

## **MINUTES OF JUNE 3, 2019**

The regular meeting of the Sussex County Board of Adjustment was held on Monday, June 3, 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 Chairman John Mills presiding. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, 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. Lauren DeVore, Planner, and Ms. Ann Lepore – Recording Secretary.

The Pledge of Allegiance was led by Mr. Mills.

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

Motion by Mr. Workman, seconded by Mr. Callaway, and carried unanimously to approve the Minutes and Findings of Facts for the April 1, 2019, meeting. Motion carried 5 – 0.

Motion by Mr. Callaway, seconded by Ms. Magee, and carried unanimously to approve the Minutes and Findings of Facts for the April 15, 2019, meeting. Motion carried 5 – 0.

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. 12309 – Martha Austin** seeks variances from the rear yard setback for proposed structures (Sections 115-42 and 115-183 of the Sussex County Zoning Code). The property is located on the southwest side of Beaver Dam Reach in the Woods at Seaside subdivision approximately 0.5 miles east of Munchy Branch Rd. 911 Address: 116 Beaver Dam Reach, Rehoboth Beach. Zoning District: GR. Tax Parcel: 334-13.00-1280.00

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 one mail return. The Applicant is requesting the 9 ft. variance from the required 10 ft. rear yard setback for a proposed deck and steps.

Martha Austin sworn in to give testimony about the Application.

Ms. Austin testified that the property is unique as the rear property line is only 10 ft. from the house and the property is only 7,500 square feet; that she would like to age in place; that there is an existing patio to the rear of the home; that she proposes to replace the patio with the deck; that the deck would be about 18 inches from the ground allowing the Applicant to walk straight out of the dwelling without steps; that the house was a spec home and the size and placement on the property

were created by the developer; that it will not alter the essential character of the neighborhood as there are similar decks and screened porches in the community; that the deck needs to be 9 feet deep to allow for seating; that the area behind the property is common space for the community; that it is the minimum variance request to make the deck usable and to include some built in seating; that the Applicant believes there are similar variances in the community; that she has discussed the application with her neighbors; and that the HOA approval is contingent on the outcome of the variance hearing.

Mr. Whitehouse stated that there have been 2 variances granted in the neighborhood.

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

Mr. Callaway moved to approve Variance Application No. 12309 as the Applicant has met all five criteria for granting a variance.

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

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

**Case No. 12310 – Ronald Saxton, Barbara Saxton & Deborah Morgan** seek a variance from the rear yard setback requirements for an existing deck (Sections 115-50 and 115-183 of the Sussex County Zoning Code). The property is located on the south side of Clover Ln. approximately 466 ft. east of Bethany Dr. in the Bethany Meadows subdivision. 911 Address: 38272 Clover Ln., Frankford. Zoning District: HR-2. Tax Parcel: 134-17.00-370.00

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received one letter in support of and none in opposition to the Application and two mail returns. The Applicants are requesting a variance of 7.9 ft. from the required 10 ft. rear yard setback for an existing deck.

Ms. Magee recused herself and left chambers.

Ronald Saxton was sworn in to give testimony about the Application.

Mr. Saxton testified that the house belonged to his late mother; that the original deck which was built in 1993 was in disrepair; that the house was built in 1993 by his parents; that the builder placed a slider to the rear of the house; that he had the deck replaced in the same footprint as the original deck; that he did not get a permit to replace the deck; that there have been no complaints from neighbors; that a variance is not requested for the steps; that the property is unique as it is only 7,500 square feet with a very small back yard; that it could not otherwise be developed as there are sliding glass doors at that location on the house; that it was not created by the Applicants as the deck is replacing an existing deck; that it will not alter the character of the neighborhood as a deck has been

in that location since 1993; that it is the minimum variance request to replace the original deck; that there is a drainage easement on the property; that the deck is elevated; that there have been no complaints about the deck; and that there is a homeowners association.

Mr. Whitehouse advised the Board that there is no variance needed for the steps because they do not project farther than five feet into the setback area.

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

Mr. Workman moved to approve Variance Application No. 12310 as the Applicants have met all five criteria for granting a variance. Mr. Workman noted that:

1. The size and shape of the Property are unique;
2. The variance is necessary to enable reasonable use of the Property;
3. The deck was built in 1993;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance requested is the minimum variance to afford relief.

Motion by Mr. Workman, seconded by Mr. Callaway, and carried that the **variance be granted for the reasons stated**. Motion carried 4 - 0.

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

Ms. Magee returned to the Chambers.

**Case No. 12311 – Marianne & Neil Young** seek variances from the side yard setback and the rear yard setback requirements for a proposed garage (Sections 115-25 and 115-183 of the Sussex County Zoning Code). The property is located on the north side of Briarhook Rd. approximately 157 ft. east of Hensley Rd. 911 Address: 4373 Briarhook Rd., Seaford. Zoning District: AR-1. Tax Parcel: 531-6.00-16.05

Ms. DeVore 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 10 ft. variance from the required 20 ft. rear yard setback for a proposed garage and a 5 ft. variance from the required 15 ft. side yard setback on the northeast side for a proposed garage.

Neil and Marianne Young were sworn in to give testimony about the Application. Additional pictures of the property were submitted by the Applicants.

Mrs. Young testified that the property is unique due to the placement of the dwelling; that the

house was existing when the Applicants purchased the property; that it cannot otherwise be developed with a garage that will line up with the driveway without this variance due to the location of the house; that the garage would be too close to the house if the built in compliance with the Code; that the variances will not alter the essential character of the neighborhood; that the location of the house was established by a prior owner; that the Applicants did not create the layout of the Property; that the area is farmland with a few residential properties; that the neighboring property to the rear is farmed; that the property to the east side has a home that is approximately 100 feet from the proposed location of the garage; that neighbors support the Application; and that the variances requested are the minimum variances to afford relief.

Mr. Young testified that, if the garage was brought into compliance, it would not line up with the driveway and would be located where the fence is located; that the driveway is 5 feet from the side property line; that the Applicants did not build the house; that the septic system is located in the front yard to the west side; that the well is located in the rear yard to the west side; that it will not alter the essential character of the neighborhood; that there is enough room to plant Leland Cypress trees to the rear of the garage; that the proposed location of the garage will give him enough room to safely access the garage and provide a safe distance from the garage to the house for fire safety; that the garage will be used to store his boat and vehicles; and that the well and septic system are located in the building envelope.

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

Ms. Magee moved to approve Variance Application No. 12311 as the Applicants have met all five criteria for granting a variance.

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

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

**Case No. 12312 – Raymond Stepp** seeks variances from the side yard, rear yard and separation distance requirements for existing structures (Sections 115-25, 115-172 115-183, and 115-185 of the Sussex County Zoning Code). The property is located on the west side of Sheffield Dr. approximately 435 ft. south of Andover Ln. in the Sussex East Manufactured Home Park. 911 Address: 13 Sheffield Dr., Lewes. Zoning District: AR-1. Tax Parcel: 334-5.00-165.00 Unit 36947

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 the following variances:

- 0.8 ft. from the required 5 ft. rear yard setback for a shed.

- 0.6 ft variance from the required 5 ft. side yard on the north side for a shed
- 3.3 ft. from the required 5 ft. rear yard for a screened porch
- 0.7 ft from the required 15 ft. separation distance for accessory structures within a manufactured home park for an existing shed on this lot and an existing mobile home on Lot 8.

Raymond Stepp was sworn in to give testimony about the Application. Mr. Stepp submitted a letter from neighbors supporting the Application.

Mr. Stepp testified that the site is too small for existing needs and structures; that, if the 3.3 ft. variance for the screened porch was not needed, the other variances could have been handled administratively; that the property is unique as it is a manufactured home park with small lots; that there is no other place to put a shed on the property without requesting a variance; that existing sewer prevents the Applicant from moving the shed into compliance; that other lots in the neighborhood have received similar variances; that the porch was on the lot when he acquired his interest in the property; that he hired a contractor to replace an older shed with the existing shed three months ago; that the shed was placed on the concrete pad of the old shed; that a permit was issued for the shed; that the new shed is 4 ft. longer than the previous shed; that the sewer line is located between the shed and the house; that the shed cannot be moved closer to the house due to the sewer line; that there are bugs in the yard; that the porch affords reasonable use of the outdoor space; that there have been no complaints about the structures; that there is common area to the rear of the property; that this exceptional practical difficulty was not created by the Applicant as the property was purchased with existing structures; that it will not alter the character of the neighborhood as other residents have received similar variances; that the placement of the sewer line also prevents moving either shed or screened porch; that it would be a great financial hardship to have to move either structure; that the original shed was placed about 30 years ago; that he obtained a permit in September 2018 to replace the shed; and that the new shed was placed in March 2019.

Stevan Class was sworn in to give testimony about the Application. Mr. Class testified that he is a member of the owner of Sussex East Manufactured Home Park; that he has no objections to the placement of the shed; and that the park does not allow for construction without a building permit from the County.

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

Mr. Williamson moved to approve Variance Application No. 12312 as the Applicant has met all five criteria for granting a variance.

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

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

**Case No. 12313 – Carl E. Haws** seeks a variance from separation distance requirement for an existing structure (Sections 115-42 and 115-172 of the Sussex County Zoning Code). The property is located on the west side of Lantern Ln. approximately 193 ft. northwest of Olde Coach Dr. in the Colonial East Manufactured Home Park. Address: 49 Lantern Ln., Rehoboth Beach. Zoning District: GR. Tax Parcel: 334-6.00-335.00 Unit 53002

Mr. Whitehouse 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 three mail returns. The Applicant is requesting a 0.8 ft. variance from the required 15 ft. separation distance for an existing screened porch on the lot to structures on Lot 51.

Carl Haws was sworn in to give testimony about the Application.

Mr. Haws testified that the lot is unique as it is a small lot in a manufactured home park; that it cannot be developed with a screened porch in another area of the property as this is the location of the existing entrance to the dwelling; that a screened porch is necessary to give relieve from bugs in the evening; that the practical difficulty was not created by the Applicant as he relied on the builder, AM Construction, to follow the permit guidelines; that it will not affect the essential character of the neighborhood and letters of support from neighbors have been submitted; that it is the smallest porch that could be constructed to allow for furniture to be moved into the home through the porch; that the porch measures 6.4 feet by 22.2 feet; that he tried to make a narrower porch; that the porch is adjacent to the main entrance to the house; and that there have been no complaints about the porch.

Mr. Sharp advised Mr. Whitehouse that variances also appear to be necessary for the steps from the porch.

Mr. Whitehouse confirmed that variances of 0.8 feet from the 15 feet separation distance requirement are also needed for the existing steps.

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

Mr. Callaway moved to approve Variance Application No. 12313 as the Applicant has met all five criteria for granting a variance.

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

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

**Case No. 12314 – Dutch Country Market – Sam Petersheim** seeks a variance from the front yard setback requirements for a proposed structure (Sections 115-82 and 115-182 of the Sussex County Zoning Code). The property is a through lot located on the northeast side of Trussum Pond Rd. and on the southwest side of Commercial Ln. approximately 995 ft. southeast of Sussex Hwy. (Rt. 13).911 Address: 11233 Trussum Pond Rd., Laurel. Zoning District: C-1. Tax Parcel: 332-1.00-102.05

Ms. DeVore presented the case and stated that the Office of Planning and Zoning received one letter in support of and none in opposition to the Application and one mail return. The Applicant is requesting a 26.5 ft. variance from the required 60 ft. front yard setback along Commercial Lane

Sam Petersheim and Charles Dennig were sworn in to give testimony about the Application.

Mr. Petersheim testified that the property is a through lot but he considers Commercial Lane as the rear of the property; that the sales area is located in the front yard adjacent to Route 113; that the Applicant needs space for storage of inventory to the rear of the site closest to Commercial Lane; that the property originally consisted of two lots but has been consolidated into 1 lot; that there are solar arrays in the rear of the lot; that it is in this location that he wants to build a warehouse for storage; that the property is unique as it is a through lot; that it cannot otherwise be developed for a warehouse of this size due to the placement of the driveway on Commercial Lane, the retention pond, septic system, and solar panels; that, if the building was located elsewhere on the property, a tractor trailer would not be able to gain access for unloading furniture; that the practical difficulty was not created by the Applicant; that it will not affect the essential character of the neighborhood as it is a commercially zoned area; that it is the minimum variance request to allow for a 50 ft. by 80 ft. building for storage; that the septic system is located in the middle of the lot; that the solar panels cannot be blocked; and that he thought Commercial Lane was a private road.

Mr. Dennig testified that the driveway runs from Commercial Lane to Trussum Pond Road, so moving the driveway would not be possible; that there is approximately 10 – 15 ft. from the property line to the edge of paving; and that there will be approximately 50 ft. from the building to the edge of paving.

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

Mr. Workman moved to approve Variance Application No. 12314 as the Applicant has met the standards for granting a variance; that the size and shape make it difficult and unique; that the variance is necessary to enable use of the property to get trucks in and out; that it will not alter the essential character of the neighborhood; and that it is a minimum variance to afford relief.

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

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

**Case No. 12315 – Frank Brennen Garrison** seeks a variance from the front yard setback requirements for a proposed structure (Sections 115-34 and 115-182 of the Sussex County Zoning Code). The property is located on the west side of Rogers Ave. approximately 230 ft. southwest of Coastal Hwy. (Rt. 1) in the Ann Acres subdivision. 911 Address: 20980 Rogers Ave., Rehoboth Beach. Zoning District: MR. Tax Parcel: 334-20.13-41.00

Mr. Whitehouse 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 two mail returns. The Applicant is requesting a 16.5 ft. variance from the required 30 ft. front yard setback for a partial renovation and proposed addition to an existing dwelling.

Frank Brennen Garrison was sworn in to give testimony about the Application. Shannon Carmean Burton, Esquire, presented the Application on behalf of the Applicant.

Mrs. Burton stated that exhibit booklets had been submitted to the Board; that the property is located in Ann Acres; that the Applicant purchased the property in January 2019; that the existing dwelling was built in the 1950s and is non-conforming; that the open porch was converted to a screened porch in 1978; that the original porch was removed because it was structurally deficient; that a building permit was issued listing the setbacks but construction was halted when setback violations were noted; that the variance application was then submitted; that the property is unique because it is a narrow, rectangular lot measuring only 50 ft. by 100 ft.; that the property was developed in the 1950s; that the minimum lot size in the MR zoning district is 10,000 square feet and the minimum lot width is 75 feet; that the property is smaller than required in that zoning district; that the building envelope is compact; that the property cannot be developed without the variance due to the size of the lot and the location of the dwelling; that the exceptional practical difficulty was not created by the Applicant, as he purchased this non-conforming property this year; that granting the variance will not alter the essential character of the neighborhood or be detrimental to the public welfare; that a letter of support from the adjacent property was submitted with the Application; that other variances have been granted in the neighborhood; that there is approximately 15 feet from the front property line to the edge of paving of Rogers Avenue; that the Applicant is unaware of any complaints; that the ground level deck shown on the survey will be removed; that the fence shown on the survey is the neighbor's fence; that the variance requested is the minimum variance request to afford relief and allow for a slightly larger home; and that building plans were submitted with the permit application.

Mr. Garrison affirmed the statements made by Mrs. Burton as true and correct.



Mr. Garrison testified that the contractor submitted the drawing for the building permit; that demolition started and then the issue was discovered; that 2 steps will project into the front yard as well and a variance is needed for the steps; and that he estimates the steps will project 3 feet farther than the proposed addition.

During discussion, a variance of 19.5 ft. variance from the required 30 ft. front yard setback for proposed steps was added to the request.

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

Mr. Workman moved to approve Variance Application No. 12315 as the Applicant has met all five criteria for granting a variance and to return the Application fee of \$400.00.

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

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

**Case No. 12316 – K. Hovnanian’s Four Seasons at Belle Terre, LLC** seek a variance from the maximum fence height requirement for a proposed fence (Sections 115-25 and 115-185 of the Sussex County Zoning Code). The property is located on the northwest corner of Dorman Farm Ln. and Mulberry Knoll Rd. approximately 0.34 miles northwest of John J. Williams Hwy. (Rt. 24). 911 Address: N/A. Zoning District: AR-1. Tax Parcel: 334-12.00-16.05

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 one mail return. The Applicant is requesting a 3.5 ft. variance from the 3.5 ft. fence height requirement for a 6 ft. fence with 1 ft. lattice for a total fence height of 7 ft.

Shannon Soderberg was sworn in to give testimony about the Application. Glenn Mandalas, Esquire, presented the Application on behalf of the Applicant.

Mr. Mandalas stated that exhibit booklets had been submitted as part of the Application and he submitted additional pictures to Board Members; that Ms. Soderberg is a sales consultant with the community; that Dorman Farm Lane is the entrance road to the community and is adjacent to the Delaware State Police Troop 7 facility which is under construction; that the proposed fence is to provide screening from the Troop 7 facility; that the Applicant constructed a fence along a border of the Troop 7 property and that fence was approved as a matter of right; that Troop 7 is affecting sales of lots in the community; that the fence will consist of 770 linear feet and will be 6 feet tall with a 1 foot tall lattice top; that the fence will connect to the existing fencing; that the property is narrow on

this strip and opens up farther into the community; that the property is unique as it is located next to Troop 7 which is currently constructing a 25,000 square foot barracks facility and a 7,000 square foot maintenance building; that the property cannot be developed with a 7 ft. screening fence without the variance; that, due to the narrowness of the property, the Applicant cannot build lots in this area; that, if the Applicant could build lots in this area, the Applicant would have had the right to build a 7 foot tall fence; that the practical difficulty was not created by the Applicant but by the approval of the conditional use for the Troop 7 facility; that the Applicant's development existed prior to the conditional use approval; that the neighboring structures are out of character for the neighborhood; that the variance will not alter the essential character of the neighborhood but will be more aesthetically pleasing for future homebuyers in Belle Terre; that there is already a permit for 1,650 linear ft. of 7 ft. fencing; that the variance will allow this to be extended by 770 ft. which is a minimum request; that it will not cause any visibility issue for drivers leaving the subdivision; and that a vegetative buffer will be planted in the fall as well.

Ms. Soderberg testified that, when entering the subdivision, potential buyers are often distracted by the very large barracks being constructed on the adjacent property; that many people think it is part of the community; that one prospective buyer turned around when she saw the Troop 7 facility being constructed; and that a screening fence would help separate the properties and give a screening buffer and help increase home sales for the community.

Mr. Whitehouse stated that Exhibit F of the exhibit booklet shows the landscaping requirements for Troop 7.

Mr. Mandalas stated that there is some fencing on the Troop 7 property but not in the area where the fence is requested.

Rene Van Houten was sworn in to give testimony about the Application in support of the Application. Ms. Van Houten testified that most of the site was open farmland; that the forested area of the site was clear cut but some trees were saved for a buffer; and that trees are being planted throughout the community.

Ms. Van Houten affirmed the statements made by Mr. Mandalas as true and correct.

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

Ms. Magee moved to approve Variance Application No. 12316 as the Applicant has met all five criteria for granting a variance.

Motion by Ms. Magee, seconded by Mr. Callaway, and carried that the **variance be granted for the reasons stated**. Motion carried 5 - 0.

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

**ADDITIONAL BUSINESS**

**Consideration of Request for Rehearing for case 12270 – Mark & Yvette Lewis** – The Applicant canceled this request as the plans for the home have been changed and a variance is not requested.

**Meeting was adjourned at 8:47 p.m.**