

MINUTES OF JULY 10, 2023

The regular meeting of the Sussex County Board of Adjustment was held on Monday, July 10, 2023, 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 Jeffrey Chorman presiding. The Board members present were Dr. Kevin Carson, Mr. John T. Hastings, Mr. Jordan Warfel, Mr. John Williamson – absent, 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. Amy Hollis – Recording Secretary.

The Pledge of Allegiance was led by Mr. Chorman.

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

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

Motion by Mr. Warfel, seconded by Mr. Hastings and carried unanimously to approve the Minutes for the May 1, 2023, meeting. Motion carried 4 – 0.

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

Motion by Mr. Hastings, seconded by Dr. Carson and carried unanimously to approve the Findings of Facts for the May 1, 2023, meeting. Motion carried 4 – 0.

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

Motion by Dr. Carson, seconded by Mr. Warfel and carried unanimously to approve the Minutes for the May 15, 2023, meeting. Motion carried 4 – 0.

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

Motion by Mr. Warfel, seconded by Dr. Carson and carried unanimously to approve the Findings of Facts for the May 15, 2023, meeting. Motion carried 4 – 0.

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

ADDITIONAL BUSINESS

Annual Reorganization

Ms. Norwood opened nominations for Board Chairman.

Ms. Norwood called for nominations for Chair.

Mr. Hastings nominated Mr. Chorman for Chair, seconded by Dr. Carson.

There were no other nominations.

Ms. Norwood closed the nominations.

The vote was 3-0 in favor.

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

Mr. Chorman called for nominations for Vice-Chair.

Dr. Carson nominated Mr. Hastings as Vice-Chair, seconded by Mr. Warfel.

There were no other nominations.

Ms. Norwood closed the nominations.

The vote was 3-0 in favor.

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

Mr. Chorman called for nominations for Board Secretary.

Dr. Carson nominated the Director of Planning & Zoning, Assistant Director of Planning and Zoning, or his/her designee as Board secretary, seconded by Mr. Warfel.

There were no other nominations.

The vote was 4-0 in favor.

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

Discussion Regarding Telephonic Participation

The Board discussed the possible removal of the telephonic participation option that was imposed during the Covid-19 pandemic.

The Board concluded that they would continue the discussion to the next meeting on August 7, 2023.

OLD BUSINESS

Case No. 12829 – Jeremy E. and Crissy L. Maddox seek a variance from the lot area requirement for an existing lot (Sections 115-25 of the Sussex County Zoning Code). The property is located on the northwest side of Sunnyside Road approximately 1,730 ft. west of Sharps Mill Road. 911 Address: 10525 Sunnyside Road, Bridgeville. Zoning District: AR-1. Tax Map: 430-15.00-1.05

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 Applicants request a variance of 0.0400-acre from the 32,670-square foot minimum lot size requirement. The record was previously left open for the submission of the survey to show the new structures on the property.

The Board reviewed the submitted survey and had limited discussion.

Mr. Hastings moved to approve the application for Case No. 12829 for the requested variances, pending final written decision, for the following reasons:

1. The exceptional practical difficulty was not created by the Applicants;
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. Hastings, seconded by Dr. Carson, carried that the **variances be granted for the reasons stated**. Motion carried 4 - 0.

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

PUBLIC HEARINGS

Case No. 12842 – Anthony R. Noble seeks variances from the side and rear yard setback requirement for a proposed structure (Sections 115-25, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located on the northwest side of Fleatown Road approximately 1278 ft. west of Clendaniel Pond Road. 911 Address: 19375 Fleatown Road, Lincoln. Zoning District: AR-1. Tax

Parcel: 230-13.00-121.09

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 a variance of 5 feet from the 15 feet side yard setback requirement on the east side for a proposed pole building and a variance of 10 feet from the 20 feet rear yard setback requirement for a proposed pole building.

Mr. Anthony R. Noble was sworn in to give testimony on this application.

Mr. Noble testified that he is looking to build a pole building; that, during the process of looking at different builders and contractors, he was told that his setback was 10 ft. which determined the size of the building; that, when he ultimately went with a different builder, he was told to get the permit; that the permit was issued with different setbacks that indicated he had to be 15 ft. from the side and 20 ft. from the rear; that, with the new setbacks provided, he would not be able to place the building due to the location of the existing septic system; that he bought the house 3 years ago; that measuring 20 ft. off the rear and 15 ft. off the side would put the building right on the septic line and the back of the house; that the proposed building will be 40 feet by 50 feet; that the building will be used to store his boat, RV, and truck; that, if he had to go smaller he probably would not build a building; that he submitted his building plans with the Application; that he has spoken with the neighbors and no one has a problem; that there are two porches off the building; that one porch faces the rest of the yard and the other is for coverage from rain; that the building will be 3 ft. from the house; that he could not go any closer to the house without removing the lean-to; that how he sees it in his mind and how it is laid out it just seems close to the house; that the building will be 14 ft. tall; that he just wants to make sure that he is doing everything the right way; that he has spoken with several different contractors that have all told him different things; that, after they measured everything out so that it would fit and obtained the permit, they found out that they could not build it within the guidelines of the permit; that he could possibly eliminate the lean-to on the front side; that he is going to call the builder and review what they can do to make this fit with the least variance possible; and that he is going to propose to remove the lean-tos and see what they can do to go smaller or not go at all.

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

Mr. Chorman closed the public hearing.

Mr. Warfel moved to leave the record open until the Board's meeting on August 7, 2023, for Case No. 12842 to allow the Applicant an opportunity to consult with his builder about his options.

Motion by Mr. Warfel, seconded by Mr. Hastings, carried that the **record be left open for the reasons stated**. Motion carried 4 - 0.

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

Case No. 12844 – Mangala Kuppa and Sabyasachi Bain seek variances from the side yard setback requirements for a proposed addition to an existing structure (Sections 115-34, and 115-183 of the Sussex County Zoning Code). The property is located on the southeast side of Gooseberry Avenue within the Lighthipe Subdivision. 911 Address: 34233 Gooseberry Avenue, Ocean View. Zoning District: MR-RPC. Tax Parcel: 134-17.00-1057.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of and no correspondence in opposition to the Application, and zero mail returns. The Applicants are requesting variances of 6 feet and 7 feet from the 10 feet side yard setback requirement on the north side.

Ms. Mangala Kuppa and Mr. Sabyasachi Bain were sworn in to give testimony about their application.

Ms. Kuppa testified that they are seeking to build an ADA complaint bathroom for her son; that the house currently has a regular bathroom; that they need to build a roll-in shower and a wheelchair accessible bathroom for her son; that the house has a slab foundation; that one of the contractors they sought an inquiry from basically said that they cannot build a roll-in shower as there would still be kind of an obstacle to accessing the shower; that they were advised to build a bathroom on the outside of the existing foundation rather than remodel the inside of the existing bathroom; that they have space in the back of the lot but the grading of the lot is such that if you were to build a bathroom it would be almost impossible or very expensive; that the suggestion by the contractor was to build it on the front left side; that the lot is wider in the front and narrower in the back; that her son's room is on the left side of the house; that they are hoping to connect the bathroom to his bedroom for privacy; that they need a minimum of 10 feet by 10 feet due to the requirements of the ADA bathroom including a 2% lift and the ability to navigate around; that they are hoping to build in the front where they have a wider setback; that, even with more room, they still have no choice but to encroach into the setback for the size bathroom that they need; that they have no intentions for any other encroachments into the setbacks; that the neighbor on that side is her sister and she wrote a letter of support; that she and her sister bought the homes together to retire here in the future; that there is a homeowners association but they need to be approved for the variance first before getting building plans and submitting to the HOA; that they have to comply with the HOA in terms of aesthetics and things like that; that the house is brand new; that they have public sewer and water; that they do not have an option of building on the right side because the setbacks are very similar and it makes more sense to build on the right side because of the sewer line placement and proximity to her son's bedroom; that the way the lot is shaped allows them more building room the farther back on the lot you go; that there is a sprinkler system that may also have to be moved; that they are hoping that whoever is building their addition would be able to make ideal use of the variance and make sure that it never exceeds that; and that this is

a community of single-family homes, of which some are older and some are newer, and they seem to sit differently on the lots depending on the age.

Mr. Bain testified that they either have to build at the back of the house where the grading is not there or along the side but they are restricted due to the placement of the existing sewer lines; that the side property is much easier for them to tap into the existing lines; that they are asking for 3 ft. parallel to the existing building line and 4 ft. for the other side of the addition; and that they submitted a picture to show the proposed location of the addition.

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

Mr. Chorman closed the public hearing.

Mr. Warfel moved to approve the application for Case No. 12844 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to the shape of the lot and the grading in the rear;
2. That, due to the physical conditions, the property cannot be developed in strict conformity with Sussex County Zoning Code, and the variances are necessary to enable the reasonable use of the property;
3. The exceptional practical difficulty was not created by the Applicants;
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 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. Warfel – yea, and Mr. Chorman – yea.

Case No. 12845 – Richard E. and Doris J. Martin seek variances from the maximum fence height requirement for a proposed fence (Sections 115-25, 115-182, 115-184, and 115-185 of the Sussex County Zoning Code). The property is located on the corner of Nautical Court and Hatteras Drive within the Pelican Point Subdivision. 911 Address: 30506 Nautical Court, Millsboro. Zoning District: AR-1. Tax Parcel: 234-16.00-1482.00

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 Applicants are requesting a variance of 0.5 feet from the 3.5 feet tall fence height requirement

Mr. Richard E. Martin and Ms. Doris J. Martin were sworn in to give testimony for this application.

Mr. Martin testified that he and his wife are new owners in the Pelican Point Subdivision; that they are proud to be new members in the State of Delaware; that the property they just purchased does not have a fence; that they got a quote from a fence company and submitted to the architectural review committee; that the committee had questions about fencing along side streets and with their permission he reached out to the County to get information regarding the construction of fences; that aside from adding to the equity in the property and maximizing the use, the purpose of the fence is for the safety and security of their dog and grandchildren when they are visiting; that the regulation, as they understand it, is that along Hatteras, which is the long side of their property, there is a 15 ft. setback where the maximum fence height is 3.5 ft.; that they are planning to install a 4 ft. high fence per the regulations in the subdivision and that is what they have designed; that safety is the most important aspect of the fence to them; that they submitted an aerial image showing the location of the fence and how it lines up with the neighbors' fences which are already in existence; that the proposed fence does not detract from the neighborhood; that the fence will not block any views for drivers; that they believe a 6 inch increase in height for the fence will not hurt anything; that the proposed fence will be black aluminum in material; that they do not like solid fences; that there are many fences similar in the neighborhood; that they have a 6 ft. minimum easement between their property and the neighbors which will separate their fence from the neighbors and allow for maintenance; that they found they needed a variance after speaking with both their architectural review committee and the County; that he learned from the County that there is not a setback restriction but rather a height restriction for fences; that the HOA does not allow for front yard fences and there is point on the house that they cannot exceed; that they do not have plans for installing a pool; that he is also concerned about the fence being lower than 4 ft. and the placement along the road for safety of both their dog and their grandchildren; that they want to do this right and not build a fence to have to take it down or move it; that it is his understanding that their adjacent neighbor got a permit and a CO for his 4 ft. high fence; that their HOA has a 4 ft. maximum height for fences; that, from looking around the neighborhood, there are no fences less than 4 ft.; that the fence would be located 4 – 4.5 ft. from the sidewalk; and that, after this process, he will be going back to their architectural review committee with their design.

Ms. Martin testified that they are asking for a 4 ft. fence on all sides; that aesthetically the 6-inch difference is a big deal to them; that all other homes in the neighborhood have 4 ft. high fences which would make them the odd house out; that they want their property to be consistent with the rest of the neighborhood; that they looked at other corner lots in the community and they are all 4 ft.; that it is a lot of money to install a fence and they do not want to waste it; that there is a possibility that their dog would be able to jump over a 3.5 ft. fence; and that their dog is a goldendoodle.

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. 12845 for the requested variance, pending final written decision, for the following reasons:

1. The variance will not alter the essential character of the neighborhood; and
2. The variance represents the minimum variance necessary to afford relief.

Motion by Dr. Carson, seconded by Mr. Hastings, carried that the **variance be granted for the reasons stated**. Motion carried 4 - 0.

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

Meeting adjourned at 7:24 p.m.