

MINUTES OF APRIL 17, 2023

The regular meeting of the Sussex County Board of Adjustment was held on Monday, April 17, 2023, at 6:00 p.m. in the County Council Chamber, Sussex County Administration Office Building, Georgetown, Delaware. The teleconference system was tested during the meeting by staff to confirm connectivity.

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 Mr. Hastings and carried unanimously to approve the agenda. 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.

Motion by Mr. Williamson, seconded by Mr. Warfel and carried unanimously to approve the Minutes for the February 6, 2023, meeting. 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.

Motion by Dr. Carson, seconded by Mr. Warfel and carried to approve the Findings of Facts for the February 6, 2023, meeting. 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.

Motion by Dr. Carson, seconded by Mr. Hastings and carried unanimously to approve the Minutes for the February 20, 2023, meeting. Motion carried 4 – 0.

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

Motion by Mr. Hastings, seconded by Dr. Carson and carried to approve the Findings of Facts for the February 20, 2023, meeting. Motion carried 4 – 0.

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

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. 12812 – Francis and Jimenez LLC seek variances from the front yard setback requirement for proposed structures (Sections 115-34 and 115-182 of the Sussex County Zoning Code). The property is located on the southwest side of Belle Road within the Bay View Park Subdivision. 911 Address: 34965 Belle Road, Bethany Beach. Zoning District: MR. Tax Map: 134-20.11-58.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received four (4) letters in support of, one (1) letter in opposition to the Application, and zero (0) mail returns. The Applicant is requesting variances of 9.8 ft. from the 30 ft front yard setback requirement for a proposed porch and second-floor deck.

Ms. Celezia Francis was sworn in to give testimony about the Application.

Ms. Francis testified that they are remodeling their house; that the front entrance is very small and difficult to navigate efficiently when bringing in groceries and other items; that it is totally exposed to all of the weather elements; that they have young children in their family and a covered porch would greatly protect those entering as well as improve the look of the home; that the zoning ordinance has a 30 ft. setback in order to improve their property; that they are asking for a 10 ft. variance for a front porch and the second-floor deck above it; that they did not build this home but rather purchased it in 2014; that they also own the property across the street; that, with their growing family, they thought this property would be a great addition to their time spent at the beach; that they are trying to make it safer for the children and elderly family members so they do not have to sit out in the sun; that they are currently improving all parts of the exterior of the home and believe the variances requested would only add to the functionality and aesthetics of not only the home but the community; that they will not alter the essential character of the neighborhood; that she has provided the before and after photos which show that this addition will add value to both their home and the community; that they have spoken with some of their neighbors who are directly adjacent and are in support of the request; that the variances sought are the minimum variances requested; that the stoop comes out about 7 ft. or so; that there is an additional 7 ft. 5.4 inches of yard between the paved road and their property; that they will still have 27 ft. 5.4 inches from the porch to the edge of the paved road; that visually this addition will blend with the neighborhood and the house; that this request will not be excessive; that they recessed the steps into it; that the current steps come out approximately 7 ft. so they are really only asking for about 3 ft.; that they have an additional 7.5 ft. shown on their plan between their front property line and the edge of the road; that there are plenty of houses in the neighborhood that are 5 or 6 ft. from the paved road; that there are houses that were maybe built a long time ago; that what they are proposing is not excessive in comparison to other homes in the neighborhood; that the home in question is pretty much a big box; that it is not very pretty to look at; that, since they

have owned it for almost 10 years now, they have decided to make the investment to renovate the house; that she believes that the County also switched the side setbacks recently from 10 ft. to 5 ft.; that this has created people building these huge mansions when they are just trying to fix what they already have in the neighborhood; that they have spoken with the neighbors to the left and right on both sides of the street who are all in agreement that this is a great idea; that they are always looking to make improvements to the houses they own; that they recently renovated the exterior of their other house across the street; that 15 years ago it was on a gravel lot and they are just trying to do anything to make it a little bit nicer; that they have a homeowners association; that they received mixed feedback from the HOA by being told that, if the County approved it, the association would and then she was also told that they may oppose it; that there is a 6' x 6' deck where the spiral staircase comes up but there are no other covered porches on the house; that they chose to recess the steps into the porch once they realized there was a setback to take into consideration and they were trying to minimize the need for variances; that 10 ft. is the minimum to functionally meet their needs of having a couple people be in a covered space on the front porch; that the front entrance is the primary entrance with 2 additional entrances through bedrooms on the back of the house; that they have accessed the house through the garage but they do not have guests access the house that way; that there are 12 grandchildren; that some of their elderly family members have trouble because it is easier to park and not go through the garage; and that the garage gets cluttered with a bunch of stuff so, for the elderly family members, it is easier to walk and have a covered space.

Mr. John Hendrickson was sworn in to give testimony in opposition to the Application.

Mr. Hendrickson testified that he is a resident of Bayview Park; that he lives a half street away; that Bayview Park was originally plotted in 1956, followed by 2 additions in 1958 and 1960 to make the community that exists today; that the original documents had no yard restrictions and, at that time, there was no planning and zoning ordinance in Sussex County; that, in 1979, the widow of the developer could no longer keep up with the road maintenance and the community association was formed as Sussex County had previously adopted a planning and zoning ordinance; that no additional yard restrictions were added to the covenants as the County has already addressed yard restrictions; that Bayview Park has always relied on the County for zoning and yard restrictions; that he has resided in Bayview Park full time since 1987 and has seen lots of changes in those 36 years; that the criteria for a variance lists 5 criteria that must be met, all 5 and not just a majority; that the Applicant has addressed each of those criteria and he does not believe they have met all 5 standards; that there is nothing unique about the property with respect to Bayview Park; that their lot consists of 5,517 square feet which is about the norm for a single family lot in the community; that neither the depth, width, or shape is unique; that it has 4 sides which most properties do; that the Applicant states the front entrance is small and not easy to navigate but the landing measures 5 ft. wide by 4 ft. with stairs that come off that which is bigger than the International Residential Code minimum of a 3 ft. by 3 ft.; that this makes it neither unique or a hardship; that it is larger than the Code stated minimum based upon basic life safety features; that it is larger than some other entrance landings in the community; that the Applicant also refers to the lack of weather protection at the entrance but this entrance landing could

be covered by a wall mounted roof that could extend into the front yard setback by 2 ft. per the Sussex County Zoning Code; that, regarding otherwise could not be developed, this house was built in the 1980s and has been used and occupied since then therefore the variances are not necessary to enable to reasonable use of the property; that he agrees this was not created by the Applicant; that the essential character of Belle Road is that the majority of the houses conformed to the 30 ft. front yard setback, as shown by the aerial photos with the Application, and the granting of these variances will alter the essential character of the neighborhood; that there are some properties in the original Bayview Park subdivision which do not have a 30 ft. setback but these structures have been in placed prior to the adoption of the Zoning Code; that the Applicant referenced the distance between their property and the edge of the street but the Zoning Code uses the distance from the property line and not the street paving as the measurement of the front yard; that, if the Applicant is seeking protection from the weather, the minimum variance requested should be to cover the existing landing; that, if that was the request, he would not even be here tonight; that, if weather protection is desired, why are we looking at a 19 ft. 4 inch wide by 10 ft. deep deck with a rooftop deck on top of it; that it seems to him that the 10 ft. distance is way more; that he thinks the Applicant has expressed the desire to improve the appearance of the house with these variances; that the request of a variance is not the only means of achieving an improved front elevation and that there are other design tools available; that Bayview Park is currently filling up with new 4 story houses that have taken advantage of the reduction in side and rear yards; that granting this variance would allow the trend to continue into the front yard setback which will reduce light, air, and space; that he asks the Board to respect the 30 ft. front yard setback requirement; that, off the top of his head, he believes very few houses on Belle Road have front porches; that he does not believe the Applicant should be granted relief because the house was constructed prior to the Small Lot Ordinance as it creates an issue for emergency vehicles accessing properties; that, typically, the homeowner association board would prefer to defer to planning and zoning since their covenants do not address the bulk, area, or height requirements; that the Applicant is a member of the community association so it does not seem fair for the Board to act as a heavy hand as they are trying to be as fair as they can; that he is speaking as a resident; that the documents were written to address common areas, which basically is the streets; that there was no language about an architectural review; that he doubts very seriously if they would be able to pass an amendment which is why they rely on planning and zoning; that they are a part of the County, unincorporated, and not a part of South Bethany; that they rely on the County to uphold setbacks; that there are concerns should this be granted that it might encourage others within the community to seek similar variances; that Bayview Park is a mix of residences including newer homes of which a lot have these front porches, plenty of homes that do not, and most of the original houses were just little 3 bedroom beach cottages; that previously, when attending Board meetings, he would always reference the fact that they are fearful of establishing a pattern of variances being granted; that they are concerned with the number of variances that have been approved for Bayview Park; that most of their streets end with a dead end at the water; that the majority of their streets are 20 ft. wide, which causes issues for the large lumber deliveries but is the minimum by the Fire Marshal for primary fire lanes; and that their founders did not follow the same procedures for the establishment of an HOA like the newer developments do.

Mr. Bayard Allmond was sworn in to give testimony in opposition to the Application.

Mr. Allmond testified that he resides on Belle Road within Bayview Park; that he is 4 or 5 houses from the Applicant's property; that he has owned his property since 1991 which has been his primary residence since he retired a few years ago; that he endorses the statements made by Mr. Hendrickson; that he opposes the Applicant's request because it will reduce their front yard to 20 ft.; that the pictures submitted show a large attached garage entry utilizing the garage door of about 18 ft. wide by 7 ft. tall; that he questions why that is not sufficient for inclement weather; that he argues that the granting of this variance will alter the essential character of the neighborhood as there are few houses with front porches and very few with front elevated decks; that those existing decks are accessible only by the second floor and all appear to be within the building envelope specified by the County; that the proposed structures will encroach in the front yard by a third of its total width which is not in character with their community; that, if you were to take a tour of Bayview Park, you will find that, except for the old houses, of which a few are left, that probably 80-90% of the new or reconstructed houses are all within the building envelope and comply with the setback requirements; that there are options available that would be less intrusive than what the Applicant is proposing, such as a portico, awning, or a weather shield; that he has a portico on the front of his house which serves its purpose; that the Applicant is trying to utilize that Belle Road has not been paved to its fullest extent which should not be held to merit; that the width and location of pavement within the street right of way is always subject to change; that it is not unusual to expect that in the future that the bed of the road might become further paved or paved with a sidewalk; that he is not aware of any home in Bayview Park that is 5-6 ft. from the street; that the Applicant's claims that this will add value to the home and community are speculative at best; that the aerial photo included with the Application shows that the houses are uniformly setback, and the paving of Belle Road is quite narrow; that it does not show the house located at 34958 Belle Road whose front yard variance request of 5 ft. was denied by this Board for the very reasons that they are seeking tonight; that part of the charm of Bayview Park is the small streets and large front yards; that he is a member of the community board and when asked about this application and the criteria for building on the property his response was that it must comply with the County requirements; that the road has been elevated for flooding and, in the near future, they have plans of repaving all of the streets within the development; that they are unsure of exactly where the paving is going to end up; and that the roads have always been community property, including the unpaved sections.

Ms. Francis testified that they have purchased these properties to come to the beach with their family; that they have invested a lot of money here; that they enjoy and want to be outside which is why they are requesting the variance for a porch; that the lack of porches by their neighbors should not mean that they cannot have a porch; that people now are constructing houses that are huge and box-shaped which are not aesthetically pleasing; that people are buying into this neighborhood because they want the bay and they want what they see there; that, at some point, Bayview Park needs to update their regulations because you have cute and quaint houses and you also have mansions that are maximizing length and width; that they bought this house because of the garage; that this house sat vacant for 10 years and was an eyesore because no one lived in; that

they have done everything they can to improve it; that they use the garage to store their bikes and outdoor sports equipment; that their other house across the street does not have a garage but does have small porches; that they are not retired and living here; that they come with their family and a lot of children who enjoy being outside; that they have been working on the roads since they purchased over 10 years ago and there have been minimal improvements; that she believes, if they were to raise the dues and be a little more aggressive with the homeowners, they could make things happen; that, if others in the community wanted porches, she would be supportive; that cover is the primary purpose for the elderly members of their family to be able to sit on the front porch when their grandchildren are in the yard; and that a 2 ft. awning would cover someone walking in the door by themselves but would not provide protection for sitting outside if you are bringing a bunch of stuff into the house.

The Board found that 2 people appeared in support of and 2 people appeared in opposition to the Application.

Mr. Chorman closed the public hearing.

Mr. Hastings moved to deny the application for Case No. 12812 for the requested variances, pending final written decision, for the following reasons:

1. The property does not have unique conditions; and
2. The variances will alter the essential character of the neighborhood.

Motion by Mr. Hastings, seconded by Mr. Williamson, carried that the **variances be denied for the reasons stated**. Motion carried 5 - 0.

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

Case No. 12813 – Sam and Molly Cooper seek variances from the front yard setback requirements for existing structures (Sections 115-34 and 115-182 of the Sussex County Zoning Code). The property is a lot located on the northwest side of Robin Hoods Loop within the Sherwood Forest Subdivision. 911 Address: 32329 Robin Hoods Loop, Millsboro. Zoning District: MR. Tax Map: 234-23.00-425.00

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 no mail returns. The Applicants are requesting variances of 1.3 ft. from the 30 ft. front yard setback requirement for an existing porch and 5 ft. from the 30 ft. front yard setback requirement for existing steps.

Mr. John Poncini and Mr. Samuel Cooper were sworn in to give testimony about the Application.

Mr. Poncini testified that the Applicants are applying for the variance for the existing front porch that was added to the house; that the Applicants applied for the building permit in September of 2022 and were approved; that the permit was to build the front porch onto an existing dwelling in addition to renovating the property's exterior, new siding, windows, doors, and roof; that the property was quite run down at the time; that they received several inspections throughout the construction and at no time was any issue of the setback pointed out; that there was no survey completed prior to the construction; that it was approximately 40 ft. from the house to the roadway at the front of the property; that, after the final inspection was completed, a setback inspection was completed which showed the property to be in violation of the 30 ft. front yard setback requirement; that, looking at the survey, there is only a portion of the porch that is into the setback by 1.33 ft.; that they are asking for a variance so that the Applicants do not have to tear it down and rebuild; that, had they been notified earlier of the setback violation, the Applicants could have made adjustments and remedied the issue; that the porch definitely improves the aesthetics of the neighborhood; that this property is the first house you see when entering the neighborhood; that many neighbors came by during the renovation to comment on how happy they were with the look; that the neighbors were happy to see someone taking care of the property, cleaning it up, and making it presentable; that the County had been out for the footer and framing inspections prior but, at the final inspection, two different inspectors came out; that the second inspector who was verifying setbacks questioned the location of the property line; that he has assumed that the property line was much closer to the road; that the inspector at the footer inspection told them that they were good to go with everything and should not have any issues; that the steps were not down but when the final inspection was done he was told that the steps can encroach into the setback without any issue but that the porch was the concern; that the curvature of the road cuts into the porch on one corner; that the porch is 6 ft. deep; that it is an older house which has been there for a while; that he should have obtained a survey before submitting the permit application; that the steps are off the front of the porch and not the side as shown in the survey; that putting the steps to the side created an issue with a window and some safety procedures; that having the steps off the front did not pose a setback issue; and that the porch is centered to the front of the house.

Mr. Cooper testified that the homeowners association is in favor of everything that they have done; that one side of the porch is over the line by 1.4 ft.; that they think they have done a great job at cleaning up the property; that he owns both lots on either side of the subject property; that the shed shown on the plan as being on both properties is no longer there; that a tree fell through the structure so he took the rest of it down; that the structure was too close to the line as it was built 40 years ago; that the house was built sometime in the late 1970s; that the property has well and septic which is located in the rear; and that he owns three lots which are not a part of the HOA but he does plan to operate as if they are to show respect to their neighbors.

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 approve the application for Case No. 12813 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique physical conditions due to the shape and location of the existing house;
2. That, due to the physical conditions, the property cannot be developed in strict conformity with Sussex County Zoning Code, and the variances are necessary to enable the reasonable use of the property;
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. Warfel, seconded by Mr. Williamson, carried that the **variances be granted for the reasons stated**. Motion carried 5 – 0.

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

Case No. 12814 – Robert L. and Candy C. Nibblett seek variances for the minimum lot area and lot width requirements for a proposed lot (Sections 115-42 of the Sussex County Zoning Code). The property is a lot located on the southeast side of Bethel-Concord Road approximately 350 ft. north of Towers Lane. 911 Address: 26091 Bethel-Concord Road, Seaford. Zoning District: GR. Tax Map: 132-2.00-332.08

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 Applicants are requesting variances of 14.94 ft. from the 150 ft. lot width requirement for a proposed lot and 5,844 sq. ft. from the 32,670 sq. ft. lot size requirement for a proposed lot.

Dr. Carson recused himself and left Council Chambers.

Mr. Robert Nibblett was sworn in to give testimony on the Application.

Mr. Nibblett testified that he grew up on the property that these lots are centered around; that these properties are located next to a salvage yard; that the property was left to his father and then to him in 2009; that he went through great lengths to keep this property within his family; that he would never intend to create any harm or alter it in any way that would be negative to this land; that the mobile home on the property is rented to a woman who has lived there since 1990; that his father put in a well and septic and moved the mobile home there for her when she had nowhere else to go; that a few years ago he put another mobile home on the property which he rents to a single mother and has for 5 or 6 years; that the reason he is seeking to subdivide further is to be able to place another rental; that there is a high demand for rental properties right now; that he

does not have a rental property listed for over \$1,000.00 per month; that he tries to keep his rents low and affordable; that his proposal will not alter the neighborhood in a negative way but rather would fit in; that the placement of the property line was done so as to keep the acreage for the existing lot behind it; that there is a garage placed on the property which also has to comply with the setbacks; that the garage is used for the storage of equipment for the purposes of maintaining the properties; that he has had the property evaluated for septic which should not be an issue; that there is an existing driveway that can be used to access the properties; that the approval or denial of the application is not going to hurt him but he is looking to be able to help someone else is a housing crisis; that one of his renters has two daughters looking for rentals due to their cost of living increasing and the other renter has a daughter residing with her who is also looking for a rental property; that the need for rental properties is huge; that he did the previous subdivision of the property; that he tasked Steve Sellers with Miller-Lewis to do the subdivision plan and, from looking at it, there appears to be alternative options for the layout of the parcels; that the existing homes septic systems are in the rear of the properties; that his plan was to put a small rancher style home; that the existing driveway has been in place for at least 50 years; that the existing driveway used to serve the salvage yard; that the driveway was done to accommodate a tractor trailer; that he previously subdivided these lands in 2017 to be able to place an additional home, which required him to come before the Board; that the location of the existing well may pose a challenge with moving the proposed lot line; that he owns all of the lots but is not sure if the well-being on a neighboring parcel would create an issue in the future; and that his long-time neighbor received notice and was concerned about his health and the potential sale of the property.

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 deny the application for Case No. 12814 for the requested variances, pending final written decision, for the following reasons:

1. That financial gain is not a legitimate, exceptional, or practical difficulty; and,
2. The exceptional practical difficulty was created by the Applicants.

Motion by Mr. Warfel, seconded by Mr. Hastings, carried that the **variances be denied for the reasons stated**. Motion carried 3 - 1.

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

Dr. Carson returned to the Council Chambers.

Case No. 12815 – James Aguirre seeks a variance from the front yard and side yard setback requirements for existing structures (Sections 115-42, 115-182, and 115-183 of the Sussex County

Zoning Code). The property is a lot located on the northeast side of Swann Drive within the Swann Keys Subdivision. 911 Address: 37892 Swann Drive, Selbyville. Zoning District: GR. Tax Map: 533-13.13-13.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received one (1) letter in support, zero letters in opposition to the Application, and one (1) mail return. The Applicant is requesting variances of 6.2 ft. from the 10 ft. front yard setback requirement for an existing deck, 9.5 ft. from the 10 ft. front yard setback requirement for existing steps, and 0.9 ft. from the 5 ft. side yard setback requirement on the north side for existing steps.

Mr. Darrell Millman was sworn in to testify on the Application.

Mr. Millman testified that he is present on behalf of Mr. and Mrs. Aguirre; that the Aguirres purchased the house in Fenwick Island; that, at closing, it was recognized that the house did not comply with setbacks; that he was brought in to try to remedy the issue; that, should the current owner ever wish to sell the property, it would become an issue at that time because of its non-compliance; that he was unable to find whoever constructed the deck off the front of the house; that Mrs. Aguirre is retired Air Force; that she is disabled and needs wider steps to enter the house; that the existing steps are about 42 inches wide; that he cannot move the deck in one direction because of existing stairs that go up to the third floor including the pilings; that shifting the existing steps would violate Building Code rather than the Zoning Code; that, when he came to the County for guidance, he was told that he would need to get a permit as the steps and deck were never permitted; that he obtained the permit and, upon inspection, had a conference call with the inspector and a staff member of the Planning and Zoning department; that his next step was to have a survey completed; that the issue with the property is the cul-de-sac creates a setback issue with the deck and steps; that, after the survey was done, the stakes were pulled up in less than a week but an unknown person; that he used the paper survey to calculate the variances need when submitting the Application; that there was some concern with a pin in the back of the bulkhead; that he was told that the steps can encroach but the front 4 ft. of the deck encroach and would have to be cut off at an angle to comply; that he explored all options to make the structures compliant with Code; that the only way without tearing down the deck was to apply for a variance; that the homeowner has to have a hip replacement and removing the deck would limit her ability to enter the house; that they did close on the property; that he believes the seller placed money in escrow to pay to fix the issue; that there is no fixing the issue without creating another; that they bought the house with the deck and steps and would like to keep them; that none of the neighbors have complained; that there is no homeowner association approval needed; that the homeowner needs help with steps into the home; that he is unsure of when the house was built; that the yard does not allow as much as it appears on paper because of the arc on the cul-de-sac; and that the tread and rise of these steps are no longer compliant with the recent updates to the Building Code.

Ms. Norwood noted that the house was built in 2012 prior to the enactment of the Small Lot Ordinance.

Mr. Richard Houseworth was sworn in to testify in support of the Application.

Mr. Houseworth testified that he lives at the adjacent property to the north; that he is in favor of the variance requests; that he does take issue with some of the things said; that this property has been surveyed twice in the last 18 months; that he does take exception to the statement that they are not sure where the property line is; that he knows exactly where they are and it has not changed over the last 20 years; that the Applicant was correct in stating that the survey pins were removed rather quickly making his job more difficult; that he is guessing to the best of his ability that they would need at least a 4 ft., maybe 5 or 6 ft., variance to be in compliance; that this has been an ongoing issue which was only made worse by bringing in a contractor who did not apply for a permit and created this issue for the new homeowner; that there is no imaginary line regarding the property, there is a radius which is tracked via survey; that he does not want there to be a misrepresentation which will cause inconsistency with the building of their structure that was completed last year; and that he wants them to make sure that the variance granted is sufficient to correct the issue at hand.

Mr. Houseworth submitted a copy of the survey of his property into the record.

The Board found that one (1) person appeared in support of and no one appeared in opposition to the Application.

Mr. Chorman closed the public hearing.

Mr. Williamson moved to approve the Application for Case No. 12815 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique physical conditions being on a cul-de-sac;
2. The exceptional practical difficulty was not created by the Applicant;
3. The variances will not alter the essential character of the neighborhood;
4. The variances represent the minimum variances necessary to afford relief; and
5. The variances represent the least modifications of the regulations at issue.

Motion by Mr. Williamson, seconded by Mr. Warfel, carried that the **variances be granted for the reasons stated**. Motion carried 5 – 0.

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

Case No. 12816 – William T. Gorman seeks a special use exception and a variance from the maximum square footage requirement for an existing garage/studio apartment (Sections 115-40 and 115-42 of the Sussex County Zoning Code). The property is a lot located on the northwest side of Washington Street within the Rehoboth Manor Subdivision. 911 Address: 20556 Washington Street, Rehoboth Beach. Zoning District: GR. Tax Map: 334-19.12-7.00

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 two mail returns. The Applicant is requesting a special use exception for a garage / studio apartment and a variance of 328 sq. ft. from the 800 sq. ft. maximum allowable square footage for a garage / studio apartment.

Mr. William T. Gorman was sworn in to give testimony about the Application. Mr. Gorman submitted exhibits to the Board.

Mr. Gorman testified that he is a resident of Philadelphia who splits his time between there and his house in Rehoboth Beach; that he owns Gorman Investment Group which is a wealth management firm on Rittenhouse Square in Center City; that he has spent 20 years as a business reporter on KYW News Radio in Philly; that he has been in wealth management for 36 years; that he plans on retiring part-time in the not-too-distant future to his property in Rehoboth Beach; that he is seeking a special use exception of an existing condition at his home which will allow him to enhance the living space; that it was once a garage with a studio apartment upstairs; that he would like to include a propane stove or an electric stove and kitchen area; that he purchased the property in June 2008; that, at that time, he obtained variances for the sheds on the property; that the property is unique because it is an irregular lot with a cottage and a detached garage with an upstairs studio apartment; that the garage was built around 2000 behind the cottage; that both buildings do not face the property front but rather the side; that the irregular lot size along with the unique characteristics of each structure creates a near impossible use of the garage as a house for automobiles as you cannot move them in and out of the structure easily; that there is about 3 ft. between the garage and the cottage in the form of a breezeway; that the garage door faces the fenced in side property line with a setback of 15 ft.; that he bought the property because of its location; that you can be from his driveway to Rehoboth Avenue in under five minutes and Route 1 completely; that, in 2014, he was working with a general contractor / interior designer to turn the garage structure into living space; that Hurricane Sandy hit and flooded his property; that he had a survey done and elevation certificate which showed he was now below base flood elevation; that he had to raise the floor in the garage by 3 ft. and install flood vents; that the garage was converted to living space in 2014; that the garage is approximately 1,100 square feet; that he does not foresee any future issues for his neighbors as a result of the variance being granted; that this structure has been in place for about 22 years without issue; that had he attempted to use the garage as an actual garage it would impose more on his neighbors due to the narrow entrance and overall design; that the former owner repaired motorcycles in the garage; that the variance would allow him to cook within the structure; that his neighbor on the west is a pump station that is owned by Rehoboth Beach Water and Wastewater; that the property consists of approximately 8,900 square feet; that keeping it as a garage would have required change the door to the west side of the building; that the west side of the property is effectively used as the rear of the lot due to the orientation of the structures; that the whole driveway is not utilized as he parks in the front; that the garage was impractical but he left it for a number of years; that the entire property is within the AE flood zone; that, when he purchased the property in 2008, the cottage was at base flood elevation; that, with the redrawing of the flood maps, it is now 6 inches below base flood; that he rents

the cottage out through VRBO in the summer and other than that it stays vacant; that the garage and the cottage are separated; that one shed was granted a variance, the other is being removed, and replaced with a shed that complies with the 5 ft. setback; that, when he purchased the property, the first floor of the garage was a garage and there was an apartment above it; that he finished off the downstairs; that the first floor of the garage is a living room, half bath, and a kitchenette with refrigerator; that the garage apartment is all one unit of 1,128 square feet; that there are not 2 separate units in the garage; that he needs the variance because the living space is 328 sq. ft. over the 800 sq. ft. maximum; that, right now, he has no ability to cook within the structure of the garage; that he stays in the garage building when he visits the Property; that the cottage has cooking facilities but the garage does not; that, in 2014, when he applied for the renovation permits he was told that he was not in compliance with water and he had to pay \$3,500.00 in back fees; that, when the prior owner built the garage with the apartment, he did not notify the water department and, when he purchased the property, he was left to get it into compliance; that the property uses Sussex County water and sewer; that he is not a member of an HOA; that he is creating 2 living structures on the property; that he does not rent out the garage but he rents out the cottage; that the property has dedicated parking on the lot; that the garage is not functional to be used for a garage; that he wants to use the entirety of the building for an apartment; and that, since he has owned the property, it has never been used as a garage.

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 approve the application for Case No. 12816 for the requested variance and special use exception, pending final written decision, for the following reasons:

1. The property has unique conditions due to the flooding and the location of the garage;
2. That, due to the physical conditions, the property cannot 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 Applicant;
4. The variance will not alter the essential character of the neighborhood;
5. The variance represents the minimum variance necessary to afford relief; and
6. The garage / studio apartment will not substantially affect adversely the uses of neighboring and adjacent properties.

Motion by Mr. Warfel, seconded by Mr. Hastings, carried that the **special use exception and variances be granted for the reasons stated.** Motion failed 2 – 3.

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

ADDITIONAL BUSINESS

Meeting adjourned at 8:03 p.m.