

## MINUTES OF NOVEMBER 19, 2018

The regular meeting of the Sussex County Board of Adjustment was held on Monday, November 19, 2018, 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. Bruce Mears, Mr. John Mills, and Mr. Brent Workman. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Ms. Janelle Cornwell, Planning and Zoning Director, Ms. Lauren DeVore – Planner, and Ms. Christin Headley – Recording Secretary.

The Pledge of Allegiance was led by Mr. Mills.

Motion by Mr. Mears, seconded by Ms. Magee, and carried unanimously to approve the revised agenda. Motion carried 5 – 0.

Motion by Mr. Mears, seconded by Mr. Callaway, and carried unanimously to approve the Minutes and Findings of Facts for September 17, 2018. 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. 12228 – Constance Fisher as Trustee of the William W. Fisher Trust** seeks variances from the front yard setback and the side yard setback for an existing structure (Sections 115-42, 115-182 and 115-183 of the Sussex County Zoning Code). The property is located on the east side of South Bayshore Dr., approximately 0.32 miles south of Marlin Dr. 911 Address: 2416 South Bayshore Dr., Milton. Zoning District: GR. Tax Parcel: 235-10.10-10.00

Ms. Cornwell 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 seeking a variance for steps based on the updated survey to be submitted at this meeting and ten (10) ft. from the forty (40) ft. front yard setback requirement for an existing dwelling.

Ms. Magee recused herself and left chambers.

Constance Fisher was sworn in to give testimony. Ross Karsnitz, Esquire, was present on behalf of the Applicant, presented the Application, and submitted an exhibit booklet to Board members.

Mr. Karsnitz stated that the Property has been purchased by new owners but Ms. Fisher was the previous owner of the Property; that the request is for 7.2 ft. from ten (10) ft. side yard setback requirement on the southeast side for steps; that the dwelling was built in 1986; that Bayshore Drive was a private road and the front yard setback requirement was thirty (30) ft. at that time; that Bayshore

Drive is now a County road and the front yard setback requirement is forty (40) ft.; and that the Applicant seeks a variance of ten (10) ft. from the front yard setback requirement.

Ms. Cornwell advised the Board that the side yard setback requirement for the steps is 10 feet; and that steps can encroach up to 5 feet into the setback area but these steps encroach farther than allowed under the Code.

Mr. Sharp advised the Board that the accessway is not a street and, thus, the corner front yard setback requirement does not apply.

Mr. Karsnitz stated that the landing was built in 1988; that the accessway is overgrown; that the steps will not encroach into the accessway to the beach; that the original permit shows that when the dwelling was built the front setback requirement was thirty (30) ft.; that the encroachment was discovered from a survey prepared for settlement; that the Applicant recently received a certificate of compliance for a fence; that the steps and deck were built in 1988 but no permit was issued for the builder; that the dwelling was built in 1986; that DNREC has approved the deck and steps; that the Property is unique because the front yard setback was changed when Bayshore Drive became a County road; that the Property is also unique due to the odd shape and the fact that it has the accessway just to the south of the Property; that the Property cannot otherwise be developed without moving the steps or moving the home which would be a significant cost to the Applicant; that the exceptional practical difficulty was not created by the Applicant as she had no control over the change in the front yard setbacks; that the Applicant relied on her builder to follow setbacks when the deck and steps were built and did have permits from DNREC; that the variances will not alter the essential character of the neighborhood as the steps have been in existence since 1988 and the steps are a sufficient distance from other properties; that the use of the Property is consistent with other uses in the neighborhood; that the variances requested are minimum variances necessary to afford relief; and that the Applicant does not propose to increase the size of these structures.

Ms. Fisher affirmed the statements made by Mr. Karsnitz as true and correct. Ms. Fisher testified that the steps were expanded in 1988 and that she has received no complaints from neighbors.

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

Mr. Callaway moved to approve Variance Application No. 12228 for the requested variances of 7.2 feet from the ten (10) foot side yard setback requirement on the southeast side for existing steps and a variance of 10 feet from the forty (40) foot front yard setback requirement for existing dwelling and deck because the Applicant has met the standards for the requested variances.

Motion by Mr. Callaway, seconded by Mr. Mears, and carried unanimously that the **variances be granted for the reasons stated**. Motion carried 4-0.

The vote by roll call; Mr. Workman – yea, Mr. Mears – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Ms. Magee returned to Chambers

**Case No. 12229 – Derrickson & Neal Investments, LLC** seeks variances from the rear yard setback for existing structures (Section 115-82 of the Sussex County Zoning Code). The property is located on the northwest side of John J. Williams Hwy. (Rt. 24), approximately 323 ft. west of Coastal Hwy. (Rt 1). 911 Address: 18744 John J. Williams Hwy. (Rt. 24), Rehoboth Beach. Zoning District: C-1. Tax Parcel: 334-12.00-90.01

Ms. Cornwell 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 Applicants seeks a variance of 20.3 feet from the thirty (30) feet rear yard setback requirement for an existing building, a variance of 20 feet from the thirty (30) feet rear yard setback requirement for an existing building, a variance of 20.3 feet from the thirty (30) feet rear yard setback requirement for an existing pole building, a variance of 21.5 feet from the thirty (30) feet rear yard setback requirement for an existing pole building, and a variance of 3.3 feet from the five (5) feet rear yard setback requirement for an existing shed.

J.D. Neal was sworn in to give testimony. Stephen Ellis, Esquire, was present on behalf of the Applicant, presented the Application. Mr. Ellis submitted a survey, property deed, and certificate of formation of LLC to the Board.

Mr. Ellis stated that the Property is used as a lumber yard off Route 24; that the Property has been used as a lumber yard since 1982-3; that the Neal family has operated the lumber yard since the mid-1980s; that the Neal family wants to own the lumber yard and has received consents from neighbors; that an updated survey showed these encroachments; that a small shopping center was purchased in the 1990s and was added to the tax parcel; that the Applicant believed it was in compliance with the Code as a certificate of compliance was issued; that there has been no change in the use of the Property since the mid-1980s; that there have been no complaints from neighbors about the structures; that the Property is unique because when built in the 1987 the Applicant received variances for the buildings but, with more modern technology, the new survey shows that the building does not meet the variances granted in 1987; that there is no other way to develop the Property without the variances unless the buildings were moved; that the variances will not affect the essential character of the neighborhood as the buildings have been there since the mid-1980s; and that the variances requested are the minimum variances necessary to afford relief.

Mr. Neal affirmed the statements made by Mr. Ellis as true and correct.

Ms. Cornwell stated that the building was previously approved for a variance of 20 feet and, thus, no variance is needed for the portion of the building which is 10 feet from the rear property line

but a variance is needed for the portion of the building which is 9.7 feet from the rear property line; that the pole building needs variances of 20.3 feet and 21.5 feet from the rear yard setback requirement; and that the shed needs a variance of 3.3 feet from the rear yard setback requirement.

Mr. Ellis stated that the shed can be moved into compliance and that no variance is needed for that structure.

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

Mr. Mears moved to approve Variance Application No. 12229 for variances for the building and the pole building and to deny the variance for the shed for the following reasons:

1. The exceptional practical difficulty was not created by the Applicant;
2. The Applicant previously received variances only to later learn of the setback violations with a more sophisticated survey;
3. The variances will not alter the essential character of the neighborhood;
4. The variances for the building and pole building are the minimum variances necessary to afford relief; and
5. The variance for the shed is unnecessary since the shed can be moved into compliance with the Code.

Motion by Mr. Mears, seconded by Ms. Magee, and carried unanimously that the **variances for the building and the pole building be granted for the reasons stated** and that the **variance for the shed be denied**. Motion carried 5 – 0.

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

**Case No. 12230 – David R. Yingling & Mona L. Hansford** seek variances from the front yard setback for existing and proposed structures (Sections 115-34 and 115-182 of the Sussex County Zoning Code). The property is located on the south side of Loughlin Ln., approximately 481 ft. east of Cedar Neck Rd. 911 Address: 112 Loughlin Ln., Ocean View. Zoning District: MR. Tax Parcel: 134-5.00-291.00

Ms. Cornwell 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 Applicants seek a variance of 1.9 feet from the thirty (30) feet front yard setback requirement for an existing dwelling and a variance of 13.7 feet from the thirty (30) feet front yard setback requirement for a deck with a proposed addition.

Ms. Magee recused herself and left chambers.

David Yingling was sworn in to give testimony. Susan Weidman, Esquire, was present on behalf of the Applicants, presented the Application, and submitted an exhibit booklet to Board members.

Mrs. Weidman stated that the Property is adjacent to Loughlin Lane, which is a curved road.

Mr. Yingling testified that the home was built in 1991 by his father; that a building permit and certificate of occupancy were sought but the certificate of occupancy could not be located; that the deck was later enclosed like a porch and faces the wetlands; that the deck measures approximately 6 feet by 10 feet; that a certificate of compliance was issued for the deck in 1992; that he wants to sell the Property; that a survey for a recent settlement showed the encroachments and the sale fell through; that, in addition to correcting the current violations, he wants to put an addition on the current deck and enclose the deck; that the deck would be expanded by 6 feet; that the deck is a first floor deck; that the Property is unique due to its irregular shape; that there is no neighbor to that side of the lot; that the Applicant did not create the situation as he received the Property from his father; that the Property could not otherwise be brought into compliance without moving the dwelling; that the Property is located in the Bayside Hamlet development; that the variances will not alter the essential character as it has been in existence since 1991 and there are similar enclosed decks in the development which are similar to the proposed enclosed deck; that the variances would enhance the character of the neighborhood; that the deck is wooden; that there is a significant distance from the edge of paving of Loughlin Lane and the front property line; that the variances are the minimum variance requests to afford relief; that the Property is served by a well and previously had a septic system; that he has received no complaints about the structures; that there are a lot of mosquitoes; and that there is no access to the other side of the house.

Al Okonski was sworn in to give testimony and submitted an exhibit to the Board. Mr. Okonski testified that he supports the requests for variances; that he lives next door to the site; that he requests that conditions be placed on the deck addition; that the Board require that the deck enclosure and roof be limited to one story and that the exterior height be limited to 15 feet above floor level of the current deck.

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

Mr. Mears moved to approve Variance Application No. 12230 for the requested variances for the following reasons and subject to the following conditions:

1. The Property is unique due to its odd shape and the existence of mosquitoes;
2. The Property cannot otherwise be developed due to the unique shape of the lot;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variances will not alter the essential character of the neighborhood;
5. The variances are the minimum variances necessary to afford relief;

6. The proposed addition to the deck is limited to a one-story addition with a roof pitch of 4/12; and
7. There shall be no deck above the roof of the proposed enclosure of the deck.

Motion by Mr. Mears, seconded by Mr. Callaway, and carried unanimously that the **variances be approved with conditions for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Mears – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Ms. Magee returned to Chambers.

**Case No. 12232 – Brooke Ward** seeks a variance from the minimum lot width requirement (Section 115-25 of the Sussex County Zoning Code). The property is located on the west side of Double Fork Rd., approximately 0.51 miles south of Hickman Rd. 911 Address: N/A. Zoning District: AR-1. Tax Parcel: 530-2.00-25.05

Ms. Cornwell 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 requests a 33.35 ft variance from the 150 ft minimum road frontage requirement.

Drew Ward was sworn in to give testimony.

Mr. Ward testified that he is representing the Applicant, Brooke Ward, who purchased this lot and the neighboring lot as investment properties; that the Applicant improved the neighboring property with a dwelling and sold it; that the Property is a non-conforming lot; that, during the process of selling the neighboring lot, the Applicant discovered that the lot in question was not a buildable lot as it did not meet the requirement for minimum road frontage; that the Property does, however, have a separate tax map number and has been taxed separately for the past 15 years; that the Applicant can build a home similar to the home on the neighboring property; that DelDOT has approved access to the Property; that onsite well and septic would be necessary if a dwelling is placed on the Property; that the Property will not become part of the Hawk Run subdivision; that the uniqueness of the Property is that it does not meet the requirement for minimum road frontage; that the Property cannot otherwise be developed without the variance as it has been declared as unbuildable; that the exceptional practical difficulty was not created by the Applicant as it was purchased by her in 2017; that the variance will not alter the essential character of the neighborhood; that the variance requested is the minimum variance requested to meet the 150 ft minimum road frontage requirement; and that other lots in the area have less than 150 feet of road frontage.

Linda Ward was sworn in to give testimony in opposition to the Application.

Ms. Ward testified that she is opposed to the Application because she does not want a house

that close to her and that the Applicant should have 150 ft of road frontage to place a dwelling on this property; that she purchased the neighboring property from the Applicant; that other houses are in line and farther from the road; that she purchased her lot due to the openness; that there are other homes in the area with less than 150 ft of road frontage but they are some distance away and all the homes in this location have the 150 ft minimum road frontage.

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

Mr. Workman moved to approve Variance Application No. 12232 for the requested variance for the following reasons:

1. The Property is unique due to its odd shape and size;
2. The variance is necessary to enable reasonable use of the Property;
3. The variance will not alter the essential character of the neighborhood; and
4. The variance is the minimum variance necessary to afford relief.

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

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

**Case No. 12233 – Greg Jacobs** seeks a special use exception for a private garage (Sections 115-4, 115-23, and 115-210 of the Sussex County Zoning Code). The property is located on the north side of West Line Rd., approximately 1.73 miles east of Hudson Rd., 911 Address: 34159 West Line Rd., Selbyville. Zoning District: AR-1. Tax Parcel: 533-18.00-52.00

Ms. Cornwell 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 seeks a special use exception to build a private garage with the capacity to house more than four vehicles and is over 900 square feet.

Greg Jacobs and Craig Connor were sworn in to give testimony.

Mr. Jacobs testified that he purchased the property eight years ago and that his intention is to build a large garage to house his numerous vehicles; that the garage will not be used for commercial activity; that the garage will measure 60 feet by 124 feet; that the Property consists of 1.5 acres; that he previously owned a barn on a farm he owned but he has since sold the farm; and that he has over \$500,000 worth of belongings that he wishes to store.

Ms. Cornwell advised the Board that a special use exception was needed because the garage

was over 900 square feet and could house 4 or more vehicles.

Mr. Jacobs testified that granting this special use exception will not substantially adversely affect the uses of neighboring property as the neighbor in the rear is actively farming that property and the neighbors on either side have no objection to his request; that he has jet skis, farm equipment, a backhoe, equipment, trailers, 12 cars and motorcycles, and 2 RVs and he wants to close them in; and that the garage will not be used commercially.

Mr. Connor testified that the proposed garage will be 16 ft to the eave wall with a 4/12 roof pitch making the building about 26 ft. tall building at its tallest point.

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

Mr. Mears moved to approve the Application No. 12233 for the requested special use exception as it will not substantially adversely affect the uses of adjacent and neighboring properties.

Motion by Mr. Mears, seconded by Mr. Callaway, and carried unanimously that the **special use exception be granted for the reasons stated**. Motion carried 5 – 0.

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

**Case No. 12234 – Charles D. & Carolyn F. Martin** seek a variance from the corner front setback requirement for an existing structure (Sections 115-34,115-182 & 115-185 of the Sussex County Zoning Code). The property is located on the southwest corner of Beech Dr. and Hickory Ln. within the Sandy Brae subdivision. 911 Address: 18168 Hickory Ln., Lewes. Zoning District: MR. Tax Parcel: 334-6.00-421.00

Ms. Cornwell 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 Applicants seek a variance of 4.2 ft from the fifteen (15) ft corner front yard setback requirement.

Carolyn and Charles Martin were sworn in to give testimony. Ms. Martin submitted pictures of the property to the Board.

Mr. Martin testified that a permit was applied for to build the garage however when building began a 1,000-gallon underground oil tank was discovered and the garage had to be moved; that permission was given by the homeowner's association to move the garage but the Applicant did not realize that he also needed to check with Sussex County; and there have been no complaints from neighbors.

Ms. Martin testified that the property is unique because it is a corner lot with two front yards;



that the Property cannot otherwise be developed with the current setback requirements because of the placement of the 1,000-gallon oil tank; that the exceptional practical difficulty was not created by the Applicants but by the company that installed the oil tank; that the variance will not alter the essential character of the neighborhood as it matches the house and will be an asset to the community; that the variance requested is the minimum variance required to bring the property into compliance with the County setback regulations; and that there are other similar garages in the neighborhood.

Mr. Martin testified that the oil tank creates the difficulty and that there is a gap between the property line and the edge of paving of Beech Drive.

Ms. Cornwell read the letter of support into the record.

Kathy Davidson was sworn in to give testimony in support of the Application. Ms. Davidson testified that she is the current president of the Sandy Brae Homeowner's Association; that the HOA supports the Application; that there are no safety issues with the intersection; and that a prior property management company was unaware of the County's requirements.

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

Ms. Magee moved to approve the Application No. 12234 for the requested variance as the Applicant has met all the criteria necessary.

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

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

**Case No. 12235 – Ron & Anne Anthony** seeks variances from the side yard and rear yard setback requirements for existing structures (Sections 115-34 & 115-185 of the Sussex County Zoning Code). The property is located on the north side of Pine St. approximately 94 ft. west of Shore Dr. 911 Address: 29121 Pine St., Milford. Zoning District: MR. Tax Parcel: 230-17.00-137.00

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received one letter in support of the application for the existing building only and no letters in opposition to the Application and zero mail returns. The Applicants seek a variance of 8.5 ft. from the ten (10) feet side yard setback requirement on the southwest side for an existing garage and a variance of 8.9 ft. from the ten (10) feet rear yard setback requirement for an existing garage.

Ron Anthony was sworn in to give testimony. Mr. Anthony submitted an updated survey to the Board.

Mr. Anthony testified that the Property is located in Prime Hook Beach; that he wishes to separate the lots and needs the requested variances for the garage to be compliant with Sussex County Code; that he owns the Property adjacent to the side yard; that the Property is unique because of the location of the garage where it was placed over fifty years ago; that the garage was placed by a prior owner; that there are 10 other garages in the neighborhood located in a similar location as this garage; that the Property cannot be otherwise developed because the garage has been there since 1968; that the garage was built by the original owner of the Property; that the Applicants did not create the exceptional practical difficulty; that the variances will not alter the essential character of the neighborhood as there are similar garages in the area; that the variance request is the minimal request to afford relief to allow the division of the two lots; that there are no issues with access to the garage; that the garage is on cinder blocks; that the Property is served by a cesspool located in the center of the rear yard; and that the character of the neighborhood is that garages are located in the rear yard.

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

Ms. Magee moved to approve the Application No. 12235 for the variances as all criteria for granting variances have been met.

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

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

### **ADDITIONAL BUSINESS**

#### 2019 Meeting Schedule

Ms. Cornwell stated that the Board of Adjustment 2019 meeting calendar has been structured to avoid holidays and Georgetown events.

**Meeting was adjourned at 8:47 p.m.**