

MINUTES OF DECEMBER 20, 2021

The regular meeting of the Sussex County Board of Adjustment was held on Monday, December 20, 2021, at 6:00 p.m. in the County Council Chamber, Sussex County Administration Office Building, Georgetown, Delaware. The teleconference system was tested during the meeting by staff to confirm connectivity.

The meeting was called to order at 6:00 p.m. with Chairman John Williamson presiding. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. Jordan Warfel, 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. Ann Lepore – Recording Secretary.

The Pledge of Allegiance was led by Mr. Williamson.

Motion by Mr. Warfel, seconded by Mr. Chorman and carried unanimously to approve the agenda. Motion carried 5 – 0.

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

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

OLD BUSINESS

Case No. 12617 – James C. Van Wagoner seeks a variance from the side yard setback requirement for a proposed structure (Sections 115-34, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located on the east side of Salty Way East within the Keenwick West Subdivision. 911 Address: 37792 Salty Way East, Selbyville. Zoning District: MR. Tax Parcel: 533-19.07-41.00.

Ms. Norwood presented the case and stated that the Board left this case open at the meeting of October 18, 2021, for the limited purpose of the Applicant submitting an updated survey and deed. The Applicant has since submitted the survey and deed.

Mr. Sharp noted that that a survey and deed were submitted along with a letter and photographs; that the letter and photographs are considered outside the scope of the limitations for leaving the record open set forth by the Board; that, as such, those exhibits have not been included in the record; that the survey and deed, however, are included in the record; and that the Board also left open the record for public comment regarding the survey and deed only.

Mr. James Van Wagoner was sworn in to give testimony about the updated survey and deed.

Mr. Van Wagoner testified that the property consists of over 10,000 square feet and, as such, does not benefit from the Small Lot Ordinance; that his surveyor did not explain the discrepancy between the surveys; and that the survey indicates an area under construction which is closing in a

porch and is not part of this application.

Ms. Norwood noted that the new survey shows that variances are needed from the side yard setback on the south side of the Property for the existing house and proposed porch and that those variances could be handled administratively since they are less than 1 foot.

Mr. Sharp stated that the Board should focus only on the variance needed for the garage and to leave the other 2 variances for the administrative variance process since they just came up.

The Board found that Mr. Dean Pantellere was sworn in by teleconference in opposition to this Application.

Mr. Pantellere testified that the lot consists of over 10,000 square feet; that all lots in this development are over 10,000 square feet; and that he opposes the Application.

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

Mr. Williamson closed the public hearing.

Mr. Hastings moved to approve Case No. 12617 for the requested variance for the garage, pending final written decision, for the following reasons:

1. The variance will not alter the essential character of the neighborhood nor substantially impair the appropriate use and development of the adjacent property; and
2. The variance represents the minimum variance necessary to afford relief and represents the least modification of the regulation at issue.

Motion by Mr. Hastings, seconded by Mr. Warfel, carried unanimously that the **variance be granted for the reasons stated**. Motion carried 5 – 0.

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

PUBLIC HEARINGS

Case No. 12637 – Jeffrey W. & Janice L. Stull seek a variance from the side yard setback requirement for a proposed structure (Sections 115-25 and 115-183 of the Sussex County Zoning Code). The property is located at the north side of Ward Way within the Meadow Drive Subdivision. 911 Address: 8 Ward Way, Millsboro. Zoning District: AR-1. Tax Map: 133-16.00-288.00.

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received

no correspondence in support of or in opposition to the Application and zero mail returns. The Applicants are requesting a 2.3 ft. variance from the required 15 ft. side yard setback on the west side for a proposed porch.

Ms. Janice Stull was sworn in to give testimony about the Application.

Ms. Stull testified that she is asking for a 2.3 ft. variance from the 15 ft. side yard setback for a proposed covered porch which will go across the front and down the side of the dwelling; that this is a minimum request for just a 6 ft. wide porch; that the lot is very narrow; that a porch built into compliance with the Code would not look good aesthetically; that the adjacent property is a wetland area so there will be no impact to neighbors; that the homeowners' association has given approval and that approval was provided as part of the application; that the house is located 2.7 feet from the building restriction line; that the porch will provide needed access to the rear of the dwelling; that the steps will be off the rear of the porch and not to the side; that there is no slope to the lot; that there are no bug problems on the Property; that there have been no complaints from neighbors regarding the proposed porch; that the septic system is located in the rear yard; that the well is located in front of the dwelling towards the left side of the property; that the location of the existing dwelling has created the exceptional practical difficulty; and that she did not place the house on the lot.

Ms. Stull clarified that, when she said wetlands, she meant stormwater management ponds; and that the ponds are generally dry.

Ms. Pat Carmine was sworn in to give testimony in support of the Application.

Ms. Carmine testified that she lives next door to the Applicant; that, if you just put a porch on the front, it would not look right because of the placement of the garage; that a wrap-around porch is necessary for aesthetics and will improve the appearance of the house; that the house was built 25 years ago; that there is no dwelling on the adjacent property to the side where the proposed porch will be; that the lot to the side of the property is a common area that will not be built on in the future; that she is a member of the homeowners' association board of directors and this was approved was the entire board of directors; that the porch will improve this property and, therefore, improve the neighborhood; and that there are approximately five homes with porches.

Mr. David Staniewski was sworn in to give testimony in support of the Application.

Mr. Staniewski testified that he lives across the street from the Applicant; that the retention pond adjacent to the subject property is a dry pond; that the proposed porch will not affect the retention pond; and that the porch would improve the current dwelling.

Ms. Carmine testified that there are no other wrap-around porches in the neighborhood; that most houses are one-story tall; that there are lots of porches in the neighborhood; and that the proposed porch will fit within the character of the neighborhood.

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

Mr. Williamson closed the public hearing.

Dr. Carson moved to approve Case No. 12637 for the requested variance, pending final written decision, for the following reasons:

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

Motion by Dr. Carson, seconded by Mr. Hastings, carried that the **variance be granted for the reasons stated**. Motion carried 4 – 1.

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

Case No. 12638 – Robert Cathell seeks a variance from the front yard setback requirement for a proposed dwelling (Sections 115-34 and 115-182 of the Sussex County Zoning Code). The property is located on the west side of Walnut Lane within the Keenwick Subdivision. 911 Address: 38340 Walnut Lane, Selbyville. Zoning District: MR. Tax Parcel: 533-19.12-97.00

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 5 ft. variance from the required 30 ft. front yard setback for a proposed dwelling.

Mr. Robert Cathell was sworn in to give testimony about the Application.

Mr. Cathell submitted exhibits to the Board members.

Mr. Cathell testified that this will be his retirement home and that he would like to move the dwelling away from the canal; that he will comply with the homeowner association front yard setback of 25 ft.; that there is flooding on the property; that he intends to grade the property to help with drainage; that the dwelling will be elevated; that he intends to install a pool to the rear of the lot in the future; that the existing house is cheaper to rebuild than to renovate; that the property is served by public water and sewer; that there is a well on the property that he would like to maintain for future irrigation use; that the neighbor has a 20 foot rear yard setback; that the existing shed adheres to the setbacks but may have to be moved if the variance is not granted; that he has support from neighbors that he spoke to; that there is a 15 ft. easement to the front of his property; that the HVAC will be on the left side of the house and will be elevated; that the HVAC will comply with the setback

requirements; that the only steps will be off the front and rear; that he looked at a smaller house; that he is designing the house with handicap accessible doors so that he can age in place; that he has to design the house to meet FEMA requirements; that the house will be elevated 4 ft. according to the FEMA flood map; that the lot slopes up to the middle and then slopes down towards the canal; that the house will consist of 2,300 square feet and will be a one story house; that the house will be 53 feet wide and the prior house was 48 feet wide; that there is approximately 15 feet from the edge of paving to the front property line; that the house will be 40 feet from the paved road; that property was previously improved with a septic system; that the steps will project no farther than the garage and will be open; and that no variance is needed for the steps.

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

Mr. Williamson closed the public hearing.

Mr. Chorman moved to approve Case No. 12638 for the requested variance, pending final written decision, for the following reasons:

1. The property has unique conditions due to the flooding in the rear yard;
2. The variance will not alter the essential character of the neighborhood nor substantially impair the appropriate use and development of the adjacent property; and
3. The variance represents the minimum variance necessary to afford relief.

Motion by Mr. Chorman, seconded by Mr. Hastings, carried unanimously that the **variance be granted for the reasons stated**. Motion carried 5 – 0.

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

Case No. 12639 – Lisa Prestipino seeks variances from the side yard setback requirement for a proposed addition (Sections 115-82 and 115-183 of the Sussex County Zoning Code). The property is located at the northwest side of John J. Williams Highway (Rt. 24) approximately 0.32 mile southwest of Coastal Highway (Rt. 1). 911 Address: 18854 John J. Williams Highway, Rehoboth Beach. Zoning District: C-1. Tax Map: 334-12.00-89.00.

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and one mail return. The Applicant is requesting variances of 10 ft. and 9.6 ft. from the required 20 ft. side yard setback on the southwest side for a proposed addition.

Ms. Lisa Prestipino and Mr. Freddy Bada, from Moonlight Architecture, were sworn in to give testimony about the Application.

Mr. Bada testified that he is present on behalf of the Applicant, Lisa Prestipino, for the business of Apple Electric; that the property is unique as it is a small commercial lot of approximately 20,000 sf. with a building that is over 40 years old; that the property has been used for the Apple Electric business for over 20 years; that the business is growing and the existing building is not big enough to support the current employees; that the Applicant cannot afford to move its business; that the addition will be a small two-story addition; that the Board previously issued a variance for a warehouse; that the State has taken some of the property to widen John J. Williams Highway so this is the only area that could be developed; that the addition will not alter the essential character of the neighborhood; that there are a lot of commercial zoned properties in this area; that a car dealership and hotel are being developed nearby; that the 10 ft. reduction will give enough space to accommodate 6 – 8 employees; that the exit will be to the rear with a small stoop and the addition will meet the rear yard setbacks; and that there is a natural buffer of trees between the subject property and the adjacent property.

Ms. Prestipino testified that she bought this property in 1999; that, at that time, she had four employees; that now she has 43 employees; that she has not spoken to neighbors regarding the variance request; that she has made accommodations for off-site employee parking; that there is commercially zoned property in the area which includes a dentist office, an undeveloped lot, and a lot owned by Tidewater Utilities; that the adjacent lot is zoned AR-1 but is unlikely to be used for residential use; that 6 employees will use the addition; that the space will not accommodate new employees but will allow existing staff to spread out within the building; that the business has adequate parking on site; and that DelDOT took 5-6 feet of the front yard.

Mr. Sharp stated that, if the adjacent property were commercially zoned, the setbacks would be 5 ft.; that, because it is adjacent to residentially zoned property, the setbacks are greater; and that the Applicant will also have to obtain Final Site Plan approval from the Planning and Zoning Commission to construct the addition.

Mr. Bada testified that the Applicant will have to have all approvals from other agencies such as Fire Marshal, Conservation District, and DelDOT.

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

Mr. Williamson closed the public hearing.

Mr. Warfel moved to approve Case No. 12639 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to the exceptionally small buildable area;
2. That, due to the physical conditions, the property cannot be developed in strict conformity with Sussex County Zoning Code and the variances are necessary to afford reasonable use of the property;

3. The exceptional practical difficulty was not created by the Applicant;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances represent the minimum variances necessary to afford relief.

Motion by Mr. Warfel, seconded by Dr. Carson, carried unanimously that the **variances be granted for the reasons stated**. Motion carried 5 – 0.

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

Case No. 12640 – Teresa Fisher seeks a variance from the minimum lot width requirement for a proposed lot (Sections 115-25 of the Sussex County Zoning Code). The property is located at the west side of Clendaniel Pond Road at the intersection of Clendaniel Pond Road and Pine Street. 911 Address: 9342 Clendaniel Pond Road, Lincoln. Zoning District: AR-1. Tax Map: 230-13.00-113.00.

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of and one letter in opposition to the Application and one mail return. The Applicant is requesting a 10.88 ft. variance from the 150 ft. lot width requirement for a proposed lot.

Ms. Theresa Fisher and Mr. Douglas James Annand were sworn in to give testimony about the Application.

Mr. Annand testified that he is a licensed land surveyor in the State of Delaware and that he is representing Ms. Fisher; that Ms. Fisher's daughter, Christie, was to be present also; that Christie was involved in a motor vehicle accident and cannot be present; that Ms. Fisher inherited this property of 3.27 acres from her uncle; that Ms. Fisher is currently renovating the dwelling on the property for her own use; that Ms. Fisher would like to subdivide a lot off the property for her daughter and grandchildren; that, although there is sufficient frontage on Pine Street, Pine Street cannot be used as it is owned privately; that all the road frontage must come from Clendaniel Pond Road; that the variance requested is a minimum variance of 10.88 ft.; that the variance needed at the front yard setback line is 22.95 feet; that DNREC has approved the proposed lot for a septic system; that there is a letter of opposition from a resident who lives on Water Street approximately ¼ mile from the subject property and that the opposition is to development of wetlands that run along Water Street; that there are wooded wetlands on the property and some of that will be part of the new lot but that the wooded wetlands will not be disturbed; that the proposed dwelling will be located in the existing open space; that the creation of this new lot will not alter the essential character of the neighborhood as there are seven lots on Water Street and six lots on Pine Street which are non-conforming and are well below the 150 ft. minimum lot width requirement; that the properties will be served by well water; and that the lot will be 0.77 acre in size.

Ms. Fisher testified that her uncle gave her this property; that she would like to be able to help her daughter and grandchildren own their own home; that having her daughter next door she will be

able to help her daughter with childcare and as she, herself gets older her daughter will be able to help her; that the variance is needed because she cannot use the frontage from Pine Street; that, if she could use the frontage from Pine Street, a variance would not be needed; that it is unclear who owns Pine Street; that there is support from the closest neighbors; that the lot lines were drawn to gain as much of the 150 ft. road frontage as possible and to accommodate both septic systems; that she preferred a straight lot line but the septic systems dictated that the line be angled as shown on the proposed subdivision survey plan.

Ms. Norwood stated that the front yard setback will be 40 feet from Clendaniel Pond Road and 15 feet from Pine Street.

Mr. Annand testified that the house will be closer to the front yard with the septic in the rear yard; and that the house will not encroach into the woods.

Ms. Patricia Denison was sworn in by teleconference to give testimony in opposition to the Application.

Ms. Denison testified that she opposed the variance request as the property is mostly wooded wetlands which provides habitat for wildlife and the additional lot would negatively affect the wooded wetlands; that she owns a lot that is 103.5 feet wide and an adjacent 50 foot wide lot; that the lot size would be smaller than those in the neighborhood; that the variance will alter the essential character of the neighborhood; that the creation of the new lot will increase density and negatively affect traffic, safety, health, and welfare of the community; that allowing lots under the required 150 ft. will set a precedent for future requests; and that the Applicant could expand the existing dwelling to accommodate her family.

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

Mr. Williamson closed the public hearing.

Mr. Chorman moved to approve Case No. 12640 for the requested variance, pending final written decision, for the following reasons:

1. The variance will not alter the essential character of the neighborhood nor substantially impair the appropriate use and development of the adjacent properties;
2. The variance represents the minimum variance necessary to afford relief; and
3. The wetlands to the rear of the property and location of the existing dwelling on the property show that the exceptional practical difficulty was not created by the Applicant.

Motion by Mr. Chorman, seconded by Dr. Carson, carried unanimously that the **variance be granted for the reasons stated**. Motion carried 5 – 0.

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

Case No. 12641 – David Poppel seeks variances from the front yard setback requirements for proposed and existing structures (Sections 115-25, 115-182, and 115-185 of the Sussex County Zoning Code). The property is located at the southwest side of Old Lighthouse Road within the Cape Windsor Subdivision. 911 Address: 38846 Old Lighthouse Road, Selbyville. Zoning District: AR-1. Tax Map: 533-20.18-171.00.

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and one mail return. The Applicant is requesting a variance of 21.8 ft. from the required 25 ft. front yard setback for a proposed garage. Ms. Norwood also noted that staff has added additional variances of 24.69 ft. and 24.77 ft. from the required 25 ft. front yard setback for an existing shed to the Application.

Mr. Matthew Saxe and Mr. David Poppel were sworn in to give testimony about the Application.

Mr. Saxe of Johnson's All Scapes testified that this is a uniquely shaped lot; that the existing shed was not part of the application and was on the property when purchased by Mr. Poppel; that the shed could be moved; that the existing shed consists of less than 200 square feet; that this application is for a proposed garage which would be placed in the driveway area; that this is the only area that could be developed for parking; that Mr. Poppel uses this property as a vacation property and would like to be able to leave a vehicle on this lot without fear of it being vandalized, stolen, or damaged by weather; that there is currently no protection for a vehicle; that the variances will not alter the essential character of the neighborhood as the garage will be finished to match the existing home; that there is approximately 6 ft. from the edge of paving of Old Lighthouse Road to the front property line; that the proposed garage would measure 17 ft. by 22 ft.; that the garage is large enough to house 2 cars; that there is approximately 4 ft. between the dwelling and the proposed garage; and that the garage will be no closer to the road than the existing shed.

Mr. Poppel testified that the dwelling was placed on short pilings so a car cannot be parked under the home; that there is no homeowner association approval needed as this is a stand-alone property; that the property is not part of the Cape Windsor subdivision; that he purchased the property three years ago; that Old Lighthouse Road is a dead end street and there is not much traffic on this road; that there are no neighbors to the north or west of the site; that the proposed garage will not create any visibility issues; that the existing shed is anchored and there have been no complaints from the neighbors; that the property is served by public water and sewer; that the shed has a deck; that there are other houses in the neighborhood which have tall pilings; that the garage cannot be attached to the house; and that the shed is approximately 7 years old and he has received no complaints about the shed.

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

Mr. Williamson closed the public hearing.

Mr. Hastings moved to approve Case No. 12641 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to the unique shape;
2. That, due to the physical conditions, the property cannot be developed in strict conformity with Sussex County Zoning Code; and
3. The variances represent the minimum variances necessary to afford relief.

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

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

Case No. 12642 – Anthony L. Johnson (Venita A. Johnson) seeks a special use exception to operate a daycare facility (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located at the southwest side of Newton Way within the Newton Woods Subdivision. 911 Address: 6156 Newton Way, Bridgeville. Zoning District: AR-1. Tax Map: 530-17.00-27.00.

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of and one letter in opposition to the Application and zero mail returns. The Applicant is requesting a special use exception to operate a daycare center for nine children.

Ms. Venita Johnson and Mr. Anthony Johnson were sworn in to give testimony about their Application.

Ms. Johnson testified that she has run a daycare business since 1997; that she has moved to the subject property and wants to relocate her business to this property; that she has two letters of support for her request; that one of the letters is from the homeowner association treasurer; that her existing business is located approximately 10 – 12 miles from the subject property; that the request is for up to nine children; that the driveway can accommodate cars for drop-off and pick-up; that the property is close to the entrance of the subdivision; that the play area is fenced; that the hours of operation are from 5:00 am through 4:30 pm; that the children must be picked up by 5:00 pm; that she moved to the neighborhood in October 2021; that the children served are from ages birth to 12; that all drop offs take place before 8:00 am; that there will be 18 vehicular trips per day related to the daycare; that there are no restrictive covenants that would prevent a daycare business; that a daycare business would not substantially adversely affect the adjacent and neighboring properties;

that there are siblings in the daycare so that creates less car trips for drop-off and pick-up; that the old daycare was in a community that became unsafe; that this is a safer area; that there were no complaints about her prior daycare; and that the daycare will benefit the community in a positive manner.

Mr. Johnson testified that he wanted to relocate as the area where he and his family previously lived had become dangerous and he was concerned for the safety of the daycare children; and that there is ample parking for up to 6 vehicles.

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

Mr. Williamson closed the public hearing.

Dr. Carson moved to approve Case No. 12642 for the requested special use exception, pending final written decision, for the following reasons:

1. That the request will not substantially adversely affect the adjacent and neighboring properties.

Motion by Dr. Carson, seconded by Mr. Hastings, carried that the **special use exception be granted for the reasons stated.** Motion carried 4 – 1.

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

ADDITIONAL BUSINESS

There was no additional business.

Meeting adjourned at 8:24 p.m.