

## MINUTES OF MARCH 20, 2023

The regular meeting of the Sussex County Board of Adjustment was held on Monday, March 20, 2023, at 6:00 p.m. in the County Council Chamber, Sussex County Administration Office Building, Georgetown, Delaware. The teleconference system was tested during the meeting by staff to confirm connectivity.

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. Amy Hollis – Recording Secretary.

The Pledge of Allegiance was led by Mr. Chorman.

Motion by Mr. Warfel, seconded by Dr. Carson and carried unanimously to approve 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 23, 2023, 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 23, 2023, meeting. Motion carried 5 – 0.

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

Mr. Sharp read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing the cases.

### **PUBLIC HEARINGS**

**Case No. 12802 – Sea Air Village** seeks variances from the separation distance and rear yard setback requirements for proposed structures (Sections 115-25, 115-172, and 115-183 of the Sussex County Zoning Code). The property is located on the northwest side of Dodd Avenue, Lot G12, within the Sea Air Village Manufactured Home Park. 911 Address: 19971 Dodd Avenue, Rehoboth Beach. Zoning District: AR-1. Tax Parcel: 334-13.00-310.00-3170

Ms. Norwood 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 14 mail returns. The

Applicant is requesting variances of 2.7 ft. from the 20 ft. separation requirement between the HVAC and porch on Lot G10, 4.4 ft. from the 20 ft. separation requirement between the unit and shed on Lot G10, 2.8 ft. from the 20 ft. separation requirement between the landing and unit on Lot G14, 6.1 ft. from the 20 ft. separation requirement between the landing and HVAC on Lot G14, 8.6 ft. from the 20 ft. separation requirement between shed and unit on Lot G14, and 1.1 ft. from the 5 ft. rear yard setback requirement for the proposed manufactured home.

Ms. Aimee Bennett was sworn in to give testimony about the Application.

Ms. Bennett testified that they are requesting a variance for this property because the property itself has unique physical circumstances which create a challenge placing the manufactured home while maintaining separation distance requirements between the home and accessory structures; that this lot is uniquely shaped; that it is a parallelogram whereas the other lots in the community tend to be more of a standard rectangle in shape; that this causes the lot to be shallower on one side of the site than the other; that this lot was laid out with the rest of the community back in the 1950s and 1960s which was prior to the current County requirements for separation and during a time when manufactured homes were much smaller; that they have selected a standard size floor plan for this home that is comparable to other new homes in the community but are unable to place it without a variance; that the narrowness of the lot and its unique shape make it difficult; that it is not the home placement itself but the surrounding structures and accessory structures such as HVAC and stairs that cause the need for variances; that this need was not created by the Applicant but rather the build out of the community and prior development of the adjacent lots; that, if authorized, these variances will not alter the essential character of the neighborhood or the district in which the property is located; that it will not substantially or permanently impair the use of or development of adjacent properties; that the distance between the proposed shed and the dwelling is greater than one foot; that its placement is pretty standard with how they set lots; that they will place a waterproof barrier and weed guard to limit the maintenance from a landscaping perspective; that the shed is a vinyl barn-style shed; that the dwelling will be guttered on the door side only; that the previous owner of the property is now deceased and the home itself is uninhabitable and needs to be removed; that they are unable to find a manufactured home of the same size as what is existing; that the existing home is a 1960s or 1970s model; that the existing home had an addition on it; that the replacement home may be a little bit wider than the trailer itself but, in totality, they are less than previous; that the standard manufactured home width when the community was established was about 8 ft. wide, which moved up to 10 ft., but the factory they are working with does not offer anything under 14 ft.; that there is enough distance between the structures on this Lot and Lot G14 that there is no need for a separation distance variance; that they have 20 ft. all the way around for the building itself but the accessory structures cause them to fall short; and that she suspects that the neighboring homes were original placements.

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

Mr. Chorman closed the public hearing.

Mr. Warfel moved to approve the application for Case No. 12802 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to the unique size and shape;
2. That, due to the physical conditions, the property cannot be developed in strict conformity with Sussex County Zoning Code, and the variances are necessary to enable the 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.

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

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

Dr. Carson moved to amend the agenda to put Case No. 12804 - Peter Roenke before Case No. 12803 - James King:

Motion by Dr. Carson, seconded by Mr. Warfel, carried that the **motion to amend the agenda be granted**. 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.

**Case No. 12804 – Peter Roenke** seeks variances from the front yard and corner front yard setback requirements for proposed structures (Sections 115-34 and 115-182 of the Sussex County Zoning Code). The property is a lot located on the corner of Roy Creek Lane and Cedar Road within the Keenwick Subdivision. 911 Address: 38174 Roy Creek Lane, Selbyville. Zoning District: MR. Tax Map: 533-20.09-169.00

Ms. Norwood 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 no mail returns. The Applicant is requesting variances of 8.1 ft. from the 30 ft. front yard setback requirement for proposed steps, 4.3 ft. from the 30 ft. front yard setback requirement for a proposed deck, and 4.7 ft. from the 15 ft. corner front yard setback requirement for an existing deck.

Mr. Peter Roenke was sworn in to give testimony about the Application.

Mr. Roenke testified that he is requesting a variance to extend the front porch on the front of

the house; that currently, it is just a staircase; that the primary reason for the request is the safety of his children; that the existing stairs are original to the house; that the proposed updates are comparable to many others within the Keenwick on the Bay neighborhood; that many of the homes in the neighborhood have similar looking decks, which are the newer homes coming in to the community; that the home and many of the original homes in the neighborhood fall into the category of 1980 style Nanticoke manufactured homes and feature the same upgrade that they are proposing; that the home directly to the north and the lot caddy corner to their northwest have both applied for and received similar variances to encroach the setback in a similar fashion; that the staircase was built by the previous owner; that the stairs are at a very steep angle and have open risers which he feels is a safety hazard; that it is very unsafe for his daughter; that the landing at the top is very small and when the door swings open there is no room to maneuver; that he proposes a wider space and the addition of a gate for the safety of his children; that he does not need HOA approval because the required setback is less than the County's setback requirement; that he has spoken with the neighbors who are all in support of their request; that the neighbors feel it will be an upgrade to their block and the neighborhood; that being a corner lot makes it more difficult for them; that the traffic on Roy Creek Lane is pretty slow because it is a cul-de-sac with a dead end; that there is more traffic on Cedar Lane which is a throughway for the neighborhood and causes concern for the safety of his children and dog; that the proposed deck and stairs will not impede any line of sight for the roadway; that currently they can easily fit six vehicles in the driveway; that the actual measurement from the end of the driveway, which he knows is not the property line, to the home is 50 ft.; that the home was placed in 1986; that the other reasons for the proposed deck and stairs is the aesthetic; that they will be using Trek style boards which keeps with the rest of the neighborhood; that the existing wood is very brittle and old, and needs to be replaced regardless; that the existing deck and stairs do not have balusters; that the proposed size of the deck is to accommodate when the doors opens at the top it utilizes the entire landing; that, even if they were to redo the staircase at a safer angle, the top landing is not enough space to safely navigate; that, if a child were to go out that door, the child would have no choice but to sort of tumble down the stairs because of the lack of space at the top; that they were thinking to have enough space at the top of the stairs to put a gate; that the proposed deck is 20' x 9'; that currently the landing at the top of the stairs is just over 4 ft.; that they are asking to come out about 5 ft. more and to go 20 ft. across; that this is both for the aesthetics of the structure and safety of their family; that this would allow them a sufficient landing before the staircase and then a landing at the 90 degree of the stairs to come down in a safe manner; that they could likely accomplish the same features with a deck of 9' x 10', so arguably the second 10 ft. on the deck is to provide a space for them to enjoy; that the safety of his family is the priority; that, if the deck was only 10 ft. wide, the issue would then become that the staircase would land directly into the parking area where cars would be moving; that the proposed deck being 20 ft. wide would place the staircase farther away from the driveway and increase the safety for his children; that he believes the gap between his property line and the edge of paving to be about 15 ft.; that the living room and bedrooms are on the main level of the house where the stairs go; that the property is within a flood zone; that the HVAC system and all other accessories to the property are raised in the back because of the flood zone also; that they have public sewer and water but there is an existing well on the property that the prior owner used for gardening he believes; that the deck on the rear of the property was there when they purchased

the home and was not a part of his original application; that Ms. Norwood brought to his attention that it would also require a variance; that he does not know when it was built but it was there when he bought the property; that it is a kind of a mid-tier deck; that they have a second level porch on the back that does not require a variance but this one comes down about head high off the ground with a staircase that continues to ground level; that they have added several trees to their yard on that side of the property and that deck is not really visible from Cedar Road; that he is not certain of the distance between the edge of paving and his property line along Cedar Road; that he thought the previous property owner had obtained a variance for that deck in the past; that they have no plans to replace the deck on the rear but they do intend to stain it and make it look nicer; and that, from looking at it, you can tell that it is newer than the steps and deck on the front of the house.

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

Mr. Chorman closed the public hearing.

Dr. Carson moved to approve the application for Case No. 12804 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique physical conditions;
2. The exceptional practical difficulty was not created by the Applicant;
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 Dr. Carson, seconded by Mr. Williamson, carried that the **variances be granted for the reasons stated**. Motion carried 5 – 0.

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

**Case No. 12803 – James King** seeks a variance from the side yard setback requirement for a proposed structure (Sections 115-25, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located on the southeast side of Bayview West within the Bay View Estates Subdivision. 911 Address: 38901 Bayview West, Selbyville. Zoning District: AR-1. Tax Map: 533-19.00-191.00

Ms. Norwood 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 (0) mail returns. The Applicant is requesting a variance of 2 ft. from the 5 ft. side yard setback requirement on the north side for a proposed shed.

Mr. James King was sworn in to give testimony on the Application.

Mr. King testified that they are requesting a side yard variance of 2 ft. to place a shed on

their property; that they purchased their house in 2009 already built and there was no shed; that they built an addition off the front of the house and now would like to place a shed on the side of their property; that the shed measures 8' x 8', which is not very large and the shed is intended to store their outdoor equipment such as lawn and garden equipment, power washer, and recreational equipment; that they have no other place to store these items apart from their garage and other living space; that placing the shed by the side of their house would not encumber the view of the canal for their neighbors; that placing the shed to the back of the house would block the view and ruin the views of their next-door neighbors and those around them; that they would also rather not place it in front of their house because it does not look good from a street view; that he provided pictures of other sheds in their neighborhood and they believe their placement would be consistent with those sheds; that most sheds in the neighborhood are located in the side yards and very close to the property lines; that their immediate next-door neighbor has provided his support of the placement of their shed; that it would be toward the rear of the house and on the side not where his driveway or entrance is and is an area of just grass; that this request is to place a shed in order to enjoy all of the things that Sussex County gives them; that this request has been approved by the community association; that the shed would be right up against the house between two (2) windows with enough distance to still maintain the house and shed; that his shed would be similarly placed to his neighbors shed; that there will be about 7-8 ft. between the two sheds; that their community has a 25 ft. setback from the canal; that it would be very difficult to put a shed in the backyard and they do not want to block the view for any of their neighbors; that he does not know how much of his property is on the other side of the bulkhead; that, when going through their neighborhood, you can drive down the streets and not see anyone but, if you are on the canal by boat, you will see everyone in their backyards; that the shed was delivered and he realized that it was too big to fit without a variance; that the neighbor's shed has been there since probably three property owners ago and they may not have gotten a variance; that the property is serviced by public sewer and well; that they have never experience any issues with flooding; that the issue was not created by him because the home was already built when they bought the property; that the way they designed the properties, the homes are close to the property lines and, in order to be able to have outdoor storage, he is requesting the variance to make up for the fact that the property was originally designed and built as to not encumber neighbors or cause problems for the neighbors' enjoyment; that his deck is 5 ft. off the ground with rails and balusters; that, if they put the shed behind the house, it would block the only window in their bedroom; that there is not enough space on the other side of the rear property to place the shed; that the rear of his property is narrower than the front; that on the other side of the property is the HVAC unit and the door to the garage; that at the back of the house on the opposite side of the property is the entrance to the deck; that the well is also located on that side in the rear; that many of their neighbors have this style of shed on the side of their house and he provided pictures for reference; that he does not want to put the shed in the front yard because he does not believe it is good aesthetics for the neighborhood; that, in his opinion, sheds do not belong in front of houses from a storage point of view; that putting it on the side of the house next to the garden makes it much more proper for the neighborhood view of the property itself; that this is the only place on the property he could put the shed because of the windows, HVAC equipment, doors, and access to the crawl space; that, based on the space he

needs for the lawn mower and other equipment, a smaller shed would not meet their need; that the shed has 2 ft. door that open towards his neighbor's property; that the doors open all the way up; that he does not need a ramp for the shed; that his lawn mower is a 22 inch Honda push mower; that his equipment is currently in his garage which has limited his use of that space; that they had also expanded the deck on the rear of the house and it is now 15' x 12'; that they added on 3 ft. and screened in the porch; that there are steps off the deck on the side that access into the screened porch; that they also added the steps to the deck off the side of the house; that it was not until he placed the shed that he became aware that he was 3 ft. off the property line rather than the 5 ft. which is required; that a neighbor had called and complained after a meeting of their community's board which he was unhappy with; that he is a member of the community board so he decided to call about him; that, in addition, he called their community person about all sheds in the community; that his neighbor most affected is in support of his request; that the neighbor who complained called their board and the County after the shed was delivered; that he was not home when the shed was delivered, had not even looked at it, when an inspector came and told him that it was too close to the property line; that he measured it himself upon returning home and went to file for a variance; that the shed company obtained the permit for them; that he miscalculated the distance; that their bedroom only has the one window facing the rear of the property; that, on the opposite side of the house, is the entrance to the garage, outdoor shower, HVAC unit, stairway to the back screened porch and the well; and that the expansion of the deck was done in 2018.

Mr. John Shultz was sworn in to give testimony in support of the Application by telephone.

Mr. Shultz testified that he lives next door to Mr. King; that the addition of the shed has no impact on him whatsoever; that it does not impede any egress to the backyard; that the style, shape, and colors all match the house; that a lot of the neighbors did not even realize that there is a shed there; that the community is also in support of the shed; and that he does not see any other place on the property that they would be able to put the shed.

The Board found that one (1) person appeared in support of and no one appeared in opposition to the Application.

Mr. Chorman closed the public hearing.

Mr. Hastings moved to approve the application for Case No. 12803 for the requested variance, pending final written decision, for the following reasons:

1. The property has unique conditions due to the canal at the rear of the property and the location of the well;
2. The variance will not alter the essential character of the neighborhood; and
3. The variance represents the minimum variance necessary to afford relief.

Motion by Mr. Hastings. Motion failed for a lack of a second.

Mr. Warfel moved to deny the application for Case No. 12803 for the requested variance, pending final written decision, for the following reasons:

1. The property is not unique; and
2. The shed could be placed in conformity with the Sussex County Zoning Code.

Motion by Mr. Warfel, seconded by Dr. Carson, carried that the **variance be denied for the reasons stated**. Motion carried 4 - 1.

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

**Case No. 12805 – Herman and Patricia Bollinger** seek variances from the maximum fence height requirements for existing structures (Sections 115-25 and 115-185 of the Sussex County Zoning Code). The property is located on the corner of Upspring Court and Artesian Avenue within the Woods at Burton Pond Subdivision. 911 Address: 23007 Upspring Court, Lewes. Zoning District: AR-1. Tax Map: 234-11.00-976.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support or in opposition to the Application and zero mail returns. The Applicants are requesting a variance of 0.5 ft. from the maximum fence height requirement of 3.5 feet for a fence in a front yard setback.

Mr. Herman Bollinger and Ms. Patricia Bollinger were sworn in to testify on the Application.

Ms. Bollinger testified that, when they applied for the fence, they went through all that they were supposed to do; that they applied to their homeowners association; that Backyard Works was their contractor; that they applied to the County; that they received approval from everyone; that the fence was up in a couple of months and then they found a sticker on their door; that they were shocked because they were home when the sticker was placed; that she has a picture of the sign for their development which does not meet the setback that she was told for their fence; that they have a letter from their neighbor in favor of the Application; that they have a corner lot on a dead end street; that they were not told about any setbacks other than 5 ft. for the homeowners association; that their front yard and house face Upspring Court; that Artesian Avenue goes back into the development to the rest of the houses and has no outlet; that Backyard Works drew the location of the fence; that they consider where the fence is located to be their backyard; that their yellow lab loves it; that, if the fence was any lower, their dog may be able to jump it; that the County approved their permit for a fence; that Backyard Works applied for the building permit and they handled everything with their homeowners association; that Backyard Works is not here tonight because they thought they did not need to be; that they will not move the fence or lower the fence; that would be at their own expense; that they did come to the County to find out what could be done to remedy the issue; that Backyard Works said



they would write a letter which they did not; that she loves her fence; that she loves her backyard; that they sodded the yard and you can see the difference between what the builder did and what they have done to their yard; that they were at a party on Saturday and none of their neighbors can believe they have to go through this; that the fence does not go beyond the back of their house; that she questions why the permit was approved and the corner front not noted; that Backyard Works seemed surprised to find that the fence was not approved during inspection; that the contractor cracked their sidewalk when bringing in some topsoil; that they have a drain in their backyard; that they have a 5 ft. setback all the way around per their homeowners association; that there is a gap of about 4-5 ft. between their property, the sidewalk, and Artesian Avenue; that this fence will not alter the essential character of the neighborhood; and that the variance sought is the minimum variance to afford relief.

Mr. Bollinger testified that their dog is young and active; that they planted trees; that they thought they were doing everything right; that the neighbors have said how beautiful the fence is and they cannot believe that they are going through this; that the fence is not blocking anything; that they went through the proper channels and someone made a mistake; that he walks their yellow lab through the neighborhood and everyone tells him how beautiful it is; and that his dog can clear a 3.5 foot tall fence.

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

Mr. Chorman closed the public hearing.

Mr. Williamson moved to approve the application for Case No. 12805 for the requested variance, pending final written decision, for the following reasons:

1. The variance will not alter the essential character of the neighborhood; and
2. The variance represents the minimum variance necessary to afford relief.

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

As part of his motion, Mr. Williamson directed Mr. Sharp to write a letter to Backyard Works.

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

**Case No. 12806 – Cheryl K. Koozer** seeks variances from the front yard setback requirement for proposed structures (Sections 115-34 and 115-182 of the Sussex County Zoning Code). The property is located on the southeast side of Long Boat Drive within the Clearwater Subdivision. 911 Address: 33529 Long Boat Drive, Frankford. Zoning District: MR. Tax Map: 134-17.00-39.03-128

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received

no correspondence in support of or in opposition to the Application, and one mail return. The Applicant is requesting variances of 14 ft. from the 15 ft. front yard requirement for a proposed open deck.

Mr. Cole Wolfe was sworn in to give testimony about the Application on behalf of the Applicant.

Mr. Wolfe testified that the homeowner is requesting a variance to expand the porch by 5 ft.; that this is proving difficult due to irregularities in the front property line; that the variances requested are to encroach into the 5 ft. setback by 1 ft.; that the front property line is irregular; that the zigzag formation prevents them from extending the porch on the home because of the setback rules; that, without a variance, there is no possible way to further develop the property and be in conformity with the Zoning Code; that the property has never been altered; that the difficulty has not been created by the Applicant; that many of the existing homes in the neighborhood have extended their front porches; that there is 9 ft. from the existing corner of the front porch; that, if the variance is granted, the porch would extend to within 4 ft. of the property line; that the existing front porch is 4 ft. deep; that he lives at the property; that the porch does not seem like it is 4 ft. wide when you are up there; that the purpose of the variance is to have a usable front porch; that the property to the left is protected wetlands; that there is a tax ditch that runs through the back of the property; that they are the last house on a dead end street; that the house consists of 2 stories and is on stilts; that there is a homeowners association; that the HOA president supports their request and has done a similar modification to his own home; that the plans also include extending the supports for the porch; that this lot is unique compared to others in the community; that he cannot confirm what the homeowner has explored as far as additional options; that he would assume they have looked into all options; that he believes the structure was built in the mid-1980s; that, if the space is not being used recreationally, you can walk through just fine but, if someone is using the front porch, there is no space to move through; that, if there were someone with a disability, there would not be enough space for them to move through; that the plan is for the porch extension to be uncovered; and that they have a boat that is parked there during the off season.

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

Mr. Chorman closed the public hearing.

Dr. Carson moved to deny the application for Case No. 12806 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions; but
2. The exceptional practical difficulty was created by the Applicant;
3. The variances will alter the essential character of the neighborhood; and
4. The variances are not the minimum variances necessary to afford relief.

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

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

**ADDITIONAL BUSINESS**

**Meeting adjourned at 7:39 p.m.**