

MINUTES OF MAY 6, 2024

The regular meeting of the Sussex County Board of Adjustment was held on Monday, May 6, 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 Vice-Chairman John T. Hastings presiding. The Board members present were Dr. Kevin Carson, Mr. John T. Hastings, and Mr. John Williamson. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Ms. Jennifer Norwood – Planning and Zoning Manager, and Ms. Marina Truitt – Recording Secretary.

The Pledge of Allegiance was led by Mr. Hastings.

Motion by Dr. Carson, seconded by Mr. Williamson and carried unanimously to approve the agenda. Motion carried 3 – 0.

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

Motion by Mr. Williamson, seconded by Dr. Carson and carried unanimously to approve the Minutes for the March 4, 2024, meeting. Motion carried 3 – 0.

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

Motion by Dr. Carson, seconded by Mr. Williamson and carried to approve the Findings of Facts for the March 4, 2024, meeting. Motion carried 3 – 0.

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

PUBLIC HEARINGS

Case No. 12931 – Jason D. Giles seeks variances from the corner front and rear setback requirements for a proposed addition to an existing shed (Section 115-34 of the Sussex County Zoning Code). The property is located Northeast of Fisher Street and Southeast of Anna B Street within the Dodd's Addition Subdivision. 911 Address: 38274 Anna B Street, Rehoboth Beach. Zoning District: MR. Tax Parcel: 334-20.09-69.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of the Application, zero letters in opposition of the Application, and one (1) mail return. The Applicant is requesting a 9.34 foot variance from the 15 foot corner front yard setback and a 2.96 foot variance from the 5 foot rear yard setback requirement for an existing shed and proposed addition to shed. An administrative correction variance was issued for the non-conforming, existing dwelling and decks that have been on record since 1948 and for a second-floor deck that was built in 2019. Ms. Norwood noted that the existing shed is also non-conforming.

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

Mr. Giles testified that he has owned the property for 5 years; the lot is small, measuring at 100 feet by 50 feet; that the small cottage on the property is being renovated; that the existing shed is non-conforming; that, when building the addition, they will not be building any closer to the road than the current shed is; that the original shed was on the property when the house was purchased; that the shed will be used for the storage of bikes, trash cans, and other belongings; that the proposed addition will be attached to the existing shed; that the plan is to remodel the proposed and existing shed to match the house; that they would not be able to do an additional shed next to the existing shed due to hardscaping and landscaping; that he grew up in the neighborhood and the shed was there when he was a child; that he is 52 years old; that there is public water and sewer to the property near the intersection; that the existing shed is rotting and the doors need to be replaced; that the shed and addition will provide privacy to the rear yard; that there will not be any visibility issues created with the proposed addition; that the addition will be away from the intersection; that there is roughly 12 feet from the edge of pavement; that there have not been any complaints in regards to the proposed shed addition; that there is no HOA, so no need for HOA approval; that there is no garage on the property; and that there are trees in the northeast corner of the lot which have historical meaning as they were planted by neighboring families years ago.

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

Mr. Hastings closed the public hearing.

Dr. Carson moved to approve the variances for the application Case No. 12931 for the requested variances, pending final written decision, for the following reasons:

1. The variances will not alter the essential character of the neighborhood; and
2. The variances sought are the minimum variances necessary to afford relief.

Motion by Dr. Carson, seconded by Mr. Williamson, carried that the **variances be approved for the reasons stated**. Motion carried 3 – 0.

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

Case No. 12932 – Scott and Sue Henry seek variances from the front and rear yard setback requirement for existing structures (Section 115-34 of the Sussex County Zoning Code). The property is located North of Chippiwa Drive and South of Creek Road within the Blackwater Village Subdivision. 911 Address: 34011 Chippiwa Drive, Dagsboro. Zoning District: MR. Tax Parcels: 134-11.00-396.00

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 seeking a 3 foot variance from the 30 foot front yard setback requirement for an

existing porch and a 5.5 foot variance from the 30 foot front yard setback requirement for the existing stairs. Ms. Norwood noted that a rear yard variance was not needed and that the existing shed is compliant with the Code.

Mr. Sharp noted that only three (3) board members are present, one (1) of whom has a conflict with the case; that the Board will not be able to have a quorum necessary to hear this case; that no testimony will be heard from the Applicants; and that the record should be left open and placed first on the agenda for the meeting of May 20, 2024.

Dr. Carson moved to leave the record open and to place the Application on the agenda for the May 20, 2024, meeting.

Motion by Dr. Carson, seconded by Mr. Williamson, carried that the **record be left open and placed on the agenda for the May 20th Board meeting**. Motion carried 3 – 0.

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

Case No. 12933 – Larry Hayes seeks a variance from the side yard setback requirement for a proposed structure (Section 115-34 of the Sussex County Zoning Code). The property is located East of Kelly Lane within the Breakwater Beach Subdivision. 911 Address: 29339 Kelly Lane, Bethany Beach. Zoning District: MR. Tax Parcel: 134-5.00-438.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support or opposition to the Application, and zero mail returns. The Applicant is seeking a 10 foot variance from the 10 foot side yard setback requirement on the south side for a proposed structure.

Mr. Larry Hayes was sworn in to give testimony for this application.

Mr. Hayes testified that he is requesting a variance to build a boardwalk and stairs leading to the community beach crossing ramp; that, due to his wife's medical needs, an access ramp / stairs would be an aid; that the property is unique due to the community beach access ramp being directly next to their home; that the setback requirements hinder developing access to the ramp; that they did not create the issue; that the ramp was placed by the community; that the proposed structure will not alter the essential character of the neighborhood due to many neighboring properties having the same boardwalk / stair combination; that the boardwalk / stair combination was designed with the minimum variance needed in mind; that, if they do not install the boardwalk / stairs, they will have to walk out of their home and down the street to access the community ramp; that the HOA has already given approval; that there is no permission needed to tie into the ramp access; that the ramp is roughly 6 feet above ground level; that the outdoor shower is in the rear yard; and that there is no other way to safely access the community ramp without the boardwalk / stairs.

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

Mr. Hastings closed the public hearing.

Mr. Williamson moved to approve the application for Case No. 12933 for the requested variance, pending final written decision, for the following reasons:

1. The Property has unique physical conditions;
2. The exceptional practical difficulty was not created by the Applicant and that, in particular, the Applicant did not select where the boardwalk was placed;
3. The variance will not alter the essential character of the neighborhood; and
4. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Williamson, seconded by Dr. Carson, carried that the **variance be approved for the reasons stated**. Motion carried 3 – 0.

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

Case No. 12934 – John R. Vitalo Jr. seeks variances from the front and corner front yard setback requirements for a proposed structure (Section 115-42 of the Sussex County Zoning Code). The property is located Southeast of 1st Street and Southwest of North Drive within the Tru Vale Acres Subdivision. 911 Address: 501 1st Street, Rehoboth Beach. Zoning District: GR. Tax Parcel: 334-13.00-63.02

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support or opposition to the Application, and zero mail returns. The Applicant is requesting a 19.8 foot variance from the 30 foot front yard setback requirement for a proposed deck, a 13.2 foot variance from the 30 foot front yard setback requirement for a proposed screen porch, and a 2.4 foot variance from the 15 foot corner front yard setback requirement for proposed steps. Ms. Norwood noted that an administrative correction was issued for the existing shed that was permitted and issued a certificate of occupancy and that there was a Board of Adjustment application approved in 2006 for variances from the front and side yard setbacks requirements for the mobile home.

Mr. John Vitalo was sworn in to give testimony for this application.

Mr. Vitalo testified that he purchased the house in September 2023; that he was unaware of what was considered his front versus corner front yard when he received his survey; that there is currently a 6 foot platform used as a walkway as shown on the survey; that, with the property being a corner lot and having increased setback requirements, it makes it difficult to add onto the house; that the area proposed for the deck / porch is the only feasible spot on the property to place it; that he purchased the lot with the mobile home and shed already on the property; that, when planning to build

the deck / porch, he proposed to build a larger structure but ultimately reduced the size to reflect the minimum variance needed to suit their needs; that reducing the original size would keep it proportionate to the size of the lot and house; that the proposed structure will not inhibit the sightline of vehicles from the roadway; that the only concern from a neighbor was that the tree line would be kept intact; that there is a well located on the side of the property closest to 1st Street and the sewer line runs along North Drive which sewer line will not be covered by the proposed structure; that the thought of moving / recessing the steps to the North Drive side had not crossed his mind to aid in reducing the variance request; that he considers the 1st Street side of the property as the front yard and driveway; that there is roughly 13.6 feet between the edge of pavement and the property line on 1st Street and roughly 15 feet between the edge of pavement and the property line on North Street; that he now realizes that the easement does not count as part of his driveway or property; that deck / porch is needed to aid in the use of outdoor enjoyment for him and his family; that, because of the gravel easements, parking is not an issue throughout the community; that he is not aware of any other properties that have structures within 10 feet of the property line; that there is no homeowners association approval needed; that the patio on the property will be removed; that the deck was proposed to eliminate the need for steps into the house and to also be used as storage since there is no attic or garage area; and that there are other properties with similar structures in the community.

Mr. Sharp stated that the front yard setback is 30 feet and the corner front yard setback is 15 feet; that, when the County deemed that North Drive was the front yard and that 1st Street was the corner front yard, it was to the Applicant's benefit because it allowed more of the property to be developed than it would otherwise; that the setbacks given enabled the Applicant to have a much larger building envelope than if the front yard was considered 1st Street; that, otherwise, the structure would have to be 30 feet from 1st Street; that it appears that a significant amount of the property is developed or is proposed to be developed; that there is question as to where the Applicant could park vehicles on the property and not in the easement if the structures were built as proposed; that there is roughly 15 feet of property along 1st Street to park if the structure was constructed; that the proposed structure would be effectively eliminating the off-street parking; and that previous variances approved for the property were prior to the approval of the Small Lot Ordinance which reduced some of the side yard and rear yard setbacks for smaller lots.

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

Mr. Hastings closed the public hearing.

Dr. Carson moved to deny the application for Case No. 12934 for the requested variances, pending final written decision, because the exceptional practical difficulty was created by the Applicant.

Motion by Dr. Carson, seconded by Mr. Williamson, carried that the **variances be denied for the reasons stated**. Motion carried 3 – 0.

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

Case No. 12935 – Joseph Ciarlo Jr. seeks variances from the front and rear setback requirements for existing structures (Section 115-82 of the Sussex County Zoning Code). The property is located Northeast of Coastal Highway and Southeast of Carolina Street within the Killens Addition Subdivision. 911 Address: 38436 Carolina Street, Rehoboth Beach. Zoning District: C-1. Tax Parcel: 334-20.09-187.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support or opposition to the Application, and zero mail returns. The Applicant is requesting a 3.2 foot variance from the 30 foot front yard setback requirement and a 3.1 foot variance from the 30 foot front yard setback requirement for a proposed addition. Ms. Norwood noted that staff added a 6.5 foot and 6.9 foot variance from the 10 foot rear yard setback requirement for an existing, nonconforming, attached garage was also needed and included.

Mr. Joseph Ciarlo was sworn in to give testimony for this application.

Mr. Ciarlo testified that the original house on the property was built by his grandparents and parents in 1949; that he and his siblings have taken it over and are expanding; that the remodel included removing a small screen porch and replaced with an addition that spans the length of the house; that, once the building started, they were not confident that they were building completely within the setback requirements; that the property was resurveyed and showed that they were over the front yard setback line; that the property is unique due to the property size being reduced from the Route One highway expansion; that Route One used to be a two-lane highway before it was expanded to four lanes; that other houses nearby are closer to Route One; that the addition will house 2 bedrooms, 3 bathrooms, a washroom, and sunroom; that, along with the addition, they are remodeling the kitchen and adding a propane stove; that the propane line and tank will be set in the backyard with its own setback requirements; that the remodel is situated around the proposed location of the propane tank; that the addition will not obstruct the visual line of sight for pedestrians or motorists; that the remodel is an asset to the essential character of the neighborhood; that the previous screen porch which was removed was 9 feet by 12 feet; that there is roughly 6 feet from the property line to the edge of pavement; that the Applicant owns up to the electrical box on the crosswalk as shown on the pictures; that there is 4 feet from the electrical box to the sidewalk; that the property consists of 2, 50'x100' lots; that one lot was originally the house and the other lot was the yard; that the original lot dimensions were much larger than the current dimensions due to the road expansion over the years; that the construction is no closer to Route One than the original screen porch which was removed; that DelDOT has taken more than 3 feet; that the edge of the addition falls in line with the front of other homes along the road; that the addition runs from the edge of the original screen porch to the southeast; and that the northeast corner of the property is where the propane tanks are located and are the only place the tanks can be located.

Mr. Ralph Timmons was sworn in to give testimony for this application.

Mr. Timmons testified that he is the builder of the home; that, when they felt that they were not building within the setback requirements, they got the property resurveyed, found that their measurements were off and put a hold on any further construction once the structure was closed in from the elements; that the current property size is smaller than the original due to the Route One highway expansion; that the structures will not present any sight problems and will have no effect on the neighborhood; and that he is in support of this application.

The Board found that one (1) person appeared in support of the Application and no one appeared in opposition of the Application.

Mr. Hastings closed the public hearing.

Mr. Williamson moved to approve the application for Case No. 12935 for the requested variances, pending final written decision, for the following reasons:

1. The variances will not alter the essential character of the neighborhood;
2. The variances will not substantially or permanently impair the appropriate use or development of adjacent properties; and
3. The use will not be detrimental to the public welfare.

Motion by Mr. Williamson, seconded by Dr. Carson, carried that the **variances be approved for the reasons stated**. Motion carried 3 – 0.

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

Case No. 12941 – Keystone Novelties Distributors seeks a special use exception for a temporary tent sale (Section 115-32 of the Sussex County Zoning Code). The property is located East of Cedar Neck Road and North of Bethany Loop within the Salt Pond Plaza Complex. 911 Address: 703 Bethany Loop, Bethany Beach. Zoning District: MR. Tax Parcel: 134-13.00-88.12

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received zero letters in support of the Application, two (2) letters in opposition to the Application, and zero mail returns. The Applicant is requesting a special use exception for a temporary tent sale with a three-year approval during the time period of June 21st to July 4th.

Mr. Rick Seery was sworn in to give testimony for this application.

Mr. Seery testified that they have a lease with the grocery store on site (Hockers) which gives the Applicant permission to place the tent in the proposed location; that the tent is not expected to impact traffic; that the tent will be contained in the parking area along the edge of the parking lot; that the parking lot is made of a permeable surface instead of concrete; that traffic cones will be used to

maintain a safe walking area for customers; that the tent setup will be very similar to the photos submitted; that the tent is 14 feet tall; that there is minor concern for the tent and product with a bar being nearby; that other locations within the parking lot were proposed to Hockers but the proposed placement is the spot picked by Hockers; that the tent was placed in the center of the parking lot to avoid sight line issues at the nearby intersection; that Hockers signed a one year lease agreement with the Applicant; that the hours of operation will follow the grocery store hours with a rough time frame of 9:00 am to 9:00 pm and from 9:00 am to 10:30 pm on July 3rd and 4th; that there will no noise associated with the use; that there are no outside loudspeakers; that lights are hung in the tent but not outside the tent; that there are no additional smells or vibrations coming from the tent; that the tent will be held down with a combination of staking and concrete weights; that the merchandise will be packed up in a storage container each night or the clerks will stay on-site to provide security; that roughly 3 cars per hour are expected the first week of the sale with the expected number growing to roughly 10 cars per hour closer to the end of the sale; and that the sale dates would be from June 21st to July 4th with tent set up 3 days prior and removal by July 10th.

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

Mr. Hastings closed the public hearing.

Dr. Carson moved to approve, with conditions, the application for Case No. 12941 for the requested special use exception, pending final written decision, because the proposed use will not substantially affect adversely the use of the adjacent or neighboring properties. As part of his motion, Dr. Carson included the following conditions:

1. The application was approved for three years;
2. The tent is permitted to be in operation from June 21 to July 4th each year; and
3. The tent may be set up no more than 3 days prior to June 21 and removed by July 10th.

Motion by Dr. Carson, seconded by Mr. Williamson, carried that the **special use exception be approved with conditions for the reasons stated.** Motion carried 3 – 0.

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

Case No. 12942 – Keystone Novelties Distributors seeks a special use exception for a temporary tent sale (Section 115-80 of the Sussex County Zoning Code). The property is located East of Roxana Road and South of Atlantic Avenue. 911 Address: 34960 Atlantic Avenue, Ocean View. Zoning District: C-1. Tax Parcel: 134-12.00-330.01

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received zero correspondence in support or opposition of the Application and zero mail returns. The Applicant is requesting a special use exception for a temporary tent sale with a three-year approval during the time period of June 21st to July 4th.

Mr. Rick Seery, who was previously sworn in, provided testimony for this application.

Mr. Seery testified that the Applicant has a one year lease for the property to operate the tent; that the landlord may do something with the space in the future; that the Hockers grocery store proposed for the tent to be setup closer to the gas pumps but the Applicant was hesitant to accept that location; that the proposed tent location was moved to an empty spot on the property that they plan to develop but no work is in progress at this time; that Hockers offered them a one year lease agreement; that the proposed tent location is stone with plenty of parking; that the location is out of the way and is not in any traffic lanes and it will not take up existing parking close to the stores; that the tent would be staked down; that the hours of operation are roughly 9:00 am to 9:00 pm following the operational hours of the grocery store and will be in operation from 9:00 am to 10:30 pm on July 3rd and 4th; that the only major difference with this case is that the tent will be staked down; that the tent will be 20 feet by 40 feet; that there will be lights hanging inside the tent but none outside; that there will be no speakers, no additional noise, and no smells or vibrations coming from the tent; that the merchandise will be packed up in a storage container each night or the clerks will stay on-site to provide security; and that the sale dates would be from June 21st to July 4th with tent set up 3 days prior and removal by July 10th.

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

Mr. Hastings closed the public hearing.

Dr. Carson moved to approve, with conditions, the application for Case No. 12942 for the requested special use exception, pending final written decision, because the proposed use will not substantially affect adversely the use of the adjacent or neighboring properties. As part of his motion, Dr. Carson included the following conditions:

1. The application was approved for one year;
2. The tent is permitted to be in operation from June 21 to July 4th each year; and
3. The tent may be set up no more than 3 days prior to June 21 and removed by July 10th.

Motion by Dr. Carson, seconded by Mr. Williamson, carried that the **special use exception be approved with conditions for the reasons stated**. Motion carried 3 – 0.

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

Case No. 12943 – Orlando and Evelyn Nieves seek variances from the side yard setback requirement for an existing addition (Section 115-25 of the Sussex County Zoning Code). The property is located Southwest of Comet Court within the Starlight Meadows Subdivision. 911 Address: 6 Comet Court, Milton. Zoning District: AR-1. Tax Parcel: 235-7.00-223.00

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 to the Application, and zero mail returns. The Applicants are requesting a 5.5 foot variance from the 15 foot side yard setback requirement on the north side for an existing addition / steps and a 5.7 foot variance from the 15 foot side yard setback requirement on the north side for an existing addition / steps.

Mr. Orlando Nieves was sworn in to give testimony for this application.

Mr. Nieves testified that he contacted a builder through Angie's List to build an addition on his house; that the contractor indicated that no building permits were required; that the contractor began working and never came back once the addition was partially completed; that there were other issues that the contractor caused; that the Applicants have now filed for a building and plumbing permit with an electrical permit coming next; that the property is located on a cul-de-sac; that the well is in the front of the house and the septic is in the rear yard which did not allow for the addition to be built behind the house; that there are woods in the rear yard as well; that no homeowner association approval was needed; that the neighbor most affected by the request supports the Application; that the addition will be used for the Applicants' daughter and son-in-law; and that there have not been any complaints from the neighbors.

Ms. Evelyn Nieves was sworn in to give testimony for this application.

Ms. Nieves testified that the house was built in 2011; and that just the steps, landing and corner of the addition needed a variance.

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

Mr. Hastings closed the public hearing.

Mr. Williamson moved to approve the application for Case No. 12943 for the requested variances, pending final written decision, for the following reasons:

1. The shape of the lot and the home being on a cul-de-sac makes this Property unique;
2. The exceptional practical difficulty was not created by the Applicants;
3. The variances will not alter the essential character of the neighborhood; and
4. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Williamson, seconded by Dr. Carson, carried that the **variances be approved for the reasons stated**. Motion carried 3 – 0.

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

ADDITIONAL BUSINESS

Meeting adjourned at 8:01 p.m.