

MINUTES OF JANUARY 6, 2020

The regular meeting of the Sussex County Board of Adjustment was held on Monday, January 6, 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 Ms. Janelle Cornwell – Director of Planning and Zoning, Mr. Jamie Whitehouse – Planning Manager, 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. Williamson, seconded by Dr. Carson, and carried unanimously to approve the Minutes for the November 4, 2019, meeting. Motion carried 5 – 0.

Motion by Mr. Chorman, seconded by Mr. Williamson, and carried to approve the Findings of Facts for the November 4, 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.

PUBLIC HEARINGS

Case No. 12399 – Kevin & Paula Burr seek variances from the rear yard setback requirements for a proposed structure (Section 115-25 of the Sussex County Zoning Code). The property is located on the west side of Linden Dr. approximately 332 ft. north of Woodland Cir. within the Angola by the Bay Subdivision. 911 Address: 22934 Linden Drive, Lewes. Zoning District: AR-1. Tax Parcel: 234-11.20-71.00

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 a 7.17 ft. variance from the required 20 ft. rear yard setback requirement for a proposed dwelling.

Mr. Bryan Elliott was sworn in to give testimony about the Application.

Mr. Elliott testified that he represents Insight Homes; that, in 2018, the small lot ordinance passed and he assumed that the ordinance applied to this lot; that the lot is unique because it consists of exactly 10,000 sf., and that, if it was just one square foot smaller, it would qualify for the small lot ordinance and lesser setback requirements would apply.

Mr. Sharp stated that the small lot ordinance applies to lots which consist of under 10,000 square feet and it reduces the rear yard and side yard setback requirements for small lots by 5 feet.

Mr. Elliott testified that the rear yard is adjacent to common area; that he learned of the need for the variance before constructing the house; that the homeowners association has approved this request; that two lots were combined into 1 lot; that the need for the variance was not created by the Applicants; that, if the variance is allowed, it will not alter the essential character of the neighborhood; that the lot backs up to a wooded common area; that the home will be a nicer home; that he told the Applicants that they will not be able to have a rear yard deck; that, if the variance were denied, the Applicants would have to construct a smaller house; that the proposed house is a ranch style house measuring 28 feet by 60 feet; and that the County gave him the wrong setback information.

Mr. Sharp stated that, even if the small lot ordinance applied, the Applicants would still need a variance.

Mr. Whitehouse said that the building permit was applied for 2019 and was put on hold pending the outcome of this Application.

Mr. Elliott testified that there is no septic system on the lot; that the HVAC and steps can comply with setback requirements; that the patio or deck could be placed in the side yard; that the design of the house necessitates why it cannot be built in compliance with the Code; and that all steps will be located within the building envelope.

Mr. Whitehouse stated that the property is subject to a 10 foot side yard setback rather than a 15 foot side yard setback because it was a pre-1970 subdivision.

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

Mr. Chorman moved to deny Case No. 12399 for the variance as the property is not unique, the property can be developed in strict conformity with the Code, and the exceptional practical difficulty is being created by the Applicants.

Motion by Mr. Chorman, seconded by Mr. Williamson, carried unanimously that the **variance be denied for the reasons stated.** Motion carried 4 – 1.

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

Case No. 12400 – Richard Byrd seeks a variance from the front yard setback, side yard setback and rear yard setback requirements for a proposed structure and existing structures (Sections 115-25, 115-182, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located on the south side of 8th St. approximately 167 ft. east of Bald Eagle Rd. 911 Address: 37348 8th St., Rehoboth

Beach. Zoning District: AR-1 Tax Parcel: 334-19.16-98.00

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 the following variances:

- 8.8 ft. from the required 30 ft. front yard setback for steps.
- 11.8 ft. from the required 30 ft. front yard setback for a covered porch.
- 2.5 ft. from the required 10 ft. side yard setback on the west side for steps.
- 3.4 ft. from the required 5 ft. rear yard setback for shed.
- 0.1 ft. from the required 5 ft. side yard setback on the west side for shed.

Note: The side and rear yard setbacks for an accessory structure under 600 sq. ft. are 5ft.

Mr. Richard Byrd was sworn in to give testimony about the Application.

Mr. Byrd testified that he is a builder and recently purchased the house in September 2019; that the house was previously vacant for 7 years and needs rehabilitation; that the existing porch is not code compliant and needed to be removed; that he requests the variance to allow him to restore the porch; that the prior porch had no cover; that he proposes to install a screen to keep insects away; and that there will be steps projecting off the side of the porch.

Mr. Whitehouse clarified that the front yard variance needed for the steps is 8.8 feet.

Mr. Byrd testified that he realized he needed the variances before construction; that the porch is 16 feet; that the shed has been removed but he would like to place a shed on the existing pad; that the Property is unique and cannot otherwise be developed; that the lot is narrow and small; that the proposed work will improve the aesthetics of the area; that the variances will not alter the essential character of the neighborhood but will improve the existing dwelling and surrounding area; that the variances requested are the minimum variances necessary to afford relief; that the porch will be on the same footprint as the existing porch; that there is approximately 8-12 feet from the edge of paving of the street to the front property line; that neighbors do not object to the request; that he has received no complaints; and that the steps will have 4 steps.

Ms. Cornwell advised the Board that, due to the age of the house, the HVAC, side steps, house, and shower are non-conforming and no variances are needed.

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

Dr. Carson moved to approve Case No. 12400 for the variances as the Applicant is improving the Property; that the variances will not alter the essential character of the neighborhood; and that the variances are the minimum variances necessary to afford relief.

Motion by Dr. Carson, seconded by Mr. Williamson, carried unanimously that the **variances be granted for the reasons stated.** 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. 12401 – Laura Messick seeks a special use exception to operate a day care center (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located on the west side of Shore Dr. at the intersection of Shore Dr. and Carvel Rd. within the Lakeshore subdivision. 911 Address: 22056 Shore Dr., Seaford. Zoning District: AR-1. Tax Parcel: 331-3.00-8.00

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 special use exception to operate a daycare facility for up to 12 children.

Ms. Laura Messick was sworn in to give testimony about the Application. Ms. Messick submitted a brochure to Board members.

Ms. Messick testified that she opened her daycare center in October 2019 and is licensed for six children; that she would like to increase the number to nine children initially and later increase to twelve children; that the Fire Marshal has given approval for up to eleven children; that there have been no issues with neighbors; that she lives at the end of a dead-end street; that she lives in the house and has one assistant; that she has a wait list for children; that she is unable to serve more than 12 children at this location; that her hours of operation are from 7:00 am – 5:30 pm – Monday to Friday, closed on major holidays; that there is currently a waiting list to attend the daycare; that the property is fenced and there is an outdoor playground; that there is adequate parking; and that the special use exception will not substantially affect adversely the uses of adjacent and neighboring property.

Ms. Cornwell advised the Board that the current use does not require a special use exception because it is treated as a home-based operation but, since the Applicant proposes to serve more than 6 children, a special use exception is needed.

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

Dr. Carson moved to approve Case No. 12401 for the Special Use Exception with the condition that the Applicant submit all agency approvals as part of the file.

Motion by Dr. Carson, seconded by Mr. Williamson, carried unanimously that the **special use exception be granted for the reasons stated.** 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. 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 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 3.6 ft. variance from the 17.6 ft average front yard setback requirement for an existing dwelling.

Mr. Sharp stated that the Applicant had a previous application – Case No. 12211 which had a public hearing before the Board on October 1, 2018; that the original Application was granted in part and denied in part; that the portion of the previous application which was denied is the subject of this request; that, before the Board can determine the merits of the variance, the Board must first determine if there has been a substantial change of conditions or other considerations materially affecting the merits of the request have intervened; that, if there is not a change in conditions, the Board cannot vacate the original decision and cannot entertain the merits of this application.

Ms. Kelly Hales was sworn in to give testimony about the Application. Ms. Hales provided an affidavit from her attorney Blake Carey.

Ms. Hales testified that her contractor moved the stakes and admitted so in Court; that it cannot otherwise be developed as the dwelling is existing and it would be a financial burden to move the home; that she would have to tear down the house in order to comply with the Code; that the exceptional practical difficulty was not caused by the Applicant but by the contractor who moved the stakes; that plumbing and electrical work is found under the pad; that the walls are in the concrete; that the property is unique as it has a retaining wall behind the house and the house could not be placed further back as it would cause the retaining wall to collapse; that the previous manufactured home was 1 foot over the line; that, since the prior application, she learned that she cannot move the house closer to the rear yard due to the structure of the retaining wall; that it will not alter the essential character of the neighborhood and that it is further back on the property than the previous home; that it is a minimum variance to afford relief; that it is only for one corner of the home; and that she would like more time to prepare for her request.

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

Mr. Workman moved to keep the public hearing open and place Case No. 12397 on the agenda for the February 3, 2020 meeting.

Motion by Mr. Workman, seconded by Dr. Carson, carried unanimously that the **record be left open and the case rescheduled for the February 3, 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.

ADDITIONAL BUSINESS

Ms. Cornwell announced her resignation from Sussex County effective later this month and thanked Board members. Ms. Magee thanked Ms. Cornwell for her service to the County.

Meeting was adjourned at 8:58 p.m.