

MINUTES OF FEBRUARY 7, 2022

The regular meeting of the Sussex County Board of Adjustment was held on Monday, February 7, 2022, at 6:00 p.m. in the County Council Chamber, Sussex County Administration Office Building, Georgetown, Delaware. The teleconference system was tested during the meeting by staff to confirm connectivity.

The meeting was called to order at 6:00 p.m. with Chairman John Williamson presiding. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman - Absent, Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Ms. Jennifer Norwood – Planning and Zoning Manager, Mr. Chase Phillips – Planner and Ms. Ann Lepore – Recording Secretary.

The Pledge of Allegiance was led by Mr. Williamson.

Motion by Dr. Carson, seconded by Mr. Warfel and carried unanimously to approve the agenda. Motion carried 4 – 0.

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

Motion by Mr. Hastings, seconded by Dr. Carson and carried to approve the Minutes for the December 13, 2021, meeting. Motion carried 3 – 0.

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

Motion by Dr. Carson, seconded by Mr. Hastings and carried to approve the Findings of Facts for the December 13, 2021, meeting. Motion carried 3 – 0.

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

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

PUBLIC HEARINGS

Case No. 12643 – E. Nelson & Linda Justice seeks a special use exception for a garage/studio apartment and a variance from the maximum square footage for a garage/studio apartment for a proposed use within an existing structure (Sections 115-23, 115-25, & 115-210 of the Sussex County Zoning Code). The property is located on the northwest side of Cypress Lane approximately 0.23 miles north of Old Landing Road. 911 Address: 30478 Cypress Lane, Laurel. Zoning District: AR-1. Tax Parcel: 232-13.00-63.01

Mr. Phillips 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 Applicants are requesting a special use exception for a garage / studio apartment and a 360 sf. variance from the 800 sf. maximum square footage requirement for a garage / studio apartment.

Mr. Nelson Justice and Ms. Linda Justice were sworn in to give testimony about their Application.

Ms. Justice testified that they are self-represented; that they have reached near the age of 80 and are on a limited income; that they cannot afford assisted living; that her husband sustained a back injury after a fall; that they need to plan for their future; that they would like to convert an existing structure into an apartment to accommodate their needs; that their children will be taking over their house on the property; that this option affords them the opportunity to care of each other; that it is not the building located on the map labeled as shop; that it is currently an equipment shed, formerly a barn; that she is submitting a picture documenting locations; that the property consists of 5 acres; that the apartment will consist of 1,160 sf., which is more than the 800 sf. allowed; that the existing structure measures 30 ft. by 32 ft.; that the pole building is the structure to become an apartment; that their neighbors do not oppose the Application; that the structure will be a 1 bedroom apartment; that she serves on the board of Old Church Landing HOA and the HOA does not oppose; that the board does not need to approve as it is an existing structure; that they will be converting lean-tos to porches and adding a carport; and that they have gained septic approval for a proposal.

Mr. Nelson Justice testified that the building is about 50 ft. east of the shed.

Mr. John W. Justice was sworn in to give testimony about the property.

Mr. John Justice testified to the exact location of the building on the map provided; that the existing building will be converted to a one-bedroom, one-bathroom apartment; that it is about 25 yards from the main house; that the closest neighboring home is not visible through the trees; that it is on the farther end of the property from the neighbors; that his father broke his back and fractured his spine and he is planning to take care of his parents and their property; and that there is designated parking.

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

Mr. Williamson closed the public hearing.

Mr. Hastings moved to approve Case No. 12643 for the requested variance and special use exception, pending final written decision, for the following reasons:

1. The variance will not be detrimental to the neighborhood; and
2. The special use exception will have no adverse effect.

Motion by Mr. Hastings, seconded by Dr. Carson, carried unanimously that the **variance and special use exception be granted for the reasons stated.** Motion carried 4 – 0.

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

Case No. 12644 – Orlando Figueroa seeks a variance from the front yard setback requirement for a proposed garage (Sections 115-42 and 115-182 of the Sussex County Zoning Code). The property is located on the north side of Weigelia Drive approximately 340 ft. east of Wilson Hill Road. 911 Address: 15421 Weigelia Drive, Georgetown Zoning District: GR. Tax Parcel: 231-3.00-24.00

Mr. Phillips 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 variances of 18.5 feet and 14 feet from the forty (40) feet front yard setback requirement for a proposed garage.

Mr. Orlando Figueroa was sworn in to give testimony about the Application.

Mr. Juan Turcios was sworn in to give testimony about the construction of the structure on the property.

Mr. Turcios testified that his client was unable to build a garage due to the setback requirements; that, due to the wetlands in the yard, it limits buildable space; that, due to the setbacks on the side yard, it limits the buildable space; that, if the garage was built in the side yard, only 1 car would fit in the garage; that the owner purchased the property with an existing structure and septic system in place; that they have spoken with the neighbors who do not oppose the Application; that this is the smallest structure buildable to accommodate the owner's needs; that, if the garage was built it compliance, the garage would only be 20'; that the driveway goes to the edge of the road; that the garage will be 25 feet from the road; that the septic system takes up a large part of the back yard and makes it unbuildable; that the structure will not obstruct visibility from the road; that one car will be parked in the driveway; that there will not be frequent visitors; that they explored alternative options for building the structure and were still running into setback requirement issues; that he measured the distance from the house to the property line but a survey was conducted also and was submitted to the Board; that he does not have a copy of the survey with him; that he measured himself from the property line to the house and the proposed garage; that he will get a new survey to submit to the Board; that he confirmed the measurements on the documents submitted; that the garage will be 30 feet deep; and that there will be no steps from to the road side of the garage.

Mr. Figueroa testified that five neighbors signed letters in approval of the proposed garage; that he wishes to build this garage to store his car; that the lot consists of approximately 0.25 acres; that no HOA approval is needed; that he owns three cars and is asking for a two-car garage; that the

third car will be parked on the left side of the garage in side yard; and that he can park three cars on his property.

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

Mr. Williamson closed the public hearing.

Mr. Warfel moved to leave the record open for Case No. 12644 for the requested variances, for the limited purpose for the Applicant to submit a survey to the Planning and Zoning Department by March 31, 2022, and to allow comments regarding the survey to be heard at the Board's meeting on April 4, 2022.

Motion by Mr. Warfel, seconded by Dr. Carson, carried unanimously that the **record be left open for the limited purposes only for the reasons stated.** Motion carried 4 – 0.

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

Case No. 12645 – Zachary Ulrich & Breanna Tumas seeks a variance from the maximum lot coverage requirement (Sections 115-25 and 115-172 of the Sussex County Zoning Code). The property is located on S Canal Street within the Bay City Manufactured Home Park. 911 Address: 35851 S Canal Street, Millsboro. Zoning District: AR-1. Tax Map: 234-24.00-34.00-17838

Mr. Phillips 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 nine mail returns. The Applicants are requesting a lot coverage of 44.8% rather than the 35% maximum lot coverage requirement set forth in the Sussex County Zoning Code.

Mr. Zachary Ulrich and Ms. Breanna Tumas were sworn in to give testimony about their application.

Mr. Greg Tumas was sworn in to give testimony about the structure / content of the additions to the property.

Mr. Ulrich testified that the Applicants are requesting a variance from the maximum lot coverage requirement with a minimum of 5% increase of the 35% requirement; that the Applicants live in a mobile home community park and they have smaller lot sizes in addition to the lot coverage rule; that their marginal restrictions are different than a typical subdivision; that the Applicants lease the lot; that their dwelling sits on a low lying area of the property and is subject to run off; that, to eliminate water problems, they have installed a French drain; that water would pool under the house; that the underneath of their home is dirt / mud and water would evaporate upward creating a moldy floor in their home; that their diligence and installation of the French drain has resolved the standing

water issues; that they added a carport and a roof to the deck; that the property is lower than other properties nearby; that they are applying for the minimum variance to complete their request; that the additions were not permitted; that they began work prior to permitting; that the carport put them over the maximum allowable coverage requirement; and that he wanted the carport because there was no garage.

Ms. Tumas testified that they have been confused about the calculation of lot coverage; that the property held water in a ponding status which made it difficult to walk in the yard; that their neighbors have built up their properties prior to regulation changes and forcing water to their low-lying property and under their home; that she has a mold allergy and was becoming ill; that their neighbor complimented their efforts in resolving the standing water problem; that neighboring lands are not as wet either; that they found the source of the mold due to standing water; that they were cited to contact the County and apply for the variance before the Board; that they added the French drain, a carport, and a roof to the deck; that the drain directs water towards the road; that the Applicants own the house; that the carport put them over the maximum allowable coverage requirement; that the additions were not permitted initially; that the installation of drains have not adversely affected their neighbors; that her father helped them construct the carport; that the carport is shown on the survey as “169 sf pavers” in the southeast corner; that the neighbor with elevated driveway is located near the carport and they are attempting to reduce the water forced to their property; that the carport would help eliminate water standing on that side of the house and creating mold near the main bedroom which was where she was getting the sickest; that there was gutters in place but they were not helpful when there was excessive rain; that their neighbors to the east have not complained about water on their property due to carport; that the water drains toward the road and back of the home based on the pitch of the roof; that this was constructed spring of 2021; that the carport stops at the end of the sunroom; that they had landlord approval; and that they purchased property three years ago and all structures were existing at that time except the carport and sunroom.

Mr. Tumas testified that he is Ms. Tumas’ father; that the carport is located on a concrete pad with cement block and no footer; that the carport is not a permanent structure as in a poured foundation; that the area was previously used by a prior owner as a paver floor and was used to hold a golf cart and jet ski; that this structure is not permanently attached to the ground; that the carport is necessary for storage of the golf cart; that the water is not directed towards the neighbor’s house but towards the front of their property; that he assisted with construction but is not a licensed contractor; that gutters and down spouts will be applied if allowed to resume work; that the carport is 5.5 feet from the side property line and is shown as the dotted edge on the paver.

Mr. Phillips stated the specifics of the lot coverage percentages based on the surveys; that the removal of the carport would not put them in compliance with the lot coverage requirement; that the total allowable lot coverage was only for the existing structure(s); a permitted carport is 8 ft. by 14 ft. (112 sf.); that 360 square feet is the overage of the lot coverage requirement; that the carport, sun room addition, and screen porch are currently permitted; that permits range from 1984-2010 and the only structures to receive Certificate of Occupancy are the enclosure of porch / shed and residential

addition; and that Sussex County visited the site in May 2021 and a building permit was thereafter submitted by the Applicants.

Mr. Sharp and Mr. Phillips calculated the square footage of the structures as follows:

- Carport – 112 square feet
- Sunroom – 166 square feet
- Shed – 101 square feet
- House 1,590 square feet
- Deck – 228 square feet
- Total: 2,197 square feet

Mr. Philips stated that the lot has 5,221.30 square feet and 35% of that amount is 1,827.46 square feet and that the structures are 369.54 feet over the maximum allowable amount.

Mr. Ulrich testified that the screen porch is part of the square footage for the house and they expanded the sunroom 6 feet towards the carport.

Mr. Phillips stated that a permit application was submitted on April 19, 2021; that the property was inspected in May 2021; that issues arose after that inspection; and that certificates of occupancy were issued for the porch / shed in 1999 and for the addition in 1991.

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

Mr. Williamson closed the public hearing.

Mr. Hastings moved to approve in part and deny in part Case No. 12645 for the requested variance, pending final written decision, for the following reasons:

1. The variance as it pertains to the carport is denied
2. The variance as it pertains to the other structures on the property is approved as those structures were preexisting.
3. The removal of the carport would put the property closer to compliance and represent the minimum variance necessary.

Motion by Mr. Hastings, seconded by Mr. Warfel, carried unanimously that the **variance be granted in part and denied in part for the reasons stated.** Motion carried 4 – 0.

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

Case No. 12646 – Donna P. Thomas seeks a variance from the side yard setback requirement for a proposed structure (Sections 115-34, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located at the south side of Admiral Road within the Tower Shores Subdivision. 911 Address: 39950 1E Admiral Road, Bethany Beach. Zoning District: MR. Tax Map: 134-5.00-110.00 E-2

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received five letters in support of and one in opposition to the Application, eight mail returns and HOA approval. The Applicant is requesting a 4.5 ft. variance from the 10 ft. side yard setback requirement on the east side for a proposed elevator.

Ms. Donna Thomas was sworn in to give testimony about her application.

Mr. Randy Penitoney was sworn in to give testimony on behalf of Donna Thomas.

Ms. Thomas testified that she has owned a four-story duplex in Tower Shores since the mid-1970s and is residing in this home full-time due to her medical condition; that there are three other elevators in the community; that there is no clear alternative to put the elevator to meet the current setbacks; that the proposed elevator is the minimum size possible to meet handicapped accessibility requirements; that the elevator cannot be built in the current house footprint because of the existing structure's layout; that the one opposition is the land owner to the west and the elevator will not be visible from his property; that the structure is also on pilings which adds to the complexity of the design; that they cannot put the elevator in the front due to parking restrictions; that parking is under the house and, if the elevator was placed in front of the house, the access to the parking would be blocked; that the neighbor who opposes thought it would de-value his property; that the lot would have been designated in the 1950s; and that she built the existing structure in the 1980s.

Mr. Penitoney testified that the area where the elevator will be placed is in the rear of the structure and not visible from the street or adjacent properties; that it would be very difficult to place the elevator within the current structure; and that the variance is needed for the southeast corner of the lot.

Mr. Sharp asked for clarification on the side yard setback requirements in regards to the small lot ordinance.

Ms. Norwood confirmed that due to the small lot ordinance the side yard setback is 5 ft. and the request is for 0.5 ft. from the 5 ft. setback.

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

Mr. Williamson closed the public hearing.

Mr. Warfel moved to approve Case No. 12646 for the requested variance, pending final written decision, for the following reasons:

1. The property has unique conditions due to the exceptionally small buildable area;
2. That, due to the physical conditions, the property cannot be developed in strict conformity with Sussex County Zoning Code and the variance is necessary to enable the reasonable use of the property;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare; and
5. The variance represents the minimum variance necessary to afford relief.

Motion by Mr. Warfel, seconded by Dr. Carson, carried unanimously that the **variance be granted for the reasons stated.** Motion carried 4 – 0.

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

Mr. Williamson recused himself from the two remaining public hearings and left the Council Chambers.

Case No. 12647– Jason Satterfield seeks variances from the side yard and rear yard setback requirements for an existing structure (Sections 115-34, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located at the northeast side of Shawnee Drive within the Blackwater Village Subdivision. 911 Address: 34060 Shawnee Drive, Dagsboro. Zoning District: MR. Tax Map: 134-11.00-301.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received five letters in support of and none in opposition to the Application and one mail return. The Applicant is requesting a 4.1 ft. and 4.7 ft. variance of the 5 ft. rear yard setback, and a 2.8 ft. variance of the 5 ft. side yard setback on the southwest side for an existing shed.

Mr. Jason Satterfield was sworn in to give testimony about his application.

Mr. Satterfield testified that his property has been very difficult to build on due to the proximity to the Black Water Creek which connects to the Indian River Bay; that the property is located close to a marsh and a majority of the front of the property is in a flood zone; that the ordinary high water line forced the septic system to be located in the front right corner with a long drain field to accommodate the narrowness of applicable area and is on the front and side 10 ft. setbacks; that his house was forced to the back 10 ft. property line; that he has a variance for his well also; that he has

almost no backyard due to all the constraints; that he was told that the lot was unbuildable prior to purchase; that, due to the design of the shed, if it was relocated it would cause everyday tasks to increase in difficulty and make one door unusable; that the shed measures 10 feet by 14 feet and has 2 double doors on the left side and a single door on the front side; that, if it was relocated, the single door would be unusable and he would not be able to get larger equipment, such as a lawn mower and kayak in and out of the shed; that the shed cannot be rotated because the shed would be inaccessible; that retaining the shed in the existing location would keep the shed usable and would help with the aesthetics; that he was not there when the shed was delivered and it was part of the contract with the builder; that his builder was responsible for purchasing and installing the shed; that they were ignorant of questions to ask of the builder; that the contractor did not obtain a permit and made a lot of mistakes; that he has looked into alternative shed locations and the cost for moving it but it would be less functional; that the neighborhood is full of sheds in various sizes and shapes; that most properties in the community have sheds; that adjacent property owners have signed letters supporting the request; that the shed matches the design and color scheme of their home; that the 3 neighboring properties have signed letters of approval; and that the HOA has also approved this application for variances.

Mr. Gary Hornbacher was sworn in to give testimony in support of this application.

Mr. Gary Hornbacher testified that the HOA has had issues in the past with sheds and ancillary buildings due to small lot size, being a wooded community and having septic fields; that the neighborhood has been approved for County Sewer and is pending federal approval; and that the sewer system should come within 2-3 years and should help the neighborhood.

The Board found that seven (7) people appeared in support of and no one appeared in opposition to the Application.

Dr. Carson closed the public hearing.

Mr. Hastings moved to approve Case No. 12647 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to the exceptionally small buildable area;
2. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare; and
3. The variances represent the minimum variances necessary to afford relief.

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

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

Case No. 12648 – Katherine Benton seeks a special use exception to operate a tourist home (Sections 115-32, 115-34, 115-183, 115-185, and 115-210 of the Sussex County Zoning Code). The property is located at the northwest side of Creek Road within the Blackwater Village Subdivision. 911 Address: 34085 Creek Road, Dagsboro. Zoning District: MR. Tax Map: 134-11.00-358.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of and 27 letters in opposition to the Application and 1 letter from the HOA in opposition and zero mail returns. The Applicant is requesting a special use exception to operate her home as an Airbnb.

Ms. Katherine Benton was sworn in to give testimony about her application.

Mr. Steven Benton was sworn in to give testimony about this application.

Ms. Benton testified that her attorney told her that the HOA had no laws against operating an Airbnb but she was unaware of needing County approval / permit; that she purchased the home from her parents; that the home has two rooms with their own entrance and bathroom; that the home can accommodate nine cars in the driveway; and that her boyfriend lives in Indianapolis.

Mr. Benton testified that he is the previous owner of the Property; that, as the previous owner, he has rented the property through Airbnb before with no issues; that the complaint was only driven after Ms. Benson told a neighbor that her plan was to operate an Airbnb; that 246 people reside in the community that did not vote for this amendment to their bylaws to limit rentals; that there are 281 lots in the neighborhood; that the restrictive covenants do not prohibit short-term rentals; that the house is up to current code and looks great; that the house was built in 2017; that the roads in the community have been turned over to the State; and that the postman backs up on the streets.

Mr. Sharp recited the definition of a tourist home.

Mr. Benton testified that the directly surrounding properties do not have an issue with this use.

Ms. Benton testified that she operates a salon out her home also; that her business has between 2-4 persons a day currently Monday through Thursday; that the home could accommodate six people for the two rentable rooms; that she was operating this for a month before being found in violation; that the listing indicates 1 vehicle per room; that the typical rental was for 2-3 days; that her family runs an event planning business and wedding venue; that there is no outdoor equipment for use of the renters; that Airbnb has an approval process for both the host and guests; that the home is not used as a wedding venue; and that there are some patio areas for guests to use.

Mr. Benton testified that the Property was busier when his children lived there; that there were more individuals residing at this home when he owned it and there were no complaints; that the

driveway is paved and is 33 feet wide; that the driveway can accommodate lots of vehicles; that the streets are 16 feet wide; that the property is 135 ft. by 80 ft. with well and septic; that no homeowner association approval is needed; that two of the bedrooms have exterior access and interior access that can be closed off; and that there is no cooking in the rental rooms.

Ms. Betty Duncan was sworn in to give testimony in opposition this application.

Ms. Duncan testified that she has been on the HOA board since 2013; that there was a petition sent to 268 units, 86 units were for adding language in the restrictions to ban short-term rentals, 37 units against, and some of which were confused on what they were signing and wrote letters to state so; and that the entire house is being advertised for rent – not just the 2 rooms.

Mr. Gary Hornbacher was previously sworn in and was still under oath.

Mr. Gary Hornbacher testified that this is a deed restricted community, with an active board of directions and covenants and bylaws, single family residential, homebased businesses; that the HOA restrictions are silent on short-term rentals currently; that the Bentons never sought out approval and then were petitioned to stop by the HOA for not following procedures; that the Application indicates no substantial impact on the neighbors but that is inaccurate due to the nature of the neighborhoods design and roadways; that there has been a substantial impact on neighbors; that the neighborhood has a unique road structure with dead-end streets; that DelDOT accepted the roads but only paved to the current width and the HOA maintains the rest; that the community was created in 1974; that the community did not permit on-street parking until 2016; that he has experienced difficulty turning around at the end of the cul-de-sac; and that this use will create a loss of privacy and affect the sense of community.

Ms. Benton testified that she is involved in the community; that she has high-end clients at her salon and is picky with her guests; that others turn around in her driveway; that the use will not create much traffic; that she only rents 2 rooms and not the entire house; and that she specializes in wedding hair.

The Board found that one person appeared in support of and five persons appeared in opposition to the Application.

Dr. Carson closed the public hearing.

Mr. Warfel moved to deny Case No. 12648 for the requested special use exception, pending final written decision, for the following reasons:

1. The Applicant failed to demonstrate that the special use exception will not substantially affect adversely neighboring and adjacent properties.

Motion by Mr. Warfel, failed for lack of second, motion withdrawn.

Mr. Warfel moved to table Case No. 12648 for the requested special use exception, to allow Mr. Chorman the opportunity to review the record and be prepared to vote at the next meeting on February 21, 2022. The record was closed with no further comment on this case.

Motion by Mr. Warfel, seconded by Mr. Hastings, carried unanimously that the case be tabled to the next meeting for vote only.

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

ADDITIONAL BUSINESS

There was no additional business.

Meeting adjourned at 8:32 p.m.