

## MINUTES OF OCTOBER 7, 2019

The regular meeting of the Sussex County Board of Adjustment was held on Monday, October 7, 2019, at 6:00 p.m. in the County Council Chambers, 2 The Circle, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chair Ellen Magee presiding. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Mr. Jamie Whitehouse – Planning Manager, Ms. Samantha Bulkilvish – Planner, 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 5 – 0.

Motion by Mr. Williamson, seconded by Dr. Carson, and carried unanimously to approve the Minutes for the August 5, 2019, meeting. Motion carried 5 – 0.

Motion by Mr. Workman, seconded by Dr. Carson, and carried unanimously to approve the Findings of Facts for the August 5, 2019, meeting. Motion carried 5 – 0.

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

### **OLD BUSINESS**

**Case No. 12357 – Shirley A. Perry** seeks variances from the front yard setback and side yard setback requirements for existing structures (Sections 115-42 and 115-185 of the Sussex County Zoning Code). The property is a through lot fronting on the north side of W. Springside Dr. and the south side of Fisher Rd. approximately 0.37 miles west of Martin Farm Rd. 911 Address: 28403 West Springside Dr., Milton. Zoning District: GR. Tax Parcel: 334-10.00-91.00

Ms. Bulkilvish presented the case which was tabled at the Board's meeting on September 9, 2019. Mr. Chorman stated that he had not reviewed the tape of the public hearing and would abstain from the discussion and from voting. Dr. Carson stated that he had reviewed the audio tape and the record and is prepared to discuss and vote on the Application.

The Board held a brief discussion.

Dr. Carson stated that this is a unique case where the contractor admitted fault but that there was a County official also involved; that he is pleased to note that there will be cross-training for officials; that when the foundation inspection is completed that a setback inspection will also be completed; and that it will limit the number of violations if setback issues are discovered prior to the building being constructed.

Mr. Workman stated that the property owner said that he could move the shed but supported the variance for the pole building.

Mr. Workman moved to approve Application No. 12357 for the variance for the pole building and to deny the variance for the shed as the shed can be moved to another location to be in compliance with County Code.

Mr. Workman moved, seconded by Dr. Carson and carried that the **variance be granted in part and denied in part**. Motion carried 3 - 1.

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

**Case No. 12355 – Charles F. & Sharon M. Schultz** seeks variances from the side yard setback requirements for proposed structures (Sections 115-42 and 115-183 of the Sussex County Zoning Code). The property is located on the east side of Canvasback Rd. approximately 0.40 miles north of Swann Dr. within the Swann Keys subdivision. 911 Address: 37082 Canvasback Rd., Selbyville. Zoning District: GR. Tax Parcel: 533-12.16-369.00

Mr. Whitehouse presented the case which was tabled at the Board's meeting on September 9, 2019. Mr. Whitehouse stated that this case was tabled to allow the Board time for further consideration.

Mr. Sharp stated that Dr. Carson was not present at the September 9, 2019, meeting and asked Dr. Carson if he was prepared to vote on this Application. Dr. Carson stated that he had reviewed the audio tape and record and is prepared to discuss and vote on the Application.

The Board held a brief discussion.

Mr. Williamson moved to approve Application No. 12355 as the Applicant has met all the criteria for granting a variance.

Mr. Williamson moved, seconded by Mr. Chorman, and carried unanimously that the **variances be granted for the reasons stated**. Motion carried 3 - 2.

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

**Case No. 12362 – Richard MacDonald** seeks a variance from the side yard setback and separation distance requirements for a proposed porch (Sections 115-25, 115-172, and 115-183 of the Sussex County Zoning Code). The property is located on the southeast side of Sea Air Ave. approximately

65 ft. southwest of Skyview St. in the Sea Air Manufactured Home Park. 911 Address: 19877 Sea Air Ave., Rehoboth Beach. Zoning District: AR-1/C-1. Tax Parcel: 334-13.00-310.00-55766

Mr. Whitehouse presented the case which was tabled at the Board's meeting on September 9, 2019. Mr. Whitehouse stated that this case was tabled to allow for submission of the building permit which was circulated to the Board.

Mr. Sharp stated that Mr. Chorman was not present at the September 16, 2019, meeting and asked Mr. Chorman if he was prepared to vote on this Application. Mr. Chorman stated that he is abstaining and will not vote on this Application.

The Board held a discussion regarding the irregular placement of the dwelling.

Dr. Carson moved to deny Application No. 12362 as the request for the variance is being created by the Applicant.

Motion by Dr. Carson, seconded by Mr. Workman, and carried unanimously that the **variances be denied for the reasons stated**. Motion carried 3 – 1.

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

### **PUBLIC HEARINGS**

**Case No. 12364 – Deborah Clements** seeks a variance from the front yard setback requirements for proposed structures (Sections 115-25 and 115-182 of the Sussex County Zoning Code). The property is located on the southwest corner of New Rd. and New Ln. 911 Address: 2 New Ln., Lewes. Zoning District: AR-1. Tax Parcel: 335-8.00-597.00

Ms. Bulkilvish 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 6.7 ft. variance from the required 30 ft. front yard setback for a proposed screen porch.

William Fay, Deborah Clements and Steven Marchant were sworn in to give testimony about the Application. Mr. Fay submitted exhibits to the Board.

Mr. Fay testified that there is an existing deck that is in compliance; that the Applicant would like to put a roof over the deck for safety reasons; that the existing deck rotted and needed to be replaced; that the roof would provide shelter for a resident who has a disability and is unstable on her feet; that that property is unique because it is a corner lot; that the deck is already in place in the front of the home; that it was not created by the Applicant as they are trying to enclose an existing deck for

safety and shelter; that it will not alter the essential character of the neighborhood as the deck has been in place since about 1999; that there will not be any extension of the existing deck; that the edge of paving to the street is about 2.5 ft. from the property line; that there is a covered porch to the rear of the home but the main entrance to the home is via the front; and that the proposed porch will be close to the driveway and where the Applicant parks her car.

Ms. Clements testified that weather related issues have caused the front door to be replaced multiple times; that the property is serviced by well and septic in the rear yard; and that the house is closer to New Lane due to the septic system.

Mr. Fay testified that the steps will be 1 foot from the house and will measure 3 feet wide; and that no variance is needed for the steps.

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

Mr. Chorman moved to approve Application No. 12364 as the Applicant has met all the criteria for granting a variance.

Mr. Chorman moved, 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. Chorman – yea, Mr. Workman – yea, Mr. Williamson – yea, Dr. Carson – yea and Ms. Magee – yea.

**Case No. 12365 – Frederick H. Gunther** seeks variances from the side yard setback requirements for proposed structures (Sections 115-25, 115-181 and 115-183 of the Sussex County Zoning Code). The property is located on the west side of Grant Ave. approximately 0.22 miles south of Lincoln Dr. within the Cape Windsor subdivision. 911 Address: 38828 Grant Ave., Selbyville. Zoning District: AR-1. Tax Parcel: 533-20.18-36.00

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received no correspondence in support of and 12 letters in opposition to the Application and zero mail returns. The Applicant is requesting a 3.25 ft. variance from the required 5 ft. side yard setback for existing HVAC system.

Frederick Gunther was sworn in to give testimony about the Application.

Mr. Gunther testified that it is a small lot under 5,000 sf.; that Cape Windsor has evolved over the years from a manufactured home park to stick-built 3- and 4-story homes; that the community does not allow parking on the street so that access for emergency vehicles is not impeded; that he has owned the property for 14 years; that originally he had 2 parking spaces; that the home was placed to one side to allow for additional parking on the lot; that he removed the prior home and erected the

new house; that the home meets setbacks and the request is for the HVAC system; that the exceptional practical difficulty was not caused by the Applicant but by the builder, Insight Homes; that he placed on the HVAC on the south side because the electrical system was located there; and that he was told an HVAC system could encroach into the setback area.

Mr. Sharp explained that, in 2018, the County passed a small lot ordinance which provided relaxed setback requirements for small lots but the ordinance also provided that HVAC systems could not encroach into the setback areas.

Mr. Gunther testified that the new house is shorter and provides more parking; that the Board approved other variances in the neighborhood; that he received a building permit and told Insight Homes were to place the house; that he would have to rewire the HVAC system to comply; that the new HVAC system is smaller and quieter than the prior HVAC system.

Mr. Whitehouse submitted a copy of the building permit issued in October 2018 which provided that the side yard setback requirement was 10 feet; and that the permit mistakenly listed the setback as the setback requirement was 5 feet.

Mr. Gunther testified that he told the builder where to place the house; that he wanted parking in the side yard and front yard; that he believes he would lose parking for his boat if the HVAC system was moved; that it would be a financial hardship to move all the utilities; that he is concerned about the noise of the HVAC system if he placed it close to his rear deck; and that it will not alter the character of the neighborhood as many homes in Cape Windsor have HVAC systems in the 5 ft. setback.

Mr. Sharp noted that he reviewed the 2 cases cited by Mr. Gunther and the first case came before the small lot ordinance was passed and the second case involved structures which had been on the property for years.

Irma Curtis Codey, Carol Naylor, and David Yates were sworn in to give testimony in opposition. Ms. Naylor and Ms. Codey submitted exhibits for the Board to review.

Ms. Naylor testified that she lives to the south of the Applicant's property; that the Applicant continued work following the stop work order; that she would be most impacted from the noise of the units; that the ordinance states that properties that benefit from the small-lot ordinance cannot have structures in the 5 ft. side yard setback; that she believes the HVAC could be otherwise located on the lot; and that the home is a 3-story house with a garage underneath the house.

Ms. Curtis Codey testified that she lives across the street from the Applicant; that she has been involved in other variance applications within Cape Windsor over the years; that there is a 4 car garage under the house and other parking on the lot; that the Applicant has more parking than others in the neighborhood; that the Applicant did not meet the criteria for granting a variance; that the hardship

was created by the Applicant; that the property can be developed with an HVAC system on the lot; that the prior house was a small house; that she has concerns about the noise of the unit; that the work did not stop after the stop work order was issued; and that the lot is small but not unique.

Mr. Yates testified that Ms. Codey and Ms. Taylor covered much of what he was going to say; that he is opposed to the Application because the new setbacks are 5 ft. and the ordinance states that no equipment can be placed in that setback, therefore the variance should not be granted; and that the Applicant has parking.

Mr. Gunther submitted exhibits to the Board to review and testified that he is improving the community.

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

Mr. Chorman moved to deny Application No. 12365 as the Applicant has created the exceptional practical difficulty.

Mr. Chorman moved, seconded by Mr. Workman, and carried unanimously that the **variances be denied for the reasons stated.** Motion carried 5 - 0.

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

**The Board took a ten (10) minute recess.**

**Case No. 12366 – Nancy Kaye Peterman** seeks a variance from the side yard setback requirements for an existing structure (Sections 115-25 and 115-185 of the Sussex County Zoning Code). The property is located on the east side of Quail Hollow Rd. approximately 500 ft. south of Tuckers Rd. within the Doe Run subdivision. 911 Address: 15609 Quail Hollow Rd., Greenwood. Zoning District: AR-1. Tax Parcel: 430-11.00-46.00

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 12.5 ft. variance from the required 15 ft. side yard setback on the south side for an existing car port and a variance of 13.4 ft. from the 15 ft. side yard setback on the south side for an existing car port.

Nancy Kaye Peterman was sworn in to give testimony about the Application.

Ms. Peterman testified that the carport was placed in the current location by her ex-husband for a motor home; that the property consists of 2 acres; that the property is unique because it slopes

towards the rear; that the structure could not be moved to the left because of the slope; that there is no where else the car port could be located; that the driveway was extended back to the carport; that the exceptional practical difficulty was created by her ex-husband; that it will not alter the character of the neighborhood; that there have been no complaints from neighbors; that the property will be listed for sale; that the carport has been in place for a number of years; that it is the minimum variance to afford relief; that the house was built in 1993; that she purchased the property in 1998; that there is no home on the lot to the south; that lots are wooded; that her septic system is located in the front yard; that the well is located in the rear yard; that the car port has been on the property for greater than 10 years; that property slopes just behind the shed and carport; that there is a cement slab around the building and the carport is bolted to the concrete and cannot be moved.

Mr. Whitehouse showed the Board a topographic map from the County's website showing a 10 foot drop in elevation in the rear yard.

David Miller was sworn in to give testimony in support of the Application.

Mr. Miller testified that he owns the lot next to the subject property; that he is aware that the carport is close to his property; and that he has no objection to the variance.

The Board found that one person appeared in support of and none in opposition to the Application.

Mr. Workman moved to approve Application No. 12366 as the carport has been in place over ten years, the neighbor has no objections and the Applicant has met all the criteria for granting a variance.

Mr. Workman moved, seconded by Dr. Carson, and carried unanimously that the **variances be granted for the reasons stated**. Motion carried 5 - 0.

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

**Case No. 12368 – Suzanne Rosetti** seeks a variance from the side yard and rear yard setback requirements for existing structures (Sections 115-34 and 115-185 of the Sussex County Zoning Code). The property is located on the southwest side of W. Pond Cir. approximately 135 ft. south of Breakwater Run within the Keenwick Sound subdivision. 911 Address: 36744 West Pond Cir., Selbyville. Zoning District: MR-RPC Tax Parcel: 533-19.00-495.00

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 1.1 ft. variance from the required 10 ft. side yard setback on the south side for an existing dwelling. Mr. Whitehouse noted that the existing shed has a certificate of occupancy

from 2003 and is eligible for the administrative corrective process.

Suzanne Rosetti was sworn in to give testimony about the Application.

Ms. Rosetti testified that the property is unique as it is a small lot which is narrow at the front but widens towards the rear; that the small lot ordinance does not offer relief because the property is located in an RPC; that only a small portion of the house encroaches into the setback area; that the property cannot otherwise be developed as it is already built; that the Applicant would have made changes to the plan had they been aware there was a problem; that the Applicant was not responsible for the exceptional practical difficulty as they depended on the builder to follow Sussex County Code; that the builder obtained the building permit; that the builder was provided a copy of the survey of the lot; that it will not alter the essential character of the neighborhood; that there are no complaints from neighbors; that neighbors have complimented her on the house; that the encroachment was discovered during final inspection; that there are similar variances in the area; and that it is the minimum amount to bring the dwelling into compliance.

During testimony it was discovered that the Applicant is requesting a 1.25 ft. variance and not 1.1 ft. as listed on the Application.

The Board found that one person appeared in support of and none in opposition to the Application.

Mr. Williamson moved to approve Application No. 12368 as the Applicant has met all the criteria for granting a variance and the exceptional practical difficulty was not created by the Applicant.

Mr. Williamson moved, seconded by Mr. Chorman, and carried unanimously that the **variances be granted for the reasons stated.** Motion carried 5 - 0.

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

**Case No. 12369 – Beebe Medical Center** seeks a special use exception to use a manufactured home type structure as a pharmacy (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located on the south side of John J. Williams Hwy. (Rt. 24) approximately 773 ft. east of Warrington Rd. 911 Address: 18941 John J. Williams Hwy., Rehoboth Beach. Zoning District: AR-1. Tax Parcel: 334-12.00-57.00

Ms. Bulkilvish 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 eight mail returns.

Chad Carter was sworn in to give testimony about the Application.



Mr. Carter testified that the request is to use a manufactured home as a temporary pharmacy while the existing pharmacy is being renovated; that the request is for 5 years as the length of the remodel is undetermined at this time; that the use is for employees to obtain inhouse pharmaceuticals and it is not a retail business; that the nearest dwelling is over 200 ft. from the site; that the manufactured home will meet setbacks; that there is a landscaped buffer on the property; that the noise and light pollution from the facility will be minimal; that the unit is handicap accessible and will be used by staff for compounding and IV bags; that no patients will be seen in the unit; and that the unit will be skirted.

Martin Blood was sworn in to give testimony about the Application. Mr. Blood submitted exhibits to Board members.

Mr. Blood testified that he is the pharmacy manager at the Tunnell Cancer Center; that the renovation of the pharmacy will meet USP 800 guidelines; that during the renovation a germ-free company provides trailers that will come to the site; that the trailers can be set up for utilities; that the trailers have clean rooms to prepare the medication for the oncology patients; that Beebe is purchasing the unit; that the unit may be used by other parts of the hospital if other remodeling is needed; that the unit will house 7-8 employees; that it takes approximately 12 weeks to renovate the pharmacy and 3-4 weeks to set up the pharmacy; that Beebe must also wait for Board of Pharmacy approval; that there will be security for the manufactured home type structure; and that it will not substantially affect adversely the uses of adjacent and neighboring property.

Mr. Carter testified that the closest neighbor to the Property is Beebe itself.

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

Dr. Carson moved to approve Application No. 12369 as the Applicant has met the criteria for granting a special use exception for a period of five (5) years.

Dr. Carson moved, seconded by Mr. Williamson, and carried unanimously that the **special use exception be granted for a period of five (5) years for the reasons stated.** Motion carried 5 - 0.

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

### **ADDITIONAL BUSINESS**

#### **Consideration of Request for Rehearing for Case No. 12337 – Lands of Ariel Gonzalez**

Ms. Bulkilvish presented the request for rehearing. Ms. Bulkilvish stated that the Applicant

submitted a letter stating that his son was injured on the day of the meeting; that due to the injury the Applicant was unable to attend the meeting; and that the Applicant submitted a letter from his doctor verifying treatment for his son.

Mr. Sharp stated that a request for rehearing is rare but allowed by Board of Adjustment rules; that the original hearing was in July; that the Board denied it for lack of representation; that the Board may allow a rehearing if there is a mistake, inadvertent surprise, or excusable neglect; and that this request for rehearing has been made under excusable neglect due to the health of a family member.

Dr. Carson moved to approve the request to rehear Case No. 12337.

Dr. Carson moved, seconded by Mr. Williamson, and carried unanimously that **the motion for rehearing of Case No. 12337 be granted.** Motion carried 5 - 0.

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

The Board held a brief discussion regarding the companies who get permits and still ignore the setbacks listed. It was decided to put an item under additional business for the next meeting to have a discussion regarding County permitting process.

**Meeting was adjourned at 8:32 p.m.**