

MINUTES OF SEPTEMBER 20, 2021

The regular meeting of the Sussex County Board of Adjustment was held on Monday, September 20, 2021, 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 Chairman John Williamson presiding. The Board members present were: Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson. Dr. Kevin Carson and Mr. Jeff Chorman were 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. Williamson.

Ms. Norwood noted that there is a request from Mr. John Sergovic, Esquire, to move up Case No. 12609 to the beginning of the public hearings due to a medical issue.

Motion by Mr. Warfel, seconded by Mr. Hastings and carried unanimously to move Case No. 12609 to the beginning of the public hearings and approve the amended agenda. Motion carried 3 – 0.

The vote by roll call; Mr. Warfel – yea, Mr. Williamson – yea, and Mr. Hastings – yea.

Motion by Mr. Warfel, seconded by Mr. Hastings and carried unanimously to approve the Minutes for the meeting of July 12, 2021. Motion carried 3 – 0.

The vote by roll call; Mr. Warfel – yea, Mr. Williamson – yea, and Mr. Hastings – yea.

Motion by Mr. Warfel, seconded by Mr. Hastings and carried to approve the Findings of Facts for the meeting of July 12, 2021. Motion carried 3 – 0.

The vote by roll call; Mr. Warfel – yea, Mr. Williamson – yea, and Mr. Hastings – yea.

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

OLD BUSINESS

Case No. 12599 – Matthew & Jacquelyn Rhinehart seek variances from the front yard, corner front yard, side yard, and rear yard setback requirements for proposed and existing structures (Sections 115-82, 115-182, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located on the northeast side of Hebron Road at the intersection of Hebron Road and Harmon Street. 911 Address: 19875 Hebron Road, Rehoboth Beach. Zoning District: C-1. Tax Parcel: 334-13.19-77.00

Mr. Sharp stated that this case had been left open at the Board's meeting on August 16, 2021, for the limited purpose of allowing the Applicants to submit an updated drawing showing the location of the proposed and related structures by August 31, 2021, and to allow public comment specific to that drawing.

Mr. Matthew Rhinehart was sworn in to give testimony about the submitted drawing.

Mr. Rhinehart testified that his goal is to fix up the house; that the drawing shows that the improvements will not increase the footprint of the dwelling; that there will be no changes made to the pole building or deck; that he intends to make the property less of an eyesore; that the fence is less than 6 feet tall and will likely be removed; that the outside shower is no longer part of the plan; that the gazebo will be removed; that he is getting public water to the site; that the deck on the house is at ground level; that the deck around the pole building is elevated; that the house is to be renovated on the same footprint; and that it will be a family home.

Mr. Sharp stated that the Applicants submitted the proposed site plan by August 31, 2021, and complied with that request from the Board.

Ms. Laura Matthews was sworn in to give testimony in opposition to the Application.

Ms. Matthews testified that there will be no permeable ground on the property; that there is concrete below the decks; that there are only 2 parking spaces on the property; that she has concerns about parking spaces; that businesses can be run out of the pole building; and that the house is grandfathered but the pole building was built in 2014 without permits.

Ms. Brenda Milburn was sworn in to give testimony in opposition to the Application.

Ms. Milburn testified that she is opposed to the variances for the pole building; that she is concerned about traffic; that she agrees with Ms. Matthews; and that she is not opposed to the variances for the dwelling.

Ms. Tara May was sworn in to give testimony by teleconference in opposition to the Application.

Ms. May testified that she objects to a precedent being set for old construction being grandfathered in; that the survey does not show the propane tank on the property; that the survey is not accurate for the pole building; that the propane tank sits on a concrete pad that goes to the property line; and that there is a concrete pad under the deck to the pole building.

Mr. Rhinehart testified that he plans to make parking in the front permeable; that the propane tank will be removed; that he discussed renting the pole building to a nonprofit because he has no real use for it; that the pole building could be used as studio space for artists but he does not intend to use

it commercially; and that there are no other structures on the property.

Ms. Norwood noted that commercial uses are permitted in the C-1 district but she is not sure if a site plan would be required.

Mr. Rhinehart testified that there is no place to park a car for commercial use.

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

Mr. Hastings moved to table Case No. 12599 for the requested variances to the Board of Adjustment meeting to be held on October 18, 2021.

Motion by Mr. Hastings, seconded by Mr. Warfel, carried that the **case be tabled**. Motion carried 3 – 0.

The vote by roll call; Mr. Warfel – yea, Mr. Williamson – yea, and Mr. Hastings – yea.

PUBLIC HEARINGS

Case No. 12609 – Todd K. & Allyson L. Moyer seek a variance from the front yard setback requirement for a proposed structure (Sections 115-34 and 115-182 of the Sussex County Zoning Code). The property is located on the north side of Baltimore Street within the Bay View Park Subdivision. 911 Address: 39663 Baltimore Street, Bethany Beach. Zoning District: MR. Tax Parcel: 134-20.11-32.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received three letters in support of and none in opposition to the Application and one mail return. The Applicants are requesting a variance of 12.5 ft. from the 30 ft. front yard setback requirement for proposed steps or as written on the Application a 7.5 ft. from the 25 ft. setback for open/unenclosed steps not elevated beyond the first floor living space.

Mr. John Sergovic was present on behalf of the Applicants, Todd K. & Allyson L. Moyer.

Mr. Sergovic stated that Bay View Park was developed prior to the subdivision ordinance being adopted by the County; that the Applicants' house was built around 1960; that the houses were haphazardly arranged; that many houses need to be removed or elevated to meet the flood plain elevation; that the Applicants experienced flooding in both the front and rear of the property; that the front yard flooded from the road and the rear yard flooded from the tidal pond; that the existing dwelling is located approximately 24 feet from the street; that the Applicants propose to demolish the existing dwelling and build a new elevated dwelling with off-street parking below the house; that, in

order to reach the elevated first floor, the steps will encroach into the front yard setback; that the allowable encroachment for open and unenclosed steps is 5 feet and the Applicants need approximately 12.5 ft.; that there are previous variances in this subdivision; that the uniqueness of the property is that it measures only 7,167 s.f. which is smaller than the minimum lot size in the MR district; that there is no street parking in this area so parking will be on the property and under the house; that it cannot be developed to meet the flood plain regulations without obtaining a variance; that this was not created by the Applicants; that the variance will not alter the essential character of the neighborhood; that there is support from neighbors; that the requested variance is the minimum variance to afford relief; that the width of the steps will be 6 ft. to allow for emergency access if necessary; that the proposed dwelling cannot be moved farther back on the rear of the property; that the Applicants did not average the front yard setbacks in the area; and that the side yard of this property is considered the rear yard for the neighboring property to the east.

Mr. Todd Moyer was sworn in to give testimony about his Application.

Mr. Moyer affirmed the statements made by Mr. Sergovic as true and correct.

Mr. Moyer testified that the dwelling will be moved back to the full 30 ft. setback and that the variance request is only for the steps to access the dwelling; that all parking will be on the property; that this proposal will improve parking on the lot; that side steps lead to a rear deck; that the front steps are necessary to access the house and are similar to other homes in the neighborhood; that there are trees in the side yard that would prevent them from building in that area; that the steps cannot be changed as it would block access to the garage which will be located under the house at both sides of the steps; that there is a gap between the edge of paving and the front property line; that there is approximately 30 ft. from the edge of paving to the proposed steps; that the house will be located on pilings and there will be no first floor living; that the new homes in the neighborhood are also built on pilings; that the prior house sustained approximately \$13,000.00 in damage from flooding after Hurricane Sandy; and that the property is adjacent to Cedar Pond which leads to the bay.

Ms. Alison Moyer was sworn in to give testimony about her Application.

Ms. Moyer testified that she is in support of the Application and is available to answer any questions from the Board Members.

There were no questions.

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

Mr. Williamson closed the public hearing.

Mr. Hastings moved to approve Case No. 12609 for the requested variance for the following reasons:

1. The property has unique conditions;
2. The exceptional practical difficulty is due to the unique physical conditions;
3. The exceptional practical difficulty was not created by the Applicants; and
4. The variance represents the minimum variance necessary to afford relief and represents the least modification of the regulation at issue.

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

The vote by roll call; Mr. Warfel – yea, Mr. Williamson – yea, and Mr. Hastings – yea.

Case No. 12607 – Paul H. Nye & Jerome V. Hofer seek a variance from maximum fence height requirement for a proposed fence. (Sections 115-25, 115-182 and 115-185 of the Sussex County Zoning Code). The property is located on the south side of S. Fieldway Court within the Kings Creek Country Club Subdivision. 911 Address: 2 S. Fieldway Court, Rehoboth Beach. Zoning District: AR-1. Tax Parcel: 334-13.00-996.00

Ms. Norwood 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 zero mail returns. The Applicants are requesting a variance of 0.5 ft. from the 3.5 ft. maximum fence height requirement in the front yard setback. Ms. Norwood noted that the proposed swimming pool complies with setbacks.

Mr. Paul Nye was sworn in to give testimony about his Application.

Mr. Nye testified that the property has a unique shape; that the house was in its current location when the property was purchased by the Applicants; that the property is long and narrow; that there are trees on the lot and Kings Creek likes to preserve trees; that the existing house faces Kings Creek Circle; that it is addressed as 2 South Fieldway Court and that is sometimes considered the front yard; that there is no other space to build a pool; that the pool will be placed in the location of the existing basketball court; that the basketball court was existing when the home was purchased by the Applicants; that County Code is conflicting because it requires a 4 ft. high fence for safety around pools but only 3.5 ft. fence is allowed in the front yard setback; that the Applicants consider this part of the property to be the side yard; that the pool design and location have been approved by the Kings Creek HOA; that letters of support have been submitted by neighbors; that the HOA only allows fences around pools if the fences are screened; that they have tried to fit the fence in with the existing landscape; that the fence will be a black aluminum fence and will be located behind thick, existing landscaping; that there are other pools in the neighborhood; that there is a swale between the property line and South Fieldway Court; that this variance is the minimum variance of six inches to allow for a 4-ft. safety fence; that there is approximately 30 feet between the edge of paving and the proposed

location of the fence; and that the fence will not create any visibility issues for pedestrians or motorists.

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

Mr. Williamson closed the public hearing.

Mr. Warfel moved to approve Case No. 12607 for the requested variance for the following reasons:

1. The property has unique conditions because it is a corner lot with two front yard setbacks;
2. That, due to the physical conditions, the property cannot be developed in strict conformity with the Zoning Code;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance represents the minimum variance necessary to afford relief.

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

The vote by roll call; Mr. Warfel – yea, Mr. Williamson – yea, and Mr. Hastings – yea.

Case No. 12608 – Charles & Paula Mundell seek a variance from the separation distance setback requirement for a proposed structure (Sections 115-25, 115-172, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located on the southeast side of Sea Air Avenue within the Sea Air Village Manufactured Home Park. 911 Address: 19913 Sea Air Avenue, Rehoboth Beach. Zoning District: AR-1. Tax Parcel: 334-13.00-310.00-21298

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received three letters in support of and none in opposition to the Application and three mail returns. The Applicant is requesting a variance of 8.2 ft. from the 20 ft. separation requirement between units for a proposed porch. The variance is for the porch on the property from the dwelling on the adjacent Lot 71. Ms. Norwood noted that there are no steps needed to gain access to the proposed porch.

Mr. Charles Mundell was sworn in to give testimony about his Application.

Mr. Mundell testified that he proposes to build a screened in porch on an existing concrete slab which was placed on the property by the previous owner; that he would like to enjoy the outdoors but has a medical condition which prevents him from being outdoors without screening from mosquitos; that he has suffered from malaria in the past; that there are other established screened in porches in the neighborhood; that the porch will fit within the neighborhood; that letters of support from neighbors have been submitted but has has not been able to speak with the neighbor most

affected by the request; that Sea Air management has approved the proposed porch; that the concrete slab was used for additional parking and as a patio by the previous owner; that the porch will measure 12 feet by 20 feet; that the slab measures 12 feet by 24 feet; that the porch will be ground level and he will use the existing steps to access the house; and that, if the variance is approved, it will not affect the parking.

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

Mr. Williamson closed the public hearing.

Mr. Hastings moved to approve Case No. 12608 for the requested variance for the following reasons:

1. The property has unique conditions; and
2. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor will be detrimental to public welfare.

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

The vote by roll call; Mr. Warfel – yea, Mr. Williamson – yea, and Mr. Hastings – yea.

Case No. 12610 – Wade Thompson seeks a variance from the front yard setback requirement for a proposed structure (Sections 115-42 and 115-182 of the Sussex County Zoning Code). The property is located on the west side of Shady Ridge Drive within the Shady Ridge Subdivision. 911 Address: 127 Shady Ridge Drive, Rehoboth Beach. Zoning District: GR. Tax Parcel: 334-13.00-579.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received one letter in support of and two letters in opposition to the Application and one mail return. The Applicant is requesting variances of 14.8 ft. and 15 ft. from the 30 ft. front yard setback requirement for a proposed dwelling with porch.

Ms. Laura Bearsch was sworn in to give testimony about this Application.

Ms. Bearsch testified that the Application was for a 15-foot variance from the 30-foot front yard setback requirement; that she learned of a previous application which was approved for a 20-foot variance which had expired for this property and that there was opposition to her request; that she reworked her plans and has now changed it to request a 10-foot variance and not 15 ft. as previously stated; that she can move the porch and patio to the side yard; that the property is unique; that the property is approximately 80% federally protected tidal wetlands which cannot be built on; that she is the contract purchaser for the lot; that the lot only consists of 1/3 of an acre; that she cannot

use the rear yard as a rear yard due to the wetlands; that, without a variance to decrease the setback, there is no possibility of building on this lot; that the house cannot be located immediately adjacent to the retaining wall because there needs to be some separation in case the retaining wall needs repairs or replacement; that the exceptional practical difficulty is due to the lands's natural topography and was not created by the Applicant; that the house will be only 26 ft. deep and will consist of less than 2,000 s.f.; that the proposal is for a single-family home that will be consistent with all other homes on the Shady Ridge Drive; that the house will be positioned on one side of the lot to provide some usable outdoor space; that the variance will not alter the essential character of the neighborhood; that there are only 3-4 undeveloped lots in the neighborhood; that the variance requested is the minimum variance to afford relief; that she tried to fit the home within the building envelope; that only 3 lots in the neighborhood have retaining walls; that most homes are set back 40 feet from the edge of paving of the road; that she believes the house will be 30 feet from the edge of paving of the road; that the home was designed to fit within a small building envelope and today changes have been made to further revise the request and ask for a lesser variance; that there were no specific reasons that could be addressed listed in the two letters of opposition; and that the steps will fit within the building envelope.

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

Mr. Williamson closed the public hearing.

Mr. Warfel moved to approve Case No. 12610 for the originally requested variances of 14.8 ft. and 15 ft. for the following reasons:

1. The property has unique conditions due to the wetlands, the retaining wall and the exceptionally small buildable area;
2. That, due to the physical conditions, the property cannot be developed in strict conformity with the Zoning Code;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances represent the minimum variances necessary to afford relief.

Motion by Mr. Warfel, seconded by Mr. Hastings, carried unanimously that the **variances be granted for the reasons stated**. Motion carried 3 – 0.

The vote by roll call; Mr. Warfel – yea, Mr. Williamson – yea, and Mr. Hastings – yea.

Case No. 12611– Charles Hairston (Roderick & Melodie Morris) seeks a special use exception to operate a daycare facility (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located at the north side of Johnson Road approximately 300 ft. east of Marshall Street. 911 Address: 18601 Johnson Rd., Lincoln. Zoning District: AR-1. Tax Map: 330-15.13-38.00

Ms. Norwood 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 to expand an existing daycare that the Board approved on September 18, 2017 for up to 12 children.

Mr. Roderick Morris was sworn in to give testimony about his Application.

Mr. Morris testified that he and his wife own Love Drives, LLC, and the daycare has been in operation in Lincoln since 2017; that the Applicants are in the process of purchasing the property from Mr. Hairston and propose to expand the business; that the first part of the expansion would allow 20 – 30 children; that they will construct an addition to the home so that will increase the capacity from 30 – 50 children; that there is adequate parking for drop off and pick-up; that the driveway is a horseshoe drive for easy access to the property; that there have been no complaints from neighbors regarding the daycare; that there are currently two employees and, with the expansion up to 30 children, there would be five employees; that the hours of operation are 7:00 am – 5:00 pm, Monday through Friday; that there is a trucking company and an elementary school in the area; that the building consists of 1,100 square feet; that there is a fenced-in outdoor play area; that there have been no issues with noise or traffic; that the speed limit is 35 miles per hour on the adjacent road, which is east of Route 113; that the ages of children served are 6 weeks to five years old; that the property is served by well and septic; that the septic system will be expanded with the second addition; that there is an agricultural field nearby; and that the Office of Childcare Licensing also look at septic capabilities on the property.

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

Mr. Williamson closed the public hearing.

Mr. Hastings, moved to approve Case No. 12611, pending final written decision, for the requested special use exception for the expansion of a daycare business to serve up to 30 children for a period of two years as the request will not substantially affect adversely the uses of neighboring and adjacent properties.

Motion by Mr. Hastings, seconded by Mr. Warfel, carried unanimously that the **special use exception be granted with conditions for the reasons stated.** Motion carried 3 – 0.

The vote by roll call; Mr. Warfel – yea, Mr. Williamson – yea, and Mr. Hastings – yea.

Case No. 12612 – W. Scott Collins seeks a variance from the front yard setback requirement for an existing structure (Sections 115-25, 115-182, and 115-185 of the Sussex County Zoning Code). The property is located on the east side of Roxana Road approximately 0.27 mile southwest of Phillips Road. 911 Address: 36617 Roxana Road, Selbyville. Zoning District: AR-1. Tax Parcel: 533-10.00-

65.00

Ms. Norwood 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 the following variances:

1. 7.8 ft. from 40 ft. front yard setback for existing pole barn.
2. 30.7 ft. from 40 ft. front yard setback for existing dwelling.
3. 35.8 ft. from 40 ft. front yard setback for existing porch roof.
4. 31.1 ft. from 40 ft. front yard setback for existing dwelling.
5. 36.1 ft. from 40 ft. front yard setback for existing porch roof.

Ms. Norwood noted that the existing dwelling and porch built in 1908.

Mr. Ward Scott Collins was sworn in to give testimony about his Application.

Mr. Collins testified that he and his friends built the pole barn; that they attempted to keep the pole barn parallel to the northwest property line; that he inherited the property in 2015 and the land was reforested under a state program; that the dwelling was built early 1900s by his grandparents; that the pole building is on a corner of the property; that the measurement was taken from the road instead of the property line in error; that the front property line matches the edge of paving; that the road has been widened; that the existing dwelling will be removed and the Applicant proposes to build a new dwelling in the future; that the pole building measures 60 feet by 80 feet; that the porch is just an overhang; that the pole barn is used for storage of cars and tractors to prevent theft; that the shed was placed after the pole barn was constructed; that there are 2 tax ditches on the property; that he could not place the pole building in the rear yard; that there are forestry easements as well; that the pole barn cannot be moved; that the new house will comply with the setback requirements; that there is no well or septic but will be required for the proposed dwelling; that there are no complaints from neighbors; that the structures do not create any visibility issues for motorists; and that the footer inspector did not notice the violation.

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

Mr. Williamson closed the public hearing.

Mr. Warfel moved to approve Case No. 12612 for the requested variances for the following reasons:

1. The property has unique conditions due to the ambiguous angle of the property line;
2. That, due to the physical conditions, the property cannot be developed in strict conformity;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variances will not alter the essential character of the neighborhood; and

5. The variances represent the minimum variances necessary to afford relief.

Motion by Mr. Warfel, seconded by Mr. Hastings, carried unanimously that the **variances be granted for the reasons stated**. Motion carried 3 – 0.

The vote by roll call; Mr. Warfel – yea, Mr. Williamson – yea, and Mr. Hastings – yea.

ADDITIONAL BUSINESS

Mr. Sharp reminded the Board Members that there is no meeting on October 4, 2021 and that the next meeting will be held on October 18, 2021.

Meeting adjourned at 8:05 p.m.