

## MINUTES OF JANUARY 22, 2024

The regular meeting of the Sussex County Board of Adjustment was held on Monday, January 22, 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. Jordan Warfel, Mr. John Williamson, and Mr. Jeffrey Chorman. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Ms. Lauren DeVore – Planning and Zoning Planner III, and Ms. Marina Truitt – Recording Secretary.

The Pledge of Allegiance was led by Mr. Chorman.

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

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

Motion by Mr. Williamson, seconded by Dr. Carson and carried unanimously to approve the Minutes for the November 20, 2023, meeting. Motion carried 4 – 0.

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

Motion by Dr. Carson, seconded by Mr. Williamson and carried to approve the Findings of Facts for the November 20, 2023, meeting. Motion carried 4 – 0.

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

### PUBLIC HEARINGS

**Case No. 12898 – Leann Barcavage** seeks variances from the side yard setback requirement for existing structures (Sections 115-42, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located on the northeast side of 3<sup>rd</sup> Street within the Tru Vale Acres Subdivision. 911 Address: 610 3<sup>rd</sup> Street, Unit 2, Rehoboth Beach. Zoning District: GR. Tax Parcel: 334-13.00-95.03

Ms. DeVore presented the case and stated that the Office of Planning and Zoning received no correspondence in support of the Application, one (1) letter in opposition to the Application, and zero mail returns. The Applicant is requesting variances of 2.2 feet from 5-ft side yard setback on the southeast side for existing deck and a variance of 4 feet from the 5-ft side yard setback on the northwest side for existing shed. The County cited the owner for no permits and not complying with setbacks. The dwelling was built in 2022 with a CO issued.

Mr. Eric Barcavage was sworn in to give testimony on this application.

Mr. Barcavage testified that he received notice about the shed needing a variance and permit a few months prior; that they had a survey completed and updated; that there was previously a shed where the current shed in violation stands; that the shed is approximately 8-10 feet with roughly 12-16 inches between the shed and the house; that the drainage issues are not due to the shed being built but from the subdivision on the lots and multiple houses being built so close to each other; that the shed fits in with the neighborhood; that the shed is minimally invasive; that he hand built the shed with a kit from Facebook; that the purpose of the shed is for added storage since the parcel is small with minimal storage areas; that his homeowners insurance required two access points to the home, so the deck was built as a secondary egress; that it took roughly 3 months to build the shed and he received no negative feedback from neighbors in that time; that the size of the shed was not pre-meditated, just what they bought; the Applicant is not able to move the shed to the back yard due to potentially infringing on the rear setbacks; that, within the three months of building the shed and second egress, no neighbors showed any concern but were also not notified; that the deck was also built by the Applicant; that the house is set on a cinderblock footer with no garage to store outdoor items; that the home was built in 2022 and later purchased by the Applicant; that the shed measures roughly 8' x 10' with 80 square feet; that violations were received for lack of permits for the shed and setback encroachment; that there is not a homeowners association for this community; that the home was built before he purchased it; that the Applicant added the shed and deck; that the outdoor shower was built by a prior owner; that the tree in the front yard was removed from the property; that there is about 18 inches between the shed and the house and he is willing to move it more into compliance; that there are no challenges maintaining both the home and shed; that the drainage is an issue within the subdivision; that the Applicant attempted to purchase another larger lot but was unable to; that the Applicant now realizes, if he would have gotten a permit for the shed and deck, he would have known his setbacks and complied with them; that the encroaching part of the deck could be removed and brought into compliance, along with a smaller shed if he could find one; that it is very difficult to find a shed small enough to fit within the tiny area; that he did not look for a smaller shed; that the water situation is not caused by him because, even if he puts gutters on the shed or moves it, there will still be standing water due to too much coverage; that the shed could be moved to the back of the property but encroach on neighboring property lines; and that the shed is 10.5 feet tall.

Mr. Sharp noted that the Small Lot Ordinance applies to this property.

Ms. Julia Jalcs was sworn in to give testimony in opposition to this application.

Ms. Jalcs testified that she owns the lot to the northwest of the property; that the Applicant never approached them about the construction of his shed; that she had mentioned to the Applicant that the placement of his shed was too close to the property line and it would not be acceptable to the County since it is 11 inches from her property line; that the shed on her property is roughly 3 feet from the property line since she can get her lawn mower around it; that the biggest concern is the

drainage issues; that, since the shed was put on the Applicant's property, rain water pools and ponds on her property; that, while the Applicant was building the shed, he would have his materials and equipment in her yard and never asked to be on her property; that the wall of the shed is 11 inches from the property line and the overhang is 8 inches from the property line; that she is unsure if her shed ever had a variance due to it coming with the house, roughly 20 years ago; that her lot is 100 feet by 100 feet and she has owned the lot for roughly 20 years; and that her shed is approximately 5 feet from her rear property line and 3 feet from the Applicant's property line. Ms. Jalcs submitted exhibits to the Board.

Ms. Carrie Rauk was sworn in to give testimony in opposition to the application.

Ms. Raurk testified that she lives across the street from the Applicant and cuts Ms. Jalcs' front yard; that she has always been able to get her riding lawn mower between the property line and car with no issues of drainage or ponding water in the past until the Applicant built the shed; that the deck is irrelevant to her and has no effect on her; that the pooling water and lack of drainage is going to effect Ms. Jalcs' foundation at some point if it stays this way; that a conversation with the Applicant's wife in the past had mention of a permit, so she did not think any further of it; that the Applicant's ignorance of the law should not have to effect Ms. Jalcs' and her property; that other smaller lots in the community have sheds within setback requirements; and that she feels that, when you purchase a house, as the homeowner, you know the size of the lot you are purchasing and what you can / cannot do within those limits.

Mr. Gene Shelleabeuge was sworn in to give testimony in opposition to the application.

Mr. Shelleabeuge testified that he lives diagonally across the street from the Applicant; that the Applicant's shed is 11 inches off the property line and is an eye sore; that the ignorance to variances caused this issue; that the shed is ugly and he does not want the shed to set the tone for the neighborhood that just got 5 newer homes and is coming up; that he, too does not care about the deck; and that his main concern is the shed that needs to go.

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

Mr. Chorman closed the public hearing.

Dr. Carson moved to deny the application for Case No. 12898 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. Hastings, carried that the **variances be denied for the reasons stated**. Motion carried 4 - 1.

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

**Case No. 12899 – William T. Gorman** seeks a special use exception and a variance from the maximum square footage requirement for a garage / studio apartment (Sections 115-4, 115-40 and 115-42 of the Sussex County Zoning Code). The property is a lot located on the northwest side of Washington Street within the Rehoboth Manor Subdivision. 911 Address: 20556 Washington Street, Rehoboth Beach. Zoning District: GR. Tax Map: 334-19.12-7.00

Ms. DeVore presented the case and stated that the Office of Planning and Zoning received 12 letters and a petition in support of the Application, zero letters in opposition to the Application, and one (1) mail return. An additional letter of support was received that evening, noting that the garage is an asset to the neighborhood and the community, is consistent with surrounding properties and the neighborhood in general as it is multifamily with large lots. The Applicant is requesting the special use exception for a garage / studio apartment and a variance of 226-square-feet from the 800-square-foot requirement of maximum allowable living space for a garage / studio apartment (Section 115-4 – total floor area).

Mr. Sharp stated that the Applicant previously requested a special use exception for a garage / studio apartment and a variance of 328 square feet from the 800 square foot requirement for a garage / studio apartment; that the Board denied that application; and that the Applicant must demonstrate that there has been a substantial change in the circumstances or conditions affecting the property or in the proposed use or plans for the use before the Board can entertain the Application.

Mr. Richard Forsten, Esquire, and Ms. Mackenzie Peet, Esquire, appeared on behalf of the Applicant to present the Application. Mr. William T. Gorman was sworn in to give testimony on the Application.

Mr. Forsten stated that the Applicant meets the substantial change status and is not requesting a variance of 328 square feet like heard last spring; that, instead, the Applicant requests a variance of only 226 square feet; that there are two buildings on the property which both predate the apartment language in the Sussex County Zoning Code; that one building was constructed in 1984 and the other building was constructed in 1999; that the front building consists of approximately 1,026 square feet and the back building consists of approximately 1,128 square feet and is two (2) stories tall; that the rear building was previously used as a car repair business by a prior owner with a living space on the second floor; that the Code allows and encourages multifamily for this specific zone; that the rear building is the larger of the two structures; that Mr. Gorman previously applied for the larger (back) building to be the apartment and the smaller (front) building to be the primary dwelling; that the variance previously requested was 328 square feet and now only a 226 square feet variance is needed due to “flipping” the structure labels; that the larger (back) building will be considered the main residence and the smaller (front) building will be considered the apartment; that the Applicant meets the substantial change in the proposed use or plans as the current variance being requested is one-

third less than the originally requested variance; that, if the apartment was 800 square feet, the Planning & Zoning director could issue the special use exception without the need for a hearing before the Board; that the buildings were constructed prior to the enactment of the 800 square foot requirement; that the car repair business has been abandoned; that neighbors support the Application; that the main difference between getting the variance and not getting the variance is a stove and a refrigerator; that the smaller (front) building currently has a stove and refrigerator and the larger (back) building does not have a kitchen; that the main floor of the larger (back) building has been converted into living space and the variance is needed in order to install a refrigerator and stove to designate that area as an apartment; and that the variance and special use exception request would allow Mr. Gorman, who comes down most weekends, to stay in the larger (back) building with a cooking facility.

Mr. Gorman affirmed the statements made by Mr. Forsten as true and correct.

Mr. Gorman testified that there was a typographical error in the letter submitted to the Board which incorrectly stated the square footage of the two buildings.

Mr. Forsten stated that there was one typo on the letter relating to the size of the buildings; that the letter stated the one story building was 1,100 square feet when it is really 1,026 square feet in size, and that the two story building was 1,026 square feet when it is really 1,128 square feet in size; that the substantial change in the applications are that they are requesting the variance that is reduced by one-third and changing the designation of the buildings; that the Applicant differs from the application presented in 2023; that the criteria has been met for the variance request since they have found a way to request the minimum variance possible and still make use of the property; that the square footage of the two buildings combined would be roughly 2,154 square feet and would not change with the proposed variance; that, to the average person on the street, there will be no difference other than Mr. Gorman will be able to cook himself a hot meal; that, after Mr. Gorman purchased the property, Mr. Gorman converted the downstairs portion of the garage into living space; that there is an interior staircase connecting the first floor and the second floor of the former garage; that the apartment will have no substantial adverse effect on neighboring properties; that allowing Mr. Gorman to put a kitchen into the larger (back) building will have no adverse impacts, let alone substantial ones on the surrounding properties; that the physical circumstances or conditions of the two (2) buildings predate the particular zoning code requirement, which makes them unique; that, because of physical conditions or circumstances, the property cannot be developed in strict conformance with the code provisions; that they are unable to create an apartment without a variance; that the exceptional practical difficulty was not created by the Applicant; that the variance will not alter the essential character of the neighborhood; that, by getting rid of the automotive repair business that had been conducted there, it would be better for the neighborhood; that the variance requested is the minimum variance necessary to afford relief to the Applicant; that, if approved, the larger (back) building would become the primary dwelling and the smaller (front) building would turn into the apartment due to the size of each building; that the larger of the buildings, once a kitchen is permitted to make it a dwelling, will inherently give it the title of primary dwelling; that the variance request

has been reduced by one-third from the prior variance application; that the uses of the two buildings would change with the proposed variance, garage / studio apartment vs single-family dwelling; and that, in the prior application, the rear building was going to be the apartment and, in this case, the rear building will be the primary residence and the front building will be the apartment.

Mr. Warfel moved to move forward with the merits of the Application as the Applicant has demonstrated that a substantial change in the proposed plans or use exists for the following reasons:

1. The reduction in the amount of variance requested;
2. The change of use between garage studio apartments and single-family dwelling;

Motion by Mr. Warfel. The motion failed for a lack of second.

Mr. Warfel moved to defer the decision about res judicata to the end of the public hearing.

Motion by Mr. Warfel, seconded by Mr. Hastings, carried that the **decision of res judicata be tabled until the end of the public hearing**. Motion carried 5 - 0.

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

Mr. Forsten stated that buildings were constructed in 1984 and 1999 and predate the zoning requirement at issue; that unique physical conditions exist which justify the granting of a variance; that, because of the physical conditions or circumstances; the property cannot be developed in strict conformity with the Code provisions and a variance is necessary to make reasonable use of the property; that it would be nonsensical to reduce the apartment by 226 square feet; that the buildings were built by a prior owner; that a kitchen is a basic human necessity; and that the front building was constructed in 1984 and the rear building was constructed in 1999.

Mr. Gorman testified that the garage sets on a flood zone and would flood with heavy storms; that, when he converted the garage into a living space in 2014, he lifted the floors three (3) feet and installed flood vents to raise them out of the base flood level; and that the configuration of the garage made it very difficult to get vehicles in and out, making the use of the garage minimal.

Mr. Forsten stated that there are other properties in the neighborhood with similar features, being they have two buildings, one apartment, and the primary dwelling (with unknown dimensions); that the back building was originally designed for an auto repair business but the design has been changed and repurposed; that 12 neighbors support the Application; that the use is a residential use; and that the larger (back) building is on a separate utility meter.

Mr. Gorman testified that the additional statements made by Mr. Forsten are true and correct.

Mr. Sharp noted that, in reviewing the definitions section of the Code, it says that the term “home occupation” was added in 1992 but there is no similar notation as to when the term “guest house” was added to the Code so he assumes it is an older defined term.

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 move forward with the merits of the Application as the Applicant has demonstrated that a substantial change in the proposed plans or use exists for the following reasons:

1. The reduction in the amount of variance requested; and
2. The change of proposed use between garage / studio apartments and single-family dwelling.

Motion by Mr. Warfel, seconded by Dr. Carson, carried that the **Applicant has demonstrated that there has been a substantial change in the proposed plans and the Board can entertain the new application.** Motion carried 4 - 1.

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

Mr. Warfel moved to approve the application for Case No. 12899 for the requested special use exception, pending final written decision, because the proposed use will not substantially affect adversely the uses of neighboring adjacent properties.

Motion by Mr. Warfel, seconded by Dr. Carson, carried that the **special use exception be granted for the reasons stated.** Motion carried 5 - 0.

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

Dr. Carson moved to approve the application for Case No. 12899 for the requested variance, pending final written decision, for the following reasons:

1. The variance will not alter the essential character of the neighborhood;
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 failed 2 - 3.

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

Mr. Williamson stated that he believed the need for the variance was created by the Applicant.

Mr. Warfel stated that the Application is effectively a request for two, single-family dwellings and is a use variance request and that the exceptional practical difficulty was created by the Applicant.

Mr. Chorman stated that he believes the exceptional practical difficulty was created by the Applicant.

Pursuant to Board Rule 6.5, three (3) affirmative votes are needed to approve a variance. Since the Applicant failed to convince three (3) Board members that the variance should be approved, the motion to approve the variance failed and the **variance was denied**.

### **RECESS**

**Case No. 12900 – Stephen and Joyce Cane** seek variances from the rear yard setback requirements for existing and proposed structures (Sections 115-25, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located on the northwest side of Hickory Manor Road approximately 165 ft. from Omar Road. 911 Address: 32076 Hickory Manor Road, Frankford. Zoning District: AR-1. Tax Map: 134-11.00-36.02

Ms. DeVore presented the case and stated that the Office of Planning and Zoning received no letters in support or opposition of the Application and zero mail return. The Applicants are requesting variances of 6.9-ft from the 20-ft rear yard setback requirement for proposed addition and 4.1-ft from the 5-ft rear yard setback requirement for existing shed. The dwelling was built in 1999 with no permit on file for the shed. The Applicants think they will be relocating the shed during the construction of the addition.

Mr. Stephen Cane and Ms. Joyce Cane were sworn in to give testimony for this application.

Ms. Cane testified that the Applicants purchased the property about 2 years ago; that their goal is to put a primary bedroom on the first floor; that, currently, the home consists of roughly 1,300 square feet with two rooms on the second floor with no closets; that the placement of the home causes the variance request due to the close proximity to the property line, well, septic, and drain field placement; that the area where the addition is proposed is the only area where it can be located on the lot; that the house and property are unique in nature; that, due to the layout of the home, the current addition plans flowed with the current home's interior; that they were surprised that the property was zoned AR-1 with the larger setbacks than expected; that they plan to move the current shed on their property to comply with current setbacks; that an addition is a need; that they are currently utilizing

one of the two bedrooms as a closet / home office; that the size of the lot and placement of the house cause the need for a variance; that the neighbors have been notified about the proposed addition and shed movement; and that the shape of the addition was designed to maximize the square footage while minimizing the amount of variance.

Mr. Cane testified that the builder of the home placed the house on an angle, making it difficult to put an addition to the house; that the property has well and septic; that there are woods to the rear yard; that the variances will not affect anyone around them; that the house is unique because it is timber built; that the Applicants did not want to change the look of the front of the house; that several options were presented and the current addition plans were the most aesthetically pleasing; that the area is heavily wooded; that the prior owner placed the house on the lot; that, if the house was centered on the lot, no variance would be needed; that the addition will not pose any infringements on any of the neighboring parcels; that there are no wetlands on the property; and that the exiting layout of the house is conducive to the proposed addition.

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. 12900 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to the placement of the house;
2. The exceptional practical difficulty was not created by the Applicant;
3. The variances will not alter the essential character of the neighborhood but will likely improve the neighborhood; and
4. The variances represent the minimum variances necessary to afford relief.

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

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

**Case No. 12901 – Michael and Carol Easley** seek variances from the separation distance and side yard setback requirement for existing and proposed structures (Sections 115-25, 115-172, and 115-183 of the Sussex County Zoning Code). The property is located on the northwest side of Sea Air Avenue within the Sea Air Village Manufactured Home Park, Lot A-40. 911 Address: 19842 Sea Air Avenue, Rehoboth Beach. Zoning District: AR-1. Tax Map: 334-13.00-310.00-3021

Ms. DeVore presented the case and stated that the Office of Planning and Zoning received zero letters in support or in opposition to the Application, one letter with a neutral comment voicing

the concerns of fire hazards, and 18 mail returns. The Applicants are requesting variances of 12.4-ft from the 20-ft separation requirement for a proposed landing and steps from the deck on Lot A-38, 0.7-ft from the 5-ft side yard setback requirement on the north side for proposed addition, 4.3-ft from the 20-ft separation requirement for proposed steps from the house on Lot A-42, 7.6-ft from the 20-ft separation requirement for proposed steps from the steps and landing on Lot A-42, 6.6-ft from the 20-ft separation requirement for a proposed shed from the house on Lot A-42, and 5-ft from the 5-ft side yard setback requirement on the north side for proposed landing and steps.

Ms. Carol Easley was sworn in to give testimony for this application.

Ms. Easley testified that they purchased the home in 1989; that they just need a little more space as there are three persons living in the home; that the manufactured home was placed on the lot by a prior owner; that they are remodeling the home; that the HVAC will be placed in the rear yard; that the park manager helped with suggestions for upgrades and additions; that the variances are for existing steps / landings that are being replaced; that the mobile home is almost exactly on the 5ft setback line so making changes is difficult; that, when relocating the shed farther into the property to eliminate the nonconformity, it will be closer to Lot A-42; that some features of Lot A-42 encroach onto the Applicants' property; and that the one set of steps being replaced will give safer access to the house.

Mr. Sharp stated that a blanket variance was issued in 2007 for the then-existing structures in Sea Air Village.

Ms. Devore noted that staff received one neutral comment about the application.

Ms. Eileen Perez was sworn in to give testimony in support of this application.

Ms. Perez testified that she lives next door on Lot A-42; and that she is happy the Applicants are doing the improvements; and that the improvements will make the park look better.

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

Mr. Chorman closed the public hearing.

Mr. Hastings moved to approve the application for Case No. 12901 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to the age of the house and being built before setbacks;

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 but will likely improve the neighborhood;
5. The variances represent the minimum variances necessary to afford relief.

Motion by Mr. Hastings, seconded by Dr. Carson, carried that the **variances be approved for the reasons stated**. Motion carried 5 - 0.

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

### **ADDITIONAL BUSINESS**

**Meeting adjourned at 8:41p.m.**