

## MINUTES OF DECEMBER 2, 2019

The regular meeting of the Sussex County Board of Adjustment was held on Monday, December 2, 2019, at 6:00 p.m. in the County Council Chambers, 2 The Circle, Georgetown, Delaware.

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, and Mr. Brent Workman. Also, in attendance were Mr. Scott Wilcox, Esquire – Assistant County Attorney, and staff members Mr. Jamie Whitehouse – Planning Manager, Ms. Lauren DeVore – Planner, 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 to approve the agenda. Motion carried 5 – 0.

Motion by Dr. Carson, seconded by Mr. Williamson, and carried unanimously to approve the Minutes for the October 7, 2019, meeting. Motion carried 5 – 0.

Motion by Dr. Carson, seconded by Mr. Williamson, and carried to approve the Findings of Facts for the October 7, 2019, meeting. Motion carried 5 – 0.

### OLD BUSINESS

**Case No. 12383 – Thomas F. & Bettie J. Dunkin** seek variances from the front yard setback and corner front yard setback requirements for a proposed pool and a proposed structure, a variance from the fence height requirement for a proposed fence. (Sections 115-34, 115-182 and 115-185 of the Sussex County Zoning Code). The property is located on the northeast corner of Arrow Dr. and Trails End Dr. within the Blackwater Village subdivision. 911 Address: 34023 Arrow Drive, Dagsboro. Zoning District: MR. Tax Parcel: 134-11.00-263.00

Mr. Whitehouse presented the case which was tabled at the Board's meeting on November 18, 2019. Mr. Chorman stated that he had not reviewed the tape of the public hearing and would abstain from the discussion and from voting.

The Board held a brief discussion.

Mr. Workman moved to approve Application No. 12383 for the variance for the fence and to deny the variances for the pool and the shed as the Applicants have not met the criteria for granting a variance for those structures.

Mr. Workman moved, seconded by Dr. Carson and carried that the **variances be granted in part and denied in part**. Motion carried 4 - 0. Mr. Chorman abstained.

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

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

### **PUBLIC HEARINGS**

**Case No. 12337 – Ariel Gonzalez** seek variances from the front yard setback and side yard setback requirements for proposed and existing structures (Sections 115-25 and 115-183 of the Sussex County Zoning Code). The property is a landlocked parcel on the northside of Saw Mill Rd. approximately 0.47 miles from Pine Rd. 911 Address: 20116 Saw Mill Rd. Georgetown. Zoning District: AR-1. Tax Parcel: 135-4.00-11.01

Ms. DeVore 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 one mail return. The Applicant is requesting a variance of 9 ft. from the required 15 ft. side yard setback for an existing porch. Ms. DeVore noted that this case was previously on the agenda for the July 15, 2019 meeting, due to a medical emergency the Applicant was unable to attend the meeting and the Board agreed to a rehearing at the October 7, 2019 meeting.

Ariel Gonzalez and Paul Tennell were sworn in to give testimony about the Application.

Mr. Tennell testified that the Property is unique due to the size of the lot and the location of the septic; that there was no other place to put the covered porch as the entrance to the dwelling is on the east side of the property; that the practical difficulty was not created by the Applicant as the property was purchased with the non-conforming dwelling in the current location; that it will not alter the character of the neighborhood as the lot to the east is owned by the Applicant and the property to the south is vacant; and that it is the minimum variance request to allow the covered porch to remain in place.

Mr. Gonzalez testified that he obtained a permit for a 10x11 porch but he did not understand the setbacks as listed on the permit. He is, therefore, seeking a variance of 9 feet to allow the porch to encroach into the side yard setback.

Mr. Gonzalez testified that there was no other place to put the porch.

Paul Reiger was sworn in to give testimony in opposition to the Application.

Mr. Reiger testified that he understood that setbacks would be checked when the footing inspection is completed to avoid the need for this type of variance request.

Mr. Whitehouse stated that this porch was built prior to the beginning of the new inspection process.

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

Mr. Williamson moved to table Case No. 12337 until the December 16, 2019, meeting.

Motion by Mr. Williamson, seconded by Mr. Chorman, carried unanimously to **table this case until the next meeting on December 2, 2019**. Motion carried 5 – 0.

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

**Case No. 12387 – William & Katherine Eager** seek variances from front yard setback requirements for a proposed pool and proposed structures, and a variance from the fence height requirement for a proposed fence. (Sections 115-34, 115-182 and 115-185 of the Sussex County Zoning Code). The property is a through lot fronting on Porpoise Way and Camelsback Dr. in the Retreat subdivision. 911 Address: 31495 Purpoise Way, Bethany Beach. Zoning District: MR. Tax Parcel: 134-13.00-1701.00

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received no correspondence in support of and twelve letters in opposition to the Application and zero mail returns. The Applicants are requesting the following variances:

- 20 ft. from the required 30 ft. front yard setback for a proposed pool and raised patio.
- 26 ft. from the required 30 ft. front yard setback for proposed steps.
- 26 ft. from the required 30 ft. front yard setback for proposed steps.
- 0.5 ft. from the required 3.5 ft. height requirement for a proposed fence.

William Eager was sworn in to give testimony about the Application. Mr. Tim Willard, Esquire, presented the Application on behalf of the Applicant and submitted exhibits to Board members.

Mr. Willard stated that the Eager family built the dwelling in 2017; that it was the Applicants' intention to install a swimming pool as stated on the original building permit; that the HOA board originally approved the pool; that the lot is unique because it is a narrow lot only 60' wide and is a through lot with two front yard setbacks; that the property cannot be developed for a pool without the variance and it is a reasonable use for the property; that the Applicants did not create the lot or the narrow dimensions; that the variances will not alter the essential character of the neighborhood as it was approved by the HOA; that there is a similar pool in a nearby neighborhood; that the request for

the 0.5 foot variance for the fence is the minimum request to provide for a safety fence around the pool; and that the in-ground pool is small and the variance is the minimum request.

Mr. Eager affirmed the statements made by Mr. Willard as true and correct. Mr. Eager testified that the intent was always to install a swimming pool and that approval was given by the HOA; that a neighbor has a similar pool; and that his intent was to be a good neighbor by speaking with his neighbors about the configuration, landscaping, etc. around the pool.

Mr. Fred Townsend, Esquire, presented on behalf of the Opposition. Mr. Townsend stated that the pool mentioned in the Applicants' presentation is in a different subdivision; that there are 13 homes in this area of the Retreat and that all of them are in opposition to the pool; that all thirteen neighbors have written letters in opposition; that the lot is not unique as it is exactly the same as three other lots in the neighborhood and similar to many of the other lots in the neighborhood; that the property already has reasonable use without adding a pool; that the pool would be entirely in the setback; that the Applicants have created this hardship; that Judge Bradley wrote in the Jungle Jim's case that "when the difficulty results from Applicant's preferred use of the land and not the particular features of the property the hardship suffered is self-created"; that the use will alter the essential character of the neighborhood; that the pool will generate noise; that this is not a minimum if the entire swimming pool is in the setback; and that the Applicants have not met any of the standards for granting a variance.

Richard McCaffrey and Robert Fraser were sworn in to give testimony in opposition to the Application.

Mr. McCaffrey affirmed the statements made by Mr. Townsend as true and correct. Mr. McCaffrey testified that he is opposed to the Application as it will create a lot of noise and disturb the peaceful atmosphere of the neighborhood.

Mr. Fraser affirmed the statements made by Mr. Townsend as true and correct. Mr. Fraser submitted some photographs to show how close the homes are in the neighborhood. He testified that every homeowner in the neighborhood opposes the request for a variance; that the Applicants do not meet any of the standards for granting a variance; and that the variances will affect the essential character of the neighborhood.

Mr. Reiger, who was previously sworn in, gave testimony in opposition to the Application. Mr. Reiger asked for clarity on the variance request and that the request for the fence height and the pool should be two separate variances.

The Board found that two parties appeared in support of and four parties appeared in opposition to the Application.

The public hearing was closed. During discussion Mr. Chorman made a motion to reopen to

the public hearing to allow staff to provide documents submitted with the permit application; to allow Board members time to review prior to the next meeting; and to allow the attorneys to make remarks regarding permit documents only. This motion was seconded by Mr. Williamson. Motion carried 4-1.

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

Mr. Williamson moved to table Case No. 12387 until the December 16, 2019, meeting.

Motion by Mr. Williamson, seconded by Mr. Chorman, carried unanimously to **table this case until the next meeting on December 2, 2019**. Motion carried 5 – 0.

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

Mr. Townsend asked for clarity as to the process going forward.

Ms. Magee stated that the record has been left open for the submission of the permit application and for the Board to ask questions and for the attorneys to have an opportunity to speak on that limited issue.

Mr. Wilcox stated that the record has been reopened for the limited purpose of receiving the building permit file; that the parties will receive the information and will have an opportunity to speak as to that specific issue only and its relevance, after which the record will be closed.

**The Board took a seven (7) minute recess.**

**Case No. 12388 – Terry Black** seeks a variance from the corner front yard setback requirements for an existing shed. (Sections 115-34, 115-182 and 115-185 of the Sussex County Zoning Code). The property located on the northeast corner of Neptune Dr. and Ocean Farm Dr. in the Ocean Farm subdivision. 911 Address: 100 Ocean Farm Dr., Frankford. Zoning District: MR. Tax Parcel: 134-17.00-468.00

Ms. DeVore presented the case and stated that the Office of Planning and Zoning received five letters in support of and none in opposition to the Application and one mail return. The Applicant is requesting a variance of 3.75 ft. from the required 15 ft. corner front setback for an existing shed.

Terry Black was sworn in to give testimony about the Application. Mr. Black referred to a powerpoint presentation during his testimony and submitted a copy of a letter of approval from the HOA. Mr. Black testified that the property is unique because it is a corner lot; that there is a large underground propane tank and a drainage pipe which prohibited him from placing the shed elsewhere

on the property; that the property floods and the shed is on the highest part of the lot, but it still had to be elevated; that there are unique setback requirements for this property and instead of a 15 ft. corner front, it is a 30 ft. setback so the variance needed is 18.75 ft.; that the shed was installed by Woodland Sheds, Maryland; that the variance will not alter the essential character of the neighborhood as there are many sheds in the area and it matches the siding and color of the dwelling; that the shed does not obstruct visibility for motorists; that there have been no complaints about the shed; that there is about 15 ft. between edge of paving and the property line; that it is the minimum to afford relief to allow the shed to remain in the current location; that a patio with plants has been built on the east side of the back of the lot so he cannot put shed on that side of the Property; and that placement of the shed in another location in the backyard would cause flooding to the neighbor's property.

Patrice Smith was sworn in to give testimony in support of the Application.

Ms. Smith testified that she is a board member on the Ocean Farm HOA and that there have been no complaints about the Applicant's shed. She further testified that the shed is the best looking shed in the neighborhood.

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

Dr. Carson moved to approve Application No. 12388 as the property has unique physical conditions and will not affect the character of the neighborhood and the variance request of 18.75 ft. from 30 ft. is the least amount to provide relief.

Dr. Carson moved, seconded by Mr. Chorman, 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. Williamson – yea, Dr. Carson – yea, Mr. Chorman – yea, and Ms. Magee – yea.

**Case No. 12389 – State of Delaware, Division of Fish & Wildlife** seeks a special use exception to operate a rifle or pistol range (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located on the northeast side of Hunters Cove Rd. approximately 736 ft. south of Owens Rd. 911 Address: 12613 Hunters Cove Rd., Greenwood. Zoning District: AR-1 Tax Parcel: 430-9.00-19.00

Mr. Whitehouse 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 one mail return. The Applicant is requesting a special use exception to operate a Trap and Skeet and Archery Shooting Range. Mr. Whitehouse noted that there have been several Special Use Exceptions on this property for the Trap and Skeet shooting, the most recent special use exception expired on May 12, 2002 and

was not renewed.

Mr. Craig Rhoads was sworn in to give testimony about the Application.

Mr. Rhoads testified that the State of Delaware has lease the property since the early 1990s to operate a shooting range; the State purchased this property four years; that the Applicant was unaware that the Special Use Exception to operate a rifle or pistol range had expired; that, after the Applicant researched expanding the existing range, it was discovered that the Special Use Exception had expired; that there have been no complaints from neighbors; that there are very few residential dwellings in the area; that the trap and skeet shooting area will remain unchanged; that the rifle and pistol range will be expanded; that final site plans will be subject to Planning and Zoning Commission approval; that the Applicant will abide by any conditions set by the Board of Adjustment; that the use will not substantially affect adversely the uses of neighboring and adjacent properties; that the rifle and pistol range will be built into the ground with a berm around to prevent anything from leaving the range; that the property adjacent to the rifle and pistol range is a distance away; that the closest building is a chicken house; and that the State will construct a landscape berm and fence around the property to prevent people from wandering on to the range.

Samuel Thorpe was sworn in to give testimony in opposition to the Application.

Mr. Thorpe testified that he has concerns about safety as he leases property surrounding the subject property and has children on the property; that he would like to know the direction of the rifle range; and that he would like to know that there is fencing protecting the public.

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

Dr. Carson moved to approve Application No. 12389 for a special use exception to operate the rifle and pistol range from Tuesday to Sunday for the hours of 9 am – 6 pm, with no hours on Monday, for a period of five years and with the condition that the southeast side of the property be fenced to insulate the proposed rifle range.

Dr. Carson moved, seconded by Mr. Chorman, and carried unanimously that the **special use exception be granted with conditions for a period of five (5) years for the reasons stated.** Motion carried 5-0.

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

### **ADDITIONAL BUSINESS**

There was no additional business discussed.

**Meeting was adjourned at 9:35 p.m.**