

## **MINUTES OF SEPTEMBER 23, 2024**

The regular meeting of the Sussex County Board of Adjustment was held on Monday, September 23, 2024, at 6:00 p.m. in the County Council Chamber, Sussex County Administration Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Jeffrey Chorman presiding. The Board members present were Dr. Kevin Carson, Mr. John T. Hastings, Mr. John Williamson, and Mr. Jeffrey Chorman. 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. Chorman.

Motion by Mr. Hastings, seconded by Dr. Carson and carried unanimously to approve the agenda. Motion carried 4 – 0.

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

Motion by Mr. Williamson, seconded by Dr. Carson and carried unanimously to approve the Minutes for the July 15, 2024, meeting. Motion carried 4 – 0.

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

Motion by Dr. Carson, seconded by Mr. Hastings and carried to approve the Findings of Facts for the July 15, 2024, meeting. Motion carried 4 – 0.

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

## **PUBLIC HEARINGS**

**Case No. 12990 – Thomas Burke** seeks variances from the side yard setback and separation distance requirements for proposed and existing structures (Section 115-25, 115-172 and 115-183 of the Sussex County Zoning Code). The property is located East of Harbor Road within the Malone's Bayside Manufactured Home Park. 911 Address: 14 Harbor Road, Millsboro. Zoning District: AR-1. Tax Parcel: 234-25.00-6.00-4575 Lot 7

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received zero letters in support of the Application, zero letters in opposition to the Application, and three (3) mail returns. The Applicant is requesting the following variances:

- 14.7 ft. variance from the 20 ft. separation requirement from the manufactured home to the shed on Lot 6.

- 2.2 ft. variance from the 20 ft. separation requirement from the manufactured home to the manufactured home on Lot 6.
- 2.3 ft. variance from the 5 ft. side yard setback requirement on the south side for the HVAC unit.
- 1 ft. variance from the 5 ft. side yard setback requirement on the south side for the shed.

Mr. Thomas Burke, III, was sworn in to give testimony for this application.

Mr. Burke testified that the new park owner required him to replace the manufactured home within two years if he wished to stay on his current lot; that the home was built in the 1960s; that there is mold, water leaks, and drafty windows in the current dwelling; that the current heating system is insufficient to heat the home during the winter months; that pipes freeze in the cold weather; that the lease is a year-round lease; that a new manufactured home would be an improvement for the park; that the placement of the new home would give the neighbors a better view of the lagoon as the shed that currently blocks their view would be moved to the front of the property; that, essentially, the footprint will be the same but the home will be a little wider; that the neighbor has requested that the proposed home be moved 3 ft. to the north in the event that the neighbor should get a new home in the future that he would not be required to get a variance; that it is not possible to move the proposed home 3 ft. as there is not enough room; that the proposed porch and deck have already been reduced to accommodate the wider home; that HOA approval is not required but he does have approval from the park owner; that the old home measured 10' x 50' and the new home will measure 15.6' x 60'; that the new porch will be 1' narrower than the prior porch but will be longer; that there is parking on the west side of the property; that the property is adjacent to a lagoon; that there is flooding on the property but it has not affected the home and equipment is kept up on blocks in the shed; that there is a new bulkhead in the park; that the shed has been on the property for 5 years; that the main issue is the separation distance and the HVAC; that the neighbor's shed is on the subject property but he does not want to make the neighbor have to move it; that the new home will be up higher than the prior home; that they have owned the home for 38 years; that there is a public boardwalk on the north and east side of the property; that the floor plan of the proposed home is the only one that suits his needs; that the secondary entrance for the new home will be on the east side of the property instead of the south side of the property; that the screened porch is needed as that is where the family spends most of their time during the summer; that variances will not be required for the steps; and that, if required, the porch could be 10 ft. instead of 11 ft. and he could move the house 1 foot north.

Mr. Thomas Burke, Jr., was sworn in to give testimony in support of this application. Mr. Burke testified about the history of his ownership of this property and he testified that the house needs to be replaced.

Ms. Ellen McGoldrick and Mr. Michael McGoldrick were sworn in to give testimony in opposition to this Application.

Ms. McGoldrick that the Burkes have been great neighbors and she was excited that they were replacing the current dwelling which is a late 1960s model; that the small lots are not large enough to accommodate large homes and multiple sheds; that this has kept the community small making it a great place for families and children; that she fears that, if this variance is granted, it will set a precedent for the existing and future homes in the park; that a recent variance for a large home on a nearby lot was denied; that the Burkes could meet the setbacks by moving the new home by a few feet; that, if this variance is granted, it will impede her family being able to upgrade their home in the future; that the lease states only one shed is permitted; that the deck could be modified to meet setbacks; that she owns a 1995 manufactured home which measures 14' x 50'; and that she was unaware that her shed was part of the separation distance variance.

Mr. McGoldrick testified that the shed is not anchored and, therefore, thought that it is not a permanent structure; that, looking to the future for themselves, if they want to replace their home, they would have to get variances on both sides; and that, if this variance is denied, then they would not have that problem.

Mr. Burke testified that his neighbor has a 14 ft. wide manufactured home with a 13 ft. addition on the north side.

Mr. Sharp asked Staff if a lot coverage variance would also be required for this lot.

Ms. Norwood responded that a lot coverage variance would also be required but it would be a separate variance request as it was not requested with this application.

The Board found that six persons appeared in support of and two persons appeared in opposition to the Application.

Mr. Chorman closed the public hearing.

Mr. Williamson moved to approve the application for Case No. 12990, with modification and subject to following condition, for the following variances, pending final written decision and for the following reasons:

- 13.7 ft. variance from the 20 ft. separation requirement from the manufactured home to the shed on Lot 6.
- 1.2 ft. variance from the 20 ft. separation requirement from the manufactured home to the manufactured home on Lot 6.
- 1.3 ft. variance from the 5 ft. side yard setback requirement on the south side for the HVAC unit.
- 1 ft. variance from the 5 ft. side yard setback requirement on the south side for the shed.

1. The property has unique physical conditions due to flooding and size of the lot;
2. The variances, as modified, will not alter the essential character of the neighborhood; and
3. The variances, as modified, represent the minimum variances necessary to afford relief.

This approval was conditioned on the house and HVAC unit being moved 1 foot to the north and the screen porch being 10 feet wide rather than 11 feet wide.

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

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

**Case No. 12992 – Brian and Wendy Feldman** seek variances from the front yard setback requirements for proposed structures (Section 115-34 and 115-182 of the Sussex County Zoning Code). The property is located East of Venetian Drive within the Seabreeze Subdivision. 911 Address: 8 Venetian Drive, Rehoboth Beach. Zoning District: MR. Tax Parcel: 334-20.17-6.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received zero letters in support of the Application, zero letters in opposition of the Application, and zero mail returns. The Applicants are requesting the following variances:

- 4.8 ft. variance from the 30 ft. front yard setback requirement for the dwelling;
- 11.2 ft. variance from the 30 ft. front yard setback requirement for the steps.
- 7.2 ft. variance from the 30 ft. front yard setback requirement for the dwelling.
- 7.89 ft. variance from the 30 ft. front yard setback requirement for the dwelling.
- 9.5 ft. variance from the 30 ft. front yard setback requirement for the steps.
- 8.6 ft. variance from the 30 ft. front yard setback requirement for the dwelling.
- 9.6 ft. variance from the 30 ft. front yard setback requirement for the dwelling.
- 8.3 ft. variance from the 30 ft. front yard setback requirement for the dwelling.
- 8 ft. variance from the 30 ft. front yard setback requirement for the dwelling.
- 4.89 ft. variance from the 30 ft. front yard setback requirement for the steps.

Mr. Mason Hayes, Ms. Wendy Feldman, and Mr. Brian Feldman were sworn in to give testimony for this application.

Mr. Hayes testified that he is the contractor hired by the homeowners to construct their home; that the property is unique due to its location with the Seabreeze Community with covenants that predate Sussex County Zoning Code; that the property is located on a canal directly off the Rehoboth Bay; that the community's rear setback is 30' which is 20' more than the 10' County setback requirement; that, due to the unique properties, the existing dwelling is non-compliant with County

Code; that the proposed variances will not substantially increase the existing setbacks of the property; that the proposed dwelling would not extend closer to the street than any other similar structures on the street; that, due to the unique lot, the property cannot be developed in conformity with the County Zoning Code; that the hardship was not created by the property owners but by the unique characteristics of the property; that the proposed dwelling will not alter the essential character of the neighborhood as the proposed dwelling is similar to other existing dwellings in the neighborhood; that the HOA has approved the proposed dwelling; that the bulkheads will be replaced and it will be much easier to do that with a vacant lot; that the building envelope would be 30 feet deep if complied with the Code; that there is approximately 10 - 15 ft. between the property line and edge of paving on Venetian Drive; that there is approximately 0.5 ft. slope from the front of the property to the rear; that they did not look at the average front yard setback provision in the Sussex County Zoning Code as it would have been an additional cost to a surveyor to provide that information and they did not think they would get the result that they were seeking; that there is approximately 20 feet to park cars in the front yard; that the property is unique due to the restrictive covenants and bulkheads; and that the house needs to be replaced and the new dwelling must be raised due to flooding concerns.

Ms. Feldman testified that she has owned the property since 2020; that there are restrictive covenants for the subdivision: that the house would be raised four feet to prevent flooding; that there have been no complaints about the placement of the existing dwelling; that the placement of the home will not affect any of the neighboring properties; and that neighbors are okay with the proposal.

Mr. Feldman testified that the dwelling is on the flood plain; that the electrical is failing; that this home cannot be repaired and must be replaced; that the bulkhead is falling in and must be replaced; that the house must be raised; that there is room on the property for parking; that they will park cars on the south side of the lot and in the front yard; and that there were no complaints about the prior dwelling on the lot.

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

Mr. Chorman closed the public hearing.

Dr. Carson moved to deny the application for Case No. 12991 for the requested variances, pending final written decision, for the following reasons:

1. The exceptional practical difficulty has been created by the Applicants.

Motion by Dr. Carson, seconded by Mr. Williamson, failed that the **variances be denied for the reasons stated**. Motion carried 2 – 2.

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

Mr. Hastings stated that he believed the property was unique due to the restrictions.

Due to the failure of the Applicants to obtain three affirmative votes for the variances, the Application is deemed denied pursuant to Board rules.

**Case No. 12993 – Jason Goodnight** seeks a variance from the front yard setback requirements for a proposed structure (Section 115-25 and 115-182 of the Sussex County Zoning Code). The property is located South of South Dogwood Drive within the Dogwood Acres Subdivision. 911 Address: 32210 S Dogwood Drive, Dagsboro. Zoning District: AR-1. Tax Parcel: 134-6.00-252.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received three (3) letters in support of the Application, zero letters in opposition of the Application, and zero mail returns. The Applicant is requesting a 12.7 ft. variance from the 30 ft. front yard setback requirement for a proposed dwelling.

Mr. Jason Goodnight was sworn in to give testimony for this application.

Mr. Goodnight testified that he has a 1984 model year manufactured home that needs to be replaced; that the cesspool on the property also needs to be replaced with a new septic system; that the house goes into the front yard; that he tried to turn the dwelling but was unable to do so; that he tried to move the septic system but it was too close to wells and property lines; that the septic system has been approved; that the manufactured home will measure 64 feet by 26 feet; that the well is located in the front yard; that the property is unique due to the placement of the proposed septic system; that the location of the proposed dwelling is limited due to the property size and location of the septic system; that this was not created by the Applicant but by the requirement for a new septic system on the property; that they tried different placements but none other would work; that they looked for a different placement for the proposed septic system but that was too close to the existing well; that granting the variance will not alter the essential character of the neighborhood but enhance the area by replacing a home that is over 30 years old; that there are many homes in Dogwood Acres that are placed within the 30 ft. front yard setback; that neighbors support the request; that the HVAC system will be located to the rear of the dwelling; that there is a 15 foot gap between the front property line and the edge of paving of South Dogwood Drive; that this is the minimum variance to allow for a 64 ft. x 26 ft. manufactured home on the property; and that this is the size home required to meet the family's needs.

Ms. Janice Tunnell, HOA president, was sworn in to give testimony in support of this Application.

Ms. Tunnell testified that she supports the Application for a variance; that having an updated septic system will benefit the entire community; that there are a lot of old cesspools in the neighborhood; and that this dwelling will improve the neighborhood.

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

Mr. Chorman closed the public hearing.

Mr. Hastings moved to approve the application for Case No. 12993 for the requested variance, pending final written decision, for the following reasons:

1. The property has unique physical conditions because of the placement of the septic system;
2. That, due to such physical circumstances or conditions, there is no possibility that property can be developed in strict conformity with Sussex County Zoning Code, and the variance is necessary to enable the reasonable use of the property;
3. The exceptional practical difficulty was not created by the Applicant;
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. Hastings, seconded by Dr. Carson, carried unanimously that the **variance be granted for the reasons stated.** Motion carried 4 – 0.

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

**Case No. 12994 – Budget Holdings, LLC** seeks a variance from the landscape buffer requirements in the Combined Highway Corridor Overlay Zone (CHCOZ) (Section 115-83.15 and 115-194.1 of the Sussex County Zoning Code). The property is located East of Sussex Highway. 911 Address: N/A. Zoning District: C-2. Tax Parcel: 530-10.00-58.09

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received zero letters in support of the Application, zero letters in opposition of the Application, and one mail return. The Applicant is requesting a 154.28 linear feet variance within the 20 ft. buffer requirement for a property in the Combined Highway Corridor Overlay Zone.

Mr. David Hutt, Esq. and Mr. Dave Heatwole, P.E., were present on behalf of the Applicant, Budget Holdings, LLC. Mr. Heatwole was sworn in to give testimony about this application.

Mr. Hutt gave a history of the property and the previous subdivision with resulted in the service road and existing stormwater management facility being created. Mr. Hutt referred to his Power Point exhibit during his presentation. Mr. Hutt stated that the property is located near Route 13 outside of Greenwood; that the Combined Highway Corridor Overlay Zone (“CHCOZ”) applies to properties along Route 13, Route 113, and Route 1 outside of municipalities; that the CHCOZ

requirements added a 20 foot buffer in the front yard and limits development in that area; that the CHCOZ also requires that certain landscaping be placed in the buffer area; that the Applicant seeks a variance from the landscaping requirement; that the CHCOZ requires that the Applicant plant 12 trees and 11 shrubs per 100 linear feet; that, due to the location of the stormwater management pond, that vegetation cannot fit and survive; that the Applicant went to the Sussex Conservation District and received approval for 12 shrubs but not trees per 100 linear feet; that there is a Dollar General and Budget Mini Storage located north of the site; that the Applicant bought the property in 2017; that there is access road in front which leaves to Beaver Dam Holdings – a pet food company located to the south; that the prior owner went to the Sussex Conservation District when creating the access road; that the Sussex Conservation District approved the pond in 2017 and the pond was created in 2018; that the Sussex County Planning & Zoning office was copied on the approval; that the pond goes to the Beaver Dam Holdings property and flows north; that the pond benefits neighboring properties; that a site plan was submitted to the Sussex County Planning & Zoning office and that was when the plantings issue arose; that there is 191 linear feet of frontage; that 38 feet on the south side will meet the landscape buffer requirement; that the property is unique due to the existing stormwater pond, the access road, elevation, and topography; that the property cannot otherwise be developed; that the variance is necessary to enable the reasonable use of the property; that the stormwater pond benefits neighboring lots; that the exceptional practical difficulty was not created by the Applicant; that the difficulty was created by the subdivider; that the variance will not alter the essential character of the neighborhood; that there has been no change since 2017; that the variance is the minimum variance to afford relief; that the Applicant seeks to plant 12 shrubs per 100 linear feet and no trees; and that the variance is only for the area where the stormwater management pond already exists.

Mr. Heatwole affirmed the statements made by Mr. Hutt as true and correct. Mr. Heatwole testified that tall trees would also block maintenance access to the pond.

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

Mr. Chorman closed the public hearing.

Mr. Williamson moved to approve the application for Case No. 12994 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique physical conditions due to the placement of the existing stormwater management facility;
2. The exceptional practical difficulty was not created by the Applicant;
3. The variance will not alter the essential character of the neighborhood; and
4. The variance represents 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 – 0.



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

**ADDITIONAL BUSINESS**

**Meeting adjourned at 7:56 p.m.**