

MINUTES OF APRIL 16, 2018

The regular meeting of the Sussex County Board of Adjustment was held on Monday, April 16, 2018, 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. Bruce Mears, and Ms. Ellen Magee. Mr. John Mills was absent and Mr. Brent Workman arrived late. Also in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, Mr. Vince Robertson – Assistant County Attorney, and staff members Mrs. Jennifer Walls – Planning Manager and Ms. Christin Headley – Recording Secretary.

The Pledge of Allegiance was led by Mr. Callaway.

Motion by Mr. Mears, seconded by Ms. Magee, and carried unanimously to move Case No. 12112 to the front of the agenda, to move Case No. 12113 to the front of the agenda upon the arrival of Mr. Workman, to move Case No. 12128 to the front of the public hearings, and to approve the revised agenda as otherwise circulated. Motion carried 3 – 0.

Motion by Mr. Mears, seconded by Ms. Magee, and carried unanimously to approve the Minutes and Findings of Facts for February 19, 2018. Motion carried 3 – 0.

Mr. Sharp read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing the case.

OLD BUSINESS

Case No. 12112 – Hudson Family, LLC seeks a determination of whether existing non-conforming uses exist (Section 115-202 of the Sussex County Zoning Code). The property is located on the northwest side of Eagle Crest Rd., approximately 495 ft. southwest of the intersection of Coastal Hwy. (Rt. 1) and Eagle Crest Rd. 911 Address: 30045 Eagle Crest Rd., Milton. Zoning District: AR-1. Tax Map: 235-22.00-50.02, 235-22.00-50.03, 235-22.00-52.00, 235-22.00-441.00, and 235-22.00-442.00.

Ms. Walls presented the case that has been left open since March 5, 2018, for the limited purpose of allowing the Board to review the record and ask questions of the Applicant.

Mr. Sharp stated that, since the full Board was not present, he spoke with the Applicant's counsel about rescheduling the hearing on this matter for the second meeting in May and that the Applicant's counsel was agreeable to rescheduling the hearing as proposed.

Motion by Ms. Magee, seconded by Mr. Mears, and carried unanimously that **the record be left open until May 21, 2018, for the limited purpose of allowing the Board to ask the Applicant questions.** Motion carried 3 – 0.

The vote by roll call; Ms. Magee – yea, Mr. Mears – yea, and Mr. Callaway – yea.

PUBLIC HEARINGS

Case No. 12128 – Springfield Historic Preservation LLC seeks a special use exception to place a telecommunication tower (Sections 115-23, 115-194.2, and 115-210 of the Sussex County Zoning Code). The property is located on the north side of Springfield Rd. (Rt. 47) approximately 500 feet east of Deep Branch Rd. 911 Address: 24009 Springfield Rd., Georgetown. Zoning District: AR-1. Tax Map: 234-8.00-2.03.

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. The Applicant requests a special use exception to place a telecommunication tower.

Mr. Sharp advised the Board that he had a potential conflict of interest in this matter and he left the Council Chambers.

Mr. Robertson appeared as counsel for the Board for the Application.

Mike Cleary and Andrew Petersohn were sworn in to testify about the Application. John Tracey, Esquire, presented the case on behalf of the Applicants.

Mr. Tracey stated that the tower will be 130 feet tall with a 4 foot lightning rod; that the property is in Agricultural Preservation; that it is a permitted use and was approved November 2017 by Agricultural Preservation; that no variance is requested; that the required fencing and lighting will be used; that the placement will mitigate the appearance being next to trees; that the neighboring property is agricultural; that there is a residence across the street; that the frequency is a hundred times lower than permissible; that a significant gap in coverage is being filled with the proposed tower; and that there are no tall structures within 200 feet.

Mr. Petersohn affirmed the statements made by Mr. Tracey as true and correct.

Mr. Tracey stated that the tower does not generate any more than one trip a month simply for maintenance.

Mr. Petersohn testified that there is no effect with radio frequency and no harmful interferences.

Mr. Tracey stated that the tower is designed to allow two collocations.

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

Mr. Mears moved to approve Special Use Exception Application No. 12128 for the requested special use exception based on the record made at the public hearing and because the uses will not substantially adversely affect the uses of the neighboring and adjacent properties.

Motion by Mr. Mears, seconded by Ms. Magee, and carried unanimously that **the special use exception be granted for the reasons stated**. Motion carried 3 – 0.

The vote by roll call; Mr. Mears – yea, Ms. Magee - yea, and Mr. Callaway – yea.

Mr. Sharp returned to Council Chambers and Mr. Robertson left.

Case No. 12122 – Lynne Craig seeks variances from the front yard setback on a through lot and a variance from the fence height requirement (Sections 115-34, 115-182, and 115-185 of the Sussex County Zoning Code). The property is located at the intersection of Hickory Ln. and Keenwick Rd. 911 Address: 38178 Keenwick Rd., Selbyville. Zoning District: MR. Tax Map: 533-20.09-58.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of the Application and two (2) letters in opposition to the Application and read the letters of opposition into the record. The letters of opposition stated concerns with the fence. Mrs. Walls stated that, after the Application was advertised, the Office discovered that a previous variance had been granted by the Board in 1976 for a fence height variance; and that no variance is needed for the fence height. The Applicant seeks a variance of 24.4 feet from the thirty (30) feet front yard setback requirement along Hickory Lane for a proposed pool house and a variance of 11.8 feet from the thirty (30) feet front yard setback requirement along Hickory Lane for an existing pool.

Lynne Craig was sworn in to testify about the Application and submitted exhibits for the Board to review.

Ms. Craig testified that she proposes to rebuild the existing pool house; that the house was built in 1974; that her family purchased the Property in 1988; that the lot is triangular shaped; that the Property's shape makes it difficult to make reasonable use of the Property; that she cannot relocate the existing pool or otherwise place the proposed pool house; that the existing pool house is 466 square feet; that the proposed pool house will be 454 square feet; that she is rebuilding the pool house but it will be smaller; that the Property has two front yards; that she thinks Hickory Lane was considered the side yard when the pool house was originally built; that the existing dwelling is very modern, distinctive home; that the fence is existing; and that there are no plans to change the existing fence.

Mr. Mears stated that he is familiar with the Property and it is an awkward and small lot.

Ms. Craig testified that the proposed pool house will be one story; that the proposed pool house will be smaller than the existing pool house; that the proposed pool house will encroach less into the setback area than the existing pool house; that the Property is a through lot; that the

Property cannot otherwise be developed; that the pool pump cannot be relocated elsewhere on the Property; that the difficulty was created by the original owner; that the pool house was built by the original owner; that the variances will not alter the essential character of the neighborhood; that the variances requested are the minimum variances necessary to afford relief; that she is actually reducing the encroachment; that there is approximately 25 feet from the edge of paving of Hickory Lane to the pool house; that no neighbors have complained about the pool or the pool house; and that she made no additions to the pool.

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

Ms. Magee moved to approve Variance Application No. 12122 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 it having two front yards;
2. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
3. The exceptional practical difficulty has not been created by the Applicants;
4. The variances will not alter the essential character of the neighborhood; and
5. The requested variances are the minimum variances necessary to afford relief.

Motion by Ms. Magee, seconded by Mr. Mears, and carried unanimously that the **variances be granted for the reasons stated**. Motion carried 3 – 0.

The vote by roll call; Ms. Magee – yea, Mr. Mears – yea, and Mr. Callaway – yea.

Mr. Workman arrived at the meeting so Case No. 12113 was moved to the front of the agenda.

OLD BUSINESS

Case No. 12113 – Allen Harim Foods LLC seeks a special use exception for a potentially hazardous use (facility for further processing; deboning, packaging, and shipping of poultry products) (Sections 115-111 and 115-210 of the Sussex County Zoning Code). The property is located on the northwest corner of Pinnacle Way and Iron Branch Rd. (Rt. 331). 911 Address: 29984 Pinnacle Way, Millsboro. Zoning District: HI-1. Tax Map: 233-5.00-14.00, 233-5.00-15.00, & 233-5.00-16.00.

Mrs. Walls presented the case which has been tabled since March 19, 2018.

Ms. Magee recused herself from the Application and left the Council chambers.

Mr. Sharp stated that the case was left open until close of business on April 9, 2018, for the limited purpose of allowing agencies to submit additional comments and for a member of the

opposition to submit comments pertaining to a Court decision referenced at the hearing.

Mrs. Walls confirmed that copies of all such comments were submitted to the Board to review.

There were no comments made by Board members.

Motion made by Mr. Mears, seconded by Mr. Workman and carried unanimously that the case be **tabled until May 7, 2018**. Motion carried 3 – 0.

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

Ms. Magee reentered the Council chambers.

PUBLIC HEARINGS

Case No. 12123 – CMF Bayside LLC seeks variances from the minimum lot width requirement and the minimum lot size requirement (Section 115-127 of the Sussex County Zoning Code). The property is located southeast of the intersection of Signature Blvd. and Lakeview Dr. and within Village A of the Americana Bayside MR-RPC. 911 Address: None Available. Zoning District: MR-RPC. Tax Map: 533-19.00-36.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of the Application or in opposition to the Application. The Applicant seeks a variance of 12 feet from the sixty (60) feet minimum lot width requirement and a variance of 1,800 square feet from the 7,500 square feet minimum lot size requirement for twenty-four (24) lots in Village A of the Americana Bayside Residential Planned Community.

Rich Rishel and Steven Marsh were sworn in to testify about the Application. Jim Fuqua, Esquire, presented the case on behalf of the Applicants and submitted exhibits for the Board to review.

Mr. Fuqua stated that the request is for certain lots located in Village A of Americana Bayside; that the Applicant requests a variance from the lot width and lot size minimum requirements; that Village A consists of 96 single-family lots; that the variance requests apply to 24 lots that are known as patio lots; that Americana Bayside was approved in 2001 as a large-scale, residential-planned community; that the community consists of 1,700 residential lots; that there is 170,000 square feet of office and retail space; that the amenities include a golf course, the Freeman Stage, and others; that the variation in architectural style leads to variations in the lot sizes; that there will be 17 lots measuring 72 feet by 100 feet, 54 lots measuring 64 feet by 120 feet, and 24 lots measuring 48 feet by 120 feet known as patio lots; that, in order to maintain the architectural style of the development, the variances are needed; that, in 2004, the Board of Adjustment approved 127 lots measuring 6,000 square feet; that, in 2013, the Board of Adjustment approved 93 lots measuring 5,000 square feet that were only 40 feet wide; that the Applicant is requesting 24 lots which will consist of 5,700 square feet and will measure 48 feet wide; that the

requested variances are smaller variances than the Board previously granted in the community; that the exceptional practical difficulty was not created by the Applicant; that the variances will not alter the essential character of the neighborhood; that Americana Bayside is the largest residential community in Sussex County; and that the variances will lead to consistency with the existing homes within the community that are already built.

Mr. Rishel affirmed the statements made by Mr. Fuqua as true and correct.

Mr. Fuqua stated that Village A is an island by itself and is not surrounded by others.

Mr. Rishel testified that there has been no site work completed yet and that Village A is surrounded by the golf course.

Mr. Fuqua stated that the Applicant will be adding land to Village A but will not be adding density to Village A; that the number of units per acre will be reduced; and that the design of Village A is a superior design.

Mr. Rishel testified that there will be no density increase in the overall project.

Mr. Fuqua stated that the Applicant will adhere to the original MR-RPC approval.

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

Ms. Magee moved to approve Variance Application No. 12123 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique;
2. The uniqueness of the community leads to the need for a variance;
3. The variances will not alter the essential character of the neighborhood;
4. The improvements will enhance the character of the neighborhood; and
5. The requested variances are the minimum variances necessary to afford relief.

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

The vote by roll call; Mr. Workman – yea, Mr. Mears – yea, Ms. Magee – yea, and Mr. Callaway – yea.

Case No. 12125 – Stacey Maloney seeks a variance from the corner front yard setback on a corner lot (Sections 115-35 and 115-182 of the Sussex County Zoning Code). The property is located on the southwest corner of Breezewood Dr. and Whisperwood Ln. 911 Address: 131 Whisperwood Ln., Rehoboth Beach. Zoning District: MR. Tax Map: 334-13.00-231.00

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of the Application and no correspondence in opposition to the Application and read the letter of support into the record. The Applicant seeks a variance of 8.3 feet from the fifteen (15) feet corner front yard setback requirement along Breezewood Drive for an existing garage.

Doug Griffin was sworn in to testify about the Application and he submitted exhibits to the Board to review. Mr. Griffin testified that the Applicant has owned the Property since 2006; that the Applicant did not build the house; that the house is a modular home; that the garage measures 24 feet by 24 feet; that the Property narrows towards the rear; that the Applicant believed the property line was closer to the edge of paving of Breezewood Drive; that there are trees between the garage and Breezewood Drive; that the rear corner of the garage is closer to the property line than the front corner of the garage; that the garage is located off an existing driveway; that the difficulty was not created by the Applicant; that no survey was ordered prior to construction of the garage; that he should have had it surveyed prior to construction; that the Property was not surveyed until after the garage was built; that most houses in the development have garages; that house with a garage looks more in character with the neighborhood; that he pulled the building permit; that the permit stated a 15 feet setback; that the distance from the garage to the edge of paving is about 20-22 feet; that there have been no neighbor complaints; that there is about 13 to 15 feet from the trees to the edge of paving; that the location of the garage is the only place where it could be located; that there is no well or septic on the Property; and that the garage does not create any visibility issues along Breezewood Drive.

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

Mr. Workman moved to approve Variance Application No. 12125 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to its size and shape and since it is a corner lot;
2. The variance is necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty has not been created by the Applicant;
4. The variance will not alter the essential character of the neighborhood;
5. The requested variance is the minimum variance necessary to afford relief; and
6. The variance requested represents the least modification possible of the regulation at issue.

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

The vote by roll call; Ms. Magee – yea, Mr. Mears – yea, Mr. Workman – yea, and Mr. Callaway – yea.

Case No. 12126 –Lola Ann Plummer seek variances from the side yard setbacks (Sections 115-25 and 115-185 of the Sussex County Zoning Code). The property is located on the west side of Discount Land Rd., approximately 270 feet south of Camp Rd. (Rd. 470). 911 Address: 29014 Discount Land

Rd., Laurel. Zoning District: AR-1. Tax Map: 232-6.00-48.01.

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. The Applicant seeks a variance of 7.4 feet from the fifteen (15) feet side yard setback requirement on the west side for an existing detached garage and a variance of 7.6 feet from the fifteen (15) feet side yard setback requirement on the west side for an existing detached garage.

Lola Ann Plummer and Felicia Culver were sworn in to testify about the Application.

Ms. Plummer testified that Ms. Culver is the adjacent homeowner; that the Property was bought in the 1950s by her family; that the property lines are unusual; that there is no place to put a garage due to the existing trees; that the dwelling is a log cabin; that she owns adjacent land as well; that the garage is a three-car garage; that there are approximately 20 trees on the lot; that garage is located in the rear of the Property and is hidden; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code; that there is no other place where the garage could be located; that she did not create the difficulty; and that the variances will not alter the essential character of the neighborhood.

Ms. Culver testified that she cannot see the building from her yard and that the garage is located in the best possible location.

Ms. Plummer testified that the variances requested are the minimum variances necessary to afford relief; that the garage has been constructed; that her contractor told her to get a variance after the garage was built; that she acquired the building permit; that the garage was built this past year; that the septic system and drain field are located in the middle of the yard and limit the building envelope; that the trees also present a problem; that the Property is narrow and has an irregular shape; that it would be impossible to back an 8 foot by 10 foot trailer into the building if the structure were built within the building envelope; that there is no possibility the Property can be developed in strict conformity with the Sussex County Zoning Code; that the variances are necessary to enable reasonable use of the Property; and that the variances will not alter the character of the neighborhood because the building is located next to woods and is surrounded by dwellings and farmland.

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. Mears moved to approve Variance Application No. 12126 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 shape, the location of the septic, and the location of trees on the lot;

2. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
3. The exceptional practical difficulty has not been created by the Applicants;
4. The variances will not alter the essential character of the neighborhood; and
5. The requested variances are the minimum variances necessary to afford relief.

Motion by Mr. Mears, 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; Ms. Magee – yea, Mr. Mears – yea, Mr. Workman – yea, and Mr. Callaway – yea.

Case No. 12127 – Delmarva Power & Light Company seeks a special use exception to use a manufactured home type structure as a temporary office (Sections 115-83.6 and 115-210 of the Sussex County Zoning Code). The property is located on the west side of DuPont Blvd. (Rt. 113) between Handy Rd (Rd. 337) and Chestnut Dr. Zoning District: CR-1. Tax Map: 233-5.00-137.01.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of the Application and no correspondence in opposition to the Application. The support letter was read into the record. The Applicant requests a special use exception to place a manufactured home type structure as a temporary office.

Lisa Savage, Neal Baker, and Jim Smith were sworn in to testify about the Application. Shannon Carmean Burton, Esquire, presented the case on behalf of the Applicant. Mrs. Burton submitted exhibits to the Board to review.

Mrs. Burton stated that the Property is located on the corner of Route 113 and consists of approximately 3.29 acres; that the Property is zoned CR-1; that the neighboring properties have a wide range of zoning including C-1, CR-1, and LI-1; that there are many uses surrounding the Property as well including manufactured homes, large scale commercial uses, a mini-storage facility, a liquor store, and other commercial uses; that Property has been used by Delmarva Power as its district office since 1971; that the Applicant seeks this special use exception to place a manufactured home-type structure as an office for no more than 5 years; that the manufactured home will be self-contained and not hook to any existing septic; that the unit will have a clean appearance which will complement the surrounding area; that the unit will be served by a holding tank underneath the unit; that the tank will be pumped out on an as-needed basis; that the unit will be in operation from 6:30 AM to 5:00 PM, Monday through Friday and as otherwise needed; that 25 to 30 employees will use the unit; that the unit will accommodate their employees at the office as they renovate their existing office; that the temporary office will be removed after the renovations are completed; and that the proposed use will have no significant adverse effect on neighboring and adjacent properties.

Ms. Savage testified that she is a real estate specialist for the Applicant; that she affirms

the statements made by Mrs. Burton as true and correct; and that the unit will be used for employees only.

Mr. Baker testified that bill payment is offered at the permanent facility but will not be offered at the proposed unit; that the unit will be used only for employees; and that the existing facility will be renovated.

Julia Donahue was sworn in and testified in opposition to the Application and submitted pictures for the Board to review.

Ms. Donahue testified that she lives directly across from Chestnut Drive from the Applicant; that she has owned her lot since 2007; that she recently built a new home on her lot; that trees previously buffered the Applicant's lot along Chestnut Drive and those trees provided a buffer from lights and noise emanating from the Property; that the Applicant removed those trees and have placed a green coating on an existing fence along Chestnut Drive; that the lights from the Applicant's property are very bright and the noise causes her to keep her windows closed; that she is not sure how the proposed unit will impact her but the proposed manufactured home will just be more for her to have to look at; that all of her bedrooms face Chestnut Drive; that she opposes the Application; and that she requests that the Applicant install a buffer and turn down lighting.

Mr. Baker testified that there are no trees on the Property for security reasons; that the Applicant stores copper wire on the Property; that that use of the Property will not change from how it has been used over the past 30 years; that the Applicant has been victimized by a thief on the Property; that the unit will not create any additional lighting; and that the unit will not result in additional traffic on the Property.

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

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

Ms. Magee moved to approve Special Use Exception Application No. 12127 for the requested special use exception 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 and adjacent properties.

Motion by Ms. Magee, seconded by Mr. Mears, and carried that **the special use exception be granted for a period of five (5) years and for the reasons stated.** Motion carried 3 – 1.

The vote by roll call; Mr. Workman – nay, Mr. Mears – yea, Ms. Magee – yea, and Mr. Callaway – yea.

The Board took a brief recess.

Case No. 12129 – Kevin Yoder seeks a special use exception for a garage/studio apartment and a variance from the maximum square foot requirement for a garage/studio apartment. (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located on the west side of N. Union Church Rd., approximately 1,266 feet south of Abbott’s Pond Rd. 911 Address: 8084 N. Union Church Rd., Milford. Zoning District: AR-1. Tax Map: 130-6.00-24.06

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. The Applicant is requesting a special use exception for a garage / studio apartment for a proposed structure and a variance of 240 feet from the 800 maximum square footage requirement for a garage / studio apartment.

Kevin Yoder was sworn in to testify about the Application. Mr. Yoder testified that the structure is proposed; that this is a family project; that the purpose is to provide living space for his parents; that the Property is a little over 2 acres in size; that he understands that he can build a structure consisting of 800 square feet or less; that the initial plans for the proposed structure included a one-car garage, 800 square feet of living space, and a screened porch; that he later learned that the screened porch would be considered living space and part of the 800 square feet calculation; that the screened porch causes the proposed garage studio apartment to exceed 800 square feet; that he obtained verbal approval from DNREC for connection of the proposed structure to the existing septic system; that there is plenty of room on the Property for the structure; that there will not be a manufactured home constructed on the Property; that the structure is designed with a gabled roof to maintain a rural look; that his neighbors support the Application; that a large portion of the rear yard is used for his septic system; and that the living area of the apartment will consist of 800 square feet.

Mrs. Walls stated that the drawings indicate that the porch will measure 12 feet by 20 feet.

Mr. Yoder testified that his parents enjoy being outdoors; that his mother has difficulty with the sun; that there are bugs in the yard; that his parents have an outdoor gazebo in their back yard which they use frequently; that he wanted to have some similar option for them when they move here; that the apartment will have a designated parking space; and that he spoke with his neighbor about the Application

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. Mears moved to approve Case No. 12129 for the requested special use exception and for the requested variance based on the record made at the public hearing and for the following reasons:

1. The use will not substantially adversely affect the uses of the neighboring and adjacent properties;

2. The Applicant has met all the criteria for granting a variance;
3. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
4. The exceptional practical difficulty has not been created by the Applicant;
5. The variance will not alter the essential character of the neighborhood; and
6. The requested variance is the minimum variance necessary to afford relief.

Motion by Mr. Mears, seconded by Ms. Magee, and carried unanimously that **the special use exception and variance be granted for the reasons stated**. Motion carried 4 – 0.

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

OLD BUSINESS

Case No. 12092 – Marvin Weaver seeks variances from the side and rear yard setbacks (Section 115-25 of the Sussex County Zoning Code). The property is located on the north side of Marina Dr., approximately 450 ft. west of the intersection of Woodland Cir. and Marina Dr. W. 911 Address: 23406 Marina Dr. W., Lewes. Zoning District: AR-1. Tax Map: 234-17.08-127.00

Mrs. Walls presented the case that has been left open since February 5, 2018.

Ms. Magee recused herself from the public hearing.

Jay Yoder was sworn in to testify about the Application. David Hutt, Esquire, presented the case on behalf of the Applicant and submitted exhibits for the Board to review.

Mr. Hutt stated that the property is located in Angola by the Bay; that, if approved, Yoder & Sons will be the contractor; that the initial request included a side yard variance request; that additional time was requested after legal counsel was obtained; that additional time was requested to allow the Applicant to obtain approval from their homeowners association; that the homeowners association approved the proposal structure; that the proposed addition has been revised from the original submission and there is no longer a variance needed for the side yard; that Angola by the Bay was created prior to the enactment of the Sussex County Zoning Code; that the dwelling was constructed in 1979; that an addition was constructed in 1985 and a certificate of occupancy was issued; that the rear of the house would have to be demolished to bring the home into compliance with the Code; that the proposed garage no longer needs the one foot variance on the side yard; that the variances being requested now are 1.5 feet and 1.8 feet from the 20-foot rear yard setback requirement; that the Applicants proposed to square off the rear of the home with the proposed addition; that there is an internal connection between the house and the garage; that the property is unique in the arrangement of the existing structures with certificate of occupancy issued; that it would be a significant expense to demolish and start over; that the variances are necessary to enable

the reasonable use of the Property; that the exceptional practical difficulty was not created by the Applicant; that the addition is of a modest size; that the present structure was not constructed by the Applicant; that the variances will not alter the essential character of the neighborhood; that approximately 50 variances have been approved in the community since 2011; that the addition cannot be seen from other properties; that the rear of the Property abuts to common area; that the homeowners association approved the proposed addition; that the encroachment will remain where the existing encroachment is; that an encroachments exist for the existing building and the proposed addition is less and of an encroachment; and that the variances requested represent the minimum variances necessary to afford relief.

Mr. Yoder affirmed the statements made by Mr. Hutt as true and correct

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

Mr. Mears moved to approve Variance Application No. 12092 for the requested rear yard variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to its size;
2. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
3. The exceptional practical difficulty has not been created by the Applicant;
4. The Applicant did not construct the original dwelling;
5. The variances will not alter the essential character of the neighborhood;
6. There are other variances in the neighborhood;
7. The addition will not encroach farther into the rear yard setback area than the existing dwelling;
8. The improvements will enhance the character of the neighborhood; and
9. The requested variances are the minimum variances necessary to afford relief.

Motion by Mr. Mears, seconded by Mr. Workman, and carried unanimously that the **rear yard variances be granted for the reasons stated**. Motion carried 3 – 0.

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

Meeting was adjourned at 9:40 p.m.