

MINUTES OF JULY 1, 2019

The regular meeting of the Sussex County Board of Adjustment was held on Monday, July 1, 2019, at 7:00 p.m. in the County Council Chambers, 2 The Circle, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Member Brent Workman 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 Mr. Jamie Whitehouse – Planning Manager, Ms. Samantha Bulkilvish, Planner, and Ms. Ann Lepore – Recording Secretary.

The Pledge of Allegiance was led by Mr. Workman.

Motion by Ms. Magee, seconded by Dr. Carson, and carried unanimously to approve the revised agenda. Motion carried 5 – 0.

ADDITIONAL BUSINESS

Reorganization

Mr. Whitehouse opened nominations.

Mr. Workman nominated Ms. Magee for Chair. There were no other nominations. Mr. Whitehouse closed the nominations. The vote was 5-0 in favor.

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

Ms. Magee nominated Mr. Williamson as Vice-Chair. There were no other nominations. Mr. Whitehouse closed the nominations. The vote was 5-0 in favor.

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

Ms. Magee called for nominations for Board secretary. Mr. Workman nominated Planning & Zoning Director Janelle Cornwell and/or her designee as Board secretary. There were no other nominations. The vote was 5-0 in favor.

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

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. 12323 – Barry W. & Virginia L. Walls seek a special use exception for a garage/studio apartment (Sections 115-4, 115-23 & 115-210 of the Sussex County Zoning Code). The property is located on the west side of Peterkins Rd. approximately 0.30 miles south of Springfield Rd. 911 Address: 22424 Peterkins Rd., Georgetown. Zoning District: AR-1. Tax Parcel: 234-8.00-39.02

Ms. Bulkilvish 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 special use exception for an existing garage/studio apartment of under 800 square feet.

Virginia Walls was sworn in to give testimony about the Application. Ms. Walls gave pictures and a copy of a permit to Board members.

Ms. Walls testified that the garage / studio apartment has existed for sixteen years; that the apartment is located above a garage; that there have been no complaints from neighbors; that there was a permit for a 2nd floor addition; that the property is wooded; that the unit cannot be seen from neighboring properties; that the Applicants are selling the property; that their son lived in the apartment when her husband had poor health; that the unit always had a stove; that there is adequate parking; that it will not substantially affect adversely the uses of adjacent and neighboring properties; that the property consists of approximately 3 acres; that the unit has been occupied for 16 years; that the unit is used residentially; and that the unit consists of less than 800 square feet.

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

Mr. Williamson moved to approve Application No. 12323 pending written decision of the Board for a special use exception as it will not substantially affect adversely the uses of adjacent and neighboring properties.

Motion by Mr. Williamson, seconded by Dr. Carson, and carried that the **special use exception be granted pending the written decision for the reasons stated.** Motion carried 5 - 0.

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

Case No. 12324– Indian River School District seeks a special use exception to use manufactured home type structures as classrooms (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located on the northwest corner of Patriots Way and Avenue of Honor. 911 Address: 26026 Patriots Way, Georgetown. Zoning District: AR-1 Tax Parcel: 133-11.00-105.00

Ms. Bulkilvish 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 special use exception to use six (6) manufactured type structures as classrooms.

Chad Carter was sworn in to give testimony about the Application.

Mr. Carter testified this Application is for a special use exception for six manufactured type structures to be used as classrooms in the Indian River School District to alleviate overcrowding issues; that the Applicant seeks approval for five (5) years; that the recent referendum failed; that growth in the school district is anticipated; that the Applicant will meet all County standards for landscaping; that approval has been granted from the Fire Marshal; that four (4) of the manufactured home-type structures will be new models and two (2) units will be older models; that the goal is to have the classrooms ready for the beginning of the new school year; that the units will hold 25-30 students per unit; that the units will be located near the center of the property; and this use will not substantially affect adversely the uses of adjacent and neighboring properties.

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

Dr. Carson moved to approve Application No. 12324 for five (5) years for a special use exception as it will not substantially affect adversely the uses of adjacent and neighboring properties.

Motion by Dr. Carson, seconded by Mr. Chorman, and carried that the **special use exception be granted for a period of five (5) years for the reasons stated.** Motion carried 5 - 0.

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

Case No. 12325– Matthew M. Colimore seeks variances from the corner front setback requirements for a proposed shed. (Sections 115-25, 115-182, and 115-188 of the Sussex County Zoning Code). The property is located on the southwest corner of Harbor Rd. and Holly Rd. 911 Address: 85 Harbor Rd., Rehoboth Beach. Zoning District: AR-1. Tax Parcel: 334-8.17-135.00

Ms. Bulkilvish 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 four mail returns. The Applicant is requesting a variance of 3.7 ft. from the required 15 ft. corner front setback for a proposed shed.

Matthew Colimore was sworn in to give testimony about the Application.

Mr. Colimore testified that the property is improved by a townhouse; that the property is unique because there is no room in the rear for a shed but there is 17.5 feet on the side; that similar sheds are located in the neighborhood; that the homeowners association has approved the shed; that

there is an additional space of almost 15 ft. from the property line to the edge of pavement which is owned by the community; that neighbors have received variances to build in the rear; that, in this case, it is more appropriate to build to the side; that the shed will blend in with the house; that the property cannot be developed for a shed without the variance as there is no other area to place the shed; that there are trees along the property line; that the shed will measure 17 feet long by 6.5 feet wide; that the shed will be adjacent to the HVAC system; that the shed will be attached to the unit; that the shed will be flat to the ground with no steps; that it will not be visible from the road as there are large trees on the property line; that the area around the shed will be landscaped per HOA regulations; that there is a fence around the HVAC system and the shed will abut the fence; that there are many other sheds in the neighborhood and it will be built to blend in with the wall of the townhome; that there are no complaints from neighbors and it has been approved by the HOA; and that it is a minimum request to allow for a long narrow shed.

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

Mr. Workman moved to approve Variance Application No. 12325 for the following reasons:

1. The size of the lot makes it difficult to build on it;
2. The variance is necessary to enable the use of the property;
3. The variance is the only way to make it work to build a shed on the property;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance is a minimum variance to afford relief.

Motion by Mr. Workman, seconded by Mr. Chorman, and carried that the **variance be granted for the reasons stated**. Motion carried 3 - 2.

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

Case No. 12326 – Proximity Malt, LLC seeks a special use exception to use a manufactured home type structure for an office (Sections 115-105 and 115-210 of the Sussex County Zoning Code). The property is located on the southwest corner of Bi-State Blvd. (Rt. 13) and St. George Rd. 911 Address: 33222 Bi-State Blvd., Laurel. Zoning District: LI-2. Tax Parcel: 332-3.00-56.00

Ms. Bulkilvish 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 renewal of a special use exception to use a manufactured home type structure as an office which was previously approved for a two-year period on April 17, 2017.

Matthew Musial was sworn in to give testimony about the Application. Mr. Musial referred to digital exhibits during his presentation.

Mr. Musial testified that this request is for a renewal of a special use exception which was granted for two years; that there is intent to eventually replace the manufactured home type structures with a permanent structure; that the business is an operational malt plant; that the Applicant is trying to complete the construction project; that there are two manufactured home-type structures which are connected by a deck; that the Applicant expects that it will need five (5) years to design and construct the permanent structure for offices; that the units are used for offices and lunch space; that the current offices are set back from the road; that the buildings are non-descript as there are larger buildings on site; that the units are difficult to see from the road; that there have been no complaints from neighbors; that nearby properties are farmland and homes; that there is a infiltration basin for stormwater management in front of the offices and will be fenced; that the manufactured homes are to be skirted; and that this special use exception will not substantially affect adversely the uses of adjacent and neighboring properties.

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

Dr. Carson moved to approve Application No. 12326 for Proximity Malt for the special use exception pending final written decision based on the record made during this public hearing because the proposed use will not substantially affect adversely the uses of adjacent and neighboring properties. As part of the motion, Dr. Carson moved that the approval be valid for a period of five (5) years with the condition that the skirting and fencing be installed within six (6) months of the date of approval.

Motion by Dr. Carson, seconded by Mr. Workman, and carried that the **special use exception for a period of five (5) years with conditions be granted for the reasons stated.** Motion carried 5 - 0.

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

Case No. 12330 – Triple V Ventures, LLC seek a variance from the side yard setback requirements for proposed stairs. (Sections 115-25 and 115-183 of the Sussex County Zoning Code). The property is located on the northwest side of Savannah Rd. approximately 875 ft. south of Dove Dr. 911 Address: 1519 Savannah Rd., Lewes. Zoning District: AR-1. Tax Parcel: 335-12.06-3.00

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. The Applicant is requesting a 4.7 ft. variance from the required 15 ft. side yard setback on the northeast side for a proposed external staircase.

Amber Woodland was sworn in to give testimony about the Application.

Ms. Woodland testified that she is one of the owners of Triple V Ventures, LLC; that the

Applicant purchased the property on April 25, 2019; that the Applicant obtained a conditional use to use the property for a law office; that the Fire Marshal requires that a fire escape from the second floor be installed; that the rear of the home will have parking and a handicapped ramp; that the steps can only be placed in this location; that the steps will project no farther into the side yard setback area than the existing Bilco door; that the Bilco door was there when the building was built; that the steps will only be used during a fire emergency; that the front of the home will remain untouched; that the building is far from Savannah Road; that the Applicant is working with DeIDOT for approvals and the driveway will have to be widened; that the property is serviced by well and septic; that the fire escape will have to be placed on the side of the home and therefore, a variance is being requested; that the property is unique as it is a residential home that was built almost 100 years ago; that most properties in the area are no longer used residentially; that the Applicant will have, at most, 3-4 employees on the second floor; that it cannot otherwise be developed with a fire escape without the variance; that the stairs cannot be placed to the rear of the building due to the handicap ramp; that this was not created by the Applicant but required by the Fire Marshal in order for the property to be used as a commercial office; that the fire escape will not alter the essential character of the building as it will be built to blend in with the colors of the house; that there are trees and, when in full bloom, the trees will block the view of the fire escape; and that it is minimal variance of 4.7 ft. to afford relief.

Mr. Whitehouse advised the Board that a site plan approval is required as part of the conditional use approval and the Applicant will have to obtain necessary agency approvals.

Shellace James was sworn in to give testimony in support of the Application. Ms. James testified that she familiar with this property which was previously owned by a family member; that she owns neighboring property and has no issue with the request; that there is no other place to put an outdoor staircase; that trees will block the stairs from view; and that her garage is located on the southwest side of her property.

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

Mr. Chorman moved to approve Variance Application No. 12330 as the Applicant has met all five criteria for granting a variance and that the variance will not be detrimental to the neighborhood.

Motion by Mr. Chorman, seconded by Dr. Carson, and carried that the **variance be granted for the reasons stated.** Motion carried 5 - 0.

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

Case No. 12331 – Jonathan & Kathryn Zeleznick seek a variance from the front yard setback requirements for a proposed house (Section 115-42 of the Sussex County Zoning Code). The property

is located west side of Wango Ln. at the west end of Bow St. in the Holly Ridge Terrace subdivision. 911 Address: 31248 Wango Ln., Ocean View. Zoning District: GR. Tax Parcel: 134-9.00-166.00

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 10 ft. variance from the required 30 ft. front yard setback for a proposed garage.

Jonathan Zeleznick was sworn in to give testimony about the Application.

Mr. Zeleznick testified that he wants to build a new house on this property and will need a variance in the front of the property for the garage; that the property is unique because the bulkhead is recessed on the back property line; that the bulkhead is shared with a neighbor; that there is an existing concrete pad which is the planned location for a shed; that, if the house was built in compliance with the Code, he would not be able to use the pad; that it cannot otherwise be developed for this home design and to allow for a shed in the rear without this variance; that he can move the shed; that the lot is vacant; that he cannot fit a boat in a smaller shed; that the neighbors have no complaints regarding the house design; that it will not alter the essential character of the neighborhood; that he chose the design of the house; that the site is served by public sewer and water; that this request is the least modification that will afford relief to allow a shed to be built on the property, behind the proposed dwelling; and that there is no flooding on the property.

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

Mr. Workman moved to deny Variance Application No. 12331 as the Applicants did not meet the criteria and that the exceptional practical difficulty has not been created by the Applicants.

Motion by Mr. Workman, seconded by Dr. Carson, and carried that the **variance be denied for the reasons stated.** Motion carried 5-0.

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

Case No. 12332 – Samantha & Nathaniel Torrijos seek a variance from the corner front setback requirements for an existing garage. (Sections 115-34 and 115-182 of the Sussex County Zoning Code). The property is located on the northwest corner of Coral Ct. and Bird Haven St. in the Rogers Haven subdivision. 911 Address: 31302 Coral Court, Ocean View. Zoning District: MR. Tax Parcel: 134-8.00-90.00

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received two letters in support of and none in opposition to the Application and zero mail returns. The Applicant is requesting variance of 6.3 ft and 5 ft. from the required 15 ft. front corner setback from

Coral Court for an existing garage.

Sarah Schifano was sworn in to give testimony about the Application.

Ms. Schifano testified that she is presenting the case on behalf of Samantha and Nathaniel Torrijos who recently purchased the property; that the variances are for a detached garage; that the shed shown on the survey has been relocated in compliance with the Code; that the property is unique as it is a narrow corner lot; that the garage was built on the property in 1983 and there have been no alterations since that date; that there is approximately 20 feet from the edge of paving to the property line; that Coral Court does not have much traffic; that it would be a financial hardship if the Applicants had to remove the garage; that the exceptional practical difficulty was not created by the Applicants as they recently purchased the home in May 2019; that it will not alter the essential character of the neighborhood as the garage has been in its current location for over 30 years; that there have been no complaints about the garage; that neighbors support the Application; and that it is a minimum variance request to bring the property into compliance with Sussex County Code.

Nathaniel Torrijos was sworn in to give testimony about the Application.

Mr. Torrijos testified that the property is served by private well and public sewer; that the well is located in the building envelope; that he could not confirm if the property was once served by a septic system; and that the garage causes no visibility issues for traffic

The Board found that one person appeared in support of and none in opposition to the Application.

Mr. Williamson moved to approve Variance Application No. 12332 pending final written decision based on the record made during this public hearing as the Applicants have met the standards for granting a variance and the exceptional practical difficulty was not created by the Applicants.

Motion by Mr. Williamson, seconded by Mr. Chorman, and carried that the **variances be granted for the reasons stated**. Motion carried 5-0.

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

Meeting was adjourned at 8:20 p.m.