

MINUTES OF FEBRUARY 4, 2019

The regular meeting of the Sussex County Board of Adjustment was held on Monday, February 4, 2019, at 7:00 p.m. in the County Council Chambers, 2 The Circle, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman John Mills presiding. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, and Mr. Brent Workman. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Ms. Janelle Cornwell, Planning and Zoning Director, Mr. Jamie Whitehouse – Planning Manager, Ms. Lauren DeVore – Planner, and Ms. Ann Lepore – Recording Secretary.

The Pledge of Allegiance was led by Mr. Mills.

Motion by Ms. Magee, seconded by Mr. Callaway, and carried unanimously to approve the revised agenda. Motion carried 4 – 0.

Motion by Mr. Callaway, seconded by Mr. Workman, and carried unanimously to approve the Minutes and Findings of Facts for December 10, 2018. Motion carried 4 – 0.

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

PUBLIC HEARINGS:

Case No. 12261 – William Barry & Ollie Jean Cregan seek variances from the front yard setback, side yard setback, and rear yard setback requirements for existing structures (Sections 115-25 and 115-185 of the Sussex County Zoning Code). The property is located on the west side of Tyler Ave. approximately 25 ft. south of Lincoln Dr. in the Cape Windsor subdivision. Address: 38736 Tyler Ave., Selbyville. Zoning District: AR-1. Tax Parcel: 533-20.14-33.00

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received seven (7) letters in support of the Application and no correspondence in opposition to the Application and one mail return. The Applicants are seeking the following variances:

- 1.3 ft. variance from the required 5.0 ft. front yard setback for an existing shed.
- 3.6 ft. variance from the required 5.0 ft. side yard for small lot on the south side for existing stairs.
- 6.0 ft. variance and a 5.8 ft. variance from the required 15.0 ft. rear yard setback for a screen porch.
- 3.2 ft. variance from the required 5 ft. side yard setback on the south side for existing HVAC equipment.

William Cregan was sworn in to give testimony. Raymond Tomasetti, Esquire presented the Application on behalf of the Applicants.

Mr. Tomasetti stated that the previous owners acquired the Property in 1992 and they obtained variances in 1994; that a variance was granted for the home and a variance was granted for the porch; that the prior owners replaced a manufactured home with a Nanticoke Home and porch; that the shed was shown on the drawing at that time and was located 5 feet from the front property line; that a certificate of occupancy was thereafter issued; that the steps and HVAC were not shown on the survey; that the Applicants purchased the property last year; that, when the survey was completed, it showed the HVAC system, the steps, and the encroachments; that, in addition, the new survey shows the measurements for the shed and screen porch were incorrect on the original application in 1994; that the Applicants want to bring the property into compliance; that neighbors support the Application; that a neighbor has a shed on the shared property line to the south; that the lots are 40-50 feet wide in the neighborhood; that the property is unique as it is a small lot and very shallow; that the variances are necessary to keep the property as it has been for at least twenty-four years and cannot be developed otherwise; that the variances are necessary to enable the reasonable use of the property; that this was not created by the Applicants but by the previous owner; that the variances will not alter the essential character of the neighborhood as the home has not been changed in twenty-four years and there are a number of other homes with similar porches and sheds; that neighboring lots also have encroachment problems; and that the requests are the minimum variances necessary to afford relief and are the least modifications possible of the regulations at issue.

Mr. Cregan affirmed the statements made by Mr. Tomasetti as true and correct. Mr. Cregan testified that the Applicants have not made any improvements to the property since purchasing it.

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

Ms. Magee moved to approve Variance Application No. 12261 for the following reasons:

1. The Property is unique;
2. The Property cannot otherwise be developed;
3. The exceptional practical difficulty has not been created by the Applicants;
4. The variances requested are the minimum variances necessary to afford relief; and
5. The variances will not alter the essential character of the neighborhood.

Motion by Ms. Magee, seconded by Mr. Callaway, and carried unanimously that the **variances be granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 12263 – Sedat Elmali 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 southeast side of Blue Bird Ln. approximately 0.19 mile west of Coastal Hwy. (Rt.

1) 911 Address: 19708 Blue Bird Ln., Rehoboth Beach. Zoning District: AR-1. Tax Parcel: 334-13.00-311.02

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.

- 11.5 ft. from the required 30 ft. front yard setback for a porch.
- 10.3 ft. from the required 30 ft. front yard setback for a dwelling.
- 8 ft. variance from the required 30 ft. front yard setback for steps.

Sedat Elmali was sworn in to give testimony.

Mr. Elmali testified that the house was existing when he purchased the property; that the house was built too close to the front property line; that it is inconvenient to use the front door without a porch; that the variances are necessary to enable reasonable use of the Property; that the porch was an open porch and he replaced the concrete porch with a covered porch and made it slightly larger than the original porch; that he received a permit for the porch renovation and it passed inspection; that he reduced the size of the deck so it was the same footprint; that there is a gap between the front property line and edge of paving of Blue Bird Lane; that the work was completed in 2009; that he is selling the Property; that the original porch encroached into the setback area; that there have been no complaints from neighbors; that the property is unique as it is on a cul-de-sac located next to storage units; that the house was placed to the front of the property making it impossible to build the porch without the variance; that it was not created by the Applicant as the house was on the property when he purchased it; that Blue Bird Lane is a paper road; that the porch measures 10 feet by 6 feet; that the porch is tied into the roof of the dwelling; that it will not alter the character of the neighborhood as the wooden porch is more attractive than the concrete porch; it is the minimum variance to afford relief; and that the property uses public water and sewer.

Mr. Whitehouse advised the Board that the dwelling may predate the Sussex County Zoning Code based on the property card.

Casey Kenton was sworn in to testify in support of the Application. Mr. Kenton testified that he is the member of the group that owns the neighboring storage center and they do not oppose the Application; and that the Property is located at the end of Blue Bird Lane.

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

Mr. Workman moved to approve Variance Application No. 12263 for the following reasons:

1. The Property is an odd-shaped lot;
2. The variances are necessary to enable the use of this property;
3. The variances will not alter the character of the neighborhood;
4. The neighbor supports the Application;
5. The porch provides cover and replaced a prior porch; and
5. The variances requested are the minimum variances necessary to afford relief.

Motion by Mr. Workman, seconded by Mr. Callaway, and carried that the **variances be granted for the reasons stated.** Motion carried 3 – 1.

The vote by roll call; Mr. Workman – yea, Ms. Magee – nay, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 12264 – Michael L. & Alison F. Miller seek variances from the rear yard setback and front yard setback requirements for existing structures. (Sections 115-25, 115-182, and 115-185 of the Sussex County Zoning Code). The property is located on the northwest corner of N. Aquarius Way and W. Gemini Lane within the Cave Colony subdivision. 911 Address: 7 N Aquarius Way, Milton. Zoning District: AR-1. Tax Parcel: 235-21.00-53.00

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 Applicants are requesting the following variances.

- 1.4 ft. and 1.3 ft. variances from the required 6 ft. rear yard for an existing swimming pool.
- 6.4 ft. variance from the required 30 ft. front yard setback for an existing garage.
- 2 ft. variance from the required 15 ft front corner setback for an existing shed.

Mr. Whitehouse stated that the variances for the garage and shed can be dealt with through the administrative corrective process as a certificate of occupancy was issued.

Michael Miller and Alison Miller were sworn in to testify about the Application.

Mr. Miller testified that they purchased the property in August 2018; that it was disclosed at settlement that the property was not in compliance with Sussex County Code; that septic and well are on the property; that the septic system is to the rear of the house and north of the pool; that the well is located on the other side; that the pool cannot be placed elsewhere; that there have been no complaints from neighbors; that the pool was existing and to move the pool would render it unusable and it would have to be replaced; that the walk space between the pool and fence is greater than the required thirty-six inches; that the pool was installed by previous property owner without a permit; that the pool will not alter the character of the neighborhood as it is totally enclosed and not visible to neighbors; and that the requested variances are the minimum to afford relief.

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

Ms. Magee moved to approve Variance Application No. 12264 as the Applicants have met all five standards for granting a variance and there was an existing problem on the property when purchased.

Motion by Ms. Magee, seconded by Mr. Callaway, and carried unanimously that the **variances be granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 12265 – Mary Sharma seeks a special use exception to operate a tourist home (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located on the northeast side of Locust Street approximately 425 ft. northwest of N. Poplar Street. 911 Address: 10127 Locust St., Laurel. Zoning District: AR-1. Tax Parcel: 232-12.18-21.00

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 zero mail returns. The Applicant is seeking a renewal of a special use exception to operate a tourist home that was first granted in June 2013.

Amar Sharma was sworn in to testify about the Application.

Mr. Sharma testified that the special use exception expired on September 2018; that the only changes made to the property are the solar panels on the roof; that he was unaware that he needed a survey – which resulted in a delay of the Application; that there are no cooking facilities in the rooms; that parking is available on the property; that it is located in a residential area; that the use has not substantially affected adversely the uses of adjoining and neighboring properties as it is one of the nicest properties on the street; that the house consists of 5,700 square feet and is 2 stories tall; that the house consists of 6 rental rooms; and that there have been no complaints from neighbors.

Michael Chanoux was sworn in to give testimony. Mr. Chanoux testified that he is renovating a house on adjacent property; that he was unaware the Property had been used in this fashion since 2013; and that he was not in opposition but had questions about the application.

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

Mr. Callaway moved to approve Application No. 12265 for a special use exception to operate a tourist home for a period of five years.

Motion by Mr. Callaway, seconded by Ms. Magee, and carried unanimously that the **special use exception be granted for a period of five (5) years for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 12266 – Bridget Keller seeks variances from the front yard setback, rear yard setback and side yard setback requirements for existing and proposed structures. (Sections 115-34, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located northwest side of Robinsons Dr. approximately 835 ft. northeast of Coastal Hwy. (Rt. 1). 911 Address: 38253 Robinsons Dr., Rehoboth Beach. Zoning District: MR. Tax Parcel: 334-20.05-312.00

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 zero mail returns. The Applicant is requesting a 4.3 ft. variance from the required 10 ft. side yard setback on the northeast side for a proposed addition to provide a bathroom for a person with additional care needs. Additional variances are required for the front yard, side yard and rear yard for the existing dwelling and the two sheds but can be dealt with through the administrative corrective process as CO's were issued for these.

Bridget Keller was sworn in to give testimony about the Application.

Ms. Keller testified that her grandfather purchased the home in 1981 and the property has been in the family ever since; that her son has special needs; that a bathroom is needed in a common area of the home so that her son does not have to use stairs to access the bathroom; that the property is unique because of the configuration of the house; that the property cannot otherwise be developed as a bathroom is necessary in the common area of the house to accommodate the special needs child; that the exceptional practical difficulty was not caused by the Applicant as, when the home was purchased, the need for this additional bathroom could not have been foreseen; that the variance will not alter the essential character of the neighborhood as it is a small bathroom and because of the placement will not be seen by surrounding property owners; that new siding will be installed on the home so the addition will look seamless; that there are five family members in the neighborhood; that the addition will measure 5.5 feet by 6 feet and is the smallest modification to accommodate a bathroom; and that, due to the rise of the house, the proposed location of the addition is the only place where it could be located.

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

Ms. Magee moved to approve Variance Application No. 12266 as the Applicant has met all five of the standards for granting a variance and that the handicap was not created by the Applicant.

Motion by Ms. Magee, seconded by Mr. Callaway, and carried unanimously that the **variance be granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 12267 – Michael S. Mears seeks variances from the rear yard setback requirements for an existing structure. (Sections 115-25 and 115-185 of the Sussex County Zoning Code). The property is located on the north side of Paradise Rd. approximately 0.25 mile west of Governor Stockley Rd. 911 Address: 22159 Paradise Rd., Georgetown. Zoning District: AR-1. Tax Parcel: 133-10.00-10.16

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 zero mail returns. The Applicant is seeking a 10.9 ft. variance and a 10.8 ft. variance from the required 20 ft. rear yard setback for a pole building with a footprint in excess of 600 sf.

Michael Mears and Michelle Mears were sworn in to give testimony.

Mr. Mears testified that he contracted with Delmarva Pole Building to build the pole building; that he requested that the building be placed in the northeast corner of the Property; that that, due to the placement of the well and septic, it was necessary to place the pole building in the northeast corner of the Property; that the builder obtained the permit and did not follow setbacks; that the Applicants relied on the builder to follow setbacks and to comply with Sussex County Code; that the Applicants were not aware that setbacks were not followed until the building was complete; that the contractor advised him that the rear yard setback requirement was 10 feet; that the building is for personal use; that there have been no complaints from neighbors; that it would be a financial burden on the Applicants to move the building; and that the variances requested are the minimum variances necessary to afford relief.

Mrs. Mears testified that she spoke with Stefan a salesperson at Delmarva Pole Building; that the Applicants never received a copy of the permit until the building was complete; that she watched the builder square the building and the builder ran a string from the property line; that the building is on a concrete pad; and she agrees that Delmarva Pole Building should be subpoenaed to explain why setbacks were not followed.

Mr. Mears testified that the well is located in the front yard and the septic system is on the northwest side of the lot and takes up a large part of the building envelope.

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

Ms. Magee moved that Variance Application No. 12262 remain open until the March 4, 2019, Board of Adjustment meeting to allow time to subpoena Delmarva Pole Building to testify and allow Board members to ask questions.

Motion by Ms. Magee, seconded by Mr. Callaway, and carried unanimously that the **Board's attorney shall subpoena the builder to appear on March 4, 2019, to answer questions from the Board and that the public hearing shall remain open until March 4, 2019.** Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 12268 – Bi-Rite Auto Sales, Inc. seeks variances from the front yard setback requirement for existing and proposed structures. (Sections 115-82 and 115-181 of the Sussex County Zoning Code). The property is a through lot located on the west side of Sussex Hwy. (Rt. 13) and east side of Brickyard Rd. approximately 518 ft. south of Concord Rd. 911 Address: 24770 Sussex Hwy., Seaford. Zoning District: C-1. Tax Parcel: 132-1.00-19.01

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 zero mail returns. The Applicant is requesting a 5.3 ft. variance from the required 60 ft. front yard setback from Brickyard Road for a proposed commercial building.

Jack Mullins was sworn in to testify about the Application. Blake Carey, Esquire presented the Application on behalf of the Applicant.

Mr. Carey stated that the Applicant wishes to place a proposed commercial building shadowing the current building on the property; that the property is a corner lot and is not a through lot because the roads are not parallel; that the Applicant has a right to construct the building because the Code allows for averaging; that the property is unique as it is pie shaped and has a limited building envelope; that the property cannot otherwise be developed without the variance due to its shape; that the Applicant did not cause this issue; that the Applicant purchased this pie shaped lot; that there is private sewer to the east and a well in the western corner; that the building was located on the property when the lot was purchased; that there is a drain field on the property as well; that the property has a long history of being used as a car dealership; that it will not alter the essential character of the neighborhood as this is a commercial area; that the new building will be placed in the rear of the current building; that the Applicant has improved the property; that the variance will not be detrimental to the public welfare; and that this is the minimum variance to allow a building to shadow the existing building.

Mr. Mullins affirmed the statements made by Mr. Carey as true and correct. Mr. Mullins testified that the addition will be used for a shop area to work on cars; that he moved to this location because his previous location was affected by flooding; and that his neighbor has no issues with

the request.

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

Ms. Magee moved to approve Variance Application No. 12268 because the Applicant has met all the standards to grant a variance and the Property has a triangular shape with two front yards which makes the Property quite unique.

Motion by Ms. Magee, seconded by Mr. Workman, and carried unanimously that the **variance be granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 12269 – Howard & Joanne Beecher seek variances from the front yard setback and side yard setback requirements for existing structures. (Sections 115-25, 115-182 and 115-183 of the Sussex County Zoning Code). The property is located on the northeast side of Coastal Hwy., (Rt.1) approximately 454 ft. south of Willow Creek Road. 911 Address: 16383 Coastal Hwy., Lewes. Zoning District: AR-1. Tax Parcel: 235-23.00-5.00

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 zero mail returns. The Applicant is requesting 24.3 ft. variance from the required 40 ft. front yard setback for an existing dwelling and a 30.8 ft. variance from the required 40 ft. front yard setback for an existing porch. Mr. Whitehouse advised the Board that a variance of 7.6 from the side yard setback requirement was not needed because the lot is considered a small lot.

Steve McNulty was sworn in to give testimony about the Applicants and he submitted exhibits to the Board to review.

Mr. McNulty testified that he represents the Beechers who currently own the property; that the Applicants are elderly and wish to sell the property; that the Applicants discovered some setback issues when the survey was completed; that he is the listing agent; that the property is located north of Lewes on the northbound side of Route 1; that the original cabin was built in the 1950s and an addition was added in 1985; that all neighboring properties dwellings set back a similar distance from Route 1; that Keyboard Americana is located to the north and a bike shop is located to the south; that there are 4 residences nearby and all the homes are located close to Route 1; that Route 1 was expanded towards to the house; that the property is unique because it is a small lot of only 8,200 square feet; that the addition was constructed for the master bedroom; that it cannot otherwise be developed as this addition has existed since 1985 no further additions are planned; that the exceptional practical difficulty was not created by the Applicant but by DelDOT when they extended Route 1 to

encroach on this property making these variances necessary; that it will not alter the essential character of the neighborhood; that the neighbor supports the Application; that the dwelling will be no closer to Route 1; that there are only 2 bedrooms in the house; and it is the minimum variance requested to allow relief.

Mr. Whitehouse stated that the addition was permitted in 1985 but a certificate of compliance was not issued.

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

Mr. Callaway moved to approve Variance Application No. 12269.

Motion by Mr. Callaway, seconded by Mr. Workman, and carried unanimously that the **variances be granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Mills – yea, and Mr. Callaway – yea.

OLD BUSINESS:

Case No. 12256 – Enrico Lachmann seeks variances from the rear yard setback requirements for an existing structure (Sections 115-42 and 115-183 of the Sussex County Zoning Code). The property is located on the southwest corner of Oak Dr. and Magnolia Dr. in the Angola Neck Park subdivision. 911 Address: 22836 Magnolia Dr., Lewes. Zoning District: GR. Tax Parcel: 234-12.14-44.01

The Board discussed the case which had been tabled since January 28, 2019.

Ms. Magee stated that she was not convinced that the Applicant met all five standards for creating a variance and that she believes the Applicant created the difficulty.

Mr. Workman agreed with Ms. Magee.

Ms. Magee moved to deny Variance Application No. 12256 because the Applicant did not meet all the standards for granting a variance. As part of her motion, Ms. Magee reasoned that the exceptional practical difficulty was created by the Applicant, that the steps can be moved to be brought into compliance with County Code, and that the variances requested are not the minimum variances necessary to afford relief.

Motion by Ms. Magee, seconded by Mr. Callaway, and carried unanimously that the **variances be denied for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Ms. Magee – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Meeting was adjourned at 8:36 p.m.