

MINUTES OF OCTOBER 5, 2020

The regular meeting of the Sussex County Board of Adjustment was held on Monday, October 5, 2020, at 6:00 p.m. in the County Council Chamber, Sussex County Administration Office Building, Georgetown, Delaware. The teleconference system was tested during the meeting by staff to confirm connectivity.

The meeting was called to order at 6:00 p.m. with Chair Ellen Magee presiding. The Board members present were: Dr. Kevin Carson, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. Mr. Jeff Chorman was absent. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney and staff members Mr. Jamie Whitehouse – Director of Planning and Zoning, Mr. Chase Phillips – Planner I, and Ms. Ann Lepore – Recording Secretary.

The Pledge of Allegiance was led by Ms. Magee.

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

The vote by roll call; Mr. Williamson – yea, Mr. Workman – yea, Dr. Carson – yea and Ms. Magee – yea.

Motion by Mr. Williamson, seconded by Dr. Carson, and carried unanimously to approve the Minutes for the August 3, 2020, meeting. Motion carried 4 – 0.

The vote by roll call; Mr. Williamson – yea, Mr. Workman – yea, Dr. Carson – yea and Ms. Magee – yea.

Motion by Dr. Carson, seconded by Mr. Williamson, and carried to approve the Findings of Facts for the August 3, 2020, meeting. Motion carried 4 – 0.

The vote by roll call; Mr. Williamson – yea, Mr. Workman – yea, Dr. Carson – yea and Ms. Magee – yea.

Mr. Sharp read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing the case.

Chair Magee read the mask policy.

OLD BUSINESS

There was no old business

PUBLIC HEARINGS

Case No. 12475 – Jennifer Cunningham & Dustin Fritz seek variances from the side yard setback and rear yard setback requirements for an existing structure (Sections 115-34 and 115-183 of the

Sussex County Zoning Code). The property is located on the northeast side of E. Pond Circle within the Keenwick Sound subdivision. 911 Address: 37729 E. Pond Circle, Selbyville. Zoning District: MR. Tax Parcel: 533-19.00-397.00

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received one letter in support of and none in opposition to the Application and zero mail returns. The Applicant is requesting a 2.2 ft. variance from the required 5 ft. side yard setback on the north side and a 1 ft. variance from the required 5 ft. rear yard setback for an existing shed.

Ms. Jennifer Cunningham was sworn in to give testimony about the Application.

Ms. Cunningham testified that the shed was placed on the property by the previous owner in February 2019; that a building permit was obtained but not closed out; that a neighbor has a similar shed close to the property line; that the property is unique as it is a shallow lot with the rear lot line at a diagonal angle; that the shed would be too close to the porch if moved; that there is no other location on the lot to place the shed; that the lot was purchased by her family in April 2020 so the Applicant did not create the exceptional practical difficulty; that the shed measures 8 feet by 12 feet; that there are a number of similar sheds in the neighborhood so it will not alter the essential character of the neighborhood; that the homeowners association advised her that another homeowner received a variance for a similar use; and that some sheds in the neighborhood are less than 2 feet from the property line.

Mr. Whitehouse advised the Board that there have been 3 variances granted in the neighborhood since 2011.

Ms. Cunningham testified that the shed is inside the fence; that there is less than 15 feet from the porch to the shed; that the shed is used for storage of patio furniture, tools, and beach equipment; that they are planning to construct a patio; that a prior owner installed the fence; that there have been no complaints from neighbors; that one neighbor has given a letter of support; that it is a minimum variance to allow the shed to remain in the current location; that the shed has a wooden floor on a concrete block foundation with no electricity; that the shed is necessary for storage because there is limited storage in the house; and that the rear yard angle makes it difficult to move off the side yard.

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

Ms. Magee closed the public hearing.

Dr. Carson moved to approve Case No. 12475 for the variances as the property has unique physical properties; that the exceptional practical difficulty was not created by the Applicants; that the variances will not alter the essential character of the neighborhood; that they are the minimum variances to afford relief; and that the variances will enable the reasonable use of the property.

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

The vote by roll call; Mr. Workman – yea, Mr. Williamson – yea, Ms. Magee – yea, and Dr. Carson – yea.

Case No. 12476 – Jeffrey & Syndy Gaber seeks variances from the side yard setbacks, rear yard setback and the minimum aggregate front yard and rear yard requirements for a proposed structure (Sections 115-25, 115-183 and 115-188 of the Sussex County Zoning Code). The property is located on the west side of Harbor Road within the North Shores subdivision. 911 Address: 61 Harbor Road, Rehoboth Beach. Zoning District: AR-1. Tax Parcel: 334-8.17-147.00

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. The Applicant is requesting a 10.7 ft. variance from the required 40 ft. minimum aggregate yard requirement for a townhouse, and a 4.3 ft. variance from the 5 ft. rear yard setback for an accessory structure under 600 sf.

Mr. Mark Wilson was sworn in to give testimony about the Application.

Mr. Wilson testified that he is the builder representing the Applicants; that the Applicants wish to build a shed to store bicycles and beach equipment; that the rear yard is small; that the shed has not yet been built; that a neighbor has a similar shed; that there is no other place for the shed to be located; that the property is unique as it is narrow and small; that the only possibility for the shed is to get a variance for the side and rear setbacks; that the exceptional practical difficulty has not been created by the Applicant but by the size of the lot; that the 10 ft. X 5.5 ft. shed will replace the existing fence and open to the common area in the rear of the property; that granting the variance will not alter the essential character of the neighborhood as there are many similar sheds in the area; that HOA approval has been given for the shed; that it is the least variance requested to allow for a small storage shed; that the Applicants have owned the property for approximately 2 years; that they are removing part of the fence and the shed will serve as the fence; that the driveway is not part of the lot; that the shed will measure 7 feet tall; that the fence measures 6 feet tall; and that the shed is necessary for the reasonable use of the property.

Mr. Whitehouse reviewed other variances approvals granted in the area and stated that North Shores is a subdivision from 1970 and is not a multi-family conditional use development.

Ms. Patricia Ward participated in the meeting by teleconference and was sworn in to give testimony about the Application.

Ms. Ward testified that that she lives in an adjoining property and has owned her property for 44 years; that the prior owner to the Applicants' property built out the unit and changed the fence line

so that it projected 3 feet on the north end; that the parking space behind the Applicants' unit is too small and their son often parks in her space; that she does not object to the shed but would like the door for the shed to be at the side farthest from her dwelling; that she would like the parking spot to be reinstated and that she does not want access to her property blocked by the Applicants.

Mr. Wilson testified that he does not object to moving the fence; that the corner of the fence will be flush with the shed; that the door will be centered; and that the Applicants will gain 2-3 feet for parking as part of the plan.

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

Ms. Magee closed the public hearing.

Mr. Williamson moved to approve Case No. 12476 for the variances with conditions that the door on the shed be placed as far north as possible and the parking space be restored; that the property is unique due as it is a small lot; that granting the variances will not alter the essential character of the neighborhood; and that they are the minimum variances to afford relief.

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

The vote by roll call; Mr. Workman – yea, Mr. Williamson – yea, Ms. Magee – yea, and Dr. Carson – yea.

Case No. 12480 – Belva Robinson seeks variances from the side yard setback requirements for an existing structure (Section 115-25 and 115-183 of the Sussex County Zoning Code). The property is located on the west side of Robinhood Road approximately 179 ft. south of Oak Branch Road. Address: 36744 Robin Hood Road, Delmar. Zoning District: AR-1. Tax Parcel: 532-14.00-15.07

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. The Applicant is requesting a 1.1 ft. variance from the 15 ft. side yard setback requirement on the north side for an existing garage exceeding 600 sf.

Ms. Beverly Robinson was sworn in to give testimony about the Application.

Ms. Robinson testified that the Applicant is her mother, Belva Robinson; that the situation is unique; that the house was built by her brother-in-law in 2000 and he divorced her sister in 2011; that her mother moved into the house but her sister died unexpectedly and the house is now owned by her mother; that her mother went to sell the property and discovered the encroachment; that the garage was placed in its current location to preserve the existing tree-line on the property; that the Applicant

was unaware that the garage was not compliant with County setbacks until a recent survey; that there is no possibility that the property can be developed in strict conformity with the Sussex County Zoning Code; that the variance is necessary to enable reasonable use of the property; that it cannot otherwise be developed as the garage has been in its current location for over twenty years; that the Applicant did not build the garage but was co-owner with her daughter who has since passed away; that the structure was built over 20 years ago; that the property is serviced by well and septic system which is on the north side of the lot; that granting the variance will not alter the essential character of the neighborhood as there have been no complaints about the garage in its present location; that this home is not in a homeowners association; that a letter of support was submitted by the adjoining neighbor; and that it is the minimum variance request to allow the garage to remain.

Mr. Whitehouse advised the Board that a building permit was issued in February 2000 for the house and a CO was issued for the house in August 2000; and that a building permit was issued for the garage in July 2020 but that permit is still active.

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

Ms. Magee closed the public hearing.

Mr. Workman moved to approve Case No. 12480 for the variances as the Applicant has met the standards for granting a variance.

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

The vote by roll call; Mr. Workman – yea, Mr. Williamson – yea, Ms. Magee – yea, and Dr. Carson – yea.

Case No. 12481 – Richard A. Strouse, Jr. seeks variances from the side yard setback requirement for a proposed structure (Section 115-42 and 115-183 of the Sussex County Zoning Code). The property is located on the east side of Canvasback Road in the Swann Keys subdivision. Address: 37032 Canvasback Road, Selbyville. Zoning District: GR. Tax Parcel: 533-12.16-386.00

Mr. Phillips presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and one mail return. The Applicant is seeking a 4.4 ft. variance and a 4.1 ft. variance from the 5 ft. side yard setback requirement for a proposed lean-to.

Mr. Richard A. Strouse, Jr. was sworn in to give testimony about the Application.

Mr. Strouse testified that he purchased the property in 2019; that the property is only 40 ft. wide and it is challenging to develop; that he proposes to construct a lean-to on the side of the lot; that

the lean-to cannot otherwise be developed as 10 ft. is the minimum to allow the space to be usable; that the space will be used to store a vehicle, golf cart, and kayak; that granting the variance will not affect neighboring properties or impede any views; that he has spoken to his neighbors and they expressed runoff concerns that he intends to use the porch as support for one side of the lean-to; that he could have reduced the size of the lean-to to 8 feet but he wanted more storage; that the need for the variance has been created by him; that he wants to use as much of the property as possible; that there is a building permit but has stopped construction until the outcome of this hearing; that the variance will not alter the essential character of the neighborhood as there are similar structures throughout the development; that 10 ft. is the minimum to make the space useable and it will not be on the property line; that maintenance can be performed on the property; that the water run-off from the gutters will drain into the canal; that the roof will have a rubber membrane and will be guttered onto his property; that he could make it work if it was 8 feet wide but would scrap the idea if it were narrower; and that the builder started with posts and received a call about the need for a variance so he told the builder to stop.

Mr. Whitehouse stated that there was a building permit issued for a porch in 1984 and a CO was issued for the porch and that there is an open building permit for the lean-to from July 2020.

Mr. Strouse testified that he wants shelter for his belongings; that he looked at other options but has not checked with his homeowners association; that he may need to go onto his neighbor's lot to maintain the posts; that the stormwater drains to the porch; and that he has an underground system for drainage to the lagoon.

Mr. Bruce Hoover and Ms. Janet Hoover were sworn in to give testimony in opposition to the Application.

Mr. Hoover submitted an exhibit showing pictures of the proximity of the lean-to to his property.

Mr. Hoover testified that his property adjoins the subject property to the south; that the lean-to will be 8.5 – 9 inches from his property; that the overhang will be closer to his property and when there is a storm water will come on his property; that the main entrance to his home is located on that side of the lot; that it will be like a tunnel; that the lean-to will block one third of their window; that construction has already begun; that safety is also a concern should there be fire, the building would be too close; that he called Planning & Zoning about the setback and work stopped about 2 weeks later after posts were installed; that he told the builder about the setbacks; that the roof slopes to his property; that the runoff drains from the street to the canal and he has stormwater concerns.

Ms. Hoover testified that allowing the lean-to to be built would be very intrusive to her property; that she and her husband have lived at this property for 17 years; that the 5 ft. setback is already very close but pushing it to 9 inches is too close; and that they get canal overflow during storms.

Mr. John McCamant was sworn in to give testimony in opposition to the Application.

Mr. McCamant testified that his property adjoins the Hoover property to the south; that the small lot ordinance was a good thing; that for safety reasons the 5 ft. setbacks must be followed; and that 9 inches is too close to the property line.

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

Mr. Strouse testified that he worked with Dry Wall Associates on the lean-to; that he apologized to his neighbors; that he would not want to build this structure even if the variance were approved and that he would like to withdraw the Application based on his neighbor's comments.

Ms. Magee closed the public hearing.

Dr. Carson moved to accept the Applicant's withdrawal of Case No. 12481 for the requested variances.

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

The vote by roll call; Mr. Workman – yea, Mr. Williamson – yea, Ms. Magee – yea, and Dr. Carson – yea.

ADDITIONAL BUSINESS

There was no additional business.

Meeting adjourned at 7:33 p.m.