

MINUTES OF JUNE 20, 2016

The regular meeting of the Sussex County Board of Adjustment was held on Monday, June 20, 2016, at 7:00 p.m. in the County Council Chambers, County Administrative Office Building, 2 The Circle, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with the Chairman Dale Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Brent Workman, and Mr. Norman Rickard, with Mr. James Sharp – Assistant County Attorney, and staff members Ms. Janelle Cornwell – Planning and Zoning Manager, 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 approve the Revised Agenda as circulated. Motion carried 5 – 0.

Motion by Mr. Rickard, seconded by Workman, and carried unanimously to approve the Minutes and Finding of Facts for April 18, 2016 as circulated. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes and Finding of Facts for May 2, 2016 as circulated. Motion carried 5 – 0.

Mr. Sharp read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing the cases.

PUBLIC HEARINGS

Case No. 11785 – Frances M. Willner – seeks a variance from the front yard setback requirement (Sections 115-42B and 115-182D of the Sussex County Zoning Code). The property is located on the south side of Hidden Acre Drive approximately 124 feet west of Tranquility Lane. 911 Address: 32285 Hidden Acre Drive, Frankford. Zoning District: GR. Tax Map No.: 1-34-11.00-608.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received two (2) letters of support to the Application and no correspondence in opposition to the Application.

Shannon Carmean Burton, Esquire, presented the case on behalf of the Applicant and stated that the Applicant was unable to attend the hearing. Mrs. Burton submitted a sworn affidavit and an exhibit booklet for the Board to review.

Ms. Burton stated that the Applicant is requesting a variance of 6.4 feet from the thirty (30) feet front yard setback requirement for an existing covered porch; that the exhibit booklet contains seven (7) additional letters of support to the Application; that the Applicant purchased the Property with her husband in 2006; that the Applicant's husband has since passed away; that the covered

porch existed at the time of purchase in 2006; that the Applicant entered a contract to sell the Property in February 2016 and a survey completed for settlement showed the encroachment of the porch into the front yard setback area; that the Applicant was not aware of the encroachment prior to the survey in 2016 and believed that the porch complied with all applicable zoning laws; that the Applicant has made no modifications or additions have been made to the porch since the Applicant purchased the Property; that the Property is unique due to its irregular shape and is located along a curved portion of the adjacent road; that the exceptional practical difficulty is due to the uniqueness of the Property; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code; that the porch provides access to the dwelling; that the variance is necessary to enable reasonable use of the Property; that the exceptional practical difficulty was not created by the Applicant; that the variance does not alter the essential character of the neighborhood; that the use does not impair the use or development of the adjacent properties; that the use is not detrimental to the public welfare; that there have been no complaints from the neighbors about the location of the porch; that the variance is the minimum variance to afford relief; that the variance requested represents the least modification of the regulation at issue; that, since no permit for the porch could be found, the Applicant obtained a building permit for the covered porch; and that the edge of the road and the location of the property line could create confusion.

Ms. Cornwell advised the Board that the front yard setback is thirty (30) feet and not forty (40) feet as listed on the survey.

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

Mr. Rickard moved that the Board approve Variance Application No. 11785 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to its irregular shape;
2. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
3. The variance is necessary to enable reasonable use of the Property;
4. The exceptional practical difficulty was not created by the Applicant;
5. The Applicant reasonably believed that the porch complied with the Sussex County Zoning Code;
6. The variance will not alter the essential character of the neighborhood; and
7. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

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

Case No. 11786 – Robert Wooldridge & Amanda Wooldridge – seek variances from the separation between units in a mobile home park, maximum lot coverage allowable in a mobile

home park, and rear yard setback requirements (Sections 115-172G(4) and 115-172G(7) of the Sussex County Zoning Code). The property is located on the east side of Old Landing Road approximately 350 feet north of Airport Road. 911 Address: 357 Magnolia Road, Rehoboth Beach. Zoning District: AR-1. Tax Map No.: 3-34-13.00-164.00-39071

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received one (1) letter of support to the Application and no correspondence in opposition to the Application.

Robert Wooldridge was sworn in and testified requesting a variance of 8.3 feet from the twenty (20) feet separation requirement between units in a mobile home park, a variance of 1.7 feet from the twenty (20) feet separation requirement between units in a mobile home park, a variance of 13.7 feet from the twenty (20) feet separation requirement between units in a mobile home park, a variance of 3.275% from the maximum lot coverage allowable in a mobile home park, and a variance of 0.7 feet from the five (5) feet rear yard setback requirement for a proposed porch; that the existing mobile home is approximately fifty (50) years old and must be replaced; that the Property is unique; that the existing mobile home is eight (8) feet from the property line; that the proposed manufactured home will be approximately 6 to 11 inches closer to the property line; that the proposed unit will be set two (2) feet farther back on the Property to allow room for two (2) parking spaces in front of the proposed unit; that a neighbor's garage on Lot 63 burned down and has been removed; that the adjacent neighbors and Pine Valley have no objection to the Application; that the Property is not square; that a variance would be needed in order to place any home on the Property; that the irregular shaped lot cannot otherwise be developed in strict conformity with the Sussex County Zoning Code; that the existing unit does not comply with the Sussex County Zoning Code; that the lots were designed and developed years ago; that the exceptional practical difficulty was not created by the Applicants; that the manufactured home will be an improvement to the Property; that the proposed unit will not alter the character of the neighborhood; that the Applicants have searched different models and manufacturers to find a design best suited for their family's needs and to fit on the lot; that most of the newer homes in the community are double-wide manufactured homes; that the existing home is approximately 22 feet wide with a porch and deck; that the proposed screen porch will provide storage as well; that there are a lot mosquitoes in Pine Valley; that the Applicants considered a 24 feet wide model but those models are longer; that a wider unit was chosen to minimize the variances needed to place a new home on the lot; that other lots in the mobile home park exceed the maximum allowable lot coverage; that the proposed porch is wide enough to allow them to access the porch from the home; and that the Applicants researched other models and all models would require some form of variance due to the proximity of structures on neighboring properties.

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. Rickard, and carried unanimously that the case **be tabled until July 11, 2016**. Motion carried 5 – 0.

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

Case No. 11787 – Renee West & Richard West – seek a variance from the rear yard setback requirement (Section 115-25C of the Sussex County Zoning Code). The property is located on the southwest side of Bridgeway Drive West in Angola by the Bay. 911 Address: 23290 Bridgeway Drive West, Lewes. Zoning District: AR-1. Tax Map No.: 2-34-17.08-7.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received one (1) letter of support to the Application and no correspondence in opposition to the Application.

Renee West and Cindy Baker, Realtor, were sworn in and testified requesting a variance of 7.8 feet from the twenty (20) feet rear yard setback requirement for an existing porch.

Ms. West testified that the Applicants purchased the Property in 2006; that the porch has existed on the Property for many years as the porch is shown on a survey dated 1984, which was submitted with the Application; that the Property is adjacent to Burton Pond and common area in the rear yard; that the porch overlooks Burton Pond; that the lot is unique in shape; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code; that no further development can be built due to the existing common area between the rear yard and the water; that the structure was built over 20 years prior to the Applicants' purchase of the Property thus the difficulty was not created by the Applicants; that the Applicants were unaware of the need for the variance at the time they purchased the Property; that the porch cannot be seen from the street; that the variance does not alter the character of the neighborhood; that the use is not detrimental to the public welfare; that the variance is the minimum variance to necessary afford relief; that no additions to the porch are being proposed; that the Applicants are selling the Property and did not know of the encroachment until preparing the Property for settlement; that there have been no complaints from her neighbors; and that there are other similar porches in the neighborhood.

Ms. Baker testified that she is the realtor for the Applicants; that the variance does not adversely affect the neighborhood; and that, without the existing porch, the value of the home would decrease.

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

Mr. Rickard moved that the Board approve Variance Application No. 11787 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to its irregular shape;
2. The variance is necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

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

Case No. 11788 – Sybil Luden – seeks variances from the separation requirement between units in a mobile home park (Section 115-172G(7) of the Sussex County Zoning Code). The property is located on the south side of Wolfe Neck Road approximately 613 feet east of Coastal Highway. 911 Address: 35577 High Alpine Lane, Rehoboth Beach. Zoning District: AR-1. Tax Map No.: 3-34-12.00-105.01-54949.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received eleven (11) letters of support to the Application and no correspondence in opposition to the Application.

Sybil Luden was sworn in and testified requesting a variance of 2.1 feet from the twenty (20) feet separation requirement between units in a mobile home park for an existing screen porch, a variance of four (4) feet from the twenty (20) feet separation requirement between units in a mobile home park, and a variance of 0.2 feet from the twenty (20) feet separation requirement between units in a mobile home park from an existing shed; that the Property is in an manufactured home community; that the principal structure and addition comply with the setback requirements but do not meet the separation distance requirements; that the neighboring units create a unique situation since those units limit what she can do with her property; that the proposed screen porch measures 12 feet by 21 feet and encroaches 2.1 feet into the separation requirement; that making the porch smaller would severely limit the utility of the screen porch as the porch would be too narrow; that there are other similar porches in the neighborhood; that the porch cannot be built in strict conformity with the Sussex County Zoning Code; that the difficulty was not created by the Applicant; that the location of a structure on an adjacent property has created the difficulty; that the screen porch does not alter the essential character of the neighborhood; that there are similar structures throughout the park; that many neighbors and a former property manager for the community support the Application; that the variance is the minimum variance necessary to afford relief; that the manufactured home was placed on the lot in March or April 2015; that she purchased the unit and had the screen porch built to help with mosquito problems; that her builder obtained the building permit for the porch; that the porch passed all building code inspections but no Certificate of Compliance was issued; that she was unaware of any issues until she was contacted by the Planning and Zoning Department; that her builder Wesley Gates offered to attend the hearing with her; that she relied on her builder to construct the porch in compliance with the Sussex County Zoning Code; that the dwelling was on the Property when she purchased it; that a narrower porch would not enable her with reasonable use because it would be too narrow; that the park advised her that a 16 feet wide porch would be permitted on this lot but she felt that it was too wide; and that the porch does not impair the uses of the neighboring and adjacent properties. Ms. Luden submitted pictures for the Board to review.

Allison Luden was sworn in and testified in support of the Application and testified that she spoke with all the neighbors in reference to the Application and the neighbors have no objection to the Application; that the survey was very costly; and that there is not a survey of the entire park.

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.

The Board discussed having the park submit a survey for the entire park. Mr. Mills stated that he wants to see a survey for this lot to show the lot lines to confirm the structures meet the required setbacks; and that the Applicant is to have her surveyor call the Planning and Zoning Department in reference to what the survey must show.

Ms. Cornwell advised the Board that a Certificate of Compliance has not been issued because there were encroachments into the separation distance requirements.

Mr. Mills stated that the survey of the entire park allows for a better determination as to whether other variances are needed for setbacks.

Mr. Sharp advised the Board that if the survey discovered that other variances were needed, a new application would need to be filed for other variances and another public hearing be held.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the case be **left open for the Applicant to provide a survey for this lot which shows lot lines and that a letter be sent to the builder by Counsel.** Motion carried 5 – 0.

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

Case No. 11789 – Louise Griffin & Lawrence Griffin – seek variances from the front yard, side yard and rear yard setback requirements (Section 115-42B, 115-182B, 115-182D, 115-183C, 115-185D, and 115-185F of the Sussex County Zoning Code). The property is located on the southwest corner of 2nd Street and Midway Drive. 911 Address: 106 Midway Drive, Rehoboth Beach. Zoning District: GR. Tax Map No.: 3-34-13.00-35.00.

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. Ms. Cornwell stated that a side yard variance was granted by the Board in 2008 for the existing dwelling.

Louise Griffin was sworn in and testified requesting a variance of 1.7 feet from the ten (10) feet side yard setback requirement for a set of steps, a variance of 2.4 feet from the five (5) feet rear yard setback requirement for a shed, a variance of 1.7 feet from the five (5) feet rear yard setback requirement for a shed, a variance of 6.4 feet from the ten (10) feet side yard setback requirement for a pool, a variance of 1.5 feet from the twenty (25) feet front yard setback

requirement for a set of steps, and a variance of 1.9 feet from the fifteen (15) feet side yard setback requirement for a dwelling; that a concrete shed and a metal shed existed on the Property at the time of purchase; that the Applicants purchased another shed, removed the metal shed, and placed the new shed in line with the existing concrete shed; that the concrete shed could not be moved; that the pool was installed next to an existing spa; that the house has three openings for steps; that that a contractor poured concrete steps on the Midway Drive side of the Property; that the set of steps on the Second Street side came with the home and the contractor never informed them the steps did not comply; that the new shed cannot be placed in compliance due to the existing well on the Property; that the pool needed to be close to the house because the pump servicing the pool needs access to electricity; that the Applicants also wanted the pool to be located near the hot tub; that the well and concrete shed were on the Property when the Applicants purchased the Property; that the structures do not alter the character of the neighborhood; that the pool cannot be seen from Midway Drive and is difficult to see from Second Street and neighboring properties; that the concrete shed cannot be moved; that the well is located near the doorway to the new shed; that she relied on her builder to install the dwelling and structures in compliance with the Sussex County Zoning Code; that the Applicants installed the new shed and obtained a building permit but did not read the setback information on the permit; that their neighbor installed the pool for them and the Applicants were not aware of the setback requirements; that the neighbor has since moved away; that a large portion of the yard has been covered in pavers; that the sheds and pool are within a fenced in area of the Property; that the Applicants relied on the pool installer to obtain the permit for the pool; that the pool is an above-ground pool but a portion of the pool is below ground; that the pool is serviced by an electric pump and a propane heater; that there are pavers around the pool; that the steps on the Second Street side of the house are the steps that were installed when the home was placed; that the steps along Midway Drive are poured concrete steps which were placed when the home was installed; and that the shed closest to Midway Drive is the newest shed, is movable, and is serviced by electricity.

Ms. Cornwell advised the Board that Second Street is considered the front yard and Midway Drive is considered the corner side yard; that the previous variance granted was for the dwelling along Midway Drive; and that the dwelling encroaches further than previously allowed by the Board.

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. Rickard to table the case. Mr. Rickard withdrew the motion.

Motion by Mr. Rickard, seconded by Mr. Hudson, and carried unanimously to leave the case **open for the limited purpose for the Applicants to provide pictures to the Board of the Property for review and that a letter be sent to the builder by Counsel.** Motion carried 5 – 0.

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

Case No. 11790 – Dean Sherman / Sherman Heating Oils, Inc. – seeks a special use exception to place a temporary manufactured home type structure for an office (Section 115-80A and 115-210A(1) of the Sussex County Zoning Code). The property is located on the west side of Sussex Highway and east side of Bridgeville Highway approximately 0.7 miles south of Old Furnace Road. 911 Address: 9101 Elm Street, Seaford. Zoning District: C-1. Tax Map No.: 3-31-3.00-164.00.

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.

Dean Sherman was sworn in and testified requesting a special use exception to place a temporary manufactured home type structure for an office and submitted exhibits for the Board to review. Mr. Sherman testified that the Property consists of approximately 8 acres; that he is the owner of the Sherman Corporation which is engaged in plumbing, heating, air conditioning, portable restrooms, and oil business; that he recently purchased this property north of Seaford to expand the business; that the Property has an existing 14,000 square foot building which will be renovated for the business; that the Applicant intends to use the Property for a propane and oil storage facility and has been granted a Conditional Use by the Planning & Zoning Commission; that the Applicant is currently cleaning up the Property; that, at the time of the purchase of the Property, there was a 28 feet by 60 feet manufactured home on the Property which had been neglected; that the prior unit was used as an office; that the prior unit has been removed from the Property; that the landscaping around the unit was overgrown as shown on the photographs; that he plans to replace it with a newer model to use for a temporary office; that the proposed unit will be used until renovations to the existing 14,000 square foot building are completed; that the proposed unit will be placed in the same location as the previous unit but will be more attractive; that the use will not substantially adversely affect the uses of the neighboring and adjacent properties; that he hopes to have the renovations complete within three (3) years but he is requesting the use for a period of five (5) years; that there are commercial properties nearby; that the proposed unit will measure 24 feet by 60 feet; and that the unit will have landscaping and good curb appeal.

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

Mr. Mills moved that the Board approve Special Use Exception Application No. 11790 for the requested special use exception based on the record made at the public hearing because the use will not substantially adversely affect the uses of the neighboring and adjacent properties.

Motion by Mr. Mills, seconded by Mr. Rickard, and 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. Rickard – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 11791 – Joseph Gentile, Jr. – seeks variances from the separation requirement between units in a mobile home park (Section 115-172G(7) of the Sussex County Zoning Code). The

property is located on the west side of Coastal Highway on the north side of Patriots Way Lane in Sea Air Village. 911 Address: 19944 Atlantic Avenue, Rehoboth Beach. Zoning District: AR-1. Tax Map No.: 3-34-13.00-310.00-52940.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received five (5) letters of support to the Application and no correspondence in opposition to the Application. Ms. Cornwell also stated the Board granted variances in 2008 for the existing manufactured home. Those variances included a variance of 6.6 feet from the dwelling on Lot 30 and the dwelling on Lot 28 as shown on the survey and from the dwelling and the sheds on Lot 30 and the shed and dwelling on Lot 29 to the rear of the Property. Ms. Cornwell advised the Board that no new variances are needed from the separation distance requirements for Lot 30 and Lot 29 but the survey shows that the dwelling is actually 13.2 feet from the deck on Lot 28 so a variance of 6.8 feet is needed for that separation distance. A variance from the separation distance requirements between Lot 30 and Lot 32 are also needed for the proposed deck.

Salvatore Gatrone was sworn in and testified requesting a variance of 3.3 feet from the twenty (20) feet separation requirement between units in a mobile home park for a proposed deck and a variance of 6.8 feet from the twenty (20) feet separation requirement between units in a mobile home park for an existing manufactured home; that the Property is unique because it is narrow and angled; that most of the units in the park are less than 20 feet from each other; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code; that the proposed deck would be 8 feet wide; that a deck which would comply with the Code would only be 5 feet wide and not very large; that the proposed deck will be used to access both doors on the existing unit; that the neighbor on Lot 32 has trash cans and an air conditioning unit on the side closest to the Property; that most lots in the community have similar decks; that the variances will not alter the character of the neighborhood; that the variances are the minimum variances to afford relief; that the neighbors support the Application; and that the proposed deck will be 28 inches above grade.

Mr. Rickard stated that if the deck was six (6) inches or less from grade the Applicant would not need a variance.

Joseph Gentile, Jr., was sworn in and testified that the proposed height of the deck was preferred to allow them to access the deck from the existing unit without having use steps at the doorways; and that the existing steps will be turned and used at each end of the proposed deck.

The Board recessed for ten (10) minutes to allow Counsel and staff time to discuss the need for a variance if the proposed deck was less than six (6) inches from grade.

After the recess, Mr. Sharp advised the Board that a variance would still be required for a deck less than six (6) inches in height in a mobile home park and from the separation requirement between units.

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

Mr. Rickard moved that the Board approve Variance Application No. 11791 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 irregular shape;
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. Rickard, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

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

OLD BUSINESS

Case No. 11781 – Ruth Ann Crovetto – seeks a variance from the rear yard setback requirement (Sections 115-25C and 115-183C of the Sussex County Zoning Code). The property is located on the south side of Mallard Drive, approximately 200 feet west of Bay Drive. 911 Address: 5 Mallard Drive, Lewes. Zoning District: AR-1. Tax Map No.: 234-12.00-121.00.

Ms. Cornwell presented the case, which has been tabled since June 6, 2016.

Mr. Rickard moved that the Board approve Variance Application No. 11781 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The shape of the lot and the location of the septic system make 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; and
5. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

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

Meeting Adjourned 9:45 p.m.