

## MINUTES OF SEPTEMBER 14, 2020

The regular meeting of the Sussex County Board of Adjustment was held on Monday, September 14, 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, Mr. Jeff Chorman, Ms. Ellen Magee, and Mr. John Williamson. Mr. Brent Workman joined the meeting at 6:35 p.m. 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. Chorman – yea, Mr. Williamson – yea, Dr. Carson – yea and Ms. Magee – yea.

Chair Magee read the mask policy.

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. 12443 – Bay Shore Community Church** seeks a special use exception to operate a day care center and a variance from the maximum fence height requirement (Sections 115-23, 115-182, 115-185 and 115-210 of the Sussex County Zoning Code). The property is located on the west side of London Avenue approximately 167 ft. southwest of Lighthouse Road (Rt. 54). 911 Address: 38288 London Avenue, Unit 6, Selbyville. Zoning District: AR-1. Tax Parcel: 533-18.00-61.02

Mr. Whitehouse presented the case, which was closed at the Board's meeting on August 17, 2020, for the limited purpose of allowing Dr. Carson and Mr. Chorman to review the audio from the August 3, 2020 meeting.

Dr. Carson and Mr. Chorman confirmed that they listened to the audio from the August 3<sup>rd</sup> meeting and were prepared to vote on the Application.

Mr. Williamson moved to approve Case No. 12443 for the special use exception and variance for the fence height as the use will not substantially affect adversely the uses of neighboring and adjacent properties.

Motion by Mr. Williamson, seconded by Dr. Carson carried unanimously that the **special use exception and variance be granted for the reasons stated.** Motion carried 4 – 0.

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

**Case No. 12453 – Paul Antonio** seeks variances from the front yard, rear yard and corner front yard setback requirements for proposed structures (Sections 115-25, 115-182 and 115-183 of the Sussex County Zoning Code). The property is located on the north side of Garfield Avenue within the Edgewater Acres subdivision. 911 Address: 39176 Garfield Avenue, Selbyville. Zoning District: AR-1. Tax Parcel: 533-20.18-187.00

Mr. Whitehouse presented the case which was left open at the Board’s meeting on August 17, 2020, to allow members of the public to comment on the application and to allow the applicant the opportunity to respond to comments.

The Board discussed the Application.

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

Ms. Magee closed the public hearing.

Mr. Williamson moved to approve Case No. 12453 for the variances as the property is unique as it is close to tidal waters; that the variances will not alter the essential character of the neighborhood, and that the variances are the minimum variances necessary to afford relief.

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; Mr. Williamson – yea, Ms. Magee – yea, Dr. Carson – yea, and Mr. Chorman - yea.

**Case No. 12461 – Matthew E. Brobst** seeks a variance from the front yard setback requirements for an existing structure (Sections 115-34 and 115-182 of the Sussex County Zoning Code). The property is located on the west side of Maple Lane within the Keenwick subdivision. 911 Address: 38320 Maple Lane, Selbyville. Zoning District: MR. Tax Parcel: 533-19.12-112.00

Mr. Whitehouse presented the case which was left open at the Board’s meeting on August 17, 2020, to allow members of the public to comment on the application and to allow the applicant the opportunity to respond to comments. Included in the Board’s packet is the information regarding the schedule of inspections for this property. One additional letter of support was received.

Matthew Brobst and Yvonne Brobst were sworn in to give testimony about the Application. Ms. Brobst submitted into the record a copy of the plans submitted to the County showing that the porch was part of the original house plan and testified to this plan.

Mr. Whitehouse advised the Board of the building permit history and he reviewed the inspection notes from the building inspector.

Mr. Brobst testified that he was the builder; that the stamps were approved, that the footer was there when inspected; that there was a failed inspection due to the drywall and smoke detector; and that he did not try to average the setbacks due to the cost of the survey.

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

Ms. Magee closed the public hearing.

Mr. Chorman moved to approve Case No. 12461 for the variance as granting the variance will not substantially alter the essential character of the neighborhood and that it is the minimum variance necessary to afford relief.

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

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

**Case No. 12462 – Barbara J. Bainum, Trustee** seeks a variance from the front yard and side yard setback requirements for an existing structure (Sections 115-34 and 115-182 of the Sussex County Zoning Code). The property is located on the east side of Windswept Way within the Ocean Breezes subdivision. 911 Address: 39701 Windswept Way, Bethany Beach. Zoning District: MR. Tax Parcel: 134-9.00-535.00

Mr. Whitehouse presented the case which was left open at the Board's meeting on August 17, 2020, to allow members of the public to comment on the application and to allow the applicant the opportunity to respond to comments. Included in the Board's packet is the information regarding the schedule of inspections for this property.

The Board found that Mr. David Hutt, Esq. was present on behalf of the Applicant, Ms. Barbara J. Bainum, Trustee.

Mr. Hutt entered into the record a new survey showing the exact location and dimensions of

the steps to the dune crossover.

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

Ms. Magee closed the public hearing.

Dr. Carson moved to approve Case No. 12462 for the variances as the property is unique; that the variances will not alter the essential character of the neighborhood; and the variances are the minimum variances necessary to afford relief.

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

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

**Case No. 12463 – Joyce Ferguson** seeks variances from the side yard, rear yard setback and separation distance requirements between units for a proposed shed (Sections 115-25, 115-172 and 115-185 of the Sussex County Zoning Code). The property is located on the southeast side of Delaware Avenue within the Sea Air Village Manufactured Home Park. 911 Address: 20043 Delaware Avenue, Rehoboth Beach. Zoning District: AR-1. Tax Parcel: 334-13.00-310.00-50594

Mr. Whitehouse presented the case which was left open at the Board's meeting on August 17, 2020, to allow members of the public to comment on the application and to allow the applicant the opportunity to respond to comments.

Mr. Whitehouse and Mr. Sharp advised the Board that an additional variance of 4.5 feet from the 20 feet separation distance requirement from the shed on Lot #72 was required as well.

The Board discussed the Application.

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

Ms. Magee closed the public hearing.

Mr. Chorman moved to approve Case No. 12463 for the variances as the property has unique physical conditions; that the variances will not alter the essential character of the neighborhood; and that the variances are minimum variances necessary to afford relief.

Motion by Mr. Chorman, seconded by Dr. Carson, carried unanimously that the **variances be**

**granted for the reasons stated.** Motion carried 4 – 0.

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

**Case No. 12465 – Lia & Vera Lehenbauer** seek variances from the side yard setback and rear yard setback requirements for a proposed garage (Sections 115-25, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located on the southwest side of Shockley Road approximately 516 ft. northwest of Cedar Neck Road. 911 Address: 22134 Shockley Road, Milford. Zoning District: AR-1. Tax Parcel: 330-8.00-17.10

Mr. Whitehouse presented the case which was left open at the Board’s meeting on August 17, 2020, to allow members of the public to comment on the application and to allow the Applicants the opportunity to respond to comments.

The Board discussed the Application.

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

Ms. Magee closed the public hearing.

Mr. Chorman moved to approve Case No. 12465 for the variances as they will not alter the essential character of the neighborhood and that they are the minimum variances necessary to afford relief.

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

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

**Case No. 12466 – Jerry & Carole Stewart** seek a variance from the front yard setback requirement for a proposed dwelling (Sections 115-34 and 115-182 of the Sussex County Zoning Code). The property is located on the east side of Bayberry Lane within the Keenwick subdivision. 911 Address: 38261 Bayberry Lane, Selbyville. Zoning District: MR. Tax Parcel: 533-20.09-106.00

Mr. Whitehouse presented the case which was left open at the Board’s meeting on August 17, 2020, to allow members of the public to comment on the application and to allow the applicant the opportunity to respond to comments.

Mr. Jerry Stewart and Ms. Carole Stewart were sworn in to give testimony about the

## Application.

Mr. Stewart testified that the house cannot sit farther back on the lot due to the 20 ft. HOA setback requirement from the lagoon; that the deck is less than 46 inches; and that the steps are enclosed in the front of the house and will not require a further variance.

Mr. Sharp advised the Board that the Board only advertised for a front yard variance for the dwelling so no additional variances can be considered at this time.

Mr. Stewart testified that the house will not fit on the lot without a variance; that the Applicants need first-floor living as Ms. Stewart has a bad knee; that the current home has 2 stories and they want to eliminate steps; that the lot is small; that the lot flooded during Hurricane Sandy; and that the exceptional practical difficulty was not created by the Applicants.

Ms. Stewart testified that the variance will not alter the essential character of the neighborhood and that the variance is the minimum variance necessary to afford relief.

Mr. Stewart testified that there are new houses in the neighborhood; that the current house was built by a prior owner and measures 24 feet by 40 feet with a large deck; that the proposed house will be no wider than the current house and deck; that the HVAC will be located on the south side; that the current house has 2 stories; that the neighbors support the request; and that there is no well on the Property.

Ms. Stewart testified that the Property is served by Artesian water and public sewer.

Mr. Whitehouse stated that the small lot ordinance applies; that the side yard setback is 5 feet; and that no additional variances are needed if built as proposed on the survey.

Mr. Stewart confirmed the location of the steps on the drawing.

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

Ms. Magee closed the public hearing.

Mr. Williamson moved to approve Case No. 12466 for the variances as the property is unique; that the property has experienced flooding; that the variance will not alter the essential character of the neighborhood; and that it is 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 4 – 1.

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

### **PUBLIC HEARINGS**

**Case No. 12467 – Paula & Jeffrey Horn** seek variances from the side yard setback requirements for proposed structures (Sections 115-25 and 115-183 of the Sussex County Zoning Code). The property is located on the west side of Riverwalk Drive within the Beaver Creek subdivision. 911 Address: 18852 Riverwalk Drive, Milton. Zoning District: AR-1. Tax Parcel: 235-30.00-637.00

Mr. Phillips presented the case and stated that the Office of Planning and Zoning received no correspondence in support of and one letter in opposition to the Application and zero mail returns. The Applicants are requesting 5.38 ft. variance from the 10 ft. side yard setback requirement on the northwest side for a proposed deck.

Mr. Jeffrey Horn and Ms. Paula Horn were sworn in to give testimony about the Application.

Mr. Horn testified that they purchased their home with an existing patio; that the request for a variance is because the Applicants wish to build a deck above the existing patio with an additional 18 inches to allow for footers for the proposed deck; that the deck will be less 34 inches tall; that it is necessary for easy access to the outdoors; that he had double knee replacement and has difficulty with steps; that the deck will not interfere with neighbors sight lines; that the property is unique as the house was placed far back on the lot and the rear yard abuts the neighbor's side yard; that the patio was existing and there is no alternative construction that would afford relief; that this was not created by the Applicants as the adjacent property built a sunroom which impedes sunlight from reaching the subject property; that the variance requested is the minimum variance necessary to afford relief; that granting the variance will not alter the essential character of the neighborhood; that he proposes to have the deck project 18 inches beyond the patio so that they do not have to sink footers in the patio; that the deck will measure 35 feet by 11.5 feet; that the deck will be 3.5 feet from the side property line; that the steps will abut the dwelling and a variance will not be required for the steps; that he just learned of the homeowner association's objection; and that the homeowner association has approved variances in the past.

Mr. Sharp advised Mr. Horn that the homeowner's association cannot grant variances from the Sussex County setback requirements.

Mr. Phillips stated that the subdivision was created in 2007.

Ms. Lepore pulled variance applications from the neighborhood and found that Case No. 11757 was denied.

Mr. Horn testified that he paid a premium for a view of the pond which was lost when the

neighbor built his addition; and that the homeowner's association approved construction outside the Sussex County setbacks.

Mr. Whitehouse stated that the neighbor obtained a building permit in 2016; that a CO was issued and the structured passed zoning in March 2017 for a dwelling; that the neighbor obtained a permit for a screen porch in June 2019; that the porch passed building code inspection but is incomplete; and that he would like to explore it further.

Mr. Horn testified that he only seeks to raise the deck; that the steps from the deck to the yard will be 3 feet wide and will meet the setback requirements; that there is no flooding on the lot; and that his neighbor to the northwest supports the request.

During Mr. Horn's testimony it was understood that the variance being sought is 6.5 ft. from the 10 ft. side yard setback requirement.

The Board requested building permit information for the adjacent property.

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

Ms. Magee closed the public hearing.

Mr. Chorman moved to leave Case No. 12467 open to the September 21, 2020 meeting for the limited purpose of receiving permit information for the adjacent property.

Motion by Mr. Chorman, seconded by Mr. Workman, carried unanimously that the **case remains open for the limited purpose of receiving permit information for the adjacent property and for the matter to be placed on the agenda for the September 21<sup>st</sup> meeting.** Motion carried 5 – 0.

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

**Case No. 12468 – Donovan's Painting & Drywall (Jose Sandoval)** seeks a variance from the front yard setback requirements for a proposed structure (Sections 115-25 and 115-182 of the Sussex County Zoning Code). The property is located on the southwest side of Lewes Georgetown Highway (Rt. 9) approximately 135 ft. west of Waples Street. 911 Address: 32454 Lewes Georgetown Highway, Lewes and N/A. Zoning District: AR-1. Tax Parcel: 334-5.00-205.01 & 208

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 requesting a 10 ft. variance from the required 40 ft. front yard setback. Mr. Phillips noted that this property has an approved conditional use for a contractor's office and storage.

Mr. Kenneth Christenbury was sworn in to give testimony about the Application.

Mr. Christenbury testified that this property has an approved conditional use for a contractor's office and storage; that the area is being redeveloped; that Stockley Materials and Five Points are nearby; that there are many C-1 properties in the area as well; that the request is for a front yard variance; that the property is unique because as it is served by public sewer but does not have central water; that 20 feet of the front yard is being claimed for DeIDOT for future road improvements; that an additional 15 feet is being claimed as a permanent easement for drainage purposes; that this taking pushes the front yard back an additional 20 feet and caused the need for the variance; that other buildings in the area are closer to Route 9; that they have removed the trailer from the site; that the property is unique because the stormwater pond is located behind the office so the building cannot be moved to the rear; that the property is served by well water opposite the stormwater basin so that boxes in the site; that it was too expensive to bring public water to the site; that to change the size of the proposed building would create a hardship to the operations of the Applicant; that this hardship was not caused by the Applicant but by the 20 ft. right of way and the 15 ft. permanent easement by DeIDOT; that this will not alter the essential character of the neighborhood as the properties directly across Route 9 are zoned commercial; that this property will have a greater setback than the existing neighboring buildings; that this is the minimum variance to afford relief; that there are open steps off the front of the building but they could be moved to the side yard; that the properties to the rear of the site are residential so a larger setback applies; that a final site plan is being drafted and will be sent to the Planning & Zoning Commission for approval; and that the steps to the building are close to the sidewalk required by DeIDOT.

During Mr. Christenbury's testimony it was brought to the Board's attention that an additional front yard variance would be required for the steps.

Mr. Christenbury testified that the steps could be redesigned to project to the side of the stoop and not come straight out toward the front property line; and that an additional variance of 15 ft. from the required 40 ft. front yard setback for the stoop and steps is needed after the steps are turned.

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. 12468 for the variances as the property is unique; that the variance will not alter the essential character of the neighborhood; and that the steps be turned 90 degrees to provide for the minimum variance necessary to afford relief. As part of his motion, Dr. Carson moved that a variance of 15 feet from the 40 feet front yard setback requirement is needed for the steps and stoops and that those structures must be turned toward the parking lot.

Motion by Dr. Carson, seconded by Mr. Chorman, carried unanimously that the **variances be**

**granted for the reasons stated.** Motion carried 5 – 0.

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

**Case No. 12469 – William & Kimberle Chipman** seek variances from the front yard and side yard setback requirements for proposed structures (Sections 115-34, 115-182 and 115-183 of the Sussex County Zoning Code). The property is located on the south side of Carla Avenue within the Seabreeze subdivision. 911 Address: 306 Carla Avenue, Rehoboth Beach. Zoning District: MR. Tax Parcel: 334-20.13-220.00

Mr. Phillips presented the case and stated that the Office of Planning and Zoning received four letters in support of and none in opposition to the Application and one mail return. The Applicants are requesting 9.7 ft. variance from the required 30 ft. front yard setback for a proposed covered porch and a 0.8 ft. variance from the required 10 ft. side yard setback on the west side for a proposed dwelling.

Mr. William Chipman was sworn in to give testimony about the case.

Mr. Chipman testified that he and his wife purchased the home in 2005; that it will become the full-time residence so improvements are necessary; that the property is unique as it is subject to historical community set-back lines which pre-date the County Code; that the community was created in the 1950s; that several homes in the neighborhood were constructed to the historical setback lines; that the proposed structures will use the same foundation and footprint; that the property previously received a variance for the porch; that the plans have the existing renovated porch connect to a side porch; that, in order to allow for the connection of the two porches, the existing variance needs to be extended; that their immediate neighbors support the request; that, without the variance for the extended porch, the front and side porches will not connect and would not allow the homeowner reasonable use of the home in a safe manner; that the plans were drawn by an architect based on the communities lesser setbacks and were not created by the Applicants; that the Applicants did not create the differences between the historical setback lines and the County setback requirements; that the variances are needed for use and enjoyment of the porches; that the variances will not alter the essential character of the neighborhood but improve it; that neighbors have submitted letters of support; that the variances requested are the minimum variance requests necessary to afford relief; that other houses in the neighborhood are outside the building envelope with most houses being 20-25 feet from the property line; that there is approximately 10-12 feet from the edge of paving to the front property line; and that the house will be 30 feet from the edge of paving.

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

Ms. Magee closed the public hearing.

Mr. Williamson moved to approve Case No. 12469 for the variances as the Applicants have met all the criteria for granting a variance.

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

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

### **ADDITIONAL BUSINESS**

There was no additional business.

**Meeting adjourned at 8:03 p.m.**