

MINUTES OF FEBRUARY 1, 2021

The regular meeting of the Sussex County Board of Adjustment was held on Monday, February 1, 2021, 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 Acting Chair John Williamson presiding. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. John Williamson, and Mr. Brent Workman. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Ms. Jennifer Norwood – Planning and Zoning Manager, Mr. Jamie Whitehouse – Director of Planning and Zoning and Ms. Ann Lepore – Recording Secretary.

The Pledge of Allegiance was led by Mr. Williamson.

Mr. Williamson welcomed new Board member, Mr. Hastings.

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

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

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

OLD BUSINESS

Case No. 12519 – Krystal Waltman seeks variances from the corner front yard setback requirement and separation distance requirement for proposed structures (Sections 115-34, 115-172 and 115-182 of the Sussex County Zoning Code). The property is located on the east side of South Shore Drive Extension approximately 450 ft. south of Marina View Court. 911 Address: N/A. Zoning District: MR. Tax Parcel: 134-2.00-4.00, 3.01 and 5.00

Mr. Sharp stated that as Mr. Hastings was not a member of the Board when this Application was heard and that Mr. Hastings will recuse himself from voting on this case.

The Board discussed the case which had been tabled at the January 25, 2021 meeting.

Dr. Carson moved to approve Case No. 12519 for the requested variances as the property has unique physical conditions; that the variances will not alter the essential character of the neighborhood; that the variances represent the minimum variances to afford relief; and that these variances are granted on condition of receiving a letter of no objection from the HOA.

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

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

PUBLIC HEARINGS

Case No. 12520 – Dewey Beer Company seeks variances from the side yard setback requirements for a proposed structure (Sections 115-82 and 115-183 of the Sussex County Zoning Code). The property is located on the southeast side of Iron Throne Drive off Harbeson Road (Rt. 5) approximately 0.20 mile north of Lewes Georgetown Highway (Rt. 9). 911 Address: 21241 Iron Throne Drive, Milton. Zoning District: C-1. Tax Parcel: 235-30.00-21.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of and two letters in opposition to the Application and one mail return. The Applicant is requesting a 10 ft. variance from the 20 ft. side yard setback requirement on the south side for mechanical equipment serving a brewery / microbrewery.

The Board found that Fred Townsend, Esq., was present on behalf of the Applicant Dewey Beer Company.

Mr. Townsend stated that Scott Kaufman, Brandon Smith and Mike Reilly are the owners of Dewey Beer Company; that Mike Makowski is one of the owners of the Business Park where Dewey Beer Company is located; that there are seven buildings in this business park; that the building which is the subject of tonight's hearing runs along the southern side of the property; that Dewey Beer Company owns a brew pub in Dewey Beach where they act as a restaurant and produce beer onsite; that they are considerate to their neighbors and avoid complaints; that a microbrewery is a state licensed facility which differs from a brew pub as there is no onsite food production; that it does not act as a restaurant and is limited in the amount of beer it can produce; that a microbrewery does offer a tasting room which is a small percentage of the total facility; that they are also limited in the hours of operation; that the use as a microbrewery has been fully approved by County Council; that the use and fit out of this building has been delayed six months due to Covid related delays; that the building was allowed to be constructed because the building meets the setback requirements; that the variance being sought is for 10 ft. from the 20 ft. side yard setback to allow for the mechanicals and other facilities that relate to beer production; that the neighbor to the south has expressed some concerns; that the Applicant has reached out to the neighbor to discuss some remedies to the complaint; that Dewey Beer company will offer accommodations to protect the interests of the neighbor; that the need for the variance was caused by the fact that there were two different sets of engineers on this project; that one engineer designed the building and another engineer designed the fit-out; that the fit-out was not considered when the building was designed; that the building is just 20.6 ft. from the property line thereby leaving an insufficient area for the mechanical equipment; that the property is unique because the building is already in place and the Applicant has to work with that location; that it cannot otherwise be developed as it is absolutely necessary to place the HVAC and the other

mechanicals for the operation of the microbrewery; that they cannot be placed behind the building as there is only an 11 ft. separation distance to the building to the east; that the mechanicals cannot be located in the front of the building or in the parking area as the parking is shared with other businesses in the park; that the owners of Dewey Beer Company did not realize that placing the mechanicals on the south side of the building would create the need for a variance; that this building is located in a General Commercial (C-1) district in a business park; that there are residential properties to the rear of the business park and to the south of the subject property; that the Applicants will place a 6 ft. privacy fence to create both a visual and sound barrier along the property line to the south; that there is a large shed on the property to the south which runs along the boundary line and creates a significant buffer as well; that the Applicant considered plantings but the fence will serve as a better buffer; and that the requested 10 ft. variance is the minimum to allow for all the necessary mechanicals for the operation of the microbrewery

Mr. Michael Reilly was sworn in to give testimony about the Application.

Mr. Reilly testified that he is the Head of Operations for Dewey Beer Company; that he is a former physics teacher; that he was tasked with setting up the brewery including the mechanicals which are the subject of tonight's hearing; that he was unaware that he could not put the mechanicals in the setback area; that there are four units of HVAC that are designed for both the building and production of beer; that, when looking at the property along the southerly boundary from west to east, there are 5 pads; that the first pad will be used for the HVAC unit for the 1,800 square foot tasting room; that the second pad will be used for the HVAC unit for the brewery; that it is hot and humid in the brewery; that the third pad will be used for a Glycol chiller and HVAC unit; that this equipment is the most important equipment for the brewery and will hold 300 gallons of liquid; that the fourth pad will have 2 HVAC units for a walk-in cooler; that the fifth pad will be used for a collection vessel for yeast and hop byproduct; that the holding tank will measure 12 feet tall; that Clean Delaware will collect the wastewater from the holding tank which will be sprayed onto fields; that the waste grain that will be collected by a farmer and used as feed for animals; that this is a fertilizer by-product and does not contain any toxic products or chemicals; that the proposed fence will go across the front from the building to the side property line and run along the side property line for the length of the building; that the fence will hide 90% of the mechanical equipment and will provide a visual and noise buffer; that he has also reached out to a landscaping company regarding planting trees of 8 – 10 ft in height; that the variances are an absolute necessity; that the structures cannot be placed inside because they need to breathe; that they cannot place the structures in the parking lot because the lot is needed for other tenants in the business park; that the retention pond also creates a problem; that the holding tank will capture 10% of wastewater; that the patio will be located in the front yard closer to Route 5; that Clean Delaware will use a hose to access the tanks; that there is no driveway between the mechanical equipment and the fence; that the neighboring house will be closer to the patio than the mechanical equipment; that the neighbor's shed also provides a barrier for the equipment; that the tank pad will measure 10 feet by 10 feet; that there is 60 feet from the corner of the neighbor's house to the first HVAC unit; that there is 200 feet from the corner of the neighbor's house to the holding tank; that the stormwater area is located behind Building 4; that the holding tank will be emptied once or twice a

month; that the HVAC units are 4 feet tall; that the Glycol chiller will be 7 feet tall; that noise from this equipment will be like noise from a loud fan; that they have similar equipment at their Dewey Beach location and it is adjacent to residential properties; that they have received no complaints about that equipment; and that the Applicant proposes, as a condition of approval, that a fence be installed along the south property line.

Mr. Reilly affirmed the statements made by Mr. Townsend as true and correct.

Mr. Townsend stated that the HVAC units must be located outside; that the neighbor to the south also has a fence along the shared property line; that the shed on the neighboring lot is approximately 60 feet long and blocks much of the building; that the residential property to the south is currently vacant; that, because the neighboring lot is residential and not commercial, the side yard setbacks are increased from 5 ft. to 20 ft; and that Mr. Makowski has agreed to the installation of a fence along the property line; that the tank can be located close to flush with the building; that the site plan process was halted due to the need for a variance; and that the survey dated September 22, 2020, with the note about the 9 feet x 9 feet pad is the correct survey to use but the pad is actually 10 feet by 10 feet.

Mr. Ronald Tonge was sworn in to give testimony in opposition to the Application.

Mr. Tonge testified that he is the nephew of Shirley Givens, who is the owner of the adjacent property to the south; that Ms. Givens is not comfortable coming to the meeting due to Covid-19 and she is also uncomfortable with technology; that Ms. Givens inherited this property when her brother passed away in October 2019; that her brother, Mr. Wilson had lived at this address since 1967 until his death in 2019; that the estate was settled in October 2020; that the Applicant stated that the property falls off steeply from front to back but that statement is not true; that the land is flat with the exception of a wooded area in the rear of the property; that, when the site plan for the subject property was provided in 2017, it was for a quiet business park with minimal impact on surrounding neighbors; that, when the Conditional Use was approved, the finding of fact stated that the "Brewing operations will not have an adverse effect on the neighboring properties or the community. The applicants have stated that all the brewery operations will occur within the building, and there are not any sounds or smells that will come from the building during these operations"; that these findings of fact may no longer be true based on the request to place the HVAC and other equipment to be placed in the side yard setback adjacent to Ms. Givens' property will introduce substantial sounds and noise to the area; that Ms. Givens also has concerns about the proximity of the large propane tanks to her property and how will they be accessed for filling; that the building is not the issue but the loud HVAC equipment that will turn a quiet business park into a loud industrial area and will change the essential character of the neighborhood and Ms. Givens' property; that a 6 ft. vinyl fence will not be a remedy for equipment that is taller than the proposed fence and will not mask the noise from the mechanical equipment; that a noise study should be completed at the Applicant's expense to show the effect on the neighborhood; that the Applicant has created a hardship for themselves of their own making and should not come at the expense of the value of Ms. Givens'

property; and that for all the reasons outlined in this presentation and the previously submitted letter Ms. Givens requests that the Board denies this request for variances.

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

Mr. Townsend stated that the propane tanks are not permanent and could be moved from the current location; that the land is flat on the property and this was an error by him on the Application; and that the adjacent property is a large parcel with the house up front and there is a quite a bit of distance between the home and the mechanical equipment on the subject property.

Mr. Workman stated that if the variances are approved the fence should be a solid fence and be as high as the equipment.

Mr. Townsend stated that it could be a condition of approval that the fence be the maximum fence height allowed by Sussex County Code.

Mr. Williamson closed the public hearing.

Dr. Carson moved that the record for Case 12520 be left open until close of business on February 25, 2021, for the limited purpose of allowing the applicant to submit a plan showing the fence and landscaping plan. As part of the motion, the Application will be placed on the agenda on March 1, 2021.

Motion by Dr. Carson, seconded by Mr. Chorman, carried that the **record be left open for the stated limited purpose until the February 25, 2021, to allow the applicant to submit a plan showing the fence and landscaping plan and that the Application be placed on the agenda for the meeting on March 1, 2021.** Motion carried 5 – 0.

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

Case No. 12521 – Care A Lot Child Development Center, LLC seek a special use exception to operate a day care center (Sections 115-80 and 115-210 of the Sussex County Zoning Code). The property is located on the south side of Long Neck Road directly across from Lingo Lane. 911 Address: 32564 Long Neck Road, Millsboro. Zoning District: C-1. Tax Parcel: 234-23.00-311.10

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received four letters in support of and none in opposition to the Application and zero mail returns. The Applicant is requesting to operate a day care center for up to 35 children.

Ms. Michelle Blattenberger was sworn in to give testimony about the Application.

Ms. Blattenberger testified that she is requesting a special use exception to operate a daycare center at the subject property; that she appeared before the Board in August 2020 for a special use exception for a daycare center at her home; that this facility will be used for up to 35 children; that the building is a stand-alone building; that there is a car wash, restaurant, and deli nearby; that this is an ideal location for the daycare and the center is needed; that there is adequate parking for drop off and pick up; that the building is 65 ft. from the road; that a fenced off 900 sf play area will be constructed to the side of the building; that the front door will be locked during the day and the only way for a child to leave will be in the company of parent or guardian; that there are two bathrooms on the premises; that there is a waiting list of 20 children; that currently Care A Lot has three employees but will immediately move to six employees when this facility opens; that approval has been given by Fire Marshal and the building did not need sprinklers; that hard wired smoke detectors are installed; that the property is served by public sewer and water; that the hours of operation will be 6:00 am – 6:00 pm; that 35 sf is required for each child and the building is approximately 1,900 sf; that the center will serve children from 6 weeks old to 12 years old; that this use will not adversely affect the uses of neighboring and adjacent properties; that the road is not as busy in the morning; and that parents typically come at staggered times for pick-up and drop-off.

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. 12521 for the special use exception as the use will not substantially affect adversely the uses of neighboring or adjacent properties.

Motion by Dr. Carson, seconded by Mr. Workman, carried unanimously that the **special use exception 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. Hastings – yea and Mr. Chorman - yea.

Case 12522 – Trevor Clark seeks a variance from the side yard setback requirements for proposed structures (Sections 115-34, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located on the north side of Ocean View Place within the White Creek at Bethany Subdivision. 911 Address: 30869 Ocean View Place, Ocean View. Zoning District: MR-RPC. Tax Parcel: 134-8.00-582.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received one letter in support of and none in opposition to the Application and eighteen mail returns. The Applicant is requesting a 7 ft. variance from the 10 ft. side yard requirement on the east side for an attached shed.

Trevor Clark was sworn in to give testimony about the Application and submitted an additional drawing of the proposed shed to Board members.

Mr. Clark testified that he is requesting a variance for a storage shed on the right side of his home; that the HOA covenants do not allow for stand-alone sheds within the development; that he is also constructing an outdoor shower and trash receptacle but those structures will meet the required setbacks; that approximately 6 square feet of the proposed shed will encroach into the setback area; that he could not move the shed farther back because the location of the side door to the garage would be blocked; that the homeowners association and neighbor to that side of the property support the Application; that the property is unique because of the placement of the house on the lot and due to the HOA restriction on stand-alone sheds; that the proposed shower, shed, and trash receptacle need to be on this side of the dwelling as the pipes are located on the right side of the home for the shower; that the exceptional practical difficulty was not created by the Applicant; that this shed will not alter the essential character of the neighborhood and has been approved by the HOA; that a letter of support has been submitted by the adjacent neighbor (Lot 43); that the shed cannot be placed on the west side of the dwelling as the property has a deep incline in that area; the other side of the property is also improved by permanent kayak racks and there are windows which cannot be blocked; that the lot to the other side of the property (Lot 45) is vacant; that this is a minimum variance to afford relief as only a corner of the 13.5 ft X 6 ft. shed, approximately 6 sf, that encroaches into the setback; that there is no internal access to the shed; and that there is a door to the garage and utility meters between the location of the proposed shed and the location of the proposed shower.

Mr. Whitehouse noted that the Board granted a variance for Case No. 11324 in January 2014 for a property in this area.

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. 12522, pending final written decision, for the requested variance as the property has unique physical conditions due to the incline on the west side of the dwelling; that the exception practical difficulty was not created by the Applicant but by the unique qualities of the property; that the shed will not alter the essential character of the neighborhood; that the shed will not impair the use of neighboring properties; and that the variance represents the minimum variance necessary to afford relief.

Motion by Mr. Chorman, seconded by Mr. Hastings, carried 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. Hastings – yea and Mr. Chorman - yea.

ADDITIONAL BUSINESS

Mr. Sharp stated that Dr. Carson wished to have discussion regarding through lots and reminded the Board members not to reference specific cases during the discussion.

Dr. Carson stated that through lots are a curiosity to him as the lots have two front yard setbacks; that, since front yards have larger setbacks, it creates a hardship for the homeowner; that, when he looks at a property, he thinks of it as having a front and a back; and that by having this discussion he would like a greater degree of clarity as to what is the front and what is the rear of the property.

Mr. Sharp stated that the through lot definition goes back to when Zoning Code was adopted 50 years ago; that the term used was two front yards which parallel on a road; that the issue that has come before the Board on many occasions is when the lot faces an interior road within a subdivision and also borders a larger collector road without access to said road; that, in the older subdivisions, you see this because there was no buffer requirement, however, with the newer subdivisions a buffer is required between the collector road and the lots within the subdivision; that through lot variances will likely not be necessary for lots in newer subdivisions; that there is a finite number of lots in the residential context of the cases before the Board; that there are some lots that have access on both roads; that this is something that has been on Staff's radar and may be an item to be looked at further; and that, if that is the case, this would be something for the County Council to address.

Mr. Whitehouse stated that one of the items that frequently comes up is swimming pools and what could be accommodated on through lots; that going forward this will be less of an issue because of the cluster subdivision lots because where there is a buffer surrounding the subdivision the lots would benefit from a rear yard setback; that the older lots do have to comply with the code and are considered to have two front yards; that form based codes nationwide have similar through lot requirements; that the intent and purpose was to foster a high quality public realm by having spacing on the front and additional front on the rear where there is the public realm; that is not to say that nothing could be developed there; that going forward could we examine some of the more common features such as fences and accessory structures in the front yard potentially avoiding the need to come before the Board of Adjustment for a variance.

Mr. Sharp stated that through lots are not just applicable to residential properties and there are many commercial properties that have similar restrictions; that there are some that not only have the through lot component but are also subject to the corner front setback; and that, when code revisions are explored, unintended consequences also need to be considered.

Dr. Carson stated that he understands the commercial side, but his primary concern is with the residential properties.

Mr. Whitehouse stated that the through lot as stated in the Code can be looked at when other Code revisions are explored.

Mr. Sharp stated that Staff will look at this and see if any tweaks can be made but that it is a legislative issue for County Council.

Mr. Sharp stated that the meeting time will be on a future agenda for the Board members to discuss summer hours and that there will be a vote for officers following the resignation of Ms. Magee and the appointment of Mr. Hastings to the Board of Adjustment.

Meeting adjourned at 7:50 p.m.