

MINUTES OF MAY 15, 2023

The regular meeting of the Sussex County Board of Adjustment was held on Monday, May 15, 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, Mr. Vince Robertson - Assistant County Attorney, and staff members Mr. Chase Phillips – Planning and Zoning Planner II, and Ms. Ann Lepore – Recording Secretary.

The Pledge of Allegiance was led by Mr. Chorman.

Motion by Mr. Warfel, seconded by Mr. Hastings and carried unanimously to approve the agenda as amended. 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.

Motion by Mr. Hastings, seconded by Dr. Carson and carried unanimously to approve the Minutes for the March 20, 2023, meeting. Motion carried 5 – 0.

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

Motion by Mr. Williamson, seconded by Mr. Warfel and carried to approve the Findings of Facts for the March 20, 2023, meeting. Motion carried 5 – 0.

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

OLD BUSINESS

Case No. 12821 – Donovan Builders and Renovations LLC seeks a special use exception and a variance from the maximum square footage requirements for a proposed garage / studio apartment (Sections 115-40, 115-42, and 115-210 of the Sussex County Zoning Code). The property is a lot located on the southeast side of Pinetown Road within the Pinetown Subdivision. 911 Address: 30122 Pinetown Road, Lewes. Zoning District: GR. Tax Map: 334-4.00-26.00

Mr. Phillips presented the case and stated that the record was closed and the case was tabled at the meeting on May 1, 2023. The Applicant is requesting a special use exception for a garage / studio apartment and a variance of 262 sq. ft. from the 800 sq. ft. maximum square footage requirement for a garage / studio apartment.

Mr. Warfel recused himself and left the Council Chambers.

Dr. Carson moved to deny the Application for Case No. 12821 for the requested special use exception and variances, pending final written decision, for the following reasons:

1. The exceptional practical difficulty was created by the Applicant; and
2. The variances will alter the essential character of the neighborhood.

Motion by Dr. Carson, seconded by Mr. Williamson, carried that the **special use exception and variances be denied for the reasons stated**. Motion carried 4 – 0.

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

Mr. Warfel returned to the Council Chambers.

PUBLIC HEARINGS

Case No. 12830 – Jeffrey and Molly Chorman seek variances from the front and rear yard setback requirements for existing structures (Sections 115-34, 115-182, and 115-183 of the Sussex County Zoning Code). The property is located on the northwest side of Alabama Drive approximately 428 feet northeast of North Bayshore Drive in Broadkill Beach. 911 Address: 4 Alabama Avenue, Milton. Zoning District: MR. Tax Parcel: 235-3.12-106.00

Mr. Phillips presented the case and stated that the Office of Planning and Zoning received one letter in support of, no correspondence in opposition to the Application, and zero mail returns. The Applicants are requesting variances of 26.7 ft. and 21.6 ft. from the 30 ft. front yard setback requirement for existing steps and existing cantilevered deck and 0.1 ft. and 0.5 ft. from the 5 ft. rear yard setback requirement for the existing dwelling.

Mr. Sharp recused himself and left the Council Chambers.

Mr. Robertson served as acting counsel for the Board.

Mr. Kris Connelly and Mrs. Molly Chorman were sworn in to give testimony for their application.

Mr. Connelly testified that he is present on behalf of the Applicants; that they requested variances from a cottage that was on the property the Chormans purchased at Broadkill Beach in 2021; that they have obtained all necessary approvals, permits, and inspections; that the permit, as-built survey, and previous Board of Adjustment findings from June of 2021 are included in the packet;

that the property is unique due to the building line, the beach, and the dead-end road of Alabama Avenue; that the lot is small; that they used a piling foundation which is probably the least accurate type of foundation to install; that the pilings are within the bounds of the setbacks previously granted; that the adjustments to the previous variance are for the steps and trim; that the steps had to be adjusted due to the front porches being cantilevered over steel and the steel being constructed back into the piling; that the pictures reflect that the steps had to be tweaked to get down to the approximate grade as you finish construction; that he believes they are still planning on pouring a concrete pad there that will help alleviate that issue but led to the steps being closer; that the other small items requested are for the trim because being in a beach environment you tend to want to cover everything with something plastic to lessen the maintenance; that pilings are driven in with a large hammer and you do your best to lay them out to perfection but as they are hammered into the ground and the way you build on top of them sometimes they are not perfectly square which leads to what he would call a slight shift; and that the 0.1 foot increase to the previously approved variance is to accommodate for the ASIC board or the trim rings that go around the deck and on the side of the house.

Mrs. Chorman testified that there has been only positive feedback from the neighbors during the construction.

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

Dr. Carson closed the public hearing.

Mr. Williamson moved to approve the application for Case No. 12830 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions;
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 variances will not alter the essential character of the neighborhood; and
4. The variances represent the minimum variances necessary to afford relief.

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

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

Mr. Sharp returned to the Council Chambers and resumed as counsel.

Mr. Chorman returned to the Council Chambers.

Case No. 12825 – 36345 Lighthouse Road Selbyville LLC seeks a special use exception to operate a temporary sales tent (Sections 115-72 and 115-210 of the Sussex County Zoning Code). The property is located on the northwest side of Lighthouse Road on the corner of Old Mill Bridge Road. 911 Address: 36345 Lighthouse Road, Selbyville. Zoning District: B-1. Tax Parcel: 533-19.00-17.03

Mr. Phillips presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. The Applicant is requesting a special use exception to operate a temporary sales tent.

Mr. Richard Seery was sworn in to give testimony about their application.

Mr. Seery testified that he is present to request a special use exception to operate a sales tent for more than three days; that they are requesting to operate between the dates of June 22 and July 4 with the tent to be installed three days prior to the sale and removed three days after the sale ends; that the Application shows the proposed location of the tent on the property; that they have received permission from the property owner; that they received all inspections as required by the Office of the State Fire Marshal and any permits required for the sale of sparkling products; that the tent will be located 20 ft. from the building on the property; that there is a designated light pole and an outlet will be on the opposite side of that; that they do not believe that the other building cooks on site but are still going to maintain the 20 ft. distance for safety; that they have not spoken with them but have spoken with the landlord and owner of the property about the shack, its location, and operation; that he is not sure of the exact distance that they will be from the Dunkin Donuts but he would estimate that it is greater than 50 ft. which is the farthest that they need to be from a gas pump; that, from a safety standpoint, he believes they would exceed the required distances; that he believes that there would be room for parking for their customers; that there would be several parking spaces that would be within code away from the tent because internal combustion engines need to be a minimum of 20 ft. away; that he did not foresee an issue with there not being enough required parking; that he would advocate and probably provide for them to set up some pylons and safety cones that are not shown in their early version of the map so that they can maintain some safe direction on where to park; that generally they identify the area around the tent as a parking exclusion area; that they do this by setting out cones with caution tape; that it also depends on the density of the area and what they believe to be necessary; that they did not show that on the map because there was no parking spaces marked near the proposed location of the tent; that the land owner requested they hold a certificate of liability insurance; that this is provided as evidence that they do have liability insurance; that the sale is scheduled to run from June 27th through July 4th, which is the last day they are legally allowed to sell; that they will be setting up a few days prior to the start of their sale; that it is not the same as submitted in the Application, that is just the date they start their season; that they operate in 10 states but do not open all the tents at the same time so when they are applying they ask for the maximum amount of time allowed; that they generally try not to set up any equipment more than 3 or 4 days in advance of the actual start of the sale; that they run consistent hours everyday with the exception of July 3rd and 4th which they stay open later until 10:30 pm; that the landowners are okay with

them operating consistent with their store hours; that their tent will be located right along the curb, as shown on the picture submitted; that he does not see an issue with the tent being placed 5 ft. from the property line to meet the setback requirements; that he is unsure how to figure out where the property line is if it does not match what is on the mapping; that they have electric provided; that they use LED lights inside the tent and some along its perimeter; that he is unsure of what the space the tent will occupy is normally used for but it is not marked for parking nor does it say no parking; that the container is used to secured the product when a clerk is not present; that they lower the tent when it is not occupied as a precaution for potential wind damage; that the tent will be weighted down; that they are requesting a three year approval; and that the request is for June 22nd through July 4th, with three days setup and three days tear down to guarantee all equipment is removed for the next three years.

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. 12825 for the requested special use exception for a period of one year, pending final written decision, because the proposed use will not substantially affect adversely the use of neighboring and adjacent properties. As part of his motion, Mr. Warfel included a condition that the tent may be used from June 22nd until July 4th and the Applicant is allowed 3 days prior to that time period and 3 days after that time period to set up and to remove the tent.

Motion by Mr. Warfel, seconded by Mr. Williamson, carried that the **special use exception be granted for a period of one year with conditions for the reasons stated.** Motion carried 5 - 0.

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

Case No. 12826 – Jesse and Elizabeth Bare seek a special use exception for a garage / studio apartment and a variance from the front yard setback requirement (Sections 115-23, and 115-25 of the Sussex County Zoning Code). The property is located on the southwest corner of Roxana Road and Persimmon Place. 911 Address: 34556 Persimmon Place, Frankford. Zoning District: AR-1. Tax Map: 134-15.00-108.09

Mr. Phillips presented the case and stated that the Office of Planning and Zoning received three letters in support of, no correspondence in opposition to the Application, and two mail returns. The Applicants are requesting a special use exception for a garage / studio apartment and a variance of 15 ft. from the required 30 ft. front yard setback for a detached garage / studio apartment.

Mr. Warfel recused himself and left the Council Chambers.

Ms. Elizabeth DuPont Bare and Mr. John DuPont were sworn in to give testimony on this application.

Ms. DuPont Bare testified that this application was submitted to the Board in 2016 and approved but they did not execute it at that time and their approval expired; that their one acre lot is in a zoned residential area; that the proposed garage apartment is in the character of their neighborhood; that the lot is unique in the sense that it is a corner lot bordered by Route 17 and Persimmon Place; that the County considers their front yard to be Persimmon Place rather than Route 17; that the proposed location is the most reasonable placement for the building; that their current driveway would service the proposed building and not require a separate entrance; that other areas of their lot are low-lying making this the most feasible option; that the location of their septic system necessitates their current proposed location and the building would be built as close as possible to that system but it does require some relief from the 30 ft. setback requirement; that they are requesting a reduction of that setback of 15 ft.; that they have spoken with their neighbors who submitted written approval which should have been included in the Application; that the building is a garage apartment which is compatible with the surrounding residentially zoned area and will not be out of place in the neighborhood; that the initial septic permit for the current home allowed for the current three-bedroom residence plus one additional bedroom with this project in mind; that this Application is the same as previously submitted and approved; that they developed their lot with this plan in mind and the proposed location is the only available to place this structure; and that the garage apartment is 800 sq. ft. she believes.

Mr. DuPont testified that Persimmon Place is a gravel road about 12 ft. wide; that the property line is about 15 ft. from the edge of that road; that the building would be about 30 ft. from the edge of the road; that the residential area is 700 sq. ft.; that the total building will be 40 feet by 28 feet with the garage to the front and the apartment to the rear; and that he would be the resident of this proposed structure.

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. 12826 for the requested special use exception and variance, pending final written decision, because the Applicants have demonstrated that they meet the criteria for granting a special use exception and variance.

Motion by Mr. Williamson, seconded by Dr. Carson, carried that the **special use exception and variance be granted for the reasons stated.** Motion carried 4 - 0.

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

RECESS 6:51 – 6:55

Mr. Warfel returned to the Council Chambers.

Case No. 12827 – Sea Air Village seeks variances from the separation distance requirements for existing structures (Sections 115-25 and 115-172 of the Sussex County Zoning Code). The property is located on the northwest side of Atlantic Avenue, Lot E74, within the Sea Air Village Manufactured Home Park. 911 Address: 20040 Atlantic Avenue, Rehoboth Beach. Zoning District: AR-1. Tax Parcel: 334-13.00-310.00-3148

Mr. Phillips 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 nine mail returns. The Applicant is requesting variances of 5.3 ft. from the 20 ft. separation distance requirement between the manufactured home and shed on Lot D-75, 4.9 ft. from the 20 ft. separation distance requirement between the manufactured home and carport on Lot E-72, and 5.2 ft. from the 20 ft. separation distance requirement between the shed and the manufactured home on Lot E-76.

Ms. Brittany Stoll was sworn in to give testimony about this application.

Ms. Stoll testified that they are back for variances that were omitted from the original request about a month and a half ago; that two requests were mistakenly omitted; that, due to the uniqueness of the property, both instances of the request of the variance distance do not surpass distances already granted by the Board; that they have requested an additional variance for a separation distance of 14.7 ft. from the shed where the Board has already granted a variance of 12.3 ft. from the rear of the neighboring home that is adjacent to the shed; that they have requested an additional variance of 15.1 ft. from the neighboring accessory carport where the Board has already granted a variance of 13.5 ft. from the proposed accessory structures; that the requests are not in excess of anything previously granted by the Board; that they proposed to place a normal sized manufactured home with a standard sized shed that is consistent with other new homes in the community but are unable to do so without violating the separation distance requirements between the neighboring shed and accessory structures; that the variances are necessary to enable the reasonable use of the property; that the exceptional practical difficulty was not created by the Applicant; that the property is quite narrow which greatly limits the use of buildable area; that the neighboring lots are also causing the development of nearby lots to be narrower and nearer to the lot lines and neighboring homes; that it appears impossible for a home to be placed on the property without violating the separation distance requirements; that the exceptional practical difficulty was created by the unique conditions of the property and development of adjacent lots; that if authorized, the variances will not alter the essential character of the neighborhood nor permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare; that they are seeking this variance to add to the conformity of the community and to modernize the homes within which will subsequently add value and improve the character of the community and neighborhood; that, when they were here for the variances last time, there were some accessory structures on neighboring properties that were omitted from the

survey that was submitted; and that she affirms the prior statements made by Ms. Bennett regarding the Board of Adjustment Case Number 12782.

Mr. Phillips advised the Board that there were 2 structures not previously addressed at the prior hearing.

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. 12827 for the requested special use exception, pending final written decision, for the following reasons:

1. The property has unique conditions;
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. Hastings, seconded by Mr. Williamson, carried that the **variances be granted for the reasons stated**. Motion carried 5 - 0.

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

Case No. 12828 – Sea Air Village seeks variances from the separation distance requirements for existing structures (Sections 115-25 and 115-172 of the Sussex County Zoning Code). The property is located on the southeast side of Center Avenue, Lot D41, within the Sea Air Village Manufactured Home Park. 911 Address: 19883 Center Avenue, Rehoboth Beach. Zoning District: AR-1. Tax Parcel: 334-13.00-310.00-56873

Mr. Phillips presented the case and stated that the Office of Planning and Zoning received no correspondence in support or in opposition to the Application and nine mail returns. The Applicant is requesting variances of 4.8 ft. from the 20 ft. separation distance requirement between the shed and manufactured home on Lot E-42 and 7.1 ft. from the 20 ft. separation distance requirement between the manufactured home and the manufactured home on Lot E-42.

Ms. Brittany Stoll, who was previously sworn in, testified about the Application.

Ms. Stoll testified that the additional variance requests are due to a separation distance

between the proposed home and the neighboring home being mistakenly omitted from the survey; that the new request does not surpass the separation distance previously approved by the Board; that the Board has already approved a separation distance of 6.4 ft. between the proposed home and the neighboring shed and 9 ft. between the proposed shed and the neighboring shed; that the additional requests include 12.9 ft. between the proposed home and the neighboring home and 15.2 ft. between the proposed shed and the neighboring home; that, due to the uniqueness of the property, it cannot be developed in strict conformity with the Sussex County Zoning Code; that they plan to place a normal sized manufactured home and a standard sized shed that are consistent with other new homes in the community but are unable to do so without violating the separation distance requirements; that the property is quite narrow which greatly limits the buildable area; that the neighboring lots are also quite narrow causing development of nearby lots to be nearer to the lot lines; that it appears it is not possible for a home to be placed on the property without violating the separation distance requirements; that the exceptional practical difficulty was created by the unique conditions of the property and the development of adjacent lots; that the variances will not alter the essential character of the neighborhood nor permanently impair the appropriate use or development of adjacent properties nor be detrimental to the public welfare; that they are seeking these variances to add to the conformity of the community and to modernize the homes within the community which will add value and improve the characteristics of the community and neighborhood; and that she affirms the prior statements made by Ms. Bennett for Board of Adjustment Case Number 12781.

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. 12828 for the requested special use exception, pending final written decision, for the following reasons:

1. The property has unique conditions;
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 Mr. Hastings, carried that the **variances be granted 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.

Case No. 12829 – Jeremy E. and Crissy L. Maddox seek a variance from the lot area requirement for an existing lot (Sections 115-25 of the Sussex County Zoning Code). The property is located on the northwest side of Sunnyside Road approximately 1,730 ft. west of Sharps Mill Road. 911 Address: 10525 Sunnyside Road, Bridgeville. Zoning District: AR-1. Tax Map: 430-15.00-1.05

Mr. Phillips 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 Applicants request a variance of 0.0400-acre from the 32,670-square foot minimum lot size requirement.

Ms. Pam Rust was sworn in to give testimony about this application.

Ms. Rust testified that she is the neighbor of the Applicants and they are seeking the variance jointly; that they purchased their house in 2007 with the driveway intact; that they made no additional improvements to the driveway; that they were informed when the Maddoxes were buying the lot next door that their driveway encroached on to their property; that the Maddoxes are friends of theirs so they sought some type of relief; that they were told at one time that they could just buy that section of their property; that they drew up a legal agreement that enabled them to go to settlement and build their home; that they paid the money to the Maddoxes accordingly; that, since that time, they have been informed that the purchase of that section of property is not sufficient so they are here to seek a variance to adjust the lot lines and correct the issue; that they purchased their lot from a major builder; that since they were informed of the issue she has gone back to the original attorney who informed them that they could buy that section of property; that, at this point, they have no alternative option; that neither they or the neighbors want to tear up the driveway; that they were not even aware of an issue until the Maddoxes' purchase in 2020 when the current owner of the lot appeared in their driveway with a letter from their attorney stating that they had to tear up the driveway; that they attempted to make arrangements with that owner to no avail; that they made the agreement with the Maddoxes and are now here requesting the variance to make it right; that the variance is for the lot area requirement as the Maddoxes' lot will be going from 0.75 acres to 0.71 acres to correct the encroachment of the driveway; that the Maddoxes are in full agreement; that it is the smallest amount to afford relief; that it does not alter the front of the property but allows them to keep what is already existing; that this will not change anything for the current residents; that she has an additional detached garage in the rear of the property; that they did extend the driveway slightly but they thought they were on their property; that adjusting the property line slightly would account for the amount that they were encroaching when they purchased the property and also when they build the other garage; that the only survey they have does not show the addition of the second garage or the extension of the driveway; that she does not know how far the garage is from their current property line; that they caddy cornered the garage, which they do not use for vehicles, using a line of plantings as a guide; that they had no idea their driveway was on the neighbors' property when they extended it; that the driveway was extended and the garage built before the Maddoxes purchased their property; that the detached garage measures 24 feet by 24 feet; that she does not believe the garage is over the current property line; that it is just the driveway that is over the line; that they kept a distance of 15 ft.; that

she does not have an updated survey because she had just refinanced the house and used that survey when placing the garage; that they placed the garage back as far as they could to allow for space to get in and out rather than placing it straight as you face it but rather it is angled; that, based on what she was told when she was instructed to remove the driveway, the placement of the building does not encroach; that she is not sure why the garage is not shown of the survey from December of 2022; that the Maddoxes had asked her to represent them tonight as Crissy Maddox had to work and Jeremy Maddox is with both children who had ball games; that they were provided with this avenue of relief to then pay the money and be told that they could not adjust the lot lines without a variance; that the original survey from when they bought their home did not show the driveway; that the garage was permitted and issued a certificate of compliance; and that, if she understands currently, that she needs a new survey showing the placement of the garage in relation to the current and proposed property line.

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 leave the record open with the limited purpose of the submission of a new survey for the application for Case No. 12829 and that the record be left open until the meeting on July 17, 2023, with the submission of the survey to be submitted prior to that meeting date.

Motion by Dr. Carson, seconded by Mr. Hastings, carried that the **record be left open for the limited purpose for the reasons stated.** Motion carried 5– 0.

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

ADDITIONAL BUSINESS

Meeting adjourned at 7:38 p.m.