

**TOWN OF SELBYVILLE
BOARD OF ADJUSTMENT
MINUTES
December 11, 2024**

Chairman/Mayor Duncan called the Board of Adjustment Hearing to order at 10 o'clock am. Member/Town Solicitor Mary Schrider-Fox and Councilmember Chris Snader were also in attendance. Also in attendance was Town Administrator Stacey Long as Secretary of the Board.

The meeting was properly advertised 15 days in advance in a publication of general circulation.

Visitors in attendance were the applicants, Maricryst Birao and Dan Velez, and Robert Palmer from Beacon Engineering, LLC. No other visitors were in attendance.

The first item on the agenda is approval of the minutes from February 21, 2024. Motion to approve the minutes was made by Member/Town Solicitor Mary Schrider-Fox. The motion was seconded by Councilman Snader and carried by all.

The second item on the agenda is an application submitted by Maricryst Sanchez Birao and Dan Jason M. Velez concerning real property located in the NB Neighborhood Business District at 32634 Lighthouse Road, Selbyville, Delaware 19975, identified as Sussex County Tax Map and Parcel No. 533-18.00-35.03, seeking a variance from the minimum lot size requirement imposed by Section 200-84.F.(1) of the Zoning Code.

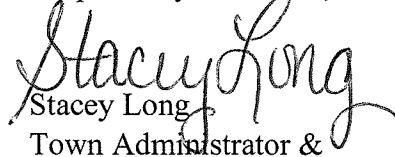
The finding of facts and decision of the Board of Adjustment is attached hereto.

There were no letters received on the application in favor of or in opposition of the requested variance.

Member/Town Solicitor Mary Schrider-Fox made a motion to approve the variance as requested. The motion was seconded by Councilman Snader and carried by all.

There being no further business, Member/Town Solicitor Mary Schrider-Fox made a motion to adjourn the hearing. The motion was seconded by Councilmember Snader and carried by all.

Respectfully submitted,


Stacey Long

Town Administrator &
Secretary of the Board of Adjustment

**BEFORE THE BOARD OF ADJUSTMENT
OF THE TOWN OF SELBYVILLE**

IN RE:	:	
	:	
APPLICATION OF	:	DECISION
	:	
MARICRYST SANCHEZ BIRAO and	:	
DAN JASON M. VELEZ	:	

The Board of Adjustment of the Town of Selbyville convened at 9:00 o'clock in the morning, prevailing time, on Wednesday, December 11, 2024, at the Town Hall, 1 West Church Street, Selbyville, Sussex County, Delaware, to hear the application of Maricryst Sanchez Birao and Dan Jason M. Velez (hereinafter the "Applicants") for a variance from the minimum lot size requirement imposed by Section 200-84.F.(1) of the Zoning Code of the Town of Selbyville (hereinafter the "Zoning Code"), for property owned by Applicants located at 32634 Lighthouse Road, Selbyville, Delaware, Sussex County Tax Map and Parcel No. 533-18.00-35.03. Present for the Board of Adjustment were Richard A. Duncan, Sr., Mayor and Chair, and members Chris S. Snader, Sr., Council Member, and Mary R. Schrider-Fox, Town Solicitor. Present as well was Stacey Long, Town Manager and Secretary for the Board of Adjustment. Robert Palmer from Beacon Engineering LLC appeared on behalf of Applicants to present the variance application to the Board. Both Applicants were in attendance. No members of the public attended.

FINDINGS OF FACT

The Applicants, Maricryst Sanchez Birao and Dan Jason M. Velez, are the owners of real property located at 32634 Lighthouse Road, Selbyville, Delaware, Sussex County Tax Map and Parcel No. 533-18.00-35.03, within the corporate limits of the Town of Selbyville, Sussex County, State of Delaware (the "subject property"). The subject property is located in the NB Neighborhood Business district.

The subject property is 1.14 or 1.15 acres (+/-) in size and is improved with an existing dwelling, deck, patio and pool, as depicted on the "Existing Conditions Plan" submitted by Applicants with their application.

The subject property abuts the Lighthouse Lakes residential subdivision, which is located within the jurisdictional limits of the Town. Other properties in the vicinity of the subject property are not located within the jurisdictional limits of the Town and are used for both commercial and agricultural purposes.

The subject property was only recently annexed into the Town on September 9, 2024, following the submission of an annexation application by Applicants. The Annexation Committee that reviewed Applicants' annexation application recommended and the Town

Council ultimately approved a zoning designation of NB Neighborhood Business for the newly annexed subject property. Said zoning designation was conferred upon the subject property despite the 3 acre minimum lot size requirement imposed by Section 200-84.F.(1) of the Zoning Code for all uses in the NB Neighborhood Business district.

A zoning designation of NB Neighborhood Business for the subject property complies with the Comprehensive Plan for the Town, which contemplates a business use for the subject property. A zoning designation of NB Neighborhood Business for the subject property was deemed to be more favorable than general commercial, which would allow for more intense commercial uses.

The Annexation Committee and the Town Council both had the expectation that Applicants' would seek a variance of the 3 acre minimum lot size requirement imposed by Section 200-84.F.(1) of the Zoning Code following annexation of the subject property into the Town.

Although the subject property does not satisfy the 3 acre minimum lot size requirement imposed by Section 200-84.F.(1) of the Zoning Code, the subject property does satisfy the 1 acre minimum pad site requirement imposed by said section of the Zoning Code.

Applicants' plan for the subject property is to redevelop it by constructing a new physical therapy office thereon, with adjoining office/commercial space, parking, highway entrance and stormwater management, as depicted on the "Annexation Site Plan" submitted by Applicants with their application.

Lighthouse Road is a major collector right-of-way according to the standards of the Delaware Department of Transportation (DelDOT). At the present time, it is not known how much of the subject property will be required to satisfy DelDOT highway entrance or other requirements. With that being the case, Applicants are proceeding under the assumption that they may only have 1 acre of usable space of the subject property remaining following satisfaction of DelDOT requirements. Accordingly, Applicants are seeking a 2 acre variance from the 3 acre minimum lot size requirement imposed by Section 200-84.F.(1) of the Zoning Code.

The Board received no comments from the public, either in person at the hearing or in writing.

CONCLUSIONS

Pursuant to Section 200-132. C. of the Zoning Code of the Town of Selbyville, the Board of Adjustment shall:

authorize upon appeal, in specific cases, such variance from the chapter as will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions of the chapter will result in unnecessary hardship or exceptional practical difficulties to the owner of the property, and so that the

spirit of this chapter shall be observed and substantial justice done, provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the chapter or Zoning Map.

Under Delaware case law, the Delaware Supreme Court has defined the two (2) types of variances, “use” variances and “area” variances. The Board of Adjustment v. Kwik-Check Realty, Inc., Del. Supr. 389 A.2d at 1289, 1291 (1978). That court indicated that “a use variance is a variance that changes the character of the zoned district by allowing the land to be used for a purpose otherwise proscribed by the zoning regulations.” Id. However, an area variance “does not involve a prohibited use, and ‘concerns only the practical difficulty in using the particular property for permitted use.’” Id. at 1291. The variance requested in this instance is an area variance to which the “exceptional practical difficulty” standard applies.

The Board concludes that Applicants face an exceptional practical difficulty because of the idiosyncratic location of the subject property in the NB Neighborhood Business district that has a 3 acre minimum lot size requirement for all uses in said district. Although Applicants knew of the 3 acre minimum lot size requirement when they sought annexation of the subject property into the jurisdictional limits of the Town, it was the Town Council that ultimately determined the zoning designation for the subject property, finding that NB Neighborhood Business was the appropriate zoning designation despite the subject property’s inability to meet the 3 acre minimum lot size requirement imposed by Section 200-84.F.(1) of the Zoning Code.

The Board concludes that Applicants’ proposed use of the subject property is in keeping with the Comprehensive Plan for the Town and will fulfill the purpose of the NB Neighborhood Business district, which is, in relevant part, to provide personal service uses to serve the needs of and be compatible with low or medium density residential neighborhoods. Accordingly, the requested variance will not adversely affect neighboring properties and, rather, will enhance the general character of the neighborhood.

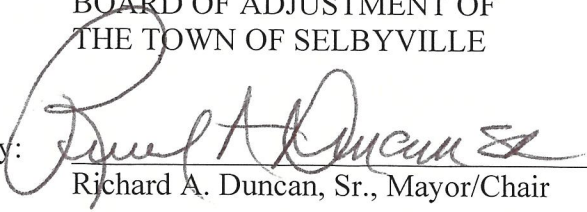
The Board concludes that, if the variance was not granted, Applicants would not be able to make any normal use of the subject property contemplated and permitted by the NB Neighborhood Business district provisions of the Zoning Code.

DECISION


It is the unanimous decision of the Board of Adjustment of the Town of Selbyville that a variance of up to 2 acres from the 3 acre minimum lot size requirement imposed by Section 200-84.F.(1) of the Zoning Code is hereby granted for Applicants’ real property located at 32634 Lighthouse Road, Selbyville, Delaware, Sussex County Tax Map and Parcel No. 533-18.00-35.03.

BOARD OF ADJUSTMENT OF
THE TOWN OF SELBYVILLE

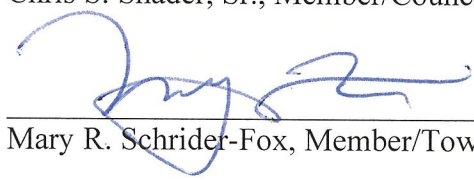
By:


Richard A. Duncan, Sr., Mayor/Chair

By:


Chris S. Snader, Sr., Member/Council Member

By:


Mary R. Schrider-Fox, Member/Town Solicitor

Date Filed with Town:

January 14, 2025

Date Mailed/Emailed to Applicant:

January 15, 2025