

## MINUTES OF MARCH 6, 2023

The regular meeting of the Sussex County Board of Adjustment was held on Monday, March 6, 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, Mr. Jamie Whitehouse – Director of Planning and Zoning, 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, Dr. Carson – yea, Mr. Warfel – yea, and Mr. Chorman – yea.

Motion by Mr. Williamson, seconded by Mr. Hastings and carried unanimously to approve the Minutes for the January 9, 2023, meeting. Motion carried 4 – 0.

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

Motion by Dr. Carson, seconded by Mr. Hastings and carried to approve the Findings of Facts for the January 9, 2023, meeting. Motion carried 4 – 0.

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

### **ADDITIONAL BUSINESS**

**Document Management System Training** - Jamie Whitehouse, Director of Planning and Zoning, provided the Board with a brief training on the County's new document management system.

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

### **OLD BUSINESS**

**Case No. 12783 – Michael and Robyn Mooney** seek variances from the front yard setback

requirements for proposed structures (Sections 115-42, and 115-182 of the Sussex County Zoning Code). The property is located on the southeast side of Pine Needle Drive within the Pine Crest Terrace Subdivision. 911 Address: 30319 Pine Needle Drive, Ocean View. Zoning District: GR. Tax Map: 134-9.00-109.00

Ms. Norwood introduced the case and noted that the case was tabled with the record left open from the January 23, 2023, meeting to allow the Applicants to submit additional information at least one week prior to the March 6, 2023, meeting, and to allow public comment on those specific items only. The site plan was submitted on February 24<sup>th</sup> and staff made note of the following variances being requested: 4.1 ft. from the 30 ft. front yard setback requirement for the proposed deck, 10.7 ft. from the 30 ft. front yard setback requirement for the proposed dwelling, 15 ft. from the 30 ft. front yard setback requirement for the proposed steps and landing, and 14 ft. from the 30 ft. front yard setback requirement for the proposed dwelling and the proposed deck.

Dr. Carson noted that he did not recuse himself from the prior hearing and that he had reviewed the record and was able to participate in this hearing.

Mr. Michael Mooney was sworn in to give testimony about the Application.

Mr. Mooney testified that their proposed house will be a two (2) story house on pilings; that they will have room underneath the house for parking; that looking at their new site plan their home will actually sit back 3-4 ft. beyond the 30 ft. setback making their house set back farther than the neighbor's dwelling on the same side of the street; that he hopes this update quells their neighbor's concern of them building a new home and blocking their views; and that he has not shown the neighbors the new site plan as he just came down yesterday.

Ms. Jodie McLaughlin was sworn in to give testimony in support of the site plan submission.

Ms. McLaughlin testified that she has reviewed the submitted site plan and it is as it was discussed at the last meeting; that she and her husband are in agreement with it; that she questions the Applicants' ability to deviate from this plan; that she questions how the variances and building of the structure would be enforced; and that they have no objection to the variances as proposed by the Mooneys.

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. Warfel moved to approve the application for Case No. 12783 for the requested variances as shown on the February 20<sup>th</sup> site plan, pending final written decision, for the following reasons:

1. The property has unique conditions due to the cul-de-sac which only exists on paper;
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 Applicants;
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 Mr. Hasings, carried that the **variances be granted for the reasons stated**. Motion carried 5 - 0.

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

**Case No. 12791 – Chad J. Parker and Laurel J. Hummel** seek variances from the rear yard setback requirements for proposed structures (Sections 115-34, and 115-183 of the Sussex County Zoning Code). The property is located on the northwest side of Gloucester Drive within the Canal Point Subdivision. 911 Address: 41235 Gloucester Drive, Rehoboth Beach. Zoning District: MR. Tax Map: 334-13.00-1505.00

Ms. Norwood introduced the case and noted that the case was tabled with the record left open from the February 6, 2023, meeting to allow the Applicants to submit a new site plan at least one week prior to the March 6, 2023, meeting, and to allow public comment on those specific items only. Ms. Norwood noted that the variances needed are now 3 feet, 3.1 feet, and 6.3 feet from the 10 foot rear yard setback requirement for a proposed porch addition and deck.

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

Mr. Chad Parker was sworn in to give testimony on the Application.

Mr. Parker testified that he is back with the new site plan as requested by the Board at the last meeting; that he believes the intention was to make both sides of the deck equal which is what their new plan shows; and that he believes that they tried to meet the best intention when measuring to make it equal on both sides.

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 with new site plan for Case No. 12791 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions;
2. The variances will not alter the essential character of the neighborhood; and
3. 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 4 - 0.

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

### **PUBLIC HEARINGS**

**Case No. 12798 – Gene Gordon** 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 northwest side of Briar Lane within the Oak Meadows Subdivision. 911 Address: 27528 Briar Lane, Millsboro. Zoning District: GR. Tax Map: 234-29.00-145.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received one letter in support of, zero letters in opposition to the Application, and zero mail returns. The Applicant is requesting variances of 10.5 ft. from the 30 ft. front yard setback requirement for an existing porch and 16.4 ft. from the 30 ft. front yard setback requirement for existing steps.

Mr. Zach Kuhns was sworn in to give testimony about the Application.

Mr. Kuhns testified that the Applicant is requesting a variance of 10.5 ft. for the porch area; that the house is located 31.5 ft. from the property line while the set back from the porch is 30 ft.; that there is no useful area around the property to otherwise be built; that the homeowners are elderly and need easier access to the front door from the steps adjacent to the driveway; that, originally, he misunderstood the setbacks; that there were no property markers present that he could see; that he assumed that they were closer to the road than they actually were based on the neighboring properties; that the structure is already built; that the porch is 31 ft. from the road; that there are houses in the neighborhood with similar porches; that these variances are the minimum needed for the porch to be in compliance; that he would estimate the distance between the property line and edge of paving to be about 10-12 ft.; that he is the contractor; that he made the mistake which led them to asking for a variance application; that he believes the property is connected to County water and sewer; that the structure has been in place for roughly 3-4 months; that he was not aware that the steps would also need a variance; that the owners were having issues accessing the property; that they were always going to the rear rather than using the front; that the porch and steps allow them to access the house better; that it is a covered porch; that the neighboring properties are all about 10 ft. to the property line; that he does not believe they looked at averaging the front yard setback; that the house was placed in 2008 and he believes it was placed by the Applicants; that he would be able to move the steps over

to be more in compliance; that he would be able to move the steps and build a 4 ft. platform that will still allow access to the porch which would eliminate the setback request for the steps; that, if he placed the steps to the right hand side, they should be back farther than the porch itself; that one of the individuals in the home is over 90 years old; that there have been no issues or complaints about the structures; that they still need a final inspection; that they have completed their footer inspection which was approved and framed the porch; that this was caught when he called for the footer inspection, at which time the framing was complete, and that was when it was realized that this did not comply with the setback requirements; and that they were allowed to continue to so as to not lose what had been done but otherwise construction stopped at the need for a variance.

Mr. Gene Gordon was sworn in to give testimony about the Application.

Mr. Gordon testified that the house was placed in 2008; that they have lived there for about 8 years; that it previously belonged to a reverend; that his father-in-law lives with them; that he has skin cancer which is why they are building enclosures to allow them to sit outside on the deck that the driveway is to the right of the house; that the HOA is okay with the structures; that there are a few houses in the neighborhood with portions just as close as theirs; that they are more than 30 ft. from the road which is the HOA requirement; that, before the porch was added, it was just steps leading into the house; that now they have a nice railing with five steps which provides a bit more safety; and that the steps being placed to the right are fine with them.

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

Mr. Chorman closed the public hearing.

Mr. Hastings moved to approve in part and deny in part the application for Case No. 12798 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 variance for the porch will not alter the essential character of the neighborhood; and
3. The variance for the porch represents the minimum variance necessary to afford relief.
4. The Board approved the variance for the porch but denied the variance for the steps because the steps can be built in compliance with the Code.

Motion by Mr. Hastings, seconded by Mr. Warfel, carried that the **variance for the porch be granted and the variance for the steps be denied for the reasons stated.** Motion carried 5 – 0.

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

**RECESS 6:48 – 6:55**

**Case No. 12799 – Gary M. Nolting** seeks a variance from the side yard setback requirement for an existing structure (Sections 115-34 and 115-183 of the Sussex County Zoning Code). The property is located on the southeast side of Maple Lane within the Keenwick Subdivision. 911 Address: 38279 Maple Lane, Selbyville. Zoning District: MR. Tax Map: 533-20.09-37.00

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 Applicant is requesting a variance of 1.2 ft. from the 5 ft. side yard setback on the southwest side requirement for an existing deck.

Mr. Gary M. Nolting and Mr. Freddy Bada were sworn in to testify on the Application.

Mr. Bada testified that he is here on behalf of Mr. Nolting; that they designed his house in 2020; that they are here because the contractor left them in a situation; that they provided plans to build the house; that they located the house on original site plans that were submitted to the contractors; that they also helped to expedite the construction of the property by applying for the building permit; that the contractor did not need to apply for anything; that, when the contractor staked out the house, the contractor shifted the house over about 2 ft. and centered the house on the lot; that their plan had the house offset on the lot to accommodate for the deck that Mr. Nolting needs to get into the house; that they were unaware of the issue until Mr. Nolting called in for his certificate of occupancy and they received a survey that showed the deck had encroached into the side yard; that, apparently in the process of construction the contractor, Cambria Construction, was made aware that the deck was going to encroach but never informed the homeowner or his company; that they are here to make it right and hopefully allow the deck to stay as it is because it is the main entrance to the house; that the stairs and deck are large enough for you to be able to move furniture in and out; that they do not enter the house from the front but rather the side; that it is unrealistic to think they could pick the house up and move it; that they are left to work with what they have; that the Applicant did not create the problem but rather the contractor; that this house, including the deck, was designed to keep in character with the neighborhood; that the home has a coastal look; that, without the survey, you probably would not notice that the stairs were in the setback; that they would not be altering the character or depreciating anyone else's property value; that they are seeking the minimum variance for the property which is the small projection of 1 ft. 2 inches into the side yard setback; that Mr. Nolting is going through legal action through a number of items that happened with the house; that the contractor was let go prior to the completion of construction; that, because of the plan of the house, there are walls that block the stairway in the garage making it to tight to maneuver furniture; that this issue was brought to light at the final placement survey; that a temporary COO was issued; that the deck is 6' x 7'; that the deck is about 4-5 ft. in height; that there is no covering over the steps; that, if they took the deck down to 4 ft. wide, which is what it would take to be in compliance, it would make it harder to navigate getting up the stairs and turning with furniture or appliances; that the footers are not in compliance meaning they would have to tear it all off and rebuild it; and that the contractor is no longer involved and all of that expense would fall on Mr. Nolting.

Mr. Nolting testified that all of his neighbors on the same side of the street have stairways on the right side of their houses; that his neighbor to the right only visits once a year; that since he has moved in he has only seen them once; that he was under the impression that he did not need to bring letters unless it was in opposition to his request; that he had five neighbors say that they would give him a letter of no objection but he did not bring them; that he spoke with his neighbors and no one had any problems with the request; that this is necessary for him to be able to get couches, bedroom sets, and other furniture into the house; that, when entering through the garage, there is a staircase that goes up, turns right on a landing, and then goes up to the left; that you cannot get furniture into the house using this stairway; that he has a letter from one of his neighbors in the car; that he spoke to a gentleman who told him that they do not care who likes it but they want to hear who does not like it; that he is in the house; that they are on public water and sewer; that there is a homeowners association if you choose; that the vice president of the homeowners association is his neighbor four houses down the street and has no issues with the request; that the deck is all about being able to get furniture in and out of the house; that it is not large enough to sit on it; that there is nothing to see off this entry except the house next door; that he is not blocking any views; that, if the deck was brought into compliance, they would not be able to get furniture in and out of the house; that, according to his neighbor who has lived there for 50 years, the property has never flooded; and that his lot is in line with those in the neighborhood.

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

Mr. Chorman closed the public hearing.

Mr. Hastings moved to approve the application for Case No. 12799 for the requested variance, pending final written decision, for the following reasons:

1. The exceptional practical difficulty was not created by the Applicant;
2. The variance will not alter the essential character of the neighborhood; and
3. The variance represents the minimum variance necessary to afford relief.

He also directed that a letter be sent to the Applicant's builder.

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

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

**Case No. 12800 – Jonathan and Kelly Botzler** seek variances from the front yard setback requirements for proposed structures (Sections 115-34 and 115-182 of the Sussex County Zoning Code). The property is a through lot on the southwest side of Willet Road within the Ocean Village Subdivision. 911 Address: 39693 Willet Road, Bethany Beach. Zoning District: MR. Tax Map:

134-13.00-1284.00

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 one (1) mail return. The Applicants are requesting variances of 14.13 ft. from the 40 ft. front yard setback requirement for a proposed addition on an existing deck for a through lot and 14.2 ft. from the 40 ft. front yard setback requirement for the existing dwelling. The dwelling has been built since 1982 and received a COO so it can be administratively approved without this process.

Mr. John Rego and Mr. Jonathan Botzler were sworn in to give testimony about the Application.

Mr. Rego testified that he is the general contractor on this project; that he was contracted to do this renovation for the Botzlers; that the design was done by Gregory Hastings; that the original survey was done by John Roach; that the property is unique because it is at the end of a cul-de-sac and is a kite-shaped property; that the property cannot otherwise be developed because of the way the lot sits and the very tight restrictions on the property; that the design was created based on the setbacks that were originally given; that this was not created by the Applicants; that John Roach originally requested the setbacks from the County and was inaccurately given a 5 ft. side and rear; that it was not until they completed the foundation, framed up the house, and at the framing inspection were they notified that it was into the setbacks; that they passed the framing inspection and were told they could insulate the home and protect it with siding and the water-resistant barrier; that they have not moved forward with any additional work on the house since then; that they wanted to do this correctly; that this will not alter the character of the neighborhood as there are several homes, two, in particular, that recently have been approved to have reduced setbacks allowing them to be closer to Route 1; that, even though it has front yard setbacks, this is the Botzlers' backyard; that the HOA has approved of the addition on the back with no opposition and even provided examples of other properties in the neighborhood that have received these types of variances; that this addition will be no taller than the existing structure; that the addition is 23-25 ft. from the property line; that there is a shoulder and then the road on the other side of their property line to Route 1; that there are very thick trees that line their property line along Route 1; that there is no vehicular access to Route 1 from the property; and that there is approximately 12 feet to the edge of paving from the property line as well.

Mr. Botzler testified that the addition is about 2 ft. closer than the deck was before; that they bought the house about 4 years ago; that they wanted to tear it down but could not afford to do so; that they redid the front deck; that they got a permit and had the house surveyed in the first year they were there; that they started that project and then the back deck started to rot and the railing was getting unsafe; that they decided it made more sense to put an addition rather than build a new deck in the back; that they had the property surveyed again, got an architect, and then contracted TNG Builders to build it; that they have been working hard to do everything the right way and then the issue of the setbacks arose; that all of the neighbors are very supportive; that the need for the addition is a bedroom and bathroom; that they are going from a three bedroom, two bath to a four bedroom,



three bath; that they have a growing family including grandchildren; that everyone is getting older; that it makes a better room for older people to access the bathroom because the house was built in the 1980s with 2 ft. doors; and that this addition will help with accessibility as they get older.

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

Mr. Chorman closed the public hearing.

Mr. Warfel moved to approve the application for Case No. 12800 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to its unusual shape and being a through lot;
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 Applicants;
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.

**Case No. 12801 – Mark and Cindy Chait** seek variances from the corner front yard setback and maximum fence height requirements for existing and proposed structures (Sections 115-25, 115-182, and 115-185 of the Sussex County Zoning Code). The property is located on the corner of Dogwood Drive and Multiflora Drive within the Pinewater Farm Subdivision. 911 Address: 19 Dogwood Drive, Harbeson. Zoning District: AR-1. Tax Map: 234-17.12-45.00

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 3.5 ft. maximum fence height requirement for a proposed fence.

Mr. Mark Chait and Ms. Cindy Chait were sworn in to give testimony for the Application.

Ms. Chait testified that they are here tonight seeking a variance for a fence for their pool; that their property is a corner lot; that the fence height requirement is 48 inches for a pool; that, when they placed their pool, the Applicants obtained a permit and removed some trees to put the pool in the

designated spot; that they were never advised of the different height requirement in regard to pools; that, if they were to come into the property 15 ft. to be in compliance with the height requirement, they would no longer meet the distance requirement for the walkway around the pool; that there is an existing fence which they are looking to replace; that the fence height they are requesting is to meet the requirement for a pool; that they also received a letter from the President of the homeowners association which was not submitted because they received it late; that they also have a drawing from the pool company that was submitted; that, even though they consider it to be their side yard, the County calls it a front yard; that they do not really have a backyard to put the pool in which is why they chose the location they did; that they removed some trees to place the pool but angled it a certain way to keep some trees also; that they tried to make everything fit; that they had no idea about the fence until the fence company informed them they would need a variance; that the pool company did not tell them anything about the fencing requirements; that the pool installer said he knew where he could place the pool and that was it; that the fence company informed them and Jennifer Norwood helped them with the rest of the process; that the trees are along the road; that the fence will not create any visual problems; that the way the property is if they were more than 30 ft. set back from Multiflora, which is the issue, that there are trees already there which they do not plan on removing; that the trees give them added privacy; that there are no other obstructions; that the fence they plan to install is a metal fence, likely to be black aluminum; that the fence is going to come off the corner of their house, meet the property line, and replace the current fence on the property line; that they became confused when told that the 48 inch fence could not be installed in their proposed location because a lower fence would not meet the other requirement; and that Ms. Norwood was great at helping her understand the issue.

Mr. Chait testified that the Code does not line up on the height requirement of fencing for the front yard and pools; that they want to replace the existing fence with a fence 48 inches high; that no matter where they place the pool there will be this issue with the fence height; that the code issue is created by Sussex County and depends on the yard; that they just planted some more trees; that they are not installing a privacy fence; that the existing fence is 9-10 ft. from Multiflora Drive; that they have a well and public sewer; that the house was built in the 1980s and they purchased it about a year ago; that the existing fence is a split-rail fence at about 3 ft. high; and that, when asked about the height, he said 48 inches and was then told it would have to be placed in a different location.

Mr. Eric Boving was sworn in to give testimony in support of the Application.

Mr. Boving testified that he lives on the cul-de-sac across the street from the Chait's property; that there is a stop sign to the right side of their house; that the fence has been there for as long as he can remember; that they removed some trees to install the pool; that he is not used to being able to see much of anything on their property so a new fence is not going to be any problem; that he does not see how the placement of a new fence is going to affect visibility; that he is fine with it; that the fence does not go all the way down the property line; and that there are other properties in the neighborhood with fences but it varies and not every property has a fence.

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.

Dr. Carson moved to approve the application for Case No. 12801 for the requested variance, pending final written decision, for the following reasons:

1. The property has unique conditions due to its unique physical conditions of being a corner lot;
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 Dr. Carson, seconded by Mr. Warfel, carried that the **variance be granted for the reasons stated**. 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.

**Meeting adjourned at 7:35 p.m.**