

MINUTES OF SEPTEMBER 16, 2019

The regular meeting of the Sussex County Board of Adjustment was held on Monday, September 16, 2019, at 7:00 p.m. in the County Council Chambers, 2 The Circle, Georgetown, Delaware.

The meeting was called to order at 7:00 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. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Ms. Janelle Cornwell – Planning and Zoning Director, Mr. Jamie Whitehouse – Planning Manager, Ms. Lauren DeVore, 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 revised agenda. Motion carried 4 – 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. 12348 – Taxi Properties, LLC. seek variances from the front yard setback requirements for existing structures (Sections 115-25 and 115-182 of the Sussex County Zoning Code). The property is located on the west side of Zoar Rd. approximately 235 ft. south of Wood Branch Rd. 911 Address: 22384 Zoar Rd., Georgetown. Zoning District: AR-1. Tax Parcel: 133-2.00-32.32

Mr. Whitehouse presented the case which was left open at the Board's meeting on August 19, 2019, for the limited purpose of allowing staff to obtain the building permit application. Mr. Whitehouse stated that the building permit was circulated to the Board.

Mr. Sharp stated that Mr. Workman was not present at the August 19, 2019, meeting and asked Mr. Workman if he was prepared to vote on this case. Mr. Workman stated that he is abstaining and will not vote on this case.

Dr. Carson moved to move the vote for Application No. 12348 to after the public hearings as Mr. Chorman will be present and able to participate at that time.

Dr. Carson moved, seconded by Mr. Williamson, and carried that the **vote on Case 12348 be held after the public hearings.** Motion carried 3 - 0. Mr. Workman abstained.

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

PUBLIC HEARINGS

Case No. 12361 – Christopher & Claudia Luxenberger seek variances from the rear yard setback requirements for proposed structures (Sections 115-25 and 115-183 of the Sussex County Zoning Code). The property is located on the north side of Anchor Watch Loop approximately 225 ft. west of Wild Goose Way within the Marina at Peppers Creek subdivision. Address: 31190 Anchor Watch Loop, Dagsboro. Zoning District: AR-1. Tax Parcel: 233-7.00-229.00

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 variance of 5.1 ft. from the required 10 ft. rear yard setback for a proposed addition. Mr. Whitehouse stated that the addition includes a 1 ft. overhang and that an overhang may project up to 2 ft. so only a 4.1 ft. variance is required.

Claudia Luxenberger and James Timmons were sworn in to give testimony about the Application. Ms. Luxenberger submitted two letters of approval from neighbors.

Ms. Luxenberger testified that she wishes to place a three-season room on the existing deck; that the lot is shallow and is unique for this community; that the porch will extend 12 feet from the rear of the existing dwelling; that a screened porch cannot be built without the variance; it was not created by the Applicant as they were unaware of the need for addition and the limited space; that it will not affect the essential character of the neighborhood as most homes have screened porches measuring 12 feet by 14 feet; that her neighbor's porch measures 14 feet deep by 12 feet wide; that the proposed porch measures 12 feet deep by 14 feet wide; that a neighbor obtained a variance in 2013; that there is common area located adjacent to the rear of the property; and that it is the minimum variance to allow a reasonable sized porch.

Mr. Timmons testified that the steps will be on the side of the porch so a variance will not be required for the steps; that the porch will only be 12 ft. in depth to allow enough room for a table with seating; and that a smaller porch would not provide usable space.

Cynthia Recca was sworn in to give testimony in favor of the Application.

Ms. Recca testified that she supports the Application as it will not alter the character of the neighborhood; that the porch will not be seen from the road; and that the area to the rear of the property is unusable common area.

Ms. Luxenberger testified that she looked at building within the building envelope but a porch of that size would not keep with the integrity of the neighborhood; and that the porch on the neighboring lot which is a deeper porch complies with the setback requirements.

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

Mr. Williamson moved to approve Application No. 12361 as the Applicant has met all the criteria for granting a variance.

Mr. Williamson moved, seconded by Mr. Workman, and carried unanimously that the **variance be granted for the reasons stated**. Motion carried 4 - 0.

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

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 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 3.7 ft. variance from the required 5 ft. side yard setback on the northeast side for a proposed porch and a variance of 3.8 ft. from the required 20 ft. separation distance between structures from Lot 53 for a proposed porch.

Richard MacDonald and Courtland Ottinger were sworn in to give testimony about the Application.

Mr. MacDonald testified that he wishes to build a screened porch; that, originally, the porch was proposed to measure 12 feet by 18 feet but his contractor advised him that the porch was too large and recommended that he resurvey the lot; that the practical difficulty was not caused by the Applicant as the home was placed at an angle on the lot by the Sea Air management; and that the home was placed on the lot 2 years ago.

Mr. Ottinger, who is the Applicant's contractor, testified that the property is unique as it is a narrow lot and the home was placed at an angle; that it cannot otherwise be developed for a porch due to the placement of the door; that the porch cannot be built within the setbacks as that would make the porch long and narrow and not allow space for a table and chairs; that they looked a narrower porch but were too limited on space; that this house is the only house on the road with this angle; that it will not alter the essential character of the neighborhood as there are many other homes with screened porches in the development; that it is a minimum variance to allow a reasonable sized porch to be constructed; that the porch cannot be moved toward the rear of the property as it is being placed next to the entrance door to the house; that the house is unique due to the placement and location of

the door; and that the house meets the 20 feet separation distance requirement from the house on the neighboring lot.

Mr. Sharp stated that there are two other small variances that will be handled administratively and the only request before the Board are the variances for the porch and the separation distance.

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

Dr. Carson moved to deny Application No. 12362 as the Applicant did not meet the criteria for granting a variance as the exceptional practical difficulty is being created by the Applicant and the property could otherwise be developed. The motion failed for lack of a second.

Mr. Williamson moved to table Case No. 12362 until the October 7, 2019, meeting.

Motion by Mr. Williamson, seconded by Mr. Workman, carried to **table this case until the October 7, 2019, meeting**. Motion carried 3 – 1.

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

Case No. 12363 – Richard Kapolka seeks a variance from the side yard setback and separation distance requirements for proposed structures (Sections 115-50, 115-183 and 115-188 of the Sussex County Zoning Code). The property is located on the south side of Bayview Circle East approximately 130 ft. west of Oliver Dr. within the Bayview Landing subdivision. 911 Address: 37951 Bayview Circle East, Selbyville. Zoning District: HR-1/RPC. Tax Parcel: 533-13.00-64.00

Ms. LeVore presented the case and stated that the Office of Planning and Zoning received no correspondence in support of and two letters in opposition to the Application and two mail returns. The Applicant is requesting variances of 8.0 ft. and 8.1 ft. from the required 20 ft. side yard setback on the northwest side for an existing shed attached to the townhouse. The Applicant has submitted a nine-signature petition in support of the Application.

Richard Kapolka was sworn in to give testimony about the Application.

Mr. Kapolka testified that he is requesting a variance for a shed that was constructed in 2015; that the property is unique as it is an outside unit of a 4-unit townhome which backs up to common space; that the shed was approved by the homeowners association at that time; that the common space floods and spills over into the rear yard; that photos of the flooding are included with the Application; that the neighbor most affected by the encroachment supports the request; that it cannot be otherwise developed for a shed as he plans to put a sunroom in the rear of the home; that the Applicant did not create the flooding in the rear yard; that it will not affect the essential character of the neighborhood as there are many sheds in the area; that the vinyl siding, roof shingles and windows on the shed match

the house; that it is a minimum to allow the existing shed to remain on the property; that he received a permit for the shed; that he planned to have an unattached shed but attached it to the building to be more secure; and that he is aware the shed may have to be removed.

Mr. Whitehouse stated that a permit application was submitted in 2018 for the shed but a building permit was not issued as a variance was necessary.

Mr. Kapolka testified that he maintains he rear yard; that there is water in the rear yard and he cannot build in the rear yard due to the water; that he plans to build a sunroom in the rear yard; that the Sussex Conservation District has examined the drainage in the neighborhood; that one stormwater pond has overflowed; that the property is serviced by public sewer; that he built the shed without a permit because he was frustrated; that the shed is built on concrete piers; that the shed could be constructed in compliance with the Code; that the sunroom will be built on the patio; and that there is no internal access from the shed to the house.

Dee Michael, Ronald C. Pickup, Audrey Pickup, and Claudia Leek were sworn in to give testimony in opposition to the Application.

Ms. Michael testified that she received a variance to build a shed on her property; that she obtained her variance prior to placing the shed; that all residents should follow the rules by applying for a variance prior to building; and that she is opposed to the Application.

Mr. Pickup testified that he is a neighbor; that he also has a shed but received approval before construction; that the Applicant built a shed without County approval; that there are temporary flooding problems after heavy rains; and that he is opposed to the variance.

Ms. Pickup testified that there have been occasional flash floods in the development; that the flooding drains within 45 minutes to one hour; that Jessica Watson from Sussex Conservation District has visited; that there is some overgrowth around the pond; that the contractor will remove the overgrowth of vegetation in the pond; that the shed was built in 2015 and the Applicant is requesting a variance in 2019; and that she is opposed to this variance request.

Ms. Leek submitted information from the County website pertaining to the violations on the Applicant's property. Ms. Leek testified that the Applicant did not obtain permits for his outdoor shower or for the shed; that Mr. Kapolka was president of the HOA and he was aware of the rules; that she, Ms. Leek built a shed, got a variance and followed the rules; that there are 48 end townhouse units in the neighborhood; and that she is opposed to this variance.

Mr. Kapolka testified that the HOA has not done everything to rectify the flooding problem; and that he thinks he knew that he needed a variance prior to building the shed but he built it anyway.

The Board found that no one appeared in support of and four people appeared in opposition

to the Application.

Mr. Workman moved to deny Application No. 12363 as the Applicant did not meet the criteria for granting a variance.

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

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

The Board took a nine (9) minute recess.

Mr. Chorman was not present at the beginning of the meeting but joined the meeting following recess.

OLD BUSINESS

Case No. 12348 – Taxi Properties, LLC. seek variances from the front yard setback requirements for existing structures (Sections 115-25 and 115-182 of the Sussex County Zoning Code). The property is located on the west side of Zoar Rd. approximately 235 ft. south of Wood Branch Rd. 911 Address: 22384 Zoar Rd., Georgetown. Zoning District: AR-1. Tax Parcel: 133-2.00-32.32

Mr. Whitehouse presented the case which was left open at the Board’s meeting on August 19, 2019, for the limited purpose of allowing staff to obtain the building permit application. Mr. Whitehouse stated that the building permit was circulated to the Board.

Mr. Workman abstained from discussion on this application.

The Board held a short discussion.

Dr. Carson moved to deny Application No. 12348 as the Applicant did not meet the criteria for granting a variance as the exceptional practical difficulty is being created by the Applicant. Dr. Carson acknowledged that there was an error on the building permit, however, the Applicant did not even meet the setback stated on the permit.

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

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

ADDITIONAL BUSINESS

Ms. Magee recused herself from the first two items of additional business and left chambers. Mr. Williamson performed the role of chair.

Request for one-year time extension for Case 12066 Lands of J.G. Townsend Jr. & Co.

Mr. Whitehouse stated that the Applicant has requested a one-year time extension for Case 12066 which was heard by the Board on December 11, 2017, with a formal written decision on February 6, 2018; that the request for a time extension was received on July 26, 2019; that more time is needed to obtain other agency approvals; and that construction is expected to commence in spring 2020.

Mr. Workman moved to approve the time extension for a period of one year.

Motion by Mr. Workman, seconded by Dr. Carson, and carried unanimously that the **time extension be approved for a period of one (1) year**. Motion carried 4 - 0.

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

Request for one-year time extension for Case 11971 Lands of Patricia A. Barthelme.

Mr. Whitehouse stated that the Applicant has requested a one-year time extension for Case 11971 which was heard by the Board on June 19, 2017, with a formal written decision on August 22, 2017; that the request for a time extension was received on August 13, 2019; and that more time is needed to obtain other agency approvals.

Dr. Carson moved to approve the time extension for a period of one year.

Motion by Dr. Carson, seconded by Mr. Chorman, and carried unanimously that the **time extension be approved for a period of one (1) year**. Motion carried 4 - 0.

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

Ms. Magee returned to chambers and resumed role of chair.

Change to Rules of Procedure regarding Board of Adjustment meeting time.

Mr. Sharp stated that the Board had discussed changing the meeting times to 6:00 p.m. beginning in October; that the Rules of Procedure provide that the meetings begin at 7:00 p.m.; that

the rules need to be updated for the Board to be compliant; that a proposal to amend rule 3.2 to state *“that regular meetings shall convene at 6:00 p.m. or such other time as designated by majority vote of the members of the Board of Adjustment on those days that a meeting has been properly noticed and advertised.”* is necessary to change the meeting time.

Mr. Chorman moved to accept the proposed changes.

Motion by Mr. Chorman, seconded by Mr. Williamson, and carried unanimously that Rule 3.2 of the Rules of Procedure be changed as proposed. Motion carried 5 - 0.

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

Board of Adjustment Training.

Ms. Cornwell presented training to Board members regarding setbacks and standards for granting a variance.

Mr. Sharp reviewed the Rules of Procedure with Board members

Meeting was adjourned at 9:43 p.m.