

## MINUTES OF OCTOBER 21, 2024

The regular meeting of the Sussex County Board of Adjustment was held on Monday, October 21, 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 Williamson, and Mr. Jeffrey Chorman. Mr. John T. Hastings – Absent. 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. Chorman.

Motion by Dr. Carson, seconded by Mr. Williamson and carried unanimously to approve the agenda. Motion carried 3 – 0.

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

Motion by Mr. Williamson, seconded by Dr. Carson and carried to approve the Minutes for the August 19, 2024, meeting. Motion carried 3 – 0.

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

Motion by Dr. Carson, seconded by Mr. Williamson and carried to approve the Findings of Facts for the August 19, 2024, meeting. Motion carried 3 – 0.

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

Mr. Chorman thanked Mr. Jordan Warfel for his service to the Board of Adjustment.

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. 12995 – Michael and Marcia Burke** seek variances from the front, corner front, side, and rear yard setback requirements for proposed and existing structures (Section 115-42, 115-182 and 115-183 of the Sussex County Zoning Code). The property is located South of 4<sup>th</sup> Street and East of Midway Drive within the Tru Vale Acres Subdivision. 911 Address: 601 Fourth Street, Rehoboth Beach. Zoning District: GR. Tax Parcel: 334-13.00-85.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received three letters in support of the Application, zero letters in opposition of the Application, and one mail return. The Applicants are requesting the following variances:

- 4.6 ft. from the 15 ft. corner front yard setback requirement for proposed addition
- 3.6 ft. from the 30 ft. front yard setback requirement for proposed porch addition
- 3.3 ft. from the 5 feet side yard setback requirement on the southwest side for an existing shed
- 5 ft. from the 5 ft. rear yard setback requirement for an existing shed

Mr. Tim Willard was present on behalf of the Applicants. Mr. Willard read letters of support into the record and submitted them to the Board.

Mr. Willard stated that the property is located in Tru-Vale Acres which was created in 1967 prior to the adoption of the Sussex County Zoning Code; that 13 variances have been approved in the neighborhood; that the parcel is unique as it is a corner lot in an old GR zoned neighborhood where most of the houses are becoming stick-built and enlarged; that this lot was improved with no garage and limited living space for a temporary cottage; that Midway Drive is considered the front yard; that the shed on the property will be moved into compliance, therefore, no variance is being requested for the shed; that the Board can impose the relocation as a condition; that the Applicants looked at averaging the front yard setback but that would not work; that the Applicants have owned the property since 1972; that there are mature trees in the front yard; that the trees were planted by a prior owner; that the manufactured home was removed and the current 1,600 sq. ft. dwelling was built in 2008; that the addition is necessary due to the increase in the size of their family; that the addition will include a 2 car garage, laundry room, and 2 bedrooms; that the addition will be 18 feet wide; that, because this lot is a corner lot, the setback is increased from 10 ft. to 15 ft.; that the addition of the garage is necessary as the homeowners age; that Michael Burke had spinal and leg surgery; that the porch extension into the front yard will be uncovered; that the house measures 58 ft. by 28 ft.; that the porch measures 8 ft. by 10 ft.; that the exceptional practical difficulty was not created by the Applicants but by the unique corner lot; that the increase in home rents and purchase prices in the area have made adding to the existing dwelling for extended family to live with their parents; that the property cannot otherwise be developed; that allowing this variance will not alter the essential character of the neighborhood as there are many stick-built homes with 2-car garages within the Tru-Vale subdivision; that these variances are the minimum variances to all for an 18-foot wide garage which will also allow for the addition of 2 bedrooms and a bathroom; and that there are numerous letters in support of the Application.

Mr. Michael Burke was sworn in to give testimony for the Application.

Mr. Burke testified that the statements made by Mr. Willard are true and correct.

Mr. Burke testified that this will be his family home; that he did not plan for this to be his full-time home in 2009 but circumstances changed; that the house will be occupied by his wife and himself, his son, his son's wife and his grandchild; that part of the reason that they are extending this house is because of the increase in the cost of land and houses; that his son is a line chef and his daughter-in-law is a housekeeper; that they decided to extend the house to accommodate the needs of

their son's family in addition to their own needs; that there is no HOA for this subdivision; that the dark block on the site plan is the parking area; that the garage will be 1 story tall with a loft above it for a kids room; that the well is located in the front yard; that there is a 10.5 foot gap between the edge of paving of 4<sup>th</sup> Street and the property line; that the stop sign is located on 4<sup>th</sup> Street; that the structures will not impair the visibility along the streets; that neighbors support the Application; that the dwelling was built in 2008-2009; that he looked at other options; that this option was the only one without substantial renovations to the entire house; that the rear yard is preserved; that he has mobility issues; and that the porch addition will provide him with better access and a sitting area.

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 approve the application for Case No. 12995 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique physical conditions because of the corner lot requirement;
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 part of his motion, Mr. Williamson placed a condition that the Applicants move the shed into compliance with Sussex County Code.

Motion by Mr. Williamson, seconded by Dr. Carson, carried unanimously that the **variances be granted with condition for the reasons stated**. Motion carried 3 – 0.

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

**Case No. 13002 – Troy Wallace** seeks variances from the side yard setback requirements for a proposed structure (Sections 115-25 and 115-183 of the Sussex County Zoning Code). The property is located on the southeast side of Charles Street. 911 Address: 9788 Charles Street, Seaford. Zoning District: AR-1. Tax Map: 331-6.00-75.00

Ms. Norwood 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 zero mail returns. The Applicant is requesting a 10 ft. variance from the 15 ft. side yard setback requirement on the southwest side for a proposed pole building.

Mr. Troy Wallace was sworn in to give testimony for this application and he submitted a photograph into the record of the existing garage and fence.

Mr. Wallace testified that there is an existing garage on the property; that the existing garage

is 60 years old and is only 3 ft. from the property line and is to be removed; that the proposed garage will be more in compliance with the Zoning Code but will still require a variance; that his neighbor's fence is on the subject property and is to remain; that he did not build the existing garage as it was on the property when he purchased the property in 2015; that the house was built in 1964; that the garage will not alter the essential character of the neighborhood; that the garage will not devalue the property; that his neighbor is present to support the Application; that the requested variance is the minimum variance necessary to afford relief as the proposed garage cannot be moved closer to the house as there would be no access to the rear yard; that the septic system is in the rear of the dwelling; that he is a big game hunter and will use the building for his trophies; that the new pole building will measure 24 feet by 40 feet; that the old garage measures 21.6 feet by 27 feet; that he looked at smaller structures but stock trusses are 24 feet wide; that the property is just over 10,745 sq. ft. and cannot benefit from the Small Lot Ordinance; that the proposed garage is 960 sq. ft. and cannot benefit from the reduced setbacks for structures under 600 sq. ft.; that he has a letter of support; that the garage will line up with the house and will be no closer to the front yard than the house; that the old garage is 3.9 feet from the side property line; and that this garage will be 5 feet from the side property line.

Mr. Brent Milligan was sworn in to give testimony in support of the Application.

Mr. Milligan testified that he has no objection to the Application; that he would like the building to remain in the current location which is 3.9 ft. from the property line; and that the existing fence will be replaced.

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.

Dr. Carson moved to approve the application for Case No. 13002 for the requested variances, pending final written decision, for the following reasons:

1. The variance will not alter the essential character of the neighborhood; and
2. The variance represents the minimum variance necessary to afford relief.

Motion by Dr. Carson, seconded by Mr. Williamson, carried unanimously that the **variance be granted** for the reasons stated. Motion carried 3 – 0.

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

**Case No. 13003 – William and Phyllis Fischer** seek variances from the side and rear yard setback requirements for a proposed structure (Sections 115-34, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located on the northwest side of Elizabeth Avenue within the Ann Acres Subdivision. 911 Address: 21040 Elizabeth Avenue, Rehoboth Beach. Zoning District: MR.

Tax Map: 334-20.13-113.00

Ms. Norwood 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 Applicants are requesting a 2 ft. variance from 5 ft. side yard setback requirement on the northeast side for a proposed shed and a 2 ft. variance from the 5 ft. rear yard setback requirements for proposed shed.

Mr. William Fischer and Ms. Phyllis Fischer were sworn in to give testimony for this application.

Ms. Fischer testified that there are two existing sheds on the property; that they wish to replace the existing sheds with a larger 12 ft. x 16 ft. shed; that they are requesting a variance to place it 3 ft. from the property line; that the property measures 50 ft. x 100 ft.; that there is a stairway going to the second floor, an outdoor shower, and a paved patio in the rear of the dwelling; that the request is to allow room to walk around the shed and be able to open the shed door to move things in and out; that the shed will not alter the essential characteristics of the neighborhood as the shed will be in the rear of the property; that there is no garage on the property; that there is a 6 feet tall existing fence; that the neighbors support the Application; that the requested variances are the minimum variances needed for storage as there is no basement in the dwelling and no garage on the property; that HOA approval is not required; that the proposed shed will be a few feet away from the existing patio; and that there is a sitting wall which prevents the door of the shed, if it were in compliance, from opening.

Mr. Fischer testified that that the old shed was moved to build the patio; that the patio was built by the Applicants' contractor in 2011; that the sheds will be able to house their bikes; that the Applicants placed the home on the lot; that the new shed will be at ground level; that the reason for the variances is to be able to access the shed with a door on the patio side in addition to an opening on the front of the shed; that Ann Acres is an old subdivision but over the years there has been a lot of new construction; and that the lack of a basement and garage creates the need for storage especially with a growing family.

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. 13003 for the requested variances, pending final written decision, for the following reasons:

1. The property does not have unique physical conditions;
2. The exceptional practical difficulty was created by the Applicants because the Applicants placed the house and patio on the lots; and
3. There are no unique physical conditions which have created an exceptional practical

difficulty.

Motion by Mr. Williamson, seconded by Dr. Carson, carried unanimously that the **variances be denied** for the reasons stated. Motion carried 3 – 0.

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

**Case No. 13005 – Hugh McLaughlin** seeks a variance from the side yard setback requirements for a proposed structure (Sections 115-25 and 115-183 of the Sussex County Zoning Code). The property is located on the west side of Shore Drive withing the Lakeshores Subdivision. 911 Address: 22152 Shore Drive, Seaford. Zoning District: AR-1. Tax Map: 331-3.00-72.00

Ms. Norwood 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, one neutral comment, and one mail return. The Applicant is requesting a 7 ft. variance from the 15 ft. side yard setback requirement on the south side for proposed detached garage.

Mr. Hugh McLaughlin was sworn in to give testimony for this application. Mr. McLaughlin submitted photographs into the record.

Mr. McLaughlin testified that he recently purchased the property 2 weeks ago; that the prior owner purchased the property in 1992; that there was no garage on the property at that time due to a neighbor's concern about views; that the variance is for a 24 ft. x 36 ft. proposed garage; that the previous property owner obtained a side yard variance from 1992 for 6 ft.; that the lot is too narrow to put the garage to the side of the dwelling; that he plans to put it to the rear of the dwelling but it would still be only 8 ft. from the side property line; that the well is located to the rear of the house; that the septic system is located in the front yard; that the garage cannot be too close to Hearn's Pond; that there would still be access to the rear of the property for emergencies; that the neighbor to the south of the subject property and the neighbor directly across the street support his application; that, if the garage was located in compliance with the Code, it would block his neighbor's view of the pond; that he looked a smaller garage but it would not fit his needs; that this size garage is necessary for his needs; that he has a 1951 Chevy truck, 2 motorcycles, and lawn equipment; that he cannot make the garage smaller or utilize sheds to accommodate his needs; that the garage cannot be placed in the front of the house because of the placement of the septic system; that the garage will not be visible from the street; that the proposed garage will not be impacted by the flood zone; that the property is level; that the driveway is on the north side of the property; and that the driveway will circle the house to enter the garage on the south side of the property.

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. 13005 for the requested variance, pending final written decision, for the following reasons:

1. The variance will not alter the essential character of the neighborhood; and
2. The variance represents the minimum variance necessary to afford relief.

Motion by Dr. Carson, seconded by Mr. Williamson, carried unanimously that the **variance be granted** for the reasons stated. Motion carried 3 – 0.

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

**Case No. 13006 – Katherine Gomez** seeks a variance from the rear yard setback requirement for a proposed addition (Sections 115-25 and 115-183 of the Sussex County Zoning Code). The property is located on the southeast side of Liverpool Lane within the Canal Point Subdivision. 911 Address: 37424 Liverpool Lane, Rehoboth Beach. Zoning District: MR. Tax Map: 334-13.00-1657.00

Ms. Norwood 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 one mail return. The Applicant is requesting a 3.6 ft. variance from the 10 ft. rear yard setback requirement for proposed addition.

Mr. Kevin Marmor was sworn in to give testimony for this application. Mr. Marmor submitted a letter of approval from the homeowners association.

Mr. Marmor testified that the requested variance is 4 ft. 8 in. and not 3 ft. 6 in. that was read into the record; that it is the same foundation, but the variance request now includes the overhang on the roof; that the foundation will be 6.4 feet from the property line; that the house is square to the street but the property line runs at an angle behind the house; that the request has been approved by the HOA; that the homeowner's spouse has brain cancer and having this room directly off the bedroom will be helpful to him as it provides better access for caregivers and visitors; that the retention pond is on the property to the rear of the subject property; that the addition will not interfere with access to the rear of the property; that the uniqueness of the property is the diagonal property line to the rear of the house; that the relief is only sought for the right hand side of the home; that the exceptional practical difficulty was not created by the Applicant but by the uniqueness of the property; that this addition will not alter the essential character of the neighborhood as the adjoining property is a common area; that the requested variance is the minimum variance necessary to afford relief; that there are similar additions in the subdivision but they did not have the same issues with the shape of the lots; that, if the rear lot line was not angled, no variance would be needed; that one side of the addition will comply with setbacks; and that the only variance required is on one side of the addition.

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 approve the application for Case No. 13006 for the requested variance, pending final written decision, for the following reasons:

1. The property has unique physical conditions due to the angle of the lot;
2. The variance will not alter the essential character of the neighborhood; and
3. The variance represents the minimum variance necessary to afford relief.

Motion by Mr. Williamson, seconded by Dr. Carson, carried unanimously that the **variance be granted** for the reasons stated. Motion carried 3 – 0.

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

**Case No. 13007 – Robert and Barbara Nowell** seek a variance from the front yard setback requirement for a proposed addition (Sections 115-34 and 115-182 of the Sussex County Zoning Code). The property is located on the West side of Crab Bay Lane within the Keen-Wik West Subdivision. 911 Address: 37800 Crab Bay Lane, Selbyville. Zoning District: MR. Tax Map: 533-19.07-72.00

Ms. Norwood 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 one mail return. The Applicants are requesting a 17.1 ft. variance from the 30 ft. front yard setback requirement for proposed attached garage.

Mr. Robert Nowell and Ms. Barbara Nowell were sworn in to give testimony for this application.

Ms. Nowell testified that the Applicants purchased the property in 1977 and built the home in 1984; that they plan to make this their permanent home; that they would like to put an attached garage to the front of the home; that there is no existing garage and there is no room to put the garage to the rear of the house; that they have support from neighbors; that they also have a letter from the HOA stating that they will agree with the decision of the Board of Adjustment; that the proposed garage would be built to match the house; that the current driveway is to be utilized for the proposed garage; that there is approximately 15 – 17 ft. between the edge of paving and the property line; that they originally believed the property was 150 feet deep but the property is only 135 feet deep; that there is 47 feet from the house to the edge of paving of the street; that others in the neighborhood have front yard variances or encroachments; that the house is 40 feet wide; that the deck is elevated and is addition to the width of the house; that they have not had any flooding issues on the property; and that the entrance to the house is on the south side of the garage and the garage cannot be placed there.

Mr. Nowell testified that the garage would be facing towards that south; that the only time

that the property flooded was during Superstorm Sandy; that the docks go underwater during the full moon but the bulkhead is a few steps above the dock; that there is a similar garage in the neighborhood but the door faces Crab Bay Lane and it is closer to the property line than the proposed garage would be; that there is a bedroom next to the proposed garage and they plan to put a door between the garage and the bedroom for access during inclement weather; and that there is only 10 ft. from the front of the house to the neighbor's property to the south.

Mr. Dean Pantellere was sworn in to give testimony in opposition to the Application.

Mr. Pantellere testified that he lives on the other side of the canal; that he is a former resident of Crab Bay Lane and he is not aware of any garages that are as close to the road as the proposed garage; that the requested variance would change the character of the neighborhood; that it would set a precedent; that he is concerned with safety for parking in the neighborhood; that the property is not unique; that there are other lots of similar size; that the situation has been created by the homeowners as they placed the home; and that he is unsure how the Applicants would be able to turn into the garage.

Ms. Nowell testified that there is precedent in the neighborhood as the home she described during her presentation that has a garage within the setback is on Salty Way; that this would not change anything with regard to parking on the property as the driveway will remain on the property; that the property is unique because of the need for a garage and that if the proposed garage was placed in the rear it would impede the neighbors view of the canal.

Mr. Pantellere testified that he is aware of the house on Salty Way that Ms. Nowell referred to and that it is a problem because traffic does get impeded.

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

Mr. Chorman closed the public hearing.

Dr. Carson moved to deny the application for Case No. 13007 for the requested variance, pending final written decision, for the following reasons:

1. The property does not have unique physical conditions; and
2. The exceptional practical difficulty was created by the Applicants.

Motion by Dr. Carson, seconded by Mr. Williamson, carried unanimously that the **variance be denied** for the reasons stated. Motion carried 3 – 0.

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

**ADDITIONAL BUSINESS**

**Meeting adjourned at 8:17 p.m.**