

MINUTES OF SEPTEMBER 21, 2020

The regular meeting of the Sussex County Board of Adjustment was held on Monday, September 21, 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, Mr. John Williamson, and Mr. Brent Workman. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney and staff members Mr. Jamie Whitehouse – Director of Planning and Zoning, Mr. Nick Torrance – Planner I, and Ms. Ann Lepore – Recording Secretary.

The Pledge of Allegiance was led by Ms. Magee.

Motion by Dr. Carson, seconded by Mr. Chorman, and carried unanimously to approve the agenda. Motion carried 5 – 0.

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

Motion by Mr. Chorman, seconded by Dr. Carson, and carried unanimously to approve the Minutes for the July 20, 2020, meeting. Motion carried 5 – 0.

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

Motion by Mr. Williamson, seconded by Mr. Chorman, and carried to approve the Findings of Facts for the July 20, 2020, meeting. Motion carried 5 – 0.

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

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

Chair Magee read the mask policy.

OLD BUSINESS

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. Whitehouse presented the case, which was left open at the Board's meeting on September

14, 2020, for the limited purpose of allowing staff to obtain building permit information for the adjacent property.

Mr. Whitehouse stated that the neighboring property at 18848 Riverwalk Drive was issued a permit on 06/19/2019 under 201906926 for a screen porch; that the drawing submitted as part of the permit included a 5 ft. wide unenclosed deck adjacent to the screen porch; and that a certificate of occupancy was issued on August 13, 2019 following a final inspection by Planning and Zoning.

The Board members discussed the case.

Dr. Carson moved to deny Case No. 12467 for the variance as the exceptional practical difficulty is being created by the Applicants.

Motion by Dr. Carson, seconded by Mr. Williamson carried unanimously that the **variance be denied for the reasons stated**. Motion carried 5 – 0.

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

PUBLIC HEARINGS

Case No. 12470 – Troy & Alice Rohrbaugh seeks variances from the rear yard setback requirements for proposed structures (Sections 115-34 and 115-183 of the Sussex County Zoning Code). The property is located on the southeast side of Owens Court within The Curves subdivision. 911 Address: 40116 Owens Court, Fenwick Island. Zoning District: MR. Tax Parcel: 134-22.00-7.05

Mr. Torrance 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 zero mail returns. The Applicant is requesting a 2 ft. variance and a 1.1 ft. variance from the 10 ft. rear yard setback for a two-level deck.

Ms. Amy Rohrbaugh and Mr. George Campbell were sworn in to give testimony about the Application.

Ms. Rohrbaugh testified that the property is also identified as 40114 Owens Court and that there were 911 issues with the address.

Mr. Whitehouse stated that the mapping department shows the property's address as 40116 Owens Court and that the advertising was correct.

Ms. Rohrbaugh testified that the proposal is for a second-level deck; that the work has not been completed on the decks; that the original deck fell apart and has not been rebuilt; that Mr.

Campbell is the contractor; that she spoke with neighbors about the request; that a railing is in place for safety; that the additional area on the decks will allow her in-laws to enjoy the outdoors without having to walk out to the beach; that the deck cannot be seen from the street; that the neighboring lot owner does not object to the proposal; that that lot is a unique beachfront lot; that the variance will allow the reasonable use of the property with maximized deck area to accommodate aging family members; that the exceptional practical difficulty is not being created by the Applicants but by the need for additional space to allow for aging parents to enjoy outdoor living space by providing additional space for navigation; that granting the variance will not alter the essential character of the neighborhood as it cannot be viewed from the street; that there are no objections from neighbors; that the variances requested are the minimum variances to allow the upper deck to mirror the lower deck and allow full navigation and reasonable use of the outdoor space; that her in-laws cannot walk on the beach; that the deck will provide a sitting area; that the house previously had an upper deck but the decks will be expanded by 2 feet; and that the deck was placed by a prior owner and needed to be replaced due to dry rot.

Mr. Campbell testified that both decks are existing; that the Applicants wish to extend the decks; that each deck will measure 50 ft. by 10 ft.; that the railing and plywood shows the 24” extension to the deck but can be removed should the variance be denied; and that the property is serviced by public water and sewer.

Ms. Rohrbaugh testified that the deck was temporarily installed for use over the summer; that the deck is similar to neighboring decks; that they cannot move 2 feet towards the front yard; that the house was placed by a prior owner and they cannot change the blueprint; that the Applicants would have built the home differently if the lot was vacant; and that no variance is needed for steps.

The Board found that three people appeared in support of and none in opposition to the Application.

Ms. Magee closed the public hearing.

Mr. Workman moved to approve Case No. 12470 for the variances as they are the minimum variances to afford relief; that neighbors support the request; that the variances will enable the use of the property; and that the variances will not alter the essential character of the neighborhood.

Motion by Mr. Workman, 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. 12471 – Daniel Ostinvil seeks variances from the rear yard setback requirement for existing structures. (Sections 115-25 and 115-183 of the Sussex County Zoning Code). The property

is located on the west side of North Poplar Street at the intersection of Old Sailor Road. 911 Address: 31016 N. Poplar Street, Laurel. Zoning District: AR-1. Tax Parcel: 232-12.18-51.00

Mr. Torrance 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 13.9 ft. variance from the 15 ft. rear yard setback requirement.

Mr. Daniel Ostinvil was sworn in to give testimony about the Application.

Mr. Ostinvil testified that the building was existing and is located in the rear yard and that the building is used for storage.

Mr. Whitehouse stated that the 2019 building permit application was for an addition to the detached garage.

Mr. Torrance stated that the 2001 building permit was for the original building and that there was no site plan filed with the conditional use application.

Mr. Ostinvil testified that the addition to the front created the need for a variance; that the property is unique as it is a small lot with an irregular shape; that, as the building is existing, it would not be feasible to move it and the placement of the septic would also prohibit moving the building; that the septic is located to the right side of the property; that the exceptional practical difficulty has not been created by the Applicant as this was built by the previous owner; that the variance will not alter the essential character of the neighborhood; that there have been no complaints from neighbors regarding this property; and that it is a minimum variance to afford relief as the request is for the existing building.

Mr. Whitehouse advised the Board that the issue was caught when reviewing the site plan for the building permit application.

Mr. Ostinvil testified that the neighbor has a chain link fence; that the shed is a pumphouse; that the addition was made to the front of the building and not to the rear of the building; that the building has always been that close to the rear property line; and that he has received no complaints.

Mr. Whitehouse advised the Board that there is a concrete walkway around the building.

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. 12471 for the variances as the Applicant has met all criteria for granting a variance; that the property is unique in shape; that the variance will not alter

the essential character of the neighborhood; and that the exceptional practical difficulty has not been caused by the Applicant.

Motion by Mr. Williamson, seconded by Dr. Carson, carried unanimously that the **variance 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. 12472 – Stephens Rentals, LLC (Cellco Partnership d/b/a Verizon Wireless) seeks a special use exception to place a telecommunications tower and a variance from the height requirements for a telecommunications tower (Sections 115-50, 115-179, 115-194.2 and 115-210 of the Sussex County Zoning Code). The property is located on the south side of Old Racetrack Road opposite Brick Manor Road. 911 Address: N/A Zoning District: HI-1. Tax Parcel: 532-20.00-14.02

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 special use exception for a 158 ft. high telecommunications monopole and a variance of 8 feet from the 150 foot height limit for a telecommunications tower.

Mr. John Tracey, Esquire, presented the Application on behalf of the Applicant, Cellco Partnership. Mr. Andrew Petersohn was sworn in to give testimony about the Application. Also, present were Ms. Sue Manchel and Mr. Mike Cleary.

Mr. Tracey stated that this Application is for a new 158 ft. telecommunications monopole; that the 5 ft. lightning rod is included in the 158 ft.; that the property is approximately 5 acres located west of Delmar on South Old Racetrack Road on property zoned HI-1; that the use of the property is commercial and industrial; that it is at least 1,200 ft. from residences; that the monopole and equipment will be located at the southwest portion of the property; that the tower will be located away from the active use of the property so as not to interfere with that use; that the monopole will be lighted at every 50 ft. as required by Sussex County Code; that the antenna will measure 150 feet; and that the need for good cell phone service has risen as the majority of homes no longer have a land line and over 70% of all 911 calls are made from cellular phones.

Mr. Petersohn testified that the existing service for the Town of Delmar is being provided by a 170 ft. tower which is located to the north of the town and that tower covers the area to the west; that the Applicant seeks to offload in-town cellular traffic; that demand for the service has increased; that the new tower will help to offload that cellular traffic; that the proposed tower would be central in that western area and would improve service and give more efficient coverage for the town of Delmar; that the tower in town is 170 feet tall; that the proposed tower will need to be close to the height of the other tower so that it can absorb that traffic; that other towers in the area did not solve the problem the Applicant was experiencing; and that this site will provide better in vehicle and in

building coverage for the area.

Mr. Tracey stated that some locations were identified to try to co-locate, two of which Verizon is already using, and others were too far away or too close to existing towers to give the desired result; and that the Applicant approached the Town of Delmar about collocating on a water tower but the Town declined for multiple reasons.

Mr. Petersohn testified that there will be better coverage in the area if the request is approved; that capacity enhancement is the goal; that the tower will only emit 1.5% of the maximum allowable RF emissions; that there is no FAA requirement for the warning lights but the Applicant will light the tower per County Code; that the tower will be available for other collocations; that the site will be fenced; and that 80% of the tower will benefit service in Delaware.

Mr. Tracey stated that demand has driven the need for new towers.

Mr. Petersohn affirmed the statements made by Mr. Tracey as true and correct.

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. 12472 for the special use exception and variance as it will not alter the essential character of the neighborhood; that it is the minimum necessary to afford relief; and that it will not substantially or adversely affect the uses of neighboring or adjacent properties.

Motion by Dr. Carson, seconded by Mr. Workman, carried unanimously that the **variance and special use exception 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.

The Board took a 5-minute recess

Case No. 12473 – Equity Trust Co. (Kenda West) seek variances from the front yard setback requirements for a proposed structure (Sections 115-34 and 115-182 of the Sussex County Zoning Code). The property is located on the south side of Pine Grove Road within the Hollywoods Park subdivision. 911 Address: 32622 Pine Grove Road, Laurel. Zoning District: MR. Tax Parcel: 432-8.00-124.00

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 5.3 ft. variance and a 6 ft. variance from the 30 ft. front yard setback requirement for an existing garage.

Ms. Kenda West and Mr. Klay West were sworn in to give testimony about the Application.

Ms. West testified that the request is for a garage adjacent to a home that is under new construction; that the Applicant understood from the building permit that there was a 30 ft. setback from the road and not from the property line; that the house is pushed back as far as possible based on the placement of the septic system; that the house is 47 ft. from the road; that there was a misunderstanding about the property line; that the property is unique due to the shallow depth and the placement of the septic system; and that the house has been constructed but the garage is not yet complete.

Ms. Magee noted that the building permit is confusing because it says that the 30 foot front yard setback requirement is from the road and not the front property line.

Mr. West testified that Pine Grove Road is only used for their neighborhood.

Ms. West testified that the garage is slightly forward of other houses nearby; that other houses are less than 25 feet from the road and that there is a variety of positioning of houses; that the garage would not be possible with a 30 ft. setback from the property line; that the exceptional practical difficulty was not caused by the Applicant but because of the septic design and misinformation given by the permitting department; that the variance will not alter the essential character of the neighborhood; and that this is a minimum variance to afford relief.

Mr. West testified that there is approximately 20 – 25 ft. between the edge of paving and the property line and that the permit was received through the mail due to Covid-19 restrictions.

Mr. Whitehouse stated that a building permit was issued on April 14, 2020 but no site plan was required for the building permit application.

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

Ms. Magee closed the public hearing.

Mr. Workman moved to approve Case No. 12473 for the variances as the size of the lot is unique and the permitting error; that the variances are necessary for the reasonable use of the lot; that the variances will not alter the essential character of the neighborhood; and that it is the minimum necessary to afford relief. Mr. Workman recommended that the Application fee be returned due to misinformation received by the Applicant.

Motion by Mr. Workman, seconded by Dr. Carson, 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. 12477 – Iris Moore, Danny L. Moore, Jr., & Darren E. Moore seek a variance from the minimum lot width requirement for a proposed lot (Section 115-25 of the Sussex County Zoning Code). The property is located on the northwest side of Shingle Point Road approximately 150 ft. northeast of Waldwick Way. 911 Address: N/A. Zoning District: AR-1. Tax Parcel: 135-11.00-2.03

Mr. Torrance 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 seeking a 100 ft. variance from the 150 ft. lot width requirement in the AR-1 zoning district to enable the creation of a flag lot with a 50 ft. wide entrance.

Mr. Tim Willard, Esquire, was present on behalf of the Application.

Mr. Willard stated that also present on behalf of the Application are Darren, Danny and Katie Moore; that the property consists of 17 acres; that the father of Danny Moore and Darren Moore died in 2014 leaving the property to them with his wife having a life estate; that the property has 226.48 feet of road frontage; that the Applicants wish to subdivide the property into two lots where they will eventually build a dwelling on each parcel; that the subdivision is consistent with their father's wishes; that the property is unique as it is a seventeen-acre parcel with only 226 feet of road frontage; that the lot is also oddly shaped; that the exceptional practical difficulty was not created by the Code; that there is no other way to subdivide the property; that two dwellings are not permitted on one lot so the subdivision is necessary for the reasonable use of the property; that the exceptional practical difficulty was not created by the Applicants; that granting the variance will not alter the essential character of the neighborhood; that the area is a residential area with a larger development in the area coming in the future; that only one variance is being sought and the two lots will have a shared entrance; that the shared entrance has been approved by DeIDOT; that the Applicants did not create the shape of the lot and did not create the estate planning of their father; and that the variance requested is the minimum variance to afford relief and allow for the creation of a flag lot.

Mr. Danny Moore was sworn in to give testimony about the Application. Mr. Moore affirmed the statements made by Mr. Willard as true and correct.

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. 12477 for the variance as the Applicants have met all the criteria for granting a variance; that the property is unique; that the exceptional practical

difficulty was not created by the Applicants; that granting the variance will not alter the essential character of the neighborhood.

Motion by Mr. Williamson, seconded by Dr. Carson, carried unanimously that the **variance 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. 12479 – Sports at the Beach seeks a special use exception for an outdoor display or promotional activity (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located on the southeast side of Lewes Georgetown Highway (Route 9), approximately 0.43 mile west of Park Avenue. 911 Address: 22518 Lewes Georgetown Highway, Georgetown. Zoning District: CR-1/AR-1. Tax Map: 135-15.00-82.00

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 six mail returns. The Applicant is requesting a special use exception for an outdoor display or promotional activity previously approved by the Board of Adjustment for a five-year period on May 4, 2015.

Mr. Sharp stated that he would recuse himself and not participate in this hearing. If the Board has questions, those questions should be directed to Vince Robertson, Esquire.

Mr. Pete Townsend was sworn in to give testimony about the Application.

Mr. Townsend testified that the request for a special use exception is on a seven-acre portion of the 87.52 acre parcel and is for an outdoor haunted house during the month of October; that it is located in the rear of the property away from the Lewes-Georgetown Highway and from residential dwellings; that the haunted house operates for 10 nights in October; that the haunted house operated for approximately 10 years but has not been used the past two years; that he has experienced mixed success with the event; that there is adequate parking; that it is for 10 nights – Friday and Saturday from 7:00 p.m. – 11:00 p.m.; that the venue cannot open to the public until all approvals have been received from the Fire Marshal; that the haunted house did not operate during 2018 and 2019 but the Applicant would like to resume it for 2020 for a five-year period; that the haunted house is approximately ¼ mile from the nearest residence and is separated by woods; that no tickets are sold after 10:00 pm; and that there will not be a Christmas village on the site.

Ms. Marguerite Wilson-Alves attended by teleconference and was sworn in to give testimony about the Application.

Ms. Wilson-Alves had questions regarding the Application.

Ms. Magee detailed the Application for the caller.

Ms. Wilson-Alves testified that she supports the Application.

The Board found that three people appeared in support of or opposition to the Application.

Mr. Townsend testified that the haunted house cannot open without fire marshal approval but he could send a copy to the Board.

Ms. Magee closed the public hearing.

Mr. Chorman moved to approve Case No. 12479 for the special use exception for 15 days from Thursday to Sunday based on the discretion of the Applicant and that the hours of operation be from 6:00 p.m. – 11:00 p.m.; that a copy of the Fire Marshal approval and State approval be submitted to the Planning and Zoning Office; and that the Special Use Exception is valid for a period of five (5) years.

Motion by Mr. Chorman, seconded by Mr. Williamson, carried unanimously that the **special use exception be granted with conditions 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.