

MINUTES OF FEBRUARY 6, 2017

The regular meeting of the Sussex County Board of Adjustment was held on Monday, February 6, 2017, 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 Vice-Chairman John Mills presiding. The Board members present were: Mr. John Mills, Mr. Jeff Hudson, and Mr. Brent Workman. Mr. Norman Rickard and Mr. Dale Callaway were absent. Also in attendance were James Sharp – Assistant County Attorney, and staff members Ms. Janelle Cornwell – Director of Planning and Zoning, Ms. Jennifer Walls – Planning Manager, Mrs. Jennifer Norwood – Planning Technician and Ms. Christin Headley – Recording Secretary.

The Pledge of Allegiance was led by Mr. Mills.

Motion by Mr. Workman, seconded by Mr. Hudson, and carried unanimously to approve the Revised Agenda as circulated. Motion carried 3 – 0.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously to approve the Minutes and Finding of Facts for November 21, 2016 as circulated. Motion carried 3 – 0.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously to approve the Minutes and Finding of Facts for December 12, 2016 as circulated. Motion carried 3 – 0.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously to approve the Minutes and Finding of Facts for December 19, 2016 as circulated. Motion carried 3 – 0.

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. 11894 – Joseph F. Donohoe and Cynthia C. Donohoe - seek variances from the front yard setback requirement (Section 115-50D of the Sussex County Zoning Code). The property is located on the south side of Bayside Drive approximately 590 feet south of Oceanside Drive. 911 Address: 36899 Bayside Drive, Fenwick Island. Zoning District: HR-2. Tax Map No.: 1-34-22.00-50.00.

Ms. Cornwell presented the case, which has been tabled since December 19, 2016.

Mr. Hudson moved to approve Variance Application No. 11894 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to its shape as is shown on the survey;
2. The exceptional practical difficulty was not created by the Applicants as the deck was constructed in 2006;

3. The variances are necessary to enable reasonable use of the Property;
4. The variances will not alter the essential character of the neighborhood;
5. The use will not be detrimental to the public welfare; and
6. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 3 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Workman – yea, and Mr. Mills – yea.

Case No. 11896 – James Truitt Farm, LLC - seeks a special use exception for an assisted living facility (Sections 115-32C and 115-210A(3)(d) of the Sussex County Zoning Code). The property is located on the north side of Shuttle Road approximately 0.2 miles west of Coastal Highway (Route 1). 911 Address: 20054 Shuttle Road, Rehoboth Beach. Zoning District: MR. Tax Map No.: 3-34-19.00-3.00.

Ms. Cornwell presented the case, which has been tabled since December 19, 2016.

Mr. Workman stated that he was not ready to vote on this application.

Motion by Mr. Workman, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until February 20, 2017**. Motion carried 3 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Workman – yea, and Mr. Mills – yea.

Case No. 11900 – Rodney Mears & Beverly Mears - seek a special use exception for an assisted living facility (Sections 115-23C(4) and 115-210(3)(d) of the Sussex County Zoning Code). The property is located on the northeast corner of Paradise Road and Persimmon Tree Lane. 911 Address: 21311 Paradise Road, Georgetown. Zoning District: AR-1. Tax Map No.: 1-33-9.00-19.01.

Ms. Cornwell presented the case, which has been tabled since January 9, 2017.

The Board discussed the case. Mr. Sharp advised the Board that he has a conflict of interest and said that, if the Board has any legal questions, the Board should direct them to Vince Robertson, Esquire.

Mr. Hudson moved to approve the Special Use Exception Application No. 11900 for the requested special use exception based on the record made at the public hearing and for the following reasons:

1. This is a Special Use Exception for a small Assisted Living Facility within an existing home. It will serve no more than 4 people at any one time.
2. The site is zoned AR-1 and assisted living facilities are authorized as a special use exception in the AR-1 zone with approval from this Board.
3. No parties appeared in opposition to the Application and there was substantial testimony

- in support of it.
4. The proposed Assisted Living Facility will not substantially affect adversely the uses of adjacent and neighboring properties for the following reasons:
 - A. The use is within an existing home that will maintain its residential character. Its outward appearance will be no different from many of the neighboring properties.
 - B. The use is limited to 3 beds or no more than 4 Assisted Living residents. This small size will not create an adverse effect on the neighborhood.
 - C. There will not be significant additional traffic generated by the use.
 - D. The number of staff required to operate the facility is small and will not adversely affect the neighborhood.
 - E. The applicant, Beverly Mears, is currently the Director of Nursing at Lifecare at Lofland Park and has stated that she is qualified to operate the facility.
 - F. There was no testimony that the use would adversely affect the values of the surrounding or nearby properties.
 - G. The property is surrounded by farmland and a few homes. The use will not adversely affect the surrounding properties.
 5. The proposed use provides a needed service to the residents of Sussex County.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted for the reasons stated**. Motion carried 3 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Workman – yea, and Mr. Mills – yea.

Case No. 11901 – Mary L. Harrington - seek a variance from the front yard setback requirement (Section 115-34B and 115-182D of the Sussex County Zoning Code). The property is located on the east side of Keen Wik Road approximately 672 feet south of Cedar Road. 911 Address: 38193 Keen Wik Road, Selbyville. Zoning District: MR. Tax Map No.: 5-33-20.09-68.01.

Ms. Cornwell presented the case, which has been tabled since January 9, 2017.

Mr. Workman moved to approve Variance Application No. 11901 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to its shape;
2. The exceptional practical difficulty was not created by the Applicant;
3. The variance is necessary to enable reasonable use of the Property;
4. The variance will not alter the essential character of the neighborhood;
5. The use will not be detrimental to the public welfare; and
6. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Workman, seconded by Mr. Hudson, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 3 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Hudson – yea, and Mr. Mills – yea.

PUBLIC HEARINGS

Case No. 11912 – Gary Lawson & Kathy Lawson - seek variances from the separation requirement between units in a manufactured home park (Section 115-172G(7) of the Sussex County Zoning Code). The property is located on the north side of Delaware Avenue approximately 701 feet west of Skyview Street in Sea Air Village. 911 Address: 20074 Delaware Avenue, Rehoboth Beach. Zoning District: AR-1. Tax Map No.: 3-34-13.00-310.00-3414.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application.

Gary Lawson and Kathy Lawson were sworn in and testified requesting a variance of 7.1 feet from the twenty (20) feet separation distance requirement for a proposed addition from a dwelling on an adjacent lot to the northwest, a variance of 12.4 feet from the twenty (20) feet separation distance requirement for a proposed addition from steps to a dwelling on an adjacent lot to the northwest, a variance of 4.0 feet from the twenty (20) feet separation distance requirement for an existing dwelling from a covered porch on an adjacent lot to the southeast, and a variance of 2.8 feet from the twenty (20) feet separation distance requirement for an existing dwelling from a dwelling on an adjacent lot to the north. The Applicants submitted exhibits to the Board to review.

Mr. Lawson testified that the steps from the neighbor's home on Lot 78 encroach onto the Property and the neighbor will be shortening the encroaching structure and turning it north so to remove the encroachment; that the neighbor's steps will be placed at the property line; that the steps on the east of the existing dwelling of the Applicant's lot will be removed; that new steps will be added to the east of the home and turned to minimize the encroachment into the separation distance requirement area; that a 3.6 feet variance will still be required to meet the separation distance requirement with Lot #74 for the side steps; and that an 11.0 feet variance will be required to meet the separation distance requirement for the proposed addition to the neighbor's side steps on Lot #78.

Mrs. Lawson testified that the Property is unique because the Property is narrow in size; that numerous variances have been granted within the park to allow homeowners to improve their lots; that, without the variances, the Applicants are unable to construct the proposed addition in order to comfortably accommodate their family; that the existing home measures 14 feet by 72 feet; that the separation distance requirement limits the size of the addition to 7 feet which is not large enough to meet their family's needs; that the variances will not alter the essential character of the neighborhood; that the variances requested are the minimum variances necessary to afford relief; that the Applicants purchased the home in 2016 for a retirement home; and that the Applicants have installed a new roof, improved the skylights, and installed a new HVAC system and electrical system.

Mr. Lawson testified that significant improvements have been made to the home; that the

home will enhance the park; that the neighbors have no issues with the Application; that the proposed addition will be enclosed; that the proposed addition will measure 12 feet by 20 feet and the prior deck measured 11 feet by 20 feet; that the Applicants purchased the home in 2016; that the home was on the lot when they purchased the Property; that the prior deck was on the Property when they acquired the lot; that the deck was in disrepair and an eyesore so the Applicants removed the deck; that the proposed addition will be in a similar location as the prior deck; that the neighboring homes and structures existed on the lots before the Applicants purchased the Property; and that the exceptional practical difficulty has not been created by the Applicants.

Mr. Sharp advised the Board that 2 variances for the Property were granted in 1995 including a variance of 3.7 feet from the twenty (20) feet separation distance setback required for an open deck.

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

Mr. Hudson moved to approve Variance Application No. 11912 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to its shape and the development of neighboring properties;
2. The Applicants did not place the dwelling on the Property;
3. The variances are necessary to enable reasonable use of the Property;
4. The variances will not alter the essential character of the neighborhood;
5. The use will not be detrimental to the public welfare; and
6. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 3 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Workman – yea, and Mr. Mills – yea.

Case No. 11914 – Kathleen Spalt - seeks variances from the side yard setback requirement (Sections 115-42B and 115-183C of the Sussex County Zoning Code). The property is located on the northwest side of Blue Teal Road approximately 846 feet northeast of Swann Drive. 911 Address: 37025 Blue Teal Road, Selbyville. Zoning District: GR. Tax Map No.: 5-33-12.16-423.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received no correspondence in support or in opposition to the Application.

Mr. Sharp advised the Board that the Applicant's name was misspelled on the agenda.

Kathleen Spalt and Henry Greenwell were sworn in to testify about the Application.

Ms. Spalt testified that she is requesting a variance of 2.7 feet from the ten (10) feet side yard setback requirement on the south side for a proposed dwelling, a variance 4.0 feet from the ten (10) feet side yard setback requirement on the north side for a proposed dwelling, and a

variance of 1.7 feet from the five (5) feet side yard setback requirement on the south side for proposed steps.

Ms. Spalt testified that the Property is 40 feet wide by 100 feet long; that the existing trailer did not need a variance; that the existing trailer had to be removed due to its age; that the existing trailer is being replaced with the new proposed dwelling; that other lots located in the development are 50 feet wide; that the variances are necessary to enable reasonable use of the Property; that she has not created the exceptional practical difficulty; that, if the lot was wider, no variance would be needed; that the proposed dwelling is a modular home and is pre-fabricated; that the dwelling cannot be reduced in width to fit on the lot; that the variances will not alter the character of the neighborhood; that there are other properties within the neighborhood that have received variances; that the variances requested are the minimum variances necessary to afford relief; that she is retired and wants a single story home; and that she did not create the width of the Property.

Mr. Greenwell testified that the proposed dwelling is smaller in width compared to a double-wide manufactured home; that two story dwellings exist in the development on similar sized lots; and that at least fifty (50) variances have been granted in for neighboring lots.

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

Mr. Workman moved to approve Variance Application No. 11914 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to its size and shape;
2. The Applicant did not create the width of the lot;
3. The variances are necessary to enable reasonable use of the Property;
4. The variances will not alter the essential character of the neighborhood;
5. The use will not be detrimental to the public welfare; and
6. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Workman, seconded by Mr. Hudson, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 3 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Hudson – yea, and Mr. Mills – yea.

Case No. 11915 – Joel Wharton - seeks variances from the setback of a poultry building requirement (Section 115-20B(1)(c) of the Sussex County Zoning Code). The property is located on the north side of Careys Camp Road approximately 648 feet northeast of Laurel Road. 911 Address: 33457 Careys Camp Road, Millsboro. Zoning District: AR-1. Tax Map No.: 3-33-3.00-34.01.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received three (3) letters in support to the Application and read the letters into the record and received no correspondence in opposition to the Application.

Joel Wharton was sworn in and testified requesting a variance of 24.9 feet from the fifty

(50) feet side yard setback requirement on the north side for a proposed 45 feet by 525 feet poultry house.

Mr. Wharton testified that he had a wetlands determination prepared and he decided to place another poultry house on the Property; that the storm water regulations limit his ability to place the poultry house on the Property; that the storm water regulations have been altered in the past year and now require that he place a storm water management pond along with a new poultry house; that the storm water management pond necessitates that the poultry house be moved closer to the property line; that the northeast corner of the poultry house will be approximately 25 feet from the side property line; that the northwest corner of the home meets the setback requirements; that the Property is unique due to the storm water management regulations; that the proposed storm water management pond will be used for drainage; that there is no other room for expansion without a variance; that the Delaware Department of Natural Resources & Environmental Control (“DNREC”) owns the adjacent property; that, since DNREC is the owner of the Property, he doubts that he would be able to purchase a portion of neighboring lands to remove the encroachment; that the Property is in a secluded area with forestry and sits back from the road; that 58.5 feet separates the existing poultry house and the proposed poultry house; that the engineer thought it would be best to fit the storm water management pond between the poultry houses; that he could not build the poultry house to be parallel with the setback line because there would not be enough room between the new house and the existing house for a truck to pass through; that new poultry houses are 60 feet to 65 feet wide; that the proposed poultry house is smaller than the typical poultry house; that the proposed poultry house is 45 feet wide; that his poultry provider has approved of the proposal; that the poultry provider prefers that the poultry house be set back from the existing lean-to on the Property; that the tax ditch is not located on the Property; that the Property consists of approximately 12 acres; that the Property is narrow in the front and wide in the rear; that the Property is unusually shaped; that there is a manufactured home located near the front of the lot preventing the poultry house from being placed elsewhere on the lot; that the location of the proposed poultry house is the only possible place it can be located; that forestry encloses the Property; and that the detached lean-to meets setback requirements.

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

Mr. Hudson moved to approve Variance Application No. 11915 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to its shape;
2. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
3. The exceptional practical difficulty was not created by the Applicant since he did not alter the existing property lines or storm water regulations;
4. The variance is necessary to enable reasonable use of the Property;
5. The variance will not alter the essential character of the neighborhood as it is a rural area with already existing poultry houses;
6. The use will not be detrimental to the public welfare; and
7. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 3 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Workman – yea, and Mr. Mills – yea.

Case No. 11916 – Custom Siding, Inc. - seeks variances from the side yard and rear yard setback requirements (Sections 115-25C, 115-181B, and 115-185F of the Sussex County Zoning Code). The property is located on the east side of Cleveland Avenue approximately 944 feet south of Lincoln Drive. 911 Address: 38847 Cleveland Avenue, Selbyville. Zoning District: AR-1. Tax Map No.: 5-33-20.18-122.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received no correspondence in support to the Application and received one (1) letter in opposition to the Application and read the letter into the record.

Charles Hayes was sworn in and testified requesting a variance of 8.3 feet from the ten (10) feet side yard setback requirement on the north side for a proposed HVAC system, a variance of 8.2 feet from the ten (10) feet side yard setback requirement on the north side for a proposed gas tank, a variance of 5 feet from the twenty (20) feet rear yard setback requirement for a proposed dwelling, and a variance of 5 feet from the ten (10) feet side yard setback requirement on the north side for a proposed dwelling. Mr. Hayes submitted drawings and pictures to the Board to review.

Mr. Hayes testified that the Property is a canal front lot in Cape Windsor; that the lot is a standard sized lot in the community; that he received a letter of acceptance from the Cape Windsor Community; that the lot is narrow; that the proposed dwelling will look proportionate to the lot and other homes in the neighborhood; that the proposed variances are similar to other properties in the development; that the community has evolved from a mobile home park to a community with stick-built homes; that other homes in the neighborhood have received variances of 5 feet from the side yard setback requirement; that there are several new homes in the development; that parking is a major issue within the community; that the variances requested will leave adequate space for extra parking; that the proposed dwelling will be in line with the homes on neighboring properties; and that neighboring dwellings are 15 feet from the canal.

Ms. Cornwell advised the Board that other properties in the neighborhood have received variances.

Mr. Hayes testified that his requests are not out of the ordinary; that many variances have been granted to neighboring properties; that the HVAC system cannot be placed in front of the Property; that he plans to move the HVAC system closer to Cleveland Avenue to accommodate a request from his neighbor; that the HVAC unit cannot be located on the south side of the proposed dwelling because of landscaping and sidewalks; that all neighboring homes have the HVAC unit located on the north side; that he is staying within the guidelines of the community; that the proposed dwelling will be two stories tall and 2,600 square feet in size; that the home will be similar to the home on Lot 20 as he built that home a few years ago; that the previous dwelling on

the Property was located only 2 feet from the side yard property line on the north side; that the proposed home will be farther away from the side yard property line; that the previous dwelling was a single story mobile home; that the parking issue is the reason why the proposed dwelling is not closer to the street; that the garage will hold one vehicle and will be located under the dwelling; that he will be able to fit 3 cars in the driveway in the front yard; that the side yard to the south side will be landscaped with a walkway and no cars will be parked there; that there is a gap between the front property line and the edge of paving of Cleveland Avenue; that properties in Cape Windsor are developed in such a way that homes are 5 feet from the side property line and HVAC systems and related structures are placed on that side of the lot and the other side of the lot is used for walkways, parking, and open space; and that he will develop the Property in this fashion.

Ben Moses, Julia Moses, and James Kodlepis were sworn in to testify in opposition of the Application.

Mr. Moses testified that he and his wife are the owners of the neighboring property - Lot 18; that they purchased Lot 18 in 1998; that the Applicant built the dwelling on Lot 20; that the five feet side yard variance requested is consistent with neighboring properties and he does not object to that variance request; that he was concerned about the placement of the HVAC system; that he hears the HVAC unit located on Lot 20; that the HVAC units are very loud; that he asked the Applicant to move the proposed HVAC unit moved closer to the road and he does not object to the HVAC system provided it is moved closer to Cleveland Avenue; that the only portion of the existing home on the Property which extends farther than 5 feet into the side yard setback area is a small bump-out; that, otherwise, the home is 5 feet from the side yard property line; that his home consists of 1,400 square feet and is a single story home; that the home is 24 feet from the foundation to the canal; that he has a deck which is closer to the canal; that he has concerns about losing the view of the canal if the Applicant builds the home as proposed; that he received a variance for the existing deck and enclosed porch; that he consulted with the neighbor before the construction of said deck and porch; that the rear yard setbacks for dwellings in the neighborhood are not generally 15 feet; that he is concerned about the solid, two-story wall of the Applicant's dwelling that will block his views of the canal; that his neighbor can see through part of his screened-in porch; that he discussed the construction of his own porch with his neighbor; that he would not object to a single-story screened-in porch on the Applicant's property; that most of the rear yard variances are for decks; that he built his home in 1999; that the screened-in porch is 12 feet deep and the open deck is 14 feet deep; that he has five (5) parking spaces on his lot; that he objects only to the proposed rear yard variance and the proposed location of the HVAC unit; that he does not object to the HVAC unit being placed closer to Cleveland Avenue; and that his other concerns are the obstruction of his view from the living room area and the value of surrounding properties.

Mrs. Moses testified that their home was built at the same time as their neighbor to the north; that their neighbor designed his home in a similar manner as the Moses home; and that the foundations for those homes are 20 feet from the property line and the decks are 15 feet from the property line.

Mr. Kodlepis testified that he lives across the street and shares the same views as Mr.

Moses.

Phillis Hayes was sworn in to testify in support of the Application. Mrs. Hayes testified that Mr. Moses' porch is dark and she is unable to see through the screen; that Mr. Moses' enclosed porch and deck are 15 feet from the bulkhead; that Mr. Moses has a large boat parked in his available parking spaces; and that newer homes in the neighborhood are being designed to allow for off-street parking.

Mr. Hayes testified that other structures in the neighborhood are 15 feet from the rear property line; that many homes in the neighborhood are being designed to be 2 stories tall; and that Mr. Moses' house is located closer to Cleveland Avenue than the Applicant's proposed home.

The Board found that one (1) party appeared in support of the Application.

The Board found that three (3) parties appeared in opposition to the Application.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the case be **tabled until February 20, 2017**. Motion carried 3 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Workman – yea, and Mr. Mills – yea.

ADDITIONAL BUSINESS

Ms. Cornwell advised the Board that the discussion of rules and procedures can be moved to a future agenda when all Board members will be present.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the discussion of rules and procedures be moved to a future meeting when there are not a lot of cases on the agenda. Motion carried 3 – 0.

Meeting Adjourned 9:00 p.m.