

MINUTES OF FEBRUARY 19, 2024

The regular meeting of the Sussex County Board of Adjustment was held on Monday, February 19, 2024, at 6:00 p.m. in the County Council Chambers, Sussex County Administration Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Jeffrey Chorman presiding. The Board members present were Dr. Kevin Carson, Mr. John T. Hastings, Mr. Jordan Warfel, Mr. John Williamson, and Mr. Jeffrey Chorman. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Ms. Jennifer Norwood – Planning and Zoning Manager, and Ms. Marina Truitt – Recording Secretary.

The Pledge of Allegiance was led by Mr. Chorman.

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

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

Motion by Mr. Hastings, seconded by Mr. Warfel and carried unanimously to approve the Minutes for the December 11, 2024, meeting. Motion carried 5 – 0.

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

Motion by Dr. Carson, seconded by Mr. Warfel and carried to approve the Findings of Facts for the December 11, 2024, meeting with corrections noted by staff. Motion carried 5 – 0.

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

OLD BUSINESS

Case No. 12892 – Ariel Gonzalez seeks variances from the side and rear yard setback requirements for existing structures (Sections 115-25 and 115-182 of the Sussex County Zoning Code). The property is located on the northwest side of Saw Mill Road approximately 2461 ft. west of Pine Road. 911 Address: 20116 Saw Mill Road, Milton. Zoning District: AR-1. Tax Parcel: 135-4.00-11.01.

Ms. Norwood presented the case and stated that the case was left open for the Office of Planning and Zoning to receive an updated survey.

Mr. Warfel recused himself and left the Council Chambers.

Mr. Ariel Gonzalez and Mr. John Kline, III, were sworn in to give testimony for this

application.

Mr. Gonzalez testified that the shed is a two story building; that the house on the property is the same house that came with the property and is old; that the lot is not very big and there is not a lot of room for the shed; that the shed was built after he came in for the porch variance; that he was aware of the property setbacks but did not know exactly where the property line was when building; that he acquired a building permit for the shed; that he realizes now how close the structure is to the property boundaries; that the shed can not be moved from where it is; that the driveway is shared between all 4 parcels; that the septic system and driveway / parking take up a majority of the front yard; that he needs the shed to put his stuff and use the second story for a home office; that he did not know exactly where the property line was in order to comply with the proper setbacks when building; that the shed was built without a survey done to show precise property lines; that, when he signed for the building permit, he understood what the setbacks were for the property; and that he thought he could put the shed 5 feet from the property lines but did not understand that the setback requirement was for structures 600 square feet or less.

Mr. Kline testified that, when they measured the area to build the shed, they measured from the marker; that he did not mind if it was encroaching the setback requirements because his land is on the other side of the property line and does not mind the shed being that close to the property line; that he owns the property to the west of the Applicant's property; that the Applicant came to him to help find the property markers and measure for the shed; and that they measured roughly 3 feet from the marker.

Mr. Sharp noted, that per the 2019 Findings of Fact, the dwelling is considered a non-conforming dwelling.

Ms. Norwood confirmed that the variances needed are as follows:

1. A variance of 20 feet from the 20 feet rear yard setback requirement for existing steps and a covered landing;
2. A variance of 15.2 feet from the 20 feet rear yard setback requirement for an existing shed and access;
3. A variance of 6 feet from the 10 feet side yard setback requirement on the northwest side for an existing shed and access; and
4. A variance of 10 feet from the 10 feet side yard setback requirement on the northwest side for an existing shed and access.

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

Mr. Chorman closed the public hearing.

Mr. Hastings moved to deny the application for Case No. 12892 for the requested variances, pending final written decision, for the following reasons:

1. The property does not have any unique physical conditions;
2. The Applicant has failed to demonstrate the property cannot be developed under strict conformity; and
3. The variances do not represent the minimum variances necessary to afford relief.

In seconding the motion, Dr. Carson added that the exceptional practical difficulty has been created by the Applicant. Mr. Williamson added that the Applicant should have known of the issue.

Motion by Mr. Hastings, seconded by Dr. Carson, carried that the **variances be denied for the reasons stated.** Motion carried 4 - 0.

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

NEW BUSINESS

Case No. 12906 – Gregory J. and M. Charlene Merk seek variances from the front and rear yard setback requirements for existing and proposed structures (Sections 115-25, 115-182, and 115-183 of the Sussex County Zoning Code). The property is located on the corner of Mulberry Knoll Road and W. Sands Street within the Bay Shore Hills Subdivision. 911 Address: 20682 Mulberry Knoll Road, Lewes. Zoning District: AR-1. Tax Parcel: 334-18.00-70.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received thirteen (13) letters in support of the Application, two (2) letters in opposition of the Application, and one (1) mail return. The Applicants are requesting a 9.7 foot variance from the 40 foot front yard setback requirement for a proposed kitchen addition and a 4.8 foot variance from the 15 foot rear yard setback requirement for a proposed wood shop addition.

Ms. Norwood stated that the dwelling received a CO in 1983 or 1984 and that the permit showed a 30 foot front yard setback; that the garage was permitted; and that no variance is needed for the garage.

Mr. William Schab, Esquire, appeared on behalf of the Applicants and presented the Application on their behalf.

Mr. Schab stated that the Applicants are seeking a variance for a proposed kitchen in the front of the property that complies with the original 30 foot setback requirement but encroaches into the updated 40 foot setback requirement; that the Applicants are seeking a variance for a proposed wood working addition in the rear of the house, as well; that the variance requested for the wood shop

addition is much smaller than a detached wood working shed, making it a unique request; that the Applicants purchased this home in 2016 and have been using it as a second home until now; that the Applicants plan to reside in the home full time; that the current layout of the kitchen is small and impractical with no dining or living room, making it unique; that the Applicant is an avid woodworker and needs a space greater than 10 feet to fit his tools; that the workshop addition makes more sense than a detached shed; that the additions would not have an adverse impact on the property or neighborhood and the difficulty was not created by the Applicants; that the Applicants could have a detached shed, instead of the addition in the back yard and that would not require a variance, but would also not fulfill the needs of the Applicants; that the Applicants' neighbor was worried about his view being obstructed but, if attached, there would be no obstruction; that, if the woodshop was detached, it would obstruct the neighbor's view; that the essential character of the neighborhood would not be changed; that the variance is the minimum variance to afford relief; and that the variance will increase property values.

Mr. Gregory Merk was sworn in to give testimony for this application.

Mr. Merk testified that the septic lines come out of the right side of the house off West Sands Street so they are unable to put an addition there; that his wood working entails large projects, book shelves, cabinets, cutting boards, etc.; that, if he were to build a detached shop, he could insulate, cool, and heat it; that, if they built a detached shed, it would obstruct the view behind their house; that his neighbor did not prefer if the wood working shop was attached or detached; that the proposed wood shop would be accessed through the garage; that, when moving, they will be downsizing from 2,800 square feet with a full basement to 1,650 square feet; that the current deck will be downsized if the addition is granted; that with the deck reconfiguration, it does not allow room to stretch the addition along the back of the house due to the interior layout of the house; that there are no homeowner association approvals needed; that the garage is 40-42 feet from Mulberry Knoll Road; that there is a gap between the edge of paving of Mulberry Knoll Road and the front property line; that the lot is similar in size to other lots in the neighborhood; that dwelling has 3 bedrooms and 2 bathrooms; that the existing kitchen measures 9 feet by 18 feet; and that there are multiple homes in the community that have variances.

Mr. Mark Helner was sworn in to give testimony in support of this application.

Mr. Helner testified that he owns Parcel 72 nearby; that the Applicant has a lot of tools for his hobby; that the proposed structures will add in seamlessly with the home; and that he is in support of the additions.

Mr. Schab stated that there are no steps in the front yard for the kitchen addition.

Ms. Michelle Flowers was sworn in to give testimony in support of this application.

Ms. Flowers testified that her and her husband moved there in 2019; that the community has

a lot of remodeling going on and is a good thing; that, if the Applicants build a detached shed instead of the proposed addition, it would block their view of Love Creek; that the Applicants are the tool keeper for many neighbors that borrow tools from Mr. Merk instead of buying them; and that she believes the additions will increase property values.

The Board found that two (2) people appeared in support of the Application and no one appeared in opposition to the Application.

Mr. Chorman closed the public hearing.

Mr. Warfel moved to approve the variance for a proposed kitchen addition and deny the variance for a proposed wood shop for the application Case No. 12906, pending final written decision, for the following reasons:

For the approval of the kitchen addition –

1. The property is unique due to its history and development due to the changing front yard setback and placement of the house;
2. That, due to such physical conditions, there is no possibility of the property can be developed in strict conformity with the code and the variance for the kitchen addition is necessary to enable reasonable use of the property;
3. The exceptional practical difficulty has not been created by the Applicants;
4. The variance for the kitchen addition will not alter the essential character of the neighborhood; and
5. The variance for the kitchen addition represents the minimum variance necessary to afford relief.

For the denial of the wood shop addition

1. The Applicant failed to demonstrate that the addition was a need and not a want;
2. The property can be developed in strict conformity with the Sussex County Zoning Code; and
3. The variance is not necessary to enable reasonable use of the Property.

Motion by Mr. Warfel, seconded by Mr. Hastings, carried that the **variances be approved in part and denied in part for the reasons stated.** Motion carried 4 - 1.

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

Case No. 12907 – Brooke and Brittanie Hudson seek variances from the maximum fence height and front yard setback requirement for existing and proposed structures (Section 115-25, 115-182,

and 115-185 of the Sussex County Zoning Code). The property is located on northwest side of Red Berry Road within the Holly Ridge Subdivision. 911 Address: 36815 Red Berry Road, Delmar. Zoning District: AR-1. Tax Parcel: 532-14.00-146.00.

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 Applicants are seeking a 29.35 foot variance from the 50 foot front yard setback requirement for a proposed pole barn with a lean-to, a 25 foot variance from the 50 foot front yard setback for the proposed pole barn with a lean-to and a 0.5 foot variance from the 3.5 foot height requirement for a fence within the front yard setback.

Mr. Brooke Hudson and Ms. Brittanie Hudson were sworn in to give testimony for this application.

Mr. Hudson testified that the property is unique due to the size and shape of the lot; that when they bought the house, they did not realize that the front and side yard bordering the road is all considered their front yard, giving them the increased front yard setback; that Insight Homes built the home; that the setbacks given when building the house and installing the fence were different; that, due to the increased setbacks, the proposed pole barn will encroach into the current setback; that there is a gap of 16 feet from the property line to the road; that there is a large ditch between the road and the property; that the size of the pole barn is based on the need for privacy, shade, and coverage from the sun when in the pool area; that solar panels being installed on the roof for green energy and storage for the kids toys and sporting accessories; that the pole barn will be shorter than the house; that the proposed pole barn has been approved by the homeowners association; that the need for variances arose when the pool company was going to install the pool and they asked to turn it but were unable due to the septic areas in the rear yard; that there is no opposition for the proposed pole barn from the neighboring properties; and that the greenhouse on the survey is in the process of being removed.

Ms. Hudson testified that the height of the fence is 4 feet tall per pool code.

Ms. Norwood noted that the front yard setback is 50 feet and the rear yard setback is 40 feet; and that the front property line is curved so it is not treated as a corner front yard.

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

Mr. Chorman closed the public hearing.

Mr. Williamson moved to approve the application for Case No. 12907 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique physical conditions due to the front curvature of the roads;
2. The exceptional practical difficulty was not created by the Applicants;

3. The variances represent the minimum variances necessary to afford relief; and
4. The variances represent the least modifications of the regulation at issue.

Motion by Mr. Williamson, seconded by Dr. Carson, carried that the **variances be approved for the reasons stated**. Motion carried 5 - 0.

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

Case No. 12908 – Ralph Page seeks variances from the corner front, front, and rear yard setback requirements for existing and proposed structures (Sections 115-25, 115-182, and 115-183 of the Sussex County Zoning Code). The property is located on the corner of Lincoln Drive and Grant Avenue within the Cape Windsor Subdivision. 911 Address: 38723 Grant Avenue, Selbyville. Zoning District: AR-1. Tax Parcel: 533-20.14-31.00.

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support or opposition to the Application and zero mail returns. The Applicant is seeking a 5 foot variance from the 15 feet rear yard setback requirement for a proposed addition and an 8.5 foot variance from the 15 feet corner front yard setback requirement for a proposed addition.

Mr. Ralph Page was sworn in to give testimony for this application.

Mr. Page testified that the property is located in Cape Windsor; that the property has a wing shape; that, when he purchased the home in 2010, there were a number of variances he needed to request due to things not being in order or taken care of before purchase; that, in 2011, he applied for a variance to add a second story addition to his home but ran out of money and only built a one story addition; that he is back to finish the proposed addition with this variance request; that Cape Windsor was developed in the 1960s as a mobile home park; that most homes in Cape Windsor are now 3 stories tall; that the property is very unique due to its shape; that the tight angle in the rear of the property limits construction to the home; that the shed will be removed; that the homeowners association approved the request; that an addition to the front of the house would cause visual impairment to oncoming corner traffic so the rear addition is much safer; that there is no opposition against the proposed addition; that the home currently has very limited living space in the home; that, structurally, the side addition is the only spot that makes sense; that the additional storage from the removed shed is not needed due to the garage attic space being created and utilized; that he is an engineer; that there have been no flooding issues on the property; and that the homeowners association has a restriction which limits construction near a bulkhead.

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

Mr. Chorman closed the public hearing.

Mr. Hastings moved to approve the application for Case No. 12908 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique physical conditions due to its shape;
2. That, due to such physical circumstances or conditions, there is no possibility that property can be developed in strict conformity with Sussex County Zoning Code;
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. Hastings, seconded by Mr. Warfel, carried that the **variances be approved for the reasons stated.** Motion carried 5-0.

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

Case No. 12909 – Andrew and Gladys Bellamah seek variances from the front and side yard setback requirements for a proposed structure (Sections 115-34 and 115-182 of the Sussex County Zoning Code). The property is located on the northwest side of Wilson Walk within the Bay View Park Subdivision. 911 Address: 39538 Wilson Walk, Bethany Beach. Zoning District: MR. Tax Map: 134-20.11-85.00.

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no letters in support of the Application, one (1) letter in opposition to the Application, and one (1) mail return. The Applicants are requesting variances of 8.55 feet and 9.7 feet from the 15 foot corner front yard for a proposed structure, a 2.19 foot variance from the 5 foot side yard setback on the north side for a proposed structure and a 2.25 foot variance from the 5 foot side yard setback requirement on the north side for a proposed structure.

Dr. Carson recused himself and left the Council Chambers.

Mr. Mike Wheedleton were sworn in to give testimony for this application.

Mr. Wheedleton testified that the Applicants purchased the Property in 1999; that the house was built in 1987; that the Applicants would like to reconstruct the home completely from the ground up replacing the foundation and all; that Hurricane Sandy damaged the house; that the setbacks have changed since the house was built causing the current footprint to encroach the current setbacks; that the proposed structure will be replaced in the same footprint as the existing dwelling; that the proposed structure will look very similar to the current structure on the property with a few cosmetic changes; that the pool and fence around the pool will remain on the property; that the Applicants have not submitted anything to the homeowners association for approval of the proposed structure; that he is

not aware of the Applicants updating the current parking situation in any way if granted the variance for the proposed structure; that the road is lightly traveled since there are only 2 houses on the road; that there has not been discussion to bring the current layout of the property into compliance because the Applicants really like the layout of the place; that the driveway is hardly on or within the bounds of the property; that he realizes that board approvals are only valid for 2 years and that the Applicants should be able to design, demolish and build within that 2 year year period if approved; and that some of the proposed future decks would be built in different spots.

Mr. Sharp noted that the Board could request a formal decision from the Planning & Zoning Director to determine the setback lines on the Property since there was a question as whether the Property bordering Wilson Walk should be considered the front yard rather than a corner front yard.

Mr. John Hendrickson was sworn in to give testimony in opposition to this application.

Mr. Hendrickson testified that he believes that the Applicant has not met all 5 criteria for a variance; that the home should be brought into compliance if torn down; that the property; that the current foot print of the house is disruptive to the essential character of the neighborhood due to being in multiple violations; that the house could be rebuilt within regulation, if they can comply, they should comply; and that vehicles parked in the public right-of-way create a safety hazard and, should an emergency arise, there could be complications.

Mr. Byard Allmond was sworn in to give testimony in opposition to this application.

Mr. Allmond testified that he is the President of the homeowners association and has not been contacted about the proposed construction plan; that he agrees with everything that Mr. Hendrickson testified; that the variances requested are wants and not needs by the Applicants; that, with demolishing the home, there will be a major disturbance to neighborhood and grounds; that the structure is too close to the street; that the streets are narrow and have dead ends, causing them to be difficult to maneuver through without the added vehicles from lots that have used all their property for building, leaving no room for parking on their lot; that there is no cul-de-sac on the road; that there have been previous variances approved for accidental building outside of the regulations; and that he would like to see an actual plan.

The Board found that no one appeared in support of the Application and two (2) people appeared in opposition of the Application.

Mr. Chorman closed the public hearing.

Mr. Hastings moved to keep the record open for the application for Case No. 12909 for the requested variances as follows:

1. The record be left open for the Planning & Zoning Director to determine the setbacks for the property and for the Applicant to present a design showing the footprint of the proposal which shall be turned in to the Planning & Zoning Department by June 30, 2024; and
2. The record be left open with a hearing to be scheduled at the Board's meeting on July 15, 2024.

Motion by Mr. Hastings, seconded by Mr. Warfel, carried that the **variances to keep the record open until for the July 15, 2024, meeting for the reasons stated.** Motion carried 4 - 0.

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

ADDITIONAL BUSINESS

Meeting adjourned at 8:39 p.m.