

MINUTES OF NOVEMBER 4, 2024

The regular meeting of the Sussex County Board of Adjustment was held on Monday, November 4, 2024, at 6:00 p.m. in the County Council Chamber, Sussex County Administration Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Jeffrey Chorman presiding. The Board members present were Dr. Kevin Carson, Mr. John T. Hastings, Mr. John Williamson, and Mr. Jeffrey Chorman. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Ms. Ann Lepore – Planning and Zoning Planner 1, Ms. Hannah Wyatt- Recording Secretary and Ms. Ashley Paugh- Recording Secretary

The Pledge of Allegiance was led by Mr. Chorman.

Ms. Lepore stated that there was no change to the agenda.

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

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

Motion by Mr. Williamson, seconded by Mr. Hastings and carried unanimously to approve the Minutes for the September 9, 2024, meeting. Motion carried 4 – 0.

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

Motion by Dr. Carson seconded by Mr. Williamson and carried to approve the Findings of Facts for the September 9, 2024, meeting. Motion carried 4 – 0.

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

PUBLIC HEARINGS

Case No. 13008 – Karen Schreiber seeks a special use for a childcare center (Sections 115-23 of the Sussex County Zoning Code). The property is located on the east side of Seaford Road. 911 Address: 28393 Seaford Road, Laurel. Zoning District: AR-1. Tax Parcel: 132-12.00-85.00

Ms. Lepore presented the case and stated that the Office of Planning and Zoning received zero letters in support of the Application, zero letters in opposition of the Application, and two (2) mail returns. The Applicants are requesting a special use exception for a childcare center.

Ms. Karen Schreiber and Ms. Toni Dickerson were sworn in to give testimony for this application.

Ms. Dickerson testified that she is a childcare administrator with Sussex preschools in partnership with Karen Schreiber from Skate World; that this request is to use the building after school and during the summer for a safe licensed childcare program; that the program would offer services to children before, after, in service, holidays, and summer camp; that it is not only focused on safe environment but an educational practice as well as skating and recreational activities; that snack and breakfast would be provided and possibly through the USDA food program have meals provided; that the program would be closely monitored by the Department of Education through the Office of Childcare Licensing; that they have worked with the Fire Marshal, the Department of Drinking Water, and the Office of Childcare Licensing to obtain licensure and take the appropriate steps to open the center; that they feel this location is perfect because it is already a bus hub for multiple school districts, including Sussex Montessori Charter School, Laurel School District, and Seaford School District as those districts use the site as a turn-around due to the size of the parking lot; that it is also a bidirectional DART bus stop so families that rely on public transportation would be able to access it as well; that all staff would be fingerprinted through multiple registries as well as the adult abuse registry search that the State of Delaware has their employees go through; that there are roughly 23,000 children and only 7,270 seats in Delaware which leave 16,000 kids with no after school program; that they would not need a playground as they would not be a service for toddlers but there is room for kids to play all the outdoor summer camp sports in this area; that they are hoping for approximately 100 children, depending on the Fire Marshal and the Office of Child Care Licensing; and that they would need one employee to every 10 children so ten to fifteen employees would work at the center.

Ms. Schreiber testified that she spoke with all the surrounding neighbors and they are all in support or have no problem with the childcare facilities being there; and that the skating rink will still be in use in the evening and weekends.

Ms. Dickerson testified that the center will operate during weekdays; and that there is a farm to the rear of the property and churches and residences nearby.

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

Mr. Chorman closed the public hearing.

Dr. Carson moved to approve the Application for Case No. 13008 for the requested special use exception, pending final written decision, because the use will not substantially affect adversely the uses of the 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 4 – 0.

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

Case No. 13009 – Steven and Kimberly Schneider seek a variance from the rear yard setback requirement for a proposed structure (Sections 115-34 and 115-183 of the Sussex County Zoning Code). The property is located on the north side of Marina Bay Circle and Putters Drive within The Peninsula on Marina Bay. 911 Address: 33471 Marina Bay Circle, Millsboro. Zoning District: MR-RPC. Tax Map: 234-30.00-310.00-26

Ms. Lepore presented the case and stated that the Office of Planning and Zoning received seven letters in support of the Application, zero letters in opposition of the Application, and three mail returns. The Applicants are requesting 6 foot variances from the 10 ft. minimum rear yard setback requirement for a proposed sunroom and steps.

Mr. Steven Schneider, Ms. Kimberly Schneider, and Mr. Darrel Millman were sworn in to give testimony for this application.

Mr. Schneider testified that he and his wife are requesting 6 foot variance to build a 13 foot by 15 foot sunroom on top of the existing patio pavers; that the pavers were installed by the builders before settlement as an incentive to buy the house; that he has received HOA and ARC approval; that his request includes stairs outside of the sunroom for emergency egress and entrance to the house from the back; that the stairs will not extend past the 6 foot variance; that this is a unique physical circumstance due to the narrowness and shallowness of the lot size; that his house and his neighbor's house were both built on the setback by the builder prior to buying and are the only two lots like this in the community; that his direct neighbor that has the same setbacks also got a variance approved in 2021 for a sunroom; that another neighbor received a variance in 2012; that the sunroom will not block any views; that the property is adjacent to a pond; that the sunroom needs to be 13 feet by 15 feet to accommodate access and furniture; that there are porches and patios on majority of the properties surrounding the pond; that the sunroom would be the same style as the other sunrooms in the community; that the sunroom will not alter the character of the neighborhood and will not impair the appropriate use of adjacent properties; that the sunroom will have the same roofline as the house; that, when they bought their house, they were unaware that the house was built on the setbacks; and that neighbors support the request.

Ms. Schneider testified that, from a personal perspective, she would like to have a sunroom to enjoy the property year around and to be protected from bugs; that other houses in the neighborhood have sunrooms; that, because of the bugs, they have not been able to enjoy their outdoor space and paver patios as much as they were hoping they would be able to; that the house has few windows so the sunroom will provide additional light to the home; that they were unaware the builder built to the setback line until later; that there have been no flooding issues from the pond; that they always believed they would be able to build in this location; that neighbors support the request; that the patio is unusable due to bugs; and that they have to burn insect repellants for an hour prior to using the patio

to eliminate the bugs.

Mr. Millman testified that, after he read the survey, he could see the builders built right up to the setbacks therefore leaving no room for the stairs to come off the back of the sunroom; that the stairs are necessary for safety reasons; that there is about 20 to 30 feet from the pavers to the stormwater pond; that there is still plenty of room after the crepe myrtles in the backyard for anyone to do what they need to at the pond; that, when they found out the pavers were encroaching, they talked about making it smaller but they ran into the problem of the egress out the back; that he believes the steps will be 2 to 3 inches less than the 6 foot that is being requested and it will not go past the 6 foot being requested; and that the steps are needed for safe access to the sunroom.

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

Mr. Chorman closed the public hearing.

Mr. Hastings moved to approve the application for Case No. 13009 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique physical conditions due to the narrowness of the lot;
2. The exceptional practical difficulty was not created by the homeowners;
3. The variances will not alter the essential character of the neighborhood; and
4. The variances represent the minimum variances necessary to afford relief.

Motion by Mr. Hastings, seconded by Mr. Williamson, carried unanimously that the **variances be granted for the reasons stated.** Motion carried 3 – 1.

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

Case No. 13010 – Eric Figueroa and Paul Parsons seek variances from the side yard setback and walkway requirements for a proposed pool (Sections 115-25 and 115-185 of the Sussex County Zoning Code). The property is located on the east side of Welches Way within the Welches Pond Subdivision. 911 Address: 22115 Welches Way, Lewes. Zoning District: AR-1. Tax Map: 334-12.00-1419.00

Ms. Lepore presented the case and stated that the Office of Planning and Zoning received one letter in support of the Application, zero letters in opposition of the Application, and no mail returns. The Applicants are requesting a variance of 3 feet from the 10 feet side yard setback on the north and south sides for a proposed pool and a variance of 3 feet from the 3 feet pool walkway requirement. Ms. Lepore confirmed that staff interprets the survey as showing that the property has no rear yard.

Ms. Jamie Ferro and Mr. Paul Parsons were sworn in to give testimony for this application.

Ms. Ferro testified that they are installing an in-ground pool, paver patio, and fence; that the fence and patio meet the setbacks but the pool does not meet the required 10 foot setbacks and they are asking for 3 foot variance beyond what the pool is allowed; that they have community approval and the neighboring yard that is affected by the variance wrote in a letter of support for the variance; that they submitted the HOA approval letter to the community and it stated that, if the Sussex County was ok with it, then the HOA is fine with it as well; that there is no neighbor to the rear of the property; that this community is a new Schell Brothers community; that there is an existing courtyard and porch on the property; that the pool company has installed 2 other pools in the development and neither one of those pools required a variance as they are within the building envelope; that there are 3 pools in the neighborhood; that there is a community pool in the neighborhood; that the pool will measure 10 feet by 16 feet; that the pool would not fit into the courtyard area without a variance or ripping up the existing pavers; that a pool would have be smaller and fabricated to fit within the building envelope; that she works for the pool company; that the development has a restrictive covenant that does not allow pools in what would be considered the side yard on most lots; that they intend to install a spillway into the pool that is 4 foot tall so it serves as a part of the fence so the rest of the fence will be right up to the spillway, they did this so they did not have to further encroach the property line; that the spillway will work as a fence and is a design feature; that the spillway eliminates the need for the walkway; that the wellhead is near the pool and would be a tripping hazard for the walkway; and that the Applicants would use the pool for exercise.

Mr. Parsons testified that the property is one of the two largest lots in the neighborhood and that the property is the only lot of its size and shape in the neighborhood; that most of the lots in the neighborhood are rectangular; that there will be a community pool that is under construction; that the lot has a unique shape and configuration; that approval of this request would not create a precedent on the lot because of the lot's uniqueness; that he seeks the variance so that he can install the type of pool that relays itself to the overall aesthetic that they are trying to achieve for their side yard configuration; that he does not think it would create a precedent within the community because of the uniqueness of his lot compared to almost all the other lots; that the lot is shaped like a baseball diamond; that the pool will be used for exercise; that the pool will be heated year-around; and that he did not design or place the house on the lot.

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

Mr. Chorman closed the public hearing.

Mr. Williamson moved to deny the application for Case No. 13010 for the requested variances, pending final written decision, for the following reasons:

1. The exceptional practical difficulty is being created by the Applicants;
2. The variances will not alter the essential character of the neighborhood; and
3. The variances do not represent the minimum variances necessary to afford relief.

Motion by Mr. Williamson, seconded by Mr. Hastings, carried unanimously that the **variances be denied for the reasons stated.** Motion carried 4 - 0.

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

RECESS

Case No. 13011 – John and Dorothea Ormsby seek a variance from the rear yard setback requirement for an existing structure (Sections 115-34 and 115-183 of the Sussex County Zoning Code). The property is located on the southeast side of William F Street within the Dodd’s Addition Subdivision. 911 Address: 38332 William F Street, Rehoboth Beach. Zoning District: MR. Tax Map: 334-20.09-84.00

Ms. Lepore presented the case and stated that the Office of Planning and Zoning received five letters in support of the Application, zero letters in opposition of the Application, and two mail returns. The Applicants seek variances of 0.9 feet from the 5 feet rear yard setback requirement for existing HVAC units.

David Hutt, Esquire, from Morris & James Law Office appeared on behalf of John and Dorothea Ormsby. Mr. Hutt submitted pictures to the Board.

Mr. Hutt stated that Mr. and Ms. Ormsby are the Applicants and owners of the property; that the property is located in the Forgotten Mile; that the Applicants purchased the property in 2008; that the property had a smaller home at that time; that the house was removed and a new house was constructed; that Mr. Yoder obtained the building permit and built the home; that the house was near completion when the encroachments were discovered; that air is needed on all 4 sides of the HVAC units; that an administrative variance could be granted if the variance is less than 1 foot but the administrative variance process is not available when lots benefit from the Small Lot Ordinance; that the property consists of less than 10,000 square feet and benefits from the Small Lot Ordinance; that the lot measures 50 feet by 100 feet and is only half the size of a conforming lot in the MR zoning district; that the property also benefits from averaging the front yard setback; that they moved the house forward two feet to accommodate the HVAC units but did not accommodate for the 5 foot airflow space needed; that the HVAC units go about ten to eleven inches into the 5’ setback; that the need for airflow for the HVAC resulted in the variances being needed; that there is a fence in the rear yard; that neighboring sheds may be closer to the rear yard in this area; that the HVAC units cannot be placed elsewhere on the property; that it is a reasonable use because even if the builders were to move the HVAC on the property it would still fall into setbacks; that the exceptional practical difficulty was not created by the owner but by the builder and survey company; that the variances will not alter the character of the neighborhood; that there are multiple variances in the area due to the small lots; that all the neighbors of the property are in support of the variance; that the variances are

the minimum variances necessary so that the HVAC system can comply with code.

Mr. John Ormsby was sworn in to give testimony for this application.

Mr. Ormsby affirmed the statements made by Mr. Hutt as true and correct.

Mr. Jay Yoder was sworn in to give testimony for this application.

Mr. Yoder affirmed the statements made by Mr. Hutt as true and correct. Mr. Yoder testified that there was a miscommunication with the HVAC contractor which led to the encroachment; that the garage is in the front part of the lot; that there is no way the HVAC could be relocated to the front by the garage because the floor is concrete and the air handlers are in the basement.

Ms. Sondra Skidmore was sworn in to give testimony for this application.

Ms. Skidmore testified that she is the neighbor immediately behind the property and has no objection to the variance.

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

Mr. Chorman closed the public hearing.

Mr. Williamson moved to approve the application for Case No. 13011 for the requested variances, pending final written decision, for the following reasons:

1. The exceptional practical difficulty has not been created by the Applicants;
2. The variances will not alter the essential character of the neighborhood; and
3. The variances represent the minimum variances necessary to afford relief as the variances are less than 1 foot.

Motion by Mr. Williamson, seconded by Dr. Carson, carried unanimously that the **variances be granted for the reasons stated.** Motion carried 4 – 0.

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

Case No. 13013 – Thomas Burke seeks a variance from the maximum lot coverage requirement for proposed and existing structures (Section 115-172 G(4) of the Sussex County Zoning Code). The property is located East of Harbor Road within the Malone’s Bayside Manufactured Home Park. 911 Address: 14 Harbor Road, Millsboro. Zoning District: AR-1. Tax Parcel: 234-25.00-6.00-4575 Lot 7

Ms. Lepore presented the case and stated that the Office of Planning and Zoning received zero letters in support of the Application, zero letters in opposition of the Application, and one mail return. The Applicant seeks a variance of 706.60 square feet from the 1,415.40 square feet allowable maximum lot coverage of 35% for proposed and existing structures.

Mr. Sharp explained to the Board that variances had been approved for this property in Case No. 12990 but that the lot coverage requirement was not included in that application and that a variance is needed from that requirement as well.

Mr. Thomas Burke was sworn in to give testimony for this application.

Mr. Burke testified that he originally received approval with modification for a proposed porch in Case No. 12990; that he learned at the hearing for that case that a variance was needed from the lot coverage requirement; that he has an existing 12 foot by 40 foot long porch and deck and which are going to be demolished; that, when the new trailer is placed, he will install a new deck which will be 2 foot narrower than the one that is currently there; that the property is unique because the existing manufactured home is a 1960s model which needs to be replaced; that the park owner is requiring him to replace the trailer due to the looks and mold issues; that he did not create the exceptional practical difficulty; that the variance will not alter the neighborhood because a new trailer would enhance the aesthetics and functionality; that the variance requested is the minimum variance necessary to afford relief; that the porch will be 10 foot wide instead 11 foot wide and will be 36 square feet smaller; that the new trailer will measure 60 feet deep by 16 feet wide and the old trailer was 50 feet deep by 10 feet wide; that they do not really have trailers in the same size category as the current trailer on the property; and that manufactured homes are generally larger now.

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

Mr. Chorman closed the public hearing.

Mr. Hastings moved to approve the application Case No. 13013 for the requested variance, pending final written decision, for the following reasons:

1. The property has unique physical conditions;
2. There is no possibility that the property can be developed in strict conformity with 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 variance represents the minimum variance necessary to afford relief.

Motion by Mr. Hastings, seconded by Dr. Carson, carried unanimously that the **variance be granted**. Motion carried 4 – 0.

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

Case No. 13014 – Ernestine Huff seeks variances from the front yard setback requirement for proposed additions (Sections 115-42 and 115-183 of the Sussex County Zoning Code). The property is located on the corner of Yew Lane and Hemlock Lane. 911 Address: 36349 Hemlock Lane, Rehoboth. Zoning District: GR. Tax Map: 334-13.00-798.00

Ms. Lepore presented the case and stated that the Office of Planning and Zoning received nine signatures in support of the Application, zero letters in opposition of the Application, and no mail returns. The Applicant is requesting the following variances: a variance of 10.5 feet from the 30 feet front yard setback requirement for a proposed porch and a variance of 3.4 feet from the 30 feet front yard setback requirement for a proposed addition.

Ms. Ernestine Huff and Mr. Ron Dougherty were sworn in to give testimony for this application.

Mr. Dougherty testified that they own the lot; that they want to retire to the property; that there are a mix of homes in the neighborhood including manufactured homes; that the house is in good shape but the lot is small; that the property is unique because, when they bought the house, he got a survey done and found out that the house was set crookedly on the lot; that the house received a variance; that they did not create the problem; that the problem was created by the original builder; that they would just like to add an addition on the house; they are asking for the minimum amount as there is already a variance on the property for the porch; that they are wanting the porch for safety reasons as they are getting older; that the porch is 9 feet deep; that there will be a roof over the porch; that the property is served by well and sewer; that the well is located in the front yard about 10 feet from the home; that the roof on the porch will help provide safer access to the home as they age; that there is a gap between the front property line and the edge of paving of Hemlock Lane; that there are trees in the front yard at the corner; that the steps are 3 feet wide by 30 feet long and are parallel to the road; that he measured the lot lines with enhanced measurements; that the structures will not impact his ability to park vehicles on the site; that the structures will not adversely impact visibility along Hemlock Lane; and that the gap between the front property line and the edge of paving is approximately 10 feet.

Ms. Huff testified that they spoke to all the neighbors around them and that all the neighbors are excited about the upgrades as there have been a lot of changes to the neighborhood; that homes in the neighborhood have been upgraded with newer homes; that the house looks like an old manufactured home and they want to upgrade the house; that there are no HOA regulations; and that they bought the property in 2019.

Staff confirmed that the variances needed are as follows:

1. A variance of 3.1 feet from the thirty (30) feet front yard setback requirement for a proposed addition;
2. A variance of 2.4 feet from the thirty (30) feet front yard setback requirement for a proposed addition;
3. A variance of 10.4 feet from the thirty (30) feet front yard setback requirement for a proposed porch;
4. A variance of 8.8 feet from the thirty (30) feet front yard setback requirement for a proposed porch; and
5. A variance of 4.9 feet from the thirty (30) feet front yard setback requirement for a proposed steps.

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

Mr. Chorman closed the public hearing.

Dr. Carson moved to approve the application for Case No. 13014 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique physical conditions due to the placement of the home
2. The variances will not alter the essential character of the neighborhood; and
3. The variances represent the minimum variances necessary to afford relief.

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

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

ADDITIONAL BUSINESS

None.

Meeting adjourned at 8:02 p.m.