

MINUTES OF JULY 20, 2020

The regular meeting of the Sussex County Board of Adjustment was held on Monday, July 20, 2020, at 6:00 p.m.

The meeting was called to order at 6:00 p.m. with Chair Ellen Magee presiding. The Board members present were: Dr. Kevin Carson, Ms. Ellen Magee, Mr. John Williamson and Mr. Brent Workman. Mr. Jeff Chorman was absent. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney and staff members Mr. Jamie Whitehouse – Director of Planning and Zoning, Ms. Jennifer Norwood – Planner I, and Ms. Ann Lepore – Recording Secretary.

The Pledge of Allegiance was led by Ms. Magee.

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

The vote by roll call; Mr. Workman – 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. 12447 – David & Constance Luetngen seek variances from the side yard setback requirement and separation distance requirement between units for proposed and existing structures (Sections 115-25, 115-172 and 115-183 of the Sussex County Zoning Code). The property is located on the northwest side of Center Avenue within the Sea Air Village manufactured home park. 911 Address: 19942 Center Avenue, Rehoboth Beach. Zoning District: AR-1. Tax Parcel: 334-13.00-310.00-55797

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 nine mail returns. The Applicant is requesting an 11 ft. variance from the 20 ft. separation distance between units to Lot 68 for a proposed deck, a 2.3 ft. variance from the 20 ft. separation distance to Lot 64 for a proposed shower and a 1.8 ft. variance from the required 5 ft. side yard setback for existing steps.

Mr. David Luetngen and Ms. Constance Luetngen were sworn in to give testimony about the Application.

Mr. Luetngen testified that he is requesting a variance to build a 10' x 20' deck on his house; that the property is unique as it is more narrow than the surrounding lots; that the dwelling on the lot is only a single-wide manufactured home; that neighboring lots are improved with doublewide manufactured homes; that the property cannot otherwise be developed; that the original plans were for an enclosed and roofed deck but a more reasonable request is now being made for an open deck; that the present conditions existed prior to the purchase of the property by the Applicants in 2018;

that the exceptional practical difficulty was created by other property owners installing additions and sunrooms on the lots along this street; that the variances will not affect the essential character of the neighborhood as the other homes in the area have decks and sunrooms; that the variances requested are the minimum variances requested to afford relief and allow a reasonable size deck to be built; and that the neighbors are supportive and there have been no complaints.

Mr. Whitehouse advised the Board that a prior variance was granted for the dwelling.

Mr. Luetgen testified that the prior owner obtained the variance for the dwelling; that the steps existed on the lot when he purchased the home; that he placed the shed on the property; and that he received a permit for the shed.

Mr. Whitehouse stated that a certificate of occupancy was issued for the manufactured home in December 2018.

Ms. Luetgen testified that the shed was placed by her and her husband; that the steps were existing when they purchased the property; and that they moved into the property in August 2018.

During testimony it was decided that an additional five variances would be necessary to bring the property into compliance. Mr. Sharp listed the variances and Mr. Whitehouse confirmed the measurements as follows:

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| <u>From Lot 64</u> | 2.3 ft. from the required 20 ft. separation distance for the proposed outdoor shower. 8.8 ft. from the required 20 ft. separation distance for the existing landing and steps. 8.5 ft. from the required 20 ft. separation distance for the existing HVAC system. |
| <u>From Lot 65</u> | 4.2 ft. from the required 20 ft. separation distance for the proposed outdoor shower. |
| <u>From Lot 68</u> | 11 ft. from the required 20 ft. separation distance for the proposed deck. 9.7 ft. from the required 20 ft. separation distance for the existing shed. |
| <u>Side Setback</u> | 1.8 ft. from the required 5 ft. side yard setback on the northeast side for existing landing and steps. 1.5 ft. from the required 5 ft. side yard setback on the northeast side for the existing HVAC system. |

Ms. Luetgen testified that there is an existing platform at the top of the steps; that the deck is the first priority; that there is an eight inch drop off the driveway; that Mr. Luetgen has an artificial ankle so the steps and deck will make access easier for him and others to access the house safely; and that she has bad knees.

Mr. Luetgen testified that the sewer and water connection are in the middle of the yard; that he purchased the shed from Weller's Trailers; that the deck will provide safer access to the home; that the deck has been approved by the landlord; that some lots meet the setback requirements but others do not; that he has a unique handicap and has difficulty using ramps; that he is willing to reduce the

size of the shower but he prefers a larger shower; that the shower will also be used for storage; and that the storage in the shed is limited.

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

Ms. Magee closed the public hearing.

Dr. Carson moved to approve Case No. 12447 for the variances as the property is unique and the variances will not affect the essential character of the neighborhood.

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

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

Case No. 12448 – Steve Joseph Baird, Jr. seeks a special use exception to operate a rifle or pistol range (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located on the southwest side of Staytonville Road approximately 330 ft. southeast of Gum Branch Lane. 911 Address: 16344 Staytonville Road, Lincoln. Zoning District: AR-1 Tax Parcel: 230-25.00-4.05

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received three letters in support of and none in opposition to the Application and zero mail returns. The Applicant is requesting a special use exception to operate a rifle / pistol range.

Mr. Steve Baird was sworn in to give testimony about the Application.

Mr. Baird testified that the request is for a pistol range to the rear of the lot; that he will give home defense training and basic firearms training; that he has received support from neighbors; that he works a full-time job; that the range will be open on Saturdays only; that the range will not be open to the public for training; that his uncle owns the property adjacent to the rear of the lot and his uncle's property consists of 500 acres; that the range will be 100 yards from the dwelling and some trees have been removed for the construction of the range; that the berm will measure 7-8 feet tall and will be to the rear of the lot; that the range will be 25-30 yards long; that the range will only be used for pistols; that the range will be offered to officers to use during the week; that he will clean all ammunition and casings from the range; that the shells will be removed from the property and the lead will be undisturbed in the mound; that, if the property were ever sold, a soil analysis would be performed before any soil could be removed from the property; that DNREC has no concerns about lead contamination; that shots will be fired towards the rear of the lot; that there is at least 25 ft. of trees behind the berm; that he will not use the range during hunting season; that DNREC does not require a permit; that he is licensed with United States Concealed Carry Association and is a Federal Firearms

Licensee; that the hours of operation will be limited to Monday to Friday 5:30 pm – 6:00 pm and Saturday 3:00 pm – 6:00 pm; that he does not want shooters on the property if he is not present; that there will be no Sunday hours; that he will provide classroom instruction as well; that the range will be locked down if he is not present; that he plans for the berm to be 10 feet tall when it is finished; that there is no standing water on the property and there are no runoff issues; that there is a tax ditch in the area; and that he teaches classes in his garage.

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

Ms. Magee closed the public hearing.

Mr. Workman moved to leave the record open for Case No. 12448 for the limited purpose of obtaining comments from DNREC regarding this application and that all comments should be received by August 31st and that the application should be placed on the agenda for the first meeting in September.

Motion by Mr. Workman, seconded by Mr. Williamson, carried unanimously that the **application be left open for the state limited purpose.** Motion carried 4 – 0.

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

Case No. 12449 – Lloyd Harrison seeks a variance from the front yard setback and maximum fence height requirement for a proposed swimming pool and fence (Sections 115-34, 115-182 and 115-185 of the Sussex County Zoning Code). The property is a through lot located on the southeast side of Robinsons Drive approximately 620 ft. southwest of Silver Lake Drive. 911 Address: 38254 Robinsons Drive, Rehoboth Beach. Zoning District: MR. Tax Parcel: 334-20.09-36.00

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received no correspondence in support of and two letters in opposition to the Application and zero mail returns. The Applicant is requesting variances of 17 ft. from the 30 ft. front yard setback from Anna B Street for a swimming pool and a 2.5 ft. variance from the maximum fence height of 3.5 ft. on a through lot.

Mr. Lloyd Harrison was sworn in to give testimony about the Application and presented a Power Point presentation.

Mr. Harrison testified that the request is for a swimming pool which will be in the 30 ft. setback off Anna B Street; that the property is location in the “Forgotten Mile” in Sussex County; that he considers Robinson Drive the front yard and the dead end street as the rear yard; that the front of the house crosses the lots at an oblique angle shortening one side of the property by 9.07 feet; that Anna B Street comes to a dead-end approximately 94 ft. from the subject property; that the lot includes a 26 ft. x 22 ft. double car garage on the east side and a geothermal heating / cooling system on the

west side which leaves a narrow area to place the swimming pool; that the garage is 26.5 feet from the edge of paving of Anna B Street; that the geothermal well is 10 feet wide; that the swimming pool cannot be constructed without the variance; that the pool would end 13 ft. from the rear property line and would be 27.5 ft. off the pavement; that the property is unique because it is one of 3 through lots; that the other two lots have pools along Anna B Street; that the property has an oblique angle; that the driveways are off Robinson Drive; that the property cannot otherwise be developed without a variance; that the garage was built in the 1950s; that the exceptional practical difficulty was not created by the Applicant as the garage was constructed on the lot prior to the current ownership; that the geothermal field further restricts the buildable area; that the garage was built by a prior owner; that the well was placed by others; that it will not alter the essential character of the neighborhood as the adjacent two properties have swimming pools in the rear of their through lots which border on Anna B Street and those lots have 5 foot tall fences; that the neighboring pools are 22 feet from the road and 16 feet from the road; that the existing pools were built perpendicular to the side yard; that the proposed pool will be built parallel to the side yard; that is the minimum variance request to afford relief without hazarding the garage foundation, the geothermal wells and piping, or blocking the rear entrance to the dwelling; that the pool would be an obstruction if placed in conformity; that there is no other place to put the pool; and that there were previous variances for this property.

Mr. Whitehouse stated that a variance was granted on November 16, 2015, for the garage.

Mr. Harrison testified that he purchased the property in 2000 and obtained the variance for the garage; that the garage is grandfathered; and that the pools on the adjacent lots were installed in 2008 on through lots with no garages.

Mr. Whitehouse stated that a variance was granted in Case No. 10938 on February 6, 2012, for a porch nearby; that a pool was installed in 2005 for 334-20.09-35.00 and a certificate of compliance was issued in 2006 but no variance was granted; and that there is no record of a permit issued for the pool on 334-20.09-35.01.

Mr. Harrison testified that the pool will measure 10 feet by 22 feet; that the neighboring lot is vacant; that the pool will be 4 feet from the garage and will not affect the foundation of the garage; that he installed the well; that he tore down the old house and built a new one in 2017 which was the reason for the prior variance; that he did not want to remove the garage because it is worth more to him than the pool; that the neighboring property with a pool has access to Anna B Street; that the walkway and fence will not affect the well; that there are no visibility issues on Anna B Street; that this pool will be for his grandchildren; that there are no drainage issues on the site as the property drains to both streets; and that the home is 2 stories tall with a basement.

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

Ms. Magee then closed the public hearing.

Dr. Carson moved to deny Case No. 12449 for the variances as the exceptional practical difficulty is being created by the Applicant.

Motion by Dr. Carson, seconded by Mr. Workman, carried unanimously that the **variances be denied for the reasons stated**. Motion carried 4 – 0.

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

The Board took a five-minute recess.

Case No. 12450 – Ronnie & Debbie Gaines seek variances from the minimum lot width requirement and the minimum lot size requirement for a proposed subdivision (Sections 115-25 of the Sussex County Zoning Code). The property is located on the west side of Bi-State Boulevard (Rt. 13A) approximately 0.25 mile south of Dickerson Road. 911 Address: 34052, 34062 and 34072 Bi-State Boulevard, Laurel. Zoning District: AR-1. Tax Parcel: 332-3.00-58.00

Ms. Norwood 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 1) a variance of 49.87 feet from the 150 foot lot width requirement for Proposed Lot 1, 2) a variance of 49.86 feet from the 150 foot lot width requirement for Proposed Lot 2, 3) a variance of 49.86 feet from the 150 foot lot width requirement for Proposed Lot 3, 4) a variance of 0.29 acres from the 0.75 acre lot size requirement for Proposed Lot 1, 5) a variance of 0.29 acres from the 0.75 acre lot size requirement for Proposed Lot 2, and 6) a variance of 0.29 acres from the 0.75 acre lot size requirement for Proposed Lot 3. The houses on this lot have been there since the 1950's and are non-conforming. The Applicants propose to subdivide the property into 3 lots as shown on the minor subdivision plan dated March 27, 2020.

Michael Cotten and Deborah Gaines were sworn in to give testimony about the Application.

Mr. Cotten testified that the property is unique as there are three residential homes on one single parcel; that there is no development planned at this time other than to create separate lots; that each house has its own individual well, septic system, and entrance; that DelDOT has approved the subdivision of the lot; that the lots cannot meet the lot size or lot width requirements; that the homes were constructed prior to the current ownership; that DNREC will require a shared septic system if the houses remain on 1 lot; that it will not alter the essential character of the neighborhood as the houses will exist in the same manner with individual entrances; that the area and frontage are evenly split; that there are similar parcels in the area; and that the houses were built in the 1950s or 1960s.

Ms. Gaines testified that the houses were built in the 1950s; that the three houses are rental properties which her husband inherited in 2013; that the houses have separate wells and septic systems; that DNREC required that all three septic systems be inspected when the Applicants

requested one inspection because the three existing septic systems are all located on one lot; that they decided to subdivide the property and realized that they needed variances to create the subdivision; that a number of other properties in the area have less than 150 feet of road frontage; and that the property is not in compliance with land use having three dwellings on one lot.

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

Ms. Magee then closed the public hearing.

Dr. Carson moved to approve Case No. 12450 for the variances as they will not alter the essential character of the neighborhood and that they 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 4 – 0.

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

Case No. 12451 – David & Gloria Prezioso seeks variances from the corner front yard setback requirement for a proposed dwelling (Sections 115-34 and 115-182 of the Sussex County Zoning Code). The property is located on the north east corner of Salty Way East and Salty Way Drive within the Keen-Wik West Subdivision. 911 Address: N/A. Zoning District: MR. Tax Parcel: 533-19.07-58.00

Ms. Norwood 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 variance of 1.36 ft. from the required 15 ft. corner front setback for a proposed dwelling.

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

Mr. Elliott testified that the request is for a variance of 1.36 ft from the corner front for a proposed dwelling; that the property is unique as it is small and irregular in shape; that the lot narrows to the front which reduces the building setback line; that the lot is on a corner and located on a canal; that there is a 20 foot rear yard setback from the canal; that the dwelling cannot be built without the variance; that the variance is necessary for the reasonable use; that the HOA has given approval for the home to be built; that the dwelling is pushed back as far as possible to try to keep it within the building setback line; that the lot is serviced by public water and sewer; that the Applicant did not create the lot but is trying to work with the limitations due to the uniqueness of the property; that granting the variance will not alter the essential characteristics of the neighborhood but will improve it; that the variance will not be detrimental to the public welfare; that the variance requested is the

minimum variance to afford relief; that there will be no steps or HVAC units in the setbacks; that it is a minimum of only 1.36 ft which is only about 3 square feet to allow the Applicants to build on this lot; that the Applicants tried another home but it would not fit on the lot either; that the bump-out in the rear yard is for a bedroom and morning room; and that the lot was not selling due to the irregular shape.

Mr. Whitehouse noted that a variance was approved in the neighborhood in Case No. 11006.

Mr. Elliott testified that the house will measure 2,600 square feet and will consist of 2 stories; that they tried to minimize the encroachment; that there is approximately 10 feet from the edge of paving to the property line; that there are no visibility issues with the intersection; and that there is no flooding in the rear yard.

Mr. David Preziuso was sworn in to give testimony about the Application.

Mr. Preziuso testified that he purchased the lot on December 3, 2019; that he thought the building envelope was larger; and that there is no possibility of developing the lot without the variance.

Ms. Norwood stated that the lot is not only restricted by the 10 ft. rear yard Sussex County setback but must also comply with a 20 ft. rear yard HOA setback.

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

Ms. Magee closed the public hearing.

Mr. Workman moved to approve Case No. 12451 for the variance as the property is unique and is slanted; that the variance is necessary for the use of the property; that granting the variance will not alter the essential character of the neighborhood and that the variance requested is the minimum variance necessary to afford relief.

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

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

Case No. 12452 – Dawn Nanz seeks a variance from the front yard and side yard setback requirement for proposed structures (Sections 115-82, 115-182 and 115-183 of the Sussex County Zoning Code). The property is located on the southwest side of Colonial Lane within the Colonial East manufactured home park. 911 Address: 19 Colonial Lane, Rehoboth Beach Zoning District: C-1. Tax Parcel: 334-6.00-335.01-7543

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received four letters in support of and none in opposition to the Application and nine mail returns. The Applicant is requesting a 1 ft. variance from the required 5 ft. side yard setback on the northeast side for a proposed screen porch and a 1 ft. variance from the required 5 ft. side yard setback on the northeast side for steps.

Ms. Dawn Nanz was sworn in to give testimony about the Application.

Ms. Nanz testified that there is an existing deck on the house; that she would like to screen in the deck; that it will not encroach any farther than the existing deck; that it is a small lot; that the deck ties into the existing fence; that the deck was built by her son many years ago and had approval from the community; that there are woods to the rear of the lot; that it cannot otherwise be developed for a screened porch without the variance; that the lot is leased; that she did not create the small lot size; that the variance is needed due to the small lot size; that the setbacks have changed; that it will not alter the essential character of the neighborhood; that there have been no complaints; and that it is a minimum variance to afford relief from bugs and mosquitos.

Ms. Norwood stated that the community has a 15 foot separation distance requirement but a 5 foot side yard setback requirement.

Mr. Whitehouse stated that a building permits were issued in August 2018 and September 2018.

Ms. Nanz testified that she bought the house in 1999 and moved there in 2002; that the deck is small; that there is a terrible bug problem; and that other porches in the neighborhood are covered.

Mr. Sharp noted that a front and side yard variance was advertised but it appears that a rear yard variance may be needed for the steps.

Mr. Whitehouse stated that he would work with the Applicant to establish if the rear yard variance is necessary and, if so, will bring it back to the Board at a future date.

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

Mr. Stevan Class was sworn in to give testimony about the Application.

Mr. Class testified that he is the property owner and has leased the land to Ms. Nanz; that he supports the request for a variance; and that there are no objections from the neighbors.

Ms. Magee then closed the public hearing.

Dr. Carson moved to approve Case No. 12452 for the variances as they will not alter the essential character of the neighborhood and that they 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 4 – 0.

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

Meeting adjourned at 8:47 p.m.