

MINUTES OF NOVEMBER 21, 2016

The regular meeting of the Sussex County Board of Adjustment was held on Monday, November 21, 2016, 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 Dale Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Brent Workman, and Mr. Norman Rickard, with James Sharp – Assistant County Attorney, Vince Robertson – Assistant County Attorney, and staff members Ms. Janelle Cornwell – Planning and Zoning Director Appointee and Mrs. Jennifer Norwood – Recording Secretary.

The Pledge of Allegiance was led by Mr. Callaway.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously to approve the Revised Agenda with Case No. 11880 – Jared & Dawn Lineweaver moved to the beginning of the Public Hearings due to a conflict of interest with Mr. Sharp. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes and Finding of Facts for September 19, 2016 as circulated. Motion carried 5 – 0.

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. 11880 – Jared Lineweaver & Dawn Lineweaver – seek a special use exception to operate a daycare facility (Sections 115-23C(5) and 115-210A(3)(e) of the Sussex County Zoning Code). The property is located on the north side of Atlanta Road approximately 0.82 miles west of Bucks Branch Road. 911 Address: 21227 Atlanta Road, Seaford. Zoning District: AR-1. Tax Map No.: 5-31-3.00-59.04.

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.

Mr. Sharp recused himself from the case due to a conflict of interest.

Mr. Robertson was present to provide legal counsel to the Board for this Application.

Dawn Lineweaver was sworn in and testified requesting a special use exception to operate a daycare facility; that she currently cares for six (6) children; that she is seeking approval to care for nine (9) children; that the use has not and will not adversely affect the adjacent and neighboring properties; that there is adequate parking available; that the children are picked up and dropped off at different times of the day; that her neighbors have no objection to the Application; and that the children will be cared for before and after school.

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

Mr. Mills moved to approve Special Use Exception Application No. 11880 for the requested special use exception based on the record made at the public hearing and because the use will not substantially adversely affect the uses of the neighboring and adjacent properties.

Motion by Mr. Mills, seconded by Mr. Rickard, 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, Mr. Rickard – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 11878 – Toby M. Chrostowski & Alexandra M. Chrostowski – seek variances from the front yard and side yard setback requirements (Section 115-34B of the Sussex County Zoning Code). The property is located on the north side of Baltimore Street approximately 225 feet west of Andrew Street in Bayview Park. 911 Address: 39667 Baltimore Street, Bethany Beach. Zoning District: MR. Tax Map No.: 1-34-20.11-34.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received three (3) letters of support to the Application and no correspondence in opposition to the Application.

Toby Chrostowski was sworn in to testify about the Application. John Sergovic, Esquire, presented the case on behalf of the Applicants and submitted exhibits for the Board to review.

Mr. Sergovic stated that the Applicants are requesting a variance of 0.9 feet from the ten (10) feet side yard setback requirement on the west side for an existing dwelling and porch and a variance of 13.3 feet from the thirty (30) feet front yard setback requirement for an existing porch; that the Applicants were granted a variance in 2015 and planned, at that time, to remove the existing structure and build a new home; that the Applicants have since discovered it is cost prohibitive to tear down the existing dwelling; that the Applicants now plan to elevate the existing structure; that, when the Applicants purchased the Property, the dwelling had a cantilevered living space with a porch underneath and this portion of the house encroached into the front yard setback area; that the small lot measures 7,020 square feet in size making it unique; that the Property is smaller than a regular lot in an MR zone; that the existing dwelling was built in 1958 or 1959; that the Property is susceptible to flooding and raising the dwelling will decrease flooding issues; that there is a lagoon to the rear yard and a boat ramp on the north side of the lot which create flooding issues on the Property; that, during Hurricane Sandy, water came within six (6) inches of the dwelling; that, due to the physical conditions, the Property cannot be otherwise developed in strict conformity with the Sussex County Zoning Code; that the Applicants seek to elevate the dwelling and there will be no changes to the existing footprint other than the raising of the structure; that the difficulty is not being created by the Applicants; that the variances will not alter the essential character of the neighborhood; that the location of structures in the community are not uniform; that the variances requested are the minimum variances necessary to afford relief; that the dwelling

cannot be shifted into compliance when being raised because it would still encroach into setback areas; and that the dwelling cannot be moved towards the rear yard due to flooding issues.

Mr. Chrostowski, under oath, affirmed the statements made by Mr. Sergovic and testified that he originally planned to tear down the structure but found out it was cost prohibitive to build a new house; that raising the dwelling ten (10) feet will elevate it above the flood plain; that there will be storage and garage space under the dwelling; that an existing porch with living space above is an integral part of the existing structure and cannot be removed; that elevating the dwelling will enable him to park cars under the home as well; that he is not planning to create additional living space by elevating the home; that the dwelling is a two story home; that he is not aware of any objections from the neighbors; and that there will be exterior steps in the rear yard and interior steps to the front of the home.

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

Mr. Rickard moved to approve Variance Application No. 11878 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique because it is an undersized lot with flooding problems;
2. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances sought are the minimum variances necessary to afford relief.

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

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

Case No. 11879 – Michael Jay Ramsey & Debra Ann Ramsey – seek variances from the front yard, side yard and rear yard setback requirements (Sections 115-42B and 115-185F of the Sussex County Zoning Code). The property is located on the south side of Railway Road approximately 66 feet west of Wilmington Street in Banks Acres. 911 Address: 31394 Railway Road, Ocean View. Zoning District: GR. Tax Map No.: 1-34-12.00-1188.00.

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.

Michael Ramsey and Debra Ann Ramsey were sworn in to testify about the Application. Raymond Tomasetti, Jr., Esquire, presented the case on behalf of the Applicants and submitted pictures for the Board to review.

Mr. Tomasetti stated that the Applicants are requesting a variance of 6.8 feet from the forty (40) feet front yard setback requirement for porch, a variance of 0.6 feet from the forty (40) feet front yard setback requirement for an existing dwelling, a variance of 2.1 feet from the five (5) feet rear yard setback requirement for an existing shed, a variance of five (5) feet from the ten (10) feet rear yard setback requirement for an existing detached garage, and a variance of 7.7 feet from the ten (10) feet side yard setback requirement on the southwest side for an existing detached garage; that the Applicants purchased the Property in October 2016; that a survey completed for settlement showed the encroachments; that the residence on the Property is a one-story manufactured home; that a previous owner placed the manufactured home on the Property in 1975 and received a Certificate of Compliance; that a previous owner obtained a building permit to place a garage on the Property; that the detached garage was built in 1979 and the deck was built in 1982; that the previous owner did not obtain permits for the existing sheds and gazebo; that the Applicants have obtained the building permits for the shed, decks, and gazebo; that the Property was previously serviced by a septic system and it is believed that the septic system was located in the rear yard; that the Property is now served by central sewer; that there is a well in the front yard; that the Applicants believe that the location of the septic system and well determined the placement of the existing sheds and detached garage; that the dwelling is set back from the road in a similar manner as other homes in the neighborhood; that the pictures of the side yard adjacent to the garage and driveway give the impression that the side yard of the Property is wider than it actually is and that there is more space between the garage and the neighbor's property; that the Property is unique due to its shape; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code; that the exceptional practical difficulty was not created by the Applicants; that the variances will not alter the essential character of the neighborhood; and that the variances requested are the minimum variances necessary to afford relief.

Mr. Ramsey, under oath, affirmed the statements made by Mr. Tomasetti and testified that the neighbors have no objection to the Application; that he plans to keep both sheds and will move the shed into compliance; and that the edge of the road is not even with the property line.

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

Mr. Rickard moved to approve Variance Application No. 11879 for the requested variances for the garage, dwelling, and porch based on the record made at the public hearing and for the following reasons;

1. The Property is unique as it has an angled property line;
2. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances sought are the minimum variances necessary to afford relief.

As part of his motion, Mr. Rickard moved to deny the variance request for the shed in the rear yard because the Applicants can move the shed into compliance, thus, the variance is not necessary to enable reasonable use of the Property.

Motion by Mr. Rickard, seconded by Mr. Mills, and carried unanimously that the variances for the dwelling, porch, and garage be **granted for the reasons stated and that the variance for the 9 feet by 8 feet shed in the rear yard be denied**. Motion carried 5 – 0.

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

Case No. 11881 – Alfred Baldassari & Michelena R. Baldassari – seek variances from the front yard and side yard setback requirements (Section 115-25C, 115-182D, and 115-185F of the Sussex County Zoning Code). The property is located on the east side of Woodland Circle across from Butternut Court in Angola by the Bay. 911 Address: 34004 Woodland Circle, Lewes. Zoning District: AR-1. Tax Map No.: 2-34-18.05-87.00.

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.

Gina Kehagias, Cynthia Baker, and Michelena Baldassari were sworn in and testified requesting a variance of 1.8 feet from the five (5) feet side yard setback requirement on the south side for an existing shed and a variance of 10.5 feet from the thirty (30) feet front yard setback requirement for an existing deck and set of steps. They submitted pictures of the Property for the Board to review.

Ms. Kehagias testified that she is the Applicants' daughter; that the Applicants are selling the Property and the survey showed the encroachments; that the Property is small and is unique due to its size; that the Applicants were unaware of any encroachments; that the shed is on a concrete pad and hooked up to electric and cannot be moved into compliance; that the shed has been in its present location for approximately 30 years; that the Applicants did not create the exceptional practical difficulty; that the Applicants believed the shed complied with the setback requirements; that the shed and deck will not alter the essential character of the neighborhood; that Applicants have not received any complaints about the shed or the deck; that the deck was built in 1982 and has been in its present location since that time; that the deck is in good condition; that the Applicants believed the deck also complied with the setback requirements; that the deck is attached to the house; that the Applicant learned of the encroachments when a survey was completed; that a septic system was located in the rear yard at one point; and that the Property is now serviced by central sewer.

Ms. Baker testified that the location of the septic system probably impacted the location of the shed because the lot is so small.

Ms. Cornwell advised the Board that a Certificate of Compliance was issued for an addition.

The Board found that one (1) party appeared in support of the Application.

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

Mr. Rickard moved to approve Variance Application No. 11881 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique because it is small;
2. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
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 structures have been on the Property for many years without complaint; and
6. The variances sought are the minimum variances necessary to afford relief.

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

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

Case No. 11882 – PGSD, LLC – seeks a variance from the front yard setback requirement (Section 115-82B and 115-83.8B of the Sussex County Zoning Code). The property is located on the north side of Lighthouse Road (Route 54) approximately 530 feet east of Old Mill Bridge Road. 911 Address: None Available. Zoning District: C-1 & CR-1. Tax Map No.: 5-33-12.00-76.03, 76.06, & 77.00.

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.

Mike Ryman was sworn in and testified requesting a variance of 14 feet from the sixty (60) feet front yard setback requirement for a proposed gas canopy and gas pumps; that the Applicant proposes to develop the Property for a Royal Farms gas station; that the Property was created when neighboring lands were developed; that the Property is unique as it is a narrow property for a commercial lot; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code; that, if the gas pumps were moved to fit within the building envelope, there would not be sufficient room for drive aisles or room for safe maneuvering of vehicles; that fuel trucks need sufficient room to maneuver on the Property as well; that the building has been placed as far towards the rear of the Property as possible so as to minimize the variance needed; that the Applicant did not create the exceptional practical difficulty; that a right-of-way acquisition by the Delaware Department of Transportation (“DelDOT”) reduced the size of the front yard; that DelDOT took an additional twenty (20) feet for the right-of-way; that, had DelDOT not taken the additional right-of-way area, no variance would be needed; that the condition was not created by the Applicant; that the variance will not alter the essential character of the neighborhood; that other businesses in the area are located closer to Route 54 than is being proposed by the Applicant; that the proposed Royal Farms store is one of the smaller models used by Royal Farms; that Royal Farms is under contract to purchase the Property; that the storm water management area on the Property is used to service the neighboring development; that the storm water management pond

limits the usable area of the Property as well; that the Property has frontage on three (3) roads; and that the multiple entrances to the site limit the buildable area of the lot as well.

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

Mr. Mills moved to approve Variance Application No. 11882 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The DelDOT acquisition is a unique condition which has created an exceptional practical difficulty for the Applicant;
2. The variance is necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variance will not alter the essential character of the neighborhood;
5. The variance will not be detrimental to the public welfare; and
6. The variance sought is the minimum variance necessary to afford relief.

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

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

Case No. 11883 – Key Properties Group, LLC / Country Life Homes, Inc. – seeks variances from the front yard setback and combined corridor overlay zone buffer requirements (Sections 115-82B and 115-194.1E(3) of the Sussex County Zoning Code). The property is located on the east side of Coastal Highway (Route 1) approximately 251 feet north of Bay Crossing Boulevard. 911 Address: 18315 & 18327 Coastal Highway, Lewes. Zoning District: C-1. Tax Map No.: 3-34-6.00-74.00 & 75.00.

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.

Carlton Savage, of Penonni Associates, was sworn in and testified requesting a variance of 27.26 feet from the sixty (60) feet front yard setback requirement for an existing building and a variance of ten (10) feet from the twenty (20) feet combined corridor overlay zone buffer requirement; that he is the design engineer for the project; that the Property consists of two (2) lots; that there is an existing dwelling and office building on the properties; that the Applicant plans to renovate the existing office building and convert it to a restaurant; that additions to the building will be made to the rear; that the existing dwelling will be demolished; that a restaurant is a permitted use in a C-1 zoning district; that the development will reduce the number of entrances to the site from three entrances to one entrance; that the Property is unique because the building existed prior to the adoption of the ordinance creating the Combined Highway Corridor Overlay Zone; that the Property is oddly shaped as it is only 160 feet deep but is 239 feet wide; that the shallowness of the lot leaves very few options for development; that the Property cannot be developed in strict conformity with the Sussex County Zoning Code; that approximately 28 feet

of the existing building would have to be demolished to bring the Property into compliance; that the reduction of the buffer requirement will provide enough space for parking, drive aisles, and landscaping; that the exceptional practical difficulty was not created by the Applicant; that parking currently exists within the twenty (20) feet buffer zone; that the existing character of the neighborhood consists of commercial businesses; that there are other structures to the north and south of the Property with similar setbacks; that the variances will not alter the character of the neighborhood; that there will be ten (10) feet of landscaping in the buffer area; that the variances requested are the minimum variances necessary to afford relief; that reducing the buffer zone allows the Applicant to meet the required parking and drive aisles for the proposed use; that there are no changes being made to the front of the building or property; and that the Delaware Department of Transportation (“DelDOT”) has expanded the right-of-way over the years, including the expansion of sidewalks in the area.

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

Mr. Rickard moved to approve Variance Application No. 11883 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The shallowness of the lot makes the Property unique;
2. The Property cannot otherwise be developed in strict conformity of the Sussex County Zoning Code;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variance will not alter the essential character of the neighborhood;
5. The surrounding area is a commercial area; and
6. The variances sought are the minimum variances necessary to afford relief.

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

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

Case No. 11884 – University of Delaware – seeks a special use exception to retain two (2) manufactured home type structures for offices (Sections 115-23A and 115-210A(1) of the Sussex County Zoning Code). The property is located on the north side of County Seat Highway (Route 9) and east side of Tyndall Road. 911 Address: None Available. Zoning District: AR-1. Tax Map No.: 2-31-19.00-6.00.

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.

Mark Isaacs was sworn in and testified requesting a special use exception to retain two (2) manufactured home type structures for office use; that the two (2) units were granted a special use exception in 2013 by the Board; that the units were needed during renovations to the laboratory also located on the Property; that the laboratory staff was moved to the temporary units while the

laboratory building was being renovated; that the Applicant originally intended to return the units when the renovation was complete; that the Applicant incurred other costs with the trailer for fiber optics, water, sewer, and gas line connections; that the Applicant opted to purchase the units to use for their field crop research laboratory; that the units are in good shape; that the units do not substantially adversely affect the uses of the neighboring and adjacent properties; that the units are completely surrounded by lands owned by the Applicant; that the units are not located near the property lines of neighboring properties; that the units are used seasonally and not year round; that the Applicant intends to use the units permanently; and that the Applicant is seeking approval for a five (5) year period.

Mr. Isaacs submitted pictures to the Board to review.

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

Mr. Rickard moved to approve Special Use Exception Application No. 11884 for the requested special use exception based on the record made at the public hearing because the use does not substantially adversely affect the uses of the neighboring and adjacent properties.

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

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

OLD BUSINESS

Case No. 11864 – Robert L. Palmer & Sue Ann Palmer – seek variances from the side yard, rear yard setback, and separation distance requirements (Sections 115-172G(7) and 115-185F of the Sussex County Zoning Code). The property is located on the south side of Barque Road in the White House Beach Development off of White House Road. 911 Address: 35432 Barque Road, Millsboro. Zoning District: AR-1. Tax Map No.: 2-34-30.00-6.00-22037.

Ms. Cornwell presented the case, which has been tabled since November 7, 2016.

Mr. Rickard stated that he has listened to the audio from the November 7, 2016 public hearing.

Ms. Norwood advised the Board that there are multiple structures assessed on the neighboring property.

The Board discussed the case. Mr. Mills stated that he is concerned about the corn crib on the neighboring property and asked the Planning & Zoning Office to go to the neighboring property to investigate the corn crib.

Mr. Mills moved to approve Variance Application No. 11864 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The shape and size of the lot are unique;
2. The variances are necessary to enable reasonable use of the Property;
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 sought are the minimum variances necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the variance be **granted for the reasons stated and that the Planning and Zoning staff investigate the corn crib on the adjacent property.** Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Rickard – yea, Mr. Hudson -yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 11865 – John Aldock & Judy Aldock – seeks a variance from the side yard setback requirements (Section 115-34B of the Sussex County Zoning Code). The property is located on the east side of Heather Lane in Bethany Dunes off of Coastal Highway. 911 Address: 30994 Heather Lane, Bethany Beach. Zoning District: MR. Tax Map No.: 1-34-9.00-426.00.

Ms. Cornwell presented the case, which has been tabled since November 7, 2016.

Mr. Rickard stated that he has listened to the audio from the November 7, 2016 public hearing and reviewed the record.

Mr. Rickard stated that the Applicants are seeking an elevator that will be wheelchair accessible and will allow them to live in their dwelling for years to come; and that this request does not set a precedent.

Mr. Workman stated that he feels the Applicants are creating their own difficulty; that the Applicants could redesign the location of the elevator; and that the Applicants have not demonstrated they are handicapped now and need the elevator.

Mr. Hudson stated that the proposed elevator will only encroach three (3) inches further than an existing spiral staircase and that the Applicants are seeking the minimum variance to afford relief.

Mr. Mills stated that he agrees with Mr. Workman; that the variance is not necessary to enable reasonable use; that the difficulty is being created by the Applicants; and that there is no uniqueness to the property.

Mr. Rickard moved to approve Variance Application No. 11865 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The existing dumbwaiter creates a unique situation to the Property;
2. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code, due to the interior of the dwelling;
3. The exceptional practical difficulty is not being created by the Applicants;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Rickard, seconded by Mr. Hudson, and carried that the variance be **granted for the reasons stated**. Motion carried 3 – 2.

The vote by roll call; Mr. Workman – nay, Mr. Rickard – yea, Mr. Hudson – yea, Mr. Mills – nay, and Mr. Callaway – yea.

Meeting Adjourned 9:07 p.m.