

MINUTES OF MAY 20, 2019

The regular meeting of the Sussex County Board of Adjustment was held on Monday, May 20, 2019, at 7:00 p.m. in the County Council Chambers, 2 The Circle, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman John Mills presiding. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. John Williamson, and Mr. Brent Workman. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Mr. Jamie Whitehouse – Planning Manager, Ms. Jennifer Norwood, Planner, and Ms. Ann Lepore – Recording Secretary.

The Pledge of Allegiance was led by Mr. Mills.

Motion by Mr. Callaway, seconded by Mr. Workman, and carried unanimously to approve the revised agenda. Motion carried 5 – 0.

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

PUBLIC HEARINGS

Case No. 12290 – Michael E. Ballard seeks variances from the front yard setback, side yard setback, and maximum fence height requirement for existing structures (Sections 115-25, 115-182, and 115-185 of the Sussex County Zoning Code). The property is a through lot located on the north side of Fenwick Cir. and the south side of Zion Church Rd., approximately 510 ft. east of New Rd. 911 Address: 37576 Fenwick Cir., Selbyville. Zoning District: AR-1. Tax Parcel: 533-12.00-218.00

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received two letters in support of and none in opposition to the Application and zero mail returns. The Applicant is requesting a 28.8 ft. variance from the required 40 ft. front yard setback for an existing shed along Zion Church Road and a 3.5 ft variance from the required 3.5 ft. fence height requirement.

Michael Ballard was sworn in to give testimony about the application. Mr. Ballard submitted an additional letter of support for his Application.

Mr. Ballard testified that the variances are for an existing shed and fence; that the home was built by Todd Williams of Treasure Home Builders and the Applicant relied on the builder to get the appropriate permits; that his relationship with the builder was poor because it took a long time to finish the project; that the property is unique as it is a through lot which backs up to Route 20; that the property cannot otherwise be developed as the fence and shed are already in place; that the fence was installed prior to inspectors leaving the property; that the property only has access to Fenwick Circle; that he wanted access off Zion Church Road but was denied; that the speed limit along Zion Church Road is 50 miles per hour and traffic is atrocious; that he has dogs and children who play in his yard; that the shed is nearly 12 feet off the rear property line; that neighbors support the application; that the shed conforms with others in the neighborhood; that the shed has been on the

property for 3-4 years; that fences in the neighborhood are on a line; that the neighboring fences have been there for 15 years; that the fence provides a sound and light barrier; that it would be a burden to move the fence because there is poured concrete down each pole of the fence; that there is a pool in the rear yard; that the shed was built as part of the fence; that it was not created by the Applicant as he relied on the builder to get all necessary permits and was unaware there was an issue until he was cited by Sussex County; that it will not alter the essential character of the neighborhood as there are many other properties with fences and also provides protection for dogs and children from the pool on the property; that it is a minimum request to allow the current fence and shed to remain as it would be a huge financial hardship for the Applicant to remove the fence and shed; that the property is serviced by County water and sewer; and that there is approximately 12 – 15 ft. between the edge of paving and the fence as a ditch separates the two.

Paul Rieger was sworn in to give testimony in support of the Application. Mr. Rieger testified that he just installed a pool and he suspects that there are different inspections between pools and fences.

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

Ms. Magee moved to approve Variance Application No. 12290 as the Applicant has met all the criteria for granting a variance; that she is familiar with the area; that the shed is part of the fence; and that a fence is necessary for the protection of the Applicant's property.

Motion by Ms. Magee, seconded by Mr. Callaway, and carried unanimously that the **Application for variances be approved.** Motion carried 5 – 0.

The vote by roll call; Mr. Williamson – yea, Ms. Magee – yea, Mr. Callaway – yea. Mr. Workman – yea, and Mr. Mills – yea,

Case No. 12304 – Patrick & Louise Meadowcroft seek variances from the front yard and corner front yard setback requirements for existing and proposed structures (Sections 115-25 and 115-182 of the Sussex County Zoning Code). The property is located on the southeast corner of Lighthouse Rd. and Jefferson Ave. in the Edgewater Acres subdivision. 911 Address: 13382 Jefferson Ave., Selbyville. Zoning District: AR-1. Tax Parcel: 533-20.19-69.01

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and one mail return. The Applicant is requesting 14.4 ft. variance from the required 40 ft. front yard to Lighthouse Rd. for a proposed extension and a 7.5 ft. variance from the required 15 ft. corner front yard to Jefferson Ave. for existing steps.

Mr. Douglas Tenly was sworn in to give testimony about the Application. Mr. Tenly

submitted an updated survey and some pictures of the surrounding neighborhood.

Mr. Tenly testified that he would like to increase the variance request to 16 feet as it is on the same side and has been advertised; that the property is unique because it is a shallow lot; that there is no street parking allowed in the subdivision; that off street parking is needed; that the addition will be used for a garage with a deck on top; that the addition will improve the house; that the exceptional practical difficulty was not created by the Applicants; that there are new houses in the neighborhood which are 32 feet from the paving of Route 54 to the deck; that the property is located in Edgewater Acres; that the property is addressed on Jefferson Avenue but the front is considered to be Lighthouse Road; that the access to the property is off Jefferson Avenue; and that he questions why Jefferson Avenue is the corner front yard.

Mr. Whitehouse stated that there is no dispute over which side of the property is considered the front yard; that, if Jefferson Avenue was considered the front yard, the building envelope would be virtually non-existent; and that the building permit says Jefferson Avenue is the corner front yard.

Mr. Tenly testified that the garage will measure 12 feet tall; that it cannot otherwise be developed for a garage and driveway as this is the only area with enough space for a garage; the lot size was not created by the Applicants and they have not made any changes thus far; that it will not alter the essential character of the neighborhood but rather enhance the area and add some character to a dwelling that is currently just a rectangular shape; that it is the minimum variance request to enable the Applicants to build a 16 ft. x 20 ft. garage with a deck on the roof of the garage with steps to the rear of the home; that the HVAC system complies with the setback requirements; that there is no interior access to the home from the garage; that the steps existed on the property prior to the Applicants' purchase of the lot; and that there have been no complaints about the steps.

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

Ms. Magee moved to approve Application No. 12304 as the development does have limited parking and the lot is shallow, and the Applicants have met all the criteria for granting a variance.

Motion by Ms. Magee, seconded by Mr. Callaway, and carried unanimously that the **variances be approved.** Motion carried 5 – 0.

The vote by roll call; Ms. Magee – yea, Mr. Williamson – yes, Mr. Workman – yea, Mr. Callaway – yea and Mr. Mills - yea.

Case No. 12305 – Larry F. & Frances A. Silcott seek variances from the front yard setback, side yard setback, and rear yard setback requirements for a proposed structure (Sections 115-25, 115-182, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located on the east side of Bucks Branch Rd. approximately 0.39 miles north of Atlanta Rd. 911 Address: 20823 Bucks Branch Rd., Seaford. Zoning District: AR-1. Tax Parcel: 531-3.00-77.00

Mr. Whitehouse 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 are requesting the following variances:

- 2.8 ft. from the required 40 ft. front yard setback for a proposed pole building;
- 6.9 ft. variance from the 15 ft. side yard setback on the north side for a proposed pole building;
- and 9.99 ft. variance from the 20 ft. rear yard setback for a proposed pole building.

Mr. Whitehouse stated that variances were approved in 2016 for the property but the approvals expired because construction did not commence.

Larry Silcott was sworn in to give testimony about the Application. Mr. Silcott testified that he had a previously received approval for variances to construct the pole building but, due to health issues, the approval expired before the construction could commence; that he tore down two buildings on the property and plans to replace them with a pole building measuring 40 feet by 50 feet; that the building will be used to house his motor home, truck, and other items; that the property has a unique shape being 118 ft. at the north end and tapering to a very narrow point on the south; that, due to the shape of the property, the north end of the lot is the only place where structures can be placed; that the surrounding area is rural; that the property cannot be developed for a pole building without a variance; that this is the area with the least encroachments into setbacks; that the Applicant did not create the size and shape of the lot; that the variances will not alter the essential character of the neighborhood; that there are other properties with pole buildings; that neighboring properties have crops and trees; that the neighbors are not opposed to the Application; that there is a large space between the house on the neighboring property and the location of the pole building; that the pole building in this place on the property will have the minimum impact on setbacks; and that there is no difference between this application and the application filed in 2016.

Mr. Paul Reiger, who was previously sworn in, testified in support of the Application. He testified that Sussex County Council discussed footer inspection and zoning inspections occurring at the same time and that this will help with future issues.

Mr. Whitehouse stated that the County is developing footing and zoning inspection protocols.

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

Mr. Workman moved to approve Variance Application No. 12305 for the following reasons:

1. The size and shape of the lot make it difficult and unique;
2. The variances are necessary to enable use of the property;

3. It is the only way to make it work with causing a hardship;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances are the minimum variances necessary to afford relief.

Motion by Mr. Workman, seconded by Mr. Callaway, and carried unanimously that the **variances be granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Williamson – yea, Mr. Callaway – yea
Ms. Magee – yea, and Mr. Mills – yea.

Case No. 12306 – Maurice Niblett seeks a special use exception to place a manufactured home type structure for a medical hardship (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located on the west side of BiState Blvd. approximately 0.40 miles north of Salt Barn Rd. 911 Address: 34110 BiState Blvd., Laurel. Zoning District: AR-1. Tax Parcel: 332-3.00-91.03

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 has submitted medical evidence in support of his request.

Maurice Niblett was sworn in to give testimony about the Application. Mr. Niblett testified that he will need three operations and he wants to place a manufactured home on the property so that his son and daughter-in-law can help take care of him during his rehabilitation; that the manufactured home will not substantially affect adversely the uses of neighboring and adjacent properties; that his son lives on the home on the lot; that the manufactured home will be out of view; that it is a very large lot; that the manufactured home it will be at least 200 ft. from neighboring homes; that he is aware that the manufactured home will have to be removed from the property if he moves; that he is aware that this request, if approved, is only valid for 2 years and will need to be renewed thereafter; that there are several manufactured homes in the area; that the neighbors are not opposed to the request; that the unit is in good shape; that it is a 1988 manufactured home and the dwelling will receive some minor remodeling; and that there is a railroad line adjacent to the rear of the property.

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

Mr. Callaway moved to approve Variance Application No. 12306 to allow a special use exception for a medical hardship for a period of two years as the Applicant has met all the necessary criteria for approval.

Motion by Ms. Callaway seconded by Mr. Williamson and carried unanimously that the **special use exception be approved for a period of two (2) years**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Williamson – yea, Mr. Callaway – yea, Ms. Magee – yea, and Mr. Mills – yea.

Case No. 12307 – Heather Osborne seeks a special use exception to operate a commercial dog kennel (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located on the south side of Daisey Rd. approximately 746 ft. east of Honeysuckle Rd. Address: 34582 Daisey Rd., Frankford. Zoning District: AR-1. Tax Parcel: 533-6.00-125.00

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received one letter in support of and none in opposition to the Application and zero mail returns. The Applicant is requesting a special use exception for a commercial kennel for between 8 – 15 dogs and a small 2 ft. X 3 ft. sign which would be permitted.

Ms. Heather Osborne was sworn in to give testimony about the Application. Ms. Osborne testified that she was unaware that she needed a special use exception to operate a commercial kennel as she is licensed with the business licensing board; that neighbors support the Application; that she has been in business for approximately two years; that she received a variance for the pole building in January 2019; that the hours of operation are 7 a.m. – 6 p.m.; that there have been no complaints; that one letter of support from a neighbor with adjoining property was submitted and the neighbor to the west of her property told her that she has no complaints and uses the service; that there are typically 8 dogs total on the Property; that the Applicant owns 3 dogs and houses 5 dogs per day on average for daycare; that there have been no noise complaints; that there are no odors emanating from the site; that there is adequate parking; that there are no employees; that overnight boarding is offered; and that the commercial kennel will not substantially affect adversely the uses of neighboring and adjacent properties

The Board found that two people appeared in support of and one person appeared in opposition to the Application.

Mr. Rieger testified that he is in opposition to the Application as the commercial kennels are not 200 ft. from the property line.

Ms. Osborne testified that the request is for 5 years; and that she thinks the Property is adjacent to state preservation lands.

Mr. Callaway moved to approve Application No. 12307 for a special use exception to operate a commercial kennel for a period of five years as the Applicant has met the criteria.

Motion by Mr. Callaway, seconded by Mr. Workman, and carried unanimously that the **special use exception be approved for a period of five (5) years**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Williamson – yea, Mr. Callaway – yea Ms. Magee – yea, and Mr. Mills – yea.

OLD BUSINESS

Case No. 12301 – John F. Bender & Colin P. Hood seek variances from the front yard, corner front and side yard setback requirements for proposed structures. (Sections 115-42, 115-182, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located on the west side of Bay Rd. at the southwest corner of Bay Rd. and Canal Rd. 911 Address: 20600 Bay Rd., Rehoboth Beach. Zoning District: GR. Tax Parcel: 334-19.12-52.00

Mr. Whitehouse stated that this Application was tabled at the last meeting to allow the Applicant to submit information about the placement of the HVAC system. In addition to the variances listed below the Applicants request an additional two variances of 0.1 ft. from the required 5 ft. side yard setback and 5.2 ft. from the required 30 ft. front yard setback. The Applicants also seek the following variances:

- 6 ft. variance and a 0.9 ft. variance from the required 30 ft. front yard setback for a proposed covered porch;
- 2.4 ft. variance from the required 5 ft. side yard setback on the south side for a shed; and a 2 ft. variance from the required 5 ft. side yard setback on the south side for an addition to the shed;
- 0.8 ft, 0.9 ft, and a 1.1 ft. from the required 5 ft. side yard setback on the south side for the existing dwelling;
- and a 3.6 ft and a 3.5 ft from the required 15 ft. corner front setback along Canal Road of the existing dwelling.

Mr. Callaway moved to approve Variance Application No. 12301 because the Applicants met the standards for granting a variance.

Motion by Mr. Callaway, seconded by Mr. Workman, and carried unanimously that the **variances be approved**. Motion carried 5 – 0.

The vote by roll call; Mr. Williamson – yea, Ms. Magee – yea, Mr. Callaway – yea. Mr. Workman – yea, and Mr. Mills – yea,

Case No. 12302 – Geoffrey S. & Lynn M. Piotroski seek variances from the cornerfront, rear yard, front yard, side yard, and fence height setback requirements for existing and proposed structures. (Sections 115-25, 115-183, 115-184, and 115-185 of the Sussex County Zoning Code). The property is located on the southwest corner of Monroe Ave. and Lighthouse Rd. in the Edgewater Acres subdivision. 911 Address: 38940 & 38934 Monroe Ave., Selbyville. Zoning District: AR-1. Tax Parcels: 533-20.19-15.00 & 533-20.19-16.00

Mr. Whitehouse presented the case which was tabled at the May 6, 2019 meeting. The following variances are requested:

- 8.2 ft. variance from the required 15 ft. corner front setback from Lighthouse Rd. for a proposed pool.
- 6.0 ft. variance from the required 15 ft. corner front setback from Lighthouse Rd. for proposed steps.
- 9 ft. and 7.6 ft variances from the required 15 ft. corner front setback from Lighthouse Rd. for a proposed pool house.
- 0.5 ft. variance from the required 3.5 ft. maximum fence height for a proposed fence.
- 15 ft. variance from the required 30 ft. front yard setback for existing landing and steps.
- 3.9 ft. variance from the required 30 ft. front yard setback for the front deck.
- 5 ft. variance from the required 15 ft. side yard setback on the south side for an existing dwelling.
- 8 ft. variance from the required 15 ft. side yard setback on the south side for and HVAC platform.
- 13.2 ft. variance from the required 20 ft. rear yard setback for existing covered porch.

Ms. Magee moved to approve Variance Application No. 12302 as this is the minimum variance to afford relief to accomplish what the Applicants propose; that the dwelling already exists on one of the lots it creates a uniqueness to this property; that, by combining the lots, the Applicants lost the setbacks afforded by the small lot ordinance; that it will not alter the essential character of the neighborhood; and the Applicants has met all the criteria for granting a variance.

Motion by Ms. Magee, seconded by Mr. Callaway, and carried unanimously that the **variances be granted for the reasons stated.** Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Williamson – yea, Mr. Callaway – yea Ms. Magee – yea, and Mr. Mills – yea.

ADDITIONAL BUSINESS

Mr. Mills announced that he will retire from the Board of Adjustment at the end of June 2019, having served 27 years.

Meeting was adjourned at 8:18 p.m.