

MINUTES OF DECEMBER 16, 2024

The regular meeting of the Sussex County Board of Adjustment was held on Monday, December 16, 2024, 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. Shawn Lovenguth, Mr. John Hastings, and Mr. John Williamson. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Ms. Jennifer Norwood – Planning and Zoning Manager, and Ms. Hannah Wyatt – Recording Secretary.

The Pledge of Allegiance was led by Mr. Chorman.

Motion by Mr. Hastings, seconded by Dr. Carson and carried unanimously to approve the agenda. Motion carried 5 – 0.

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

Motion by Mr. Williamson, seconded by Dr. Carson and carried unanimously to approve the Minutes for the October 21, 2024, meeting. Motion carried 5 – 0.

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

Motion by Dr. Carson seconded by Mr. Lovenguth and carried to approve the Findings of Facts for the October 21, 2024, meeting. Motion carried 5 – 0.

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

PUBLIC HEARINGS

Case No. 13023 – Sea Air Village seeks variances from the separation distance requirement for proposed structures (Section 115-172 and 115-25 of the Sussex County Zoning Code). The property is located East of Sea Air Avenue within the Sea Air Village Manufactured Home Park. 911 Address: 19940 Atlantic Avenue, Rehoboth Beach. Zoning District: AR-1. Tax Parcel: 334-13.00-310.00-3055

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received zero opposition letters, zero letters of support, and eighteen mail returns.

Ms. Norwood stated that the Applicant is requesting the following variances:

- 6.4-ft. variance from the 20-ft. separation distance requirement from proposed landing to HVAC on Lot E30
- 7.5-ft. variance from the 20-ft. separation distance requirement from proposed landing to mobile home Lot E30
- 4.5-ft. variance from 20-ft. separation distance requirement from proposed mobile home to mobile home on Lot E30
- 1.7-ft. variance from the 20-ft. separation distance requirement from proposed mobile home to mobile home on Lot E30
- 13.5-ft. variance from the 20-ft. separation distance requirement from proposed shed to mobile home on Lot E30
- 2.9-ft. variance from the 20-ft. separation distance requirement from proposed mobile home to mobile home on Lot E26
- 12.1-ft. variance from the 20-ft. separation distance requirement from proposed mobile home to shed on Lot E26
- 3.6-ft. variance from the 20-ft. separation distance requirement from proposed HVAC to mobile home on Lot E26

Ms. Aimee Bennett was sworn in to give testimony for this application.

Ms. Aimee Bennett testified that a unit was surrendered to the landlord; that the house is unable to be repaired so they are asking for a variance to replace the home with a new manufactured home; that the property is uniquely narrow because the lots were made in the 1950s and 1960s prior to the current Sussex County zoning requirements for separation; that the lot sizes are small in comparison with the size of modern manufactured homes; that the Applicant selected a standard size floorplan for this home that is comparable to other new homes in the community; that the placement of the of the home will mirror the placement of the home that is being replaced; that, without the variances, she would not be able to place any size home; that the variances are needed for the reasonable use of the property; that the exceptional practical difficulty has not been created by the Applicant because the lots were made before the Sussex County separation requirements; that the property is unique due to its narrowness; that the placing of the new home will not alter the essential character of the neighborhood; that the variances are the minimum variances necessary to afford relief; that the structures will meet the setback requirements; that the neighbors are welcoming to the idea of a new home in the park; that the Applicant could have installed a porch addition but would have needed a variance; that the prior homeowner died in the original home; and that the model home chosen was the narrowest manufactured home available.

Ms. Bennett submitted a survey of the property from November 4, 2024.

Ms. Norwood confirmed that no variances are needed from Lot D27.

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. 13023 for the variances, pending final written decision, for the following reasons:

1. The property has unique physical conditions due to its narrowness;
2. The exceptional practical difficulty is not being created by the Applicant as the placement of structures on neighboring lots impacted where the house could be located;
3. The variances will not alter the essential character of the neighborhood; and
4. The variances sought are the minimum variances necessary to afford relief.

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

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

Case No. 13024 – Christopher Siperko seeks a variance for the height requirement for an existing fence (Sections 115-25 and 115-185 of the Sussex County Zoning Code). The property is located on the north side of Carter Lane. 911 Address: 11039 Carter Lane, Seaford. Zoning District: AR-1. Tax Parcel: 132-2.12-25.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received four letters of support to the Application, zero letters in opposition, and zero mail return.

Ms. Norwood stated that the Applicant is requesting 2.5 feet variance from the 3.5 feet maximum height requirement for an existing fence.

Mr. Christopher Siperko was sworn in to give testimony for this application.

Mr. Siperko testified that he assumed that he could put a 6 foot fence up because the neighboring property had one when he moved to the street; that the fence adds to the appearance of Carter Lane; that the property is unique because it is located at the end of a gravel drive; that the side of the fence that was installed and passes the front of the dwelling borders nothing but trees and shrubbery; that there is no other current dwelling on that side that would cause any concern for the placement of the fence; that there is also an existing wood fence located directly across Carter Lane that has been installed almost identically past the front of the dwelling; that he hopes to install a pool in the future; that the fence will be needed for the pool; that the septic system is located in the far-right corner of the property; that there is a well and overhead electric wires on the property; that the utility pole shown on the plot plan has been removed; that he intends to install a pool in the front right side of the property; that, when the fence was installed, neither he nor the fence company were aware of the setbacks and had no intention of going against Code; that the fence location was chosen due to

the future location of the in-ground pool; that he told the fence company where he wanted the fence installed; that the fence is on level ground; that the fence placement does not affect any surrounding properties or other homeowners; that, if any home were to be built next to the fence in the empty lot, it still would not affect them; that the fence is 11.5 feet from the septic system in the rear yard; that there is an abandoned well on the property; that the pool will go in front of the septic system but will not project farther than the house; that the property was surveyed and he had the fence placed 6 inches off the property line; that all four properties have rights to Carter Lane but only two use Carter Lane; that there was positive feedback from the neighbors; that there is a 3 foot slope from the pool location to the fence; that large vehicles turn in his driveway; that he worked with a contractor for the fence; that there is no homeowners association; and that he is not sure who is responsible for maintaining Carter Lane.

Ms. Norwood noted that a fence requires a permit; that a building permit was obtained; that there was no building permit issued for the neighbor's fence; that Carter Lane is a paper street on the County Tax Map; and that Carter Lane does not have a cul-de-sac.

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

Mr. Chorman closed the public hearing.

Mr. Lovenguth moved to deny the application for Case No. 13024 for the requested variance, pending final written decision, because the property does not have unique physical conditions which have created an exceptional practical difficulty. As part of the motion, Mr. Lovenguth directed that a letter be sent to the Applicant's contractor.

Motion by Mr. Lovenguth, seconded by Mr. Hastings, carried that the **variance be denied for the reasons stated**. Motion carried 3-2.

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

Case No. 13025 – Joseph Ciarlo, Jr. seeks a variance for the height requirement for a proposed fence (Sections 115-82 and 115-185 of the Sussex County Zoning Code). The property is located on the north side of Coastal Highway and East of Carolina Street within the Killens Addition Subdivision. 911 Address: 38436 Carolina Street, Rehoboth Beach. Zoning District: C-1. Tax Map: 334-20.09-187.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received one letter in support of the Application, zero letters of opposition, and one mail return.

Ms. Norwood stated that the Applicant is requesting a 3.5 foot variance from the 3.5 feet maximum fence height requirement for a proposed fence.

Mr. Joseph Ciarlo, Jr., was sworn in to give testimony for this application.

Mr. Ciarlo testified that their home is in the Forgotten Mile in between Rehoboth Beach and Dewey Beach; that, many years ago, the State added another lane on both sides of the highway and this expansion significantly cut back on their lot size; that there is a bike lane, shoulder, and sidewalk between the property line and Route 1; that, in the summer when they get a lot of traffic, there is a lot of noise pollution, light pollution, and dog waste; that people that are leaving the bars late at night have broken his landscape lights and litter on his property; that he used to have a post with a chain but it did not alleviate the problem; that the fence will be a white vinyl fence with lattice at the top; that the neighboring properties have similar fencing as to what he is proposing; that a nearby property that has townhouses has had similar fencing for over 10 years; that he requests the height of the fence because he they get a lot of light coming in their window as shown in an exhibit he submitted; that the fence would not hinder the line of sight for oncoming traffic; that the fence would not impede the pedestrian or vehicle traffic; that they are seeking a solution to help them and not bother the traffic; that the property is unique because it is located right next to the highway; that the property cannot otherwise be developed; that the fence would provide a little security for when grandkids visit; that the fence would not alter the character of the neighborhood; that neighbors do not oppose the request; that a 3.5 foot fence would not help with the light pollution, trespassing, and litter and this is why they request the 7 foot fence; that the fence would be 3.5 ft from the fence to the sidewalk; that Route 1 is considered the side yard; that he has found beer bottles, condoms, and trash on his lot; that the living quarters of the dwelling are on the side of the dwelling closest to Route 1 and are the areas most affected by light pollution; that he considered shrubbery but prefers the fence; that he will install shrubs in the corner; that there is a stop sign at the intersection of Carolina Street and Route 1; that there are only 6 houses along Carolina Street; that there is little traffic along Carolina Street; and that there is no slope to the property.

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. 13025 for the requested variance, pending final written decision, for the following reasons:

1. The property has unique physical circumstances or conditions due to the proximity to Route 1 and the traffic;
2. The exceptional practical difficulty has not been created by the Applicant;
2. The variance will not alter the essential character of the neighborhood; and
3. The variance represents the minimum variance necessary to afford relief.

Motion by Mr. Hastings, seconded by Mr. Lovenguth, carried that the **variance be approved for the reasons stated**. Motion carried 3-2.

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

Case No. 13026 – Esly Ruiz seeks variances from the front and side yard setback requirements for an existing structure (Sections 115-42 and 115-185 of the Sussex County Zoning Code). The property is located on the north side of West Springside Drive and south side of Fisher Road within the Coolspring Farms Subdivision. 911 Address: 28537 West Springside Drive, Milton. Zoning District: GR. Tax Map: 334-10.00-109.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received zero letters of support to the Application, zero letters of opposition, and two mail return.

Ms. Norwood stated that the applicant is requesting a 3.2 feet variance from the 10 feet side yard setback requirement on the southeast side for an existing dwelling and a 1.8 feet variance from the 30 feet front yard setback for an existing dwelling.

Ms. Esly Ruiz and Mr. Henry Ruiz were sworn in to give testimony for this application.

Ms. Ruiz testified that, when they first got the property, they believed the septic that was present was in functioning condition but they had to replace it; that because the lot is so small it takes up most of the property; that the engineer that approved the septic knew about the size of the house; that, when they placed the house, it was set on an angle to avoid the septic system; that the septic system takes up a large part of the building envelope; that the driveway is shared; that the older manufactured home on the lot was removed; that there have been no complaints from neighbors about the placement of the home; that there is a gap between the front property line and the edge of paving of the road; that the house is greater than 30 feet from the road; that the lot is a through lot but they have no access to Fisher Road; and that the house was angled due to the septic system and that, had the house been placed parallel to the side property line, it would have encroached into the septic system.

Mr. Ruiz testified that the used a contractor to place the house on the lot; that the driveway already existed when they purchased the lot; and that the prior septic system was placed in the 1960s.

Mr. Sharp stated that the property consists of 10,000 square feet and, if the property consisted of 9,999 square feet the side yard setback would be 5 feet.

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

Mr. Chorman closed the public hearing.

Dr. Carson moved to approve the application for Case No. 13026 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique physical circumstances or conditions due to the location of the septic system;
2. The exceptional practical difficulty has not been created by the Applicants;
3. The variances will not alter the essential character of the neighborhood nor will the variances be detrimental to the public welfare; and
4. The variances represent the minimum variances necessary to afford relief.

As part of his motion, Dr. Carson directed staff to send a letter to the contractor about the encroachment.

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

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

Case No. 13027 – Ana and Paulo Fabiano seek a special use exception for a childcare center (Sections 115-23 of the Sussex County Zoning Code). The property is located on the northwest side of Millsboro Highway. 911 Address: 38330 Millsboro Highway, Millsboro. Zoning District: AR-1. Tax Parcel: 333-14.00-30.05

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received five letters of support to the Application, zero letters in opposition to the Application, and zero mail returns.

Ms. Norwood stated that the Applicants are requesting a special use exception for a childcare center.

Ms. Ana Fabiano was sworn in to give testimony for this application.

Ms. Fabiano testified that there is a shortage of childcare facilities in the area and most of them have a long waiting list; that her own daughter is affected by this shortage; that she has someone that will use her property for the facility; that the lady who will run the facility has all of her licensing and that the Board of Education is just waiting for the Board’s approval; that the facility will be open 6:30am to 5:00pm; that they were hoping to have 20-26 kids but the fire department has to do their inspections to get a final head count; that they have a well system and septic system; that there would be 3 employees; that there is a fenced in recreational area behind the house; that the neighbors will use the childcare facilities; that it will provide year-around care and they will have kids aged 1-12 years old; and that she is not concerned about the traffic because they are making their driveway larger

so it will make the flow of in and out easier.

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

Mr. Chorman closed the public hearing.

Dr. Carson moved to approve the application for Case No. 13027 for the requested special use exception, pending final written decision, because the request does not substantially adversely affect the neighboring and the adjacent properties.

Motion by Dr. Carson, seconded by Mr. Williamson, carried that the **special use exception be approved for the reasons stated.** Motion carried 5-0.

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

ADDITIONAL BUSINESS

Meeting adjourned at 7:38 p.m.