

MINUTES OF SEPTEMBER 9, 2024

The regular meeting of the Sussex County Board of Adjustment was held on Monday, September 9, 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. Mr. Jordan Warfel was 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. Chorman.

Ms. Norwood stated that there was a change to the agenda to remove Case No. 12983.

Mr. Sharp explained that although Case No. 12983 was correctly advertised there was an error on the Online Application Docket which showed the Case as being withdrawn, so it will be readvertised and will be back on the agenda in October.

Motion by Dr. Carson, seconded by Mr. Hastings and carried unanimously to approve the agenda, as amended. 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 Mr. Hastings and carried unanimously to approve the Minutes for the July 1, 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 Mr. Hastings, seconded by Dr. Carson and carried to approve the Findings of Facts for the July 1, 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. 12975 – John Skibinski and Letitia Long seeks variances from the rear yard setback requirement for proposed structures (Section 115-34 of the Sussex County Zoning Code). The property is located South of Bay Reach within the Country Manor Pine Bay Subdivision. 911 Address: 35 Bay Reach, Rehoboth Beach. Zoning District: MR. Tax Parcel: 334-20.00-51.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received

two (2) letters in support of the Application, zero letters in opposition of the Application, and two (2) mail returns. The Applicants are requesting a 10 ft. variance from the 20 ft. rear yard setback for a proposed deck.

Mr. John Skibinski and Ms. Letitia Long were sworn in to give testimony for this application.

Mr. Skibinski testified that he and his wife are the owners of 35 Bay Reach in Rehoboth Beach; that this request is to improve the condition of the home and to improve the utility of the home for his progressing leg disability; that he would go through the Power Point slides to show the home and what is being requested; that his wife would address the criteria for the requested variance; that the Applicants bought the property in March 2023 and the house was built in 1996; that the house suffered from poor maintenance over the past 15 years; that the decking and side of the house were replaced due to wood rot; that there is a 2 foot tall retaining wall behind the house; that he plans to demolish the side entrance and porch due to wood rot; that the side deck encroaches into the setback area now; that he plans to move the deck outside the setback area; that the side deck will connect to the rear deck; that one or two piers may need to be in the setback area; that the proposal will reduce the distance from the wetlands; that the structure will be 18 inches to 42 inches from the wetlands; that this will result in a net increase of 5 square feet; that the Applicants are removing a door and placing it in the rear yard; that they are adding an elevator where the current side door is located; that the triangular part of the deck will be in the setback area as that area is needed for clearance for the door and cannot be narrower; that they also need a 36 inch clearance to meet ADA rules; that the homeowners association is aware of the request and will render a decision after the Board decides on this application; that the neighbors support the request; and that the property slopes to the wetlands.

Ms. Long testified that the property is unique because the lot is not as deep at the neighboring lots; that the wetland line is not straight and projects farther into the property than on neighboring lots; that the house was build right up to the setback lines in front and back; that there is no room to adapt the house to the requirements to accommodate disabled access; that wheelchair clearances will be necessary; that this is the most feasible design for access by persons with disabilities; that the house was built in 1996 and not adequately maintained; that there is extensive wood rot; that the Applicants purchased the home in 2023 and, because an elevator will be needed, the back door has to be relocated; that granting the variance will not alter the essential character of the neighborhood because the replacement stairs will have little, if any, visibility from the street; that the neighbors have no objection; that the improvements to the home will improve the home and be of benefit to the neighbors and the neighborhood's character; that the proposal has been discussed with the homeowners association and the Applicants will seek homeowner association approval; that this variance is the minimum variance to afford relief to allow for wheelchair access; that the replacement deck connection will be between 18" – 44" farther away from the wetlands line; and that the total additional area is only 5 ft.

Mr. Skibinski testified that contractors informed him that this was the only way to provide ADA access to the home.

Mr. Harvey Fruman was sworn in to give testimony in support of this application.

Mr. Fruman testified that he is a neighbor of the Applicants; that all the proposed improvements would be within his view; that the Applicants are respectful of the property and the adjacent wetlands; and that he supports the Application.

Ms. Norwood stated that the variance needed is 10.4 feet from the 20 feet rear yard setback requirement.

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. Williamson moved to approve the Application for Case No. 12975 for the requested variance, pending final written decision, for the following reasons:

1. The property has unique physical conditions due to the wetlands to the rear;
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 variance will not alter the essential character of the neighborhood; and
4. The variance represents the minimum variance necessary to afford relief.

As part of his motion, Mr. Williamson conditioned the approval on the Applicants providing the Office of Planning & Zoning with written notice of HOA approval of the variance.

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.

Case No. 12984 – Arbor Lyn Rehoboth Beach, LLC seeks variances from the front yard setback requirements for an existing structure (Section 115-188 of the Sussex County Zoning Code). The property is located Southeast of American Holly Road and Southwest of Beech Tree Lane within the Arbor Lyn Subdivision. 911 Address: 19284 American Holly Road, Rehoboth Beach. Zoning District: MR. Tax Parcel: 334-12.00-127.02-92 Unit 92

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 two mail

returns. The Applicant is requesting a 2.15 ft. variance from the 16.75 ft. minimum front yard setback requirement for the unit.

Dr. Carson recused himself and left the Council Chambers.

Mr. John DiStefino, Mr. Dan Ayers, and Mr. Kenneth Usab were sworn in to give testimony for this application.

Mr. DiStefino, production manager for Schell Brothers, testified that he was present to introduce Mr. Ayers, engineer from Morris & Ritchie Associates to explain the requested variance.

Mr. Ayers testified that Arbor Lyn is a single-family condominium development; that the record plan for Arbor Lynn calls for a 16.75 ft. front yard setback; that the home that was constructed on Lot 92 features a box bay window on the front that contains a window seat and is supported by a concrete foundation; that the plan, which was prepared by his firm, did not correctly show the bay window; that the bay window extends over the 16.75 ft. line; that he is responsible for the error in the home placement; that the request is to move the setback line to 14.6 ft. for the window; that there have been no complaints about the bay window; that, when it was drawn, the engineer did not consider the window as being the face of the unit but the wall behind it; that the wall of the home meets the 16.75 ft. setback; that the units have generally being set forward to maximize the outdoor space in the rear; that they are compact lots; that the box bay window was not identified as an issue until the construction of the home was complete; that the property cannot otherwise be developed; that the homeowner did not create this issue and that the Applicant did not intentionally shift the home to reduce the distance to the private right-of-way; that the location of the home does not affect the use of any adjacent unit; that it is the minimum variance to afford relief and allow the box bay window to remain in its current location; and that most of the house is outside the setback area

Mr. DiStefino testified that that the owners of the home are currently renting the home while this is resolved; that a temporary Certificate of Occupancy has been obtained; that, if the window has to be removed, the owners would be displaced while the work is being done; that it was discovered on the final survey prior to settlement that there was an encroachment; that HOA approval is not required; that there have been no complaints about the encroachment; that the encroachment is just on this lot; and that there are 22 homes still to be built and this error will not occur again.

Mr. Sharp stated that, if the bay window did not have a foundation, it would be permitted to extend 2 ft. into the front yard setback per Sussex County Zoning Code.

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

Mr. Chorman closed the public hearing.

Mr. Hastings moved to approve the application for Case No. 12984 for the requested variance, pending final written decision, for the following reasons:

1. The property has unique physical conditions due to the compact lot;
2. The exceptional practical difficulty was not created by the homeowners;
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. Hastings, seconded by Mr. Williamson, carried unanimously that the **variance be granted for the reasons stated**. Motion carried 3 – 0.

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

Dr. Carson returned to the dais.

Case No. 12988 – William Powell seeks variances from the side yard setback requirement for an existing structure (Section 115-25 of the Sussex County Zoning Code). The property is located East of Parker Road. 911 Address: 38481 Parker Road, Millsboro. Zoning District: AR-1. Tax Parcel: 333-15.00-21.09

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 2.6 ft. variance from the 15 ft. side yard setback on the south side for an existing structure.

Mr. William Powell was sworn in to give testimony for this application.

Mr. Powell testified that he purchased the property in 2018; that there was no pole barn on the property; that, in October 2018, he hired Delmarva Pole Buildings to build a 24 ft. x 24 ft. pole barn with a concrete floor and an overhang; that the contractor informed them that they were in compliance with everything; that, when he put the property up for sale this year, it was discovered that the front right of the pole building is into the setback; that they put some money in escrow for the buyers and moved forward with the sale; that he offered to present the request for a variance; that the pole building was built on an angle; that, if the pole building was built straight, no variance would be needed; that the property is next to a gun range; that there is no homeowners association; that there have been no complaints about the structure; that the septic system is located on the north side of the property; that the well is located on the south side of the lot; that the well, drain field, and septic system prevent the pole building from being moved; that the pole building has an upstairs loft; that there is no attic in the house; and that there is a ditch on the south side of the property.

Mr. Sharp asked Ms. Norwood to confirm the requested variances.

Ms. Norwood stated that there are two variances necessary from the 15 feet side yard setback requirement on the south side, a 2.6 ft. at the front of the garage and a 1.0 ft. at the rear of the garage on the south side of the property.

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

Mr. Chorman closed the public hearing.

Mr. Williamson moved to approve the application for Case No. 12988 for the requested variances, pending final written decision, for the following reasons:

1. The exceptional practical difficulty was not created by the Applicant;
2. The variances will not alter the essential character of the neighborhood; and
3. The variances represent the minimum variances necessary to afford relief.

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

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

Case No. 12989 – Sea Air Village seeks variances from the separation distance requirement for proposed structures (Section 115-187 of the Sussex County Zoning Code). The property is located Northwest of Delaware Avenue within the Sea Air Village Manufactured Home Park. 911 Address: 20044 Delaware Avenue, Rehoboth Beach. Zoning District: AR-1. Tax Parcel: 334-13.00-310.00-15868 Lot K60

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 thirty (30) mail returns. The Applicant is requesting the following variances:

- 3 ft. variance from 20 ft. separation distance for proposed manufactured home to the existing HVAC on Lot K62;
- 0.4 ft. variance from 20 ft. separation distance for proposed manufactured home to the existing manufactured home on Lot K62;
- 12.6 ft. variance from 20 ft. separation distance for proposed shed to the existing manufactured home on Lot K62;
- 9.1 ft. variance from 20 ft. separation distance for proposed shed to the existing manufactured home on Lot L59;
- 12.3 ft. variance from 20 ft. separation distance for proposed manufactured home to the existing manufactured home on Lot L59;

- 12.8 ft. variance from 20 ft. separation distance for proposed manufactured home to the existing shed on Lot L59;
- 4.5 ft. variance from 20 ft. separation distance for proposed HVAC to existing manufactured home on Lot K58; and
- 1.7 ft. variance from 20 ft. separation distance for proposed manufactured home to the existing manufactured home on Lot K58

Ms. Aimee Bennett was sworn in to give testimony for this application.

Ms. Bennett testified that the property is very narrow and the narrowness creates a difficulty placing the manufactured home; that this lot was laid out in the community prior to the current zoning requirements for separation distances; that the lot size is small in comparison to the modern manufactured homes; that proposed mobile home size almost mirrors the home that it is replacing; that the previous build out of the surrounding lots makes it difficult develop the property within compliance of the Sussex County Zoning Code; that neighboring HVAC unit and home on Lot K62 encroach into the 5 ft. setback and the home and shed on the lot to the rear both encroach; that the proposed manufactured home and shed are consistent with the other homes and sheds in the community; that the variances are necessary to enable reasonable use; that, without the variances, the property cannot be developed; that the circumstances were not created by the Applicant due to the neighboring lots encroaching and narrowness of the lot; that the unit that was on this site was a 1979 home that was abandoned by the prior owner; that the variances will not alter the essential character of the neighborhood; that the proposed home would assist with modernizing the neighborhood; and that these variances are the minimum variances required to replace the defunct 1979 home with a new home while reducing the number of existing violations on the home.

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 approve the application for Case No. 12989 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique physical conditions;
2. The variances will not alter the essential character of the neighborhood; and
3. The variances represent the minimum variances necessary to afford relief.

Motion by Dr. Carson, seconded by Mr. Hastings, carried unanimously that the **variances 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. 12991 – Whiskey Ridge Shooting Preserve seeks a special use exception for a shooting range (Section 115-23 of the Sussex County Zoning Code). The property is located East of Parker Road. 911 Address: 38149 Parker Road, Millsboro. Zoning District: AR-1. Tax Parcel: 333-15.00-37.00

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 one mail return. The Applicant is requesting a special use exception to operate a Shooting Range for a period of five (5) years. There was a previous approval granted on April 15, 2019, for a special use exception for a period of five (5) years.

Mr. Tim Willard, Esq., appeared on behalf of the Applicant.

Mr. Willard stated that he represents Joseph and Janet Kansak who are the owners of the Whiskey Ridge Shooting Preserve; that Mr. Kansak is a retired Wilmington police officer; that he has a security business; that this special use exception was approved in 2019; that they are requesting approval as there are no changes to the original request; that the total property is approximately 200 acres; that they also have a shooting preserve license; that there is hunting on the property which is separate from the shooting range; that the preserve has been in operation since 1998 and is licensed through the Department of Natural Resources and Environmental Controls (“DNREC”); that the nearest residence on Parker Road is 1,440 ft. away from the range with 960 ft. of heavy woods separation; that the nearest residence on Fireman’s Road is 1,500 ft. away with 300 ft. of heavy woods separation; that the nearest residence on Bethel Road is 2,400 ft. away with 1,200 ft. of heavy woods separation; that the berm is U-shaped and is approximately 20 ft. in height; that there have been no complaints; that concealed carry permit classes are conducted at this location; that they provide services for Fenwick Police Department in addition to Ocean View and Milford police departments; that the range holds up to 14 shooters and classes are held between the hours of 10:00 am – 4:00 pm; that most of that time is in the classroom; that lead remediation plan was required at the last public hearing; that the same plan is being implemented at the range; that brass is picked up at all sessions; that there is vegetative cover for the berm to keep it in tact; that the Applicant follows best practices for brass and lead remediation and recycles the brass and lead; that the Applicant runs 1-2 classes per month; that the range provides a service to the County; that the range uses cardboard targets; and that, for all those reasons, the application does not adversely affect the neighboring and adjacent properties.

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

Mr. Kansak testified that, since the pandemic, that they are not doing as much business now as they were before the pandemic; that they use cardboard targets which get burned on the property with a screen over the top; and that the guns used are from 22 calibers up to 50 caliber.

Ms. Librada Famiglietti was sworn in to give testimony in support of the Application.

Ms. Famiglietti testified that she came to the meeting because she wanted to know if there were going to be any changes to the gun range; that, before she bought her house in 2007, she came to the property to hear how loud it would be; that she has no issues with the range; and that they have trees all around the property which reduce the noise.

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. Williamson moved to approve the application Case No. 12991 for the requested special use exception for a period of five (5) years, pending final written decision, because the special use exception will not substantially affect adversely the uses of neighboring and adjacent properties.

Motion by Mr. Williamson, seconded by Mr. Hastings, carried unanimously that the **special use exception be granted for a period of five (5) years 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 7:20 p.m.