

MINUTES OF MARCH 4, 2024

The regular meeting of the Sussex County Board of Adjustment was held on Monday, March 4, 2024, 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. 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, and Ms. Marina Truitt – Recording Secretary.

The Pledge of Allegiance was led by Mr. Chorman.

Motion by Dr. Carson, seconded by Mr. Hastings and carried unanimously to approve the agenda. Motion carried 5 – 0.

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

Motion by Mr. Williamson, seconded by Mr. Warfel and carried unanimously to approve the Minutes for the January 8, 2024, meeting. Motion carried 5 – 0.

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

Motion by Mr. Hastings, seconded by Mr. Warfel and carried to approve the Findings of Facts for the January 8, 2024, meeting. Motion carried 5 – 0.

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

PUBLIC HEARINGS

Case No. 12910 – George Empty seeks variances from the lot width and area requirements for proposed lots (Sections 115-34 of the Sussex County Zoning Code). The property is located on the East side of Bethesda Road and the West side of Patriots Way. 911 Address: 27175 and 27167 Bethesda Road, Millsboro. Zoning District: MR. Tax Parcels: 133-11.00-39.00, 26.00 & 27.00.

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support or opposition of the Application and zero mail returns. The Applicant is requesting a 41.02 foot variance from the 150 foot lot width requirement for a parcel (Parcel 26), a 6,320 square foot variance from the 32,670 square foot lot size requirement for a parcel (Parcel 27), and a 6,672 square foot variance from the 32,670 square foot lot size requirement for a parcel (Parcel 26).

Mr. George Empty was sworn in to give testimony for this application.

Mr. Empty testified that he owns almost 5 acres of land, of which he is selling the right portion of land to the Floyds to consolidate with their current property to provide a driveway and back yard area; that the Floyds intend to buy property owned by Bruce Thompson as well; that the Floyds' property can be identified as Parcel 133-11.00-25.00; that the Floyds intend to purchase additional lands from him for access to Parcel 25.00 and to later build a house; that he owns the lands surrounding a majority of the properties and many of the properties use his lands as a means of egress; that his lands wrap around Berry Bramble Lane; that Shirley Hooper owns Parcels 26.00 and 27.00; that the existing Parcels 26.00 and 27.00 will be combined and he will be adding lands to the Hooper lands to create one large parcel; that he will create a larger lot to the west of the Hooper lands; that the lot to the west of the Hooper lands has an existing dwelling which is in disrepair; that the dwelling has been on the lot for a long time; that they are not creating any new lots, just rearranging the land to create bigger lots; that the owner of Parcel 25.00 has no driveway or access; that he plans to sell the parcel to the west of the Hooper lands to the owner of Parcel 25.00; that he has talked with his neighbors and they all seem to be in favor of the proposal; that no additional DelDOT entrances will be needed in addition to the 2 current driveways; that his property has an unusual shape; that he inherited the property from his father last year; that he is in the process of cleaning up the messy configuration; that there are 3 or 4 houses that are extremely close to his property line and utilize his lands regularly; that there is a trailer in the back (Northwest) side of his property that uses his land as an egress access point; and that the shed noted on the survey has been removed from the proposed property line.

Ms. Shirley Hooper was sworn in to give testimony in support of this application.

Ms. Hooper testified that she owns property adjacent to the Applicant's property; that she has no problem with the Applicant's requests for the variances presented; and that she supports the Application.

The Board found that three (3) people appeared in support of the Application and no one appeared in opposition to the Application.

Mr. Chorman closed the public hearing.

Dr. Carson moved to approve the application Case No. 12910 for the requested variances, pending final written decision, for the following reasons:

1. The property is unique due to its history and development;
2. That, due to such physical conditions, there is no possibility of the property can be developed in strict conformity with the code and the variances are necessary to enable 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 Dr. Carson, seconded by Mr. Warfel, carried that the **variances be approved 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.

Case No. 12911 – Sea Air Village seeks variances from the separation distance and side yard setback requirements for proposed structures (Section 115-25 and 115-172 of the Sussex County Zoning Code). The property is located south of Skyview Street and on the west side of Delaware Avenue within the Sea Air Village Manufactured Home Park. 911 Address: 20020 Delaware Avenue, Lot K48, Rehoboth Beach. Zoning District: AR-1. Tax Parcel: 334-13.00-310.00-3218.

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 13 mail returns. The Applicant is seeking a 5 foot variance from the 20 foot separation requirement from a proposed shed to the manufactured home on Lot L-47, a 3.6 foot variance from the 20 foot separation requirements from a proposed shed to landing on Lot K-50, a 3.6 foot variance from the 20 foot separation requirements from the proposed manufactured home to the manufactured home on Lot K-50, a 6.5 foot variance from the 20 foot separation requirement from the proposed landing to the manufactured home on Lot K-50, a 1.9 foot variance from the 20 foot separation requirement from proposed the manufactured home to the manufactured home on Lot K-50, a 5.7 foot variance from the 20 foot separation requirement from the proposed landing to the manufactured home on Lot K-50 and a 2.3 foot variance from the 5 foot side yard setback on the northeast side for a proposed HVAC unit.

Ms. Aimee Bennett was sworn in to give testimony for this application.

Ms. Bennett testified that the exact variance requests were slightly different than what was stated and the Applicant updated the record; that Sea Air Village was built in the 1950s and 1960s before zoning was in effect thereby making the property unique; that the lots are much more narrow than the present day lots and the homes are much bigger than they were at the time the lots were created; that they are replacing the current mobile home with another standard sized mobile home; that the proposed mobile home is narrower than the mobile home they are replacing; that variances are still needed in order to use the land; that the difficulty was not created by the Applicant but, rather, from the historical past; that the variances will allow the mobile home to be updated thereby allowing a cleaner looking neighborhood; that they acquired the mobile home via surrender from the next-of-kin of the owner due to a mold issue; that they are swapping out a single-family home for another single-family home; that the neighbors on both sides are okay with the requests; and that there are 2 entrances on the southwest side of the property and no entrances on the east side due to a request to the manufacturer to place the mobile home as close to the setback requirement as possible.

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

Mr. Chorman closed the public hearing.

Mr. Hastings moved to approve the application for Case No. 12911 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique physical conditions;
2. That, due to such physical circumstances or conditions, there is no possibility that property can be developed in strict conformity with Sussex County Zoning Code;
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. Warfel, carried that the **variances be approved for the reasons stated**. Motion carried 5 - 0.

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

Case No. 12912 – Michele and Nels Taber seek variances from the rear yard setback requirements for a proposed structure (Sections 115-25 and 115-183 of the Sussex County Zoning Code). The property is located on the northeast side of Reserve Way and west of Harvest Circle within the Vines of Sandhill Subdivision. 911 Address: 19889 Reserve Way, Milton. Zoning District: AR-1. Tax Parcel: 135-10.00-225.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support or opposition to the Application, and one (1) mail return. The Applicants are seeking 1.6 foot variances from the 10 foot rear yard setback requirement for proposed screen porches.

Mr. Nels Taber and Ms. Michele Taber were sworn in to give testimony for this application.

Mr. Taber testified that the Applicants purchased the property in April 2023; that they just discovered the severity of the arched property line when discussing the proposed porches; that the house is a model home for the community; that they did not build the house; that his wife's health condition prevents her from being outside too often; that his wife has a condition which cause an outbreak of she is bit by insects; that the screen porches will allow them to enjoy the outdoors more; that the proposed porches will square off the house and will not stick out any farther than what is there already; that the porches will be the same size as the patios; that a concrete pad is required on the one side requested due to the potential for a therapeutic spa in the future; that there is open space behind

them that will not be developed and they are not building any closer to their side neighbors, just towards the back of the property; that they have approval from their homeowners association; that they posted on their community page explaining what they were proposing and had no correspondence in return; that the size of the proposed porches will allow them to reasonably use the property; that the pond behind their house is a water retention pond which hoards more insects than other lots; that the variances are the correct amounts needed to fit the therapeutic spa; that there will not be steps on the outside of the porches; that the steps will exit the home onto the porch; that the porch will then be ground level to exit if needed; that the steps exiting the home will take up space within the porch area; and that there are a few lots with similar curvature but none with such a severe arch.

Ms. Taber testified that the therapeutic spa is one of the smallest on the market; that it will not fit without the variance due to it needing a concrete pad for the warranty; and that their property arches more than other lots in the area.

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. 12912 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique physical conditions due to the curvature in the back;
2. That, due to such physical circumstances or conditions, there is no possibility that property can 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 Dr. Carson, carried that the **variances be approved for the reasons stated**. Motion carried 5-0.

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

Case No. 12913 – George Cole, Jr. seeks a special use exception to place a manufactured home as an office (Sections 115-29 of the Sussex County Zoning Code). The property is located on the southwest side of Bethany Loop and east of Cedar Neck Road within The Salt Pond Subdivision. 911 Address: 698 Bethany Loop, Bethany Beach. Zoning District: MR-RPC. Tax Parcel: 134-13.00-1843.00.

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received

no letters in support of the Application, 4 letters in opposition to the Application, and 1 mail return. The Applicant is requesting a special use exception to place a manufactured home as an office.

Mr. Williamson recused himself and left the Council Chambers.

Mr. Sharp recused himself but stayed for purposes of swearing in witnesses and to make sure the procedure for that went smoothly. Mr. Sharp stated that he would not be, due to recusal, able to answer any questions or ask any questions of the Applicant or any of the witnesses; that, if the Board has questions, Seth Thompson at Vince Robertson's office, is available to answer those questions at a future meeting; that, if there are any questions, the Board can defer those questions for him; that, for the record, this is a special use exception for a temporary special use for up to five years; that the Board used to routinely hear these types of applications until there was a change in the Sussex County Zoning Code several years ago that allowed for an administrative process; that, under the new process, neighbors are notified of the application and, if someone were to object, the application then comes to the Board; that, to his understanding, that is what happened here; and that now this case has come to the Board.

Mr. George Cole, Jr., was sworn in to give testimony for this application.

Mr. Cole testified that he is requesting the use of a manufactured type structure as an office and retail space; that he plans to operate between the hours of 8:00 am and 6:00 pm; that the manufactured structure will not be a mobile home but a kit-type structure on a concrete foundation; that the structure will have a coastal design; that the fence will be 7.5 feet tall and will provide a buffer on the south and east of the property; that the property is served by public water and sewer; that there are already sign and fence permits submitted through the County; that the fence will keep a nice buffer between the neighboring properties; that the land was originally given to the Millville Volunteer Fire Department for a substation but they gave up the land; that the land was later sold to the Applicant by Rupert Smith, who is the business owner to the west of the property; that the land is not recognized as part of the Salt Pond Homeowners Association; that the lot is recognized as B-1 zoning; that, with construction costs, the manufactured home type structure was the feasible way to go; that he plans to use the office space for a Beracah Homes show room, display tile, cabinet and flooring options and operate his real estate business out of the building; that he originally applied for the administrative variance but, due to opposition, he needed a public hearing; that there was a manufactured home previously on the lot; that he once sold a friend's car of the lot; that, in the surrounding area of the property, there is a 3 unit business complex to the east, a grocery store, a bar, a cycling and a physical therapy facility to the north and homes to the southeast of the property; that the two lots to the east of his property are owned by Bethany Beach and Sussex County; that the entrance to The Salt Pond would be the main access point for potential customers coming off Cedar Neck Road onto Bethany Loop, which is a private road of Salt Pond; that the site plan submitted was for a proposed bike shop but still falls in line with the current plan; that the site plan shows what is being proposed but with a different name; that traffic flow should not be an issue; that there are only six parking spots proposed so no more than six customers at a time; that he has no plans to pave the parking lot; that there will

be a fence surrounding the property which will be 3.5 feet tall and 7.5 feet tall; that he has access to Bethany Loop as a property owner in the Salt Pond; that the maximum sized manufactured home would be 1,000 square feet; and that the special use exception is temporary with a maximum of five years.

Ms. Patricia Milstead was sworn in to testify in opposition to this application.

Ms. Milstead testified that the HOA was presented with a bike shop and not a sales office; that Bethany Loop is a private road of Salt Pond and there is not a good ingress or egress for the proposed property; that she has concerns with the median strip; that they have an agreement with Hocker's for maintenance of the road; that the traffic is a concern; and that the B-1 zoning was a question for a few members of the community.

Mr. Steven Kehler was sworn in to testify in opposition to this application.

Mr. Kehler testified that many cars use the cul-de-sac he lives off of as a turnaround; that the traffic and safety is a concern; that there is no cross-over on Bethany Loop; that the B-1 zoning is a concern that they have maxed out on the acreage; that he believes the lot is too small for any building to be on; that he receives a lot of reflection from headlights turning on to Bethany Loop off Central Avenue; that he believes they have enough commercial business in the area already and no more is needed; that any more commercial use should be in the Hockers' complex and not on the parcel at hand; that there are always boats and things being sold on the property; and that there is not a definitive plan as to what he wants to put there.

Mr. Gregory Floyd was sworn in to testify in opposition to this application.

Mr. Floyd testified that he, too, is worried about the added traffic; that there have been 2 restaurants which opened this winter and he is concerned about the increase in traffic this summer to the area; that the area is overcrowded; that he has flood plain concerns; that the noise and manufactured home look is a concern; that there is not a definitive plan as to what the Applicant wants to put there; that he has a gazebo on his lot and has concerns about the impact on his property; and that he believes another business would adversely impact them.

Mr. Cole testified that the property is part of the original Salt Pond RPC; that he has a right to use the road; that he is open to putting money towards road maintenance; that Osprey Point is also part of the Salt Pond RPC; that the structure will be approximately 1,000 square feet; that he will only be displaying materials to sell but will not actually be selling building supplies from the site; and that the property was originally approved as B-1.

The Board found that no one appeared in support of the Application and four (4) people appeared in opposition of the Application.

Ms. Norwood stated that for this parcel they still are within the permitted B-1 area; that the B-1 use area was 5.68 acres; that there was a part of the B-1 use area not yet allocated in The Salt Pond of 0.4 acres like 17,750 square feet; that the B-1 use area parcel is at 0.2 acres, which is 9,665 square feet; that they are still within the permitted threshold of the B-1 area; that the uses for the property would allow anything in a B-1 zoning; and that the reason the Applicant is here is because he is seeking a manufactured home and, if it were a modular or stick built home, he would simply apply for a permit with an approved site plan.

Mr. Warfel stated that the benefit of everyone in the audience, the only thing that the Board is considering is the special use exception; and that there is just one standard - will it substantially affect adversely the uses of the neighboring adjacent properties.

Mr. Chorman closed the public hearing.

Mr. Warfel moved to approve the application for Case No. 12913 for the requested special use exception, pending final written decision, because the proposed use will not substantially affect adversely the uses of neighboring and adjacent properties subject to the following conditions:

1. That this approval be valid for a period of five (5) years; and
2. That the structure be no larger than 1,000 square feet.

Motion by Mr. Warfel, seconded by Dr. Carson, that the **special use exception be approved with conditions for the reasons stated.** Motion failed 2 - 2.

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

Pursuant to Board Rule 6.5, the Applicant failed to obtain 3 affirmative votes for the Application so the Application was denied.

ADDITIONAL BUSINESS

Meeting adjourned at 7:30 p.m.