

## MINUTES OF MARCH 20, 2017

The regular meeting of the Sussex County Board of Adjustment was held on Monday, March 20, 2017, at 7:00 p.m. in the County Council Chambers, 2 The Circle, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Dale Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. Mr. Jeff Hudson was absent. Also in attendance were Mr. James Sharp – Assistant County Attorney, and staff members Ms. Janelle Cornwell – Director of Planning and Zoning, Mrs. Jennifer Walls – Planning Manager, and Ms. Christin Headley – Recording Secretary.

The Pledge of Allegiance was led by Mr. Callaway.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously to remove Case No. 11930 – Michael J. DeSantis Jr. from the public hearings and approve the Revised Agenda as circulated and amended. Motion carried 4 – 0.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously to move the Minutes and Finding of Facts for February 20, 2017, to the agenda for the meeting on April 3, 2017. Motion carried 4 – 0.

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. 11927 – Daniel Davis & Sarah Davis** - seek variances from the front yard setback requirement and the minimum lot width for a parcel requirement (Sections 115-34A and 115-34B of the Sussex County Zoning Code). The property is located on the south side of Club House Road (Road 351) approximately 367 feet east of Bird Heaven Street. 911 Address: 37384 Club House Road, Ocean View. Zoning District: MR. Tax Map No.: 1-34-8.00-73.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application.

Daniel Davis was sworn in to testify about the Application. Shannon Carmean Burton, Esquire, presented the case on behalf of the Applicants and submitted exhibits for the Board to review.

Mrs. Burton submitted a new survey into the record and stated that the Applicants are requesting a variance of 11.6 feet from the thirty (30) feet front yard setback requirement for an existing dwelling, a variance of 15.5 feet from the one hundred and fifty (150) feet road frontage requirement for the purpose of subdividing the parcel into two parcels and created Proposed Tract #1, and a variance of 15.66 feet from the one hundred and fifty (150) feet road frontage requirement for the purpose of subdividing the parcel into two parcels and creating Proposed Tract #2; that the

subdivision plan has been slightly amended; that the subdivision plan dated August 12, 2016, shows a proposed driveway for the Proposed Tract #2 and the revised subdivision plan dated February 4, 2017, removes the proposed driveway and shows the existing driveway on Proposed Tract #2; that the Property is located in the MR zoning district and is improved by an existing dwelling which was constructed in or before 1970; that the Applicants purchased the Property in August 2016; that the Applicants purchased the Property with the understanding that the Property could be subdivided; that, when sewer lines were installed in the neighborhood, Sussex County officials recommended the installation of a second sewer connection; that the previous owner reasonably believed that the Property could be subdivided; that the previous owner marketed the Property as able to be subdivided; that the Property is unique as it is an oversized lot consisting of approximately 1.168 acres; that the minimum lot size requirement in an MR district is 10,000 square feet and the Property, if subdivided would meet the lot size requirement; that the Property, however, cannot be subdivided while still meeting the lot frontage requirement of 150 feet per lot; that the total road frontage for the Property is 268.84 feet; that the lot frontage variances are needed in order to subdivide the Property; that the existing dwelling is an existing nonconforming structure but the variance is being sought to bring the home into compliance with the Sussex County Zoning Code; that the exceptional practical difficulty was not created by the Applicants; that the variances requested are necessary to subdivide the Property and for the existing dwelling; that the variances are necessary to enable reasonable use of the Property; that the Applicants did not construct the dwelling or create the size of the Property; that the Property can easily service two separate dwellings on two separate lots; that Sussex County approved the installation of the second sewer connection; that the variances will not alter the essential character of the neighborhood or be detrimental to the public welfare; that the Applicants are unaware of any complaints from neighbors; that the request is smaller than the lot width requirement but the lot size is much larger than the minimum lots size requirement; that other lots in the area do not meet the lot width requirement; that the Delaware Department of Transportation (“DelDOT”) does not object to the proposed subdivision; that the variances requested are the minimum variances necessary to afford relief; and that the Applicants are asking to bring the existing dwelling into compliance and to subdivide the lot into two lots.

Mr. Davis, under oath, affirmed the statements made by Mrs. Burton. Mr. Davis testified that he is an owner of the Property; that he and his wife are new homeowners in Delaware; that the Applicants want to retire in Delaware; and that renovations of the existing dwelling will take a lot of work.

Mrs. Burton stated that the existing sheds will be removed.

Mr. Davis testified that there is a possibility he and his wife will build their dream home on the second lot; that, at this time, the Applicants have no intentions of selling the second lot; that a majority of the surrounding lots have less than one hundred and fifty (150) feet of road frontage; that there would be no problems with setbacks if a new home is built; and that there is approximately 2 feet from the front property line and the edge of paving for Club House Road.

Theresa Rogers was sworn in to testify in opposition to the Application. Ms. Rogers submitted an exhibit for review and read a letter into the record and testified that she owns the adjacent property to the west; that she operates a day care at her home; that one of the deciding factors in purchasing her property was the open space between her property and the existing dwelling on her

neighbor's property; that the children at her daycare go outside regularly for recess; that she has no issues with the location of the existing dwelling; that she has concerns about the location of a dwelling within 10 feet of her property; that the play area in her rear yard is not fenced in; that, if a home was built closer to her property, it would be too close to her play area; that it is heavily wooded between properties; and that the woods are located on the Applicants' property.

The Board found that one (1) party appeared in support of the Application.

The Board found that one (1) party appeared in opposition to the Application.

Mr. Rickard moved to approve Variance Application No. 11927 for the requested variances based on the record made at the public hearing and for the following reasons:

1. That he was not convinced by the opposition that the approval of the requested variances would affect the opposition's daycare; and
2. The Applicants have met the standards for granting a variance.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

**Case No. 11928 – Mary Yeager** - seek variances from the front yard and side yard setback requirements (Sections 115-42B and 115-183C of the Sussex County Zoning Code). The property is located on the southeast side of Laws Point Road approximately 1,084 feet northeast of Swann Drive. 911 Address: 36976 Laws Point Road, Selbyville. Zoning District: GR. Tax Map No.: 5-33-12.16-303.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of the Application and read the letter into the record and received no correspondence in opposition to the Application.

Gil Fleming was sworn in and testified on behalf of the Applicant and testified that the Applicant is requesting a variance of 17 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling, a variance of 2.2 feet from the ten (10) feet side yard setback requirement on the north side for a proposed dwelling, a variance of 4.8 feet from the ten (10) feet side yard setback requirement on the north side for a proposed HVAC system, a variance of 4.3 feet from the ten (10) feet side yard setback requirement on the north side for proposed steps, a variance of 4.6 feet from the ten (10) feet side yard setback requirement on the south side for a proposed dwelling, a variance of 4.7 feet from the ten (10) feet side yard setback requirement on the south side for a proposed dwelling, and a variance of 2.3 feet from the ten (10) feet side yard setback requirement on the north side for a proposed dwelling; that the Property is located in Swann Keys; that the Applicant has selected a home from Mr. Fleming's business; that the previous dwelling on the lot did not conform to the setback requirements; that the Property is unique; that Swann Keys was created many years ago; that the building envelope does not allow for new, larger homes; that the proposed dwelling is a

one story home; that the home is modest in size and measures 61 feet long; that the exceptional practical difficulty was not created by the Applicant; that Swann Keys was developed many years ago; that the proposed dwelling is aesthetically pleasing; that the setback requirements from the bulkhead require the proposed dwelling to be moved closer to the front yard; that the lot is forty (40) feet wide; that, if the lot was fifty (50) feet wide, the proposed dwelling would meet the side yard setback requirements; that, because the lot is only forty (40) feet wide, it is difficult to develop the Property in strict conformity with the Sussex County Zoning Code; that there will be no sheds or other buildings on the Property; that there is flooding in the rear yard at times; that it is beneficial for the proposed dwelling to be located away from the lagoon as much as possible; and that the proposed dwelling is being built closer to the road.

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

Mr. Mills moved to approve Variance Application No. 11928 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to its size and the development of neighboring properties;
2. The variances are necessary to enable 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; and
5. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Rickard – yea, Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11929 – Robert J. Palmer & Laura M. Hudson** - seek a variance from the setback of an agriculture building requirement (Section 115-20B(1)(b) of the Sussex County Zoning Code). The property is located on the west side of Cedar Lane (Route 318) approximately 2,884 feet northwest of Governor Stockley Road (Route 432). 911 Address: 23318 Cedar Lane, Georgetown. Zoning District: AR-1. Tax Map No.: 1-33-3.00-1.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of the Application and read that letter into the record and received no correspondence in opposition to the Application.

Robert Palmer was sworn in and testified requesting a variance of 67.5 feet from the two hundred (200) feet separation requirement for stables and submitted an exhibit booklet and a Power Point presentation for the Board to review.

Mr. Palmer testified that he is a civil engineer for waste water and designed the facility across the street from the Property; that the existing stable consists of six (6) stalls, a tac room, and a workshop; that, per the Sussex County Zoning Code, a public stable consists of more than four (4) stalls; that a run in shed attached to the stable is too close to the property line; that a lot line adjustment

was recorded approximately one (1) year before the Applicants' purchase of the Property; that the previous owner adjusted the lot line to retain four (4) acres, which was the horse pasture; that the Applicants did not learn of the encroachment until after they purchased the Property; that the previous owner owns nearby lands; that the Applicants are unable to purchase a portion of the neighboring property to eliminate the encroachment; that the stables were constructed in October 1996 and conformed with the Sussex County Zoning Code at that time; that the vegetation around the perimeter of the Property screens the stables from neighboring residential properties; that agricultural lands are located nearby as well; that the rear property line is fifteen (15) feet into the woods; that the stables cannot be seen from the neighbors to the north, south, or west; that they are able to use the neighboring four acre lot as horse pastures; that they are unable to purchase the neighboring four acres that were split off in 2015; that the stables do not alter the essential character of the neighborhood nor permanently impair adjacent development or be a detriment to the public welfare; that the stables were 264.78 feet from the lot line prior to the lot line adjustment made by the previous owner; that the stables are now located only 132.5 feet from the lot line; that the stables have existed for over 20 years; that the variance requested is the minimum variance necessary to afford relief; that the stables will be used for storage of friends' horses as well as horses owned by the Applicants; that at the time of creation of the lot line adjustment, a variance was not requested for the stables because the survey did not show any structures; and that no additions have been made to the stables since the purchase of the Property.

The Board found that one (1) party appeared in support of the Application.

The Board found that no parties appeared in opposition to the Application.

Mr. Mills moved to approve Variance Application No. 11929 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to the lot size adjustments;
2. The variance is necessary to enable 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;
5. The variance will not be detrimental to the public welfare; and
6. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Workman, and carried that the variances be **granted for the reasons stated**. Motion carried 3 – 1.

The vote by roll call; Mr. Rickard – nay, Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11931 – J & N Hickman Family** - seeks a variance from the front yard setback requirement (Section 115-34B of the Sussex County Zoning Code). The property is located 270 feet east of Coastal Highway (Route 1), on the southwest corner of Evergreen Road and Dune Road. 911 Address: 3 Dune Road, Bethany Beach. Zoning District: MR. Tax Map No.: 1-34-17.20-236.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received

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no correspondence in support of or in opposition to the Application.

Richard Malinowski and Chad Hickman were sworn in and testified requesting a variance of 3.1 feet from the thirty (30) feet front yard setback requirement for an existing porch and submitted pictures into the record for the Board to review.

Mr. Malinowski testified that he purchased the home in January 2017; that, during the closing process, the parties discovered the encroachment; that the porch is supported by large pilings; that the porch was existing at the time of purchase; that the house has been rented since 1997-1998; that all the neighboring homes are in line with the Applicant's porch; and that the old setback requirements in the community were 25 feet from the front yard property line.

Mr. Hickman testified that his parents bought the home in 1997 and the encroachment was not discovered at that time; that the house was originally built in 1972 or 1973; that the house was remodeled for aesthetic purposes but the same floorplan was kept; that there have been no additions made to the existing home but his family replaced the wood on the deck and replaced the siding; that all the older neighboring homes line up at 25 feet from the front yard property line; and that his family did not know of the encroachment until right before selling the Property to Mr. Malinowski.

Mr. Malinowski testified that he purchased the home with a preexisting condition; that neither he or Mr. Hickman knew about the nonconforming porch until reviewing the survey prior to closing; that there have been no complaints from any neighbors; that the Property is a corner lot; that there is about three feet from the front yard fence to the shoulder of the road; and that there is approximately 30 feet between the edge of paving and the porch.

The Board found that four (4) parties appeared in support of the Application.

The Board found that no parties appeared in opposition to the Application.

Mr. Rickard moved to approve Variance Application No. 11931 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The encroachment was not created by the Applicant; and
2. The encroachment existed prior to the Applicant's acquisition of the Property.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

**Case No. 11932 – Kelly Bivins** - seeks a variance from the separation requirement between units and a variance rear yard setback requirement (Section 115-172G(7) of the Sussex County Zoning Code). The property is located approximately 1,074 feet west of Coastal Highway (Route 1) on the north side of Route 54. 911 Address: 39024 Reilly Place, Fenwick Island. Zoning District: C-1. Tax Map No.: 1-34-23.20-68.00-55509.

Ms. Cornwell presented the case and stated the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application.

Kelly Bivins was sworn in and testified requesting a variance of 7.9 feet from the twenty (20) feet separation requirement to a shed on Lot #2, a variance of 2.7 feet from the twenty (20) feet separation requirement to a dwelling on Lot #2, a variance of 10.5 feet from the twenty (20) feet separation requirement from a screen porch on Lot #2, a variance of 10.6 feet from the twenty (20) feet separation requirement from a screen porch on Lot #2, a variance of 2.3 feet from the twenty (20) feet separation requirement from a dwelling on Lot #2, a variance of 2.3 feet from the twenty (20) feet separation requirement from a dwelling on Lot #4, a variance of 3.1 feet from the twenty (20) feet separation requirement from a dwelling on Lot #4, a variance of 8.0 feet from the twenty (20) feet separation requirement from a shed on Lot #1, a variance of 0.8 feet from the twenty (20) feet separation requirement from a dwelling on Lot #1, and a variance of 1.9 feet from the five (5) feet rear yard setback requirement for a manufactured home.

Mr. Sharp advised the Board and the Applicant that the Application was advertised for a rear yard setback variance but the survey shows that the proposed home will actually encroach into the front yard setback area. The Applicant has since informed staff that she actually seeks to move the home towards the rear yard property line so a variance from the rear yard property line would be required.

Ms. Bivins testified that the Property is unique because the mobile home park was designed to accommodate mobile homes which are 12 feet wide but homes that small are no longer made; that she is proposing to place a manufactured home which is fourteen (14) feet wide; that she did not create the existing lot; that the lot is located at Mason-Dixon Annex at Rhiley Place; that the previous manufactured home was forty years old and was abandoned; that the lot has been vacant for a couple of years; that most of the manufactured homes in the community are older homes; that neighboring manufactured homes are 10 to 12 feet wide and manufactured in the 1970s or 1980s; that she is allotted two parking spots and would propose to move the home closer to the rear yard to allow for better parking; that she has had no discussion with neighbors; that a letter was written by the owner of the park in favor of the proposed manufactured home; and that a 14 feet wide manufactured home is the smallest available on the market.

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

Mr. Sharp advised the Board that, if the home is moved closer to the rear yard, the separation distances between the proposed home and neighboring units and structures would differ from what is shown on the survey presented to the Board.

Ms. Bivins testified that she will be leasing the lot from Tom Reilly.

Mr. Mills stated that he is concerned about the continued variance requests that will come from this manufactured home park and that the lots within the manufactured home park do not accommodate even the smallest manufactured home available.

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Mr. Cornwell stated that the Planning & Zoning office could reach out to the manufactured home park owner and discuss future plans for the park.

Ms. Bivins testified that this is the only vacant lot in the park.

Mr. Mills moved to leave open Variance Application No. 11932 for the park owner to be subpoenaed and testify about the park and the requested variances.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously to **leave the case open and to subpoena the owner of the park for further discussion.** Motion carried 4 – 0.

The vote by roll call; Mr. Rickard – yea, Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11933 – Village of Five Points Ventures, LLC** - seeks a special use exception to place a tent for special purposes (Sections 115-72A and 115-210A(1) of the Sussex County Zoning Code). The property is located on the northwest corner of Route 18 and Road 269A. 911 Address: 17252 North Village Main Boulevard, Lewes. Zoning District: B-1. Tax Map No.: 3-35-12.00-1.01.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application.

Steve Rayburn was sworn in and testified requesting a special use exception to place a tent for more than three days for special events. Mr. Rayburn testified that he is the store manager for Weis Markets in Lewes; that the Applicant proposes to use a tent for special events in the summer months; that the goal is to bring the community together; that the tent will be used for a period of one month from June 15 to July 15; that the tent will provide the sale of summer merchandise such as beach towels, flowers, and water; that a pharmacy is being placed in the front of the store so the Applicant will be losing some space inside the store for merchandising of these items; that the Applicant wants to be involved in the community with the fire company and local charities; that the tent will not substantially affect adversely the uses of neighboring and adjacent properties; that the proposed tent will not block any property or local residence views; that the proposed tent will be located in the parking lot closer to Savannah Road and Old Orchard Road intersection; that the proposed tent will be directly across from a beer distributor; that the tent will not take up many parking spaces; that the proposed tent is 40 feet by 40 feet in size; and that the tent will not adversely affect parking on the Property even during peak business hours.

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

Mr. Mills moved to approve Special Use Exception Application No. 11933 for the requested special use exception from June 15 to July 15 for a period of five (5) years based on the record made at the public hearing and because the use will not substantially adversely affect the uses of the neighboring properties.

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Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted from June 15 – July 15 for a period of five (5) years for the reasons stated.** Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Rickard – yea, Mr. Mills – yea, and Mr. Callaway – yea.

### **ADDITIONAL BUSINESS**

**Case No. 11694 – Central Storage at Harbeson, LLC** seeks a special use exception to place a billboard (Sections 115-159.5B and 115-83.6C of the Sussex County Zoning Ordinance). The property is located on the north side of Lewes-Georgetown Highway (Route 9) approximately 509 feet west of Harbeson Road. 911 Address: 23673 Lewes-Georgetown Highway, Harbeson. Zoning District CR-1. Tax Map 2-35-30.00-8.02.

#### **REQUEST FOR A TIME EXTENSION**

Ms. Cornwell presented the case to the Board.

There was no discussion.

Mr. Mills moved to approve the extension request for one (1) year.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the request be **granted for a period of one (1) year.** Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Rickard – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Meeting Adjourned 8:46 p.m.**