

MINUTES OF JUNE 4, 2018

The regular meeting of the Sussex County Board of Adjustment was held on Monday, June 4, 2018, 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 Dale Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. Bruce Mears, Ms. Ellen Magee, Mr. John Mills, and Mr. Brent Workman. Also in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Mrs. Jennifer Walls – Planning Manager and Ms. Christin Headley – Recording Secretary.

The Pledge of Allegiance was led by Mr. Callaway.

Motion by Mr. Mills, seconded by Mr. Mears, and carried unanimously to approve the revised agenda 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 case.

PUBLIC HEARINGS

Case No. 12147 – Robert & Ruth Burdekin seek variances from the front yard and side yard setbacks for existing structures (Sections 115-25 and 115-185 of the Sussex County Zoning Code). The property is located on the east side of Grant Ave., approximately 833 feet south of Lincoln Dr. 911 Address: 38791 Grant Ave., Selbyville. Zoning District: AR-1. Tax Map: 533-20.18-63.00

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of the Application or in opposition to the Application. The Applicants seek a variance of 3.6 feet from the five (5) feet side yard setback requirement for existing steps on the north side, a variance of 0.6 feet from the five (5) feet front yard setback requirement for an existing dwelling, a variance of 0.5 feet from the five (5) feet front yard setback requirement for an existing dwelling, a variance of 0.3 feet from the five (5) feet side yard setback requirement on the south side for an existing shed, and a variance of 0.8 feet from the five (5) feet front yard setback requirement for an existing shed.

Robert Burdekin was sworn in to testify about the Application. Manaen Robinson, Esquire, presented the Application on behalf of the Applicants.

Mr. Robinson stated that the Applicants purchased the property on March 15, 2018; that the property is located in Cape Windsor; that the survey presented at settlement showed the encroachments; that the property is a unique, small lot; that the Applicants have no intentions on adding onto the existing structures; that the property is unique because it is small; that the Applicants would have to incur significant expense to remove the structures; that the dwelling has been on the property since 1983; that the sheds have been on the property since 1999; that the existing structures cannot be maintained without a variance; that the property cannot otherwise be developed; that the variances are necessary to enable the reasonable use of the property; that the exceptional practical

difficulty was not created by the Applicants; that the variances will not alter the essential character of the neighborhood; that, like many other properties in the community, the shed is located in the front yard; and that the requests are the minimum variances needed to afford relief.

Mr. Burdekin affirmed the statements made by Mr. Robinson as true and correct.

Mr. Burdekin testified that there is about three to four feet from the property line to the edge of paving; that a portion of the rear yard is in the lagoon; and that the planter he owns is encroaching on the neighboring property.

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

Mr. Mears moved to approve Variance Application No. 12147 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 size and shape;
2. The variances are necessary to enable reasonable use of the property;
3. The exceptional practical difficulty has not been created by the Applicants because they purchased the property as is;
4. The variances will not alter the essential character of the neighborhood because there are similar variances in the neighborhood; and
5. The requested variances are the minimum variance necessary to afford relief.

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

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

Case No. 12148 – Edward & Christine Sochurek seek a variance from the front yard setback for a proposed structure (Sections 115-25, 115-182, and 115-185 of the Sussex County Zoning Code). The property is located on the north end of Central Park Cir., between Central Park Cir. and Falling Point Rd. 911 Address: 35655 Central Park Cir., Dagsboro. Zoning District: AR-1. Tax Map: 134-6.00-342.00

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of the Application and no correspondence in opposition to the Application. The Applicants seek a variance of 19.8 feet from the forty (40) feet front yard setback requirement along Falling Point Road for an existing garage.

Jan Edward Sochurek and Bob Brooks were sworn in testify about the Application and submitted exhibits for the Board to review.

Mr. Brooks testified that the house was set according to the homeowners association architectural review regulations; that the homeowners association requires the dwelling to be forty (40) feet from the front property line which is Central Park Circle; that the homeowners association deed restrictions state that the rear yard setback is twenty (20) feet from the rear property line; that Miller Lewis, Inc., staked out the placement for the buildings; that he never received a copy of the building permit; that there is no room on the Property to place the garage; that a large septic system limits the size of the building envelope; that the dwelling faces Central Park Circle; that there is no access from Falling Point Road; that there is about fifteen to twenty feet from the property line to the edge of paving of Falling Point Road.

Mrs. Walls stated that the property has frontage on three roads giving the property three front yards and that Sandy Landing Road is a front yard but considered a corner front yard.

Mr. Brooks testified that the garage has been finished; that he asked the Planning and Zoning department if he had to stop work; and that he filed for the variance the same day he found out he was in violation of the Zoning Code.

Mr. Sochurek testified that he had no idea the property was a through lot; that he relied on the builder to place the garage and the surveyor to stake the lot; that the garage presents no visibility concerns; and that trees line Sandy Landing Road.

Mr. Brooks testified that the Applicant purchased the lot based on the information provided by the Homeowners' Association.

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

Mr. Mills moved to approve Variance Application No. 12148 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 size, shape, and there being three road frontages;
2. The variances are necessary to enable reasonable use of the property;
3. The exceptional practical difficulty has not been created by the Applicants;
4. The Applicants relied on a builder and surveyor;
5. The variance will not alter the essential character of the neighborhood;
6. The requested variance is the minimum variance necessary to afford relief; and
7. The requested variance will not be detrimental to public welfare.

Motion by Mr. Mills, seconded by Ms. Magee, and carried unanimously that **a letter be sent to the surveyor and the Homeowners Association, and that the variance be granted for the reasons stated.** Motion carried 5 – 0.

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

Case No. 12149 – Glenville Hollow Farms seeks variances from the minimum road frontage requirement for a proposed minor subdivision (Section 115-25 of the Sussex County Zoning Code). The property is located on the east side of Conrail Rd., approximately 3,104 feet south of Hearn's Pond Rd. 911 Address: None Available. Zoning District: AR-1. Tax Map: 331-3.00-138.00

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of the Application or in opposition to the Application. The Applicant seeks a variance of 25.81 feet from the 150 feet minimum road frontage requirement for proposed Lot 1 and a variance of 32.11 feet from the 150 feet minimum road frontage requirement for proposed Lot 2.

Cynthia Yingling was sworn in to testify about the Application. Michael McGroerty, Esquire, presented the Application on behalf of the Applicant and submitted exhibits for the Board to review. The exhibits included a plot of the proposed subdivision and a picture.

Mr. McGroerty stated that the property is an irregular shape; that two homes interrupt the road frontage of the property; that the dotted lines on the survey show the path of the irrigation; that the Applicant wants to subdivide the property because the small pieces cannot be irrigated for farming; that the rest of the property is used for growing corn; that, since the Applicant cannot farm that area, the Applicant intends to divide and sell that portion of the property; that the subdivision makes the most economical sense; that the Applicant is retaining fifty (50) feet of the road frontage to continue to use as farm access; that there is a low point in the front of the property that is not being subdivided because it is so low; and that, when the Applicant purchased the property, two existing lots were already subdivided out of it.

Ms. Yingling testified that the Applicant needs the variance for economic reasons and the subdivision makes the most sense.

Mr. McGroerty stated that the property is an irregular shape; that the difficulty has not been created by the applicant; that the irregular shape of the property has created the difficulty; that the request is consistent with the neighborhood; that the property being subdivided is not practical to otherwise be developed or profitable to farm; that it is difficult to till and plant those areas due to the narrowness and the neighboring properties; that the variances will not alter the essential character of the neighborhood; that the variances are the minimum variances necessary to afford relief; and that the neighboring property owned by the Barr family is 124.8 feet wide.

Ms. Yingling affirmed the statements made by Mr. McGroerty as true and correct.

Ms. Yingling testified that she purchased the property about two years ago; that the Applicant had been farming the property even before it was purchased; that the neighboring homes have existed prior to the Applicant's purchase of the property; and that it is difficult to till the area due to the location of the house.

David Nolan was sworn in and testified that he owns the property to the north; that he is concerned about there being a development there; and that he is undecided on his stance on the Application.

Karen Andrews was sworn in and testified that she questions if there will be more homes built; that she questioned what a subdivision truly means; that she is undecided on her stance on the Application because she does not know what affect it will have on the neighborhood; that she bought her home in 1989; and that the existing parcels have been there for many years.

Gladys Robinson was sworn in and testified that she does not understand the process enough to speak on it.

Mr. Mills stated that, if the Applicant does away with the fifty (50) feet driveway, the Applicant will only need one variance for Lot 2.

Ms. Magee stated that the difficulty is being created by the Applicant with Lot 1; that a solution can be made to take away the variance for Lot 1; and that she understands the need for a variance for Lot 2.

Ms. Yingling testified that the fifty (50) feet driveway is the only vehicular access to the rear field and is an existing lane and that they need to keep the fifty (50) feet easement because it is the inlet and outlet for farm equipment; and that the portion of the remaining property closest to County Road 546 consists of lowlands and cannot be driven over.

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

Mr. Workman moved to approve Variance Application No. 12149 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique;
2. The variances are necessary to enable reasonable use of the property;
3. The variances will not alter the essential character of the neighborhood because the neighboring lot has less than 150 feet of road frontage; and
4. The requested variances are the minimum variances necessary to afford relief.

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

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

Case No. 12150 – KJR Holdings, LLC seeks a variance from the rear yard setback for a proposed structure (Section 115-82 of the Sussex County Zoning Code). The property is located on the north side of John J. Williams Hwy. (Rt. 24), approximately 933 feet east of Gravel Hill Rd. (Rt. 30). 911 Address: 29920 John J. Williams Hwy., Millsboro. Zoning District: C-1. Tax Map: 234-32.00-38.00

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of the Application or in opposition to the Application. The Applicant seeks a variance of 4.2 feet from the twenty (20) feet rear yard setback requirement for a proposed addition.

Kelly Racz was sworn in to testify about the Application.

Mr. Racz testified that he purchased the property in June 2015; that the property is commercially zoned and the area is commercially zoned; that 2 variances had already been granted for the existing structures; that the property is an odd and irregular shape; that the business is growing and there is a need for additional storage for inventory; that the proposed addition is an enclosure measuring 20 feet by 20 feet on already existing steps and landing; that the addition is to the rear of the building; that the neighboring properties are also zoned C-1 and they have no problems; that there are no issues with the neighbor in the rear; that the proposed addition cannot be seen from the road; that he assumed the addition would be closest to the side yard, which has a five (5) feet setback but he found out it is considered a rear yard; that there are 2 separate business on either side; that there is no other location where the addition could be placed because gates to the dumpster are located nearby; that the entrance to his business is in the center of the building; that the building was built in 1971; and that the septic field is located in the rear of the building so the addition could not be placed there either.

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

Mr. Mears moved to approve Variance Application No. 12150 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 shape in the rear;
2. The variance is needed for the addition;
3. The exceptional practical difficulty has not been created by the Applicant;
4. The variance will not alter the essential character of the neighborhood; and
5. The requested variance is the minimum variance necessary to afford relief.

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

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

Case No. 12151 – Albun, LLC seeks a special use exception for promotional activities as accessory uses to a speedway (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located on the south side of Speedway Rd. between Dupont Blvd. (Rt. 113) and Bethesda Rd (Rd. 326). 911 Address: 22206 Speedway Rd., Georgetown. Zoning District: AR-1. Tax Map: 133-2.00-22.00, 133-2.00-23.00, 133-2.00-24.00, & 133-2.00-24.01

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. The Applicant seeks a special use exception for promotional activities as accessory uses to a speedway.

Tim Willard, Esquire, was present on behalf of the Applicant, presented the Application, and submitted exhibits for the Board to review.

Mr. Willard stated that he is speaking on behalf of the tenant; that this special use exception has been approved over many years as approvals were granted in 1989, 2008, and 2013; that the property consists of 4 parcels; that a historic monument was recently dedicated on the property; that, in 1949, the property was used as a race track which is considered non-conforming; that charitable events are hosted on the property; that the most recent event hosted there was a fundraiser for Wounded Warrior Project; that the use of a race track has been in existence since 1949; that the racetrack is used in the spring and summer; that events include carnivals, the Boys & Girls Club, festivals, Chamber of Commerce events; circuses, and charitable activities; that all the accessory uses are a lesser impact than the race track; that the use will substantially effect adversely adjacent and neighboring properties; that a letter from John Minutoli was read into the record; that the existing fence has been improved; that a classic car event is a possibility; that events are infrequent; and that he could have the owner or tenant present at a future hearing.

Ms. Magee stated that she would like to know what has happened on the property other than racing that requires this request.

Mr. Sharp stated that, if the Board wishes, they can require Mr. Willard's client to submit a list of previous and proposed events on the property.

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

Motion by Ms. Magee, seconded by Mr. Mills, and carried unanimously that the **record be left open until June 18, 2018 and that the Application be placed first on the Agenda.** Motion carried 5 – 0.

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

Case No. 12152 – Michael J. Galasso seeks a variance from the front yard setback for a proposed structure (Section 115-34 of the Sussex County Zoning Code). The property is located on the west side of Maplewood Dr., approximately 500 feet south of Pinewood Rd. 911 Address: 14 Maplewood Dr., Lewes. Zoning District: MR. Tax Map: 234-11.00-325.00

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of the Application and no correspondence in opposition to the Application. The Applicant seeks a variance of 7.1 feet from the thirty (30) feet front yard setback requirement for a proposed porch

Michael Galasso and Terry Lane were sworn in to testify about the Application.

Mr. Lane testified that he is with Diamond State Contractors; that the property was purchased by the Applicant two years ago; that the front of the existing dwelling is about 30.9 feet from the property line and about 34.9 feet from Maplewood Drive; that the Applicant is proposing a porch measuring 20 feet by 8 feet; that both neighbors have a porch; that the addition will be consistent with the neighborhood; that the addition will add value to the property; that the previous owner placed the home within one foot of the setback, leaving no room for future additions; that the Applicant came here to retire; that, due to the existing owner having placed the home within one foot of the minimum setback to the front of the property line, there is no room for a future covered porch if desired making the property unique; that the Applicant was unaware of the situation; that the property cannot otherwise be developed; that there is less than a foot of setback left from where the house was placed thereby leaving no room for a covered porch on the front of the home; that the actual property line sets back away from the road quite a bit which would allow for a proposed porch to not be anywhere close to the road; that it is not being created by the Applicant because the owner purchased the home under the assumption that he had bought a double lot with plenty of front yard, not knowing that the home was at the minimum front setback where he had intended to have a front covered porch; that by adding a front porch to this home will not alter the essential character of the neighborhood; that other homes in this development have porches with similar characteristics; that the porch has been kept narrow yet presentable and suitable; that the staircase has been designed to the side in order to minimize the variance as much as possible; that a porch less than eight (8) feet wide would not be usable; that neighboring porches are close to the road and in similar spots; that the porch has not been built yet; that there is about four (4) feet from the edge of paving to the property line; and that the steps have been built to the side to limit the variance request.

Mr. Galasso testified that the dwelling was built in 2001.

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

Mr. Mears moved to approve Variance Application No. 12152 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique;

2. The variance is necessary to enable reasonable use of the property;
3. The exceptional practical difficulty has not been created by the Applicant;
4. The variance will not alter the essential character of the neighborhood;
5. There was no opposition to the variance request; and
6. The requested variance is the minimum variance necessary to afford relief.

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

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

Case No. 12154 – Victor Artuchov & Armine Hovhannisyan seek a variance from the maximum fence height requirement for a proposed structure (Section 115-185 of the Sussex County Zoning Code). The property is located on the northeast corner of the intersection of Lavinia St. and Sand Hill Rd. (Rd. 319). 911 Address: 15775 Lavinia St., Milton. Zoning District: AR-1. Tax Map: 235-20.00-13.06

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of the Application and no correspondence in opposition to the Application. The Applicants seek a variance of 2.5 feet from the 3.5 feet maximum fence height requirement for a proposed fence on a corner lot.

Victor Artuchov was sworn in to testify about the Application. John Sergovic, Esquire, presented the Application on behalf of the Applicant and submitted exhibits for the Board to review.

Mr. Sergovic stated that the property is unique because it is a corner lot; that there is a short angle between Lavinia Street and Sand Hill Road; that the Applicants have occupied the home since April of this year; that people would use the property as a turnaround; that they are proposing to place a fence within twenty (20) feet of the front yard to deter trespassing; that the exceptional practical difficulty was not created by the Applicants; that the property is heavily wooded; that the visibility of the corner has been heavily enhanced after being cleared; that the fence will be located between the two existing rows of trees; that the fence being proposed will be almost invisible in nature; that the proposed fence will be an open rail wrought iron fence; that the fence will keep their large dog in the yard as well; that the property cannot be properly developed or secured without a variance; that they are requesting a six (6) feet high fence to provide a barrier for the dog and a deterrent from trespassers; that the variance requested is the minimum variance necessary to afford relief; that there are no neighbor objections; and that they are awaiting the Board's approval to raise the fence.

Mr. Artuchov affirmed the statements made by Mr. Sergovic as true and correct. Mr. Artuchov testified that his dog is 4 feet tall.

Mr. Sergovic stated that there are a lot of joggers in the neighborhood.

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.

Ms. Magee moved to approve Variance Application No. 12154 for the requested variance based on the record made at the public hearing because the Applicants met all the criteria for granting a variance.

Motion by Ms. Magee, 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. Workman – yea, Mr. Mears – yea, Ms. Magee – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 12072 – Anthony W. Bailey seeks a special use exception for a garage / studio apartment and a variance from the maximum square footage for a garage / studio apartment for an existing structure (Sections 115-4, 115-23, and 115-210 of the Sussex County Zoning Code). The property is located on the north-west side of Pine Haven Dr., approximately 900 ft. east of the intersection of Pine Haven Dr. and Deep Branch Rd. 911 Address: 22606 Pine Haven Dr., Georgetown. Zoning District: AR-1. Tax Map: 234-8.00-28.00

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of the Application and two (2) letters in opposition to the Application. The letters of opposition were read into the record and stated concerns with traffic, safety, dust and travel down the lane, and business being operated on the property. The Applicant seeks a special use exception for a garage / studio apartment and a variance of 400 square feet from the 800 square feet maximum size for a garage / studio apartment. The garage / studio apartment measures 1,200 square feet.

Anthony W. Bailey and Douglas Catts were sworn in to testify about the Application.

Mr. Bailey testified that Pine Haven Drive is a crush and run drive; that the drive is maintained by 3 of the property owners; that his farmhand lived in a trailer on the property; that the agriculture building was built for farm use related to the raising of alpacas; that he was raising alpacas; that the farming use has since ceased due to market conditions; that he relocated the alpacas to another farm; that the agriculture building was converted to a residence for the farmhand; that the building consists of 1,200 square feet; that it is larger than the existing trailer which is only 490 square feet; that he wants to demolish the trailer as it is in disrepair; that there are only 2 residential units on the property; that there will be no additional traffic; that he disputes the argument raised by the opposition about traffic concerns; and that the septic was updated to accommodate both units.

Mrs. Walls stated that the Director made the decision that this case had to come before the Board.

Mr. Sharp stated that the property was being used as a farm but now it is not.

Mr. Bailey testified that there is a potential that the property will be used as a farm again in the future.

Mr. Catts testified that he is a tenant of a neighboring farm; that the Applicant has an onsite farmhand; that he is buying an adjacent property and plans to raise cattle on his property; that the property has horse stables, an agricultural building, a manufactured home, and a house that there are no horses on the property; that it is impossible to bring farm equipment back to the site due to the road; that he is in discussion with a neighbor about a farm road; and that the alpaca market crashed.

Mr. Bailey testified that he will have a dedicated parking space for the tenant of the unit; that the apartment will consist of 1,200 square feet; that the building has been erected and has been used as an apartment; that the only complaint from neighbors is in regards to dust from the private drive; and that he would not object to a condition of approval that the manufactured home be removed.

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

Mr. Mears moved to approve Special Use Exception / Variance Application No. 12172 for the requested special use exception and variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to the building already being there and no longer being used due to the collapse of the alpaca market;
2. The variance will not alter the essential character of the neighborhood;
3. The requested variance is the minimum variance necessary to afford relief; and
4. The use will not substantially affect adversely the uses of adjacent and neighboring properties.

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

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

Meeting was adjourned at 9:45 p.m.