

## MINUTES OF NOVEMBER 18, 2019

The regular meeting of the Sussex County Board of Adjustment was held on Monday, November 18, 2019, at 6:00 p.m. in the County Council Chambers, 2 The Circle, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chair Ellen Magee presiding. The Board members present were: Dr. Kevin Carson, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, Mr. Scott G. Wilcox – Assistant County Attorney and staff members Ms. Janelle Cornwell – Planning and Zoning Director, Ms. Jennifer Norwood – Planner, and Ms. Ann Lepore – Recording Secretary.

The Pledge of Allegiance was led by Ms. Magee.

Motion by Dr. Carson, seconded by Mr. Williamson, and carried to approve the agenda. Motion carried 4 – 0.

Motion by Mr. Workman, seconded by Mr. Williamson, and carried unanimously to approve the Minutes for the September 9, 2019, meeting. Motion carried 3 – 0. Dr. Carson abstained.

Motion by Mr. Williamson, seconded by Mr. Workman, and carried to approve the Findings of Facts for the September 9, 2019, meeting. Motion carried 3 – 0. Dr. Carson abstained.

Motion by Dr. Carson, seconded by Mr. Workman, and carried unanimously to approve the Minutes for the September 16, 2019, meeting. Motion carried 4 – 0.

Motion by Dr. Carson, seconded by Mr. Williamson, and carried unanimously to approve the Findings of Facts for the September 16, 2019, meeting. Motion carried 4 – 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. 12383 – Thomas F. & Bettie J. Dunkin** seek variances from front yard setback and corner front yard setback requirements for a proposed pool and a proposed structure, a variance from the fence height requirement for a proposed fence. (Sections 115-34, 115-182 and 115-185 of the Sussex County Zoning Code). The property is located on the northeast corner of Arrow Dr. and Trails End Dr. within the Blackwater Village subdivision. 911 Address: 34023 Arrow Drive, Dagsboro. Zoning District: MR. Tax Parcel: 134-11.00-263.00

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 one mail return. The Applicant is requesting a 2.5 ft. variance from the required 3.5 ft. height requirement for a proposed

fence, a variance of 3 ft. from the required 30 ft. front yard setback for a proposed shed and a variance of 18 ft. from the required 30 ft. front yard setback for a proposed pool.

Bettie Dunkin and Thomas Dunkin were sworn in to give testimony about the Application. Mr. Dunkin submitted exhibits to the Board.

Mr. Dunkin testified that the Applicants purchased 2 adjacent lots in 2015 and later purchased a third lot; that Mrs. Dunkin wanted to install a pool; that the original survey showed Trails End as the front yard for two lots and Arrow Drive as the front yard for the house; that they have since combined the lots; and that, prior to combining the lots, the setback to Arrow Road was 15 feet and the Applicants were unaware of the change until they began the permit process for the pool.

Mrs. Dunkin testified that the house and garage are near wetlands; and that Arrow Drive and Trails End are dead-end roads.

Ms. Cornwell provided the Board with a history of the lot consolidation.

Mr. Dunkin testified that 20% of the property is located in wetlands; that, although the property consists of three lots combined that it is a narrow lot which contributes to the uniqueness; that there is no back yard behind that home; that it is better to place the pool away from the wetlands; that trucks drop off logs to the property; that they are trying to hide the pool behind a grove of trees; that the shed will be used for pool equipment; that they explored other placement options for the pool; that the location of the pool is high ground; that the swale drains to the wetlands; and that he would rather not place the patio and shed on the other side of the pool; and that the patio could be smaller.

Mrs. Dunkin testified that it is the last house in Blackwater Village on two dead end roads; that it is low-lying and drains towards the back of what was originally lot 2; that the property cannot be otherwise developed because the lot is only 65 feet wide; that they are afraid they will hit water if the pool is moved closer to the wetlands; that they deliver firewood to the property and need egress near the pool for deliveries; that the property backs up to a nature preserve; that the community is wooded; that it will not alter the essential character of the neighborhood as it is the last home in the neighborhood; that the homeowners association opposes tree removal; that the fence will provide privacy and a noise buffer; that the septic drain field is located between the house and garage; that they would not be able to use the garage if the pool was moved closer; that there are 2 wells on the lot; that one well is near the garage and the other is near the house; that the area between the pool and the wetlands are low-lying; that the design could possibly be amended to move the shed into compliance but for aesthetic purposes it would be preferred to keep the shed in the proposed location; and that the pool will be raised 1 foot to help with drainage.

Gary Hornbacher was sworn in to give testimony in support of the Application. Mr. Hornbacher submitted an exhibit to the Board.

Mr. Hornbacher testified that he is a past president of the homeowners association; that the community is a wooded community with a 27 acre nature preserve; that he supports the request because it will preserve the NW corner drainage into blackwater saltwater marsh; that the homeowners association has bylaws against the removal of trees; that the Applicants worked with the homeowners association; that the trees on the corner of the lot will not be removed; that the proposed pool placement avoids issues with sightlines in the neighborhood; particularly on the Arrow Drive side of the property; that it will ensure minimal viewing obstructions for motorists; and that it will enhance property values.

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

Mr. Workman moved to table Case No. 12383 until the December 2, 2019, meeting.

Motion by Mr. Workman, seconded by Mr. Williamson, carried unanimously to **table this case until the next meeting on December 2, 2019**. Motion carried 4 – 0.

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

**The Board took a five (5) minute recess.**

**Case No. 12384 – Isabella, LLC** seeks variances from front yard setback requirements for an existing building (Section 115-77.1 of the Sussex County Zoning Code). The property is located on the east side of Old Stage Rd. approximately 280 ft. north of Line Rd. 911 Address: 36858 Red Berry Rd., Delmar. Zoning District: AR-1/C-1. Tax Parcel: 532-20.00-107.00

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 variances of 55.42 and 53.2 ft from the required 60 ft. front yard setback for an existing building.

Vasilios Diakos was sworn in to give testimony about the Application. Mr. Michael Smith, Esquire, presented the Application on behalf of the Applicant and submitted an exhibit booklet to Board members.

Mr. Smith stated that the subject property is an 18.9 acre parcel located primarily in a commercially zoned area; that the front of the property is zoned C-1 commercial and the rear of the property is zoned AR-1; that a one-story warehouse is located within the C-1 portion of the lot; that, in 2009, the prior owner of the property divided the parcel into two separate lots; that, in April 2019, the parcels were consolidated with the warehouse remaining in the current location; that the Applicant now wishes to subdivide the property and in doing that creates the setback issue with the warehouse;

that the proposed Lot 2 will consist of 17.24 acres and the proposed Lot 3 will consist of 1.73 acres and will house the warehouse building; that the Application refers to the warehouse building located on the southwest portion of the property; that the building has been on the property for a number of years and is located approximately 350 ft. from Old Stage Road; that access to the property is from a 50 ft. easement; that the animal hospital located to the south also uses this access point; that the property is unique as it has a deep and narrow configuration; that the exceptional practical difficulty is not being created by the Applicant; that the Applicant did not construct the warehouse but purchased the property with the building in place; that it will not alter the essential character of the neighborhood as the property is located close to Sussex Highway (Rt. 13) and is in an area with significant development and growth; and that it is the minimum variance request to afford relief.

Mr. Diakos affirmed the statements made by Mr. Smith as true and correct.

Mr. Smith stated that the variance is needed in order to obtain subdivision approval.

William Randolph Ellis, Megan Prettyman, and Ryan Prettyman were sworn in to give testimony in opposition to the Application.

Mr. Ellis testified that he is opposed to the Application because it will add to the traffic congestion in the area; that he owns Lot 109 which consists of 2.25 acres; and that he is not in favor of another lot being created.

Mr. Prettyman testified that he is a neighbor and lives on Line Road; that the area is very high traffic; that the easement was not designed to handle a subdivision; and that he is opposed to the variance request.

Mr. Smith stated that the proposal is not a subdivision request; that development is available without a subdivision; and that the property is zoned C-1 in a heavy C-1 area.

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

Dr. Carson moved to approve Application No. 12384 as the property is unique; that it has been existing and will not alter the character of the neighborhood.

Dr. Carson moved, seconded by Mr. Workman, and carried unanimously that the **variances be granted for the reasons stated**. Motion carried 3 - 1.

The vote by roll call; Mr. Workman – yea, Mr. Williamson – yea, Dr. Carson – yea and Ms. Magee – nay.

**Case No. 12385 – Gerald Workman (Peggy Bowden White)** seek variances from the road frontage

requirement for proposed lots (Section 115-42 of the Sussex County Zoning Code). The property is located on the east side of Brittingham Rd. approximately 543 ft. south of Pepperbox Rd. 911 Address: N/A. Zoning District: GR. Tax Parcel: 532-15.00-45.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of and two in opposition to the Application and zero mail returns. The Applicant is requesting a variance of 99.81 ft. from the 150 ft. road frontage requirement.

Shelly Workman, Peggy Bowden White and Randy White were sworn in to give testimony about the Application. Ms. Workman submitted a letter of support.

Ms. Workman testified that they are selling two lots from the subject parcel and are requesting a variance to provide an entrance to the remaining farmland from Brittingham Road; that the entrance along Brittingham Road for the residual lands will be less than 150' wide; that the parcels being created meet the lot width requirement; that the property is unique and currently has irrigation placed; that the irrigation would be cost prohibitive to relocate; that there is no other available entrance to the farmland; that the entrance will still allow enough room for farm equipment to reach the residual lands; that the land has been farmed for more than 60 years; that it will not alter the essential character of the neighborhood at the two new lots will be similar in size and shape to the existing residential lots; and that the entrance has been approved by DelDOT.

Ms. White testified that the residual lands will consist of 21 acres; that the access strip will provide enough room for utilities and access; that the lots are not deeper because they would run into the irrigation pivots; and that the access to the farmland may not need a variance.

Ms. Cornwell stated that the point raised will be discussed with the County Attorneys and the Applicant will be notified when clarification on the need for a variance has been made.

Kathryn Pusey and Frank Pusey were sworn in to give testimony in opposition to the Application.

Ms. Pusey testified that she owns an adjacent lot created in 2008; that she is opposed to the variance request and has concerns that agricultural lane could be moved from the proposed location and be placed next to her property; and that she does not oppose the 2 lots being created.

Mr. Pusey testified that he expects more traffic to the access point; that he has no objection to the creation of the 2 lots provided the access stays north of the 2 lots; and that his daughter-in-law lives east of the 2 proposed lots.

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

Dr. Carson asked for clarification on the technical issue if the variance was needed in this case. Mr. Sharp stated that the issue will be reviewed, and a response will be made to the Board, but it will not affect this Application.

Dr. Carson moved to approve Application No. 12385 as the conditions were met and if following legal technical review, it is determined that the Applicant didn't have to appear before the Board of Adjustment for a variance that the Application fee be refunded.

Dr. Carson moved, seconded by Mr. Workman, and carried unanimously that the **variance be granted for the reasons stated.** Motion carried 4 - 0.

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

**Case No. 12386 – Sun Home Services, Inc.** seeks variances from the side yard setback and separation distance requirements for a proposed shed (Sections 115-25 and 115-172 of the Sussex County Zoning Code). The property is located on the southeast side of Center Ave. approximately 238 ft. west of Skyview St. in the Sea Air Village Manufactured Home Park. 911 Address: 19929 Center Avenue, Rehoboth Beach. Zoning District: AR-1. Tax Parcel: 334-13.00-310.00 unit 48951

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 six mail returns. The applicant is requesting a variance of 6 ft. from the 20 ft. separation distance requirement from the dwelling on Lot 63 for a proposed shed.

Kaylie Bush was sworn in to give testimony about the Application.

Ms. Bush testified that there is no place on the lot where the shed can be placed; that the variance is necessary to enable reasonable use of the property; that the property is located in Sea Air Village; that the request is for a 6 ft. variance for a proposed shed on the left side of the property; that the property is unique as the lots were created in the 1930s and 40s; that the lot is narrow and the usable space is limited; that the shed will improve the neighborhood; that the lot is vacant; that the prior manufactured home on the lot had a variance; that the entrances to the dwelling will be on the left side; that wherever the shed would be placed on the lot, it would create non-conformity; that the need for a shed was not created by the Applicant but by the narrowness of the lots; that the proposed shed will not alter the character of the neighborhood as there are many sheds in the neighborhood; that granting the variance will make this property more uniform with the other properties in the community; that placing the side on the left side of the property is the minimum variance for the side; that the shed could be placed in the rear of the property for a lesser variance but then would not match the character of the neighborhood; that the house on Lot 63 has been on that lot for a long time and is located on the lot line; and that there are other sheds in the neighborhood.

Ms. Cornwell advised the Board that, if the shed was moved to the rear yard, a variance would still be needed; and that there are many old variances in the neighborhood.

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

Mr. Williamson moved to approve Application No. 12386 as the Applicant has met all the criteria for granting a variance and it is a very small lot.

Mr. Williamson moved, seconded by Mr. Workman, and carried unanimously that the **variance be granted for the reasons stated**. Motion carried 4 - 0.

The vote by roll call; Mr. Workman – yea, Mr. Williamson – yea, Dr. Carson – yea and Ms. Magee - yea.

### **ADDITIONAL BUSINESS**

Dr. Carson stated that he is pleased with communications to the Board; that he appreciates the work that goes into preparing Findings of Fact and he hopes that we can continue to move them forward in a timely manner for Applicants; that a decision regarding permitting should come before a decision regarding variance; that a Board member is absent from a meeting and a case is tabled to the next meeting, can that Board member participate if he/she listens to the audio or watch the video of the meeting?

Mr. Sharp responded that a Board member can listen to the audio and request copies of any exhibits submitted, that, at the meeting when the case is revisited, the question will be asked of the Board member if he/she has reviewed the tape and if he/she is prepared to discuss and vote on the case.

**Meeting was adjourned at 7:59 p.m.**