

MINUTES OF OCTOBER 20, 2025

The regular meeting of the Sussex County Board of Adjustment was held on Monday, October 20, 2025, 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 John Williamson presiding. The Board members present were Mr. Shawn Lovenguth, Dr. Lauren Hitchens and Mr. Nathan Kingree. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Ms. Jennifer Norwood – Planning and Zoning Manager and Ms. Ann Lepore – Recording Secretary.

The Pledge of Allegiance was led by Mr. Williamson.

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

The vote by roll call: Dr. Hitchens – yea, Mr. Lovenguth – yea, Mr. Kingree – yea and Mr. Williamson – yea

PUBLIC HEARINGS

Case No. 13121 – Helen Fausnaught seeks a special use exception for an accessory dwelling unit on a lot with an area of less than 10,000 SF (Sections 115-40(A)15(F) of the Sussex County Zoning Code). The property is located on the north side of Bay Farm Road. 911 Address: 26395 Bay Farm Road, Millsboro. Zoning District: GR. Tax Map: 234-23.00-209.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received zero letters of support, zero letters of opposition, and zero mail returns.

The Applicant is requesting the following:

- A special use exception for an accessory dwelling unit (“ADU”) on a lot with an area less than 10,000 square feet.

Helen Fausnaught and Nicole Cucinotta were sworn in to give testimony about the Application.

Ms. Cucinotta testified that Ms. Fausnaught and herself purchased the property in June 2024 and that the intent is to place the ADU on the lot but the lot size is measured at approximately 127 feet under the required 10,000 square feet that is the minimum; that the ADU is currently in the process of being built; that the idea was that this could be used as a multi-generational property with the main home and the ADU for elderly family or disabled dependents to live with some independence; that the property is located near grocery stores; that the house has 5 bedrooms and 4 bathrooms; that the ADU will have a microwave and stove; that the ADU will have a separate entrance; and that the ADU has been constructed but the stove has not been installed.

Ms. Fausnaught testified that she has been in real estate for 34 years; that it is hard to find affordable housing now; that there is plenty of parking to accommodate the unit and space to allow for a yard area also; that there is an 18 feet by 24 feet parking area on one side which can fit 3 cars and an 18 feet by 20 feet parking area on the other side which can fit 1-2 cars; that she rehabilitates properties for veterans; that this was an idea brought on after realizing the need for more affordable housing in Sussex County, especially for aging family members; that the ADU is constructed within the main dwelling with its own entrance; and that, in order for the unit to have a microwave, it would be considered an ADU which brings them before the Board.

Mr. Sharp stated that the survey that is provided actually says that the lot is 9,762 square feet making the requirement short by 238 feet and not the 127 feet that is on the Application.

Ms. Fausnaught testified that there are two different surveys that they have and one is being off by 238 feet and one being off by 127 feet; that the surveyor they were working with told them to do title research to determine what is the correct square footage; that the difference comes from the previous owners purchased additional land in the rear of the lot and that is where the second survey comes from; that, considering the footprint of the home was not changing with the creation of the ADU, they did not need to get a new survey yet as they would need the special use exception regardless of what the square footage is; and that none of the neighbors have any issues with the ADU on her property.

Ms. Cucinotta testified that the property utilizes sewer and well services; that the ADU is not an ideal rental because there are shared utilities with the main dwelling; and that the ADU will look like part of the house from outside the property.

Ms. Fausnaught testified that a neighbor is looking at an ADU as well; that there are 2, 50 gallon hot water heaters, 2 electric panels, and 2 HVACs; that the area is residential but there is a business use nearby and a Harris Teeter and a physical therapy business located across the street.

Mr. Sharp stated that, for the Board's benefit, the only requirement for consideration with this application is whether the use substantially adversely affects the uses of the neighboring and adjacent properties.

Mike Montalvo was sworn in to give testimony in support of the Application.

Mr. Montalvo testified that he lives down the street from this property and that the Applicant has done a great job in updating the lot and adding a new dwelling; that the property originally was an empty lot; and that the idea of having extra living space for elderly family members or disabled dependents is a great idea and use of the space.

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

Mr. Williamson closed the public hearing.

Mr. Lovenguth moved to approve the application for Case No. 13121 for the requested special use exception, pending final written decision, for the following reasons:

1. The use will not substantially affect adversely the use of the neighboring and adjacent properties.

Motion by Mr. Lovenguth, seconded by Mr. Kingree, carried that the **special use exception be approved for the reasons stated.** Motion carried 4-0.

The vote by roll call: Dr. Hitchens – yea, Mr. Kingree – yea, Mr. Lovenguth – yea, and Mr. Williamson – yea

Case No. 13122 – Theresa and William Ford seek variances from the rear yard and side yard setback requirement for existing structures. (Sections 115-183 and 115-185 of the Sussex County Zoning Code). The property is located on the east side of Josephs Road. 911 Address: 18473 Josephs Rd., Milton. Zoning District: AR-1. Tax Map: 334-10.00-30.18

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received zero letters of support, zero letters of opposition, and zero mail returns.

The Applicants are requesting the following variances:

- A 2 ft. variance from the 5 ft. rear yard setback for an existing pergola;
- A 1 ft. variance from the 5 ft. rear yard setback for an existing pergola;
- A 14 ft. variance from the 20 ft. rear yard setback for an existing metal building;
- A 1.9 ft. variance from the 5 ft. rear yard setback for an existing shed; and
- A 4 ft. variance from the 5 ft. side yard setback requirement on the north side for an existing carport.

Chad Lingenfelder, Esq., presented the Application on behalf of the Applicants.

Mr. Lingenfelder stated that he represented the Applicants, Theresa and William Ford; that the Applicants had a survey done in 2013 when they purchased the property and, on that survey, it showed all of the encroachments except for the carport; that the survey was never submitted to the County to be recorded nor were variances sought; that the attorney that oversaw their settlement was a joint attorney and did not let the Applicants know that there were any issues with encroachments; that the seller's disclosure statement specifically states that there were no issues with any zoning, any

setbacks, or any needs for any variances; that the Applicants have been living on the property for the last 12 years and, until recently when they wanted to sell, there were no issues; that the new survey now shows all of the encroachments and the need to fix them prior to the sale of the home; that the Applicants placed the carport and septic system on the property; that the septic system is located in the middle of the rear yard; that Mr. Ford is a Delaware State Police veteran; that the septic system took up most of the rear yard; that the structures cannot be relocated; that the Property is unique; that the uniqueness of the property is not necessarily geographical but yet the way the lot is in placed and encompassed by the fencing; that, in order to correct the encroachments, the fence would need to be completely removed and all structures repositioned; that the septic is also placed in the middle of the yard which makes moving structures in even harder; that the property cannot otherwise be developed; that there is not enough space to have any of these things moved outside of the fence and into the front yard; that the neighbors do not want to see things in the front yards and that is why the Applicants put the fence up; that it would not be beneficial to their neighbors by putting any of these things in the front yard, which of course then would be seen by the entire neighborhood; that there are 10-12 residences in the neighborhood; that the exceptional practical difficulty was not created by the Applicants; that this was a problem created by the previous seller and the issues were present at the time that the Applicants purchased the property; that the Applicants were unaware of these issues; that the Applicants hired professionals to help them navigate through the process and they were let down by those professionals; that the Applicants have not done any of this with intent or malice of any sort; that it was not the Applicants' intent to skirt any of the rules when, in fact, they bought the property as is, except for the RV port; that the variances will not alter the essential character of the neighborhood; that this is a small community and none of the neighbors have any issues with the way the home is now and do not want to make them change it; that there is no homeowners association governing the property; that the variances are the minimum variances necessary to afford relief; that the Applicants met with staff to find out the specific requirements to ensure that the property is coming into compliance and that this sale can proceed.

William Ford was sworn in to give testimony about the Application.

Mr. Ford testified that carport was added several months after the home was settled on; that the original owners had ordered a smaller carport originally and then decided they wanted to go bigger; that, when they sold the home, the new carport was still not delivered; that several months after they went to settlement he installed this carport; that the home was up for sale approximately 2 years ago and that is when it was discovered that the septic was not capable of handling the home and it needed to be replaced; that, after the septic was replaced, the structures were already present and everything had to be worked around; that the structures could not be moved as they either interfered with the septic, the well or they were cemented into the ground with permanent footers; that the carport is anchored into the asphalt driveway and the new buyers of the home want to keep that where it is presently; that the prior owner built the shed / kennel; that he is able to maintain the structures on the property; and that the carport has no sides.

Mr. Lingenfelder stated that the well is located in the front yard and the septic system must be

set back at least 50 feet from the well.

Mr. Ford affirmed the statements made by Mr. Lingenfelder as true and correct.

Barbara Lee was sworn in to give testimony in support of the Application.

Ms. Lee testified that she is the Applicants' neighbor and they have been great neighbors; and that the structures have been there for years with no complaints from anyone in the neighborhood.

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

Mr. Williamson closed the public hearing.

Mr. Kingree moved to approve the application for Case No. 13122 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique physical conditions due to development of the property by a prior owner;
2. There is no possibility that the property can be developed in strict conformity with the Sussex County Zoning Code;
3. The variances are necessary to enable the reasonable use of the property;
4. The exceptional practical difficulty has not been created by the Applicants;
5. The variances will not alter the essential character of the neighborhood;
6. The variances will not substantially impair the appropriate use or development of adjacent property;
7. The variances represent the least modifications possible of the regulation at issue; and
8. The variances represent the minimum variances necessary to afford relief.

Motion by Mr. Kingree, seconded by Dr. Hitchens, carried that the **variances be approved for the reasons stated**. Motion carried 4 - 0.

The vote by roll call: Mr. Kingree – yea, Dr. Hitchens – yea, Mr. Lovenguth – yea, and Mr. Williamson – yea

Case No. 13124 – Randall Cypher seeks variances for a side yard setback and an accessory dwelling unit with a floor area greater than 1,000 sq ft or 50% of the floor area of the single-family dwelling located on the same lot. (Sections 115-20 A(15)(c) and 115-23 of the Sussex County Zoning Code). The property is located on the west side of Collins Street. 911 Address: 14460 Collins St., Milton. Zoning District: GR. Tax Map: 235-14.00-39.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received

zero letters of support, zero letters of opposition, and zero mail returns.

The Applicant is requesting the following:

- A 74 ft. variance from the 1,000 sq. ft. maximum allowable square footage for an accessory dwelling unit requirement;
- A 1.3 ft. variance from the 10 ft. side yard setback requirement on the north side for an existing overhang; and
- A 2.5 ft. variance from the 10 ft. side yard setback requirement on the north side for an existing deck.

Randall Cypher was sworn in to give testimony about the Application. Mr. Cypher submitted exhibits to the Board.

Mr. Cypher testified that he and his wife purchased the property in February 2023 and have been renovating it themselves and have taken it from a dilapidated property to what it is today; that they have had a new septic put in to accommodate a third bedroom which they would have within the ADU; that they are asking to have a small ADU that will be more like an efficiency apartment for a lower income rental above their garage; that they cannot place the building anywhere else within the property due to the septic field; that the proposed pole building will replace the current shed which will be removed; that the deck was built by him and is not meeting the setbacks as a result of his own mistake; that he is attempting to correct any mistakes and get the proper variances needed to make all structures within compliance; that because of the size of the primary dwelling the need for the ADU variance is necessary; that the primary dwelling is only about 1,000 sq. ft. and that limits the size of an ADU; that they are trying to place a 24 foot by 24 foot pole barn to have a garage and a small efficiency apartment; that all of the neighbors are happy with the improvements that they have made to the property and have no negative comments; that a full-sized truck cannot fit in the pole building if it was smaller; that there is no other location where this can be located; that the deck is uncovered; and there is one step from the deck to the ground.

Ms. Norwood stated that there are no variances needed for the deck because it goes to the first floor; that the dwelling is considered non-conforming; and that the 16 square foot shed is also considered non-conforming.

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

Mr. Williamson closed the public hearing.

Mr. Lovenguth moved to approve the application for Case No. 13124 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique physical conditions due to development of the property by a prior owner;
2. There is no possibility that the property can be developed in strict conformity with the Sussex County Zoning Code;
3. The variances are necessary to enable the reasonable use of the property;
4. The exceptional practical difficulty has not been created by the Applicant;
5. The variances will not alter the essential character of the neighborhood;
6. The variances will not substantially impair the appropriate use or development of adjacent property;
7. The variances will not be detrimental to the public welfare;
8. The variances represent the least modifications possible of the regulation at issue; and
9. The variances represent the minimum variances necessary to afford relief.

Motion by Mr. Lovenguth, seconded by Dr. Hitchens, carried that **the variances be approved for the reasons stated.** Motion carried 4 - 0.

The vote by roll call: Mr. Kingree – yea, Mr. Lovenguth – yea, Dr. Hitchens – yea and Mr. Williamson – yea

Meeting adjourned at 7:07 p.m.