

## **MINUTES OF APRIL 7, 2025**

The regular meeting of the Sussex County Board of Adjustment was held on Monday, April 7, 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 Jeff Chorman presiding. The Board members present were Dr. Kevin Carson, Mr. John T. Hastings, Mr. Shawn Lovenguth, 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, Ms. Hannah Wyatt – Recording Secretary.

The Pledge of Allegiance was led by Mr. Chorman.

Motion by Mr. Hastings, seconded by Mr. Lovenguth and carried unanimously to approve the agenda. Motion carried 5 – 0.

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

### **PUBLIC HEARINGS**

**Case No. 13028 – Jose Villatoro** seeks a special use exception and a variance for an accessory dwelling unit with a floor area greater than 1,000 square feet or 50% of the floor area of the single-family dwelling located on the same lot. (Sections 115-32 C and 115-20A(15)(c) of the Sussex County Zoning Code). The property is located on the southwest side of Vines Creek Road. 911 Address: 34206 Vines Creek Road, Dagsboro. Zoning District: MR. Tax Map: 134-11.00-137.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support or opposition to the Application, and four (4) mail returns. The Applicant is requesting a special use exception and a variance for an accessory dwelling unit that is 348 square feet over the allowable square footage.

Mr. James Churchman, Esquire, was present on behalf of the Applicant. Mr. Churchman submitted exhibits on behalf of the Applicant.

Mr. Churchman stated that he is an Attorney with Fuqua, Willard, and Schab representing Jose Villatoro; that Mr. Villatoro is requesting a special use exception and a variance; that, initially, there was some confusion as the ordinance was revised this past June; that there has been only one other case to go before the Board since that revision; that the request is for the variance due to a square footage issue; that the property is in the Coastal Growth area of the future land use map; that Mr. Villatoro bought this property with the dwelling and garage already built; that there have been no additions to the house to increase the size; that the dwelling is just over 1,100 square feet; that the proposed accessory dwelling unit (“ADU”) is currently a garage; that the current square footage of the garage is 450 square feet; that the proposed ADU is going to be 900 square feet as there will be

an addition on top of the garage itself; that the downstairs will have the kitchen and living room; that the upstairs will be two bedrooms and a bathroom; that the issue at hand is that the proposed ADU will exceed the 50% of the square footage of the single family dwelling on the property; that the proposed ADU will not substantially affect the use of adjacent or neighboring properties; that the footprint of the structure will not be changed as the proposed addition is to build up; that there will not be any setback issues; that they independently sent out letters to the neighbors; that some of the letters were returned by mail and only one neighbor reached out; that the neighbor who responded was against to the variance due to the septic being out of compliance; that they sent information showing that the septic was compliant; that, if the existing house was larger, there would be no need for the variance and the special use exception would not be required either; that the septic system would serve the dwelling and the proposed ADU; that Mr. Villatoro does not currently reside on the property but, rather, rents it out; that the proposed ADU is intended to be used as a guest home for his family and friends when they come to the beach; that the size of the ADU is needed to accommodate the size of the family; that the Applicant did not build the home or the garage; that the use of an ADU at 450 square feet would be unattainable; that there will be no changes in the footprint of the structure; that the structure will comply with all setback requirements; that Mr. Villatoro has not altered the structures; that the property is unique; that the Applicant did not create the exceptional practical difficulty; that the lot is small; that the property cannot otherwise be developed; that the variance will not alter the essential character of the neighborhood; that the ADU will improve the area; that the variance is the minimum variance necessary to afford relief; that there will not be any additional traffic for the ADU as Mr. Villatoro will be using it for his personal needs; that, if anything, the ADU will improve the surrounding area due to the older garage being built up; that the requested variance is the minimum variance necessary as they are not expanding the footprint of the garage but, rather, building a second floor; that his interpretation of the Code update is to help people who are facing an increase of the cost of homes; that this approval would allow Mr. Villatoro to use the property to its full extent; and that there is an existing gravel driveway that goes to the garage and will have a parking space for the proposed ADU.

Mr. Jose Villatoro was sworn in to give testimony for this application.

Mr. Villatoro testified that the statements made by Mr. Churchman were true and correct; that he understands the concern that he would rent out both the dwelling and the ADU; that, when they purchased this home, it was the intention to use it as a beach house and then the opportunity to rent it came up which they decided to do; that they plan to solely use the ADU as a beach home; that they have no HOA governing the property; that the main dwelling is a long-term rental; that he has not thought about renting the ADU but it could be a possibility; that there is a dedicated parking space for the ADU in front of the garage; that a new septic was installed to accommodate the additional bedrooms; that the rest of the area is dwellings and is primarily residential use; that there are no restrictive covenants that he is aware of; that the property has a well; that the ADU will be on a separate utility meter; that the property is located on Route 26; that he believes the tenant has two vehicles; that there are no other accessory structures on the property; and that the entire of the existing garage with second floor addition will be used for the ADU.

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

Mr. Chorman closed the public hearing.

Mr. Williamson moved to approve the application for Case No. 13044 for the requested special use exception and variance, pending final written decision, for the following reasons:

1. The use will not substantially affect adversely the uses of neighboring and adjacent properties;
2. The Applicant has met the criteria for granting a variance;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variance will not alter the essential character of the neighborhood;
5. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Williamson, seconded by Mr. Hastings, carried that the **special use exception and variance be approved for the reasons stated.** Motion carried 3-2.

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

**Case No. 13046 – Keystone Novelties Distributors** seeks a special use exception for a temporary tent sale (Sections 115-32 & 115-210 of the Sussex County Zoning Code). The property is located on the south side of Fred Hudson Road approximately 200 feet east of Cedar Neck Road. 911 Address: 695 Bethany Loop, Bethany Beach. Zoning District: MR. Tax Parcel: 134-13.00-88.05

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of, four (4) letters in opposition to the Application, and zero mail returns. The Applicant is requesting a special use exception to operate a sales tent for fireworks. There was a prior approval in 2024 for one (1) year, with the conditions that the tent is only used from June 21 to July 4 and the tent is removed by July 10<sup>th</sup>.

Mr. Sharp recited the conditions of the prior approval.

Mr. Maxwell Bushong was sworn in to give testimony for this application.

Mr. Bushong testified that he is the managing director of Keystone Novelties Distributors located in Lancaster, Pennsylvania; that the Applicant has been working with the County since the State of Delaware legislation opened up the temporary firework sales a few years ago; that, at this particular property on Bethany Loop in Bethany Beach, the Applicant was given an opportunity last year which did very well which is why the Applicant would like to return to this location; that the proposed location on the property is at the corner of Fred Hudson and Bethany Loop which is different

than last year's application at Bethany Loop and Road 357; that the reason for the change of tent placement is for a better flow of traffic; that the Applicant shares a parking lot with Hockers Grocery in Bethany; that the Applicant has a very good relationship with the landlord; that the tent would be 20 feet x 20 feet in size which would take up about 2.5 parking spaces for the structure; that, per the site plan, the Applicant has identified a small generator which will be placed 25 feet away from the tent in accordance with State laws; that there is also a porta-potty facility located away from the generator for the use by the operator at night; that, if the operator of the tent does not choose to have a secured storage unit on site, then the Applicant will need to make sure that the site is manned 24 hours per day for the duration of the tent sale; that the proposed location of the tent is a much more visible location; that the tent will not be located in the drive aisle of the parking lot; that the Applicant does not own the tent company; that the company contracts about 70 different professional contracted vendors that do tent installation for a living; that he believes that the pavement side of the tent will be weighted and the grass side will be staked; that the Applicant has submitted paperwork showing their coverage for liability insurance; that the Applicant's operating hours are 10:00 am until 10:00 pm; that the Applicant has interior lighting within the tent which run off the generator; that the stakes, if used on the grass side, would not be an area in which customers would be entering the tent; that the tent will measure 14 feet tall; that their lease is for 30 days which gives them some leeway to set up the tent equipment; that he sees the approval allowed for a 3 day set up and take down which he will note in their database to work with the vendors so that they do not exceed it; that the start date of the sale would not begin prior to June 21 and would not exceed July 4; that the State law says their equipment must be removed by July 11<sup>th</sup>; that the Applicant requests a 3 year approval which would allow the Applicant to renew its lease as well; that the traffic impact would depend on the day and time for which they do expect traffic to increase closer to July 4<sup>th</sup>; that the tent operator will take one parking space for the duration of the event; that they expect 3-4 customers at any given time; that the Applicant operates 450 locations across 10 states for which they have 55 managers; that their job is to visit their assigned locations to review the daily activities and make sure that they are operating correctly and disposing of trash; that the Applicant's landlords have direct contact information for them and should notify them directly of any concerns; that the Applicant's priority is keeping sites clean; that the entrances and exits for the tents are clearly marked to avoid confusion; that one tent operator is assigned for 60-70% of the sale with a helper to be required for the busier days; that the Applicant has signage around the tent that is required relating to no smoking and no fireworks discharge; and that the porta-potty is locked so the operator only has access.

Ms. Norwood stated that the Planning & Zoning office did not receive complaints about the tent last year in a similar location.

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

Mr. Chorman closed the public hearing.

Mr. Williamson moved to approve the application for Case No. 13046 for the requested special use exception, pending final written decision, for a period of 3 years with the conditions that

the tent remain in their proposed location, the tent shall only be used from June 21 to July 4 and must be removed by July 10, and that documentation of consent from the landlord is submitted, because the proposed use will not substantially affect the uses of neighboring or adjacent properties.

Motion by Mr. Williamson, seconded by Dr. Carson, carried that the **special use exception be approved for three (3) years with conditions for the reasons stated.** Motion carried 5 - 0.

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

**Case No. 13047 – Keystone Novelties Distributors** seeks a special use exception for a temporary tent sale (Sections 115-80 & 115-210 of the Sussex County Zoning Code). The property is located on the southwest of Sussex Highway at the intersection of Sussex Highway and Chipman’s Lane. 911 Address: 30702 Sussex Highway, Laurel. Zoning District: C-1. Tax Parcel: 232-12.20-34.00

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 (1) mail return. The Applicant is requesting a special use exception to operate a sales tent for fireworks.

Mr. Maxwell Bushong, who was previously sworn, appeared to give testimony for this application.

Mr. Bushong testified that the subject property is nice because the Applicant can place the tent in a grassy area; that there is a large grass area where the tent is identified; that the Applicant can stake the tent all around, which creates greater security; that the Applicant always prefers stakes over weights for securing the tents; that this property sits along Sussex Highway; that he does not anticipate it would create any adverse traffic effects to the existing business; that the existing business has fairly low traffic volume; that he would not anticipate any disturbances to guests or management; that there is a fairly large parking lot so there will be plenty of spaces for the Applicant’s customers to park; that there is no storage unit proposed but should one be requested the Applicant would provide it; that the generator is placed 25 feet away from the tent for interior lighting; that the lights will operate from dusk to close around 10:00 pm; that the Applicant is requesting a one year approval as this is the Applicant’s first year at this location; that the primary use on this property is an inn or hotel; that the Relax Inn is the name of the establishment; that the timeframe of operation is June 21<sup>st</sup> through July 4<sup>th</sup> with three days before for setup and removal by July 10<sup>th</sup>; that the hours of operation are from 10:00 am until 10:00 pm; and that this location will also have a generator and porta-potty for the use of the operator.

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. 13047 for the requested special use exception pending final written decision for a period of one (1) year with the conditions that the tent remain in their proposed location, the tent shall only be used from June 21<sup>st</sup> to July 4<sup>th</sup> and must be removed by July 10<sup>th</sup>, and that documentation of consent from the landlord is submitted because the use will not substantially affect adversely the use of neighboring or adjacent properties.

Motion by Mr. Hastings, seconded by Mr. Lovenguth, carried that the **special use exception be approved for one (1) year with conditions for the reasons stated.** Motion carried 5-0.

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

**Case No. 13048 – Keystone Novelties Distributors** seeks a special use exception for a temporary tent sale (Sections 115-80 & 115-210 of the Sussex County Zoning Code). The property is located on the north side of Coastal Highway at the intersection of Coastal Highway and Holland Glade Road within the Tanger Outlet Complex. 911 Address: 36470 Seaside Outlet Drive, Rehoboth Beach. Zoning District: C-1. Tax Parcel: 334-13.00-325.06

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application, and zero mail returns. The Applicant is requesting a special use exception to operate a sales tent for fireworks. This case was previously approved for a period of 3 years.

Mr. Maxwell Bushong, who was previously sworn in, appeared to give testimony for this application.

Mr. Bushong testified that the Applicant has been at this location for many years; that the landlord likes having them at this location; that the Applicant receives great business at this location; that this location uses a storage container where the operator secures the product when not open for business; that this location uses a generator to operate lights within the sale tent; that the Applicant will be requesting an approval through 2027; that the tent will be setup in the single row parking by the road; that there have been no complaints about the tent; that the Outlets have security that monitors the grounds; that the operation will occupy roughly 8 parking spaces in total; that the hours are 9:00 am through 9:00 pm with the occasional 10:00 pm closing time, as the Applicant follows the hours of the Outlets; that the tent will be secured with stakes on the road side and cement blocks on the pavement side; that the landlord has a right to relocate the tent but, if that were to occur, the Applicant would come back to the Board for a new approval; that there will be no outdoor speakers or additional noise or smells; that the use of lighting will be within the tent with no outside lighting; and that the Applicant will be requesting the 3 day setup prior to the sale and until July 10<sup>th</sup> to remove the tent from the property.

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 application for Case No. 13048 for the requested special use exception, pending final written decision for a period of 3 years with the conditions that the tent remain in their proposed location, the tent shall only be used from June 23<sup>rd</sup> to July 4<sup>th</sup> and must be removed by July 10<sup>th</sup>, and that documentation of consent from the landlord is submitted because the proposed use will not substantially affect the uses of neighboring or adjacent properties.

Motion by Dr. Carson, seconded by Mr. Lovenguth, carried that the **special use exception be approved for three (3) years with conditions for the reasons stated.** Motion carried 5 - 0.

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

**Case No. 13049 – Keystone Novelties Distributors** seeks a special use exception for a temporary tent sale (Sections 115-80 & 115-210 of the Sussex County Zoning Code). The property is located on the east side of Sussex Highway approximately 0.28 miles south of Cannon Road. 911 Address: 20689 Sussex Highway, Seaford. Zoning District: C-1. Tax Parcel: 331-2.00-18.15

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application, and zero mail returns. The Applicant is requesting a special use exception to operate a sales tent for fireworks. This case was previously approved for a period of 3 years.

Mr. Maxwell Bushong, who was previously sworn in, appeared to give testimony for this application.

Mr. Bushong testified that this location lists a storage container so the operator may pack up and secure the merchandise at night; that a generator will be placed 25 ft. from the tent, as well as a porta-potty for the use of the operator will be located on the side of the tent; that the standard hours of operation will be from 10:00 am until 10:00 pm; that there will be indoor lighting of the tent only; that trash will be picked up by the route manager daily; that this will be the Applicant's second year at this location and the Applicant received no complaints; that with this location is one of the Applicant's tent vendors and they are nice enough to offer the Applicant a discounted rate; that the primary use of the property is Barton's Rentals; that the tent will be staked on one side and weighted on the other; that the Applicant would be operating the tent from June 23<sup>rd</sup> to July 4<sup>th</sup> with setup for three days prior and tent removal by July 10<sup>th</sup>; that the clerk will pack up at night in the storage pod as there is no security detail; that there are no loudspeakers; that the tent will be 20 feet by 40 feet in size; and that the Applicant believes there will be a minimal traffic impact.

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

Mr. Chorman closed the public hearing.

Mr. Lovenguth moved to approve the application for Case No. 13049 for the requested special use exception, pending final written decision, for a period of 3 years with the conditions that the tent remain in their proposed location, the tent shall only be used from June 23<sup>rd</sup> to July 4<sup>th</sup> and must be removed by July 10<sup>th</sup>, and that documentation of consent from the landlord is submitted because the proposed use will not substantially affect the uses of neighboring or adjacent properties.

Motion by Mr. Lovenguth, seconded by Mr. Hastings, carried that the **special use exception be approved for three (3) years with conditions for the reasons stated.** Motion carried 5 - 0.

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

**Case No. 13050 – Keystone Novelties Distributors** seeks a special use exception for a temporary tent sale (Sections 115-80 & 115-210 of the Sussex County Zoning Code). The property is located on the east side of Dupont Boulevard approximately 0.28 miles north of McCabe Road. 911 Address: 36389 Dupont Boulevard, Selbyville. Zoning District: C-1. Tax Parcel: 533-9.00-46.00

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 zero mail returns. The Applicant is requesting a special use exception to operate a sales tent for fireworks.

Mr. Maxwell Bushong, who was previously sworn in, appeared to give testimony for this application.

Mr. Bushong testified that this is a new location for the Applicant; that the property's current use is an automotive repair shop / garage; that the aerial imagery is deceiving, as the area where the tent is proposed was being leased for automotive sales; that the Applicant will have full access to all of the parking areas on the southernmost side of the property; that, in line with their operating procedures, there will be indoor lighting with a generator 25 feet away from the tent, a porta-potty facility for the clerk, and no storage on site which would make this a 24/7 security guarded facility; that, should storage be requested, they would provide it; that the tent will be staked on the grass side of the tent and weighted on the side with asphalt; that this will be a 20 feet by 40 feet tent on the property alongside Dupont Boulevard; that the vehicles on the aerial are no longer there; that the other vehicles on the property are located in the back within a fenced area which will not impede their sale; that their operating hours will be 10:00 am until 10:00 pm; that the Applicant is seeking approval for operation from June 21<sup>st</sup> to July 4<sup>th</sup> with 3 days prior for set-up and removal by July 10<sup>th</sup>; that the Applicant expects 3-5 parking spaces to be utilized at one time; that the Applicant is requesting an one-year approval; and that there are no noises, smells, or vibrations associated with the use.



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

Mr. Chorman closed the public hearing.

Mr. Lovenguth moved to approve the application for Case No. 13050 for the requested special use exception, pending final written decision for a period of 1 year with the conditions that the tent remain in their proposed location, the tent shall only be used from June 23<sup>rd</sup> to July 4<sup>th</sup> and must be removed by July 10<sup>th</sup>, and that documentation of consent from the landlord is submitted because the proposed use will not substantially affect the uses of neighboring or adjacent properties.

Motion by Mr. Hastings, seconded by Mr. Williamson, carried that the **special use exception be approved for one (1) year with conditions for the reasons stated.** Motion carried 5 - 0.

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

**Case No. 13051 – Keystone Novelties Distributors** seeks a special use exception for a temporary tent sale (Sections 115-72 & 115-210 of the Sussex County Zoning Code). The property is located on the south of Lighthouse Road directly across from West Fenwick Boulevard. 911 Address: N/A. Zoning District: B-1. Tax Parcel: 533-12.00-94.00

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 zero mail returns. The Applicant is requesting a special use exception to operate a sales tent for fireworks.

Mr. Maxwell Bushong was previously sworn in to give testimony for this application.

Mr. Bushong testified that the tent is proposed for a vacant lot that is adjacent to a Citgo Gas and oil property; that the tent is well beyond the setback requirement from the gas pumps which is 50 feet in the State of Delaware; that they will be about 300 feet away from the gas pumps; that the tent will be a standard 20 feet by 40 feet tent with a generator 25 feet away from the tent; that there will be inside lighting only operated by the generator; that this location will not have a porta-potty as the Applicant is working with the landlord to take advantage of the indoor restroom facilities; that, if that were to fall through, the Applicant would provide a porta-potty; that traffic flow on this spot is really nice; that another nice thing on this property is that the tent will be staked all the way around; that this is a new location; that the Applicant is seeking a one year approval; that the hours of operation will be from 10:00 am until 10:00 pm from June 21<sup>st</sup> through July 4<sup>th</sup>, with 3 days for setup and removal by July 10<sup>th</sup>; that there will be no noise, smells or vibration; that this site will be manned 24/7 by the operator of the tent as no storage facility is outlined; and that, if requested, a storage facility will be provided.

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

Mr. Chorman closed the public hearing.

Mr. Williamson moved to approve the application for Case No. 13051 for the requested special use exception, pending final written decision for a period of 1 year with the conditions that the tent remain in their proposed location, the tent shall only be used from June 23<sup>rd</sup> to July 4<sup>th</sup> and must be removed by July 10<sup>th</sup>, and that documentation of consent from the landlord is submitted because the proposed use will not substantially affect the uses of neighboring or adjacent properties.

Motion by Mr. Williamson, seconded by Dr. Carson, carried that the **special use exception be approved for one (1) year with conditions for the reasons stated.** Motion carried 5 - 0.

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

### **ADDITIONAL BUSINESS**

**Meeting adjourned at 7:17 p.m.**