

MINUTES OF NOVEMBER 1, 2021

The regular meeting of the Sussex County Board of Adjustment was held on Monday, November 1, 2021, 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 John Williamson presiding. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. John Williamson, and Mr. Jordan Warfel. 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. Williamson.

Ms. Norwood stated that Case No. 12620 for Michael G. Nechupas & Dawn M. Nechupas as been withdrawn as the property will benefit from the small lot ordinance and a variance is not necessary. Ms. Norwood asked if the Board members would consider moving Case No. 12625 for Robert & Sarah Murphy to the first item on the agenda.

Motion by Dr. Carson, seconded by Mr. Warfel and carried unanimously to approve the agenda with the revisions noted by Ms. Norwood. 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.

Motion by Mr. Warfel, seconded by Mr. Hastings and carried unanimously to approve the Minutes for the September 13, 2021, meeting. 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.

Motion by Mr. Hastings, seconded by Dr. Carson and carried to approve the Findings of Facts for the September 13, 2021, meeting. 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.

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

PUBLIC HEARINGS

Case No. 12625 – Robert & Sarah Murphy seek a variance from the separation distance requirement between units for a proposed structure (Sections 115-25, 115-172, and 115-185 of the Sussex County Zoning Code). The property is located on the south side of River Road within the Pot-

Nets Bayside Manufactured Home Park. 911 Address: 34171 River Road, Millsboro. Zoning District: AR-1. Tax Parcel: 234-30.00-2.00-51528

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received six letters in support of and none in opposition to the Application and two mail returns. The Applicant is requesting a 14 ft. variance from the required 20 ft. separation distance between units.

Ms. Sarah Murphy was sworn in to give testimony about her Application and she submitted exhibits for the Board to review.

Ms. Murphy testified that the request is for a pad and wheelchair elevator for her husband; that her husband fell and broke his hip; that a year and a half later, her husband is still not walking; that there is currently a temporary ramp which is 62 ft. long and costs \$1,000.00 a month to rent; that a veteran's organization has volunteered to install a lift free of charge which will allow her husband to wheel his wheelchair onto the lift and provide easy access to the dwelling; that, if, in the future, the lift is not needed it would be removed; that Tunnel Properties advised her to get County approval first; that, if the variance is approved by the County, she will then need to get approval from Tunnel Properties; that this is the only area on the property to place the lift; that it cannot be placed on the opposite side of the house as there is a slope on that side of the property; that she is unable to install a concrete pad on the other side due to the slope of the lot; that there is no flooding on this property but the home does meet FEMA requirements; that houses in the community have to be raised to meet FEMA requirements; that her family has lived on the lot for 53 years; that the lot is graded to avoid flooding problems; that she would not have needed the variance if not for the topography of the lot; that there is electricity where the lift is to be installed; that the existing ramp will be removed; that the lot is a pie-shaped lot; and that, if the variance is approved, the Applicants asked if the Board would consider refunding the application fee as this is for a medical need and not just to enhance the home.

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

Mr. Williamson closed the public hearing.

Mr. Warfel moved to approve Case No. 12625 for the requested variance, pending final written decision, for the following reasons and that the application fee be refunded to the Applicants:

1. The property has unique conditions due to its size and shape;
2. That, due to the physical conditions, the property cannot be developed in strict conformity with Sussex County Zoning Code and the variance is necessary to enable the reasonable use of the property;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variance will not alter the essential character of the neighborhood ; and
5. The variance represents the minimum variance necessary to afford relief.

Motion by Mr. Warfel, seconded by Dr. Carson, carried unanimously that the **variance be granted for the reasons stated**. 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.

Case No. 12619 – Sawmill Woods, LLC seeks a variance from the side yard setback requirement for a proposed dwelling (Sections 115-25 and 115-183 of the Sussex County Zoning Code). The property is located on the east side of Holly Oak Drive within the Sawmill Woods Subdivision. 911 Address: 23591 Holly Oak Drive, Milton Zoning District: AR-1. Tax Parcel: 235-24.00-243.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. The Applicant is requesting a 9.6 ft. variance from the required 15 ft. side yard setback on the southeast side for a proposed dwelling.

Mr. Jordan Ashburn was sworn in to give testimony about his Application.

Mr. Ashburn testified that this property has a very unique shape; that it is located at the end of the subdivision on a cul-de-sac; that the property line follows a wetland delineation line; that it is a difficult lot to develop; that a variance is being requested for the rear corner; that the adjacent property is a wooded area that will not be developed; that the parcel to the right is a dry pond so granting this variance would not encroach on any neighbors; that he knew of the shape of the property when he purchased it; that the proposed dwelling will look similar to the other houses in this development; that, if the variance were not approved, a deep, narrow house would have to be designed which would not be in character with the existing homes in this development; that a well and septic system will be installed when construction begins; that the septic drain field also limits where the house can be located; that the wetlands are not on this property but on an adjacent property; that all steps and HVAC will be placed in compliance with the Code; that the house will consist of approximately 1,900 square feet with a two-car garage; that the property line ends at the edge of pavement; that there is a swale in the front yard; that the septic system cannot be located in any other location; that only a small triangular corner of the house will encroach into the setback area; that HOA approval is not necessary as the HOA has not yet been formed and he is the developer; that this development was purchased at a sheriff's sale; and that another developer designed the lots.

Mr. William Walters was sworn in to give testimony in opposition to the Application.

Mr. Walters testified that he owns Lot 1 in Sawmill Woods; that the property is already under contract as sold; that there are drainage issues in the entire development; that the pond is not as full because there are drainage issues in the community; and that, if the drainage system worked, the storm water management pond would not be a dry pond.

Ms. Renee Angil was sworn in to give testimony in opposition to the Application.

Ms. Angil testified that she owns Lot 245; that she had questions; that she wanted to know if this house would be close to her property line; that the area next to the proposed dwelling is a dry pond; that, when the drainage issues are corrected, the pond will be full; that this is open space for people to walk around the pond and walk their dogs; that they are paying for open space; that there is poor grading and drainage in the neighborhood; that the house on the lot will affect drainage; that she moved into the community in May 2021 and the swales have been wet since that time; and that she asked if there would be a swale between her property and the subject property.

Mr. Sharp explained to Ms. Angil that the aerial overlay does not always match the tax map and that the subject property does not extend into the stormwater management pond.

Mr. Douglas Bosley was sworn in to give testimony in opposition to the Application.

Mr. Bosley testified that he lives in Sawmill Woods; that the lot is too oddly shaped to be developed with a dwelling and that the land there is needed for drainage.

Mr. Ashburn testified that there are drainage issues in the development; that he is working with Sussex Conservation District to correct the drainage; that the Conservation District put a shallow slope on the swales; that, before the turnover to the homeowners, he will meet with the Conservation District and take remedial measures; that the subject property will be developed with a dwelling; that there will not be a swale between Ms. Angil's property and the subject property; that there is a slope towards the rear of this property; that the stormwater management pond was designed to be a dry pond; that the swales are oddly designed but were approved by the Conservation District; that 15 homes are constructed in the neighborhood and there are 2 more homes left to be built; that the lot drops off significantly; that the stormwater pond is entirely on the neighboring lot; that the Conservation District would not approve a stormwater pond on a residential lot; that the house is under contract; that most homes in the neighborhood are 50 feet wide; that the house would have to be considerably narrower to comply with the Code and would stick out; that the easement on the property also limits the buildable area; and that the easement is used for access.

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

Mr. Williamson closed the public hearing.

Mr. Chorman moved to deny Case No. 12619 for the requested variance, pending a final written decision, for the following reasons:

1. The Applicant has failed to demonstrate that the property cannot be developed in strict conformity with Sussex County Zoning Code and that the variance is necessary to enable

- the reasonable use of the property.
2. The exceptional practical difficulty is being created by the Applicant.

Motion by Mr. Chorman, seconded by Mr. Hastings, failed that the **variance be denied for the reasons stated**. Motion 2 – 3.

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

Mr. Warfel moved to approve Case No. 12619 for the requested variance, pending final written decision, for the following reasons:

1. The property has unique conditions due to its odd size and shape;
2. That, due to the physical conditions, the property cannot be developed in strict conformity with Sussex County Zoning Code;
3. The variance is necessary to enable the reasonable use of the property;
4. The exceptional practical difficulty was not created by the Applicant;
5. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor will be detrimental to public welfare; and
6. The variance represents the minimum variance necessary to afford relief and represents the least modification of the regulation at issue.

Motion by Mr. Warfel, seconded by Dr. Carson, carried that the **variance be granted for the reasons stated**. Motion carried 3 – 2.

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

Case No. 12621 – Michele A. Mosley seeks a special use exception to operate a daycare facility (Sections 115-32 and 115-210 of the Sussex County Zoning Code). The property is located at the west side of S. Mayhew Drive within the Cedar Creek Estates Subdivision. 911 Address: 9268 S. Mayhew Drive, Lincoln. Zoning District: MR. Tax Map: 230-13.00-268.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. The Applicant is requesting a special use exception to operate a daycare center for up to 12 children.

Ms. Michele Mosley was sworn in to give testimony about her Application.

Ms. Mosley testified that she was previously approved in 2019; that the special use exception approval has expired; that her request is to operate a large family daycare at her property in Lincoln;

that she has foster children and cannot have a foster home and a daycare in the same house; that the property is in a family neighborhood; that there is a need for daycares; that the playground will be completely fenced-in; that she is renovating the house; that her childcare licensing application is in progress; that the hours of operation will be from 6:00 am – 6:00 pm, Monday through Friday; that there is parking on the property; that the neighbors are in support of the Application; that she previously lived in the neighborhood; that the property is served by public water and a septic system; that no one will live on the premises; that, in addition to herself, there will be one employee; that there are no restrictive covenants which prevent this use; that there is a convenience store and residences in the area; that there are lots of children in the neighborhood; and that there has been no negative feedback from neighbors.

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

Mr. Williamson closed the public hearing.

Dr. Carson moved to approve Case No. 12621, pending final written decision, for the requested special use exception for a daycare business as the request will not substantially adversely affect the uses of neighboring and adjacent properties.

Motion by Dr. Carson, seconded by Mr. Hastings, carried unanimously that the **special use exception 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. 12622 – Evergreene Homes seeks variances from the front yard setback requirement for a proposed dwelling (Sections 115-34 and 115-182 of the Sussex County Zoning Code). The property is located on the west side of Maple Lane within the Keenwick Subdivision. 911 Address: 38356 Maple Lane, Lot 41, Selbyville. Zoning District: MR. Tax Parcel: 533-19.16-37.00 (Lot 41)

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no letters in support of and three in opposition to the Application and zero mail returns. The Applicant is requesting a 5 ft. variance from the required 30 ft. front yard setback for a proposed dwelling.

At the request of the Applicant, the Board of Adjustment agreed to consolidate the next two items Case No. 12622 and Case No. 12623 into one public hearing. Mr. Sharp explained that, although the two applications will be heard together, there would be two votes, one for each application.

Case No. 12623 – Evergreene Homes seeks variances from the front yard setback requirement for a proposed dwelling (Sections 115-34 and 115-182 of the Sussex County Zoning Code). The property is located on the west side of Maple Lane within the Keenwick Subdivision. 911 Address: N/A.

Zoning District: MR. Tax Parcel: 533-19.16-37.01 (Lot 42)

Ms. Norwood presented Case No. 12623 and stated that the Office of Planning and Zoning received no letters in support of and one in opposition to the Application and one mail return. The Applicant is requesting a 5 ft. variance from the required 30 ft. front yard setback for a proposed dwelling.

Mr. Tim Naughton was sworn in to give testimony about the Application.

The Board found that James Fuqua, Esq., was present on behalf of the Applicant, Evergreen Homes.

Mr. Fuqua stated that the Applicant owns both lots 41 and 42 in the Keen-Wik Development; that both Applications are requesting front yard variances; that both lots are located on the west side of a dead-end street and are close to the end of Maple Lane; that granting these variances will not create traffic issues; that the lots are bordered by a lagoon in the rear; that Keen-Wik was developed before Sussex County Zoning Code was enacted; that the development consists of small non-conforming lots; that Lot 41 consists of 5,818 square feet with approximately 49 ft. of frontage on Maple Lane and Lot 42 consists of 6,000 square feet with approximately 49 ft. of frontage on Maple Lane; that Evergreene proposes to construct new homes on each of the lots; that, in order to construct homes with a reasonable square footage that are similar to other homes in the area, they request front yard variances for each lot; that the request is for 5 ft. on Lot 41 and 3.9 ft. on Lot 42; that Keen-Wik's covenant restrictions require a 25 ft. front yard setback and a 20 ft. rear yard setback; that, in 1970 when the Zoning Code was adopted, the County set a 30 ft. front yard setback and a 10 ft. rear yard setback for lots in the Medium Residential Zoning District; that the lots in Keen-Wik are required to meet the restrictive covenants and the County setbacks which created a squeeze on the lots; that this difficulty has been recognized by the Board on previous occasions and there have been approximately 32 variances granted in Keen-Wik in the past 10 years; that 6 variances for properties along Maple Lane have been granted since 2014; that the lots are unique due to the small size of the lots and the impact of the private and the County setback restrictions; that the variances are necessary to enable the reasonable residential use of the lots for the construction of appropriately sized homes; that the need is directly related to the small lot size and to the increased 20 ft. rear yard setback; that the exceptional practical difficulty was not created by the Applicant; that the lot size was created when the subdivision was created and the additional 20 ft. was created by the subdivision restrictions; that the variances will not alter the essential character of the neighborhood as there are similar variances within the subdivision; that the variances are the minimum for the proposed homes and for the reasonable use of the lots; that the homes designed for these lots have been reduced to meet the Keen-Wik's 20 ft. rear yard setback and 25 ft. front yard setback; that, in one of the letters of opposition, parking was mentioned as a reason for not granting the variance; that parking will not be an issue; that the houses are raised; and that there will be four parking spaces on each lot.

Mr. Naughton affirmed that the statements made by Mr. Fuqua as true and correct.

Mr. Naughton testified that the homes on these lots will be approximately 2,500 sf. each, which is similar to the size of other homes in the neighborhood; that the lots benefit from the small lot ordinance with 5 ft. side yard setbacks; that the design is one that is specific for small lots; that they did not expand on the home to make it wider; that these lots are served by public sewer and water; that there was a large tree between the lots, but it may not be possible to save that tree; that the homes will be two-story on top of pilings; that there are no flooding issues on these lots; that he is unsure if the lot lines extend into the water; and that HOA approval will be sought if the variances are approved by Sussex County.

Mr. Fuqua stated that these lots had one house on two lots; that the house was demolished, and the two original lots were reestablished; that there is some area between the lot line and the edge of paving, but it has not been measured; that Maple Lane is a 50 foot wide right-of-way but the road itself is not 50 feet wide; that he estimates Maple Lane is 20 feet wide; and that the Applicant did not seek to use the averaging of the front yard setback requirement.

Mr. Fuqua submitted picture to Board members showing the placement of telephone poles on the lots and he stated that they are quite a distance from the edge of paving.

Mr. Sharp reviewed the cases cited by Mr. Fuqua.

Mr. Fuqua noted that three prior applications were for new construction.

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

Mr. Williamson closed the public hearings.

Dr. Carson moved to approve Case No. 12622 for the requested variances for the following reasons:

1. The property has unique conditions; and
2. The variances represent the minimum variances necessary to afford relief.

Motion by Dr. Carson, seconded by Mr. Hastings, carried that the **variances be granted for the reasons stated.** Motion carried 4 – 1.

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

Dr. Carson moved to approve Case No. 12623 for the requested variances for the following reasons:

1. The property has unique conditions;
2. The variances represent the minimum variances necessary to afford relief.

Motion by Mr. Hastings, seconded by Mr. Chorman, carried that the **variances be granted for the reasons stated**. Motion carried 4 – 1.

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

Case No. 12624 – Cellco Partnership d/b/a Verizon Wireless seeks a special use exception to place a telecommunications tower (Sections 115-23, 115-194.2 and 115-210 of the Sussex County Zoning Code). The property is located on the west side of Camp Arrowhead Rd. approximately 1.2 miles south of Angola Rd. 911 Address: 23182 Camp Arrowhead Rd., Lewes. Zoning District: AR-1. Tax Parcel: 234-18.00-26.00

Ms. Norwood 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 to place a telecommunications tower.

Mr. Warfel recused himself from hearing this case and left Council Chambers.

The Board found that Mr. John Tracey, Esq. was present on behalf of the Applicant, Cellco Partnership.

Mr. Tracey stated that this special use exception was previously approved by the Board of Adjustment under Case No. 12226; that, due to the Covid-19 pandemic, construction was delayed; that the special use exception expired; that a new application is being sought for the same relief; that the property consists of approximately 12 acres of land across from West Bay; that there is a lack of cellular coverage in this area; that this tower will fill a gap in service; that neighbors want the tower in place; that there is another tower to the northwest but it is too far away to help the lack of service issue; that the tower will be 148 feet tall; that the tower will have lighting to comply with Sussex County Code; that the tower will be able to accommodate two additional carriers; that the tower will, in a worst case scenario, have RF emissions of less than 1.5% of the FCC limit; that the subject property also serves as a maintenance yard for the West Bay Community and as a stormwater management area; that this is mostly a residential area; that the tower will not cause any additional traffic as once it is constructed a technician will travel to the site approximately once every six weeks to make sure everything is functioning as it should; that there is no noise or smells associated with the tower; that the use will not have a substantial adverse effect on neighboring and adjacent properties; that the pad site will be surrounded by a fence; and that the tower will meet setback requirements.

Mr. Matthew Graubart and Mr. Andrew Petersohn were sworn in to give testimony about the Application.

Mr. Graubart affirmed that the statements made by Mr. Tracey as true and correct.

Mr. Petersohn affirmed that the statements made by Mr. Tracey as true and correct.

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

Mr. Williamson closed the public hearing.

Mr. Hastings moved to approve Case No. 12624 for the special use exception, pending a final written decision, as the proposed use will not substantially adversely affect the uses of neighboring or adjacent properties.

Motion by Mr. Hastings, seconded by Dr. Carson, carried unanimously that the **special use exception be granted for the reasons stated**. Motion carried 4 – 0.

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

Mr. Warfel returned to Chambers.

ADDITIONAL BUSINESS

Consideration, Discussion, and Possible Vote on Request for Rehearing for case 12257 – Lands of Key Properties Group, LLC

Ms. Norwood stated that Case 12257 was heard on May 17, 2021; that the Applicant was seeking variances from the front yard setback requirement for existing buildings and from the Combined Highway Overlay Zone for Districts 334, Map 6, Parcels 74, 75 and a part of 70.01; that the zoning is C-1; and the address is 18315 Coastal Highway, Lewes.

Mr. Hastings did not participate in the May 17, 2021, hearing and abstained from participating in the discussion this evening.

Mr. Sharp stated that this is a motion for rehearing under Rule 18.1 under the Board's Rules of Procedure; that it is not one that requires an oral argument or public comment; that the Board rendered its decision after the hearing a few months ago; that, after the written Findings of Fact were approved, the Applicant submitted a motion for reconsideration; that the rules also allow for opposition to submit a response in writing; that the opposition was contacted and they have not submitted any response; that before the Board tonight is the motion and materials submitted by Attorney, David Hutt on behalf of the Applicant; that there are three reasons for which the Board may rehear a case:

1. Mistake, inadvertent surprise or excusable neglect.
2. Newly discovered evidence which by due diligence could not have been discovered at the time of the original hearing.
3. Fraud, misrepresentation or other misconduct of an adverse party.

Mr. Sharp stated that following his review of the motion it is the first category is what the Applicant has sought as the basis for the motion.

The Board discussed the request for rehearing for Case No. 12257.

Dr. Carson moved to deny the request for rehearing.

Motion by Dr. Carson, seconded by Mr. Warfel carried that the **motion for the rehearing of Case No. 12257 is denied.** Motion carried 3 – 1.

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

2022 Board of Adjustment Meeting Schedule

The Board discussed the 2022 Board of Adjustment meeting schedule.

Meeting adjourned at 8:03 p.m.