

MINUTES OF MARCH 18, 2024

The regular meeting of the Sussex County Board of Adjustment was held on Monday, March 18, 2024, at 6:00 p.m. in the County Council Chambers, Sussex County Administration Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Jeffrey Chorman presiding. The Board members present were Dr. Kevin Carson, Mr. John T. Hastings, Mr. Jordan Warfel, Mr. John Williamson, and Mr. Jeffrey Chorman. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Ms. Jennifer Norwood – Planning and Zoning Manager, and Ms. Marina Truitt – Recording Secretary.

The Pledge of Allegiance was led by Mr. Chorman.

Motion by Dr. Carson, seconded by Mr. Hastings and carried unanimously to approve the agenda as amended to remove Case No. 12917 to the front of the agenda. Motion carried 5 – 0.

The vote by roll call; Mr. Williamson – yea, Mr. Hastings – yea, Mr. Warfel – yea, Dr. Carson – yea, and Mr. Chorman – yea.

Motion by Mr. Williamson, seconded by Mr. Warfel and carried unanimously to approve the Minutes for the January 22, 2024, meeting. Motion carried 5 – 0.

The vote by roll call; Dr. Carson – yea, Mr. Hastings – yea, Mr. Warfel – yea, Mr. Williamson – yea, and Mr. Chorman – yea.

Motion by Mr. Hastings, seconded by Dr. Carson and carried to approve the Findings of Facts for the January 22, 2024, meeting. Motion carried 5 – 0.

The vote by roll call; Mr. Warfel – yea, Mr. Williamson – yea, Dr. Carson – yea, Mr. Hastings – yea, and Mr. Chorman – yea.

PUBLIC HEARINGS

Case No. 12917 – Nathan S. Thompson seek variances from the front and side yard setback requirements for proposed and existing structures (Sections 115-25 of the Sussex County Zoning Code). The property is located on the south side of Virginia Avenue and east of Coastal Highway. 911 Address: 40134 Virginia Avenue, Fenwick Island. Zoning District: C-1. Tax Parcel: 134-23.20-102.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received a front yard average and that the previous variance requested was no longer needed for the front yard.

The Applicant requested to withdraw the Application.

Mr. Hastings moved to approve the Applicant's request to withdraw the Application for Case No. 12917.

Motion by Mr. Hastings, seconded by Dr. Carson, carried that the **application be withdrawn.** Motion carried 5-0.

The vote by roll call; Mr. Williamson – yea, Mr. Warfel – yea, Dr. Carson – yea, Mr. Hastings – yea, and Mr. Chorman – yea.

Case No. 12915 – Tina C. Werking seeks variances from the corner front setback and maximum fence height requirement for existing structures (Sections 115-34 of the Sussex County Zoning Code). The property is located North of Bauska Drive and East of West Riga Drive within the Ocean Way Estates Subdivision. 911 Address: 32813 Bauska Drive, Ocean View. Zoning District: MR. Tax Parcel: 134-13.00-737.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of the Application, four (4) letters in opposition of the Application, and two (2) mail returns. The Applicant is requesting a 2.5 foot variance from the 3.5 foot maximum height requirement for an existing fence and an 8.3 foot variance from the 15 foot corner front yard setback requirement for an existing shed.

Ms. Tina Werking was sworn in to give testimony for this application.

Ms. Werking testified that she applied for a fence permit May 17, 2023; that she received the permit and asked many questions to understand the process; that the fence was constructed after the pool was installed; that she did not know the fence was non-compliant until the final inspection was completed; that this was an honest mistake; that friends and family constructed and installed the fence and shed without the help of a contractor; that HOA approval was not necessary for a fence; that she spoke with the neighbors to the side of her property and they showed no concerns; that the fence does not interfere with the line of sight for oncoming traffic at the stop sign; that the fence was constructed out of cedar boards; that she has received compliments about the fence; and that the fence is 6 feet tall.

Mr. Sharp explained the variance requirements and the setback requirements.

Ms. Werking testified that it would be extremely cost prohibitive to move the fence and shed to bring them into compliance; that the shed is set on a crush and run base; and that, in order to move the shed, it would have to be deconstructed, the stone dug-up, moved and re-constructed.

Ms. Norwood stated that Bauska Drive is the front yard; there are, in fact, two (2) variances before them today, the height of the fence and shed location; that, if the fence was moved in farther off the property line, there would not be an issue with the fence height; that the setback requirements

are larger due to the property being a corner front instead of a side yard; that the Applicant is required to have a four (4) foot fence for their pool so they would need a variance for height where the fence stands now; that, when the fence permit was issued in May 2023, the permit department did not note the setbacks on her permit; that the permit was updated in October 2023 to correct the setbacks; and that the Applicant failed her final inspection in December 2023.

Ms. Werking testified that an updated fence permit with setbacks included was never sent to her; that the fence was built in June or July; that she has received no complaints about the structures; that the fence provides privacy for the pool; that there is no septic system on the property; that the shed can be moved; that the shed was built on-site; that the shed is not anchored in concrete; that the shed measures 8' x 12' and is a pre-fabricated shed; that she cannot get equipment to the property to move the shed; that the property has unique shape; that she purchased the property in August 2021; that the house was on the property at that time; that the well for the property is located in the back yard, restricting the placement of the shed; that there is a portion of the corner front yard which is unusable due to it lying within a flood zone; that she added the pool, hot tub, deck, shed, and fence; that she started work in May 2023; that the pool work was completed in June or July 2023; that the fence was installed thereafter; and that there are other 6 foot tall fences in the neighborhood.

Mr. Richard Braida was sworn in to give testimony in opposition to the Application.

Mr. Braida testified that he lives on East Riga Drive and is a member of the Oceanway Estates HOA; that he is speaking in opposition to the Application; that he is confused by the Applicant's permit that he pulled from online; that the confusion stems from what is considered to be the front versus corner front yard of the property; that he does not know of any other six (6) foot tall side yard fences in the community; that the Applicant's fence is not compatible with the rest of the neighborhood and it should be reduced to four (4) feet tall; that, because of the wooden construction, the Applicant should be able to modify it to meet the four (4) feet requested; that the lot is particularly unusual; that there is a 10' easement; that there is no approval needed to install fences in the community; and that he, along with the HOA, do not have any concerns about the placement of the shed.

The Board found that no one appeared in support of the Application and two (2) persons appeared in opposition to the Application.

Mr. Chorman closed the public hearing.

Mr. Warfel moved to approve the application Case No. 12915 with modifications for the variances, pending final written decision, for the following reasons:

Approval granted for the corner front yard setback requirement for the existing shed and a modification for a one (1) foot maximum height requirement variance for the existing fence.

1. The property is unique due to its unusual shape and being a corner front with increased setbacks;
2. Due to such physical conditions, there is no possibility of the property can be developed in strict conformity with the Sussex County Zoning Code and 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 represent the minimum variances necessary to afford relief.

As part of his motion, Mr. Warfel directed that the County refund the Applicant's application fee due to the missing information on the Applicant's first fence permit.

Motion by Mr. Warfel, seconded by Mr. Hastings, carried that the **variances be approved with modifications for the reasons stated.** Motion carried 4 – 1.

The vote by roll call; Mr. Williamson – nay, Dr. Carson – yea, Mr. Hastings – yea, Mr. Warfel – yea, and Mr. Chorman – yea.

Mr. Williamson noted that he believed the property was unique and that no modification was needed for approval.

RECESS

Case No. 12916 – Amar Sharma seeks a special use exception to retain a tourist home (Section 115-23 of the Sussex County Zoning Code). The property is located northeast of Locust Street and west of Poplar Street within the Woodland Heights Subdivision. 911 Address: 10127 Locust Street, Laurel. Zoning District: AR-1. Tax Parcel: 232-12.18-21.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support or opposition to the Application, and one (1) mail return. The Applicant is seeking a special use exception to retain a tourist home.

Mr. Amar Sharma was sworn in to give testimony for this application.

Mr. Sharp stated that there are two (2) prior temporary approvals in 2013 and 2019 but that the Board is not required to limit an approval, if granted, to a temporary use.

Mr. Sharma testified that the pool and deck have been removed from the property; that nothing else has changed on the property since the last hearing; that the house is 5,700 square feet; that there have been no complaints from the neighbors; that each of the six (6) rooms are rented out with a shared kitchen and six (6) parking spots; that, sometimes, he spends weekends at this property – usually 3 times per month; that the second building on the property is a storage garage; that he rents

the rooms full-time; that there are no cooking facilities within the individual rooms; that there are no plans to change anything on the property; that he has no plans to place a new pool; and that the area near the property is residential.

Ms. Norwood stated that this case does not fall under the five (5) year limit; and that the Board would not have to put a time limit on the case unless wanted to do so.

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

Mr. Chorman closed the public hearing.

Mr. Williamson moved to approve the application for Case No. 12916 for the requested special use exception, pending final written decision, for the following reasons:

1. The use will not substantially affect adversely the uses of adjacent and neighboring properties; and
2. That this is for an indefinite period of time.

Motion by Mr. Williamson, seconded by Dr. Carson, carried that the **special use exception be approved for the reasons stated.** Motion carried 4 – 1.

The vote by roll call; Mr. Warfel – yea, Mr. Hastings – nay, Dr. Carson – yea, Mr. Williamson – yea and Mr. Chorman – yea.

Mr. Hastings stated that he voted against the motion to approve because he felt that the approval should be limited to 5 years as was done previously.

Case No. 12918 – Juan Zamora and Teresa Conde seek variances from the front yard setback requirements for existing structures (Sections 115-25 of the Sussex County Zoning Code). The property is located on the southwest side of Gum Tree Road and south of Nine Foot Road. 911 Address: 26856 Gum Tree Road, Dagsboro. Zoning Districts: AR-1 / GR. Tax Parcel: 233-15.00-25.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support or opposition to the Application, and zero mail returns. The Applicants are requesting a 19 foot variance from the 40 foot front yard setback requirement for an existing porch and second floor porch, an 18.6 foot variance from the 40 foot front yard setback requirement for an existing porch and second floor porch, a 15.4 foot variance from the 40 foot front yard setback requirement for an existing dwelling and a 14.1 foot variance from the 40 foot front yard setback requirement for the existing dwelling.

Mr. Juan Octavio Caballero and Mr. Jeff Revel were sworn in to give testimony for this

application.

Mr. Revel testified that he is a friend of Mr. Caballero; that his wife's family previously owned and built the dwelling in 1941; that they were remodeling the house; that the structures are no closer to the road than the prior structures; that the porch is 4 feet deep; that there is 39.5 feet from the house to the edge of the paving of the road; that the plans originally had a wrap-around porch but they reduced it to just the smaller front porch; which is what was constructed; that the porch is replacing the stoop that was originally there; that the front porch is about 36 feet from the edge of pavement; that the house is in the same footprint as the previous house, with the addition of a second floor; that they had building permits and failed the final inspection resulting in the need for a variance; that Mr. Caballero pulled the permits and built the porch himself; that there have been no complaints from any neighbors; and that there are updated utilities and a septic drain field in the rear corner of the property.

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

Mr. Chorman closed the public hearing.

Mr. Hastings moved to approve the application for Case No. 12918 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to the original footprint being built before the Sussex County Zoning Code was established;
2. The exceptional practical difficulty was not created by the Applicants;
3. The variances will not alter the essential character of the neighborhood; and
4. The variances represent the minimum variances necessary to afford relief.

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

The vote by roll call; Mr. Williamson – yea, Mr. Dr. Carson – yea, Mr. Warfel – yea, Mr. Hastings – yea and Mr. Chorman – yea.

ADDITIONAL BUSINESS

Meeting adjourned at 7:02 p.m.