

MINUTES OF MARCH 2, 2020

The regular meeting of the Sussex County Board of Adjustment was held on Monday, March 2, 2020, at 6:00 p.m. in the County Council Chambers, 2 The Circle, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chair Ellen Magee presiding. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, 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, Lauren DeVore – Planner III and Ms. Ann Lepore – Recording Secretary.

The Pledge of Allegiance was led by Ms. Magee.

Motion by Dr. Carson, seconded by Mr. Chorman, and carried to approve the agenda. Motion carried 5 – 0.

Motion by Mr. Williamson, seconded by Dr. Carson, and carried unanimously to approve the Minutes for the January 6, 2020, meeting. Motion carried 5 – 0.

Motion by Mr. Chorman, seconded by Mr. Williamson, and carried to approve the Findings of Facts for the January 6, 2020, 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.

OLD BUSINESS

Case No. 12404 – Douglas Bates seeks variances from the side yard setback and rear yard setback requirements for a proposed and existing structures (Sections 115-42, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located on the east side of Robinhood Loop within the Sherwood Forest North subdivision. 911 Address: 32342 Robinhood Loop, Millsboro. Zoning District: GR. Tax Parcel: 234-23.00-198.00

Mr. Whitehouse presented the case which was previously left open for the limited purpose of allowing the Applicant to submit information from the Department of Natural Resources regarding the location of the septic system. A drawing was submitted by McMullen Septic Service, Inc. showing the location of the septic system and drain field and was distributed to Board members prior to the meeting.

The Board discussed the case.

Dr. Carson expressed concern about driving over the septic drain field to reach the new garage.

Mr. Chorman and Mr. Workman expressed concern that the proposed garage was too large

for the parcel.

Mr. Whitehouse stated that a certificate of occupancy was issued for an accessory structure on the property in 1985, and that, if the Applicant can show that it was for the existing garage, then a variance would not be necessary as the garage would be subject to the administrative corrective process.

Dr. Carson moved to deny Case No. 12404 for the variances as the Applicant has created the exceptional practical difficulty.

Motion by Dr. Carson, seconded by Mr. Williamson, carried that the **variances be denied for the reasons stated.** Motion carried 3 – 2.

The vote by roll call; Mr. Workman – nay, Mr. Williamson – yea, Ms. Magee – yea, Dr. Carson – yea, and Mr. Chorman - nay.

Case No. 12415 – Mary C. Harry-Wolf seek variances from the rear yard setback and side yard setback requirements for existing and proposed structures (Sections 115-25, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located on the northwest side of Anchor Watch Loop within the Marina at Peppers Creek subdivision. 911 Address: 31192 Anchor Watch Loop, Dagsboro. Zoning District: AR-1. Tax Parcel: 233-7.00-228.00

Mr. Whitehouse presented the case which was tabled at the Board's meeting on February 17, 2020.

The Board held a brief discussion.

Mr. Workman stated that he believes the shed in the rear yard can be moved off the rear property line.

Mr. Chorman moved to approve Case No. 12415 for the following variances and for the following reasons:

- 2 ft. from the required 10 ft. rear yard setback for a proposed sunroom.
- 2 ft. from the required 10 ft. rear yard setback for steps to the proposed sunroom.
- 1.25 ft. from the required 5 ft. side yard setback for the relocation of an existing shed.
- 3 ft. from the required 5 ft. rear yard setback for the shed on the northwest of the property.
- 3 ft. from the required 5 ft. side yard setback for the shed on the northwest of the property.

- That the variances will not affect the essential character of the neighborhood as there are other sheds in the development.
- That the exceptional practical difficulty has not been created by the Applicants.
- That the variances are necessary to allow Mr. Wolf the full use of his property.

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

The vote by roll call; Mr. Workman – yea, Mr. Williamson – yea, Ms. Magee – yea, Dr. Carson – yea, and Mr. Chorman – yea.

Case No. 12416 – Jessica F. Peake seeks variances from the front yard setback requirements for proposed structures, the landscape buffer requirement in the Combined Highway Corridor Overlay Zone (CHCOZ), and from the number of required parking spaces. (Sections 115-82, 115-162, 115-182 and 115-194.1 of the Sussex County Zoning Code). The property is located on the east side of Coastal Hwy. (Rt. 1) approximately 300 ft. south of Jefferson Bridge Rd. 911 Address: 32967 Coastal Highway, Bethany Beach. Zoning District: C-1. Tax Parcel: 134-17.11-40.00

Mr. Whitehouse presented the case, which was left open at the Board's meeting on February 17, 2020 and stated that additional letters of support and a new site plan have been submitted and copies were distributed to Board members.

Mackenzie Peet, Esquire, presented the Application on behalf of the Applicant. Nick Geracimos, Michael O'Neill, and Jack Burbage were sworn in to testify about the Application. Ms. Peet submitted a number of exhibits into the record, an executed lease for shared parking; exhibits showing area shots of the area which delineate access points, sidewalks, and parking; pictures of parking signs on a nearby property and at another mini-golf location owned by Mr. Geracimos; pictures of the crosswalks on Route 1; pictures of bicycle racks on an adjacent property; pictures of on-site parking at Mickey's Family Crab House; pictures of the shared parking on the Holiday Inn Express property; a site plan of the Holiday Inn Express showing 143 parking spaces; and additional letters of support.

Ms. Peet stated that the Application is for three variances – a variance from the front yard setback requirement, a variance from the landscaped buffer in the Combined Highway Corridor Overlay Zone (CHCOZ) and a variance for a reduction in parking spaces.

Ms. Peet stated that Mr. Burbage owns the neighboring property; that the Applicant has a similar arrangement in Ocean City with a hotel and restaurant; that the request has been reduced from the front yard variance and the CHCOZ variance; that she would address the concerns raised by Board members at the meeting on February 17, 2020; that the original front yard variance has been changed, instead of a 55 ft. variance from the required 60 ft. front yard setback, the Applicant is seeking a 45 ft. variance; that the Applicant has reduced the size of the golf course; that instead of a 15 ft. variance

from the required 20 ft. landscaped buffer in the CHCOZ, the Applicant is seeking a 5 ft. variance; that the request for reduced parking is not a request for exemption but just a reduction; that the Applicant has provided for a shared use sidewalk should it be required by DelDOT; that the Applicant will address the entrance from Route 1 with DelDOT; that the entrance exists but there is no curbing; that DelDOT requires a commercial entrance and they are working with DelDOT on that requirement; that crepe myrtles will be planted in the buffer as they are multi-stemmed and will act as a stronger barrier and a greater visual screen around the property; that the billboard will remain on the site and will not affect sight lines; that a ten-year lease has been executed with the owner of the Holiday Inn Express to allow for twelve parking spaces for the mini-golf course; that the hotel is currently under parked; that the hotel has 121 parking spaces but only 100 rooms; that this will allow for a total of eighteen parking spaces, six onsite and twelve at the adjacent Holiday Inn; that the parking spaces at the hotel will have signs designating the parking for the mini-golf course; that violators risk having their vehicles towed; that spaces for bike racks will also be provided; that the Applicant has similar shared parking agreements in Ocean City where he only has 9 spaces; that the Applicant believes he only needs 18 spaces; that Hickman Plaza is inaccessible due to the stormwater pond; and that there are 2 ways to access the site – from Route 1 and from Jefferson Bridge Road.

Mr. Geracimos affirmed the statements made by Ms. Peet as true and correct.

Ms. Peet stated that there is an informal agreement for shared parking with Mickey's Crab House for six spaces if needed; that Mickey's Crab House has 14 spaces; that the Applicant is working on a stormwater management plan, and will be improving the stormwater conditions on the site as there will be more permeable surface; and that the Applicant also has to go to the Planning & Zoning Commission for approval.

Mr. Geracimos testified that there are 2 employees at the golf course; and that parking has not been an issue at other locations

Mr. Williamson noted that there a lot of traffic in the area.

Mr. Burbage testified that this amenity will be a positive thing for Bethany; that there is ample parking on the Holiday Inn site which is owned by him; that he rarely sees the Holiday Inn parking lot full; that he expects most of the traffic to the miniature golf course will be either by bicycle or on foot from the local hotels and the Sea Colony development; and that he asks for the Board's support of this application.

Brenton Archut was sworn in to give testimony in opposition the Application.

Mr. Archut testified that he and his mother own property on both sides of Coastal Highway which includes the Hickman Plaza south of the subject property; that his property includes the location of the Cottage Café and is within walking distance of the Applicant's site; that he is concerned about the parking variances; that available parking is a premium in this area; that they have had to hire

parking monitors to make sure that the people using their services have available parking; that the on-street parking in this area is almost non-existent; that there is no public transportation in this area; that he has concerns that the Holiday Inn with 100 rooms should have 150 parking spaces per Sussex County Code; that he has concerns that patrons of the golf course will use their parking spaces; that he has seen the Holiday Inn Express lot full of cars; that, while many people walk or bike in the area, there is still a lot of vehicle traffic; that the number of parking spaces allotted will not be enough; and that he has no issue with the variances for the front yard setback or the CHCOZ buffer area.

Ms. Peet stated that there are 143 parking spaces for the Holiday Inn Express; that there is no proposal to use the Hickman's Plaza parking; that she admits that Ocean City is a different animal; that she believes many patrons will walk to the site; that 18 spaces are sufficient; that the golf course will be 20 feet from the highway; that Sea Shell Shop is 7 feet from Route 1; that the Applicant has other golf courses which are closer to the road; that the liquor store had no lined parking spaces; and that she is unsure how many spaces were on the site.

Mr. Geracimos testified that he has 18 spaces at 4 other locations – 3 of which are in Ocean City; that the parking lot is rarely full; that there is lots of bikers to his site in Fenwick and he had to double the size of his bike racks to accommodate the bikers; that the trees and fence will separate the golf course from Route 1; and that it is rare that balls leave the site.

Ms. Peet stated that the Property has a unique shape; that the Property cannot be developed in strict conformity with the Sussex County Zoning Code; that the exceptional practical difficulty was not created by the Applicant; that the shape of the Property was created by a prior owner; that the variances will not alter the essential character of the neighborhood; that the requests are the least modifications of the regulations at issue; that the use is seasonal; and that the Applicant will use indigenous landscaping.

The Board found that one person appeared in support of the Application and two persons appeared in opposition to the Application.

Mr. Williamson moved to deny Case No. 12416 for the variances as the Applicant has created the exceptional practical difficulty, that the property is effectively a clean slate once the existing building is removed, that the variances sought are too much, that, while it may not alter the essential character of the neighborhood, it will affect the uses or development of the neighboring properties, and that it is not the minimum variance to afford relief and does not represent the least modification of the regulation in issue.

Motion by Mr. Williamson, seconded by Mr. Chorman, carried that the **variances be denied for the reasons stated.** Motion carried 3 – 2.

The vote by roll call; Mr. Workman – nay, Mr. Williamson – yea, Ms. Magee – yea, Dr. Carson – nay, and Mr. Chorman – yea.

The board took a ten-minute recess

PUBLIC HEARINGS

Case No. 12418 – Wade, LLC seeks variances from the front yard setback and the corner front yard setback requirements for proposed structures (Sections 115-82 and 115-182 of the Sussex County Zoning Code). The property is located on the northeast corner of Birch Rd. and South St. approximately 55 ft. east of Old Landing Rd. 911 Address: 35603 South St., Rehoboth Beach Zoning District: C-1. Tax Parcel: 334-13.00-150.00

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 two mail returns. The Applicant is requesting variances of 7 ft. and 9 ft. from the 60 ft. front yard setback on Birch Road for a proposed office building addition and an 8 ft. variance from the 15 ft. corner front setback from South Street for a proposed external staircase.

Zach Crouch was sworn in to give testimony about the Application. Mr. Crouch presented the Application on behalf of the Applicant. Also present was Wade Thompson.

Mr. Crouch testified that the building is currently a one and a half story office building formerly used as a bar stool business; that the Applicant recently purchased the Property; that the original plan was to restore the original building but the building would not meet current County and ADA requirements; that the Applicant intends to remove and replace the existing office on site; that the State Fire Marshal requires two egress areas from the office building thereby necessitating the request for the steps on the side of the building; that the building will have an interior staircase and elevator as well; that there is a 17' wide accessway and the Fire Marshal requires that the accessway measure at least 16' wide; that the addition will consist of 1,500 square feet; that, if the Applicant constructed a second interior staircase, the Applicant would lose 400 square feet of usable space in the addition; that, to make the building feasible, it will encroach into setbacks; that the existing building encroaches into setbacks; that the new building will encroach less than the existing building; that the property is unique as the drive lane around the building is one way and the Applicant is trying to utilize the existing building; that the Applicant looked at putting the stairs on the other side of the building but, due to restrictions per fire code, the only place to put the stairs was on the South Street side which creates the need for a variance; that the exceptional practical difficulty was not caused by the Applicant but by the age of the building and the need to make it ADA compliant; that renovating the existing building will not alter the essential character of the neighborhood; that the building will otherwise meet stormwater, DelDOT, and Fire Marshal regulations; that it is a minimum requirement for the stairs and the new addition is a lesser encroachment than the existing building; that the addition will improve access for the public; and that the HVAC units will be within 7 feet of the building.

During the discussion it was discovered that additional variances of 5 ft. would also be

required for the HVAC units.

Mr. Crouch testified that there are no steps in the front yard; that the addition will measure 3 stories tall; that there is approximately 10 feet from the property line to the edge of South Street; that the building has been on the site for a long time; and that the Applicant has received no complaints about the building.

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

Mr. Chorman moved to approve Case No. 12418 for the variances as the variances will not affect the essential character of the neighborhood but improve it, that the variances are the minimum variance requests to afford relief, and that the exceptional practical difficulty was not caused by the Applicant.

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

The vote by roll call; Mr. Workman – yea, Mr. Williamson – yea, Ms. Magee – yea, Dr. Carson – yea, and Mr. Chorman - yea.

Case No. 12419 – Adam & Renee Koper seeks variances from the front yard setback and the corner front yard setback requirements for a proposed dwelling (Sections 115-34 and 115-182 of the Sussex County Zoning Code). The property is a through lot located on the northwest corner of Wellington Ct. and Windsor Rd. within the Rehoboth Beach Yacht and Country Club subdivision. 911 Address: 2 Wellington Ct., Rehoboth Beach Zoning District: MR. Tax Parcel: 334-19.00-1380.00

Mr. Whitehouse stated that a request to withdraw the Application was received on March 1, 2020.

Mackenzie Peet, Esq. was present on behalf of the Applicants, Adam & Renee Koper.

Ms. Peet stated that the property had been on the market for over two years; that the Applicants applied for variances with the intention of developing the property; that they are now in contract to sell the lot as-is and therefore, would like to withdraw the request for variances.

Dr. Carson moved to approve the withdrawal of Case No. 12419 as the Applicants have demonstrated good cause to allow for the withdrawal of the Application.

Motion by Dr. Carson, seconded by Mr. Williamson, carried unanimously that the **withdrawal be granted for the reasons stated.** Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Williamson – yea, Ms. Magee – yea, Dr. Carson – yea, and Mr. Chorman - yea.

Case No. 12420 – Glenville Hollow Farms seek a variance from the road frontage requirement for a proposed lot (Section 115-25 of the Sussex County Zoning Code). The property is located on the west side of Bridgeville Hwy. (Rt. 13A) approximately 0.54 mile southwest of Sussex Hwy. (Rt. 13). 911 Address: 22358 Bridgeville Hwy. Seaford. Zoning District: AR-1. Tax Parcel: 331-3.00-145.00 (Portion of)

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 six mail returns. The Applicant is requesting a 12.44 ft. variance from the 150 ft. lot width requirement for a proposed lot fronting onto Bridgeville Highway (Rt. 13). The proposed lot is identified as Lot 10 on the survey provided by the Applicant.

Michael McGroerty presented the case on behalf of the Applicant, Glenville Hollow Farms. Also in attendance was Cindy Yingling who was sworn in to give testimony about the Application. Mr. McGroerty submitted photographs to the Board to review.

Mr. McGroerty stated that the property is unique as there is only approximately 137 ft. between the property entrance and the farm lane; that there is a large drainage ditch and 3 transmission poles on the site; that there are unique physical and topographical conditions which prevent extending the proposed lot; that the proposed lot could not otherwise be developed due to the physical conditions of the lot; that, without the variance, the farm lane would run the length of the new lot and the new owners would have farm equipment crossing their property; that the exceptional practical difficulty was not caused by the owner but by the fact that is not enough frontage between the farm lane and the highway entrance; that nearby properties also have limited road width as there are lots which measure 75 feet, 79 feet, 88 feet, and 121 feet wide nearby; that granting this variance will not alter the essential character of the neighborhood as the proposed lot will have more road frontage than several lots in the immediate area; and that it is a minimum variance to afford relief.

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

Ms. Yingling testified that the farm consists of 134 acres and there is a farm building behind the proposed lot; that there used to be a house on the proposed lot but it was torn down; that this portion of the farm is currently unusable but by granting the variance it will become a usable lot and can be developed; and that the lane is 13 feet wide and is used for farm equipment.

Mr. McGroerty stated that the drainage ditch curves around; that the farm lane cannot be moved; and that irrigation would be impacted as well.

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

Dr. Carson moved to approve Case No. 12420 for the requested variance as the property has unique physical conditions; that strict conformity is not possible due to these conditions; that the variance will not affect the essential character of the neighborhood; and that it is a minimum variance necessary to afford relief..

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

The vote by roll call; Mr. Workman – yea, Mr. Williamson – yea, Ms. Magee – yea, Dr. Carson – yea, and Mr. Chorman - yea.

Case No. 12421 – Colleen Fitzgerald seeks variances from the separation distance requirement between units for existing and proposed structures (Sections 115-25, 115-172 and 115-185 of the Sussex County Zoning Code). The property is located on the north side of Sandpiper Rd. within the Pot Nets Seaside manufactured home park. 911 Address: 37109 Sandpiper Rd., Millsboro. Zoning District: AR-1. Tax Parcel: 234-31.00-4.00-6011

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 35 mail returns. The Applicant is requesting 1.8 ft. variance from the 20 ft. separation distance requirement for structures in a Manufactured Home Park.

Colleen Fitzgerald was sworn in to give testimony about the Application.

Ms. Fitzgerald submitted pictures into the record and she testified that the property is unique as it is a reverse pie shape; that the building envelope will only allow for a single-wide manufactured home; that, as the homeowner, she would like to expand the rear of the house to enlarge the bedroom and the master bathroom; that the master bedroom is exceptionally small; that there is no flooding on the lot; that the property cannot otherwise be developed without granting the variance; that the variance given to a neighbor for a shed has created the exceptional practical difficulty; that the house is 36 years old and she is renovating it; that she purchased the house in October 2019; that the renovation will enhance the neighborhood; that it will not alter the essential character of the neighborhood as there are many homes with additions in the community; that she proposes to construct a 5 foot wide addition; that the shed will be removed; that, with the proposed addition, the dwelling will still be 10 ft. from the property line; that it is a minimum variance to afford relief; that the only issue is with the section of the neighbor's bump-out; that she intends to use a lock box instead of a shed; and that the HVAC is located on the other side of the house.

Mr. Whitehouse stated that there have been no variances granted since 2011.

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

Dr. Carson moved to approve Case No. 12421 for the variance as the property is unique; that it cannot otherwise be developed; that it will not affect the essential character of the neighborhood; and that it is a minimum variance request to afford relief.

Motion by Dr. Carson, seconded by Mr. Chorman, carried unanimously that the **variance be granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Williamson – yea, Ms. Magee – yea, Dr. Carson – yea, and Mr. Chorman - yea.

Case No. 12422 – Diane W. McConnell seeks variances from the front yard setback requirements for an existing structure and a special use exception for a tourist home (Sections 115-23, 115-34, 115-182, and 115-210 of the Sussex County Zoning Code). The property is located on the west side of Shore Drive approximately .55 mile north of Prime Hook Rd. 911 Address: 9026 Shore Dr., Milford. Zoning District: MR. Tax Parcel: 230-17.00-218.06

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received six letters in support of and no correspondence in opposition to the Application and zero mail returns. The Applicant is requesting an 8.4 ft. variance from the required 40 ft. front yard setback for an existing garage and a special use exception to operate a tourist home.

Ms. Diane McConnell was sworn in to give testimony about the Application.

Ms. McConnell testified that when she purchased the property the existing building already had the setback violation; that she operates an Air BnB rental on the site for part of the year; that, to meet the current setback requirements, the structure would have to be demolished; that the building existed when she purchased the Property in 2006, therefore the exceptional practical difficulty was not caused by the Applicant; that many of the houses in the neighborhood have similar setbacks so granting this variance would not affect the essential character of the neighborhood; that there is a vacant lot adjacent to the property; that 4-5 houses in the area have the same setback; that she rents to no more than 4 people during the months of May through September; that there is a wildlife refuge nearby; that most rentals are for 3 days; that she does not stay in the house when the guests are there; that she lives in the house from October to April; that she does not rent the house out by the room; that the variance requested is the minimum setback request to afford relief and allow the current dwelling to remain in its current location; that the home is rented out during the summer season as an Airbnb rental.

Mr. Sharp stated that it appeared that no special use exception was needed because the use of the dwelling does not meet the definition as a tourist home. Mr. Whitehouse agreed.

Ms. McConnell testified that the dwelling uses public water and a septic holding tank; that the

house was built prior to 1975 but she is not sure when the garage was built; that she owns the adjacent lot also; that she bought the lots at the same time but they have always been separate; that the rear yard floods and part of the rear yard is likely always submerged; that she thinks the house needs to be elevated 10 feet; that she cannot move the house to the rear yard; that she will have to elevate the dwelling to the base flood level; that she is considering having the steps under the home so they will not project farther into the setbacks; that she is unsure of the distance between the edge of paving and her property line; that there is gravel in front of the property; that the fence was removed; and that there is space between the property line, the fence, and the road.

Donald Shalhoub was sworn in to give testimony in support of the Application.

Mr. Shalhoub testified that he supports the request for a variance; that he lives across the street from the property; that it does not alter the essential character of the neighborhood; that the guests are respectful and quiet; and that the houses all seem to line up so the setback violation is negligible.

The Board found that one person appeared in support of the Application and none in opposition.

Mr. Williamson moved to approve Case No. 12422 for the variance and to deny the request for a special use exception as it is not needed.

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

The vote by roll call; Mr. Workman – yea, Mr. Williamson – yea, Ms. Magee – yea, Dr. Carson – yea, and Mr. Chorman - yea.

ADDITIONAL BUSINESS

Dr. Carson commented on recent training and stated that it was informative, and he would recommend this type of training for other Board members as schedules allow.

Meeting was adjourned at 8:50 p.m.