

## MINUTES OF MARCH 21, 2022

The regular meeting of the Sussex County Board of Adjustment was held on Monday, March 21, 2022, 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 John Williamson presiding. The Board members present were: Dr. Kevin Carson - Absent, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson. 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. Williamson.

Motion by Mr. Warfel, seconded by Mr. Chorman and carried unanimously to approve the agenda. Motion carried 4 – 0.

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

Motion by Mr. Chorman, seconded by Mr. Hastings and carried to approve the Minutes for the January 24, 2022, meeting. Motion carried 4 – 0.

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

Motion by Mr. Hastings, seconded by Mr. Warfel and carried to approve the Findings of Facts for the January 24, 2022, meeting. Motion carried 4 – 0.

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

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

Motion by Mr. Warfel, seconded by Mr. Chorman and carried unanimously to modify the agenda to move Cases 12669 and 12670 to the end of the agenda. Motion carried 4 – 0.

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

## PUBLIC HEARINGS

**Case No. 12671 – Charles Albano** seeks a variance from the front yard setback and side yard setback requirements for a proposed structure (Sections 115-34, 115-182, 115-183 and 115-185 of the Sussex

County Zoning Code). The property is located on the east side of Shore Drive approximately 116 ft. northwest of Dogwood Street. 911 Address: 9307 Shore Drive, Milford. Zoning District: MR. Tax Parcel: 230-17.00-60.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received four (4) letters of support, no correspondence in opposition to the Application, and one (1) mail return. The Applicant is requesting a 20.4 ft. variance from the 30 ft. front yard setback, a 5.1 ft. from the 10 ft. side yard setback on the northwest side for an existing and proposed detached garage, a 0.8 ft. variance from the 10 ft. side yard setback on the northwest side for an existing dwelling, a 4.5 feet variance from the 10 ft. side yard setback on the northwest side for existing steps and a deck, and a 6.1 ft. variance from the 10 ft. side yard setback on the southeast side for an existing deck.

Ms. Norwood clarified that the existing garage was built in 1982 and the existing dwelling was built in 1954.

Mr. Warfel recused himself from this case and left the Council Chambers.

Mr. Mark Redden was sworn in to give testimony about this Application.

Mr. Redden testified that the Applicants are attempting to add a level to the existing garage to create a work space of an art studio and home office; that the property is unique due to the location of a beach community and being an undersized lot; that the septic system takes up the majority of buildable area on the lot; that the property is unbuildable without the variance; that the Applicants purchased the home as it stands a few years ago; that the home was built in the 1960s and the garage was built in the 1980s; that they are looking to grandfather in the items existing but also add to the property; that the variances will not alter the essential character of the neighborhood as many of the neighbors have oversized garages; that the lots are set up differently as the lots have the beach as their front yard rather than toward the roadway and that leads to a different orientation of the lots; that he is an architect on behalf of the Albanos; that the variances sought are the minimum variances to be requested; that they have limitations due to powerlines also; that the addition will be used for a home office; that the intended addition is not to be used as a commercial work space; that, due to the pandemic, the Applicants have been working from home more and would like to free up the space in their guest bedroom; that the neighbors to the north both have garages of this size and the neighbor to the south does also which is set back farther but it is very tall; that this addition will not impede views down the street or block driveway views; that the garage will be set back a similar distance from a neighbor's garage; that they will still maintain plenty of room to park their vehicles; that there is no gap between the property line and edge of roadway per the survey they have; and that the HVAC system will be a mini split system with piping mounted to the exterior wall due to the flood plain and will not be located within the setbacks.

Mr. Charles Albano was sworn in to give testimony about the Application.

Mr. Albano testified that he received letters of support from the owners of Lot 61, Lot 62, Lot 59, and Lot 175; that the neighbors who submitted letters in support constitute most of the adjacent neighbors; that there have not been any complaints from neighbors about existing structures on the property; and that there is a DNREC dune line separating his property from the beach which renders a portion of his property unbuildable.

The Board found that two individuals appeared in support of and no persons appeared in opposition to the Application.

Mr. Williamson closed the public hearing.

Mr. Chorman moved to approve Case No. 12671 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to the exceptionally small buildable area, the development of the property prior to the enactment of the Sussex County Zoning Code, and the location of the septic system;
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 nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare; and
5. The variances represent the minimum variances necessary to afford relief.

Motion by Mr. Chorman, seconded by Mr. Hastings, carried unanimously that the **variances be granted for the reasons stated**. Motion carried 3 – 0.

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

Mr. Warfel returned to the Council Chambers.

**Case No. 12672 – Steve McCarron** seeks a variance from the rear 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 north side of Earlee Avenue within the Passwaters Estates Subdivision. 911 Address: 302 Earlee Avenue, Bridgeville. Zoning District: AR-1. Tax Parcel: 131-10.20-113.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received 5 letters in support of and no correspondence in opposition to the Application and zero mail returns. The Applicant is requesting a 15 ft. variance from the 20 ft. rear yard setback for a proposed detached

garage.

Mr. Steve McCarron was sworn in to give testimony about his Application.

Mr. McCarron testified that he is requesting a variance in order to build a shop within 5 ft. of his property line; that the shop measures approximately 44 ft. by 56 ft. and is a metal-sided building; that its use will be personal in nature and not include any business activities; that he has included letters of no objection from his neighbors in his application packet; that he is requesting the variance in order to allow the remainder of his yard to be intact; that, if he changed the position of the building, he would have to remove lawn irrigation and a tree; that there is a 12 ft. alley behind his property, which would place the proposed structure 17 ft. from the neighbor's property line; that the alley is blocked by trees on both ends rendering it unusable; that his paved driveway connects to his gravel driveway; that his yard is fenced in; that the alley behind his property is just grass; that his property is just outside of town limits; that he has obtained letters of no objection from all adjacent neighbors, except for a vacant property and a rental property; that this structure is for personal storage; that the home was built in 1974; that the paved driveway was existing but he added the gravel driveway; that the irrigation system was added by him but the tree was existing; that the tree is located between the driveways; that he believes the tree adds character to the neighborhood; that he will be moving the existing shed and does not need a variance for that structure; that this is the minimum size pole building for him to be able to back a boat in; that he would actually prefer to move it back farther on his property but this is the minimum he is asking for; that he would not be able to put his boat in a smaller structure; that he will also be storing vehicles in the structure; that he has a septic system preventing him from building in the rear yard; that he looked at placing the pole building in the corner but he would not be able to fit his boat in that location; and that, if he moved the location of the structure, it would actually stick out farther than where he is requesting to place it now.

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

Mr. Williamson closed the public hearing.

Mr. Hastings moved to approve Case No. 12672 for the requested variance, pending final written decision, for the following reasons:

1. The property has unique conditions due to the exceptionally small buildable area and the location of the alley;
2. That, due to the physical conditions, the property cannot be developed in strict conformity with Sussex County Zoning Code and the variance is necessary to enable the reasonable use of the property;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare; and

5. The variance represents the minimum variance necessary to afford relief.

Motion by Mr. Hastings, seconded by Mr. Chorman, carried unanimously that the **variance be granted for the reasons stated.** Motion carried 4 – 0.

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

**RECESS – 6:30 pm – 6:45 pm**

**Case No. 12669 – Wheatley Ventures Inc.** seeks variances from the front yard setback requirement for existing structures (Sections 115-25 and 115-182 of the Sussex County Zoning Code). The property is located on the north side of Madelyn Avenue within the Morningside Village Subdivision. 911 Address: 11594 Madelyn Avenue, Bridgeville. Zoning District: AR-1. Tax Parcel: 430-19.00-267.00

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 mail returns. The Applicant is requesting 7.7 ft., 3.8 ft., and 1.7 ft. variances from the 30 ft. front yard setback requirement for an existing covered porch, steps, and dwelling.

Mr. Dale Wheatley was sworn in to give testimony about the Application.

Mr. Sharp recused himself from counsel but was available to swear in witnesses for testimony. He noted that, if the Board had any legal questions, those questions should be directed to Vince Robertson.

Mr. Wheatley testified that either the surveyor or the contractor made a mistake; that the home was placed incorrectly and did not account for the front porch or steps; that the contractor staked off for the house and Miller Lewis does the surveying; that he is unsure exactly who made the mistake but it is a costly one; that they use a private builder by the name of Kevin; that he is unsure if the surveyor actually checked prior to construction but they were called; that this is a Beracah Home, which was placed on the foundation; that the property was staked off to indicate where to start, which may have been wrong; that this is existing on the property currently; that, once the mistake was brought to their attention, construction stopped but they were allowed to put siding to protect the house from the elements; that none of the neighbors have complained about the encroachment; that these requests will not alter the essential character of the neighborhood; that this falls in the same category as the neighborhood; that the contractor put the stakes in for Miller Lewis, who went by the stakes, which were incorrect in the front; that this is the first time this mistake has happened in this neighborhood; that the homeowners association has approved the variance pending the Board's decision; and that it would be a big and costly mistake to have to remove the structure.

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

Mr. Williamson closed the public hearing.

Mr. Chorman moved to approve Case No. 12669 for the requested variances, pending final written decision, for the following reasons:

1. The exceptional practical difficulty was not created by the Applicant;
2. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare; and
3. The variances represent the minimum variances necessary to afford relief.

Motion by Mr. Chorman, seconded by Mr. Hastings, carried unanimously that the **variances be granted for the reasons stated**. Motion carried 4 – 0.

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

**Case No. 12670 – Wheatley Ventures Inc.** seeks variances from the front yard setback requirement for existing structures (Sections 115-25 and 115-182 of the Sussex County Zoning Code). The property is located on the north side of Madelyn Avenue within the Morningside Village Subdivision. 911 Address: 11598 Madelyn Avenue, Bridgeville. Zoning District: AR-1. Tax Parcel: 430-19.00-268.00

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 variances of 6 ft. and 5.5 ft. from the 30 ft. front yard setback requirement for an existing covered porch and steps.

Mr. Dale Wheatley was previously sworn in to give testimony about the Application.

Mr. Sharp recused himself from counsel but was available to swear in witnesses for testimony. He noted that, if the Board had any legal questions, those questions should be directed to Vince Robertson.

Mr. Wheatley testified that he affirms the previous testimony given in Case No. 12669 is accurate and applies to this case as well and should be incorporated herein; that this and the previous case are almost identical mistakes; and that this case is the in regards to the covered porch and steps and that no variance is needed for the dwelling.

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

Mr. Williamson closed the public hearing.

Mr. Chorman moved to approve Case No. 12670 for the requested variances, pending final written decision, for the following reasons:

1. The exceptional practical difficulty was not created by the Applicant;
2. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare; and
3. The variances represent the minimum variances necessary to afford relief.

As part of his motion, Mr. Chorman directed the Applicant to provide the name of the builder to the Office of Planning & Zoning so that a letter could be sent to the builder.

Motion by Mr. Chorman, seconded by Mr. Warfel, carried unanimously that the **variances be granted for the reasons stated**. Motion carried 4 – 0.

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

### **ADDITIONAL BUSINESS**

There was no additional business.

**Meeting adjourned at 7:01 p.m.**