

MINUTES OF FEBRUARY 15, 2021

The regular meeting of the Sussex County Board of Adjustment was held on Monday, February 15, 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 Mr. Jamie Whitehouse – Director of Planning and Zoning, Ms. Jennifer Norwood – Planning and Zoning Manager, and Ms. Ann Lepore – Recording Secretary.

The Pledge of Allegiance was led by Mr. Williamson.

Ms. Norwood stated that the agenda was revised on February 11, 2021, after the Applicant in Case No. 12523 called the Planning and Zoning Office to withdraw the Application.

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

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

Motion by Dr. Carson, seconded by Mr. Chorman, and carried unanimously to approve the Minutes for the December 14, 2020, meeting. Motion carried 5 – 0.

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

Motion by Mr. Chorman, seconded by Mr. Workman, and carried to approve the Findings of Facts for the December 14, 2020, meeting. Motion carried 5 – 0.

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

Other Business

Vote of Officers (Chair and Vice-Chair)

Ms. Norwood opened the floor for nominations for Chair.

Mr. Chorman nominated Mr. Williamson for Chair, seconded by Dr. Carson. There were no other nominations. Ms. Norwood closed the nominations. The vote was 5-0 in favor.

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

Ms. Norwood opened the floor for nominations for Vice- Chair.

Mr. Workman nominated Dr. Carson as Vice-Chair, seconded by Mr. Hastings. There were no other nominations. Ms. Norwood closed the nominations. The vote was 5-0 in favor.

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

Ms. Norwood welcomed the new Chair and Vice-Chair and Mr. Whitehouse congratulated both Mr. Williamson and Dr. Carson.

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

OLD BUSINESS

There was no old business.

PUBLIC HEARINGS

Case No. 12526 – Jean Gail & Renee Cannon seek a special use exception to operate a tourist home (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located on the east side of Hickory Hill Road approximately 318 ft. south of Indian Branch Road. 911 Address: 30951 Hickory Hill Road, Millsboro. Zoning District: AR-1. Tax Parcel: 233-9.00-25.04

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 special use exception to operate a tourist home and to rent two rooms in her home.

Ms. Renee Cannon was sworn in to give testimony about her Application.

Ms. Cannon testified that she has rented out two bedrooms in her home on AirBnB in the past; that she has a detached garage that has been turned into a rental unit; that she would like to rent this unit on AirBnB as a short-term rental for tourists; that the garage measures 24 feet by 24 feet; that, in addition, she would like to build a cabin to the rear of the property as an additional short-term rental option for tourists; that she is requesting of approval of a tourist home; and that the cabin has been delivered to the property but the interior has not been completed at this time.

Mr. Sharp stated that this Application was advertised for a tourist home but does not specify the number of rooms; that, in the past, there have been some ancillary structures used included tourist home applications; and that there are no cooking facilities allowed in any rooms or additional structures within the tourist home definition.

Ms. Cannon testified that there will be no cooking facilities in any of the rooms, the garage, or the cabin; that she plans to rent to the members of the public; that she had a conversation the Willeys whose property is adjacent to her; that the Ms. Willey expressed concern about tent campers on the property last summer; that there will be no tent campers this coming summer; that the garage will be used as a studio apartment with one room to rent; that the cabin measures 12 feet by 24 feet and is one room; that the larger garage is connected to the septic system but the cabin will not be connected to the septic system; that the guests in the cabin would use the restroom facilities in the main house; and that the septic system is sized for a six-bedroom house and can accommodate all the structures on the property.

Ms. Norwood stated that DNREC bases the calculation for septic systems based on the number of bedrooms and that DNREC would have to approve the garage being connected to the septic system.

Ms. Cannon testified that there are five bedrooms in her home and the garage would be the sixth; that she did not know the exact distance from the proposed cabin to the neighbor's property but that it is approximately 130 ft.; that the rear of the property is wooded; that there are farm fields adjacent to the subject property on the east and to the south; that there is a tax ditch separating her property from the farm fields; that there will be dedicated guest parking on the subject property; that most guests stay for the weekend and some for up to a week; that there will be no long-term rentals; that most tenants will be seasonal weekend guests; that she will not be offering any tent camping, events, or outdoor activities; that the area is residential; and that guests are permitted to use the in-ground swimming pool.

Mr. Mark Willey and Ms. Jennifer Willey were sworn in to give testimony in opposition to the Application. They own property adjacent to the Applicant's lot.

Ms. Willey testified that she had a conversation with Ms. Cannon and relayed the concerns that she and her husband have regarding the use as a campground and the placement of the cabin; that they tolerated the campground during the past summer as Ms. Cannon was trying to raise money to put in a new septic system and they did not realize that it was intended to be an ongoing venture; that when a cabin was delivered and they realized that this would be a continual use; that one of the issues caused by the use as a tourist home adjacent to their property was that some guests walked their dogs on their property; that the guests are using the pool so it is looks like a commercial pool and the noise is constant and it detracts from the enjoyment of their own pool; that the campers set up tents close to their property line and there were flashlights being directed through the master bedroom; that the

Applicant proposes a revolving door of strangers in the neighborhood; that a recreational vehicle is also available for rent on the subject property and is advertised on AirBnB for up to six guests; that there was a portable toilet on the subject property last summer; that there was an issue with trash collecting on the subject property over the summer months; and that they have a fire pit on their lot but stopped using it because a family using tents on the Applicant's lot was too close to their property.

Mr. Willey testified that the shed on the Applicant's lot has electric and plumbing; that he does not use his property for any commercial use; that he parks a work truck in the shed at the rear of the property for security; that he has permission from the farmer who owns the road to use the road; that, with the permission of the farmer, he has made considerable improvements to the road; that the cabin was delivered on this roadway to the subject property; that the cabin is approximately 200 ft. from the shed; that this use is not just seasonable but year-round; that this is a rural area; that this use substantially adversely affects the use and enjoyment of his own property; that he is too embarrassed to have guests over due to the use of the Applicant's property; that they have lived on their lot for 30 years; and that the Applicant's use is detrimental to their property values.

Ms. Willey submitted pictures of the subject property and copies of AirBnB advertisements to Board members.

Ms. Willey testified that there is a trampoline on the Applicant's property and that kids scream at the pool often.

Mr. Willey testified that they have well water and have concerns about the effect of the Applicant's septic system on their well; and that, on busier weekends, mounds of trash have been left on the Applicant's property.

Mr. Sharp asked the Applicant to address the AirBnB advertisements submitted by the opposition which showed a bedroom for two, a family bedroom for three guests, and a fully private motor home.

Ms. Cannon testified that only the little blue bedroom would be used as a guest space inside the house.

Mr. Sharp asked Ms. Cannon to clarify exactly what she is requesting from the Board and how many guests could be accommodated and how many permanent residents are in the home.

Ms. Cannon testified that she would propose to rent out the cabin and garage during the summer season, the motor home about half of the season, and the room inside her home during the entire year; that, at maximum capacity, it could accommodate 16 guests; that she and her two daughters live in the home; that the blue bedroom can accommodate 2 guests; that the garage can accommodate 4 guests; that the cabin can accommodate 4 guests; that the motor home can accommodate 6 guests; that she will not be listing her purple bedroom for rent; that there are only 3

residents of the home; that the plumbing in the shed is for her chickens and may be tied to the septic system; that she dumps waste from the motorhome into the septic system; and that she had a bounce house once last year.

Mr. Sharp asked if there were concerns about additional constraints on the septic system.

Ms. Cannon stated that she was not concerned because the use is not constant and that, even when guests are present, they are usually out all day experiencing tourist activities in Sussex County.

Ms. Norwood stated that Zoning Code does not permit staying in a motorhome on a residential property; and that, to stay in a camper or recreational vehicle, it must be on a campground.

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

Mr. Williamson closed the public hearing.

Mr. Workman moved to deny Case No. 12526 for the requested special use exception as the use will substantially adversely affect the uses of neighboring and adjacent properties.

Motion by Mr. Workman, seconded by Mr. Chorman, carried that the **special use exception be denied 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 No. 12528 – Todd Schultz seeks variances from the side yard setback requirements for proposed and existing structures (Sections 115-25, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located on the southwest side of Circle Drive West within the Hunters Mill Estates Subdivision. 911 Address: 40 Circle Drive West, Milton. Zoning District: AR-1. Tax Parcel: 235-30.00-265.00

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 the following variances:

- 8.07 ft. from the 15 ft. side yard setback requirement for a proposed attached garage extension.
- 8.08 ft. from the 15 ft. side yard setback requirement for a proposed attached garage extension.
- 3 ft. from the 5 ft. side yard setback requirement for an existing shed.
- 2 ft. from the 5 ft. side yard setback requirement for an existing shed.

Mr. Todd Schultz and Ms. Tina Schultz were sworn in to give testimony about his

Application.

Mr. Schultz testified that he is requesting a variance to expand the existing attached garage; that they have owned the property for 30 years and are now full-time residents; that the garage addition will allow them to park 2 cars in the garage; that the property is located off a cul-de-sac; that he spoke with neighbors and they support the request; that the property narrows towards the rear; that the septic system is located behind the deck; that there is an underground propane tank as well; that the garage will match the materials of the existing house; that the property is unique as it is narrow; that the placement of the dwelling prevents a garage from being placed in another location; that the septic system is to the rear of the existing garage so it cannot be extended lengthwise; that the exceptional practical difficulty was not created by the Applicant but by the placement of the dwelling and septic on the property; that the placement of the underground propane tank also prevents moving the garage to another location on the property; that the dwelling has been in place since 1996; that the variances will not alter the essential character of the neighborhood as that addition will be an extension of the existing garage and will be finished to match the existing dwelling and garage; that it is the minimum variance needed to allow for a 14 ft. extension which will make the garage usable and aesthetically pleasing; that there are no complaints from the neighbors regarding the proposal; that HOA approval has been received and is part of the Application; that four letters of approval are included with the Application; that the neighbor most impacted by the request for the variances is present to show her support for the Application; that the shed was placed in its existing location in 1997; that the shed cannot be moved; that they did not know that a permit was required for a shed; and that it does not impact neighboring properties.

Ms. Schultz testified that she was unaware that a permit was required when she bought the shed in 1997.

Mr. Schultz testified that there have been no complaints about the shed and that the garage could not be turned due to the location of the propane tank.

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

Mr. Williamson closed the public hearing.

Mr. Hastings moved to approve Case No. 12528 for the requested variances, pending final written decision, as the requested variances will not alter the essential character of the neighborhood or substantially permanently impair the appropriate use or development of the adjacent property nor be detrimental to the public welfare; and that the variances represent the minimum variances necessary to afford relief and represent the least modifications of the regulations at issue.

Motion by Mr. Hastings, seconded by Mr. Chorman, carried that the **variances 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 No. 12529 – Umaru Bolarinwa seeks variances from the front yard, side yard, and rear yard setback requirements for proposed structures (Sections 115-34, 115-182 and 115-183 of the Sussex County Zoning Code). The property is located on the west side of Charleys Run approximately 250 ft. southwest of Jay Bird Street. 911 Address: 31600 Charleys Run, Bethany Beach. Zoning District: MR. Tax Parcel: 134-13.00-2184.00

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 Applicant is requesting the following variances:

- 4.5 ft. from the required 15 ft. front yard for a proposed porch.
- 3 ft. from the required 15 ft. front yard for proposed steps.
- 18.01 ft. from the required 25 ft. rear yard for a proposed dwelling.

Mr. Tim Naughton was sworn in to give testimony about the Application.

The Board found that Mr. Jim Fuqua, Esq. was present on behalf of the Applicant Umaru Bolarinwa.

Mr. Fuqua stated that Mr. Tim Naughton from Evergreen Homes is present on behalf of Mr. Bolarinwa; that an exhibit booklet was submitted as part of the Application; that Bethany Woods is an 18 lot subdivision; that the property is located north of Bethany Beach; that this lot is unique as it has an irregular shape and is narrow; that the lot at its deepest point has a depth of only 100 ft.; that the lot is triangularly shaped; that the lot sharply decreases both to the north and south of the property; that the shape of the lot reduces its building envelope; that, because of the small buildable area, the variances are necessary for the reasonable use of this lot; that the exceptional practical difficulty was not caused by the Applicant as no construction has occurred; that the lot is vacant; that the lot's shape was created when the Bethany Woods was created in 2007; that, if the variances are approved, it will permit the building of a dwelling that will be compatible and similar to homes in the neighborhood and will not alter the essential character of the neighborhood; that the only adjacent homes are to the north and the home will meet the setbacks on this portion of the lot; that, in addition to meeting the setbacks on this side of the property, there is also an area of common community space between the subject property and the neighboring properties to the north; that to the rear of the subject property is separated from McCoy's Way by an existing conservation easement of approximately 25 – 30 ft.; that the proposed house plans were submitted to the Bethany Woods Property Owners Association and the Applicant has received approval of the proposed setbacks and support for the variance application; that the variances requested are the minimum variances for the reasonable use of the property; that there is a restriction for the subdivision that requires homes therein to have no less than 2,000 sf. of

interior space; that normally, in a medium residential (MR) cluster subdivision, the setbacks would be 30 ft. for the front yard and 10 ft. for the rear and side yards; that, in this subdivision of Bethany Woods, the setbacks are 15 ft. from the front and 10 ft. for the rear and side yards; that, however, for the subject property, there is a rear yard setback of 25 ft. which is unusual; and that, if this variance request is approved, the approved variances and setbacks for this property should be clearly listed on the written decision to avoid confusion in the future.

Mr. Naughton affirmed the statements made by Mr. Fuqua as true and correct.

Mr. Fuqua stated that the conservation easement is wooded and overgrown.

Mr. Naughton testified that the HVAC system will not require additional variances and that there will be no steps from the rear of the dwelling.

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. 12529 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 necessary to afford relief; and that the written decision include the appropriate setback distances as prescribed by Counsel.

Motion by Dr. Carson, seconded by Mr. Hastings, carried that the **variances 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

The Board members discussed changing the meeting time during the summer months.

Motion by Mr. Hastings, seconded by Mr. Chorman have Board of Adjustment meetings began at 6:30 pm from the first meeting in May until the second meeting in October when the start time of the meeting will revert to 6:00 pm. 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.

Meeting adjourned at 7:30 p.m.