

MINUTES OF JANUARY 9, 2017

The regular meeting of the Sussex County Board of Adjustment was held on Monday, January 9, 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 Chairman Dale Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, and Mr. Brent Workman. Mr. Norman Rickard was absent. Also in attendance were Mr. James Sharp – Assistant County Attorney, Mr. Vince Robertson – Assistant County Attorney, and staff members Ms. Janelle Cornwell – Director of Planning and Zoning and Mrs. Jennifer Norwood – Recording Secretary.

The Pledge of Allegiance was led by Mr. Callaway.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to move Case No. 11894 – Joseph F. Donohoe and Cynthia C. Donohoe and Case No. 11896 – James Truitt Farm, LLC under Old Business to the beginning of the proceedings and move Case No. 11900 – Rodney Mears and Beverly Mears to the beginning of the public hearings and approve the Revised Agenda as circulated and amended. Motion carried 4 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes and Finding of Facts for November 7, 2016 as circulated. Motion carried 4 – 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.

The Board discussed the Application and noted that Mr. Rickard made the motion to table the Application at the previous hearing but he was not present tonight.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case be **tabled until January 23, 2017**. Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – 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. Sharp advised the Board that any correspondence submitted to the Planning & Zoning Office after the last hearing is considered outside the public record and should not be considered by the Board.

Mr. Mills stated that he wanted additional time to review the information.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case be **tabled until January 23, 2017**. Motion carried 4 – 0.

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

The Board took a five (5) minute recess.

PUBLIC HEARINGS

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

Rodney Mears and Beverly Mears were sworn in and testified requesting a special use exception for an assisted living facility; that they purchased the Property three (3) years ago; that the existing dwelling has been completely remodeled; that the facility will care for a maximum of four (4) residents; that there are three (3) bedrooms and two (2) bathrooms; that only married couples can share a bedroom, which allows the facility to care for up to four (4) people; that the facility will not allow more than three (3) residents at one time if not married; that there will be nursing staff on site twenty-four (24) hours seven (7) days week; that the staff will prepare meals, disburse medications, and help with daily needs of the residents; that local transportation will be provided; that the rear yard is fenced in and can be used by the residents and visitors; that Delaware Division of Long Term Care will regulate the facility; that the use will not substantially adversely affect the uses of the neighboring and adjacent properties; that there will only be one (1) employee per shift; that there is adequate parking available; that there will not be a negative impact to traffic

in the area; that the facility will remain residential in character; that a resident cannot be bedridden over fourteen (14) days and stay at the facility; that the Property is surrounded by farmland and residential properties; that the neighbors have had no objection to the Application; that approximately six (6) to eight (8) employees will share the workload; and that they cannot expand the number of residents at this location.

Wayne Pepper was sworn in and testified in support of the Application and testified that he once owned the Property and is a neighbor; that the Applicants held an open house for the neighbors to explain the proposed facility and answered all the neighbors' questions; and that he feels the proposed facility will be great.

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

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until January 23, 2017**. Motion carried 4 – 0.

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

Case No. 11898 – Michael Jahnigen – seeks a variance from the minimum lot width requirement for a parcel (Section 115-194B(2) of the Sussex County Zoning Code). The property is located on the northeast side of Pepper Creek Road and north of Dogwood Drive. 911 Address: 30909 Pepper Creek Road, Dagsboro. Zoning District: AR-1. Tax Map No.: 1-34-6.00-12.00.

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.

Michael Jahnigen and Tom Ford were sworn in to testify about the Application. Robert Witsil, Esquire, presented the case on behalf of the Applicant and submitted exhibits for the Board to review.

Mr. Witsil stated that the Applicant is requesting a variance of 24.49 feet from the 150 feet lot-width requirement for a parcel; that the parcel is within Conservation District and is subject to the Conservation District regulations; that the Property is located along Pepper Creek; that Dogwood Acres is located nearby; that many neighboring lots are also within the Conservation District but are not 150 feet wide; that the Property is larger than neighboring lots; that the proposed subdivision meets all the Conservation District regulations except for the 150 feet lot-width regulation; that lots within the Conservation District are required to be 150 feet wide; and that lot width is to be measured at the building restriction line.

Ms. Cornwell advised the Board that the width of a lot can be measured at the building setback line per the Code; that Parcel #1 of the proposed subdivision meets the lot width requirement but Parcel #2 does not meet the requirement; that a variance is needed for the lot width

of Parcel #2; and that the variance being requested is measured at the building restriction line for Parcel #2.

Mr. Witsil stated that §115-4 of the Sussex County Code allows for the measurement of lot width at the building setback line; that the front portion of the lot was designed to be perpendicular; that Parcel #1 will be 150 feet wide at the building restriction line and no variance will be needed for that parcel; and that Parcel #2 will be 125.51 feet wide at the building restriction line and a variance is needed for that parcel.

Tom Ford, of Land Design, Inc. testified that, except for the lot width requirement for Parcel #2, the proposed subdivision meets all of the conservation and subdivision requirements including the acreage requirement and the lot width requirement for the rear of the lots; that a soil analysis was performed and the analysis concluded that the soils could support septic systems for the proposed lots; that the Applicant will meet the fifty (50) feet setback from tidal waters requirement; that the existing dock and bulkhead will remain; that other lots in the neighborhood do not meet the 150 feet lot width requirement; that the proposed subdivision will conform with the neighboring properties and the lots will even be larger than some of those lots; that the existing dwelling on the Property will be removed; that he does not foresee difficulty designing buildable areas on the two lots; that a literal enforcement of the lot width requirement would result in an unwarranted hardship to the Applicant; that there is no other configuration to subdivide the parcel which would meet the lot width requirements; and that he tried to subdivide the Property in different ways but was still unable to meet the lot width requirement.

Mr. Sharp reviewed the Conservation District variance standards with the Board.

Ms. Cornwell advised the Board that a copy of the Application was forwarded to the Sussex County Administrator.

Mr. Ford testified that the proposed subdivision will not have an adverse effect to the adjacent tributary; that the current lot size of the Property is unique to the area; that the proposed lots will be more in character with the neighborhood; and that the lots have been seeded.

Ms. Cornwell advised the Board that, if the Property was outside the conservation zone, the lot would only need to have 100 feet of road frontage since the Property is not along a state-maintained road; and that the conservation zone district requirements require 150 feet of lot width which is different than road frontage.

Mr. Ford testified that the Conservation District became effective in 1989; and that the existing lots in the neighborhood pre-date the Conservation District regulations.

Michael Jahnigen testified that he is the owner of the Property; that he has spoken with some of the neighbors and they have no objection to the Application; that the existing dwelling will be removed; that he affirms the statements made by Mr. Ford and Mr. Witsil as true and correct; and that the variance will bring the Property more into conformity with the neighborhood.

John Covelli, Harry Backus, Robert Rankin, Karen Merritt, and Teresa Maney were sworn in and testified in opposition to the Application.

Mr. Covelli testified that the lot adjacent to the Property is a federally protected lot; that he is concerned about the fifty (50) feet access easement shown on Parcel #1; that the proposed access easement appears to have access to the neighboring gravel drive; and that the gravel drive is on a property that is federally protected.

Ms. Cornwell advised the Board that the Applicant will have to go through the minor subdivision process with the Planning & Zoning Commission and the easement issue would be addressed at that level.

In rebuttal, Mr. Witsil stated that the State of Delaware owns the lot immediately to the west of the Property; and that the State's parcel encroaches into the road.

Mr. Ford testified that the proposed access easement shown on the survey is to allow access to Parcel #2 from the existing driveway on Parcel #1; that there will not be access to the neighboring property to the west; and that Parcel #1 and Parcel #2 will share a driveway.

Mr. Rankin testified that the gravel drive is used to gain access to the waterway; and that he would like to know if single-family dwellings or multi-family dwellings are being proposed.

Mr. Jahnigen testified that the proposed dwellings for the lots will be single-family homes.

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

The Board found that five (5) parties appeared in opposition to the Application.

Mr. Sharp reviewed the conservation district variance standards with the Board.

Mr. Mills moved to approve Variance Application No. 11898 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The non-conformity of the lot makes this Property unique;
2. The variance is necessary to enable 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;
5. The variance is not detrimental to the public welfare;
6. The variance sought is the minimum variance necessary to afford relief;
7. The Applicant has demonstrated that special conditions or circumstances exist in that the proposed two lot subdivision has considerable frontage on a tributary to the Indian River Bay and that the nature of the divided lots is similar to the size and characteristics of neighboring properties. These conditions are peculiar to the land within the County and a literal enforcement of provisions within the conservation zone, as designated by this section would result in unwarranted hardship;

8. The variance request is not based upon conditions or circumstances which are a result of actions by the applicant, other than the filing of the referenced minor subdivision application. The 2.12 acre parcel is otherwise appropriate for subdivision and the resulting lots shall be similar in conformation to, and larger in size to the surrounding community of subdivided lots, several of which are non-conforming to the requirements of the Conservation Zone. The variance request does not arise from any condition relating to the land use, either permitted or nonconforming, on any neighboring property.
9. The granting of a variance will not adversely affect water quality or adversely impact the tidal water bodies adjacent to the Conservation Zone. The proposed lot that is the subject of the variance otherwise meets the Tidal Waters protective setback of 50 feet and all other setback and area requirements but for the 150 feet lot width requirement for Parcel #2. The existing dock will be shared by the owners of Parcels #1 and #2 and there will be no disturbance within the tidal setback areas. Variances will be in harmony with the general spirit and intent of the section and any subsequent regulations. Necessary septic system permits will be acquired.
10. The application for a variance has, in fact, been made, in writing to, the Board of Adjustment on forms provided by the County, with a copy to the County Administrator.

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

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

Case No. 11899 – Timothy J. Long & Laurie A. Long – seek variances from the front yard setback requirements (Section 115-82B and 115-182D of the Sussex County Zoning Code). The property is located on the north side of Lighthouse Road approximately 450 feet east of Coastal Highway (Route 1). 911 Address: 37573 Lighthouse Road, Fenwick Island. Zoning District: C-1. Tax Map No.: 1-34-23.20-147.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received four (4) letters of support to the Application and no correspondence in opposition to the Application.

Timothy Long and Laurie Long were sworn in to testify about the Application. William Scott, Esquire, presented the case on behalf of the Applicants and submitted exhibits for the Board to review.

Mr. Scott stated that the Applicants are requesting a variance of 13.7 feet from the forty (40) feet front yard setback requirement for a proposed deck and a variance of 18 feet from the forty (40) feet front yard setback requirement for proposed steps; that the Applicants intend to remove an existing dwelling on the Property and replace it with a new home; that the existing house is located 16 feet from the front property line and is located almost entirely in the setback area; that the shed in the rear yard is near the rear property line; that the existing dwelling was built

years ago; that the existing dwelling, shed, and propane tank will be removed; that the proposed dwelling will meet the side and rear yard setback requirements; that the average front yard setback in the neighborhood is 15.3 feet from the front property line; that the lot measures 50 feet by 100 feet; that there are numerous variances in the neighborhood; that the Property is in the unincorporated part of Fenwick Island; that older homes in the neighborhood have been removed and replaced with newer homes; that the neighbors support the Application; that the lot was created and the house was constructed prior to the enactment of the Sussex County Zoning Code; that the Property is unique as it is narrow; that the variances are necessary to enable reasonable use of the Property; that the Property cannot be developed in strict conformity with the Sussex County Zoning Code; that the proposed dwelling will meet the current flood zone requirements; that the difficulty is not being created by the Applicants; that the variances will not alter the essential character of the neighborhood; that the proposed dwelling will be more in character with the neighborhood than the existing home; that other variances have been granted in the neighborhood; and that the variances requested are the minimum variances necessary to afford relief.

Mr. Long, under oath, affirmed the statements made by Mr. Scott and testified that the proposed dwelling will be a three (3) story structure; that each floor will consist of approximately 1,200 square-feet; that the dwelling will be elevated and will allow for parking underneath the home; that the proposed deck will be on each level of the home; that the decks will not be enclosed or screened-in; that raising the dwelling will help prevent problems associated with flooding and parking; and that parking along the street is challenging.

Mr. Scott stated that the proposed dwelling will set back farther from Lighthouse Road than other homes in the neighborhood.

Ms. Cornwell advised the Board that, if the Property was a vacant lot, the Applicants would have the option of using the average front yard setback.

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

Mr. Mills moved to approve Variance Application No. 11899 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 the development of neighboring properties;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicants;
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. Mills, 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. Hudson – yea, Mr. Mills – yea, Mr. Workman – yea, and Mr. Callaway – 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 and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application.

Ron Harrington, Mary Harrington, and Dave Baker were sworn in and testified requesting a variance of five (5) feet from the thirty (30) feet front yard setback requirement for a proposed dwelling.

Mr. Baker testified that there is a discrepancy between the Keen Wik setback requirements and Sussex County setback requirements; that the Applicant requests the variance to conform with the Keen Wik setback requirements; that Keen Wik requires a setback of 20 feet in the rear yard and Sussex County only requires a setback of 10 feet from the rear yard property line; that the existing dwelling is too small for the family; that the Property is unique due to the different setback requirements; that the Applicant proposes to construct a new home that will better accommodate her family; that each floor will consist of approximately 1,600 square-feet; that the proposed dwelling will be three (3) stories tall and have five (5) bedrooms; that the difficulty has not been created by the Applicant as the Applicant did not create the different setback standards; that the variances will not alter the character of the neighborhood; that the proposal will comply with the community's standards; that the neighboring dwellings are twenty-five (25) feet from the front property line; that the variance requested is the minimum variance necessary to comply with the community's standards; that the existing home consists of two (2) stories and consists of 1,800 square feet; that the dwelling could be made to fit on the lot but it would require the loss of a bedroom which would defeat the purpose of constructing the new home; that there will be one (1) bedroom on the first level, three (3) bedrooms on the second level, and one (1) bedroom on the third level; that a smaller footprint will not allow for the five (5) bedrooms the Applicant is seeking; that there is a proposed living area on both the first and third floors; that there is a gap of 8 to 10 feet between the edge of paving and the front property line; and that the existing dwelling is thirty (30) feet from the front property line.

Ms. Harrington testified that the existing dwelling is approximately 45 years old; that Keen Wik Homeowners Association will not allow any structures to encroach into the required twenty (20) feet rear yard setback requirement; that there are no flooding issues; and that the neighbors have no objection to the Application.

Mr. Harrington testified that the Keen Wik Homeowners Association strictly enforces the rear yard setback requirement so as to not block any water views in the neighborhood.

Nikki Harrington was sworn in and testified in support of the Application and testified that the variance is necessary to enable reasonable use of the Property; that the proposed dwelling will

function well for the whole family to enjoy the Property; and that the Property has been in the family for forty-two (42) years.

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

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

Motion by Mr. Workman, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until January 23, 2016**. Motion carried 4 – 0.

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

Case No. 11902 – Janet S. Weisman – seeks variances from the side yard setback requirement (Section 115-25C of the Sussex County Zoning Code). The property is located on the east side of Pebble Drive approximately 1,156 feet north of Thorogoods Road. 911 Address: 118 Pebble Drive, Dagsboro. Zoning District: AR-1. Tax Map No.: 2-33-6.00-163.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received one (1) letter of opposition to the Application and no correspondence in support of the Application. The author of the letter stated that he objects to any new construction but has no objection to a variance for the existing structure.

Dustin Oldfather was sworn in and testified requesting a variance of 4.2 feet from the fifteen (15) feet side yard setback requirement on the north side and a variance of 4.1 feet from the required fifteen (15) feet side yard setback requirement on the north side for an existing dwelling; that the dwelling was built in 1979 and encroached into the side yard setback on the north side; that it is unclear whether the encroachment was due to a surveying error at the time; that it is also possible that the location of the septic system on the opposite side of the Property led to the placement of the home closer to the north side yard property line; that the encroachment was discovered when a recent survey was completed; that this survey was prepared in relation to a sale of the Property; that the dwelling cannot be moved into compliance; that the seller of the Property suffers from dementia and has moved with family out-of-state; that the encroachment has gone unnoticed for over forty (40) years; that the difficulty was not created by the Applicant; that the variance will not alter the essential character of the neighborhood; that the variances requested are the minimum variances necessary to afford relief; that the septic system is on southeast side of the Property; that the current owner purchased the Property in 1993; that the house is on a foundation; and that no additions have been made to the dwelling.

Paul Reiger was sworn in and testified in support of the Application and testified that he feels setback requirement in an AR-1 (Agricultural Residential District) and in a GR (General Residential District) should be the same; and that a property's zoning cannot be determined by sight.

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

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

Mr. Mills moved to approve Variance Application No. 11902 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The existing dwelling and location of the septic system make this Property unique;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances sought are the minimum variances necessary to afford relief.

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

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

Case No. 11903 – Anne Harding & Michael Harding – seek a special use exception to place a manufactured home type structure for a medical hardship (Sections 115-23A and 115-210A of the Sussex County Zoning Code). The property is located on the east side of Hollyville Road approximately 1,179 feet south of Mount Joy Road. 911 Address: 26265 Hollyville Road, Millsboro. Zoning District: AR-1. Tax Map No.: 2-34-21.00-169.01.

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.

Anne Harding and Michael Harding were sworn in and testified requesting a special use exception or a manufactured home type structure for a medical hardship. Mr. Harding submitted an exhibit into the record.

Ms. Harding testified that the Applicant wants to place a trailer or camper in the rear yard; that the proposed home will be for her sister; that her sister currently lives with her mother but her mother is suffering from failing health; that the family has been making plans for her sister to have a place to live; that her sister needs someone near to help with medications throughout the day; that she works from home and will be able to meet her sister's needs; that her sister experiences problems if she does not take her medications; that her sister cannot live alone; that her sister suffers from short term memory loss; that she is close with her sister; that she needs some separation from her sister and the trailer will provide that separation; that the use will not substantially adversely affect the uses of the neighboring and adjacent properties; that the neighbors have no objection to the Application; and that there are corn fields and a chicken farm located nearby.

Mr. Harding testified that the Applicants were planning to purchase a camper or park model unit; that the Applicants will now look for a manufactured home to place on the Property; that the Property consists of 1.3 acres; and that the Property is serviced by a well and a septic system.

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to **leave the case open to allow the Applicant to submit pictures of proposed manufactured home**. Motion carried 4 – 0.

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

Meeting Adjourned 9:35 p.m.