

MINUTES OF DECEMBER 18, 2017

The regular meeting of the Sussex County Board of Adjustment was held on Monday, December 18, 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 Mrs. Jennifer Walls – Planning Manager, Mr. Jamie Whitehouse – Planning Technician, and Ms. Christin Headley – Recording Secretary.

The Pledge of Allegiance was led by Mr. Callaway.

Motion by Mr. Mills, seconded by Mr. Mears, and carried unanimously to approve the Revised Agenda as Amended. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Mears, and carried unanimously to approve the Minutes and Finding of Facts for October 16, 2017. 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. 12067 – John Thomas & Julie Thomas - seek a variance from the side yard setback requirement (Section 115-185 of the Sussex County Zoning Code). The property is located on the south side of Carla Avenue, at the corner of Carla Avenue and Draper Drive. 911 Address: 316 Carla Avenue, Rehoboth Beach. Zoning District: MR. Tax Map No.: 3-34-20.13-225.01.

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 request a variance of 3.0 feet from the ten (10) feet side yard setback requirement on the south side for a proposed pool.

John Thomas was sworn in and testified about the Application.

Mr. Thomas testified that the yard is small and narrow; that pool will be located seven (7) feet from the side property line and six (6) feet from the rear property line; that the pool is proposed to be located in this location in order to provide separation distance from the house; that there will be pavers between the house and the pool; that the Property is unique because the space available for a pool is too small; that there is little difference in cost for a large pool versus a small pool; that the variance will not alter the essential character of the neighborhood; that other neighbors have obtained variances; that there are other pools in the neighborhood; that the variance requested is the minimum variance necessary to afford relief; and that the pool will be concrete.

Mrs. Walls stated that there is approximately 37 feet from the side property line to the

dwelling; and that there will be approximately 11 feet from the edge of the pool to the house.

Mr. Thomas testified that there is no well or septic on the Property; that pavers will be placed around the pool; that the sitting area near the pool will be located between the pool and the dwelling; that they have not spoken with their neighbors about the pool; that the Applicants do not live on the Property; that his neighbor has a shed near the property line; that there will be landscaping between the pool and the fence; that the Applicants have been saving for the past five (5) years to pay for the pool; and that the builder lined the house up with other houses in the neighborhood.

Mrs. Walls advised the Board that the Property is a corner lot; and that Carla Avenue is considered the front yard and Draper Drive is considered the corner front yard.

Mr. Thomas testified that his brother-in-law built the house; that there are no stairs from the rear of the dwelling to the area where the pool will be located; that the Applicants are considering constructing an access from the sunroom to the pool and stairs would be needed from that access point; that there is no HVAC system near where the pool will be located; that there is a fence in the side and rear yard; and that the dwelling consists of approximately 2,400 square feet.

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

Mr. Mills moved to approve Variance Application No. 12067 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique since it is a corner lot;
2. A 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;
5. The variance will not be detrimental to the public welfare; and
6. The requested variance is the minimum variance necessary to afford relief.

Motion by Mr. Mills, 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.

Case No. 12068 – Robert Joseph Frey & Gina Drago Frey - seek a variance from the front yard setback requirement (Sections 115-182 of the Sussex County Zoning Code). The property is located on the south side of Water Walk Way, at the intersection of Water Walk Way and Nature Walk Way. 911 Address: 38035 Water Walk Way, Selbyville. Zoning District: MR. Tax Map No.: 5-33-19.00-1346.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received four

(4) letters in support of the Application and read them into the record, and no correspondence in opposition to the Application. The Applicants request a variance of 5.4 feet from the thirty (30) feet front yard setback requirement for existing steps.

Gina Frey and Robert Frey were sworn in to testify about the Application. The Applicants submitted a site and grading plan into the record for the Board to review.

Mr. Frey testified that the Property is unique due to its pie-shape; that the Property is narrow; that there is a bio-swale on the east side of the Property; that the Property is subject to a wetland buffer of fifty (50) feet in the rear yard; that these conditions limit the Property's building envelope; that they explored options to construct a home on the Property within the building envelope and reviewed multiple different blueprints; that the bio-swale has a steep slope; that the variance will not alter the essential character of the neighborhood; that the homes in the neighborhood are three (3) stories tall with entrances on the second floor; that the dwelling has a second story entrance; that the variance requested is the minimum variance necessary to afford relief; that the house has been constructed and the stairs are already in place; that the original drawings showed that the stairs would extend five (5) feet from the building envelope and would comply with the Sussex County Zoning Code; that the footings were pinned; and that the house is located on pilings and the stairs go to the second floor entrance.

Mrs. Walls advised the Board that the variance is needed because the stairs extend farther than five (5) feet into the front yard setback area.

Mr. Frey testified that a temporary certificate of occupancy was issued; that he served as the general contractor on the project; that the house was placed as far west and south as possible while not encroaching on the bio-swale or the wetland buffer area; that neighboring homes have similar stairs; that the first floor is used for a garage, mechanical room, bedroom, and recreation room; that the homeowners association requires that homes consist of at least 2,400 square feet; that the garage slab was raised to minimize the slope; and that he minimized the grade of the driveway.

Mrs. Frey testified that there is an interior staircase as well.

Mr. Sharp advised the Board that, even if the first floor of living space was the second floor of the dwelling, a variance would still be needed because the stairs encroach more than five (5) feet into the front yard setback area.

Mr. Frey testified that the stairs lead straight out from the house rather than turn because space was needed for cars to be able to access the garage; and that the stairs also lead to a walkway.

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

Ms. Magee moved to approve Variance Application No. 12068 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique as it is narrow and pie-shaped;
2. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
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 afford relief.

Motion by Ms. Magee, seconded by Mr. Workman, 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.

Case No. 12069 – Nan Martino - seeks variances from the front yard and side yard setback requirements (Section 115-34 and 115-185 of the Sussex County Zoning Code). The property is located at the end of Oakwood Court, approximately 300 feet east of the intersection of Cedarwood Drive and Oakwood Court. 911 Address: 6 Oakwood Court, Lewes. Zoning District: MR. Tax Map No.: 2-34-11.00-175.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of the Application and read it into the record and no correspondence in opposition to the Application. The Applicant requests a variance of 23.4 feet from the thirty (30) feet front yard setback requirement for an existing pole building and a variance of 1.5 feet from the five (5) feet side yard setback requirement on the northeast side for an existing shed.

Nan Martino and Michelle Sartan were sworn in to testify about the Application and submitted pictures into the record for the Board to review.

Ms. Sartan testified that she is a representative of Diamond State Pole Buildings (“DSPB”) and assisted the Applicant with the installation of the pole building; that DSPB believed the structure met the setback requirements based on the available drawings; that the Property is unique; that the encroachments were not discovered prior to the pouring of concrete; that the building is now erected; that no placement survey was required; that the shed has been on the Property for thirty (30) years and prior to the Applicant’s ownership; that there is no other place where the pole building could be located; that the septic is located in the rear yard and the Property is serviced by a well; that the building is not detrimental to the public welfare; and that the cul-de-sac was widened a few years ago.

Ms. Martino testified that she lost a portion of the Property due to the widening of the cul-de-sac a few years ago.

Ms. Sartan testified that DSPB relied on a drawing of the Property that did not show any structures; that DSPB will require a placement survey in certain instances; that there are two sets

of fences on the Property and they used the fences for the measurements; that she believed the front yard setback requirement was thirty (30) feet; and that she does not know if the flags were moved prior to the pole building being built.

Ms. Martino testified that DSPB obtained the building permit; that she has owned the Property for 5 years; that there is approximately 33 feet from the edge of paving of the cul-de-sac to the edge of the pole building; that the building measures 20 feet by 40 feet; that the building was erected in May 2017 and permits were issued in February or March 2017; and that she was notified by Planning & Zoning of the encroachment after the building was erected.

Ms. Sartan testified that DSPB builds approximately 200 pole buildings a year; and that the flags for placement of the pole building were placed by DSPB and the Applicant.

Ms. Martino testified that trees were removed but the stakes were not moved during the construction process; that the encroaching shed was on the Property when she purchased the Property; that she wants a garage; that her neighbors do not object to the request; that there is an easement of approximately 3 feet from the edge of paving to the mailbox; that, if she had known of the encroachment issues, she would not have built a building that size; that she did not create the exceptional practical difficulty for the shed; and that the shed is “destroyable”.

Ms. Sartan testified that she asked the Applicant to identify the property lines.

Ms. Headley provided a copy of the building permit to the Board to review

The Board found that two (2) parties appeared in support of the Application.

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

Motion by Mr. Mills, seconded by Mr. Mears, and carried unanimously that the case **be tabled until January 8, 2018**. Motion carried 5 – 0.

Case No. 12071 – James E. Hudson, Jr. - seeks variances from the side yard setback requirement (Sections 115-20 and 115-185 of the Sussex County Zoning Code). The property is located on the east side of Gravel Hill Road, approximately 650 feet south east of the intersection of Shingle Point Road and Gravel Hill Road. 911 Address: 18315 Gravel Hill Road, Georgetown. Zoning District: AR-1. Tax Map No.: 2-35-25.00-43.02.

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 requests a variance of 44.4 feet from the fifty (50) feet setback requirement on the south side for an existing stable and a variance of 4.9 feet from the five (5) feet side yard setback requirement on the south side for an existing playhouse.

James Hudson, Jr., Lori Hudson, and Theresa Rogers were sworn in and testified about the

Application. Mr. Hudson submitted exhibits and a support letter into the record for the Board to review.

Mr. Hudson testified that the stable and playhouse encroach into the setback areas; that he is a building contractor; that he believed the side yard setback requirement was 15 feet when the structures were built; that the woods on the Property are thick; that he consulted with a surveyor when he built the structures and believed that there was additional room from the proposed location of the structures and the property line; that he believed the structures were at least 15 feet from the side yard property line; and that the variances will not alter the essential character of the neighborhood.

Mrs. Hudson testified that the issue arose because the Property is being sold; and that they spoke with Elwood Wilson and Bessie Wilson, who are their neighbors, about the variances and the Wilson do not object to the requests.

Mr. Hudson testified that the stable has been on the Property since 1979; that the playhouse was constructed in 2002; and that he was not aware the 50 feet setback requirement for the stable until the late 1990s.

Mrs. Hudson testified that the playhouse does not encroach onto neighboring lands.

Mr. Hudson testified that the playhouse cannot be moved into compliance; that there are thick trees nearby; that the Property is served by well and septic; that the well is located in the front yard; that the septic system is located in the rear yard within the building envelope; and that there is a portable manure dumpster on the Property and it will be moved.

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

Mr. Mills moved to approve Variance Application No. 12071 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Applicant was mistaken about the setback requirements;
2. The variances are necessary to enable the reasonable use of the Property;
3. The variances will not alter the essential character of the neighborhood; and
4. The requested variances are the minimum variances necessary to afford relief; and
5. The variances will not be detrimental to public welfare.

Motion by Mr. Mills, seconded by Ms. Magee, and carried unanimously that the **variances 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.

Case No. 12073 – Steven Tait & Robin Tait - seek variances from the front and side yard setback requirements (Section 115-34 of the Sussex County Zoning Code). The property is located on the west side of Shore Drive, at the southwest corner of the intersection of Oak Street and Shore Drive. 911 Address: 9272 Shore Drive, Milford. Zoning District: MR. Tax Map No.: 2-30-17.00-183.00.

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 Applicants request a variance of 9.5 feet from the fifteen (15) feet corner front yard setback requirement along Bayshore Drive for a dwelling, a variance of 8.6 feet from the fifteen (15) feet corner front yard setback requirement along Bayshore Drive for a dwelling, a variance of 28.2 feet from the thirty (30) feet front yard setback requirement along Oak Street for a dwelling, a variance of 27.7 feet from the thirty (30) feet front yard setback requirement along Oak Street for a dwelling, a variance of 23.8 feet from the thirty (30) feet front yard setback requirement along Oak Street for a dwelling, a variance of 7.0 feet from the ten (10) feet side yard setback requirement on the west side for a dwelling, and a variance of 8.1 feet from the ten (10) feet side yard setback requirement on the west side for a dwelling.

Mark Redden was sworn in and testified on behalf of the Application.

Mr. Redden testified that he is the Applicants' architect; that the Property is a small, undersized lot; that the Property is approximately half the size it is required to be under the Sussex County Zoning Code; that the Property is located in the flood plain; that the Property cannot be developed in strict conformity with the Sussex County Zoning Code; that the Applicants propose to raise the dwelling above the flood plain; that the footprint of the house will not change but the house will be three (3) feet taller; that the exceptional practical difficulty was not created by the Applicants; that the dwelling has been on the Property for approximately fifty (50) years and was constructed without regard to the setback requirements; that the variances will not alter the essential character of the neighborhood; that the Applicants propose to renovate the dwelling and it will be more attractive; that there will not be parking spaces under the dwelling; that the variances requested are the minimum variances necessary to afford relief; that the dwelling was built prior to the enactment of the Sussex County Zoning Code; that the interior of the dwelling will be renovated; that the lot will be re-sodded; that raising the dwelling will help with the flood insurance rates in the neighborhood; and that there is a gap between the edge of paving of Oak Street and Bayshore Drive and the property lines.

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

Mr. Mills moved to approve Variance Application No. 12073 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to the existing non-conforming nature of the dwelling;
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; and
5. The requested variances are the minimum variances necessary to afford relief.

Motion by Mr. Mills, seconded by Ms. Magee, and carried unanimously that the **variances 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.

Case No. 12074 – Lawrence John Hefner - seeks a variance from the side yard setback requirement (Section 115-185 of the Sussex County Zoning Code). The property is located on the west side of Oak Street, approximately 800 feet northwest of the intersection of Road 351 and Oak Street. 911 Address: 31382 Oak Street, Ocean View. Zoning District: GR. Tax Map No.: 1-34-12.00-121.00.

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 requests a variance of 1.5 feet from the five (5) feet side yard setback on the southeast side for an existing shed.

Laurie McFeal was sworn in and testified about the Application.

Ms. McFeal testified that she is the Applicant's realtor; that the Applicant is in poor health; that the Applicant purchased the Property in 2003 and the shed was located on the Property at that time; that the Applicant is selling the Property but is unable to consummate the transaction because of the shed's encroachment into the setback area; that neighboring properties have sheds; that the shed has a permanent foundation and contains utilities; that the shed has been on the Property for approximately 20 years; that the shed cannot be moved into compliance with the Sussex County Zoning Code; that the Applicant did not create the encroachment; that the variance will not alter the essential character of the neighborhood; that the variance requested is the minimum variance necessary to afford relief; and that there is a well on the Property which serves the shed.

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

Ms. Magee moved to approve Variance Application No. 12074 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The exceptional practical difficulty has not been created by the Applicant as the shed has been there many years; and
2. The variance will not alter the essential character of the neighborhood.

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

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

Case No. 12075 – Donald Broderick, II - seeks variances from the side yard setback requirement (Section 115-42 of the Sussex County Zoning Code). The property is located on the west side of Swann Drive, approximately 1,000 feet northeast of the intersection of Blue Teal Road and Swann Drive. 911 Address: 37831 Swann Drive, Selbyville. Zoning District: GR. Tax Map No.: 5-33-12.16-514.00.

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 requests a variance of 3.5 feet from the ten (10) feet side yard setback requirement on the north side and a variance of 3.2 feet from the ten (10) feet side yard setback requirement on the south side for a proposed dwelling.

Donald Broderick and Michael Deatrick were sworn in to testify about the Application and submitted pictures for the Board to review.

Mr. Broderick testified that the Property is unique; that the Property is located in Swann Keys and measures only 40 feet wide; that the Property has a small lot size; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code; that the Applicant did not create the exceptional practical difficulty; that the variances will not alter the essential character of the neighborhood; that similar variances have been granted in the neighborhood; that the variances requested are the minimum variances necessary to afford relief; that the dwelling will be a single-story, double-wide manufactured home; that the dwelling will be set above the flood plain; and that the dwelling will measure 26.7 feet wide but the dwelling will measure 28 feet wide with the eaves.

Mr. Dietrick testified that the single-wide manufactured home on the site will be removed; and that the existing dwelling is a 1964 model.

Mr. Broderick testified that there is a porch which is part of the dwelling; that there will be steps from the front and rear of the home; that there will be no steps to the sides of the home; and that the steps and HVAC system will be placed within the building envelope.

Mr. Dietrick testified that he spoke with his neighbors and they support the Application

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

Ms. Magee moved to approve Variance Application No. 12075 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to the small lot size;
2. Other variances have been granted in the neighborhood; and
3. The variances are necessary to enable reasonable use of the Property.

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

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

ADDITIONAL BUSINESS

Case No. 11867 – Nicholas J. D’Ascoli - seeks variances from the side yard setback requirement (Section 115-25C of the Sussex County Zoning Code). The property is located on the southeast side of the dead end of the Taft Avenue approximately 390 feet southwest of Old Lighthouse Road. 911 Address: 38835 Taft Avenue, Selbyville. Zoning District: AR-1. Tax Map No.: 5-33-20.18-166.00.

REQUEST FOR A SIX (6) MONTH TIME EXTENSION

Mrs. Walls presented the request of the Applicant to extend the approval for a variance for a period of six (6) months. The variance was initially granted in January 2017 and the Applicants encountered construction delays due to the soil composition. The Applicants have resolved those issues and are ready to move forward with the construction and requested an extension of six (6) months in order to give them time to construct the dwelling.

Motion by Ms. Magee, seconded by Mr. Mears, and carried unanimously that **the extension request be granted for a period of six (6) months**. 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.

OLD BUSINESS

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 which has been tabled since December 11, 2017.

The Board discussed the Application.

Mr. Mears stated that the manufactured home is already placed and hooked up.

Ms. Magee stated that a building permit was issued with the correct setback requirements.

Mr. Mears stated that the neighborhood is not free of encroachments.

Ms. Magee stated that the Applicant put the stakes in the wrong place and that it was placed

incorrectly in human error.

Ms. Magee moved to approve Variance Application No. 12063 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The error was unintentional;
2. The Property cannot otherwise be developed in strict conformity with the Sussex County Code;
3. The variance will not alter the essential character of the neighborhood; and
4. The requested variance is the minimum variance necessary to afford relief.

Motion by Ms. Magee, seconded by Mr. Mills, 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 8:53 p.m.