

MINUTES OF FEBRUARY 20, 2023

The regular meeting of the Sussex County Board of Adjustment was held on Monday, February 20, 2023, 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 Jeffrey Chorman presiding. The Board members present were: Dr. Kevin Carson, Mr. John T. Hastings, Mr. Jordan Warfel, Mr. John Williamson - absent, 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, Mr. Chase Phillips – Planner II, and Ms. Ann Lepore – 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 4 – 0.

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

Motion by Mr. Warfel, seconded by Mr. Hastings and carried unanimously to approve the Minutes for the December 19, 2022, meeting. Motion carried 4 – 0.

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

Motion by Dr. Carson, seconded by Mr. Hastings and carried to approve the Findings of Facts for the December 19, 2022, meeting. Motion carried 4 – 0.

The vote by roll call; Mr. Warfel – 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. 12773– Bay Shore Community Church, c/o Jeremy Ferruccio seeks a special use exception to operate a daycare (Section 115-23 of the Sussex County Zoning Code). The property is located on the west side of Old Landing Road approximately 0.12 miles from Betsy Ross Boulevard. 911 Address: 20376 Old Landing Road, Rehoboth Beach. Zoning District: AR-1. Tax Parcel: 334-18.00-78.00 & 78.01

Ms. Norwood introduced the case and noted that the record was left open from the December 19, 2022, meeting to allow the Applicant to submit additional information and for public

comment at tonight's meeting. Ms. Norwood noted that the Applicant has since submitted a request to withdraw the Application.

Ms. Mackenzie Peet, Esquire, was present on behalf of the Applicant.

Ms. Peet stated that the Applicant wishes to withdraw the request for a special use exception to operate a daycare center.

Dr. Carson moved to approve the request to withdraw the Application for Case No. 12773.

Motion by Dr. Carson, seconded by Mr. Hastings, carried unanimously that the **application for a special use exception be withdrawn**. Motion carried 4 – 0.

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

Case No. 12778 – Jaymo Holdings LLC seeks variances from the front yard setback requirement for existing structures (Sections 115-25 and 115-182 of the Sussex County Zoning Code). The property is located on the north side of Teatown Road approximately 580 ft. east of Deep Grass Lane. 911 Address: 13941 Teatown Road, Lot 1, Greenwood. Zoning District: AR-1. Tax Parcel: 130-5.00-9.03

Ms. Norwood introduced the case and noted that the case was tabled with the record left open from the January 9, 2023, meeting to allow the Applicant to submit additional information on septic and well placement, additional information from DNREC, any other appropriate Government Agency at least one week prior to the February 20, 2023, meeting, and to allow public comment on those specific items only.

Mr. Warfel stated that he was absent for the January 9, 2023, meeting; that he had listened to the tape; and that he is prepared to participate in this hearing.

Ms. Mackenzie Peet, Esquire, was present on behalf of the Applicant.

Ms. Peet stated that documents were submitted to the Board on January 23, 2023; that calling in by telephone today are her clients, Moe Adams and Jay Roberts; that also on the telephone is Kenneth Redinger, who is the wetland specialist who assisted her clients in obtaining a permit for the fill after the fact.

Mr. Kenneth Redinger was sworn in to give testimony about the Application.

Mr. Redinger testified that he was retained by Jaymo Holdings to deal with any wetlands issues resulting from bringing fill onto the property; that the project process took approximately

eight months to complete; that the federal wetlands permit process is a multi-stage process; that it began with him delineating the wetland boundaries on the property and noting them on the site plan; that a plan dated May 31, 2022, was prepared by Merestone Consultants, Inc., and revised on June 17, 2022; that it was determined that approximately 1,875 square feet of fill material had been mistakenly placed within the wetlands boundary prior to obtaining the required permits from the U.S. Army Corps of Engineers (“USACE”); that the Applicant was able to obtain an “after the fact” nationwide permit to authorize those impacts; that the necessary documents which included an alternatives analysis which shows that the activity has avoided and minimized the wetland impact to get the project completed; that part of the process included a review by the U.S. Fish & Wildlife Service, the Delaware Fish & Wildlife Service, and State Historic Preservation Office; that the permit was issued on December 1, 2022, which settled any of the unauthorized wetland activities on the property and confirmed the limits of wetlands within the property; that the placement of the home was setback as far as it could be to meet all the setback requirements that were known at the time; that the USACE allowed the fill to remain within the silt fence to meet the County setback requirements that were known at the time; that the silt fence will stay in place until the soil is stabilized and covered by grass to meet the sediment control requirements; that an additional inspection will be required; that he will make a site visit to ensure that all permit requirements have been met; that he is a private wetland consultant; that his Professional Wetland Scientist number is 2126; that his company name is Kenneth W. Redinger Environmental Services; and that he has worked in Sussex County for approximately 30 years.

Ms. Peet submitted an email with a summary of Mr. Redinger’s testimony into the record.

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

Mr. Chorman closed the public hearing.

Dr. Carson moved to approve the application for Case No. 12778 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions;
2. The variances will not alter the essential character of the neighborhood; and
3. The variances represent the minimum variances necessary to afford relief.

Motion by Dr. Carson, seconded by Mr. Warfel, carried that the **variances be granted for the reasons stated.** Motion carried 3 – 1.

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

PUBLIC HEARINGS

Case No. 12794 – Daniel A. Nedwick seeks a variance from the rear yard setback requirement for an existing structure (Sections 115-25 and 115-183 of the Sussex County Zoning Code). The property is located on the north side of Hayes Avenue within the Edgewater Acres Subdivision. 911 Address: 13028 Hayes Avenue, Selbyville. Zoning District: AR-1. Tax Map: 533-20.19-54.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received five letters in support of, zero letters in opposition to the Application, and zero mail returns. The Applicant is requesting 4.7 ft. for 1st floor, 2nd floor, and 3rd floor balconies and a variance of 5.2 feet for a spiral staircase.

Ms. Mackenzie Peet, Esquire, was present on behalf of the Applicant.

Ms. Peet stated that she is representing the Applicant Daniel Nedwick; that Mr. Nedwick is seeking variances for existing 2nd and 3rd floor balconies and supports in the amount of 4.7 ft. at 10.3 ft. from the rear property line; that it includes a spiral staircase which is part of the structure and connects the second and third floor balconies which would be a 5.2 ft. encroachment at 9.8 ft. from the rear property line; that the first floor balcony complies with the setbacks as it is allowed to encroach up to 5 feet into the setback per County Code; that the second and third floor balconies must comply with the setbacks issued for the dwelling; that the contractor did not comply with the setbacks and did not read the building permit correctly; that the property is unique as it consists of less than 10,000 square feet and is considered to be an existing, non-conforming lot; that the variances are necessary to enable the reasonable use of the property as the variances will allow the reasonably sized, existing balcony and its structures to remain in place; that the balcony cannot be removed without substantial reconstruction; that the contractor placed the structures in the rear yard setback not the Applicant; that the Applicant relied on professionals to guide him through the planning and building process only to later discover the balcony encroachment into the rear yard setback; that the variances will not alter the essential character of the neighborhood; that the Board granted front and rear yard variances for existing structures at a nearby property identified as 13030 Hayes Avenue (Case No. 12159); that the record for that case confirmed there are 17-18 properties that encroach into the rear yard setback in the neighborhood; that the variances requested are the minimum variances necessary to afford relief of the existing balconies and staircase; that this was constructed within the last 18 months; that the initial permit was obtained by Mr. Nedwick but the subsequent permits were pulled by Beam Construction; that the property is in a flood zone; and that there is no homeowners association but there are deed restrictions recorded.

Mr. Daniel Nedwick was sworn in to give testimony about the Application.

Mr. Nedwick affirmed that statements made by Ms. Peet as true and correct.

Mr. Nedwick testified that the property is served by public water and sewer; that the contractor is Beam Construction in Fenwick Island; that he was unaware that the balcony was in the setback; that the front yard was cleared; that there is no street parking and all parking must be on the property; that there was an older dwelling on the lot which was removed; that this dwelling has been elevated; that the balcony is 5 ft. wide; and that the only access to the 4th floor balcony is from the spiral staircase.

Ms. Peet submitted a copy of the deed restrictions into the record.

Mr. Phillips stated that there is a history of three Board cases on this street.

Mr. Sharp stated that the Booros case was for a front and side yard variance but it was prior to the enactment of the Small Lot Ordinance; that the Cassie case dealt with some issues made by the architect and builder which included some foundation problems; that, because the first floor balcony is essentially covered, it would require a variance also because only uncovered decks, steps, and balconies that may encroach into the setback.

Mr. Phillips stated there was a third variance on that street which was withdrawn.

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. 12794 for the requested variances, pending final written decision, for the following reasons:

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

Motion by Mr. Hastings, seconded by Mr. Warfel, carried that the **variances be granted for the reasons stated.** Motion carried 4 – 0.

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

Case No. 12795 – Barry Dukes II seeks a special use exception to operate a rifle / pistol range not to exceed five (5) years (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located on the northeast side of Hammer and Chisel Drive approximately 1270 feet from Dukes Lumber Road. 911 Address: 29091 Hammer and Chisel Drive, Laurel. Zoning District: AR-1. Tax Map: 232-8.00-5.08

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support or in opposition to the Application and zero mail returns. The Applicant is requesting a renewal of a special use exception to operate a rifle / pistol range not to exceed five (5) years.

Mr. Evan Rogers and Mr. Barry Dukes, II, were sworn in to testify on the Application.

Mr. Rogers testified that he and Mr. Dukes have owned and operated a firearms training business for approximately ten years; that they use this property for the training; that they are requesting a renewal of the special use exception; that there have been no complaints from neighbors; that the range is not open to the public; that the hours of operation are generally in the early afternoon with occasional evening training when required by security companies; that there are no changes to the berm; that there is no change in traffic; that there have been no injuries at the range; that this is only for hand gun training only; and that only about 10 people could be shooting at the same time.

Mr. Dukes testified that the range is only used on Saturdays and only for private use which is the firearms training offered by them; that classes generally run from 12-2 pm; that the surrounding land is mainly owned by family members; that he resides at the property; that the business name is East Coast Defense; that both he and Mr. Rogers are licensed NRA instructors; that there are approximately 10 – 12 classes each year; and that there are no houses to the rear of the berm.

Mr. Sharp reviewed the prior findings of fact for Case No. 12049 with the Applicants and they confirmed those findings.

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

Mr. Chorman closed the public hearing.

Mr. Warfel moved to approve the application for Case No. 12795 for the requested special use exception for a period of five (5) years, pending final written decision, because the use will not substantially affect adversely the uses of adjacent and neighboring properties.

Motion by Mr. Warfel, seconded by Mr. Hastings, carried that the **special use exception is granted for a period of five (5) years for the reasons stated.** Motion carried 4 – 0.

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

Case No. 12796 – Craig Forster seeks variances from the front yard and corner front yard setback requirements for proposed structures (Sections 115-25 and 115-182 of the Sussex County Zoning Code). The property is a corner through lot located on the west side of 2nd Street within the Ann Acres Subdivision. 911 Address: 21206 2nd Street, Rehoboth Beach. Zoning District: AR-1. Tax

Map: 334-20.13-159.00

Mr. Phillips presented the case and stated that the Office of Planning and Zoning received one letter in support of, zero letters in opposition to the Application, and zero mail returns. The Applicant is requesting the following variances:

1. 7.8 ft. from the 15 ft. corner front yard setback requirement from Andrew Avenue for a proposed dwelling;
2. 5.9 ft. from the 15 ft. corner front yard setback requirement from Andrew Avenue for a proposed dwelling;
3. 3.7 ft. from the 15 ft. corner front yard setback requirement from Andrew Avenue for a proposed HVAC unit;
4. 13.9 ft. from the 30 ft. front yard setback requirement from 2nd Street for a proposed dwelling;
5. 17.9 ft. from the 30 ft. front yard setback requirement from 2nd Street for proposed stairs; and
6. 12.9 ft. from the 30 ft. front yard setback requirement from 2nd Street for a proposed HVAC unit.

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

Mr. Forster submitted 16 letters of support from neighbors into the record.

Mr. Forster testified that he purchased the home approximately 25 years ago and it has been used as a vacation home; that now it will be his permanent residence; that the existing dwelling has very limited space with almost no storage; that the variance requests are to build a new dwelling that will suit the family's needs; that the property is unique as it is triangular in shape with 4,497 square feet surrounded by three streets; that the buildable area is 497 square feet or only 17% of the lot; that this property cannot be developed without the variances because of the small lot size and the triangular shape versus the rectangular shape with front yard setbacks or corner front setbacks on three sides; that the variances are necessary to enable a reasonable use of the property for a full-time residence; that these issues were not created by the Applicant but by uniqueness of the lot; that the existing dwelling stands only 16 ft. from the 2nd Street property line and sits inside the 30 ft. setback requirement; that the variances will not alter the essential character of the neighborhood as he takes great pride to keep his house and property in good condition; that the new dwelling will be similar in appearance to other houses in the area; that the changes will keep the character and charm of the beach community; that the house cannot be moved back as there are large elm trees on that side of the property and it would create a request for a variance from Dodd Avenue; that the new dwelling will have 2,400 square feet of living space with a two-car garage below the living space; that he intends to bury the propane tank; that he cannot relocate the compressor but intends to fence it; that the mailbox will be close to the intersection of 2nd Street and Andrews Avenue based on advice from the postal carrier; that the house is addressed on 2nd Street; that there is approximately 10 – 15 ft. between

the property line and the edge of paving; that 2nd Street is a dead-end street so there is very little traffic; that these variances will not create any visibility issues for traffic; and that the existing deck will be removed.

Mr. Christopher J. Andrews was sworn in to give testimony in support of the Application.

Mr. Andrews testified that he lives on Andrew Avenue; and that the house has been staked out so it will not block any traffic or create any visibility issues.

Ms. Kay Wheatley was sworn in to give testimony in support of the Application.

Ms. Wheatley testified that she has watched this area be developed over the years and what Mr. Forster is requesting is minimal compared to other homes in the area; that he is simply asking for room for his family and more storage which is something any of us would want; and that she hopes the Board can support his request for variances.

Mr. Forster testified that the elm trees along the south property line are trimmed yearly but limit the ability to move the house closer to the side property line; that, if he built the house closer to the side property line, a variance would be needed from Dodd Avenue; that the deck will be removed; and that the house will be 7.7 feet from the side property line.

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

Mr. Chorman closed the public hearing.

Mr. Warfel moved to approve the application for Case No. 12796 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to its shape and size;
2. That, due to the physical conditions, the property cannot be developed in strict conformity with Sussex County Zoning Code, and the variances, as modified, are necessary to enable the 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 that the **variances be granted for the reasons stated**. Motion carried 4 – 0.

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

Case No. 12797 – GP Lewes LLC seeks variances from the front yard setback requirements for existing and proposed structures (Sections 115-82 and 115-182 of the Sussex County Zoning Code). The property is located on the southeast side of Shady Road at Coastal Highway. 911 Address: 17467 Shady Road, Lewes. Zoning District: C-1. Tax Map: 334-6.00-525.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support or in opposition to the Application and zero mail returns. The Applicant is requesting the following variances:

1. 4 ft. from the 60 ft. front yard setback requirement for an existing and proposed addition;
2. 12.56 ft. from the 60 ft. front yard setback requirement for a proposed addition;
3. 18.83 ft. from the 60 ft. front yard setback requirement for an existing structure;
4. 19.82 ft. from the 60 ft. front yard setback requirement for an existing structure; and
5. 7.8 ft. from the 60 ft. front yard setback requirement for a proposed addition;

Mr. Warfel recused himself and left Council Chambers

Mr. Timothy Metzner was sworn in to give testimony for the Application.

Mr. Metzner testified that, in addition to the information in the record, when the site was approved Sussex County had 40 ft. setbacks; that the building met those setbacks and the setbacks have been increased along Shady Road and Coastal Highway to 60 ft.; that the existing structures do not meet the new setback requirements; that the owners of the building want to upgrade the building to increase safety; that there are two entrances to the building, one for takeout and one for the restaurant; that the owner proposes to make both entrances side by side; that the owner proposes to create a larger indoor waiting area for patrons for safety and for protection from inclement weather; that the proposed floor plan was submitted into the record and will allow for more fluid movement within the building; that the property is a legal non-conforming lot; that the amendment to the Code created the exceptional practical difficulty; that the proposed variances will not alter the character of the neighborhood as this is a commercial area; that the proposed improvements will provide for greater safety for patrons accessing the restaurant; that the variances, if authorized, represent the minimum that will afford relief and represent the least modifications possible to improve restaurant access and safety; that this vestibule is consistent with other Grotto restaurants; that there will be a ADA accessible sidewalk along the front of the building; that the Applicant is restricted due to the existing infrastructure of the property; that the edge of paving to the property line is 5 ft. on Shady Road and 16 ft. on Coastal Highway at the closest points; and that, on the site plan where it states that 1,284 sq. ft. of asphalt is to be removed, the removal is for adding to the water service for the installation of a sprinkler system and it will be restored back to asphalt.

Mr. Jeffrey Gosnear was sworn in to give testimony about the Application.

Mr. Gosnear testified that this restaurant is a family place and a lot of sports teams come to the restaurant after games and / or for end of season parties; that, by creating a larger indoor waiting area and installing a sidewalk, it will create a safer environment especially for children; and that the waiting area will triple in size.

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. 12797 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions and was developed before the change in zoning laws;
2. The exceptional practical difficulty was not created by the Applicant;
3. The variances will not alter the essential character of the neighborhood; and
4. The variances represent the minimum variances necessary to afford relief.

Motion by Mr. Hastings, seconded by Dr. Carson, carried that the **variances be granted for the reasons stated.** Motion carried 3 – 0.

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

ADDITIONAL BUSINESS

There was no additional business.

Meeting adjourned at 7:44 p.m.