

MINUTES OF JULY 6, 2020

The regular meeting of the Sussex County Board of Adjustment was held on Monday, July 6, 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, 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 – Director of Planning and Zoning, Ms. Jennifer Norwood – Planner I, Mr. Chase Phillips – Planner I, 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 unanimously to approve the amended agenda with Case Nos. 12416 and 12427 being moved to the end of the agenda. 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.

Motion by Mr. Williamson, seconded by Dr. Carson, and carried unanimously to approve the Minutes for the June 1, 2020, meeting. 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.

Motion by Mr. Chorman, seconded by Mr. Williamson, and carried to approve the Findings of Facts for the June 1, 2020, meeting. 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.

ADDITIONAL BUSINESS

Reorganization

Mr. Whitehouse opened nominations.

Mr. Williamson 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.

Mr. Chorman 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. Dr. Carson nominated Planning & Zoning Director Jamie Whitehouse or his 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.

OLD BUSINESS

Case No. 12433 – Donna M. Sulecki & Brenda L. Blackburn seek variances from the front yard setback and side yard setback requirements for existing structures (Sections 115-41, 115-182, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located on the northeast side of Rose Lane within the Orchard Manor subdivision. 911 Address: 28337 Rose Lane, Millsboro. Zoning District: GR. Tax Parcel: 234-34.08-28.00

Mr. Whitehouse presented the case which was left open at the Board's meeting on June 1, 2020, for the limited purpose of obtaining information from the Applicants' contractor.

Mr. Sharp explained that a subpoena was issued to the Applicants' contractor Angelo Delapo.

Mr. Angelo Delapo appeared via teleconference and was sworn in to give testimony.

Mr. Delapo testified that he is the owner of Delway Contracting; that he obtained the permit for the Applicants but he did not build the structure; that the carport was built by a company from North Carolina; that the carport was on the lot when he obtained the permit; that he obtained the permit as a favor to the Applicants; and that he only performed siding work on the home.

Mr. Whitehouse noted that the minutes from the June 1st meeting indicate that a different construction crew installed the carport.

Dr. Carson moved to deny Case No. 12433 for a front yard variance as the Applicants have not demonstrated why the carport could not have been built in conformity with County Code.

Motion by Dr. Carson, seconded by Mr. Chorman, carried unanimously that the **variances be denied for the reasons stated.** Motion carried 5 – 0.

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

Case No. 12428 – Sun Leisure Point Resort, LLC seeks variances from the separation distance requirement for proposed structures (Section 155-172 of the Sussex County Zoning Code) The property is location on the southwest side of Diplomat Street, approximately 440 ft. southeast of Radie Kay Lane. 911 Address: N/A. Zoning District: AR-1. Tax Parcel: 234-24.00-39.02 and 39.06

Mr. Whitehouse presented the case which was tabled at the Board’s meeting on June 1, 2020.

Mr. Sharp mentioned the concerns raised by the opposition and recited the proposed conditions of approval presented by the Applicant.

The Board held a brief discussion.

Mr. Chorman moved to approve Case No. 12428 for the variance as the applicant has met all the criteria for granting the variances of 266 ft., which is the modified request from the Applicant; that, due to the physical circumstances the property cannot otherwise be developed in strict conformity with Sussex County Code; that the variance will not alter the essential of the neighborhood; and that it is a minimum necessary to afford relief. As part of his motion, Mr. Chorman noted that conditions submitted by the Applicant must be adhered to.

Motion by Mr. Chorman, seconded by Mr. Williamson, carried that the **variance be granted with conditions for the reasons stated.** Motion carried 3 – 2.

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

PUBLIC HEARINGS

Case No. 12440 – Lockwood Design & Construction Co., Inc. seek a special use exception for an off-premises electronic message center. (Sections 115-80, 115-81, 115-159.5, 115-161.1 & 115-210 of the Sussex County Zoning Code). The property is located on the southeast side of Broadkill Road (Rt. 16) approximately 380 ft. northeast of Reynolds Road. 911 Address: 26412 Broadkill Road, Milton. Zoning District: C-1. Tax Parcel: 235-15.00-24.00

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 25 ft. tall Electronic Message Center with a 30 ft. X 12 ft. panel.

Mr. Mark Davidson and Mr. Lynn Rogers were sworn in to give testimony about the Application. Mr. Davidson distributed an additional exhibit regarding meeting the requirements for electronic messaging centers.

Mr. Davidson testified that the request is for an off-premises Electronic Message Center to be placed on a 3.95 acre property on Route 16; that the subject property is zoned general commercial (C-1) and has been occupied by the Lockwood Design and Construction Company for approximately 40 years; that there are 2 existing billboards on site; that the property has an odd shape as it wraps around another commercial property; that the site is used for a self-storage facility, U-Haul business, and office; that there are no wetlands on the subject property; that the existing billboards will be removed when this electronic message center is installed; that the Applicant only seeks to have 1 electronic message center; that Route 16 is a major collector road with a future right-of-way measuring 80 feet wide; that the Applicant has dedicated right-of-way to DelDOT for future expansion of Route 16 and has taken the expansion into consideration when designing this sign; that the sign will meet all the setback requirements; that the properties to the east and south are farm fields and the properties to the north are commercial; that there is a church located across Route 16 but the church property will be 154 feet from the sign; that the sign will be 91 feet from the existing on-premises sign; that there have been no complaints about the existing signs; that there are no electronic message centers within one mile of this site; that there are off-premises signs located greater than one mile from the site along Route 1; that the sign will be 25 feet tall and consist of 300 square feet of sign facing per side; that the sign will have a steel monopole; that the billboard messaging will stay static for at least ten seconds in compliance with federal law; that DelDOT has issued a letter of no objection; that the sign will not substantially affect adversely the uses of neighboring and adjacent properties; that such exception will not substantially increase the hazard from fire or other dangers to neighboring properties; that it will not otherwise impair the public health, safety, comfort, morals or general welfare of the public; that such exception will not diminish or impair property values within the neighborhood; that it will not unduly increase traffic congestion on public highways, create a public nuisance, or result in an increase in public expenditures; and that the current signs are 35 feet tall.

Mr. Rogers testified that the Applicant owns adjacent lands; that the neighbors have no objection to the electronic message center; that the lighting on the sign will meet County Code and will adjust according to weather and time of day; and that the sign will meet the County Code requirements regarding change in message copy.

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

Ms. Magee closed the public hearing.

Mr. Williamson moved to approve Case No. 12440 for the special use exception as the proposed use will not substantially affect adversely the uses of neighboring and adjacent properties with the condition that the existing off-premise signs be removed as presented by the Applicant.

Motion by Mr. Williamson, seconded by Mr. Workman, carried unanimously that the **special use exception be granted with conditions for the reasons stated.** Motion carried 5 – 0.

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

Case No. 12441 – James & Amy Owens seek variances from the rear yard setback requirements and from the minimum aggregate front yard and rear yard requirements for proposed structures (Sections 115-34, 115-183 and 115-188 of the Sussex County Zoning Code). The property is located on the northeast corner of Tower Place and Ashlyn Road within The Overlook subdivision. 911 Address: 30563 Tower Place, Selbyville. Zoning District: MR. Tax Parcel: 533-20.00-88.00

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 variance of 5.58 ft. from the required 15 ft. rear yard setback for a proposed screen porch and a variance of 7.83 from the minimum front yard and rear yard aggregate requirements for a proposed screen porch.

Mr. James Owens sworn in to give testimony about the Application.

Mr. Owens testified that he purchased the townhome in 2018; that there is an existing patio that he would have to screen in to protect from mosquitos and bugs; that the existing patio is 9.92 ft from the property line; that the bugs make the patio unusable at times; that he proposes to screen in only half of the patio; that he did not realize how close the patio was to the rear property line; that the patio cannot be screened without the variance; that the patio was existing when the home was purchased; that the porch will not alter the essential character of the neighborhood as there are a number of screened porches in the area; that it is a minimum request for a small porch to allow the Applicant and family members to enjoy the outdoor area without the nuisance of bugs; that the porch will go 6 inches beyond the patio; that only a portion of the patio will be screened in; that steps will not be required; and that he has a letter of support from the adjacent neighbor.

Mr. Whitehouse stated that there are no other variances in the community; that the community is zoned MR-RPC; that the MR zoning district has larger rear yard setbacks but the setback here is smaller due to the MR-RPC; that there are 3 different types of units in the community; and that the single family dwellings have different rear yard setback requirements.

Mr. Owens testified that other townhomes have porches but no units in his group have porches; that the west side of the existing patio will be used for the porch; that there will be no need

for steps because it will open up to the patio; that HOA approval is needed; that he would prefer to widen the porch but the house bumps out; that there are no drainage issues in the area; and that he bought the model unit.

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. 12441 for the variances as there are some unique physical characteristics to the property; that granting the variances will not alter the essential character of the neighborhood; and that the requested variances are the minimum variances necessary to afford relief.

Motion by Dr. Carson, seconded by Mr. Chorman, 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, Ms. Magee – yea, Dr. Carson – yea, and Mr. Chorman - yea.

The Board took a seven-minute recess.

Case No. 12442 – Richard Johnson & Joyce Flanagan seek variances from the front yard setback requirement for proposed structures (Sections 115-34 and 115-182 of the Sussex County Zoning Code). The property is located on the southeast side of Rogers Avenue within the Ann Acres subdivision. 911 Address: 21001 Rogers Avenue, Rehoboth Beach. Zoning District: MR. Tax Parcel: 334-20.13-56.00

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 one mail return. The Applicant is requesting variances of 6.33 ft. from the required 30 ft. front yard setback for a proposed dwelling and a 7.8 ft. from the required 30 ft. front yard setback for steps.

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

Mr. Elliott testified that the property is unique as it is both narrow and shallow; that the lot is only 5,000 square feet; that there are steps and mechanicals in the rear of the home; that the property cannot otherwise be developed as it is necessary and reasonable to allow for a small backyard for the maintenance of the HVAC unit and steps; that the variances are necessary to enable the reasonable use of the property; that the difficulty has not been created by the Applicants as the existing home has a greater encroachment into the setback; that granting the variances will not alter the essential character of the neighborhood but enhance it with a newer dwelling; that this is one of the smallest model homes available as most are at least 10 ft. wider; that these are the minimum variances to afford

relief and to allow reasonable use of the property; that the pad to the side of the house will be at grade level; that the house will be 2 stories tall; that the house will be 23.67 feet from the front property line; that the property will be served by public water and sewer; that there is approximately 5 feet from the edge of paving and the front property line; that other homes in the neighborhood are closer to the road; that the Applicants did not create the lot; and that the lot is narrow for the area.

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

Mr. Johnson testified that there is approximately 15 ft. between the house and the rear property line; that he purchased the property five years ago; that the original house was built in the 1960s; and that the original intent was to renovate the existing dwelling, but it was not economically feasible.

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

Ms. Magee then closed the public hearing.

Mr. Chorman moved to approve Case No. 12442 for the variances as there are some unique physical characteristics to the property; that granting the variances will not alter the essential character of the neighborhood but enhance it; and that it is the minimum variance request to afford relief.

Motion by Mr. Chorman, 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, Ms. Magee – yea, Dr. Carson – yea, and Mr. Chorman - yea.

Case No. 12443 – Bay Shore Community Church 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 east side of London Avenue approximately 513 ft. southwest of Lighthouse Road (Rt. 54). 911 Address: 38288 London Avenue, Unit 6, Selbyville. Zoning District: AR-1. Tax Parcel: 533-18.00-61.01

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received a petition of 53 signatures 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 daycare center for 55 children.

Jeremy Ferruccio and Rachel Hall were sworn in to give testimony about the Application.

Mr. Ferruccio testified that the Applicant opened a third campus for its church; that the Applicant currently serves 120 children at a different location; that there was previously a church at this location with a daycare; that the Applicant plans to use the front portion of the site; that the

building is the L-shaped building known as Unit #6; and that the playground would be fenced in.

Ms. Hall testified that the Applicant and the playground will meet the childcare licensing requirements; that the site is located in an industrial park; that most traffic would use the first entrance; that she will run the daycare; that there are never more than 10 cars with the larger daycare.

Mr. Jerrucio testified that there are 23 parking spaces.

Ms. Hall testified that there will be a 6 foot tall vinyl fence.

During testimony it was discovered that the incorrect property was advertised, therefore the public hearing was closed. Staff announced that the case will be advertised with the correct information and the case will be heard on August 3, 2020.

Dr. Carson moved to leave the record open to re-notice the application for the proper address and to hold a hearing on August 3, 2020.

Motion by Dr. Carson, seconded by Mr. Chorman, carried unanimously that the **Application be re-noticed for a hearing on August 3rd**. Motion carried 5 – 0.

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

Case No. 12444 – Jane L. Hawkins seeks variances from the front yard setback and side yard setback requirements for proposed and existing structures (Sections 115-25, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located on the north side of Daisey Road approximately 287 ft. southeast of Honeysuckle Road. 911 Address: 34517 Daisey Road, Frankford. Zoning District: AR-1. Tax Parcel: 134-18.00-46.01

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 variances of 5 ft. from the required 15 ft. side yard setback on the east side for a proposed garage.

Ms. Jane L. Hawkins and Mr. John Hoban were sworn in to give testimony about the Application.

Ms. Hawkins testified that the request is for a variance of 5 ft on the east side of the property; that a one-car garage will be removed and a two-car garage will be built; that the garage will meet the front yard setback requirement; that the property has a unique shape and there is a tax ditch in the rear of the lot; that the septic system is located on the east side of the house and the well is located on the west side; that, if the garage was turned, it would not line up with the house; that the septic has been

on the property since 1983; that the house has been on the property since 1990; that it cannot otherwise be developed as there is a septic system between the house and the proposed garage; that the exceptional practical difficulty was not created by the Applicant but by the placement of the septic system; that the variance will not alter the essential character of the neighborhood; that the neighbors to the east of the property have provided a letter in support of the Application; and that it is a minimum variance request to allow for a two-car garage and is only a 5 ft. request.

Mr. Hoban testified that the garage will be a pole building structure; that the garage will be the same height of the house; that it will have regular garage doors; and that the garage will line up with the existing driveway.

Mr. Sharp noted that a variance of 4.2 feet from the 40 foot front yard setback requirement was also needed for the steps off the existing dwelling.

Mr. Hoban testified that the proposed garage will be 10 ft. from the septic field; that the garage cannot be moved to be in conformity with the building setback line without looking odd; and that there is a gap between edge of paving and the property line.

Ms. Hall testified that there have been no complaints about the existing steps.

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

Ms. Magee closed the public hearing.

Mr. Williamson moved to approve Case No. 12444 for the variances as the property is unique and is slanted; that granting the variances will not alter the essential character of the neighborhood and that they are the minimum variances necessary to afford relief.

Motion by Mr. Williamson, seconded by Mr. Workman, 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, Ms. Magee – yea, Dr. Carson – yea, and Mr. Chorman - yea.

Case No. 12446 – Dorzet Short 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 north side of Old Furnace Road approximately 0.68 mile west of Rementer Road. 911 Address: 14181 Old Furnace Road, Georgetown. Zoning District: AR-1. Tax Parcel: 231-14.00-24.03

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 two mail returns. The Applicant is requesting a special use exception to operate a daycare center.

Dorzet Short was sworn in to give testimony about the Application.

Ms. Short testified that she is requesting a daycare center for 12 children; that she will care for nine children for the next year or two and will increase to 12; that the State requires a fenced area for the children to obtain approval to care for 12 children; that she is licensed by the State of Delaware as a day care provider; that the Fire Marshal has given approval for 12 children; that there is adequate parking on site; that the hours of operation are Monday through Friday 6 am – 6 pm; that the daycare center is within her home; that the daycare has been in operation for 14 months; that there have been no complaints from neighbors; that parents pick up their children at different times; and that there are residential and agricultural properties nearby.

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. 12446 for the special use exception for a daycare center as such exception will not substantially affect adversely the uses of neighboring or adjacent properties.

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, Ms. Magee – yea, Dr. Carson – yea, and Mr. Chorman - yea.

ADDITIONAL BUSINESS

Consideration of Request for Rehearing for case 12416 – Lands of Jessica F. Peake.

Mr. Whitehouse presented the Consideration for Request for Rehearing Case No. 12416 – Jessica F. Peake. Mr. Whitehouse stated that Case No. 12416 focused on a request by Jessica F. Peake for multiple variances and was denied by the Board; that a request for a rehearing based on the rules and procedures of the Board of Adjustment was submitted within the timeframe set forth in the rules.

Mr. Sharp stated that a request for rehearing is rare but allowed by Board of Adjustment rules; that the original hearings were February 17 and March 2, 2020; that the Board denied the request for variances; that the Board may allow a rehearing if there is:

- A. A mistake, inadvertent surprise, or excusable neglect.
- B. Newly discovered evidence which could not have been discovered at the time of the original hearing.

C. Fraud, misrepresentation or other misconduct of an adverse party.

Mr. Workman left the meeting at this time.

Mr. Williamson moved to deny the Consideration of Request for Rehearing Case No. 12416.

Motion by Mr. Williamson, seconded by Mr. Chorman, carried unanimously that the **request for rehearing be denied**. Motion carried 4 – 0.

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

Consideration of Request for Rehearing for case 12427 – Lands of Robert Barkey & Janet Hynes.

Mr. Whitehouse presented the Consideration for Request for Rehearing Case No. 12427 – Robert Barkey & Janet Hynes. Mr. Whitehouse stated that Case No. 12427 focused on a request by Robert Barkey & Janet Hynes for a special use exception for a garage studio apartment and was denied by the Board; that a request for a rehearing based on the rules and procedures of the Board of Adjustment was submitted within the timeframe set forth in the rules.

Mr. Sharp stated that the reason given for the request for rehearing was evidence that the septic system would support four bedrooms and not three as was the evidence given at the public hearing; that this is not newly discovered evidence, but new evidence; and that the Applicants testified that there are a total of five bedrooms on the property and now states that there are three, that this is not a misrepresentation by the Board but by the Applicants.

Mr. Sharp reviewed the Movant's arguments and cited the law pertaining to the motion.

Dr. Carson moved to deny the Consideration of Request for Rehearing Case No 12427.

Motion by Dr. Carson, seconded by Mr. Chorman, carried unanimously that the **request for rehearing be denied**. Motion carried 4 – 0.

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

Meeting adjourned at 8:47 p.m.