

MINUTES OF MAY 19, 2025

The regular meeting of the Sussex County Board of Adjustment was held on Monday, May 19, 2025, at 6:00 p.m. in the County Council Chamber, Sussex County Administration Office Building, Georgetown, Delaware.

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. Jeffrey Chorman, and Mr. John Williamson. Mr. Shawn Lovenguth and Mr. John Hastings were absent. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Ms. Jennifer Norwood – Planning and Zoning Manager, and Ms. Ann Lepore – Recording Secretary.

The Pledge of Allegiance was led by Mr. Chorman.

Motion by Dr. Carson, seconded by Mr. Williamson and carried unanimously to approve the agenda. Motion carried 3 – 0.

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

Motion by Mr. Williamson, seconded by Dr. Carson and carried unanimously to approve the Minutes for the March 24, 2025, meeting. Motion carried 3 – 0.

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

Motion by Dr. Carson seconded by Mr. Williamson and carried to approve the Findings of Facts for the March 24, 2025, meeting. Motion carried 3 – 0.

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

PUBLIC HEARINGS

Case No. 13068 – Lynsay Hernandez seeks variances from the rear and side yard setback for an existing and proposed structure (Section 115-183, 115-185 and 115-34 of the Sussex County Zoning Code). The property is located on the south side of River Road and East of Point View Road. 911 Address: 31594 River Road, Millsboro. Zoning District: MR. Tax Map: 234-34.10-78.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received zero letters of support, zero letters of opposition, and one mail return.

The Applicant is requesting the following variances:

- 6.7 ft. from the 10 ft. rear yard setback requirement for an existing garage
- 6 ft. from the 10 ft. rear yard setback requirement for an existing garage
- 0.5 ft. from the 5 ft. side yard setback requirement on the southwest side for an existing garage and proposed addition
- 0.6 ft. from the 5 ft. side yard setback requirement on the southwest side for the proposed

addition

Mr. James Wheatley and Ms. Lynsay Hernandez were sworn in to give testimony about the Application.

Mr. Wheatley testified that the neighbor has a similar garage; that the dilapidated building will be removed; that the Applicant plans to attach the garage to the new dwelling; that the garage is existing; that the addition will be made to the garage; that the new dwelling will meet setbacks; that the proposed addition will not increase the encroachment as the addition is to the rear of the garage, not towards the road; that the garage will remain a garage; that the neighbor's garage is a similar distance from the road; that they are not requesting a variance for the proposed addition to the garage as it will meet setbacks; that there is a dilapidated dwelling on the property which does not meet setbacks; that the existing garage was on the property when it was purchased; that the existing garage is similar to the neighbor's garage; that there have been no complaints from neighbors; that there is approximately 5 ft. between the property line and the edge of paving of River Road; that this property sits outside the flood zone; that there is no homeowners association; that Indian River is part of the yard; that there were some issues with the surveyor; that the well and septic are located within the building envelope; and that he does not need that 0.6 feet side yard variance because the addition will comply with the side yard setback requirement.

Ms. Hernandez testified that the garage was built in 2002; and that the neighbor's garage was built in 2015.

Mr. Norwood confirmed that, in this case River Road, is considered the rear yard.

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. 13068 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique physical conditions due to the proximity to Indian River;
2. The exceptional practical difficulty is not being created by the Applicant;
3. The variances will not alter the essential character of the neighborhood; and
4. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Williamson, seconded by Dr. Carson, carried that the **variances be approved for the reasons stated.** Motion carried 3 - 0.

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

Case No. 13070 – John Caudle seeks variances from the side yard setback requirements for existing structures (Section 115-183, 115-185 and 115-42 of the Sussex County Zoning Code). The property is located southeast of Laws Point Road and North of Swann Drive. 911 Address: 37000 Laws Point Road, Selbyville. Zoning District: GR. Tax Map: 533-12.16-293.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received zero letters of support, zero letters of opposition, and zero mail returns.

The Applicant is requesting the following variances:

- 2 ft. from the 5 ft. side yard setback requirement on the north side for an existing deck
- 1.8 ft. from the 5 ft. side yard setback requirement on the north side for existing HVAC
- 3.4 ft. from the 5 ft. side yard setback requirement on the north side for existing HVAC

The Board found that Mr. James Churchman, Esq., presented the Application on behalf of John and Sherry Caudle.

Mr. Churchman stated that the property is located in Swann Keys; that there have been a number of variances approved in Swann Keys since the Small Lot Ordinance was passed; that the Applicants purchased the property in 2016; that the house was built by a previous owner in 2010; that there was a variance granted (Case 10573) from the front yard setback for the dwelling; that, during the Covid-19 pandemic, the Applicants hired a contractor to place a deck on the property; that the Applicants were unaware that the deck was non-compliant with the setbacks; that the Applicants have reached out to the contractor but have been unable to reach him; that the property is unique because the home was built closer to the north side of the lot leaving approximately 5 ft. between the house and the lot line; that the property cannot otherwise be developed as the deck is existing and it would be a substantial cost to the Applicants if they had to remove it; that the Applicants depended on their contractor to comply with the setbacks; that the variances will not alter the essential character of the neighborhood as Swann Keys has numerous variances due to the small lots; that the property is unique; that the exceptional practical difficulty was not created by the Applicants; and that the variances requested are minimum required variances to bring the property into compliance.

Mr. John Caudle was sworn in to give testimony about his application.

Mr. Caudle testified that the statements made by Mr. Churchman were true and correct; that the contractor, Mark Winterly, obtained the building permit; that he had issues with the contractor; that he bought the property in 2016; that there was a screen porch which was converted to a sunroom; that a deck was added; that they looked an addition going upward; that this encroachment was not discovered until the property was surveyed for the proposed addition; that they are no longer doing that addition; that they would like to bring the property into compliance for the future should they decide to sell; that it would not be possible to move the HVAC without considerable expense; that there have been no complaints about the structures; that the sunroom is not the width of the house;

that there is a wrap-around deck to be symmetrical; and that the HVAC is on the deck and projects no farther than the deck.

Ms. Norwood confirmed that no variance is needed for the HVAC in the front yard as that was approved in 2010.

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. 13070 for the requested variances, pending final written decision, for the following reasons:

1. The exceptional practical difficulty is not being created by the Applicants;
2. The variances will not alter the essential character of the neighborhood; and
3. The variances sought are the minimum variances necessary to afford relief.

Motion by Dr. Carson, seconded by Mr. Williamson, carried that the variances be approved for the reasons stated. Motion carried 3 - 0.

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

Case No. 13071 – Suzanne Bienert seeks variances from the front yard setback for existing structures (Section 115-182 and 115-34 of the Sussex County Zoning Code). The property is located on the East side of Sylvan Vue Drive within the Blackwater Cove Subdivision. 911 Address: 34582 Sylvan Vue Drive, Dagsboro. Zoning District: MR. Tax Map: 134-11.00-707.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received zero letters of support, zero letters of opposition, and one mail return.

The Applicant is requesting a 7 ft. variance from the 30 ft. front yard setback requirement for steps.

Ms. Suzanne Bienert was sworn in to give testimony about the Application.

Ms. Bienert testified that the septic system is in the middle of the backyard; that the house had to be placed toward the front of the property because of the location of the septic system; that the location of the house was the only place it could be located; that she called the County and was informed that open and unenclosed steps may encroach into the front yard; that the steps are uncovered; that her house failed the final inspection; that the inspector thought the house was 34 feet from the front yard setback when it was actually 30 feet; that the distance from the property line to the edge of paving of Sylvan Rue Drive is 14 ft.; that the steps project 17 inches beyond what is

allowed under the Code; that she requests permission to allow the steps to go 24 inches beyond what is allowable due to the curvature of the road; that she is unsure why this was not discovered sooner in the process; that she only learned of the violation when she saw it in the portal; that the steps are necessary because due to the basement, the front door is high from the ground; and that there are no complaints from the neighbors.

Ms. Bienert submitted exhibits to the Board to review.

Ms. Norwood confirmed that the variance needed is a variance of 7 feet from the 30 feet front yard setback requirement.

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. 13071 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 sought is the minimum variance necessary to afford relief.

Motion by Mr. Williamson, seconded by Dr. Carson, carried that the variance be approved for the reasons stated. Motion carried 3 - 0.

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

Case No. 13072 – James O'Donnell seeks a special use exception for a tent for special purposes for a period exceeding three days (Section 115-97A). The property is located on the southeast side of Vines Creek Road approximately 500 ft. southeast of Falling Point Road. 911 Address: 30968 Vines Creek Road, Dagsboro. Zoning District: LI-1. Tax Map: 134-10.00-37.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received zero letters of support, zero letters of opposition, and zero mail returns.

The Applicant is requesting a special use exception for a tent for special purposes for a period exceeding three days.

James O'Donnell was sworn in to give testimony about the Application.

Mr. O'Donnell testified that he was looking for a place to put his food truck; that he has spoken to the property owner about leasing a portion of the property to sell steamed crabs; that the lease will not be finalized until the special use exception is approved by Sussex County; that a 10 ft. x 10 ft. tent

would be erected for the comfort of customers who would be waiting to pick up crabs; that the tent would be secured with weights and tie downs; that the tent would be located to the west side of the existing trailer; that the tent would be removed during inclement weather; that the hours of operation would be 11 am – 7 pm, seven days a week from April – October; that the property is primarily used for an HVAC business; that the truck is portable but, most likely, will not be moved; that this would be in addition to the current business; that the only employees would be the Applicant and his son; that he has a state business license; that the expectation is 15 – 20 customers a day; that the tent and food truck will be placed back from the road and will not cause any visibility issues for traffic; that there will not be any lighting in the tent; that there is a house across the street from the property; that he asks for a 5 year approval for use between April 15 and October 15 each year; that the tent will be located behind the tree line away from the road; that he expects early afternoon to be the busy time; and that he will close early if there is no business.

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. 13072 for the requested special use exception, pending final written decision for a period of two (2) years, because the use will not substantially affect adversely the uses of neighboring and adjacent properties and subject to the following conditions:

1. All appropriate regulatory approvals and licenses for the operation of the business shall be provided to the Office of Planning & Zoning; and
2. The tent may only operate from April 1 to November 1.

Motion by Dr. Carson, seconded by Mr. Williamson, carried that the **special use exception be approved for a period of 2 years with conditions for the reasons stated.** Motion carried 3 - 0.

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

Case No. 13080 – Keystone Novelties Distributors seek a special use exception for a temporary tent sale. (Sections 115-80 and 115-210 of the Sussex County Zoning Code). The property is located at the corner of Harbeson Road and Lewes Georgetown Highway. 911 Address: 26454 Lewes Georgetown Highway, Harbeson. Zoning District: CR-1. Tax Map: 235-30.00-68.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received zero letters of support, zero letters of opposition, and one mail return.

The Applicant is requesting a special use exception for a tent for special purposes for a period exceeding three days.

Maxwell James Bushong was sworn in to give testimony about the Application.

Mr. Bushong testified that he is the president of Keystone Novelties Distributors; that the proposal is to erect a temporary fireworks tent structure at the property listed on the application; that the Applicant has a 30-day lease with Two Farms, Inc., also known as Royal Farms at the intersection of Route 9 and Route 5; that the Applicant has tents at 30 different Royal Farms locations; that the proposed tent would be in front of the dumpster where it would be safer for both pedestrian traffic and vehicle traffic; that the tent will be located outside the drive aisle; that the tent will take up 4 parking spaces; that the tent would be staffed 24 / 7 by an operator and night watchman; that generator lights will not be used, only a battery pack which is less noisy and no fumes will be emitted; that the employees will use restroom facilities within the Royal Farms building, as worked into the lease agreement; that the tent will be more than 50 ft. away from the gas pumps; that no visibility sight lines will be affected; that the hours of operation will be 9:00 am – 9:00 pm and 9:00 am – 10:30 pm on July 3 and July 4; that the tent will be open for business from June 23 – July 4 with 3 days to install and 3 days to remove the tent; and that the Applicant is flexible on the size of the tent, typically a 20 ft. by 40 ft. but would be willing to downsize to a 20 ft. by 20 ft. if the Board chooses.

Ms. Norwood stated that she believes the site will still have enough Code-required parking spaces even with the tent as proposed.

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. 13080 for the requested special use exception, pending final written decision and subject to the following conditions, because the use will not substantially adversely affect the uses of adjacent and neighboring properties.

1. The tent is approved for a period of five (5) years;
2. The tent may be in operation from June 23 to July 4 each year;
3. The Applicant will have 3 days before and 3 days after the tent sale to set-up and take down the tent.

Motion by Mr. Williamson, seconded by Dr. Carson, carried that **the special use exception be approved with conditions for a period of five (5) years** for the reasons stated. Motion carried 3 - 0.

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

ADDITIONAL BUSINESS

There was no additional business.

Meeting adjourned at 7:16 p.m.