the aesthetics of the site; that the pole barn placement is determined by the existing buildings on the property; that the placement also allows for greater accessibility for employees to move and trade equipment in and out of the pole barn; that the placement of this building will allow a large turning radius to get equipment in and out of the pole barn; that the property is unique as it is a five-sided property with split-zoning; that the property cannot otherwise be developed because of the placement of the dwelling and other buildings and employee parking existing on the lot; that the exceptional practical difficulty was not created by the Applicant; that the variance will not alter the essential character of the neighborhood as there is another split-zoned parcel in close proximity and general commercial properties in the area; that the use is compatible with some existing uses in the area; that these variances are the minimum variances to afford relief and allow for the placement of the pole barn to provide storage for equipment and materials; that the Applicant looked at other locations on the lot for the pole barn but it could not be located elsewhere; that there is property zoned C-1 to the east of the site; that there is a shopping center nearby; and that the dwelling and structures were placed by a prior owner.

Mr. George Elliott was sworn in to give testimony about the Application. Mr. Elliott affirmed the statements made by Ms. Peet as true and correct. Mr. Elliott testified that there are similar pole buildings in the neighborhood; that the property has well and sewer; that he plans to move the storage containers and the shed; that he explored other options for the placement of the pole building but that this was the best placement for the needs of the business and the current conditions on the property; that he needs room for the turning radius of equipment; that he will be able to maintain the building

while remaining on the lot; that there will be no steps or doors at the back of the building; and that there is a tree on the property that causes further impediments.

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

Ms. Magee closed the public hearing.

Dr. Carson moved to approve Case No. 12464 for the variances stated as the property is unique; that the variances will not alter the essential character of the neighborhood, and that they are the minimum variances to afford relief.

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

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

Case No. 12492 – Boys & Girls Club of Delaware seek variances from the side yard setback and rear yard setback requirements for proposed and existing structures (Sections 115-25, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located on the southwest side of Oak Orchard Road approximately 442 ft. east of John J. Williams Highway (Rt. 24). 911 Address: 31550 Oak Orchard Road, Millsboro. Zoning District: AR-1. Tax Parcel: 234-29.00-69.06

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received four letters in support of and none in opposition to the Application and zero mail returns. The Applicant is requesting variances of 6.4 ft. from the 15 ft. side yard setback requirement on the southeast side for steps, 3.04 ft. from the 20 ft. rear yard setback requirement for a proposed addition and a 3.94 ft from the 5 ft. side yard setback requirement on the northwest side for an existing shed.

Mr. Ring Lardner was sworn in to give testimony about the Application and submitted exhibits to Board members.

Mr. Lardner testified that he is an engineer with Davis, Bowen and Friedel; that the request is for three variances; that also present are Ms. Millie Charnick, who is vice-president of the Southern Region Boys and Girls Club, Ms. Nicole Silicato-Miller, who is part of the Great Futures Fund Committee, Ms. Erica Kennedy of the Boys and Girls Club, and Mr. Mike Wheelton, who is an architect with Davis, Bowen and Friedel; that Oak Orchard Road is to the north of this site; that the property to the west is owned by the Nanticoke Indian Tribe; that the lands to the south and east are owned by Robert Reed; that the first variance is to allow for an external stairway for a proposed second floor addition which will encroach into the side yard setback; that the second variance is to allow the building expansion to encroach into the rear yard setback; that the third variance is for an existing shed to remain in its current location in the side yard setback; that the Boys and Girls Club

has reached capacity and needs to expand in order to accommodate the families in the area; that this property received a special use exception in 2010 to use a manufactured home as a classroom; that the proposed expansion is the least impactful that will still meet the needs of the Applicant; that the Club intends to expand to the rear and to create a second floor addition to the building; that the manufactured home will be removed; that the outdoor pavilion on the property will be relocated on the site; that the property is unique as it is a small lot that has a commercial use; that there was additional land purchased to increase the size of the lot in the early 2000s; that the lot width is 150' which is the minimum lot width for AR-1 zoning district; that there are properties zoned B-2 in the area which have lesser setback requirements; that the building is 100' from the right-of-way; that parking is located in the front yard; that the property cannot otherwise be developed as the stairs are needed for an emergency exit; that the building depth is needed to meet programming needs and life, health and safety codes; that the addition cannot be shortened in the rear yard to meet the setback requirements while still meeting other regulations; that there is no other location for the shed and it is needed for storage; that the exceptional practical difficulty has not been created by the Applicant but to serve the needs of the community, provide additional space for students and to meet safety regulations; that granting the variances will not alter the essential character of the neighborhood as the Boys and Girls Club is an integral part of this neighborhood and, if they were to relocate to another area, it would alter the character of the neighborhood; that the variances requested are the minimum to afford relief; that the building cannot be reduced in size as classrooms must be a certain size and hallways have to be ADA compliant; and that the shed cannot be relocated without negatively affecting the development of the property.

Ms. Mildred Charnick was sworn in to give testimony about the Application.

Ms. Charnick testified that she is the vice-president for the southern region of the Delaware Boys and Girls Club; that she began her employment with the Boys and Girls Club at the Oak Orchard Community Church while this building was under construction; that it is important to remain at this location as the Club serves many of the families in this area; that the club is in close proximity to Mountaire making this location convenient for families to drop off or pick up children after work; that they are hoping that the variances will be granted so that they can expand the building; that there is a current waiting list for 60 children; that the manufactured home will be removed; that the Covid-19 pandemic has hurt because, due to spacing issues, the number of children has been reduced; that prior to Covid-19 they were approved for 100 children; that they are hoping to be able to serve teenagers in the evening hours; and that they request the granting of the variances.

Ms. Magee, on behalf of the Board of Adjustment for Sussex County, thanked Ms. Charnick and the Boys and Girls Club for the good work they do for the Community.

Mr. Lardner testified that the Nanticoke Indian Association Chief supports the request; that the Reed lands are under contract for sale to a new owner; that the Boys and Girls Club plans to contact the new owner regarding purchasing an additional 5 ft. of land so that the rear yard variance will not be necessary but wished to proceed with the variance request at this time in the event that

they are unable to purchase the additional property; that the stormwater management area is located in the rear yard; that the Applicant cannot build elsewhere in the rear yard due to the stormwater management area; that no additional parking is needed; that there will be security lighting; and that there is no well or septic on site.

The Board found that three (3) parties appeared in support of the Application and no parties appeared in opposition to the Application.

Ms. Magee closed the public hearing.

Mr. Williamson moved to approve Case No. 12492 for the variances as the Applicant has met all the required criteria for granting a variance; that the variances will not alter the essential character of the neighborhood but will enhance the neighborhood; and that the variances requested are the minimum variances to afford relief.

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

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

Case No. 12500 – Mark Perdue seeks variances from the front yard setbacks for proposed and existing structures (Sections 115-34, 115-182 and 115-185 of the Sussex County Zoning Code). The property is located on the east side of Sylvan Vue Drive within the Blackwater Cove Subdivision. 911 Address: 34560 Sylvan Vue Drive, Dagsboro. Zoning District: MR. Tax Parcel: 134-11.00-704.00

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received three letters in support of and none in opposition to the Application and zero mail returns. The Applicant is requesting variances of 6 ft. from the 30 ft. front yard setback for an existing shed, 10 ft. from the 30 ft. front yard setback for a proposed pole building and 7.1 ft. from the 30 ft. front yard setback for an existing covered porch and ramp. Mr. Whitehouse notes that a certificate of occupancy was issued for the existing dwelling, porch, and shed.

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

Mr. Perdue testified that he is requesting three variances, two for situations existing on the property when he purchased the property and one for a proposed pole building; that he purchased the property in December 2019 and the shed, porch, and ramp were on the property at that time; that the property is unique as there is a tax ditch on the property and the topography of the property slopes off to the rear; that the pole building cannot be placed to the rear of the dwelling due to the placement of the septic system; that the septic system is in the rear yard; that the Sussex Conservation District has

approved the pole building; that there is a setback requirement from the tax ditch as well; that the exceptional practical difficulty was not created by the Applicant but by the unique physical properties on the site; that granting the variances will not create any visibility issues; that there have been no complaints about the existing setback issues on the property; that the variances will not alter the essential character of the neighborhood and the design will match the existing dwelling; that the variances requested are the minimum variance requests to afford relief; that there is a 4-6 feet drop in topography towards the tax ditch; that the pole building will be approximately 8 feet from his well; that there is an 8-9 foot gap between the edge of paving of Sylvan Vue Drive and the front property line; that there are no visibility issues from the road; that he has received no complaints about the shed; and that the shed cannot be moved as it is on a concrete slab and has electricity.

Mr. Whitehouse noted that the Applicant may need additional approvals from DNREC because of the tax ditch.

Mr. Perdue testified that DNREC is aware of where he intends to place the pole building.

Mr. Whitehouse stated that the building permit process will require a formal DNREC approval for the pole building.

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

Ms. Magee closed the public hearing.

Dr. Carson moved to approve Case No. 12500 for the variances because that the property is unique; that there are some physical circumstances and conditions that will not allow the property to be developed in strict conformity with the Sussex County Zoning Code; that the variances will not alter the essential character of the neighborhood; and that they are the minimum variances to afford relief.

Motion by Dr. Carson, seconded by Mr. Williamson, carried that the **variances be granted for the reasons stated**. Motion carried 3 – 1.

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

Case No. 12501 – Lawrence D. & Gale A. Lingo seek a variance from the side yard setback for a proposed structure (Sections 115-34, 115-184 and 115-185 of the Sussex County Zoning Code). The property is located on the north side of Loggerhead Court within the Swann Cove Subdivision. 911 Address: 31561 Loggerhead Court, Selbyville. Zoning District: MR. Tax Parcel: 533-12.00-923.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received two letters in support of and none in opposition to the Application and zero mail returns. The

Applicant is requesting a variance of 1.1 ft from the required 5 ft. side yard setback requirement on the west side for a proposed detached shed.

Mr. Lawrence Lingo was sworn in to give testimony about the Application.

Mr. Lingo testified that he needs extra storage space; that the shed measures 8 feet by 10 feet; that the property is unique as it is a narrow lot with only 11.9 ft to the property line from the dwelling; that placing an 8 ft. shed will not meet the 5 ft. County setback; that the HOA restrictions will not allow for a shed to be placed in the back yard; that the exceptional practical difficulty was not created by the Applicant but by the need for additional storage; that the Applicant cares for an elderly parent and handicapped wife so there is a need to store a mobility scooter and walker in addition to other items; that a ramp in the garage took up a lot of storage space; that the HOA has issued their approval and the adjacent neighbor is in support of the Application; that it will not alter the essential character of the neighborhood; that it is the minimum variance to allow for an 8 ft. shed for additional storage; and that there will be a 2-3 inch gap between the shed and the house.

Mr. Sharp stated that the variance needed will be 1.4 feet from the 5 feet side yard setback requirement since there will be a gap between the shed and the house.

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

Ms. Magee closed the public hearing.

Mr. Williamson moved to approve Case No. 12501 for the variance because the exceptional practical difficulty for the need for space was not created by the Applicants and that it is the minimum variance to afford relief.

Motion by Mr. Williamson, seconded by Mr. Chorman, carried unanimously that the **variances be granted for the reasons stated.** Motion carried 4 – 0.

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

Case No. 12502 – South Laurel, LLC seek a special use exception to operate a day care center (Sections 115-80 and 115-210 of the Sussex County Zoning Code). The property is located on the west side of N. Laurel Plaza Road at the intersection of Discount Land Road and Sussex Highway. 911 Address: 10771 N. Laurel Plaza Road, Laurel. Zoning District: C-1. Tax Parcel: 232-12.00-63.09

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or none in opposition to the Application and one mail return. The Applicant is requesting a special use exception to operate a day care facility.

Mr. Gary Campbell was sworn in to give testimony about the Application.

Mr. Campbell testified that he is representing the Applicant, Encounter Praize Church; that the property is leased by the church and is currently used for church services; that, because of the needs of the congregation, the church would like to have a daycare facility from Monday – Friday; that the hours of operation would be from 7:00 am – 5:30 pm; that Laurel was hit hard by daycare closings due to the Covid-19 pandemic and that essential workers were hit hard; that there are 4 businesses in the park including an HVAC business, a termite business, an appliance business, and a dance studio; that there will be two employees and a maximum of 15 students; that there will be a 762 sf fenced area for a playground; that there are bathroom facilities on site; that the daycare will be used for elementary school children; that there will no infants; that there are no kitchen facilities as the children will bring their own lunch; that the center is located in a light industrial park; that there is a Dollar General and Food Lion across the street; that there are movable partitions for individual classrooms; that the pick-up and drop-off hours will not affect the neighboring businesses; that the use as a day care center will not substantially adversely affect the uses of neighboring and adjacent properties; that the property is located along Route 13; that there is a 20 foot buffer between the road and the parking lot; that there is approximately 35 feet from the building to the front property line; and that there is room for a drop off area for parents.

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

Ms. Magee closed the public hearing.

Dr. Carson moved to approve Case No. 12502 for the special use exception as the use will not substantially adversely affect the uses of neighboring and adjacent properties.

Motion by Dr. Carson, seconded by Mr. Chorman, carried unanimously that the **special use exception be granted for the reasons stated.** Motion carried 4 – 0.

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

Case No. 12503 – Scott & Heather Carpenter seek a variance from the front yard setback for proposed structures (Sections 115-34 and 115-182 of the Sussex County Zoning Code). The property is located on the east side of Pebble Drive within the Sandy Beach Subdivision. 911 Address: 106 Pebble Drive, Dagsboro. Zoning District: AR-1. Tax Parcel: 233-6.00-169.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received five letters in support of or none in opposition to the Application and zero mail returns. The Applicant is requesting a variance of 11 ft. from the 30 ft. front yard requirement for a proposed porch and steps.

Mr. Scott Carpenter and Ms. Heather Carpenter were sworn in to give testimony about the

Application.

Ms. Carpenter testified that the uniqueness of the property is the fact that the lot is shallow, and the dwelling sits on the 30 ft. setback line; that it cannot be developed for a porch and steps without the variance; that the exceptional practical difficulty was not created by the Applicants as they purchased the property with the dwelling in its existing location in 2016 and wish to improve it with a front porch and steps; that the variance will not alter the essential character of the neighborhood but will enhance the appeal of the home; that neighbors have submitted letters in support of the Application; that placing a porch on the front of the home will help with the heat during the summer and during inclement weather; and that it is a minimum variance to afford relief.

Mr. Carpenter testified that he was unsure of the distance from the edge of paving to the property line but estimates the gap is approximately 10 ft.; that he did not take an average of the front yard setbacks of the neighboring properties; that the septic system takes up the rear yard and they cannot put anything there.

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

Ms. Magee closed the public hearing.

Mr. Chorman moved to approve Case No. 12503 for the variance.

Motion by Mr. Chorman, seconded by Mr. Williamson, carried unanimously that the **variances be granted for the reasons stated.** Motion carried 4 – 0.

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

Additional Business

Meeting adjourned at 7:47 p.m.