

## MINUTES OF MARCH 18, 2019

The regular meeting of the Sussex County Board of Adjustment was held on Monday, March 18, 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. Callaway, seconded by Mr. Workman, and carried unanimously to approve the revised agenda. Motion carried 5 – 0.

Mr. Williamson abstained from voting on previous Minutes and Findings of Fact as he was not present at either meeting.

Motion by Mr. Workman, seconded by Mr. Callaway, and carried unanimously to approve the Minutes and Findings of Facts for February 4, 2019. Motion carried 4 – 0.

Motion by Mr. Callaway, seconded by Mr. Mills, and carried unanimously to approve the Minutes for February 18, 2019. Motion carried 4 – 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. 12270 – Mark & Yvette Lewis** seek a variance from the front yard setback requirements for a proposed dwelling (Section 115-34 of the Sussex County Zoning Code). The property is located on the west side of Oyster Shell Cove, approximately 224 ft. south of Bethany Loop Ln. in the Salt Pond subdivision. Address: 205 Oyster Shell Cove, Bethany Beach. Zoning District: MR - RPC. Tax Parcel: 134-13.00-1751.00

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received no correspondence in support of and two letters in opposition to the Application and one mail return. The Applicant is seeking a variance of 7 ft. from the required 30 ft. front yard setback for a proposed dwelling.

The Board found that the Applicant was not present.

Motion by Mr. Magee, seconded by Mr. Callaway, and carried unanimously that **Case No. 12270 be moved to the end of the agenda.** Motion carried 5 – 0.

**Case No. 12271 – Tanya Randolph** seeks a special use exception to operate a day care center (Sections 115-23 & 115-210 of the Sussex County Zoning Code). The property is located on the east side of Oak Rd., approximately 0.5 miles north of Rifle Range Rd. 911 Address: 18307 Oak Rd., Bridgeville. Zoning District: AR-1. Tax Parcel: 430-16.00-32.08

Ms. DeVore presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. The Applicant is requesting a special use exception to enable a proposed increase in the number of children at a day care center, up to nine in total.

Tanya Randolph was sworn in to give testimony about the Application. Ms. Randolph testified that she has operated a day care center for nine years at this location; that she has operated a day care center for a total of 19 years including 10 years at a different location; that she seeks increase the number of children served at the facility; that she is operating at a level one but needs zoning approval to operate at a level two; that her property is not fenced but the house is 125 feet from the road; that the children are supervised when playing outdoors; that there are no complaints from neighbors; that the current facility serves 6 children and she proposes to serve 9 children; and that the facility will not substantially affect adversely the uses of adjacent and neighboring properties.

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

Mr. Callaway moved to approve Special Use Exception Application No. 12271 as this day care center has been in operation for a number of years with no complaints, therefore, it will not substantially affect adversely the uses of adjacent and neighboring properties

Motion by Mr. Callaway, seconded by Mr. Workman, and carried that the **special use exception 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. 12272 – Patrick E. & Jennifer A. Patterson** seek a variance from the maximum fence height requirement for a proposed fence (Sections 115-34, 115-182, and 115-185 of the Sussex County Zoning Code). The property is located on the east side of Old Mill Rd. and the west side of Naomi Dr. approximately 140 ft. south of Chad Pl. in the White Creek Manor subdivision. 911 Address: 121 Naomi Dr., Ocean View. Zoning District: MR. Tax Parcel: 134-12.00-1483.00

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 Applicants are requesting a 1.5 ft variance from the required 3.5 ft fence height for a proposed fence in the front yard of a through lot.

Jennifer Patterson and Patrick Patterson were sworn in to give testimony.

Mr. Patterson testified that the request is for a variance for fence height; that all the neighbors have fences; that bikers and pedestrians cut through the neighborhood; that DelDOT denied an entrance off Old Mill Road; that, since there is no fence on this property, people funnel through their property; that other neighbors have through lots and obtained variances for their fences; that the property is a through lot and has two front yards; and that the fence will be placed on what the Applicant considers to be his rear yard.

Mrs. Patterson testified that the property is unique because it is a through lot and backs up to a busy county road; that the fence will be used for privacy; that it cannot otherwise be developed to allow for privacy without the variance; that this practical difficulty was not created by the applicant as they purchased the property without knowing that it was considered to have two front yards; that the fence will not alter the essential character of the neighborhood as there are fences on neighboring properties; that a fence which would comply with the fence height requirement would not provide adequate privacy; and that it is the minimum amount to afford relief and allow for privacy.

Mr. Patterson testified that the fence will be a cedar fence; that there is approximately 25 feet from the property line to the edge of paving of Old Mill Road; and that the fence will be located a similar distance from the road as other fences in the area.

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

Ms. Magee moved to approve Variance Application No. 12272 as the Applicant has met all five standards for granting a variance and it does create a hardship when the property fronts on both sides.

Motion by Ms. Magee, seconded by Mr. Callaway, and carried unanimously that the **variance 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 – yes, and Mr. Callaway – yea.

**Case No. 12273 – John Palita** seeks variances from the side yard setback requirements for existing structures. (Sections 115-42 and 115-183 of the Sussex County Zoning Code). The property is located on the east side of Bethany Dr., approximately 830 ft. south of Double Bridges Rd. 911 Address: 34717 Bethany Dr., Frankford. Zoning District: GR. Tax Parcel: 134-19.00-336.00

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received no correspondence in support of and one letter in opposition to the Application and zero mail returns. The Applicant is requesting 0.8 ft. and 0.7 ft. variance from the side yard setback to lot No.41 for an existing landing. The applicant is also requesting a 4.1 ft. and a 3.8 ft. variance for the side

yard setback to lot No. 43 for an existing deck.

John Palita was sworn in to give testimony about the Application.

Mr. Palita testified that the property is unique as it is a small lot consisting of only 6,000 square feet; that the property is long and narrow; that the uniqueness of the lot makes it difficult to fit within the setbacks; that, originally, the plan was to put the deck on the front of the house but that would affect his neighbors ability to gain access to their property; that the deck cannot be placed on the rear of the dwelling as it all swamp and standing water; that the landing is 10 feet tall; that the landing needed to be wider to provide safe access to the home; that he did not create the exceptional practical difficult as he did not create the lot; that he did get the permit but had a contractor build the steps and deck; that the contractor did not want to apply for the permit; that the contractor told Mr. Palita that the deck could be built right up to the property line as it would not have a roof; that other houses in the neighborhood have decks; that the house was constructed within the building envelope; that the deck is wide enough to allow for seating at a picnic table; that the Applicant kept the deck back one foot from the property line; that halfway through the project the contractor went to jail for fraud; that the Applicant and his friend are now trying to complete the project; that the property is in a flood zone and the house has been elevated; that the neighbor to Lot 43 has limited access due to the location of a telephone pole and water; that it will not alter the essential character of the neighborhood as there are decks on neighboring properties; that it is the minimum requested to allow reasonable use of the deck; that there is a sliding glass door to the house; and that the neighbor wants the deck at least 3 feet from the property line but he cannot do that without major changes to the footers and it would be difficult to reasonably use the deck if it was that small.

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

Mr. Callaway moved to approve Application No. 12273 for the requested variances as the Applicant has met the standards for granting the variances.

Motion by Mr. Callaway, seconded by Mr. Workman, and carried unanimously 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 and Mr. Callaway – yea.

**Case No. 12275 – Beatrice Oliver** seeks variances from the front yard setback and maximum fence height requirement for existing structures (Sections 115-25, 115-182, and 115-185 of the Sussex County Zoning Code). The property is a through lot located at the southeast corner of Cave Neck Rd. and Sweetbriar Rd. 911 Address: 16891 Sweetbriar Rd., Lewes. Zoning District: AR-1. Tax Parcel: 235-22.00-14.00

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 zero mail returns. The Applicant is requesting the following variances:

- 18 ft. from the required 40 ft. front yard setback to Cave Neck Road for existing steps.
- 15 ft. and 11 ft. from the required 40 ft front yard setback from Sweetbriar Road for a deck and steps.
- 38.9 ft. and 35.3 ft. from the required 40 ft. front yard setback from Sweetbriar Road for an existing gazebo.
- 2.5 ft. from the required 3.5 ft. boundary height for a fence in the front yard setback on a through lot.

Mr. Whitehouse stated that a variance is not required for the garage as a certificate of occupancy was issued and this can be remedied with the administrative corrective process.

Kevin Smith and Beatrice Oliver were sworn in to give testimony.

Mr. Smith testified that the original request was for the fence after a complaint was made to the County; that, when inspecting the fence, it came to the Applicant's attention that other variances were necessary to bring the property into compliance; that a variance (Case No. 10726) was granted for the house in 2010 but the steps and deck were not included in the request at that time; that the survey presented in 2010 showed the steps and deck; that a building permit was issued for the deck; that the property is unique as it is a pie-shaped lot and is considered a through lot with two front yards; and that the deck was constructed so as not to protrude past the corner of the house.

Ms. Oliver testified that the deck was built 4-5 years ago by Byrd Construction.

Mr. Smith testified that the gazebo has been on the property for 10 years and was on the property when the garage was built but was moved after the garage was constructed; that existing sheds were removed when the garage was built; that the gazebo could be moved but, because of the shape of the property, it would need a variance wherever it is placed on the property; that the Applicant prefers to leave the gazebo in its existing location; that the Applicant retained a contractor to build the fence; and that the fence is a 6 feet tall vinyl fence.

Ms. Oliver testified that she hired Home Depot to apply for the permit and install the fence; and that she asked Home Depot to attend this hearing but the installer is no longer with Home Depot.

Mr. Smith testified that the property is unique as it is located at the intersection of 2 roads; that the property is subject to 2, 40 feet front yard setbacks; that the house received variance approval; that the property cannot otherwise be developed; that the variances are necessary to keep the structures; that the fence is on the side yard property line to provide privacy for the Applicant

and to identify the boundary line; that the neighbor stores unsightly materials; that the need for the variance was not created by the Applicant; that it cannot otherwise be developed and does not impede vision of approaching traffic; that the lot was created prior to the Sussex County Zoning Code; that it will not alter the essential character of the neighborhood as it has been in place for a number of years; that the fence upgrades the aesthetics of the property; that the fence has been on the property since May 2015; that the variances are the minimum variances to afford relief; that the only complaint was about the fence; that the fence does not block views of the intersection; that there is approximately 7-8 ft. between property line and the edge of pavement; and that there is a small shoulder off the road as well.

Ms. Oliver testified the septic in the front of the house and the well is to the side of the house; that the well and septic further limit the buildable area of the property; and that there have been no complaints from neighbors

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

Mr. Callaway moved to approve Application No. 12275 for the requested variances as the Applicant has met the standards for granting the variances.

Motion by Mr. Callaway, seconded by Mr. Workman, and carried unanimously 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 and Mr. Callaway – yea.

**Case No. 12276 – Gary L. Conaway, LLC** seeks variances from the front yard setback and side yard setback requirements for existing and proposed structures. (Sections 115-20 and 115-25 of the Sussex County Zoning Code). The property is located on the northeast side of E. Piney Grove Rd., approximately 511 ft. northwest of Governor Stockley Rd. 911 Address: 22358 E. Piney Grove Rd., Georgetown. Zoning District: AR-1. Tax Parcel: 133-10.00-9.02

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:

- 13.4 ft. from the 50 ft. side yard setback requirement on the southeast side for an existing chicken house.
- 1.3 ft. from the required 50 ft. side yard setback requirement on the southwest side for an existing chicken house.
- 0.3 ft. from the required front yard setback for an existing chicken house.

- 50 ft. from the required 50 ft. side yard setback on the west side for an existing manure shed.
- 10.41 ft. from the required 40 ft. front yard requirement for a proposed solar panel foundation.
- 14.75 ft. from the required 40 ft. front yard setback for a proposed solar array.

Mr. Mills recused himself and left Council Chambers. Mr. Callaway presided for this case.

Gary Conaway was sworn in to testify. Shannon Carmean Burton, Esquire presented the Application on behalf of the Applicant.

Ms. Carmean-Burton referred to the exhibit booklets which had been distributed to Board members prior to this meeting. Ms. Carmean-Burton stated that the Applicant wishes to make energy efficient improvements to his existing agriculture operations by installing a solar array on the property; that the variances are for the solar array and existing structures on the lot; that the Applicant will be applying for a grant from USDA to help off-set the cost of these improvements; that the property is an irregular shaped lot making it unique; that it consists of approximately 5 acres of land and is used for the existing poultry operation; that the solar array can only be installed in the front of the property because the connection point is placed there and the efficiency would be lost if it were to be moved; that the roofs of the chicken houses are not structurally sound to take the weight of the solar array; that grant requirements state that the solar panels must be on the property which is benefiting from it and this is the only physical location on the property that will work; that the exceptional practical difficulty is due to the uniqueness of the property; that the property cannot be developed in strict conformity with Sussex County Code without the requested variances; that the variances are necessary to enable the reasonable use of the property; that the non-conforming chicken houses and manure shed cannot be relocated; that the need for the variances was not created by the Applicant as two of the poultry houses have been in place since 1983, the third since 1986 and the manure shed in 1992; that these variances will not alter the essential character of the neighborhood or be detrimental to the public welfare; that the existing improvements have been in place for more than 26 years; that the Applicant and family members own most of the surrounding properties; and the requested variances represent the minimum variances to afford relief.

Mr. Conaway affirmed the statements made by Ms. Carmean Burton as true and correct.

Allen Hazzard was sworn in to testify about the Application. Mr. Hazzard, from Solaire, LLC, testified that the solar panels will be placed on the property facing due south; that, if the panels were placed on the rear of the property, they would be shaded by the chicken houses but would also cause a setback issue.

Mr. Conaway testified that there no gap between the property line and edge of paving on East Piney Grove Rd.

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

Ms. Magee moved to approve Variance Application No. 12276 as the Applicant has met all the standards to grant a variance.

Motion by Ms. Magee, seconded by Mr. Williamson, and carried unanimously that the **variances be granted for the reasons stated**. Motion carried 4 – 0.

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

Mr. Mills returned to the Chambers.

**Case No. 12277 – Richard Good** seeks a variance from the maximum fence height requirement for an existing fence (Sections 115-34, 115-182, and 115-184 of the Sussex County Zoning Code). The property is located on the southwest corner of Flint Ct. and Indian Hill Ln. in the Murrays Haven subdivision. 911 Address: 1 Flint Ct., Ocean View. Zoning District: MR. Tax Parcel: 134-12.00-1587.00

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 four mail returns. The Applicant is requesting a 1.5 ft. variance from the required 3.5 ft. fence height requirement for an existing fence along Indian Hill Lane and Flint Court.

Richard Good and William Ruppert were sworn in to give testimony. Mr. Good submitted exhibits to the Board showing a drawing of the property and photographs.

Mr. Good testified that he and his wife purchased the home last year; that they purchased a single-family house; that they have two German shepherd dogs; that a fence is necessary for the safety of the dogs as well as the community; that the HOA gave permission for a 5 ft. tall fence to be placed on the property; that the dogs can clear a fence measuring 4 feet tall; that they hired a licensed fence company to install the fence; that the property is unique because it has two front yards, Flint Court and Indian Hill Lane; that Flint Court is considered the front yard; that Indian Hill Lane is the main road in the development and has car, pedestrian, and bike traffic; that the height of the fence keeps the dogs from seeing Indian Hill Lane; that it could not be developed otherwise as that has the largest area of open space for the dogs; that Flint Court has a cul-de-sac and is not a busy street; that it will not affect the visibility for the neighbors and will not alter the essential character of the neighborhood; that there have been no complaints from neighbors; and that it is the minimum variance requested to afford relief.

Mr. Ruppert testified that he applied for a permit after the fence was installed; and that this is not his usual practice but due to impending bad weather he built the fence prior to getting the permit.



Robert Allen was sworn in to give testimony in support of the Application.

Mr. Allen testified that he is the president of the HOA; that the fence was approved by the HOA; that Mr. Good had to get approval from his immediate neighbors; that he spoke with neighbors and they said there are no visibility concerns; and that he is aware that County regulations supersede HOA rules.

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

Ms. Magee stated that she believes that Mr. Ruppert's presence at this hearing show that it is not common practice for him to disregard Sussex County regulations.

Ms. Magee moved to approve Variance Application No. 12277 as the Applicant has met all the criteria for granting a variance.

Motion by Ms. Magee, seconded by Mr. Callaway, and carried unanimously that the **variance 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. 12284 – Brian & Dolores Cascio** seek a variance from the rear yard setback for a proposed structure (Sections 115-42 & 115-183 of the Sussex County Zoning Code). The property is located on the southwest side of Sunflower Blvd. approximately 439 ft. west of Moonbeam Way within the Americana Bayside Phase 8 Subdivision. 911 Address: 36308 Sunflower Blvd. Selbyville. Zoning District: MR-RPC. Tax Parcel: 533-19.00-1117.00

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. The Applicant is requesting a 5.9 ft. variance and a 6.5 ft. variance from the required 10 ft. rear yard setback for a proposed screen porch.

Brian Cascio and Dolores Cascio were sworn in to give testimony.

Mrs. Cascio testified they purchased the home in Americana Bayside in 2006; that, at that time, they decided not to add a porch or deck as it was too costly; that the HOA has not given permission because of the size of the lot; that the Applicants want a screen porch because they back up to a storm water pond; that they want to enjoy the outdoors without the annoyance of bugs; that the property is unique because of the lot size; that it is a duplex lot zoned MR-RPC which backs up to the water; and that they could have built a deck.

Mr. Cascio testified that there is 38 ft. from the dwelling to the pond; that, due to the small lot, if they were to build the porch to within County Code, it could only be 6 ft. deep; that the proposed porch will be 12 feet deep; that the HOA will have to approve the porch; that it would not alter the essential character of the neighborhood as there are many other screened porches within the development; that most lots have a porch and some porches are 20 feet deep; that many of the other porches go all the way to the pond; that, if this variance request is approved, there will still be 26 ft. to the pond; that the neighbor on the other side of the duplex has no objection; and that the variance will not impact the neighborhood.

Mrs. Cascio testified that the neighbor on the south is concerned that he will lose some of his view of the pond and there is nowhere else on the Property to put a screened in porch; that this practical difficulty was not caused by the Applicants; that the sales representative said that they would be able to add a deck or porch at a later date; that it will not alter the essential character of the neighborhood as there are other screened porches in the community; and this is the minimum request to allow for wheelchair access in the future.

Mr. Cascio testified that the current builder, Schell Homes, recommends at least a 12 ft. deep porch on the homes being built currently; and this will be the full-time retirement home within the next few years.

Henry Chmura was sworn in to give testimony in opposition to the Application.

Mr. Chmura testified that he owns the home to the south of the Applicant; that he paid for a premium lot and is concerned that, by losing some of the view, it will affect the value of his investment; and that he is not aware of any screen porches that encroach into setbacks in his neighborhood.

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

Ms. Magee moved to deny Variance Application No. 12284 as there are no other porches that encroach into setbacks; the proposed porch is out of character with neighboring properties; the exceptional practical difficulty has been created by the Applicants; and the Applicants do not meet all the standards.

Motion by Ms. Magee, seconded by Mr. Workman, and carried unanimously that the **variances be denied 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. 12270 – Mark & Yvette Lewis** seek a variance from the front yard setback requirements for a proposed dwelling (Section 115-34 of the Sussex County Zoning Code). The property is located on the west side of Oyster Shell Cove, approximately 224 ft. south of Bethany Loop Ln. in the Salt Pond subdivision. Address: 205 Oyster Shell Cove, Bethany Beach. Zoning District: MR - RPC. Tax Parcel: 134-13.00-1751.00

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received no correspondence in support of and two letters in opposition to the Application and one mail return. The Applicant is seeking a variance of 7 ft. from the required 30 ft. front yard setback for a proposed dwelling. Mr. Whitehouse and Ms. Lepore stated that the Applicant was notified of the hearing.

The Board found that the Applicant was not present.

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

Mr. Sharp stated that, per Sussex County Code § 115-208G, “[a]ny applicant or appellant to the Board who fails to appear, or appear by agent, for a hearing before the Board shall be considered to have withdrawn its application or appeal. Whenever an applicant or appellant fails to withdraw an application or appeal as provided in Subsection **F** hereof or fails to appear, or appear by agent, for a hearing before the Board, an application or appeal substantially similar shall not be reconsidered sooner than one year after the previous failure to withdraw or failure to appear.”

Motion by Ms. Magee, seconded by Mr. Callaway, and carried unanimously that **Case No. 12270 be denied for lack of representation.** 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.

Mr. Mills stated that he would like to see additional business on a future agenda.

Ms. Magee stated that she would like to discuss the subpoena process at a future meeting

**Meeting was adjourned at 8:51 p.m.**