

MINUTES OF APRIL 19, 2021

The regular meeting of the Sussex County Board of Adjustment was held on Monday, April 19, 2021, 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 John Williamson presiding. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. John Williamson, and Mr. Brent Workman. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Ms. Jennifer Norwood – Planning and Zoning Manager, Ms. Lauren DeVore – Planner III and Ms. Ann Lepore – Recording Secretary.

The Pledge of Allegiance was led by Mr. Williamson.

Ms. Norwood announced that the Agenda has been amended to reschedule Case No. 12542 for Jeff & Victoria Rushie for the meeting on May 17, 2021, because of an error in the advertisement.

Motion by Mr. Chorman, seconded by Dr. Carson, and carried unanimously to approve the agenda as revised. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Williamson – yea, Dr. Carson – yea, Mr. Hastings – 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. 12541 – Kevin & Zofia Bremser seek variances from the front yard setback requirements for a proposed and existing structures (Sections 115-34 and 115-182 of the Sussex County Zoning Code). The property is located on the east side of Rock Elm Drive within the Keenwick Subdivision. 911 Address: 38198 Rock Elm Drive, Selbyville. Zoning District: MR. Tax Parcel: 533-19.12-120.00

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 one mail return. The Applicants are requesting the following variances from the required 30-ft. front yard setback:

- 0.2 ft. for the existing dwelling
- 5.2 ft. for a proposed porch
- 6.2 ft. for proposed steps
- 4.8 ft. for a proposed garage addition
- 18.9 ft. for a proposed garage addition

- 2.6 ft. for a proposed garage addition

Ms. Norwood noted that Mr. Bremser submitted an additional exhibit which has been distributed to Board members.

Mr. Kevin Bremser was sworn in to give testimony about his Application.

Mr. Bremser testified that he is making improvements to his home by adding a garage and a front porch, and by converting the existing garage into living space; that, to make these improvements, variances are being requested; that the variances are needed from the required County 30 foot setback but will meet the HOA setbacks of 25 ft.; that there is a right-of-way to the side of the property but the road does not take up all of the right-of-way; that there is an undeveloped parcel between his lot and the road and he does not know who owns that parcel; that the property is unique; that the covered front porch is necessary to make entering and exiting the home safe to age in place; that the home was built to the 30 ft. setback therefore a front porch and garage cannot be built without the variance; that he is not the original owner of the property and did not build the existing house; that the variances will not alter the essential character of the neighborhood as most houses in the community are unique in design and there are many homes in the community that do not conform to the 30-foot front yard setback requirement; that there are no complaints from neighbors and preapproval has been given by the HOA; that the variance requests are the minimum variances to afford relief; that there is no flooding on the property but, one time the lagoon overflowed onto the lot; that there is no area in the rear of the property to make these improvements; that there are no steps or HVAC that would further encroach into the setbacks; that he spoke with neighbors and they do not object to the proposal; that he has owned the property since 2003; that the HOA treats the Rock Elm Drive side of the lot as a side yard property line; that they are seeking to add a bedroom; that there was no other location on the lot where the garage could be located; that the driveway is located near the proposed garage as well; and that they will leave space in the existing garage to access the garage addition from the house.

Ms. Norwood stated that six variances are being requested and that the land adjacent to this parcel was recorded as part of Rock Elm Drive but was not developed as such.

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

Mr. Williamson closed the public hearing.

Dr. Carson moved to approve Case No. 12541 for the requested variances for the following reasons:

1. The property has unique physical conditions;
2. The variances will not alter the essential character of the neighborhood; and
3. The variances represent the minimum variances necessary to afford relief.

Motion by Dr. Carson, seconded by Mr. Chorman, carried unanimously that the **variances be granted for the reasons stated.** Motion carried 5 – 0.

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

Case No. 12543 – John Byrnes & Katherine Cunningham seek variances from the rear yard setback requirement for proposed structures (Sections 115-34 and 115-183 of the Sussex County Zoning Code). The property is located on the north side of Marina Bay Circle within The Peninsula Development. 911 Address: 33469 Marina Bay Circle, Millsboro. Zoning District: MR-RPC. Tax Parcel: 234-30.00-310.00 Unit 25

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received two letters in support of and none in opposition to the Application and one mail return. The Applicants are requesting a 5.88 ft. variance from the required 10 ft. rear yard setback for a proposed sunroom and 6.01 ft. variance from the required 10 ft. rear yard setback for proposed steps.

Mr. John Byrnes and Ms. Katherine Cunningham were sworn in to give testimony about the Application.

Mr. Byrnes testified that the Applicants wish to enclose a paver patio which encroaches into the setbacks; that it is on the rear of the home; that the uniqueness of the property is that the rear of the home was built directly on the setback allowing no room to attach a sunroom; that there is no other location where an indoor / outdoor enclosure can be installed as there is a very narrow space between the homes and side setbacks; that there are similar sunrooms in the neighborhood; that the sunroom needs to be this size to accommodate furniture; that the exceptional practical difficulty was not created by the Applicants but is the builder's development project; that the variances will not alter the essential character of the neighborhood as there are many homes in the community with sunrooms attached; that the style of the addition will match the existing homes in the community; that these variances are the minimum variances to afford relief as the side setback is tight and encroaching into the rear setback area is the only possibility; that, due to the narrow width of the 15 feet available, the depth must be enough to allow the minimum 200 square feet for furniture layout and egress path; that HOA approval will be sought following the outcome of this variance request; that he doubts the HOA will object; and that letters of support have been submitted from neighbors.

Ms. Cunningham testified that there is a pond to the rear of the property; and that they would like to be able to enjoy the outdoors without the nuisance of bugs.

Mr. Byrnes testified that the steps will be located within the footprint; that a neighbor received a variance from the rear yard setback requirement for a patio; that the dwelling is 2 stories tall and is a detached single-family home; that most of the building envelope was used for the dwelling; and that a neighbor is also doing construction.

Ms. Norwood stated that there is another rear yard variance in the Community for a proposed patio.

Dr. Carson stated that he would be more comfortable if there was HOA approval for this request and that he has concerns that granting this variance would be precedent setting for the development.

Mr. Byrnes testified that he did approach the HOA prior to the applying to the variance and that the HOA guidance was to get approval from the County for a variance before submitting a request to the HOA.

Ms. Cunningham testified that there are many screened porches in the Community.

Mr. Workman stated that, even if approval is granted by the County, the HOA could still deny the request.

Mr. Byrnes testified that he estimates it will take 45 days for HOA approval and he is aware that the HOA could deny the request.

Mr. Joseph Giannetto was sworn in to give testimony in support of the Application.

Mr. Giannetto testified that the requested variance for the sunroom is consistent with the character of the neighborhood; and that the sunroom addition will be similar to others in the neighborhood.

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

Mr. Williamson closed the public hearing.

Mr. Hastings moved to approve Case No. 12543 for the requested variances for the following reasons:

1. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property;
2. The variances represent the minimum variances necessary to afford relief; and
3. The variances represent the least modifications of the regulation at issue.

Motion by Mr. Hastings, seconded by Mr. Workman, carried that the **variances be granted for the reasons stated**. Motion carried 3 – 2.

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

Case No. 12544 – Peaceful Child, LLC (Patrick Snyder) seeks a special use exception to operate a day care center (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located on the southwest side of Coastal Highway (Rt. 1) approximately 0.31 miles southeast of Hudson Road. 911 Address: 14904 Coastal Highway, Milton. Zoning District: AR-1. Tax Parcel: 235-16.00-75.00 and 77.00

Ms. DeVore presented the case and stated that the Office of Planning and Zoning received twelve letters in support of and none in opposition to the Application and zero mail returns.

Mr. Patrick Snyder was sworn in to give testimony about the Application.

Mr. Snyder testified that he and his wife run a small Montessori school at St. Jude Catholic Church where they have a few rooms; that they are at full capacity and there are many requests for childcare; that they have been looking for an additional location; that the subject property was previously used as a church and also had a conditional use permit for a yoga studio; that the school will follow the Cape Henlopen School District schedule with a few exceptions; that the hours of operation would be 7:30 am through 5:30 pm; that it would be a separate school and childcare facility to the current school, Little World, but would have similar programs; that grass and nature is important for Montessori learning; that there will not be traditional playground equipment but there will be a fenced play area for safety; that it will not substantially adversely affect the uses of neighboring and adjacent properties; that the use will be less intense than when it was used for a church; that drop off and pick up times are staggered; that there is adequate parking; that there will be approximately 10-12 employees; that the property is located adjacent to the southbound lanes of Route 1; that the facility is located far from the road; that he is unaware of traffic problems related to the prior church or the yoga studio; that he is registered with the Delaware Department of Education for up to 100 children but do not intend to have 100 children at this location; that, because they are regulated by the Department of Education, they get an exception from the Office of Childcare Licensing; that Fire Marshal approval will be the next step in the process; that the building does not have a sprinkler system; that he has spoken to the landlord regarding installing a sprinkler system; that the building consists of 5,000 square feet; that the children would be from 1 year old through 12 years old; and that the adjacent property to the southeast is Hudson Fields.

Mr. Christian Hudson was sworn in to give testimony in support of the Application.

Mr. Hudson testified that he is representing the landlord, Hudson Family II, LLC; that there are some Conditional Use permits in the area and some B-1 zoning; that approximately 0.5 miles from this property is an existing daycare center and 0.25 miles past that is another daycare center; that he also represents Hudson Fields which is an adjacent property owner; that this is an ideal location for a daycare center as there is ample outdoor space for children; that there is tremendous demand for

private schools and daycare; and that he supports the request.

The Board found that two people appeared in support of and no one appeared in opposition to the Application.

Mr. Williamson closed the public hearing.

Mr. Chorman moved to approve Case No. 12544 for the requested special use exception as the use will not substantially adversely affect the uses of neighboring and adjacent properties. Mr. Chorman placed the following condition that, if an outdoor playground is installed, it must be fenced.

Motion by Mr. Chorman, seconded by Dr. Carson, carried unanimously that the **special use exception be granted with a condition for the reasons stated.** Motion carried 5 – 0.

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

Case No. 12545 – Joseph A. Vai seeks a variance from the side yard setback requirement for a proposed structure (Sections 115-42 and 115-183 of the Sussex County Zoning Code). The property is located on the west side of Mallard Drive within the Swann Keys Subdivision. 911 Address: 37041 Mallard Drive, Selbyville. Zoning District: GR. Tax Parcel: 533-12.16-94.00

Ms. DeVore 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 Applicant is requesting a 5 ft. variance from the required 5 ft. side yard setback from Lot 53 for a proposed shed.

Mr. Joseph Vai was sworn in to give testimony about the Application.

Mr. Vai testified that he has an existing 8 foot by 12 foot shed on his property and would like to replace it with a proposed 10 foot by 24 foot shed; that the existing shed is old; that this home will be the Applicant's full-time residence and there is a need for additional storage; that the existing shed is 5.5 inches from the property line; that the shed will be an A-Frame with the same shiplap toward the front to match the home; that the adjacent neighbor supports the request; that HOA approval is not required; that this is the only location to place the shed and allow access to the rear of the property from the street; that the exceptional practical difficulty was not created by the Applicant; that the new shed will be in the same location as the existing shed which was on the property when purchased; that the proposed shed will not alter the essential character of the neighborhood as it will match the existing house; that the request is for a 10 foot by 24 foot shed but it could be a 10 foot by 20 foot shed; that the proposed shed would be 10 feet tall and the existing shed is 8.5 feet tall; that the existing shed is on the grass with a sidewalk around it; that the 24 foot shed would not impede the view from the neighbor's home; that he does not want the shed to block his window; that the shed cannot be placed

to the rear of the home as the Applicant intends to add additional living space in the future; that there is a small existing shed in the rear which will be removed; and that there is a mature tree on the property which would prevent placing the shed further to the rear.

Ms. Norwood advised the Board that she was not sure if a prior variance had been granted for the existing shed.

Mr. Sharp explained to the Applicant that it is the Applicant's burden of proof to show the Board that the exceptional practical difficulty is not being created by the Applicant and that it is the minimum variance to afford relief. Mr. Sharp asked the Applicant how he proposed to construct the shed and maintain the shed while remaining on his own property if a full variance was granted.

Mr. Vai testified that the existing shed will be removed, the grass removed and some stone put down and the proposed shed will be brought through the driveway; that there will be an overhang of 6 inches but will not extend onto the neighbor's property; that the neighbor's home is 10 feet from the property line; that the proposed shed will have vinyl siding with no windows on the neighbors side of the shed so it will not require maintenance; that, if necessary, the shed could be moved 1 foot to 1.5 feet off the property line; that there are larger sheds in the neighborhood; that there is no flooding on the property; that the area under the shed will be dug out, stone will be installed and have a concrete base; that he cannot move the shed closer to the house due the sidewalk; that the shed would block two windows if it was put closer to the house; that the home measures 12 feet by 60 feet and was purchased in 2000; that an addition was added along with the rear shed in 2004; that the older shed was on the property when he purchased it; that the shed will be approximately 2 feet from the sidewalk and the sidewalk measures 3.5 feet wide; that he plans to expand the sidewalk to 5 feet wide; and that the prime view from the property is to the rear of the house and he wants to preserve that view.

Mr. Sharp asked Mr. Vai if he considered adding some storage space to the proposed future addition.

Mr. Vai testified that he intends to extend the living room and bedroom and that there is no room for storage.

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

Mr. Williamson closed the public hearing.

Dr. Carson moved to deny Case No. 12545 for the requested variance as the exceptional practical difficulty is being created by the Applicant.

Motion by Dr. Carson, seconded by Mr. Chorman, carried unanimously that the **variance be denied for the reasons stated**. Motion carried 5 – 0.

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

Case No. 12546 – Jeanne Murray seeks variances from the front yard and side yard setback requirements) for proposed and existing structures. (Sections 115-82, 115-182, 115-183, and 115-185 of the Sussex County Zoning Code). The property located on the southwest side of Washington Street approximately 225 ft. southeast of Church Street. 911 Address: 37496 Washington Street, Rehoboth Beach. Zoning District: C-1. Tax Parcel: 334-13.20-63.00

Ms. DeVore 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 Applicant is requesting the following variances:

- 18.6-ft. var from 30-ft. front yard for proposed steps (19.52-ft. average front yard)
- 16.3-ft. var from 30-ft. front yard for a proposed porch
- 1.2-ft. var from 5-ft. side yard setback for an existing shed

The Board found that Ms. Mackenzie Peet, Esq. was present on behalf of the Applicant and submitted an exhibit to Board members.

Ms. Peet stated that the property is near the YMCA and Crystal's Restaurant in Rehoboth; that the average setback survey shows that the average front yard setback is 19.2 ft.; that Ms. Murray owned this property with her late husband who inherited the cottage from his parents; that Ms. Murray contracted with Oak Construction to make renovations to the cottage; that the contractor noted that variances would be required to make the renovations that are the subject of this Application; that the existing dwelling sits on a 9,374 square foot lot; that the structure is not centered on the lot; that there is an existing front porch on the dwelling with a set of stairs which have encroached into setbacks for decades; that the existing shed has been on the property for at least a decade; that the proposed structure includes an addition and an expansion on the porch with proposed dimensions of 9.3 ft. by 3.38 ft. in length and a replacement of the existing stairs to be located in the front yard and to be attached to the porch; that this property is located in the C-1 General Commercial district; that averaging of front yard setbacks is permitted per Sussex County Code; that all of the homes on Washington Street have porches or structures that exist in the front yard setback; that the home closest to the intersection of Church Street and Washington Street is only at 13.6 ft. from the property line and projects farther into the front yard; that the property side and rear setbacks are 5 ft.; that the shed is approximately 100 square feet and projects into the side yard setback; that the Applicant is requesting four variances, 5.82 ft. to reduce the front yard setback from 19.52 ft. to 13.7 ft. for a proposed porch, 8.1 ft. to reduce the front yard setback from 19.52 ft. to 11.4 ft. for a set of stairs to be attached to the porch, 0.6 ft. to reduce the side yard setback from 5 ft. to 4.4 ft. for the existing dwelling, and 1.2 ft. to reduce the side yard from 5 ft. to 3.8 ft. for the existing shed; that the lot is uniquely shaped in comparison to the other single family lots on Washington Street as this lot is a lot and a half; that the existing structure is not centrally located on the lot but is located towards Lot 19

and sits in the side yard setback creating unique condition on site peculiar to this property and an exceptional practical difficulty for the Applicant to make normal improvements to the existing structure; that it cannot otherwise be developed because of the lot's size and shape and the placement of the existing structure restrict the Applicant's reasonable use of the property to make normal improvements to the aged existing structure; that the exceptional practical difficulty was not created by the Applicant as the property was inherited by the Applicant in its current condition; that there is an existing porch on the property and the Applicant is proposing to make normal improvements to improve the existing structure; that it will not alter the essential character of the neighborhood but is similar to other attached porches on Washington Street and will enhance the neighborhood; that these are the minimum variances to afford relief and represent the least modifications of the regulations at issue; and that the chain of title suggests that the property and the existing dwelling have existed in the front and side yard setbacks for decades and possibly before the adoption of the Sussex County Zoning Code.

Ms. Jeanne Murray was sworn in to give testimony by teleconference about the Application.

Ms. Murray testified that the cottage was gifted to her late husband by his parents; that she and her husband planned to renovate the cottage; that her husband passed before the renovations could begin and she wishes to see her husband's plan be completed; that the current porch is small for her family of nine; that the cottage is two bedrooms and one bath so there is a need for additional space; that she was unsure if the shed is on concrete or grass and it may be possible to move the shed; and that there have been no complaints about the location of the shed or the dwelling.

Ms. Peet stated that the Applicant did consider moving the steps to the side but ultimately decided to keep them in the front like the existing steps and steps on other homes on Washington Street; and that the proposed porch would only add an additional 1.1 ft. to the existing porch.

Ms. Murray affirmed the statements made by Ms. Peet as true and correct.

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

Mr. Williamson closed the public hearing.

Mr. Hastings moved to approve Case No. 12546 for the requested variances:

1. The exceptional practical difficulty was not created by the Applicant;
2. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to public welfare; and
3. The variances represent the minimum variances necessary to afford relief and represent the least modifications of the regulations at issue.

Motion by Mr. Hastings, seconded by Mr. Workman, carried unanimously that the **variances be granted for the reasons stated.** Motion carried 5 – 0.

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

Case No. 12547 – John Lepkowski seeks variances from the side yard setback requirements for existing and proposed structures (Sections 115-42, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located on the east side of Blue Teal Road within the Swann Keys Subdivision. 911 Address: 37000 Blue Teal Road, Selbyville. Zoning District: GR. Tax Parcel: 533-12.20-46.00

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 one mail return. The Applicant is requesting a 3.3 ft. variance from the required 5 ft. side yard setback on the north side for an existing HVAC unit and a 2.2 ft. variance from the required 5 ft. side yard setback on the south side for existing landing with steps.

Mr. John Lepkowski was sworn in to give testimony about the Application.

Mr. Lepkowski testified that, when he submitted the house plans for permitting, he was unaware that variances would be needed; that the lot is unique as it is only 40 ft. wide; that the property cannot be otherwise developed because of the unique conditions of the lot; that the building permit was approved for the house but a Certificate of Occupancy has not been issued; that the steps cannot be moved because they are the secondary egress from the dwelling; that the HVAC unit cannot be moved as the only other realistic location for the system is the driveway; that the plan was approved by Sussex County; that the variances will not alter the essential character of the neighborhood as the home is similar to other homes in the community; that this development was developed as a manufactured home park where homes have since been converted to stick built homes; that other homes in the vicinity have had similar variances granted; that these variances are the minimum variances necessary to afford relief as the steps and HVAC system cannot be moved; that the contractor, Carl Deputy and Sons, obtained the permit; that this is a single-story dwelling on a block foundation; that the home was built in 2020; that the home is elevated due to Hurricane Sandy; that he cannot put these structures under the house; that there have been no complaints from neighbors and two neighbors offered to send letters of support; that there has been no flooding on the property; and that there are no parking issues in the neighborhood.

Ms. Norwood noted that a permit was issued with the correct setback information but the survey submitted with permit did not show HVAC unit or the steps with landing.

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

Mr. Williamson closed the public hearing.

Mr. Chorman moved to approve Case No. 12547 for the requested variances, pending final written decision, for the following reasons:

1. The exceptional practical difficulty was not created by the Applicant;
2. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property; and
3. The variances represent the minimum variances necessary to afford relief and represent the least modifications of the regulations at issue.

As part of his motion, Mr. Chorman directed that a letter be sent to the contractor, Mr. Deputy, advising him to follow Sussex County setbacks.

Motion by Mr. Chorman, seconded by Dr. Carson, carried unanimously that the **variances be granted for the reasons stated**. Motion carried 5 – 0.

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

Recess
7:51 p.m. – 7:57 p.m.

Mr. Sharp restated the procedures for public hearings before the Board of Adjustment.

Mr. Chorman recused himself from the following case and left chambers.

Mr. Sharp restated the procedures for public hearings before the Board of Adjustment.

Mr. Chorman recused himself from the following case and left chambers.

Case No. 12532 – John H. Legg seeks a special use exception to operate a rifle or pistol range (Sections 115-23 and 115-210 of the Sussex County Code). The property is located on the northeast corner of Gravel Hill Road (Rt. 30) at the intersection of Bennum Switch Road and Gravel Hill Road. 911 Address: 20093 Gravel Hill Road, Georgetown. Zoning District: AR-1. Tax Parcel 135-11.00 82.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of the Application and 12 letters and a 91-signature petition in opposition to the Application and zero mail returns. The Applicant is requesting a special use exception for a period of five years to operate a rifle / pistol range.

Mr. Williamson made a statement regarding how the public should conduct themselves during the hearing.

The Board found that Mr. Harold Dukes, Jr., Esq. was present on behalf of the Applicant. Also present were Mr. John Legg and Mr. Ronald Hagan.

Mr. Dukes stated that the County records show that the property is zoned Agricultural Residential (AR-1) but, when the Applicant purchased the property, it was zoned Light Industrial (LI-1); that he is unclear how this could have changed; and that the property has been continuously used.

Ms. Norwood stated that the property has always been AR-1 zoning but she thinks the commercial use on the property is non-conforming as it dates back prior to the Sussex County Zoning Code; and that the rifle/pistol range would still require a special use exception regardless of the zoning.

Mr. Legg was sworn in to give testimony about his Application.

Mr. Legg testified that he acquired the property approximately 12 years ago; that there was a construction company leasing the property and that the zoning was Light Industrial; that there was a gun range on the property which was not used often; that the berm for the gun range was built up for personal use; that it is currently used by Mr. Hagan for his business; that there is no rent charged; and that the range is used for pistols and rifles.

Mr. Dukes stated that Mr. Hagan is an expert in this area, and he will testify to the safety features and the legalities regarding the location of neighboring residences.

Mr. Hagan was sworn in to give testimony about the Application.

Mr. Hagan testified that he is a lifelong Sussex County resident, a 37 year member of the volunteer fire service and a retired Delaware State Police captain after 30 years of service; that his business partner, Hank Rickards, is also a lifelong Sussex County resident and a retired Marine Corps. Veteran; that he, Mr. Rickards, and their wives are the owners of American Responder Services (ARS) which is a business; that Mr. Legg has allowed them to use the subject property free of charge to conduct live fire training for classes; that the name of the business was derived from their services as volunteers, firefighters, law enforcement, and military veterans; that they provide tools and training to citizens; that ARS began as a training consulting business in January 2018 and grew into a firearms training and retail with a focus on home and self-protection; that ARS offers classes, some with live fire, some without and some private training; that they hold a Federal Fire Arms license, a Delaware Deadly Weapons Dealer license, and Delaware Retailer license; that the business began with two trainers and has grown to nine instructors who all have been certified by the United States Concealed Carry Association, some of whom were also law-enforcement firearms instructors, NRA firearms instructors and Range Safety Officers; that, before live fire training, there is live firearm safety training including what to do in case of a medical emergency; that, when on the range, there is no less than a 3-1 ratio of students to instructor; that this is done to provide the best instruction while insuring safety

rules are followed; that there are no classes held after dark and only a few times after sunset to simulate low light conditions or to finish a late running class; that training has increased over the past three years during Covid-19, civil unrest, and the threat to restrict the purchase of certain firearms; that, since January 2021, ARS has conducted 13 live fire classes and 10 one-on-one lessons with a total of 51 hours of range time; that all classes were conducted on Tuesdays, Thursdays, and Saturdays; that this past weekend some distance measurements and sound level testing was conducted; that the closest property lines are 180 and 185 yards from the range; that the sound level decibel (dB) testing was performed from several locations and is available on video; that the ambient noise level ran at about 49 – 50 dBs; that, from 10 feet behind the firing line, there were two readings, one at 93 dBs and the other at 85 dBs; that from 100 feet directly behind the firing line there was a high reading of 81.5 dBs; that from 200 feet away there was a reading of 81.3 dBs; that the readings were taken then from two separate areas between the range and the pond on the subject property and from one those locations the high readings were 80.9 dBs and 74.8 dBs and the other the high readings were 76 dBs and 68.3 dBs; that a reading was taken at 80 yards from a bungalow on an adjacent property and the high reading 69.4 dBs; that a reading was taken on Route 9 with the general traffic noise giving a high reading of 79.8 dBs, 81.7 dBs, 84 dBs, and 85 dBs, all of which are just as high or higher than when taking the reading from 10 feet behind the line of fire; that ambient noise is louder than the range; that several enhancements have been made to the range by making it higher and angling the ends to further enhance the safety and reduce the noise; that, prior to this hearing, they had received approval from Mr. Legg to line both sides and rear with waste concrete to help reduce the noise level; that this improvement will not be completed until after the outcome of this hearing; that ARS has purchased a live fire simulator to use at their shop on Hebron Road in Rehoboth Beach to reduce the amount of live fire classes on the range; that live fire of 100 rounds is required for Delaware residents to obtain their concealed carry permit; that, if the special use exception is not granted, it would eliminate the ability to provide firearms training to retired officers and the citizens of the community; that it would hinder the ability for citizens to enjoy their Second Amendment right to obtain a concealed carry permit; that the State is now looking at legislation to require further firearms training to purchase a firearm; that safety rules are followed by employees of ARS when instructing on the range; that the legal distance of fire from a residence is 300 feet and this range and that the nearest residence to the range is almost double that; that there is a monetary charge for classes as it is a business; that there is a maximum of 12 students for each live fire class; that it is rare to have more than 1 class on the site per day; that there is no State Police training at this site and no contracts with law enforcement agencies with ARS; that some current and retired law enforcement officers take private classes to enhance their skills; that woods surround the range; that the range is on the east side of the property; that there is a tax ditch on the east side of the property approximately 20 yards from the berm; that the range runs parallel to Bennum Switch Road; that the range is located in the open area shown on the aerial photograph; that there are wetlands to the north side of the property; and that it is mainly handguns used at the range but there is occasional AR shooting; and that, during hunting season, they sight shotguns and rifles for customers.

Mr. Dukes stated that a complaint was made and the Applicant, Mr. Legg, received a notice of violation from the County.

Mr. Hagan testified that the dirt berm is approximately 10 feet tall and angled on each side; that the berm is about 35 feet wide and the angled sides approximately 12 – 15 feet which decrease in height; that all the brass is picked up at the range but lead remediation has not been performed at this time; that the area in front of the berm has been graded to make it safer and stone has been put down; that lead remediation would require a company coming on site and digging the lead out of the berm; and that there is no concern about lead leeching into the pond or the tax ditch.

Mr. Sharp asked about the other uses on the subject property.

Mr. Legg testified the Schell Brothers rent a portion of the property for some landscaping needs and a shop for powder coating, which is all indoors, is also located on the site; that the range does not interfere with the businesses on the site; and that the hours of operation would be from 10:00 am through 7:00 pm every day.

Mr. Hagan testified that they mostly use paper targets so there is no danger of shrapnel ricocheting as the bullet will go through the paper and into the berm; that ricocheting can happen when using metal targets; that the picture from the ARS Facebook page showing a man with shrapnel in his face is used for training purposes and that has never occurred at this site; that the hours of operation would be Tuesday, Thursday, and Saturday from 10:00 am through 7:00 pm; that he has no plans to expand the business; that the properties across the road on the south side of Bennum Switch Road are residential; that the property to the east is farmland and woodlands; that the properties across the road on the west side of Gravel Hill Road are residential and a DelDOT yard; and that the properties adjacent to the north are residential properties.

Mr. Legg testified that the range was on the site when he purchased the property and that the prior owners used it from time-to-time.

Mr. Hagan testified that he started his business on the site in February 2018; that, prior to 2018, Richard Catts of Delaware Firearms used the property for training; that the range was used in the 1960s for Boy Scouts to earn merit badges; and that the business is fully insured.

Ms. Norwood confirmed that a family and their friends may shoot on property owned by them, but a business must obtain a special use exception.

Mr. Ray Donohoe was sworn in to give testimony in support of the Application.

Mr. Donohoe testified that this is one of the safest groups he has worked with and he has 55 years' experience.

Mr. David Buchanan was sworn in to give testimony in support of the Application.

Mr. Buchanan testified that he is a retired law enforcement officer; that he has been employed for ARS for three years; that he has been a firearms instructor since 1980; that there is a difference between law enforcement officers and civilians on the range; that he is impressed with Mr. Hagan's safety record; and that there is a class for beginners.

Mr. Dukes stated that this use has been in existence for a number of years; that it is needed in the community; that it is the only gun range on the east side of Route 113; that it is handled professionally; that there are no houses within the statutory limit; that it meets the standards for the State of Delaware; and that he believes the use is grandfathered.

Mr. Hagan testified that there is no way for shrapnel to hit a house unless someone was aiming at it.

Mr. Sharp asked Mr. Dukes to clarify that this case is not a determination of use case but a special use exception request.

Mr. Dukes affirmed that is the request before the Board is for a special use exception for a rifle / gun range and not for a determination of use.

The Board found that there were 8 people present in support of and 14 people opposed to the Application.

The Board found that Mr. William Schab, Esq. was sworn in to give testimony in opposition to the Application.

Mr. Schab testified that he has lived in and practiced law in Sussex County for 47 years; that he has owned Parcel 79 adjacent to the subject property for 38 years; that he has leased his land and used it for storage for his office files; that this Application substantially adversely affects neighboring and adjacent properties and the life of surrounding property owners; that this is an inappropriate location for shooting firearms that cannot be controlled by this Board; that, in close proximity to the site, are Gravel Hill Road and Route 9 which are both heavily traveled; that the bike path will go down Bennum Switch Road as well; that a range cannot be safe in this location; that the property owned by him is a vacant rental property with two storage buildings for his business storage and he is at his property regularly; that, in the past, he never heard gunfire that now it sounds like a war zone; that his tenants never heard gunfire either; that the property value of his commercially zoned property will be negatively affect by being adjacent to a pistol range; that, if the use is residential, the homeowner has to list adverse uses which can affect sales prices; that the noise can be deafening; that it is tough to live in this area; that a property owner has a right to quiet enjoyment; that it has been this way for 3 years and has intensified; and that, if this use was in existence for 30+ years, then someone cannot move here and try to change the use.

Mr. Sharp explained that the Board of Adjustment can impose conditions of approval on any

application.

Mr. Pete Lorah was sworn in to give testimony in opposition to the Application. Mr. Lorah referred to photos and videos during his presentation.

Mr. Lorah testified that, as recently as 14 months ago, the range used shorter berms of logs and, according to best management practices, moved berm and dirt should be tested for hazardous materials; that the Applicant's Facebook page shows posts from his family members showing that they realize they are causing a disturbance to neighbors; that another site had a ricochet so ARS is aware that ricochets can occur; that the site is also used for family and friends for recreation in addition to the ARS classes; that the new dirt berm has eroded and does not have the best management practices for lead removal as suggested by the Application; that the berm is not a U-shape but in one line and is not a constant height; that the berm is approximately 10 yards from the tax ditch and not 20 yards as stated by the Applicant; that the bike path will be in close proximity to this site; that people ride ATVs and horses nearby; that there is a manufactured home community also close by; that the Hawthorne community is nearby as well; that the range is approximately 100 yards from his back yard; that the gunfire measured from his porch was 85 dBs when there were only 3 shooters on the range and it was not a full class; that the sound is worse when there is a full class and it can go on for 4-5 hours; that a measurement taken in his front yard with traffic on Route 9 and a lawnmower being operated has an average of 72 - 73 dBs; that, when the lawnmower gets close to the reader, it measures 82 dBs which is still not as loud as the gunfire; that the area is developing; that Title 7 Chapter 71 – the General Assembly finds and determines that the people of this State are entitled to and should be ensured an environment free from noise which unnecessarily degrades the quality of their life; that a noise disturbance means any sound which endangers or injures the safety or health of humans or animals, annoys or disturbs a reasonable person of normal sensitivities, or jeopardizes the value of property; that no person shall, without first having obtained a variance or a temporary emergency variance from the Department of Natural Resources and Environmental Control, undertake any activity which in any way may cause or contribute to the creation of noise or a noise disturbance; that Title 28 Section 903 states that “No person shall keep a gallery or booth or other convenience for the purpose of target shooting or other trials of skill by the use of firearms within the borders of any town or city, or within 300 yards of any road or public passway, within this State, or at any place of public resort, unless the gallery or booth or other convenience is enclosed with walls not less than 10 feet in height and not less than 4 inches in thickness sufficient to prevent ball or shot from the firearms from escaping from or passing through the gallery or booth”; that this is not a Second Amendment issue but a quality of life issue; that his home is 400 feet from the range; that he has children and likes to use his back yard; that, when the range is in session, his dogs bark and it is tough to read, focus, or watch television; that the range sessions typically last 4-6 hours; that the Applicant should construct a proper noise abatement berm on the property to protect the quality of life; that he has lived in the area for 40 years and has no memory of a shooting range on the property from his childhood; that he used to play on the Applicant's property as a child and there was no range at that time; that the noise from the range intensified after complaints were levied; that he has received threats from his neighbor; that this is a residential area; that he

would have no issue with the gun range if the proper noise abatement and lead abatement measures are put in place so that the residents in the area can have quality of life; and that his property is identified as Parcel 77.01.

Ms. Grace McDonald was sworn in to give testimony in opposition to the Application.

Ms. McDonald testified that supports the Hawthorne petition in opposition to the Application; that she retired to Southern Delaware for peace and quiet; that she can hear the shots from the range; that she fears that, if this is approved, the business will expand and create more noise; that there is no guarantee that it will not become a 7-day-a-week business; that she has safety concerns for bicyclists in the area; and that the supporters of the Application do not live in the neighborhood.

Ms. Janet Mitchell was sworn in to give testimony in opposition to the Application.

Ms. Mitchell testified that she owns Parcel 77; she has lived at her home for 63 years; that there was no shooting range on the subject property; that she would ride horses on the property in the 1960s and used to ride horses until 2005 when she was shot at; that the sound magnifies over the water; that initially the shooting was occasional but it has increased in recent years; that, when complaints were made, the shooting would ease up but then go right back to it; that she cannot enjoy the outdoors on her own property; that she could not have a barbeque last year due to the shooting; that she used to spend time in her gazebo; that she cannot hold conversations when the range is in session; that she has safety concerns about walking on Bennum Switch Road; that the range users are beginners; that she has concerns about the effect of the range on the bicycle trail; that she cannot go outside; that the guns used on the range are high-caliber weapons; that the gunfire affects her dog and she has to take the dog away from her home when the range is in session; and that she cannot live in her home when the range is in session.

Mr. Joe Loeffler was sworn in to give testimony in opposition to the Application.

Mr. Loeffler testified that he owns Parcel 76; that he has owned his property for approximately 1.5 months; that his property is adjacent to the subject property; that he works close to three gun ranges and he does not have the same issues as he does with this gun range; that, when he is home, he cannot enjoy his home; that he is a gunowner and would not wish to take gun rights away from anyone but this is a sound problem; that the sound echoes and carries greatly; that he was unaware of the range when he bought his home; that, if the Applicant can shoot without a permit, what is going to happen if the permit is granted; that it is a sound issue, a property value issue, and a quality of life issue; and that he has concerns that the Applicant will not abide by rules if the use is permitted.

Mr. James Mitchell was sworn in to give testimony in opposition to the Application.

Mr. Mitchell testified that he owns Parcel 77; that he has resided in this area for 40 years; that he has seen a lot of growth in the Gravel Hill area; that residents of Sussex County have a reasonable

expectation to enjoy a quality of life and should have the freedom to enjoy their homes and outdoor spaces with a reasonable expectation of comfort, safety and a healthy lifestyle; that the noise level has exceeded safe and healthy environment range; that this is not safe for walking and/or biking; that it is not safe that his family has to sit indoors with the TV turned up loud to drown out the impulse noises from firearms; and that this is not the location for a commercial shooting range.

Ms. Traci Jewell was sworn in to give testimony in opposition to the Application.

Ms. Jewell testified that she lives on Bennum Switch Road; that she fears for the safety for the safety of her grandchildren; that she has lived in the area for 45 years; that the gunfire is ongoing 7 days a week for 3 – 4 years; that the range sounds like a warzone; that she cannot hold a conversation when the range is in session; and that she has concerns about lead leaking into the tax ditches and affecting groundwater as she has a well on her property.

Ms. Danielle Lorah was sworn in to give testimony in opposition to the Application.

Ms. Lorah testified that she lives on Parcel 77.01; that she is a parent of a special needs child with an anxiety disorder; that the gunfire triggers panic attacks in her child; that they have their child in therapy; that the walls rattle when the range is used; that they have talked to Law Enforcement, DNREC, and politicians to try to get this issue resolved and have gotten no help; that they cannot move as they have family support in the area and it would mean moving three family units

Mr. Victor Joseph was sworn in to give testimony in opposition to the Application.

Mr. Joseph testified that he lives on Parcel 74; that, when the gun range is active, that is sounds like sonic booms and he can feel it in his chest; that he has concerns about lead contamination; that the range was not there previously; that he feels the Applicant is misleading; that the neighbors are long-time residents and not new to the neighborhood; that the noise is constant; and that he would support an indoor range but not an outdoor range.

Ms. Jessica Mills was sworn in to give testimony in opposition to the Application.

Ms. Mills testified that she lives on Gravel Hill Road; that she is in opposition to the gun range because it is not just used by Mr. Hagan on Tuesday, Thursday, and Sunday but also by Mr. Legg and his associates; that they began shooting as early as 6:30 am and have gone until the late hours of the evening; that the only solution is to eliminate the gun range entirely or to build an enclosure where you cannot hear the sound.

Mr. Hagan testified that the range is only used Tuesday, Thursday, and Saturday; that AR-15s are shot from time to time but it is rare that they are shot on site; that 95% of the guns used are handguns; that Mr. Legg allows his friends to use the range for recreation; that occasionally rifles and shotguns are used on the site as well; that the pictures submitted by the opposition are correct; that

the original berm was not moved, dirt was added to it; that, if this Application is approved, ARS intends to use cinder blocks used in landscaping and build them up approximately 9 ft. high in a U-Shape; that the dirt would be up against the block; that they would look into the lead mitigation; that they will abide by any conditions given by the Board of Adjustment; that he is not aware that he needs any permits from DNREC; that the rails to trails will be on the north side Bennum Switch Road and they would not be crossing the backstop of the range; that he is fine with prohibiting rifles on the site; that the bike path is approximately 120 yards from the range; and that he wants to be a good neighbor.

Mr. Williamson closed the public hearing.

Mr. Workman moved to leave Case No. 12532 open for the limited purpose of allowing the Applicant to submit a video that Mr. Hagan referenced in his testimony by April 26, 2021 and the Applicant to be present at the Board of Adjustment meeting on May 3, 2021, to answer questions regarding the video.

Motion by Mr. Workman, seconded by Mr. Hastings, carried unanimously that the **record be left open for limited purposes stated.** Motion carried 4 – 0.

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

ADDITIONAL BUSINESS

There was no additional business.

Meeting adjourned at 10:06 p.m.