

MINUTES OF FEBRUARY 24, 2025

The regular meeting of the Sussex County Board of Adjustment was held on Monday, February 24, 2025, 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 Chairman Jeffrey Chorman presiding. The Board members present were Dr. Kevin Carson, Mr. Shawn Lovenguth, Mr. John Hastings and Mr. John Williamson. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Ms. Ann Lepore – Planner III, and Ms. Hannah Wyatt – Recording Secretary.

The Pledge of Allegiance was led by Mr. Chorman.

Motion by Dr. Carson, seconded by Mr. Lovenguth and carried unanimously to approve the agenda with the removal of Case No. 13028. Motion carried 5 – 0.

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

Motion by Mr. Williamson, seconded by Mr. Hastings and carried unanimously to approve the Minutes for the December 9, 2024, meeting. Motion carried 5 – 0.

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

Motion by Mr. Hastings seconded by Dr. Carson and carried to approve the Findings of Facts for the December 9, 2024, meeting. Motion carried 5 – 0.

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

Motion by Dr. Carson seconded by Mr. Hastings and carried to approve the Minutes for the December 16, 2024, meeting. Motion carried 5-0

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

Motion by Mr. Lovenguth seconded by Dr. Carson and carried to approve the Findings of Facts for the December 16, 2024, meeting. Motion carried 5-0

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

PUBLIC HEARINGS

Case No. 13022 – Karen Groves seeks a variance from the side yard setback for an inground pool (Sections 115-34 and 115-185 D of the Sussex County Zoning Code.) The property is located on the east side of Keenwick Road within the Keenwick Subdivision. 911 Address: 38169 Keenwick Road, Selbyville. Zoning District – MR. Tax Map: 533-20.09-72.00

Ms. Lepore presented the case and stated that the Office of Planning and Zoning received zero opposition letters, 5 letters of support, and zero mail returns.

The Applicant is requesting a 4 foot variance from the 10 foot side yard setback requirement on the south side for a proposed swimming pool.

Mr. Robert Groves and Ms. Karen Groves were sworn in to give testimony for this application.

Mr. Groves testified that there was a pre-existing pool on the property; that the prior owners had a pool installed in 2003 and the seams started ripping and ground water got into the lining of the pool; that they had replaced 3 pool liners in 9 years; that they determined that a new pool was needed because the previous pool met its life expectancy; that the pool company came and demolished the old pool and dug the new hole for the proposed pool; that, after they dug the hole for the new pool, they stopped the process and said they were over the setbacks; that the contractor failed to let them know about the setbacks before they started the process; that they paid a \$40,000.00 deposit to the pool contractor; that they cannot move the pool to be in compliance because there is a well to the right of the proposed pool and he would have to remove the well in order to move the pool; that there are other pools in the neighborhood that are about 3 feet from the fence on their properties; that they have erosion from the hole being in the back yard and his footers are starting to show; that the pool will not pose a fire hazard; that they had immediate neighbors sign off on the pool and variance; that it would enhance the area and not alter the character of the neighborhood; that the neighborhood was developed in the 1960s and 1970s; that there has been renovation within the neighborhood; that they do not have a HOA to get approval from; that there are 5 in-ground pools on the street and other above-ground pools; that the old pool was L-shaped and measured 22' x 24' if square; that the new pool is smaller because part of the pool area will be used for a hot tub; that the new pool is longer but not as wide; that the pool will have a concrete walkway and treks on the deck; that the water line will be 6 feet from the side property line; that there were no complaints about the prior pool; that he needs the hot tub for medical purposes; that he has had multiple surgeries on his neck and shoulders as well as back pain; and that by having this pool he could do aquatherapy at home.

Ms. Groves testified that neighbors support the request.

Mr. Sharp noted that the Small Lot Ordinance does not apply to pools.

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. 13022 for the variance, pending final written decision, for the following reasons:

1. The property has unique physical conditions;
2. The variance will not alter the essential character of the neighborhood;
3. The variance sought is the minimum variance necessary to afford relief; and
4. The exceptional practical difficulty is not being created by the Applicants.

Motion by Mr. Hastings, seconded by Mr. Lovenguth, carried that the **variance be approved for the reasons stated**. Motion carried 5 - 0.

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

Case No. 12987 – DEStorage.com LLC seeks a special use exception for an off-premises sign and seeks variances from the front yard setback requirement and separation distance requirements for a proposed structure (Section 115-159.5B, 115-161.2D and 115-80 of the Sussex County Zoning Code). The property is located South of Dickerson Road, West of Dupont Boulevard, and Northeast of Handy Road. 911 Address: 28862 Dupont Boulevard, Millsboro. Zoning District: C-1. Tax Parcel: 233-5.00-101.00

Ms. Lepore presented the case and stated that the Office of Planning and Zoning received neither support nor opposition, and zero mail returns.

The Applicant is requesting a special use exception to replace an existing off-premises sign and the following variances.

- Separation distance- 48' from the 150' separation distance. The nearest dwelling is 102'.
- Front Yard- 4' from the 40' requirement. Current sign is 21' from the front property line, the proposed sign would be 36' from the property line.

Ms. Lepore noted that the Applicant cannot ask for height variances as the maximum height of the sign is 25'.

Mr. Sharp reviewed the standards set forth in Section 115-161.2 of the Sussex County Zoning Code.

Mr. Casey Kenton was sworn in to give testimony for this application.

Mr. Kenton testified that the Applicant is requesting to replace a 35 year old wooden billboard; that the existing sign is a three pylon sign that straddles the fence; that they would like to replace the sign with a single steel monopole sign in a “V” format; that they are decreasing the non-conformity of the sign as it will be farther from the setback; that the current sign is 21’ from the front yard property line and the new sign will be 36’ from the front yard property line; that the sign will be the same size as the current sign; that the sign measures 12’x 24’; that there is not another location the sign could go due to the drive through for the storage facility; that the current sign is not “V” shaped; that a “V” shaped sign will provide better aesthetics; that the sign will not be an electronic message center; that the sign will be located within the fence line; that the sign will be lit; that the stormwater pond also limits where the sign can be located; that there is a large gap between the front property line and the edge of paving of Route 113; and that there have been no complaints about the current billboard.

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. 12987 for the requested special use exception and variance, pending final written decision, for the following reasons:

1. The variance is necessary to enable reasonable use of the Property;
2. The variance will not alter the essential character of the neighborhood;
3. The variance represents the minimum necessary to afford relief; and
4. The sign will not substantially affect adversely the uses of neighboring and adjacent properties.

Motion by Dr. Carson, seconded by Mr. Lovenguth, carried that the **variance and special use exception be approved for the reasons stated.** Motion carried 5-0.

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

Case No. 13029 – John Maharaj seeks variances from the side and front yard setback requirements for an existing structure. (Sections 115-34, 115-182, and 115-183 of the Sussex County Zoning Code). The property is located on the west side of Shore Drive. 911 Address: 9188 Shore Drive, Milford. Zoning District: MR. Tax Map: 230-17.00-199.00

Ms. Lepore presented the case and stated that the Office of Planning and Zoning received no letters of support of or in opposition to the Application, and one mail return.

The Applicant is requesting a 10.8 feet variance from the 30 feet front yard setback and 3.6 feet variance from the 5 feet side yard setback on the northwest side for an existing garage.

Mr. John Maharaj was sworn in to give testimony for this application.

Mr. Maharaj testified that he wanted to put a carport over the driveway; that he filed for a permit and it got approved; that he ordered this carport pre-built from Louisiana; that the property measures 50' x 100'; that, once completed, he called for an inspection and it passed inspection and the inspector was going to issue a certificate of occupancy; that, about a month later, he received a call that he needed to apply for a variance because he was encroaching the 5' setback; that his neighbors like it; that most of the garages in the neighborhood are very close to the roads; that the property is located in Prime Hook Beach; that the bugs are bad so that is why he would added the sides; that the structure is about 18 inches off the property line; that he applied for a garage but then added a front and back to the garage; that the garage measures 13' x 25'; that he did not anticipate it being 18" from the side property line; that the dwelling was constructed in 2020; that the concrete driveway was installed in 2020; that the septic system is located in the front yard; that there is a gap between the front property line and the edge of paving of Shore Drive; that the neighbor is usually only there on weekends in winter and full time in the summer; that there is no HOA governing the property; that the house is elevated but there is no parking under the house; and that there is no shed or garage on the property.

Ms. Lepore stated that the building permit was for a pergola and that the inspections department violated the structure.

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. 13029 for the requested variances, pending final written decision, for the following reasons:

1. The property does not have unique physical circumstances or conditions;
2. The exceptional practical difficulty is being created by the Applicant;
3. The Applicant has failed to demonstrate that the property cannot be developed in strict conformity with the Sussex County Zoning Code.

Motion by Mr. Hastings, seconded by Mr. Lovenguth, carried that the **variances be denied for the reasons stated**. Motion carried 3-2.

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

The Board took a 6 minute recess at 6:52 and returned at 6:58

Case No. 13030 – Thomas and Lisa Lattomus seek variances from the front yard setback requirements for a proposed structure. (Sections 115-27 and 115-182 of the Sussex County Zoning Code). The property is located on the west side of Basin Street. 911 Address: 37423 Basin Street, Rehoboth. Zoning District: AR-2. Tax Map: 334-19.16-19.00

Ms. Lepore presented the case and stated that the Office of Planning and Zoning received five letters of support to the Application, no letters in opposition, and zero mail return.

Ms. Lepore stated that the dwelling was built in 1948; that the garage and shed are also non-conforming structures; and that the well cover is to be removed.

The Applicants are requesting a 6.7 feet variance from the 30' front yard setback for a proposed screen porch.

Mr. Thomas Lattomus and Ms. Lisa Lattomus were sworn in to give testimony for this application.

Mr. Lattomus testified that he and his wife would like to renovate the current porch into a wrap-around porch leveraging the southeast exposures using new energy efficient technologies and building materials; that the property only has southern sun exposures so that is why they are wanting to build it in this location; that the difficulty is not being created by the Applicants as the house was constructed in the 1940s and 1950s by his grandfather and they want to renovate and be their retirement home; that it will not impair neighbors' views and will be consistent with the style of the neighborhood; that most of the houses on the street are encroaching into the 30 feet setback; that there are 9 homes on properties along Basin Street and 70% encroach; that the variance will not be detrimental to the public welfare; that the variance is the minimum variance necessary to afford relief; that there is a gap between the edge of paving and the front property line; that the property is served by a well but they intend to connect to public sewer; that he will not be extending any farther out then he already is as they are just extending to the side with a wrap-around porch; that there is no homeowners association in this community; that neighbors support the request; and that no steps will project out from the porch.

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

Mr. Chorman closed the public hearing.

Mr. Lovenguth moved to approve the application for Case No. 13030 for the requested variance, pending final written decision, for the following reasons:

1. The variance will not alter the essential character of the neighborhood;

2. The variance will not impair the uses of neighboring properties or be detrimental to the public welfare;
3. The variance represents the minimum necessary to afford relief; and
4. The variance represents the least modification of the regulation at issue.

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

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

Case No. 13031 – Michael King seeks a variance from the rear yard setback requirements 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 Nine Foot Road. 911 Address: 26795 Nine Foot Road, Dagsboro. Zoning District: AR-1. Tax Map: 233-15.00-211.00

Ms. Lepore presented the case and stated that the office of Planning and Zoning received zero letters of support, zero letters of opposition, and no mail returns.

The Applicant is requesting a 15.4 feet variance from the 20 feet rear yard setback requirement for an existing structure.

Ms. Fabrea McCray was sworn in to give testimony on this application.

Ms. McCray testified that she purchased this home on January 10, 2025; that the garage was already there when she bought it and before the previous owner purchased as well; that the garage is located to the rear yard; that she has one neighbor that this variance does not affect and the rest of her surroundings are farmland; that she is unsure of when it was built but she was under the impression that a previous variance was in place when purchasing the property; that the property is improved by a well and septic; that the garage is located on a concrete foundation; that the prior owner purchased the property in February 2024; that she parks her truck in the garage; that the septic is located on the west side so the garage cannot be located there; that there is not anywhere else on the property that this garage could be moved to where it can be reasonably accessed; that she plans to install a fence in the rear yard; and that the rear yard appears to extend beyond the property line as grass has been historically cut beyond the property line.

Ms. Lepore noted that there were permits for the property in the 1990s; and that there is no record of a variance for the property. Ms. Lepore submitted a copy of the property record card for the record.

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

Mr. Chorman closed the public hearing.

Mr. Williamson moved to approve the application for Case No. 13031 for the requested variance, pending final written decision, for the following reasons:

1. The exceptional practical difficulty is not being created by the Applicant;
2. The garage was placed by a prior owner;
3. The variance will not alter the essential character of the neighborhood;
4. The variance represents the minimum necessary to afford relief; and
5. The property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.

Motion by Mr. Williamson, seconded by Mr. Hastings, carried that the **variance be approved for the reasons stated**. Motion carried 5-0.

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

Case No. 13032 – Paul and Gladys King seek variances from the side yard setback for existing structures (Sections 115-183 and 115-25 of the Sussex County Zoning Code). The property is located on the east side of Taft Avenue within the Cape Windsor development. 911 Address: 38821 Taft Avenue, Selbyville. Zoning District: AR-1. Tax Map: 533-20.18-169.00

Ms. Lepore presented the case and stated that the Office of Planning and Zoning received zero letters of support, zero letters of opposition and two mail returns.

The Applicants are requesting a 2.5 feet variance from the 5 feet side yard setback requirement on the north side for an existing propane tank and a 3.9 feet variance from the 5 feet side yard setback requirement on the north side for an existing HVAC system.

Mr. Paul King and Ms. Gladys King were sworn in to give testimony on this application.

Mr. King testified that they just finished the house in November and were awaiting the certificate of occupancy when the inspector informed them of the encroachment of the HVAC and propane tank; that the house was completed in November 2024; that the structures were not on the original drawing; that there are other lots in the neighborhood with similar issues; that the builder was Piney Island; that there is no flooding on the property; that they can reach the tank to fill it; and that there have been no complaints about the structures.

Ms. King testified that, in Cape Windsor, the lots are narrow; that there are a lot of homes in Cape Windsor that have the same design for the HVAC platform similar to how they have their HVAC; that the right side of the yard is needed for parking as they are not allowed to park on the

street so they made as much parking as they could with the lot being so narrow; that these variances are the minimum variances necessary as the house is already placed; that it could not be relocated because they put more concrete driveway in as they thought they had the room before inspection; that they got HOA approval and the builder never mentioned them being in the setback until after the house was done; that they need the south side of the lot for parking; and that the builder designed the house.

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. 13032 for the requested variance, pending final written decision, for the following reasons:

1. The variance represents the minimum necessary to afford relief.

As part of his motion, Dr. Carson directed Mr. Sharp to send a letter to the Applicants' builder.

Motion by Mr. Hastings, seconded by Mr. Lovenguth, carried that the **variance be approved for the reasons stated**. Motion carried 5-0.

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

ADDITIONAL BUSINESS

Meeting adjourned at 7:39 p.m.