

MINUTES OF OCTOBER 2, 2023

The regular meeting of the Sussex County Board of Adjustment was held on Monday, October 2, 2023, 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. Jennifer Norwood – Planning and Zoning Manager, 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 as amended. Motion carried 4 – 0.

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

Motion by Mr. Warfel, seconded by Mr. Hastings and carried unanimously to approve the Minutes for the August 7, 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 to approve the Findings of Facts for the August 7, 2023, meeting. 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. 12867 – Robert R. Kump seeks variances from the rear yard setback for a proposed structure (Sections 115-34 and 115-183 of the Sussex County Zoning Code). The property is located on the northeast side of Sunburst Path within the Peninsula Subdivision. 911 Address: 26961 Sunburst Path, Millsboro. Zoning District: MR. Tax Map: 234-30.00-27.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of, no correspondence in opposition to the Application, and zero mail returns. The Applicant is requesting a variance of 4 ft. from the 10 ft. rear yard setback requirement for a proposed porch.

Mr. Robert R. Kump and Ms. Laura Kump were sworn in to give testimony on this application.

Mr. Kump testified that they live in the Peninsula; that their builder was Schell Brothers; that the builder set the house on the property far back and did not leave them enough room in the back to allow them to put a patio, sunroom, or even a screen room; that they have been working with the architectural review committee in their community, who are very strict, to do a comprehensive review; that they submitted plans and design drawings from a qualified contractor, Premier, and have gone back and forth to make changes according to their critique; that, after making all of the changes, they finally got approval from the architectural review committee; that, through the process of performing the work, an inspector from the County came out and was questioning whether there was an encroachment into the rear yard setback by the left corner of the addition; that their property is a strange shape; that, according to Eric Blaker, who is the Co-Chairman of their Architectural Review Committee, they are about 2 ft. into the 10 ft. setback; that they will have a door and stairs off the porch but it will not be in the setback area; that there are 2 acres of open land belonging to the Peninsula adjacent to their property; that all of their neighbors have offered support; that their property slopes to the common area; that, when they get heavy rain, the 2 acre lot behind them has a pitch to it and a swale on the other end but it is not draining properly yet and he believes that Sposato is coming out to make repairs to it; that they had the home built; that the dotted lines on the survey were added by Premier to show where the addition would be and it is not to scale; that he is nowhere near the front building restriction line; that, when they contracted Schell to build their home, they trusted them to put the house in the appropriate place on the lot that they picked; that he believes that the house could have been set forward some as his driveway is 45 ft. long; that he did not know that the building restriction line on the survey was where the house had to be placed and thought it was a line that the builder proposed when they submitted plans at the design of the house; that the porch will be 20 ft. wide by 13 ft. deep with a door that has two steps down; that he was told by the ARC that the back left corner was about 2 ft. or so over the building restriction line and then gradually less because of the angle of the property line; that he does not believe that the committee would make a mistake on the distance from the property line or their structure being over the property line; that the committee came out and measured after thorough review; that the porch is framed and the roof is on; that the Peninsula told their builder to continue building but they wanted to play it safe and wait until they had this meeting; that the contractor signed for the permit; that the framing for the porch is 20 ft. by 13 ft.; that the house was completed in August 2022; that he was not aware that the permit was for an 8 ft. by 13 ft. porch; that he is unfamiliar with the process for having a survey done but will do his best; and that they are concerned because the porch is framed and open to the weather right now with wood exposed, and we have experienced a lot of rain lately.

Ms. Kump testified that they applied for a permit through the County and it was issued; that the property behind them is vacant, common property; that the addition will not impede any drainage; that they worked with the architectural review committee who said that they were not impeding any flow of water or encroaching on the property line; that the issue for them is that they submitted appropriately because they wanted to do this correctly, the permit was issued and it was not until someone came out for an inspection and the posts were installed that they were told of the encroachment; and that the Peninsula and inspector told them to keep going.

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 for the application of Case No. 12867 to allow the Applicants to provide a new site plan showing the location of the porch by December 4, 2023, and to schedule the application for a public hearing at the Board's meeting on December 11, 2023.

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

Case No. 12868 – Christine L. Srebro seeks variances from the separation distance requirements for proposed structures (Sections 115-42 and 115-172 of the Sussex County Zoning Code). The property is located on the southwest side of Possum Road within the Bay City Manufactured Home Park. 911 Address: 38248 Possum Road, Ocean View. Zoning District: GR. Tax Map: 134-9.00-94.01-20770

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of, no correspondence in opposition to the Application, and six (6) mail returns. The Applicant is requesting variances of 1.8 ft., 4.6 ft., and 1.7 ft. from the 20 ft. separation distance requirement between manufactured homes from the existing manufactured home on Lot 293 for a proposed manufactured deck and steps.

Ms. Christine L. Srebro and Mr. Mark Srebro were sworn in to give testimony for this application.

Mr. Srebro testified that they purchased a mobile home in Bayshore; that, upon purchase, they saw immediately how the steps are situated for the front door, which are 3 concrete steps to a landing; that his wife is disabled; that they thought this would be a good place for them but needed to do something to accommodate her ability to get in and out of the house; that they started talking about a deck and met with Brett Cox who is the owner of Bayshore; that they discussed with him the proposed deck and the needs of his wife as relating to her disability; that he told them that the way everything is set up they could put on a 6 ft. deck with no problem; that, with respect to how his wife deals with her disability, she has a machine that she is connected to and they believe will be in a wheelchair eventually; that, based upon Mr. Cox's comments and advice, they decided to seek a variance for an 8 ft. deck; that he consulted with Mr. Cox on the placement of the steps off the deck and was told that there would not be a problem if they were on the side facing the neighboring home; that the sign was placed on their property; that the neighbors most directly affected are an older couple who are disabled

and are hardly at that property; that they were told the house has been there since 1983; that they are not familiar with the process and have relied upon Mr. Cox's guidance; that they park on the road because there is very limited space; that the additional 2 ft. they are requesting is for a ramp as they wanted to handle all of it in one shot; that, if a ramp is needed, they would cut out a portion of the deck and not extend farther than the footprint of the proposed deck; that the steps were added and the distance noted by staff at Planning and Zoning; that the pavers on the survey are a patio sitting area which will be replaced by the deck; and that the location of the steps is for his wife's accessibility.

Ms. Srebro testified that she has spoken to their neighbors coming and going but not directly about their proposal; that the house has been there for 40 years; and that she believes that their proposed deck would still leave room for emergency vehicles.

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. 12868 for the requested variances, pending final written decision, for the following reasons:

1. The Application meets the standards for granting a variance;
2. The variances will not alter the essential character of the neighborhood; and
3. The variances represent the minimum variances necessary to afford relief.

Motion by Mr. Williamson, seconded by 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. 12869 – 37844 Darning Drive Delmar DE, LLC seeks a variance from the front yard setback requirement for a proposed structure (Sections 115-42 and 115-182 of the Sussex County Zoning Code). The property is located on the southwest side of Darning Drive within the Carroll's Development Subdivision. 911 Address: 37844 Darning Drive, Delmar. Zoning District: GR. Tax Map: 532-18.00-27.07

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 4 ft. from the 30 ft. front yard setback requirement for the proposed dwelling.

Mr. Tim Willard, Esquire, was present on behalf of the Applicant.

Mr. Willard stated that the Applicant is 37844 Darning Drive Delmar DE, LLC; that Travis Martin is the individual acting on behalf of the LLC and is one of the owners of Chesapeake Plumbing; that Mr. Martin could not be here tonight due to a tragic loss but has sent an officer of the company on his behalf, Mr. Scarlavai, who is a building director; that he noticed there were some other individuals signed in for this case and did not get a chance to speak with them but is hopeful that his presentation will address their questions; that this property has somewhat of an interesting history; that there were 6 or so lots in front; that, in the back property which is called Ann Lane, but also referred to or the County's official name is Darning Drive, there have been more like 9 lots subdivided since 2017; that you can see there are some pretty nice houses placed there; that his client purchased the subject lot in 2021; that the subject property had been in limbo for many years; that there is a septic on the lot already; that Mr. Scarlavai has informed him that the septic has been checked out and can be used after some improvements but it is a viable system; that the intention for the property is for Mr. Martin to build a house which is why they are before the Board; that they are seeking a variance of 4 ft. from 30 ft. front yard setback requirement on this property which is zoned GR; that the property consists of 42,025 square feet and measures 85 ft. by 165 ft.; that, in the bottom half of the survey, it shows the location of the septic system, tank, and drain field; that the proposed building footprint is at the top; that the placement of the house complies for the location for the proposed front of the house at or just above 30 ft. from the front property line; that they submitted a proposal for the model of the home that has been chosen though it may not be built by Insight Homes; that this is the only lot with a convex property line; that the road curves around the property and does not intersect; that, if the property was at the intersection of two roads, it would be treated as a corner property; that they are asking for the setback reduction to 26 ft. rather than 30 ft. on the longer front property line which will look more like the side of the house; that, if it was truly a side property line, their setback would only be 10 ft. and, if it was a corner front, it would be 15 ft.; that they believe the property is unique due to being a corner lot and the only one with a convex property line, noting that the property across the street has a concave property line; that the footprint of the home they are proposing is a modest home and certainly not as large in square footage as the 3 homes that it will face; that they believe what is being proposed will be a nice looking house; that looking at the floor plan you can see that the primary bedroom or owner's suite is 13 ft. by 14 ft. and without the variance it would be reduced to 9 ft. by 14 ft. as well as cutting the hallway in half and making both an impractical size; that, if the variance is not granted, they would have to readjust the entire floorplan; that he thinks a reasonable argument when building a house is to make it custom in order to make it marketable and not decrease the value of the home; that the property is unique due to being on a corner and its narrowness; that they do not believe that the variance will alter the character of the neighborhood which consists of nice stick built homes; that 4 ft. is the minimum variance necessary to afford relief; that the placement of the existing septic system also restricts placement of the proposed home; that the septic tank is 16 ft. off the back steps of the proposed house; that the house will be 26.23 ft. off the property line where the variance is requested; that the gravel drive is narrower than the space that was provided for it; and that it appears that there is room for the HVAC within the buildable area.

Mr. Jason Scarlavai was sworn in to give testimony on the Application.

Mr. Scarlavai testified that he is the director of construction for Chesapeake Plumbing; that Mr. Willard's statements are true and correct to the best of his knowledge; that they have not discussed the placement of the HVAC system yet; that he does not believe that the HVAC will project into any setback area or require a variance; and that the septic is still awaiting repairs and final approval.

Mr. Raymond Roach was sworn in to give testimony in opposition to the Application.

Mr. Roach testified that he lives adjacent to the subject property; that he does not believe that the proposed house will fit the aesthetic of the current houses that are on the cul-de-sac or in the area; that he believes the area in which the current road does not occupy was left for future expansion; that he is questioning how far the septic system is from the ditch that runs along the property line; that the ditch runs behind the subject property and along two of his property lines; that they have had issues with water draining and have had to get the ditch dug out to help with the issue; that there have been issues with septic systems that are closer to the ditch; that they were unaware of the septic on this property until they had the lid dug up; that the subject property has been underwater due to the flooding before; that they do not want anything that is going to cause more flooding in that area; that obviously they will have to build a foundation up which is going to create a blockage and change the way the water flows; that the tree line at the bottom of the property is a drain, with a cover, that goes underneath Darning Drive on both sides; that it is not a tax ditch but they did work with DNREC who came out and dug the whole ditch to help alleviate the problems they were having with drainage; that he would like to see the proposed house plans if possible; and that his questions have been answered.

Mr. Rodney Farmer was sworn in to give testimony in opposition to the Application.

Mr. Farmer testified that he lives across the street from the subject property; that they have big issues with flooding on their property; that he has seen several acres with almost a foot high of water; that no one is cleaning the drainage ditch pipes out regularly and it is causing problems for them; that he was one of the first homes at this end of Darning Drive; that he does not think they can handle another home back there with the runoff; that all of the runoff is aimed toward the subject property; that he watched a neighbor pump for 2 days to no avail; that they all had to install mound septic systems and he is wondering how the Applicant does not have to; that he has owned his home since 2018; that his driveway is paved; that all of the existing homes are set back away from the road; that he does not think that the property is large enough for a house; that the entire property was a trailer park; that it was 25 acres where they cleared out all of the trailers; and that there are various wells and septic systems from before.

Mr. Richard Martin was sworn in to give testimony in support of the Application.

Mr. Martin testified that he owned the subject lot for 43 years; that it was originally part of Carol's Trailer Park; that he purchased it from Carol Gravenor 43 years ago; that he owned the whole parcel all the way up to Providence Church Road; that he can correct some of the misconceptions about the property; that the ditch runs along the subject property and the adjacent parcel's rear line,

underneath of Darning Drive, up to Route 54, and across the street where it ties in to the State ditches; that the ditch is owned by the State and they finally, after about 15 years of issues, came out and cleaned the entire ditch; that, in his 43 years there, he found that animals would create dams on the other side of Route 54 in the ditch system and someone would have to go over and break them up to allow the water to resume; that the survey submitted does not show the accurate location of the drain field as it is located closer to Darning Drive and farther away from the ditch; and that the septic and drain field have been like that for 43 years.

Mr. Willard stated that DNREC will inspect the system.

Mr. Scarlavai testified that he is bringing the septic up to Code.

The Board found that one (1) person appeared in support and five (5) persons appeared in opposition to the Application.

Mr. Chorman closed the public hearing.

Dr. Carson moved to approve the application for Case No. 12869 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to the continuous front yard; and
2. The exceptional practical difficulty was not created by the Applicant;

Motion by Dr. Carson, seconded by Mr. Warfel, carried that the **variances be granted for the reasons stated**. 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.

Case No. 12870 – William and Katherine McInnes seek variances from the side yard setback requirements for existing and proposed structures (Sections 115-34 and 115-183 of the Sussex County Zoning Code). The property is located on the northeast side of Shore Drive within the Prime Hook Beach Subdivision. 911 Address: 9303 Shore Drive, Milford. Zoning District: MR. Tax Map: 230-17.00-59.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of, no correspondence in opposition to the Application, and zero mail returns. The Applicants are requesting variances of 3.6 ft. from the 5 ft. side yard setback requirement on the south side for the existing house and proposed second-floor addition.

Mr. Warfel recused himself and left the Council Chambers.

Mr. Mark Redden was sworn in to give testimony for this application.

Mr. Redden testified that he is here representing the McInneses; that they have a house that dates back before FEMA regulations and, potentially, the Sussex County Zoning Code; that the house was built without any reference to the zoning code as it was built about a foot and a half from the property line; that the property is within the VE flood zone which means that the foundation needs to be on piles or is not compliant with the FEMA regulations; that, because the house is not on piles, the Applicants are limited to how much they can do to the house; that their choices are to knock the house down and build a brand new house which is not in his clients' budget or to do a renovation to the house which is within the regulations FEMA has; that they are proposing to get more space and make the house more livable due to the lack of amenities in this beach cottage, to put in a new kitchen and to add some more living space; that the goal is to pull the roof off on the back half or third of the house and build a second floor on top of that; that they also plan on adding a screen porch because they have no exterior space on the back of the house and this would provide them with some living space on the top level; that, in order to keep the cost down, they will be using the existing footprint and foundation which puts them into the setbacks; that the neighbors most directly affected are on board and have submitted a letter of support; that there are a ton of these houses in the neighborhood and the neighbor next door had the same issue of being too close to the property line; that a lot of these houses were built completely disregarding the property lines and setbacks; that his clients only bought this house a few years ago; that this was an inherited problem; that the property is unique in the existing condition that the house was built; that this was not created by the Applicants; that it cannot be otherwise be developed because if they tried to do anything else they would not be able to save the house; that they do not have a budget to do anything else without violating FEMA standards and being unable to obtain a permit; that they did not design or place the existing home; that it will not alter the essential character of the neighborhood as there are many properties similar in the neighborhood; that this is the minimum variance because this is what needs to be done to save and renovate the house to make it more livable year round; that, due to the budget limitations, the Applicants have to use the existing foundation which is already in violation of the setbacks and must remain as they bring the joists all the way over the wall rather than spending more money on beams and rerouting of structural materials; that the original house is 60-70 years old; that the foundations are solid and the floors are in good shape but they do have an engineer who will verify the condition; that, if they are granted a variance but the foundation does not pass inspection, it will likely kill the project because there is no money to upgrade the foundation; that the existing house is one story with an existing under roof area which puts it at about 20 ft. tall; that, with the proposed addition, they are looking at the between 30 ft. and 35 ft. in height but under the height restriction; that they do these types of projects frequently; that most footings are oversized when constructed; that, if the footing was to fail one day, it would be the engineer who would take the heat; that it will be on the engineer and Building Code to verify that the addition and structure are compliant; that he is not aware of any complaints regarding the current placement of the house; that they do not have issues with mosquitos more than anywhere else in Delaware but screen porches have become the standard at Delaware beaches; that he is unsure of the age of the garage but it appears to be a little bit newer than the house; that they are not adding any bedrooms and should not need to update the septic system; that they are

just inside the DNREC build line; that they will be compliant with both the DNREC build line and the VE flood zone; that, in this area, the dunes usually hold the floods back from the Bay but rather any flooding usually comes from the marsh on the other side of the street; and that the house does not have any issues relating to flooding and was dry when he went into the crawl space but he does not recall the weather prior to his inspection.

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 the application for Case No. 12864 for the variances, pending final written decision, for the following reasons:

1. The property has unique conditions;
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 represent the minimum variances necessary to afford relief.

Motion by Mr. Hastings, seconded by Mr. Williamson, carried that the **variances be granted for the reasons stated**. Motion carried 4 - 0.

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

ADDITIONAL BUSINESS

2024 Board of Adjustment Meeting Schedule

The Board discussed the 2024 Board of Adjustment meeting schedule.

Meeting adjourned at 7:33 p.m.