

MINUTES OF SEPTEMBER 19, 2022

The regular meeting of the Sussex County Board of Adjustment was held on Monday, September 19, 2022, 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. Jeffrey Chorman, Mr. John T. Hastings, Mr. Jordan Warfel, 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, Mr. Chase Phillips – Planner, and Ms. Amy Hollis – Recording Secretary.

The Pledge of Allegiance was led by Mr. Chorman.

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

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

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

PUBLIC HEARINGS

Case No. 12737– Brian Vincent seeks variances from the front yard setback requirement and maximum fence height requirement for a proposed fence around a pool (Sections 115-25, 115-182, and 115-185 of the Sussex County Zoning Code). The property is a through lot located on the northeast side of Springwood Drive within the Lakewood Estates Subdivision. 911 Address: 29727 Springwood Drive, Millsboro. Zoning District: AR-1. Tax Parcel: 133-19.00-355.00

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 Applicant is requesting variances of 3.5 ft. and 2.5 ft. from the maximum height requirement of 3.5 ft. for a proposed fence in a front yard setback for a through lot along Lake View Road and variances of 0.5 ft. and 1.5 ft. from the maximum height requirement of 3.5 ft. for an existing metal fence and gate along Springwood Drive.

Ms. Norwood stated that there is no permit for the fence; that the house was built in 2005; that the garage was built in 2015; and that there is a 40 foot setback from Lake View Road.

Mr. Brian Vincent was sworn in to give testimony about the Application. Mr. Vincent submitted exhibits to the Board.

Mr. Vincent testified that he is trying to replace a fence; that he lives on a through lot; that, if

he knew then what he knows now, he would not have bought a through lot; that the pool is located at the 40 foot setback requirement and requires a fence; that, if the fence for the pool was placed in compliance with the Code, the fence would be on the patio; that the fence is a 6 ft. tall wooden fence and is beyond repair and needs to be replaced; that he will be replacing it with a vinyl fence; that the fence is currently 6 ft. tall but they are requesting to go to 7 ft.; that the fence is for the privacy of their pool because at the height it is now you can see over the fence into their pool; that the fence was not permitted prior as a portion is not on his property and he will be correcting that; that the front fence is not in compliance with the setback due to the height being 4 ft. which he does not want to change; that the rear portion of the fence is requested to be 7 ft. high but it will only be along the portion that abuts to the road and will go back to 6 ft. along the sides; that the fence does not block any views of the road; that he purchased the property at a foreclosure and the house was vacant for 5 years prior his purchase; that the grade of the road is an issue; that there have been no complaints about the existing fence; that the fences do not impact traffic visibility; that the property has a well and septic; that the well is in the rear yard and the septic is in the front yard; that the septic is located in the front yard and the well in the rear; that, to bring the front fence into compliance, they would have to redo the whole fence; that the corners of the fence are block and set too far forward; that the fence would have to be 3.5 ft. to comply with the front yard height but then it would not comply for height required for the safety of the pool; that the survey without the pencil markups and the garage is from when they purchased the property; that the survey with the pencil mark ups is the current survey of the property and its structures; that the concrete around the pool is slightly elevated due to the slope of the yard; that they had to bring in fill dirt to level the property some when installing the pool and patio; that the deck around the pool is about 31 ft. from the property line; that the pool is at about 39 ft. from the property line as he left a 1 ft. margin for error in case something was not measured correctly; that they placed it as far back as they could towards Lake View Road; that the back of his house has a composite deck which required an egress space between it and the pool, otherwise he would have to tear the deck off of the house; that there is a 3 ft. drop from Lake View Road to the location of his fence; that the fence company told him the highest fence they could do is 7 ft. but if he could put a 10 ft. he would; that, due to the slope, the fence appears to be 4 feet tall from Lake View Road; that the fence is for privacy not necessarily safety; that, in the summer months, there are feed trucks that deliver to the chicken houses behind them and their lights shine into their yard at night; that the paved portion of Lake View Road is about 18 ft. to 20 ft. from his property line; that there is a 20 ft. to 22 ft. distance from Springwood Drive to his property line; that there is no HOA; that he purchased the property in 2014 and has had no complaints; and that there is no vehicular access from Lake View Road but there is a gate on that portion of fence that allows him access with his mower and for the maintenance of his pool.

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 Case No. 12737 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to the existing fence and the depression in the yard facing Lake View Road;
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 Applicant;
4. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare; and
5. The variances represent the minimum variances necessary to afford relief.

Motion by Mr. Warfel, seconded by Mr. Williamson, carried unanimously that the **variances be granted for the reasons stated.** Motion carried 5-0.

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

Case No. 12739– Terry Harmon seeks a variance from the minimum lot width requirement (Section 115-42 of the Sussex County Zoning Code). The property is located on the south side of Frankford School Road approximately 0.56 miles from Thatcher Street. 911 Address: 30410 Frankford School Road, Frankford. Zoning District: GR. Tax Parcel: 533-1.00-21.00

Mr. Phillips 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 one (1) mail return. The Applicant is requesting a variance of 34.33 ft. from the 150 ft. lot width requirement for a proposed lot identified as “Proposed Lot” on a site plan dated April 2022.

Mr. Terry Harmon was sworn in to give testimony about the Application.

Mr. Harmon testified that he is here because his parents formerly owned a farm of 23 acres; that it was left to the family that is remaining and is now up for sale; that he never had his portion placed in his name due to personal matters in his past; that they cannot sell the property until his portion is subdivided; that he has lived there for quite some time and has never had any issues with the neighbors to the sides or rear; that he informed the neighbors about the hearing tonight; that he currently resides on the proposed lot; that the previous subdivision of land and the shape that the lot was left was done when his parents still owned the land; that the whole parcel will be sold as far as he is aware; that he is not looking to make any additions to his property as he was diagnosed with cancer a few years ago and it has impacted him financially; that he will continue to live on the property; that there are some ditches on the property that limit his ability to develop the lot further; and that there will be no change to the width of 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 approve Case No. 12739 for the requested variance, pending final written decision, for the following reasons:

1. The property has unique conditions;
2. The exceptional practical difficulty was not created by the Applicant;
3. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare; and
4. The variance represents the minimum variance necessary to afford relief.

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

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

Case No. 12740– David J. Burke seeks variances from the front yard, side yard, and rear yard setback requirements for existing and proposed structures (Sections 115-42, 115-182, and 115-183 of the Sussex County Zoning Code). The property is located on the southeast side of South Bay Shore Drive within the Broadkill Beach Subdivision. 911 Address: 1406 South Bay Shore Drive, Milton. Zoning District: GR. Tax Parcel: 235-4.18-4.00

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 three (3) mail returns. The Applicant is requesting variances of 5.1 ft. from the 19.2 ft. average front yard setback requirement for the proposed addition, 5.5 ft. from the 19.2 ft. average front yard setback requirement for an existing deck, 30 ft. from the 30 ft. front yard setback requirement for existing steps, 27.1 ft. from the 30 ft. front yard setback requirement for an existing deck, 2.8 ft and 2.2 ft. from the 5 ft. side yard setback requirement on the south side for an existing deck, 2.4 ft. from the 5 ft. side yard setback requirement on the south side for an existing porch, 3.1 ft. from the 5 ft. side yard setback requirement on the south side for an existing outdoor shower, and 3.7 ft. and 3.6 ft. from the 5 ft. rear yard setback requirement for an existing deck and steps. Ms. Norwood also notes that the existing dwelling, decks, and steps are non-conforming.

Mr. Freddy Bada was sworn in to give testimony about the Application.

Mr. Bada testified that he is here on behalf of the Burkes; that the Burkes could not be present as Mr. Burke had to have surgery; that they are requesting the variances to bring the house into

conformance; that the house was built a number of years ago and the zoning regulations have changed since that time; that they are looking to enclose the deck and turn it into a home office; that the Burkes work from home; that they are looking to expand their home a little; that they purchased the home in 2005; that they have not done any alterations to the home; that they are looking to add onto the home but stay within the existing footprint; that, with the additions, they are looking to bring the home into compliance as a whole; that the house was built some time in the 1970s; that they will be utilizing existing utilities on the property; that the home is partially on pilings; that it was formerly a trailer and the house was brought in and placed on the pilings; that they face some structural issues because of this; that the red on the survey is the setback area and how much the structure encroaches; that the steps off the front of the house extend to the property line; that the distance from the steps to the paving of the road is about another 12 ft.; that it is difficult to see around the curves of the road but the house is set back far enough to not create issues; that the area is very tight with the placement of structures; that the property is unique due to the nonconformity of the structure and the challenges that present from it; that the house may have been constructed in the 1960s; that he is not aware of any contact with the neighbors; that they had talked about potentially building up but found it to create more structural concerns and be a more costly option due to having to remove the roof; that the pilings go down two (2) side of the house but are the width of a trailer and the additional supports on the home are 4' x 4' posts; that this house has been pieced together over time by the prior owners; that they are receiving a benefit by the average front yard setback of 19.2 ft. rather than the normal 30 ft. setback for the front yard; that the existing deck is only about 8 ft. wide and would give them about 5 or 6 ft. to work with for the addition of their home office; that, at that size, building code would not dictate it to be a room; that 7 ft. is the minimum size for a room; that they have been working remotely since Covid; that they cannot build on ground level due to the VE flood zone; that he does not have plans that indicate the DNREC building line; that he believes this house is on sewer; that the steps are tiered down towards the roadway; that they can look into additional methods for the placement of the steps; that he is not aware of any complaints about the steps; that the garage is underneath of the house and consists of one (1) bay; that it is possible to position the steps to land at the driveway rather than at Bay Shore Drive; that there is one floor of living space in the dwelling; that he is not aware of the square footage of living space; that there is storage underneath the dwelling; and that the steps associated with the boardwalk are to navigate the dune and step down but go up.

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

Mr. Chorman closed the public hearing.

Mr. Hastings moved to approve Case No. 12740 for the requested variances with the condition that the steps are rotated 90 degrees so as not to land at the front property line 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 nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare; and
3. The variances represent the minimum variances necessary to afford relief.

Motion by Mr. Hastings, seconded by Mr. Warfel, carried unanimously that the **variances be granted with conditions for the reasons stated.** Motion carries 5-0.

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

Case No. 12741– Tori and Greg Leech seek variances from the corner front yard setback requirement and minimum fence height requirement for a proposed fence around a pool (Sections 115-34, 115-182, and 115-185 of the Sussex County Zoning Code). The property is a corner lot located at the corner of Burbage Lane and Cedar Neck Road within the Pine Shores Acres Subdivision. 911 Address: 38656 Burbage Lane, Ocean View. Zoning District: MR. Tax Parcel: 134-5.00-215.01

Mr. Phillips presented the case and stated that the Office of Planning and Zoning received three (3) letters in support of and four (4) letters in opposition to the Application and zero mail returns. The Applicants are requesting a variance of 0.5 ft. from maximum fence height requirement of 3.5 feet for a fence in a front yard.

Ms. Tori Leech and Mr. Greg Leech were sworn in to give testimony about their Application.

Ms. Leech testified that the County Code requires a fence around their in-ground pool; that fence height conflicts with what is allowed in their corner front yard; that they would have never guessed having a corner lot would be such an issue; that they are requesting a variance of 6 inches to have their fence meet the 4 ft. height requirement for a fence around a pool; that their lot is irregular as it is narrower to the rear of the property; that there are no houses across from them where the fence is proposed; that she found the sign placed on their property to be confusing and noticed a lot of people reading it; that they are asking that the fence come off the back of their house and go to their property line and straight back to the rear property line; that the proposed fence will be inside of their existing landscaping and will not affect any view; that they are proposing a black aluminum fence so that it is easy to see through; that they had three (3) letters of support from their neighbors; that the neighbors in support did not oppose if they put up a vinyl fence rather than the aluminum fence that they have chosen; that she interviewed five (5) different fence companies and chose First State Fence to install a 4 ft. tall black aluminum fence; that the pool and patio are installed and were permitted; that the pool and patio are at ground level; that she believes the opposition is confused on the proposed location of the fence; that she submitted pictures from Burbage Lane looking in both directions and the orange construction fence is not visible and in the same location as the proposed permanent fencing; that the fence would be inside of the block bench; that she knows a neighbor at the end of

the street who is not affected by this has caused them a deal of pain in regards to this; that her husband has stage four (4) cancer; that they have heard through other neighbors that this one neighbor was going to appeal the decision to cause them misery; that the Quillen's Point HOA President has no objection to their proposed fence once it was understood what they were asking for; that there is 4 or 5 ft. between the edge of the pavement and their property line; that, originally, their property went across the street based on an old plot plan; that then Marshy Hope Way was placed to grant access to the VFW; that there is a stop sign on Marshy Hope Way but it is not a County placed stop sign; that the distance between their property line and the edge of the road is very close; that their landscaping is on their property and not to the edge of the road; that, from the edge of their landscaping to the paving of the road, is about 3-4 ft.; that the shrubbery is on their property and the fence is proposed to be inside of the shrubbery; that the pilings noted in the opposition letters have been removed; that the pilings were on their property at the edge of the road; that the pilings were not located in the paved section of Cedar Neck Road; that she removed the pilings when the pool was installed; that she believes they were removed 5-7 days ago; that they had reflectors on the pilings so that people could see that something was coming up; that people were coming out from Quillen's Point and were not stopping at the stop sign; that the intersection is very busy; that the pool installer obtained their permit for the pool and patio; that they knew they needed a fence to be installed around the pool; that someone from the County told them they should not have a problem getting a fence because it is required around a pool and that the County issued the permit for the pool; that there is a magnolia tree in the back right corner of their property; that they do not believe their magnolia tree blocks the view on that corner; that one of the individuals in opposition is friends with the neighbor who has given them grief; that a neighbor on their street has a 4 ft. high fence on their property line and she does not recall seeing a variance for it; that there was a case earlier for a similar variance for a fence height around a pool; that the pool location was chosen because they have grandchildren and do not want them accessing the pool directly from the deck off of the house; that her husband is sometimes in a wheelchair due to medical issues related to his cancer; that it is a small cocktail pool; that the shrubbery is at the edge of the road but on their property based on the survey they have; that the purpose of the pilings with reflectors was for safety; that the fence will be at least 4 ft. inside of the property line; that, if they placed the fence 15 ft. off the property line to comply with the allowable fence height, it would place the fence in the center of their yard; that their property stake is a white post; that the temporary fence was placed where she wanted the fence to be placed; that she believes it will be at least 8 ft. inside of the property line; that it will be placed inside of the bushes; that she has driven down Burbage Lane and looked down the side and you cannot see the fence; that the landscaping is not blocking the fence; that you cannot see the fence because of the curve in the road; that there are trees to the left of the road that create a visual barrier and an accident occurred there; that it will be inside of the property line, she would say at least 5-6 ft.; that the blue line on the screen is not their property line; that the property line is the road; that the fence will be at least 5-6 ft. from the road but probably more; that their yard along Marshy Hope slopes to the rear; that Marshy Hope at the end by the VFW floods; that they are one (1) of the highest points in Sussex County; that they used to come and put stakes there; that the fence will end at the rear of the house; that she is not sure what the blue line on the screen is because her property marker is located in a different location; that one corner marker for their property is in the road on Cedar Neck; that the fence will be inside of their property line and end

at their shed; that they have a 6 ft. fence along the side of their property between them and the adjacent neighbors; that the fence would be in the middle of the patio around the pool if they brought it in 15 ft. off of the property line; and that when she designed the pool and fence she may have left 3 ft. for the walkway for in case their variance was not approved but it would not leave much room for their grandchildren or her husband to move around the pool.

Mr. Leech testified that they have road frontage on three (3) separate roads; that, on Marshy Hope Way, the property lines go to the center of the road; that the pilings were on the edge of the road; that, when they first purchased their house, people would cut the corner close through their yard; that the magnolia tree does not block the road; and that two (2) of their neighbors have fences over 4 ft. located on the property line.

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

Mr. Chorman closed the public hearing.

Mr. Hastings moved to approve Case No. 12741 for the requested variance with the condition that the aluminum fence be placed in the location specified by the Applicants in the testimony, pending final written decision, for the following reasons:

1. The property has unique conditions as it is a corner lot;
2. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare; and
3. The variance represents the minimum variance necessary to afford relief.

Motion by Mr. Hastings, seconded by Dr. Carson, carried that the **variance be granted with condition for the reasons stated.** Motion failed 2-3.

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

Since the Applicant failed to obtain the necessary votes for approval, the variance request was denied pursuant to Board Rule 6.5.

ADDITIONAL BUSINESS

There was no additional business.

Meeting adjourned at 7:21 p.m.