

## **MINUTES OF AUGUST 5, 2024**

The regular meeting of the Sussex County Board of Adjustment was held on Monday, August 5, 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 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. Marina Truitt – Recording Secretary.

The Pledge of Allegiance was led by Mr. Chorman.

Motion by Mr. Warfel, seconded by Mr. Hastings and carried unanimously to approve the amended agenda to move Case No. 12974 to the front. Motion carried 4 – 0.

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

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

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

Motion by Mr. Hastings, seconded by Mr. Warfel and carried to approve the Findings of Facts for the June 3, 2024, meeting. Motion carried 4 – 0.

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

## **PUBLIC HEARINGS**

**Case No. 12974 – Kevin and Linda Vane** seek variances from the maximum fence height requirement for a proposed structure (Section 115-25 of the Sussex County Zoning Code). The property is located North of Hearn Pond Road. 911 Address: 8399 Hearn Pond Road, Seaford. Zoning District: AR-1. Tax Parcel: 331-3.00-106.00

Ms. Norwood presented the case and stated that the Applicants sent an email stating they are not planning on installing an 8 foot fence anymore. The Applicants have, thus, requested to withdraw the Application.

Mr. Williamson moved to approve the request to withdraw the Application for Case No. 12974.

Motion by Mr. Williamson, seconded by Mr. Hastings, carried unanimously that the **Applicants' request to withdraw the Application be granted for good cause.** Motion carried 4 – 0.

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

**Case No. 12971 – Steve Bailey** seeks variances from the front yard setback requirements for proposed structures (Section 115-25 of the Sussex County Zoning Code). The property is located East of Mayflower Lane and South of Green Briar Way within the Green Briar Subdivision. 911 Address: 4414 Green Briar Way, Seaford. Zoning District: AR-1. Tax Parcel: 531-11.00-109.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received a petition in support of the Application, no correspondence in opposition to the Application, and one (1) mail return. The Applicant is requesting a 13.9 foot variance from the 60 foot front yard setback requirement for proposed structures, a 15.7 foot variance from the 60 foot front yard setback requirement for proposed structures and an 18.3 foot variance from the 60 foot front yard setback requirement for proposed structures.

Mr. Steve Bailey was sworn in to give testimony for this application.

Mr. Bailey testified that he and his wife purchased the property in 2006; that the materials for the pole building have already been purchased and site work has been put on hold; that the proposed pole barn will be 24 feet by 48 feet with a 12 foot lean-to; that, due to the placement of the septic tanks, drain field, pool, and house, there is no other spot on the property that would allow for the pole building; that the 60 foot setback requirement prohibits building; and that neighbors support the Application.

Ms. Norwood stated that a petition was previously submitted with 25 signatures in support.

Mr. Bailey testified that the HOA has approved the request; that the septic tanks are on the west side of the property, the pipes will run under the lean-to and exit towards the east side of the property where the drain field is located; that DNREC has a 10 foot setback requirement off the drain field and septic tanks; that the property was raw when they purchased it; that they built the house and installed the pool; that the well is to the front of the house; that there is an underground propane tank towards the southeast corner of the property; that the 60 foot setback affects three sides of the property unlike most corner lots that only have two sides affected; that there are only 3 other corner lots in the neighborhood but the Applicant's property is the only lot with the severe limitations on the building envelope due to its shape; that there is roughly five (5) feet between the property line and edge of pavement; that the pole building will be approximately 50 feet from the edge of paving of the road; that the trusses have been cut and the materials have been ordered; that there will not be drive or access from the cul-de-sac for the pole building; that the pole building will house the lawn mower

and not a vehicle; that no steps are protruding from the pole building; and that the in-ground pool was moved to assist with bringing the pole building more into compliance.

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

Mr. Chorman closed the public hearing.

Mr. Williamson moved to approve the application for Case No. 12971 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to the cul-de-sac;
2. The exceptional practical difficulty was not created by the Applicant due to the shape;
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. Williamson, seconded by Mr. Warfel, carried unanimously that the **variances be approved**. Motion carried 4 – 0.

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

**Case No. 12972 – Craig and Jill Lambertson** seek variances from the front yard setback requirements for existing structures (Section 115-25 of the Sussex County Zoning Code). The property is located South of Garfield Avenue within the Edgewater Subdivision. 911 Address: 39173 Garfield Avenue, Selbyville. Zoning District: AR-1. Tax Parcel: 533-20.18-192.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support or in opposition of the application, and zero mail returns. The Applicants are requesting a 19.8 foot variance from the 30 foot front yard setback requirement for existing steps, a 17.1 foot variance from the 30 foot front yard setback requirement for an existing porch, a 4 foot variance from the 30 foot front yard setback requirement for an existing outdoor shower, an 11.8 foot variance from the 30 foot front yard setback requirement for an existing dwelling and storage area, and an 11.9 foot variance from the 30 foot front yard setback requirement for an existing dwelling and storage area.

Mr. Craig Lambertson was sworn in to give testimony for this application.

Mr. Lambertson testified that he and his wife purchased the property with the legally non-conforming house; that the house measures 30 feet by 30 feet; that the entire house is 12 feet over the Sussex County setback requirement; that the entire house required repair that they were going to perform; that, when replacing the front steps and porch, the final product ended up being a few square feet larger than the original; that the need for a variance was presented when a constable approached

the Applicants while investigating a complaint that stated they were building without a permit; that the Applicants did have proper permitting; that the prior porch and steps were rotten; that the house was approximately built in 1962; that all floor joists in the house were replaced; that the walls of the house were okay but the porch was in poor shape; that the porch is not as deep but is wider than the prior porch; that the porch is 1 foot farther from the road than the prior porch; that all neighbors they have spoken with are in support of the renovations; that the rear yard floods at high tide; that there is no homeowners association for the community; that the storage unit was existing when the house was purchased and was repaired in its original form; that the outdoor shower is located there due to plumbing and the window layout of the house; and that there is a few feet between the property line and edge of paving of Garfield Avenue.

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

Mr. Chorman closed the public hearing.

Mr. Hastings moved to approve the application for Case No. 12972 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique physical conditions;
2. That, due to such physical circumstances or conditions, there is no possibility that property can be developed in strict conformity with Sussex County Zoning Code;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances represent the minimum variances necessary to afford relief.

Motion by Mr. Hastings, seconded by Mr. Warfel, carried unanimously that the **variances be approved**. Motion carried 4 – 0.

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

## RECESS

**Case No. 12973 – Gary and Bonita Rabe** seek a variance from the rear yard aggregate setback requirement for proposed structures (Section 115-188 of the Sussex County Zoning Code). The property is located North of Cormorant Way within the Bay Forest Subdivision. 911 Address: 21000 Cormorant Way, Ocean View. Zoning District: MR-RPC. Tax Parcel: 134-8.00-1204.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support or in opposition of the application, and zero mail returns. The Applicants are requesting a 3.7 foot variance from the 20 foot rear yard aggregate requirements for a proposed structure.

Mr. Gary Rabe and Ms. Bonita Rabe were sworn in to give testimony for this application.

Mr. Rabe testified that the house is 72 feet long and a three seasons room will not fit without a variance; that their house is 10 feet longer than the neighboring houses; that there is a drainage easement in the rear of the property that brings flooding and insects; and that the trees to the rear of the property will not be developed.

Ms. Rabe testified that there are 2 other properties with variances that have the same structure and the same depth as theirs; and that one of the properties which received a variance is in the same townhouse pad as the Applicants' lot.

Mr. Rabe testified that many properties in the community have sunrooms that did not require a variance; that there is still 16.4 feet between the proposed structure and property line; that the sunroom will be 30-35 feet from the woods; that the HOA has approved the proposed structure; that the proposed sunroom is slightly smaller than the neighboring property's sunroom; that the proposed structure will be 12 feet by 12 feet; that most of the sunrooms were added after the house was built; that the 10 foot bedroom bump out causes a hardship when attempting to add on; that the neighboring house does not have the bump out; that a smaller room will not suit their needs; and that the prior owner built the house.

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

Mr. Chorman closed the public hearing.

Mr. Warfel moved to approve the application for Case No. 12973 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique physical conditions due to the bump out that was made by the previous owner;
2. That, due to such physical circumstances or conditions, there is no possibility that property can be developed in strict conformity with Sussex County Zoning Code, and the variance is necessary to enable the reasonable use of the property;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance represents the minimum variance necessary to afford relief.

Motion by Mr. Williamson, seconded by Mr. Warfel, carried unanimously that the **variance be approved**. Motion carried 4 – 0.

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

**Case No. 12976 – Harold and Deborah Bennet** seek variances from the front yard setback requirement for proposed structures (Section 115-34 of the Sussex County Zoning Code). The property is located West of Draper Drive within the Seabreeze Development Subdivision. 911 Address: 103 Draper Drive, Rehoboth Beach. Zoning District: MR. Tax Parcel: 334-20.13-239.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support or in opposition of the application, and zero mail returns. The Applicants are requesting a 3 foot variance from the 30 foot front yard setback requirement for a proposed dwelling, a 7 foot variance from the 30 foot front yard setback requirement for a proposed covered porch, a variance of 8.4 feet from the 30 foot front yard setback requirement for a proposed dwelling, and an 8.4 foot variance from the 30 foot front yard setback requirement for proposed steps on the covered porch.

Mr. Matt Purnell and Ms. Deborah Bennet were sworn in to give testimony for this application.

Mr. Purnell testified that he and his company (Oak Construction) were hired by the Applicants to design and build a new home; that the Applicants have owned the property since 1993 and the existing home was built in the 1960s; that the property is located within the Sea Breeze Community, which predated the enactment of the Sussex County Zoning Code; that the HOA requires a 20 foot front yard setback versus Sussex County's 30 foot front yard setback requirement; that the proposed dwelling will sit farther back off the road than existing neighboring houses; that the proposed dwelling will encroach less than the existing dwelling by 18 inches; that the Applicants already have HOA approval for the sunroom off the back to remain but not the second story deck; that there is a slope of approximately 3 feet from the front to the rear of the property; that the Applicants could not reasonably build a home within the building envelope; that the size of the proposed dwelling is the minimum size required to fit their needs; and that the property will be a clean slate to rebuild on.

Ms. Bennet testified that DNREC approval has been granted to renovate the dock and replace the soon to be failing bulkhead.

Mr. Purnell testified that the bulkhead replacement prompted the timing for the proposed dwelling; that the existing dwelling will be removed, the bulkhead will be repaired, and the proposed dwelling built; that the property is on public sewer and water; that there is currently a buried propane tank that will be removed and relocated when the proposed dwelling is built; that there is roughly 18 feet between the property line and edge of pavement; that the proposed dwelling is a two-story home with a deck on top of the sunroom and steps coming off the deck; that there is no crawl space; and that pilings will be the structural support for the home but will be at ground level.

Ms. Bennet testified that there have been no complaints about the location of the prior dwelling; and that neighboring homes are located a similar distance from the street.

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

Mr. Chorman closed the public hearing.

Mr. Williamson moved to approve the application for Case No. 12976 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique physical conditions due to the slope of the property and the need for a new bulkhead;
2. The exceptional practical difficulty was not created by the Applicants;
3. The variances will not alter the essential character of the neighborhood or substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare; and
4. The variances represent the minimum variances necessary to afford relief.

Motion by Mr. Williamson, seconded by Mr. Warfel, carried unanimously that the **variances be approved**. Motion carried 4 – 0.

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

### **ADDITIONAL BUSINESS**

**Meeting adjourned at 7:12 p.m.**