

MINUTES OF APRIL 28, 2025

The regular meeting of the Sussex County Board of Adjustment was held on Monday, April 28, 2025, at 6:00 p.m. in the County Council Chamber, Sussex County Administration Office Building, Georgetown, Delaware.

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. Shawn Lovenguth, Mr. John Hastings and Mr. John Williamson. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Ms. Jennifer Norwood – Planning and Zoning Manager, and Ms. Ann Lepore – Recording Secretary.

The Pledge of Allegiance was led by Mr. Chorman.

Ms. Sharp noted that David Hutt has presentations for Case Nos. 13056 and 13060 and has requested that they be moved to the end of the agenda as he has another presentation scheduled at the Town of Georgetown at 6:00 pm.

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

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

Motion by Mr. Williamson, seconded by Mr. Hastings and carried unanimously to approve the Minutes for the February 24, 2025, meeting. Motion carried 5 – 0.

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

Motion by Mr. Lovenguth seconded by Dr. Carson and carried to approve the Findings of Facts for the February 24, 2025, meeting. Motion carried 5 – 0.

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

PUBLIC HEARINGS

Case No. 13039 – Chata, LLC seeks variances from the side and rear yard setback requirements for existing structures. (Sections 115-25 and 115-183 of the Sussex County Zoning Code.) The property is located on the west side of DuPont Boulevard and south of Wilson Road. 911 Address: 19084 DuPont Boulevard, Georgetown. Zoning District: AR-1. Tax Parcel: 135-9.00-9.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received zero letters of support, zero letters of opposition, and zero mail returns.

The Applicant is requesting the following variances:

- 7.6 feet from the 15 feet side yard setback requirement on the north side for an existing structure
- 15.3 feet & 16.2 feet from 20 feet rear yard setback requirement for an existing structure.

The Board found that Mr. Michael McGroerty, Esq., was present on behalf of the Applicant, Chata, LLC. Also in attendance is Ms. Rubicle Moran Morales who was sworn in to give testimony about the Application.

Mr. McGroerty stated that Ms. Morales is a member of Chata, LLC, that there are two buildings on the property, a garage and a shed that have been there since 1974 as shown by the property records; that a neighbor indicated the structures were built between 1970 and 1974; that the Applicant purchased the property with the existing improvements and was unaware that the structures did not meet setbacks; that the exceptional practical difficulty was created between 1970 – 1974; that the Applicant did not create the exceptional practical difficulty; that the property has been sold multiple times since 1974; that the Applicant cannot use the shed and garage without the approval of the variances; that, when the Applicant purchased the property, there were property maintenance violations; that the property was served by a cesspool; that the Applicant has cleaned up the property and paid all outstanding violation fines; that the Applicant has completed the permitting process to install a septic system; that the structures are similar to other structures in the neighborhood as there are garages and sheds in the neighborhood; that the variances will not alter the essential character of the neighborhood; that these are the minimum variances to allow the existing structures to remain on the property; that the Applicant plans to file for an Accessory Dwelling Unit (“ADU”) if the variances are approved; that the ADU will meet code requirements and be a portion of the existing garage; that the shed will remain as a shed; that there is no opposition from the neighbors; that there is electricity in the shed but it is not connected to water; and that Mr. Morales has made repairs to both buildings and improved the property.

Ms. Morales testified that there is electric in the shed; that the current septic system is right behind the dwelling; and that the proposed septic system would be farther towards the rear and to the south of the existing shed.

Ms. Morales affirmed that the statements made by Mr. McGroerty as true and correct.

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

Mr. Chorman closed the public hearing.

Dr. Carson moved to approve the application for Case No. 13039 for the requested variances, pending final written decision, for the following reasons:

1. The exceptional practical difficulty is not being created by the Applicant;
2. The variances will not alter the essential character of the neighborhood; and
3. The variances sought are the minimum variances necessary to afford relief.

Motion by Dr. Carson, seconded by Mr. Hastings, carried that the **variances be approved for the reasons stated.** Motion carried 5 - 0.

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

Case No. 13057 – Steven & Diane Reid seek a variance for the height requirement for proposed and existing fence (Sections 115-34 and 115-185 of the Sussex County Zoning Code). The property is located on the south side of New Road and east of Peach Tree Lane within the Nassau Station subdivision. 911 Address: 32883 Peach Tree Lane, Lewes. Zoning District: MR. Tax Parcel: 335-7.00-45.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received zero letters of support, zero letters of opposition, and zero mail returns.

The Applicants are requesting a 2.5 feet variance from the 3.5-foot height requirement for a fence.

Mr. Steven Reid and Ms. Diane Reid were sworn in to give testimony about their application.

Mr. Reid testified that they are planning to retire to Delaware; that they were looking for a home in an established development; that their requirements for the retirement home were to be near the bike trail, a private pool, and a fenced yard for their dogs; that they found their home in Nassau Station and settled in January 2024; that the property was improved with a 6-foot black fence; that they wanted to replace the existing fence with a white vinyl fence which would match other fences in the neighborhood; that the white fence was built in 2019 when the house was constructed; that the black fence was installed in 2022; that the prior owner constructed those fences; that the existing fence was removed during the pool construction; that the Zoning Code allows for a 3.5 foot tall fence in the front and corner front but the pool requires a 4 foot tall fence; that the Applicants seek permission to install a 6 foot tall fence around the property; that the Applicants submitted a request to the homeowners association and received favorable response; that the architectural review committee was not favorable to the black fence; that their neighbor supports the request; that the fence will not impede sight lines along New Road; that the fence is 8.5 feet from the property line; that the adjacent neighbor has a similar fence and supports this application; that the variance is needed for the fence parallel to New Road and for a fence in the rear yard and front yard; that there is approximately 20-

feet between the edge of pavement and the property line; that there have been no complaints regarding sight lines with the existing black fence; that there will be a new residential development across New Road and the fence will give privacy in addition to blocking the noise from traffic; that there are large concrete trucks which drive down New Road; and that the fence would be 6 feet tall around the mechanical area for the pool.

Ms. Reid testified that the fence will not impede sight lines; and that there are trees which are farther into sight lines than the fence.

Mr. Sharp asked Ms. Norwood to clarify if Nassau Station has a buffer. He stated that the older subdivisions did not have a buffer requirement but that the newer subdivisions have to have a 30-foot buffer; and that a variance would not likely be necessary if the entire subdivision had a 30-foot buffer.

Ms. Norwood confirmed that Nassau Station dates to 2001 and was not required to have a 30-foot buffer.

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

Mr. Chorman closed the public hearing.

Mr. Hastings moved to approve the application for Case No. 13057 for the requested variance, pending final written decision, for the following reasons:

1. The property has unique physical conditions due to it being a corner yard;
2. The property cannot be otherwise developed in strict conformity with the Sussex County Zoning Code;
3. The exceptional practical difficulty is not being created by the Applicants;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Hastings, seconded by Mr. Lovenguth, carried that the **variance be approved for the reasons stated**. Motion carried 5 - 0.

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

Case No. 13058 – Edward Crowder seeks variances from the front and side yard setback requirements for existing structures. (Section 115-34, 115-182 and 115-183 of the Sussex County Zoning Code). This property is located on South Shore Drive within the South Inlet Manufactured Home Park. 911 Address: 46 South Shore Drive, Bethany Beach. Zoning District: MR. Tax Parcel: 134-2.00-4.00-57075

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received zero letters of support, zero letters of opposition, and one mail return.

The Applicant is requesting the following variances:

- 0.4 feet from the 5 feet front yard setback requirement for a structure.
- 1.0 feet from the 5 feet side yard setback requirement on the west side for a structure.
- 0.7 feet from the 5 feet side yard setback requirement on the west side for a structure.

Mr. Edward Crowder and Ms. Jamie Crowder were sworn in to give testimony about their application.

Mr. Crowder testified that the development is unique as it is zoned as a manufactured home park; that, when building a home, they had to place a manufactured home on pilings and then put extensions to build the dwelling; that the placement of the trailer played a part in the house being over by a few inches; that he obtained a survey and used professionals to place the home; that the manufactured home was placed incorrectly; that some stairs were eliminated from the project; that A-Del Construction put the pilings in; that he asked the builder to attend the hearing but the builder did not want to attend; that he, the Applicant, pulled the permit for the dwelling; that there are many homes in the community that are directly on the property line; that the placement of the dwelling will not affect the neighborhood; that neighbors are okay with the placement of the structure; that the home was placed using a crane; that this was his first time dealing with pilings; that the manufactured home was a different size than what was ordered; that the home is a 16' manufactured home with an addition; that the old manufactured home has been removed; that he planned to comply with the Sussex County Zoning Code; that, if the house was placed closer to Lot 81, no variance would be needed; and that there is a gap between the edge of paving of South Shore Drive and the front property line.

Ms. Crowder testified that this encroachment was not discovered until after the building was completed; that, after the pilings were installed, the house shifted; that the property is unique; that the neighborhood is zoned as a manufactured home park; that there are some stick-built homes in the neighborhood; and that the property is on leased land.

Mr. Sharp explained that the property was not rezoned; and that there was a code provision to allow for stick-built home but that provision was removed.

Mr. Joel Maida was sworn in to give testimony in support of the Application.

Mr. Maida testified that he and his wife own the property directly across the street from the subject property; that they have no objection to Mr. and Mrs. Crowder's variance request; and that surveys in the neighborhood are difficult due to nebulous lot lines.

Mr. Bill Martin, who is a member of the homeowners association board of directors, was sworn in to give testimony in support of the Application.

Mr. Martin testified that the HOA owns the land; that the community has 21 lot; that they share the land; that, although he is over the setback lines, he is not over the property line; that there is no fire hazard; and that the HOA board has no objection to the variance request.

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

Mr. Chorman closed the public hearing.

Mr. Lovenguth moved to approve the application for Case No. 13058 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique physical conditions; and
2. The Applicant has met all the requirements to be granted a variance.

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

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

Case No. 13059 – Barry & Linda Brittingham seek a variance from the side yard setback for a proposed structure (Sections 115-42 and 115-185 of the Sussex County Zoning Code). The property is located within the Holly Ridge Terrace. 911 Address: 32410 Holly Terrace Road, Ocean View. Zoning District: GR. Tax Parcel: 134-9.00-187.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received one letter of support, zero letters of opposition, and zero mail returns.

The Applicants are requesting a 3-foot variance from the 5-foot side yard setback requirement on the north side for a shed.

Mr. Barry Brittingham and Ms. Linda Brittingham were sworn in to give testimony about their application. Mr. Brittingham submitted an exhibit to the Board.

Mr. Brittingham testified that the house was built in 1977; that the Applicants purchased the property in 2020 from the estate of the original owner; that the information he has is that the shed was placed when the dwelling was built; that the shed is old and needs to be replaced; that he wants to

place it in the same area; that his neighbor supports the request; that there is a concrete pad beneath the shed; that the proposed shed would have the same footprint; that the shed will be used for storing lawn equipment and boat supplies; that the property does not flood; that it did flood during Hurricane Sandy when the water reached 6 inches from the house; that the property is served by a private well and Sussex County sewer; that the well is on the other side of the lot behind the garage; that the placement of the shed in the same location will not block the view of the canal for his neighbors to the south but, if the shed were on the other side of the lot, it would block the neighbor's view; that the property is located off a dead end road and he and his neighbors are responsible for road maintenance; that there are 10 homes on the street; that the pad measures 12' x 12'; that they have an application in for dredging the canal and, if the shed was to be moved, the dredging equipment could not be brought onto the property; that the same issue exists for equipment needed for bulkhead repair; that there is no HOA; and that variances were granted in 2012.

Ms. Brittingham testified that the shed is old and is held together by dirt.

Ms. Norwood confirmed that the Board of Adjustment approved variances in 2012 for the house, steps, and the garage.

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

Mr. Chorman closed the public hearing.

Mr. Hastings moved to approve the application for Case No. 13059 for the requested variance, pending final written decision, for the following reasons:

1. The property has unique physical conditions;
2. The property cannot be otherwise developed in strict conformity with the Sussex County Zoning Code;
3. The exceptional practical difficulty is not being created by the Applicants;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Hastings, seconded by Mr. Lovenguth, carried that the **variance be approved for the reasons stated**. Motion carried 5 - 0.

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

Case No. 13061 – Collins 54, LLC seeks a variance from the minimum lot size requirement for a proposed lot (Section 115-25 of the Sussex County Zoning Code). The property is located on the corner of Lighthouse Road and Dickerson Road. 911 Address: 38189 Dickerson Road, Selbyville. Zoning District: AR-1. Tax Parcel: 533-18.00-25.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received zero letters of support, zero letters of opposition, and zero mail returns.

The Applicant is requesting a 4,594 square feet variance from the 20,000 square feet minimum lot size requirement for a proposed lot.

The Board found that Mr. Tim Willard, Esq., was present on behalf of the Applicant, Collins 54, LLC. Also present are Ms. Diane Brasure and Mr. Chris Brasure owners of the joint trust which is Collins 54, LLC.

Mr. Willard stated that the Brasure family owns Brasure Pest Control through a trust; that the family dates back to the 1700s in Delaware; that the first business was making salt from ocean water; that the property consists of 1.35 acres; that the property was the subject of previous conditional uses; that, in 2011, a conditional use was approved by County Council for truck storage for the business; that, in 2012, a conditional use was approved by County Council for an office; that the Brasure family operates a large pest control business; that the residential dwelling on the property was renovated by Mr. Brasure and he gave a life estate to the man and woman who lived there; that the property is now part of an estate and the residential portion is to be given to Chris Brasure and, therefore, the property must be subdivided; that the minimum lot size is 20,000 square feet; that the dwelling will meet all setbacks but the lot will consist of 15,406 square feet if approved; that the Applicant made the lot line 15 feet from the existing building on the commercial lot to maximum the square footage of the lot; that the residential portion of the property has an existing entrance; that the property is unique because of its shape; that the property cannot otherwise be developed; that there is no change in the use of the property; that the exceptional practical difficulty was not created by the Applicant; that the variance will not alter the essential characteristics of the neighborhood as nothing is changing on the property; that the surrounding area is mixed use; that the subdivision creates the largest lot possible for the residential lot; and that this variance is the minimum variance to allow the property to be subdivided.

Mr. Chris Brasure was sworn in to give testimony about his application.

Mr. Brasure affirmed the statements made by Mr. Willard as true and correct.

Mr. Williamson noted that the lots appear separate anyway.

Mr. Willard stated that there is an easement in place for the residual lands.

Ms. Ellen Magee was sworn in to give testimony in support of the Application.

Ms. Magee testified that she lives near this property; that the Brasures have done a good job with this subdivision plan; and that this proposal is out of necessity because of the loss of a loved one.

The Board found that one 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. 13061 for the requested variance, pending final written decision, for the following reasons:

1. The property has unique physical conditions due to the odd angle of the lot;
2. The variance will not alter the essential character of the neighborhood as the structures on the lot have been there for a long time; and
3. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Williamson, seconded by Dr. Carson, carried that the **variance be approved for the reasons stated**. Motion carried 5 - 0.

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

Recess 7:14 p.m. – 7:20 p.m.

Case No. 13056 – Ocean One Holdings, LLC seeks a special use exception for two off-premises static signs and one off-premises electronic message center. (Section 115-159.5, 115-161, 115-80 and 115-210 of the Sussex County Zoning Code.) The property is located on the south side of Coastal Highway. 911 Address: N/A. Zoning District: C-3/ AR-1. Tax Parcel: 235-8.00-39.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received one letter of support, one letter in opposition, and zero mail returns.

The Applicant is requesting a special use exception for three (3) off-premises signs, which include one electronic message center and two static signs.

The Board found that Mr. David Hutt, Esq., was present on behalf of the Applicant, Ocean One Holdings, LLC. Mr. Dale McAllister from First State Signs as also present.

Mr. Dale McAllister was sworn in to give testimony about the application.

Mr. Hutt stated that this is a special use exception request for three billboards, one of which is what the Sussex County Zoning Code would refer to as an off-premises electronic message center and two static billboards; that a site plan for the property is on the screens around the room; that the property is located at a significant intersection of Route 1 and Route 16; that intersection

is currently under construction for an overpass; that the property is across the road from the Rookery Golf Course; that the proposed electronic message center would be the northernmost billboard; that the static billboards would be at the southern end of the property; that County Council adopted Ordinance Number 2994 on March 5, 2024 which changed the zoning designation on the eastern portion of the property to Heavy Commercial Zoning District (C-3); that County Council had a number of findings which are germane to this evening's application; that the first finding is that C-3 zoning is designed to allow auto oriented retail and service businesses that serve local and regional residents and permitted uses include retail uses, restaurants, offices, and vehicle service stations; that the second finding states that the site has frontage along Route 1 and Route 16 at the intersection of those two significant roadways; that Route One is identified as a principal arterial by DelDOT and a major arterial roadway in the Sussex County Code and DelDOT identifies Route 16 as a major collector; that the third finding states that this site is the location of a grade separated intersection overpass that is being constructed by DelDOT with on ramps and off ramps; that DelDOT and this developer have coordinated throughout the intersection design process about the design of this site and its access including an internal service route; that the C-3 zoning designation would allow for an off-premises sign as proposed here tonight; that the question in front of the Board this evening is whether or not the proposed three billboards would substantially adversely affect the use of neighboring adjacent properties; that there are specific requirements such as a front yard setback of 40-ft. front yard setback and, in this case, the proposed signs would be 41 feet from the front property line; that the setback on the southern end of the property is 50 feet and that wraps around toward the rear of the property which is zoned AR-1 and provides a great buffer between everything to the west; that a billboard has to be 150 feet from property used as a dwelling, a church, a school, or public lands; that there is a dwelling on the same property as the NAPA store, therefore, the setback of the most southern sign is 150 feet; that the NAPA business has been on that location for many years; that the separation distance between billboards is a minimum of 600 feet and these boards are all greater than the 600 feet that is required; that the maximum height permitted is 35 feet along a 4-lane highway and these boards will be 30 feet in height; that the size of each panel on each side is a maximum of 600 feet, for a total of 1200 front and back on a billboard; that these signs are 12 feet by 48 feet, which is 576 square feet, or in total 1152 square feet; that, because the northernmost sign that was shown on that survey is an off-premises electronic message center, it must also meet the special requirements that contain technology necessary to satisfy the lighting requirements and things like how the messaging appears; that approval from DelDOT is also required for billboards; that the site plan shows a 150 foot radius from the eastern most edge; that you can see on the site plan that essentially for all three of those billboards have a 150 foot edge that lands at the eastern edge of the median between the lanes of travel; that, as an undeveloped commercial property, the developer is going to develop in a logical sequence, starting with billboards before they put the buildings up; that the zoning code says that a billboard cannot be put within 50 feet of an on-premises sign but the reverse is not true; that, once the site is developed, the on-premises signs may be as close to the billboards as necessary; that the billboards will be lit in a north-south direction of Route 1 so that travelers on the highway can see them; that the signs will not face east; that, as the property is developed commercially, lights from that development will exceed the lights from the billboards; that this is

an appropriate location for the billboards; that there will be on-premises signs in the future as well; that on-premises signs can be closer to the property line; that the layout will be similar to the Grotto Pizza layout elsewhere on Route 1; and that there is a campground to the rear of the property and agricultural lands nearby.

Mr. McAllister confirmed the statements made by Mr. Hutt as true and correct.

Mr. McAllister testified that the signs are dimmed down during the evening hours and that they are monitored by cameras so that, if they malfunction, it can be immediately addressed.

Mr. Sharp gave the Board a history of the sign ordinance pertaining to off-premises signs.

Mr. William Sharp and Ms. Joan Sharp were sworn in to give testimony in opposition to the Application.

Mr. Sharp pointed out their home which is located on the opposite side of Route 1 across from the southern end of this property; that his biggest concern is the amount of light that will be shining on his home; that they have lived there for 80 years; that the neighbor has lights and they are so bright that he can read a newspaper at night; that he has questions about the radius shown on the site plan, also that this was the first time seeing this site plan; that he has questions about the lumens on the billboards.

Ms. Sharp testified that they own land across Route 1 from the southern end of the property; and that they are concerned about the lights.

Mr. McAllister testified that it is a prismatic light designed to hit the face of the sign which lights up the sign and then the light falls down; that you really do not get much ambient light to the side because all the light is directed on the sign; that the light being stopped to the side and reducing the amount of ambient light coming off this board; that, if the Sharps look over to it, they will see the light but that light will not travel to their front yard because it is not shining in that direction; that electronic message centers near Frederica along Route 1 are 300 feet apart and the Applicant's billboards will be much farther apart; and that there are only 2 lights per side of the static billboards.

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

Mr. Fitzhugh testified that he owns property across Route 1 between the electronic message center and the static billboards; that he has concerns about the lights from the billboards shining on his house; that the site plan being shown was not available prior to this hearing; that he would like confirmation of the 150 feet radius being shown on the site plan; that he has a deck in the rear yard and the sign will project into his yard.

Mr. Hutt stated that the site plan was prepared by an engineering firm and they have a

professional obligation to show correct measurements and that, if you look at the 150 feet setback from the southern property line, it may be compared to the radius from the signs to the second lane of the highway.

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

Mr. Chorman closed the public hearing.

Dr. Carson moved to approve the application for Case No. 13056 for the requested special use exception, with confirmation that the location of the proposed signs meets the County requirements for the 150 feet separation distance, pending final written decision, for the following reasons:

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

Motion by Dr. Carson, seconded by Mr. Williamson, carried that the **special use exception be approved for the reasons stated.** Motion carried 4 - 1.

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

Case No. 13060 – Trinity Commercial Holdings, LLC seeks a special use exception to operate a potentially hazardous use (Construction and Demolition Debris Recycling) (Sections 115-111 and 115-210 of the Sussex County Zoning Code). The properties are located on the South side of Fleatown Road and East of North Old State Road. 911 Address: 11663 Windmill Lane, Lincoln. Zoning District: HI-1/ GR. Tax Parcel: 230-19.00-111.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received zero letters of support, zero letters of opposition, and one mail return.

The Applicant is requesting a special use exception to operate a potentially hazardous use of concrete crushing.

Mr. Sharp stated that this application requires a different review than most special use exception applications; that the Board will consider the special use exception standard but shall not permit any buildings or structures related to this use until the Applicant has demonstrated that the public health, safety, morals, and general welfare will be protected and that necessary safeguards will be provided for the protection of water areas of surrounding property and persons; that the Board shall also consult with other agencies created for the promotion of public health safety and shall pay with particular attention to the protection of the County and its waterways from the harmful effects of air and water pollution of any type; that the Planning & Zoning Department sent a memo to the Technical

Advisory Committee members, which includes various different agents including the Department of Natural Resources & Environmental Control, the Office of State Fire Marshall, the Sussex Conservation District, and various other agencies and departments; that staff received some comments from those agencies; that there is additional scope of review that the Board has to undertake; that this property is in heavy industrial (HI-1) as well as General Residential (GR); and that the proposed use is in the HI-1 zone of the property.

The Board found that Mr. David Hutt, Esq., was present on behalf of the Applicant, Trinity Commercial Holding, LLC. That also present is Mr. Alan Decktor, P.E. with Pennoni, Mr. Guillermo Vasquez, and Mr. James Grant, partners in Trinity Commercial Holdings, LLC.

Mr. Hutt stated that this application is for a special use exception with the additional characteristics that Mr. Sharp described for a potentially hazardous use that are found within the Heavy Industrial (HI-1) district; that this application is for concrete crushing; that, in 2019, an appeal of the Planning Director's decision regarding the presence of a concrete batching plant on this property and the decision of the Planning & Zoning Director was appealed by various neighbors to the Board and, ultimately, the Board determined that the Director was correct and that the concrete production facility was a permitted use within the HI-1 zoning district; that, in 2020, the Applicant received approval for the final site plan for the concrete production facility; that tonight's application is a related use as it is for concrete crushing and it is related to the current use on the property; that, if there is demolition involved, that involves concrete, whoever is doing that work will take that concrete to a facility so that it can be recycled, crushed and then recycled; that this operation is called the washout from concrete and the large trucks obviously get loaded at the facility that was approved here in 2020; that the good news about concrete is that it is a very recyclable material and the State of Delaware want to keep all concrete out of landfills because it does not deteriorate; that taking concrete to a place like his proposed this evening allows it to be recycled and reused that DelDOT has authorized the use of crushed concrete as a base material for all state roadways; that, in Delaware, we do not have stone quarries so the ability to recycle concrete for roads is important to Sussex County; that there are very few businesses in Sussex County that currently have a concrete crushing operation, especially north of Georgetown; that the property is split-zoned both Heavy Industrial District (HI-1) and General Residential District (GR); that the production of concrete and the other permitted uses in the HI-1 District is appropriate within that zoning classification; that certain uses require a public hearing before the Board of Adjustment; that the nearest home to the concrete crushing operation would be 372 feet away and is buffered by some mature trees; that the neighbors have concerns with both noise and dust; that crushing machines have spays and misters integrated into them to keep down the dust; that, should the need arise, spray trucks will be used to keep down the dust; that DNREC will require air pollution mitigation; that the average decibels of the machine is 85 decibels which will be dissipated by the time it reaches the nearest home; that, at about 100 feet, the noise will be like a normal conversation; that there is a 4 decibel drop per 13 feet; that the proposed use is similar to the current use on the property; that the location of the concrete crushing is more than 100 feet from the property lines; that there is a tree buffer area and the surrounding properties are under same ownership; that the Applicant's position is that this proposed use related to the existing concrete

production facility will not substantially adversely affect the neighboring adjacent properties and, through compliance with the permitting requirements that are set forth within all of the various agency approvals that are necessary to conduct this operation, the public health and safety would be protected; that the plan is for it to be a long-term operation again it because it complements the existing concrete production facility; that there is water on site to keep dust down; that there are still additional agency approvals to be received but the Applicant cannot move ahead until approvement through Sussex County Zoning; that that the proposed use would be a long-term use; that the immediate neighbor to the south is the same property owner as the subject property; that the owner of the property to the northeast of the site is agricultural land; that one of the reasons why when you have a property that is zoned HI-1 like this that already has heavy industrial use to have this sister related use right there rather than try to place this somewhere else where there is nothing that's like it seems more appropriate; that the plant in Lincoln is currently seeking its own permissions through Sussex County and is not currently authorized to crush concrete; that it is difficult to predict how often the concrete crusher would be in use as it would depend on the demolition projects in the area; that there would be long stretches of time where the machinery would not be in use; that it would not be economical to run the machinery every day; that the concrete would be stored until there is a large enough pile; that the machinery would probably be in use less than 200 days a year; that the hours of operation will match the plant; that the Applicant will use misting to suppress dust; that there are other steps the Applicant must go through before initiating the use; that the long-term plan is to complement the existing plant with this facility; that homes coming to the are located south of the site; that the back-up alarms from trucks often exceed the noise of crushing; that concrete is poured early in the morning; that the Applicant will accept deliveries of concrete but those deliveries will be irregular; that they anticipate the concrete crushing facility will be used likely ½ the operating days of a month; that there is a 30 foot landscape buffer between Fleatown Road; that there was no study for property values as it is currently zoned HI-1 and is an existing concrete production facility.

Mr. Alan Decktor was sworn in to give testimony about the Application.

Mr. Decktor testified that there is no earth berm; that the land between the trees and road is flat; that, if there are concerns, a vegetative buffer could be planted; that the site has an industrial stormwater permit that is through the current tenant doing the concrete plant and it is monitored often, and updated often and as part of this use would most likely tie into that or have a separate one; that it is the same with the air permitting process; that the permit package is ready, but cannot be submitted until this process is finalized; that DNREC has a team that conducts inspections; that DNREC checks the equipment because the equipment have devices on there that track the usage, right; that they can find out things like in the last week, the machinery been used five hours versus ten hours; that the owner also has to submit reports; that there is a water filtration system in place and that a concrete pad could be installed beneath the machinery if requested; that for this property, and there are no streams or waterways that would be impacted and there is no water runoff; that the plant has approximately 100 trips per the DelDOT report; and that he estimates a maximum of 8-10 trucks when starting off.

Mr. James Green was sworn in to give testimony about the Application.

Mr. Green testified that the hours of operation would be the same as the concrete facility which is 7:00 am – 5:00 pm, Monday through Saturday; that there are occasional requests to be open on Saturdays; that there is a tree buffer with trees as tall as 50 feet; that some of the trees were thinned out but there is new growth underneath; that there is a visual barrier but less so during the winter months with the loss of vegetation; that the machinery that is being purchased to do the concrete crushing is made to keep dust down as it has built-in sprayer and safeguards of that nature to meet all the requirement of the Clean Air Act; that he does not object to reduced hours for concrete crushing; that the concrete crushing would not be a constant operation as the concrete would be stockpiled until it would be feasible to crush it; that a week or two could go by with no activity; that the machine is like a tub grinder with rubber absorbers; that the machine vibrates; that it is not within a closed building but the operation would be outdoors; that he anticipates the concrete crushing facility will be used 200 days per year; that, if we cannot do this operation in an HI-1 zone, where can we; that the machine is approximately 13 feet in height; and that they are not associated with the facility in Lincoln.

Ms. Norwood stated that to her knowledge there have not been any complaints about the current use at the subject property.

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

Mr. Guillermo Vasquez was sworn in to give testimony about the Application.

Mr. Vasquez testified that there was no intention of removing trees; that there were old trees that were falling and some were removed for safety reasons; that there is probably about half remaining; and that there is a plan to create a buffer around the perimeter.

Ms. Norma Shelton and Mr. Raymond Shelton were sworn in to give testimony in opposition to the Application.

Mr. Shelton testified that they own Tax Map Parcel No. 111.11 and he pointed out his property in relation to the subject property; that most of the trees have been removed; that, before the trees were removed, you could not see the concrete plant; that, without the trees, there is no noise barrier; that there is a stockpile of concrete that is taller than his house; that they use an excavator to continue building up the pile; that they use a jack hammer to break up the concrete; that the crusher will be run with a generator which will add to the noise; that the trees help keep the noise out but it will take years for trees to grow up; that a berm would help; that he has run a concrete crusher before; that you cannot keep noise down; that there are potholes in the driveway; that, prior to the trees being cut down, he could not hear the plant; and that there is no elevated berm.

Ms. Shelton testified that there is no berm; that there is nothing to reduce the noise; that the

noise is incredible; that she has concerns about the dust as it is silica and causes cancer and silicosis of the lungs; that that their home is serviced by well water and she is worried about the run-off going into the ground; that her property will be devalued; that there is a large housing development proposed in the area; that she appreciates the Board's questions; that there is no berm or trees to block the noise; and that she has lived in Delaware her entire life.

Ms. Kayla Adkins, Ellendale Town Manager, was sworn in to give testimony in opposition to the Application on behalf of the Town of Ellendale.

Mr. Sharp stated that he was unaware that Ms. Adkins would be testifying; that he is the Solicitor for the Town of Ellendale; that, if there are any further questions on this matter, he recommends that Vince Robertson, Esq., answer any questions the Board may have so there is no conflict of interest.

Ms. Adkins testified that, speaking on behalf of the Town, the Town is concerned due to the recent three large developments that are planned very close to the subject property; that one project is underway; that the concern is for the residents for the air and noise; that the closest project is going to be Forest Landing a couple 100 feet from this; that all of these trees are gone; that there is no buffer; that there will be landscaping and residents will put some trees up; that there will be no trees on the back of the property; that there will be no buffer for any of these residents, which will give concern and they will be calling into the town about this concern of noise and dust; that the vibration is a possible concern for the almost 300 homes here; that there will be another 300 homes less than half a mile from the subject property; that Ingram Village already exists and has hundreds of homes and continuing to build; that the Town understands the right to do business but the Town's concerns is the health of the residents; and that they want to make sure the residents are protected.

As part of Ms. Adkins' presentation, a tax map was shown showing the boundaries of the Town of Ellendale in relation to the property.

Mr. Tom Panas, Ellendale Council President and Acting Mayor, was sworn in to give testimony in opposition to the Application on behalf of the Town of Ellendale.

Mr. Panas testified that the Applicant has not addressed the water run-off other than mention the area is like a basin; that there is a water issue in Ingram Village; that Forest Landing, the newest development just did some work on the tax ditch; that this area is becoming a reservoir with the ground being covered by homes and streets; that it needs to be addressed; that he can hear the concrete plant all the way towards Main Street; that the speed limit from Route 16 to Fleatown Road is 25 miles per hour; and that he has concerns regarding the streets and if the streets can handle all the trucks with the additional weight.

Mr. Hutt stated that, regarding the concerns about stormwater management, in the past, there was development that did not have stormwater management; that is not the case anymore, all

developments now must have stormwater management; that this site will not impact waterways; that there is no tax ditch on site; that a vegetative buffer could be added to the extent that there is room within the approved site plan for the concrete plant; that there is not a specific number of trips that get assigned to this particular use because it is such a needs based; that, if there are projects going on, the traffic increases and, if not, then the traffic decreases; that it is not a defined science where you can assign a number; that this property is zoned HI-1 with an existing concrete production business; and that, with the appropriate conditions, is an excellent location or this type of activity.

Mr. Vazquez testified that some trees were rotten and falling down so they were taken out; that the Applicant planned to create a buffer; and that approximately 50% of the trees remain.

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

Mr. Chorman closed the public hearing.

The Board discussed the Application.

Mr. Hastings moved to leave the record open until June 2, 2025, for Case No. 13060 for the limited purpose of the Applicant submitting a new site plan showing a proposed 30-foot vegetative buffer and to allow the public to comment on the revised site plan at the Board's meeting on June 2nd.

Motion by Mr. Hastings, seconded by Dr. Carson, and carried that the **application for a special use exception be left open for a limited purpose**. Motion carried 5 - 0.

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

ADDITIONAL BUSINESS

There was no additional business.

Meeting adjourned at 9:36 p.m.