

MINUTES OF FEBRUARY 3, 2020

The regular meeting of the Sussex County Board of Adjustment was held on Monday, February 3, 2020, at 6:00 p.m. in the County Council Chambers, 2 The Circle, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chair Ellen Magee presiding. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney and staff members Mr. Jamie Whitehouse – Planning Manager, Ms. Jennifer Norwood – Planner, and Ms. Ann Lepore – Recording Secretary.

The Pledge of Allegiance was led by Ms. Magee.

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

Motion by Mr. Chorman, seconded by Dr. Carson, and carried unanimously to approve the Minutes for the December 2, 2019, meeting. Motion carried 5 – 0.

Motion by Mr. Williamson, seconded by Dr. Carson, and carried to approve the Findings of Facts for the December 2, 2019, meeting. Motion carried 5 – 0.

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

OLD BUSINESS

Case No. 12397 – Kelly Hales seeks variances from the front yard setback and side yard setback requirements for existing structures (Sections 115-42, 115-182, & 115-185 of the Sussex County Zoning Code). The property is located on the west side of East Lagoon Rd., approximately 511 ft. north of Falling Point Rd. 911 Address: 30835 & 30843 East Lagoon Rd., Dagsboro. Zoning District: GR. Tax Parcels: 134-6.00-123.00 & 134-6.00-124.00

Mr. Whitehouse presented the case which was left open at the Board's meeting on January 6, 2020.

Mr. Sharp stated that that the Board first heard this case in 2018; that the case was approved in part and denied in part; that the front yard variance for the dwelling was denied; and that there would have to be a substantial change in the conditions of the property for the Board to rehear the variance request.

Kelly Hales was sworn in to give testimony about the Application. Mr. Blake Carey, Esquire, presented the Application on behalf of the Applicant. Mr. Carey submitted exhibits for the Board to review.

Mr. Carey stated that there are two items before the Board; that the first is to show the substantial change in the circumstance or conditions of the property; that, if the Board agrees, then he will present the criteria to grant a variance; that the letter from Matt Dunn states that moving the home into compliance would compromise the bulkhead and may result in destroying the bulkhead and the dwelling; that the retaining wall creates the exceptional practical difficulty; that the Applicant did not have that information regarding the retaining wall until after the original request for a variance was denied and she sought information about moving the dwelling; that Mr. Dunn opined that moving the house back 3.6 feet would cause significant load on the retaining wall and would collapse the wall, the house, or both; that moving the house back would place 362,000 pounds of weight on the retaining wall; that, in 2018, the Board found that the house could be moved; that a material change in the merits has occurred since the Applicant learned that the house cannot be moved; that the Property has a significant slope in the rear yard; that the retaining wall was there prior to the house; that there was previously a manufactured home on the lot which was located closer to the road than this house; that house was unilaterally placed on the lot by the builder; that the property was staked but the builder moved the stakes; that the Applicant was engaged in litigation with the builder; that that this information shows that there is a substantial change affecting the property; that, if the house was moved closer to the retaining wall, the Applicant and neighbors would be put at risk; and that the house would also be uninsurable if moved.

Ms. Hales affirmed the statements made by Mr. Carey as true and correct.

Motion by Mr. Workman, seconded by Mr. Chorman that the Applicant has demonstrated that there is a substantial change in the circumstances related to the property which materially affect the merits of the Application and that such change warrants the Board to rehear this case.

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

Mr. Carey presented the Application and stated that the Applicant is seeking a 3.5 ft. variance from the front yard setback for the northern corner of the dwelling; that the property is unique as it abuts a canal and the property is a wedge shape; that a significant part of the building envelope is unbuildable; that the exceptional practical difficulty is created by the retaining wall; that, if the variance is not approved, the property will likely be subject to foreclosure; that the manufactured house on the lot previously was closer to the road than this house; that the property cannot be developed in strict conformity with the zoning code; that there is a known risk if the house is moved closer to the retaining wall; that the retaining wall is not parallel to the roadway and due to its placement makes the building portion of the property very narrow; that the dwelling is already in place and to move it closer to the retaining wall could compromise both the retaining wall and the dwelling; that this exceptional practical difficulty lies in the issues with regard to the retaining wall and not caused by the Applicant; that the retaining wall was built by a prior owner; that the property has a steep decline in the rear yard and the topography was not created by the Applicant; that the variance will not alter the essential character of the neighborhood as it is farther back from the property

line than the previous dwelling and this is a newer home that is aesthetically more pleasing than the home that pre-existed this one; that, if the dwelling was moved into compliance and the retaining wall was to collapse, it would cause damage to the entire neighborhood; that the variance requested is the minimum variance to allow the home to remain in its current location; and that the Applicant is in litigation with the builder over negligence claims.

Ms. Hales testified that she purchased the property 10-12 years ago; that the retaining wall was on the property at that time; that she has maintained the retaining wall; that the rear yard floods up to the retaining wall; that there are no steps in the front yard; that there is a gap between the edge of paving of the road and the front property line; that the house is at least 17.6 feet from the edge of paving; that the septic is located to the right of the house; that they have not been able to occupy the house due to this issue; and that they have received no complaints about the location of the house.

Ms. Hales affirmed the statements made by Mr. Carey as true and correct.

Mr. Carey stated that the house was raised by the builder and they are not sure why; and that the house cannot be moved.

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

Mr. Workman moved to approve Case No. 12397 for the variances as the size and shape of the lot created the hardship; the variance is necessary for the reasonable use of the property; that the retaining wall was in place when the Applicant purchased the property; that granting the variance will not alter the essential character of the neighborhood; that there have been no complaints regarding the placement of the dwelling; and that it is the minimum variance to afford relief.

Motion by Mr. Workman, seconded by Mr. Chorman, carried that the **variance be granted for the reasons stated**. Motion carried 4 – 1.

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

NEW BUSINESS

Case No. 12404 – Douglas Bates seeks variances from the side yard setback and rear yard setback requirements for a proposed and existing structures (Sections 115-42, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located on the east side of Robinhood Loop within the Sherwood Forest North subdivision. 911 Address: 32342 Robinhood Loop, Millsboro. Zoning District: GR. Tax Parcel: 234-23.00-198.00

Mr. Whitehouse 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 the following variances:

- 5.1 ft. from the required 10 ft. rear yard setback for an existing garage
- 5.1 ft. from the required 10 ft. rear yard setback for a proposed garage.
- 5.3 ft. from the required 10 ft. side yard setback on the south side for an existing garage.
- 4 ft. from the required 10 ft. side yard setback on the north side for a proposed garage.

Douglas Bates was sworn in to give testimony about the Application.

Mr. Bates testified that the property is small in size and has many trees; that the property is also improved by a septic system; that he knows where the septic tank is located but he was unsure of the exact placement of the septic field; that he has owned the property for 3 years; that the garage was built by a prior owner; that the garage would look odd and would be difficult to access if it was moved; that constructing the new garage in compliance with the County code would put the garage in the middle of the yard which would not be aesthetically pleasing; that the placement of the proposed garage will align with the existing garage; that the garage is also being placed at the rear of the property to avoid interference with the septic field; that there is nowhere else to place the garage; that the house was formerly a drug house and he has cleaned up the property; that the variances will not alter the essential character of the neighborhood as there are similar buildings in the area; that the proposed garage will be behind the dwelling and therefore, will not be seen from the road; that the variances are the minimum variances to allow for this garage to be built; that there have been sheds on neighboring properties since the 1980s; that the area has grown; that he collects cars; that he plans to make the new garage taller; that he has removed trees on the site; that there is a large tree stump which would prevent building the garage in compliance; and that the garage is a pole building style barn.

Mr. Whitehouse noted that there is a survey on file.

The Board took a brief recess for Mr. Whitehouse to make copies of the survey.

Mr. Bates testified that the garage measures over 1,100 square feet.

Mr. Whitehouse advised the Board that there was a building permit and CO issued in 1985 for an accessory structure.

Mr. Bates testified that the proposed garage will have 12 foot tall walls and will be 17.4 feet tall; that the existing garage has 8 foot tall walls and is 12-13 feet tall; that there is no homeowners association in this community; that the septic is located in the center of the lot; that the neighbors do not object to the request; that he plans to add to the house in the future and that addition will take up part of the driveway; and that he will look into the drain field location prior to construction.

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

Dr. Carson moved to leave the record open for the limited purpose of allowing the Applicant to submit information by February 28, 2020, from the Department of Natural Resources regarding the location of the septic system and to place the application on the agenda for the meeting on March 2, 2020.

Motion by Dr. Carson, seconded by Mr. Williamson, carried unanimously that the **application be left open for the limited purpose and for the application to be added to the agenda for the March 2, 2020, meeting.** Motion carried 5 – 0.

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

Case No. 12407 – Coleman Revocable Trust seeks variances from the side yard setback requirements for a proposed structure (Sections 115-34 and 115-183 of the Sussex County Zoning Code). The property is located on the southeast corner of Jefferson Bridge Rd. and Coleman Gale Ln. 911 Address: 39548 Jefferson Bridge Rd. Bethany Beach. Zoning District: MR. Tax Parcel: 134-17.11-29.00

Mr. Whitehouse 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 four mail returns. The Applicant is requesting a 2 ft. variance from the 10 ft. side yard setback requirement on both sides of the lot for a proposed lot which is to be reinstated as a minor subdivision.

Ken Christenbury was sworn in to give testimony about the Application.

Mr. Christenbury testified that he represents the contract purchaser; that the property was subdivided in 1968; that the lot line has been reestablished by a plan recorded on January 12, 2019; that, in 1968, lots were allowed to have a 5 foot side yard setback but that was later increased to 10 feet; that the reestablishing of the lots did not bring back the 5 foot side yard setback; that no variance is needed for proposed Lot 2; that the variances are proposed for Lot 1; that the lot is narrow in width which does not meet the current building demand; that most current zoning codes allow for a 40 ft. wide building envelope; that, when the original lot was created, it had a building envelope of 34 ft. wide but now with the change in setbacks it has been reduced to 24 ft. wide; that the current building envelope is narrower than the other lots in the subdivision and a modern home cannot fit on the property; that the proposed variances will allow for a house measuring 28 feet wide to be constructed thereon; that the property encumbrances were created by the change in County Code regarding the setbacks and not by the Applicant; that other lots that are 50 ft. wide have only 5 ft. setbacks which allow for a 40 ft. building envelope; that granting this variance will allow construction on this lot to be closer to the essential character of the other homes in the subdivision; that the variances requested are the minimum variances necessary to afford relief; that the property is served by water and sewer;

and that the lot consists of less than 10,000 square feet.

Mr. Whitehouse stated that, if the lot had been created prior to March 2018, the lot could have benefitted from the small lot ordinance with reduced side yard setbacks.

Mr. Chistenbury testified that an 8 foot side yard is needed to make the lot buildable; that Lot 1 will be accessed from Jefferson Bridge Road; that Lot 3 and ½ of Lot 4 will still use Coleman Gale Lane; that there are small lots in the neighborhood; that a 24 wide building envelope is too small for a modern home; that the Applicant has spoken with the builder; that building plans for the home are not available at this time but the Applicant could provide them if needed; that he is not sure where the HVAC and steps will be located; that the house will be a high-end home; and that, though the original setbacks were only 5 ft., the Applicant is requesting 8 ft. side yard setbacks to establish a buildable lot.

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

Mr. Williamson moved to leave the record open for the limited purpose of allowing the Applicant to submit building plans by February 28, 2020, and to allow the Applicant to answer questions from the Board members regarding said plans at the Board meeting on March 16, 2020.

Motion by Mr. Williamson, seconded by Mr. Workman, carried that the **application be left open for the limited purpose as noted and to be placed on the agenda for the March 16, 2020, meeting.** Motion carried 4 – 1.

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

Case No. 12408 – Robert L. & Stella R. Reed seek variances from the road frontage requirement for proposed lots (Section 115-25 of the Sussex County Zoning Code). The property is located on the east side of Blanchard Rd. approximately 740 ft. north of McDowell Ln. and on the north side of Deer Meadows Rd. approximately 0.46 mile west of Blanchard Rd. 911 Address: 12249 Blanchard Rd., Greenwood. Zoning District: AR-1. Tax Parcel: 530-8.00-10.00

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 Applicant is requesting a 120 ft. variance from the 150 ft. lot width requirement to reinstate a lot that was previously combined.

Robert Reed and Stella Reed were sworn in to give testimony about the Application.

Mr. Reed testified that the property was originally two parcels and that he would like to return it to the original lot lines; that, if the variance is not granted, the parcel cannot be separated; that the

Applicant combined the parcels for tax reasons in 1987; that the Property consisted of 2 separate farms; that he plans to re-establish the boundaries to match the legal descriptions in the deed; that there is an existing dirt driveway off Deer Meadows Road which has been there all of his life and is used for farm equipment; that he would not have combined the lots had he known about the road frontage issue; that this subdivision will not alter the essential character of the neighborhood as there is an existing dirt road that has existed prior to 1975; that this subdivision is for retirement and estate planning reasons; that he has no plans to change the use of the Property; that the Property will remain farmland; that there is land on both sides of the driveway; and that there is no intention to develop the Property.

Ms. Reed testified that they are not planning to sell the Property; and that the Property was historically 2 farms.

Mr. Workman noted that he is familiar with the property and that driveway has been there for many years.

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

Mr. Chorman moved to approve Case No. 12408 for the variance as reestablishing the lot line as it was in prior years will not create any issues in the area.

Motion by Mr. Chorman, seconded by Mr. Williamson, carried unanimously that the **variance be granted for the reasons stated.** Motion carried 5 – 0.

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

Case No. 12409 – Louis W. & Janet C. Melton seek a variance from the rear yard setback requirements for existing structures (Sections 115-42, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located on the northwest corner of Old Mill Rd. and Railway Rd. 911 Address: 36328 Old Mill Rd., Ocean View. Zoning District: GR. Tax Parcel: 134-12.00-73.01

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 three mail returns. The Applicant is requesting a 1.6 ft. variance from the required 10 ft. rear yard setback for an existing structure.

Louis Melton was sworn in to give testimony about the Application.

Mr. Melton testified that the lot is unique because it is a triangular corner lot; that the dwelling and garage are parallel with Old Mill Road and not with the rear property line; that the lean-to is already built and covers the porch that encroaches; that the porch is made of concrete; that he has 2

sets of drawings; that the first drawing shows the building and the second drawing shows the lean-to and porch; that the 1.6 ft. encroachment will not alter the essential character of the neighborhood; that a fence will be installed and the encroachment will be out of the view of neighbors; that the variance requested is a minimum variance request to keep the existing structure; that he received a building permit and hired Diamond State Pole Building to erect the structure; that the lean-to was always part of the architectural drawings; that the encroachment was discovered by Planning & Zoning staff; that he has received no complaints about the structure; that it would require substantial renovation to be in compliance; that the variance will preserve the architectural integrity of the building; that the exceptional practical difficulty was not created by the applicant but due to a mix up in the building drawings; that the pole building measures 40 feet by 80 feet; that one drawing, which was used for the stakes, did not show the lean-to and porch; and that the Property is served by water and sewer.

Mr. Whitehouse stated that a CO has not yet been issued.

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

Dr. Carson moved to approve Case No. 12409 to grant the variance as it represents the minimum variance to afford relief for this circumstance.

Motion by Dr. Carson, seconded by Mr. Williamson, carried unanimously that the **variance be granted for the reasons stated.** Motion carried 5 – 0.

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

Case No. 12410 – Jose Rodriguez-Sanchez seeks variances from the front yard setback requirements for existing structures (Sections 115-25 and 115-182 of the Sussex County Zoning Code). The property is located on the east side of Hollyville Rd. approximately 0.75 miles south of Mount Joy Rd. 911 Address: 26543 Hollyville Rd., Millsboro. Zoning District: AR-1. Tax Parcel: 234-27.00-36.01

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received one letter in support of and none in opposition to the Application and no mail returns. The Applicant is requesting a 5.0 ft. and a 5.9 ft. variance from the required 40 ft. front yard setback for an existing porch. During testimony, it was noted that an additional variance of 6.9 ft. from the required 40 ft. front yard setback is also needed for the step from the front porch.

Jose Rodriguez-Sanchez and Adamari Rodriguez were sworn in to give testimony about the Application. Ms. Rodriguez submitted photographs to the Board members.

Ms. Rodriguez testified that the property is unique because the septic is on the left and the

drain field is in the rear of the property; that the well is in the front yard; that the dwelling could not otherwise be developed as a covered porch was necessary to keep the rain away from the front door; that the exceptional difficulty was caused by the location of the drain field in the rear of the property; that the house is 100 years old and the new house is in the same footprint; that the porch existed in 1912; that the structure has been lengthened but not expanded; that the porch will not alter the character of the neighborhood; and that the request is the minimum request to afford relief.

Mr. Rodriguez-Sanchez testified that the new dwelling is on the original foundation; that the footprint of the home was not increased; that there is a step from the porch; that the house was to be remodeled but he found too much damage; that he tried to use the existing roof but it fell; that he worked with an engineer and reinforced the footers; that he used the existing foundation and framed the house off that foundation; and that there is approximately 50 ft. from the step to the edge of paving.

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

Mr. Chorman moved to approve Case No. 12410 for the variances they are the minimum variances to afford relief and will not alter the essential character of the neighborhood.

Motion by Mr. Chorman, seconded by Mr. Williamson, carried unanimously that the **variance be granted for the reasons stated**. Motion carried 5 – 0.

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

ADDITIONAL BUSINESS

There was no additional business.

Meeting was adjourned at 8:03 p.m.