

## MINUTES OF APRIL 9, 2018

The regular meeting of the Sussex County Board of Adjustment was held on Monday, April 9, 2018, at 7:00 p.m. in the County Council Chambers, 2 The Circle, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Dale Callaway presiding. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman. Also in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Ms. Janelle Cornwell – Director of Planning and Zoning and Ms. Christin Headley – Recording Secretary.

The Pledge of Allegiance was led by Mr. Callaway.

Motion by Mr. Mills, seconded by Mr. Mears, and carried unanimously to approve the revised agenda as circulated. Motion carried 5 – 0.

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

### PUBLIC HEARINGS

**Case No. 12115 – Beverly I. Hogate** - seeks variances from the side yard and rear yard setback requirements (Section 115-25, 115-181, and 115-183 of the Sussex County Zoning Code). The property is located on the east side of Roosevelt Avenue, approximately 1,420 feet south of Lincoln Drive. 911 Address: 38835 Roosevelt Avenue, Selbyville. Zoning District: AR-1. Tax Map No.: 5-33-20.18-9.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. The Applicant seeks a variance of 3.7 feet from the five (5) feet side yard setback requirement on the north side for an existing HVAC system with 2 units and a variance of 4.0 feet from the five (5) feet side yard setback requirement on the north side for existing steps.

Ms. Cornwell stated that because of the new ordinance changes, the original variance request from the rear yard setback requirement is no longer needed.

Beverly Hogate was sworn in to testify about the Application.

Ms. Hogate testified that she intends to cantilever the deck closer to the water; and that the deck was so small that it was difficult to navigate the deck.

Mr. Sharp advised the Applicant and the Board that the Code was amended after the Application was filed; that, as a result of the ordinance amendments, no variance is needed for the deck expansion; and that, in reviewing the survey, staff discovered that variances are needed for the existing steps and HVAC system.

Ms. Cornwell explained the variances to the Applicant and the changes to the Code.

Ms. Hogate testified that the steps and HVAC system have been on the Property since the dwelling was built 12 years ago; that the Applicant received a variance for the dwelling; that she relied on the builder to construct the home in compliance with the Code; that the builders were Beracah Homes and Iachetta Builders; that the builder is no longer in the area; that neighbors have HVAC systems and side steps on the north side of their lots as well; that the lots in the neighborhood are narrow; that the steps serve as an emergency exit and are rarely used; that the Property cannot otherwise be developed in strict conformity with the Code; that the exceptional practical difficulty was not created by the Applicant; that the variances will not alter the essential character of the neighborhood; that the variances requested are the minimum variances necessary to afford relief; that she learned of the need for the variances when her builder applied for a building permit to expand the deck; that she relied on a professional to build the stairs and the HVAC system; and that she moved into the dwelling in June 2006.

Mr. Sharp stated that the previous variance was from the side yard setback requirement for a proposed dwelling.

Ms. Hogate testified that she has owned the Property since the 1970s; that the existing dwelling was built on the same footprint as the prior dwelling on the Property; that she has received no complaints about the structures; and that her neighbor has indicated support of the Application.

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

Mr. Mears moved to approve Variance Application No. 12115 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique;
2. The Property cannot be developed in strict conformity with the Sussex County Zoning Code;
3. The exceptional practical difficulty has not been created by the Applicant because she relied on a professional builder;
4. The variances will not alter the essential character of the neighborhood; and
5. The requested variances are the minimum variances necessary to afford relief.

Motion by Mr. Mears, seconded by Ms. Magee, and carried unanimously that the **variances be granted for the reasons stated**. Motion carried 5 – 0.

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

**Case No. 12116 – Millard F. Herold, III** - seeks variances from the front and side yard setback requirements (Sections 115-35, 115-182, and 115-185 of the Sussex County Zoning Code). The property is located on the northwest side of James A Street, approximately 150 feet northeast of Fisher

Street. 911 Address: 38361 James A Street, Rehoboth Beach. Zoning District: MR. Tax Map No.: 3-34-20.09-89.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received two (2) letters in support of the Application and no correspondence in opposition to the Application. Ms. Cornwell read the letters of support into the record. The Applicant seeks a variance of 4.9 feet from the five (5) feet side yard setback requirement on the southwest side for an existing shed, a variance of 4.8 feet from the five (5) feet side yard setback requirement on the southwest side for an existing shed, and a variance of 2.7 feet from the 19.575 feet average front yard setback requirement for existing steps.

Millard F. Herold, III, was sworn in to testify about the Application. Taylor Trapp, Esquire, presented the case on behalf of the Applicant.

Ms. Trapp stated that the Applicant purchased the Property in November 2015; that the Applicant screened in the front porch and relocated the steps to the porch from the middle of the porch to the southwest corner of the porch; that a Certificate of Compliance was issued for the porch and steps; that, in January 2017, the Applicant added a shed to the Property; that the shed was needed for outside storage; that the Applicant's contractor obtained the building permit; that there is no outside storage on the Property; that the Applicant was unaware that the shed was built within the setback area; that the Property is unique because it is narrow; that there is a large, in-ground pool in the rear yard which was placed by a prior owner; that the rear yard is small; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code; that there is no place where to put a small shed due to the location of the pool; that the steps of the pool are located in the only place the shed could be located; that outdoor storage is necessary; that the Applicant did not create the need for the variance because the pool was placed on the Property by a prior owner; that the variances will not alter the essential character of the neighborhood; that the shed is already located on the Property; that there are three direct neighbors and twelve other neighbors who have similar sheds; that the building permit states the setback requirements; that the Applicant was not involved in the permit process; that a Certificate of Compliance was issued for the screened-in porch and steps but not for the shed; and that there was previously a shed with a sitting area located near the pool but the Applicant removed that structure because it was too close to the pool.

Mr. Herold submitted exhibits, including photographs of the Property, for the Board to review.

Mr. Herold testified that the pre-existing structure was very close to the pool; that the structure was a screened-in porch / shed combination; that he was concerned about the safety of moving around the back yard; that the previous structure was an eye sore; that he decided to demolish the existing shed structure and to construct a new shed to the side of the house; that his contractor, Carl Alessi, pulled the building permit and he relied on the builder; that he assumed the shed was included in one permit with the rest of the remodeling and not on a separate permit; that there are footers to anchor the shed; that he installed a gutter to drain water away from the neighboring property; that he would need to talk with his neighbor if he needed to conduct maintenance on the side of the shed but he is

on good terms with his neighbor; that there is a walkway between the shed and the house; and that, if the shed was moved closer to the house, it would still block two windows and would still encroach into the setback area.

Ms. Trapp stated that there is also a drainage area between the shed and the house which would have to be relocated if the shed were moved.

Mr. Herold testified that the survey encompasses the overhang of the shed so the entire shed is located on the Property.

Mr. Mills stated that the February 2017 survey indicates that the Mr. Herold's fence is inches onto the neighboring property.

Mr. Herold testified that there is approximately six feet from the edge of paving to the front property line.

Maura Cahill was sworn in to testify in opposition to the Application.

Ms. Cahill testified that she is the neighbor on the southwest side of the Property; that her lot is located on the corner of Fisher and James A Street; that she does not oppose the front yard variance request; that she spoke with the builder during construction of the shed and asked the builder about the location of the shed; that she called the permitting department in August 2017; that she does not like the shed there; that the Applicant raised the area around the shed; that the shed is an eye sore; that she thinks the shed should be located where the old shed was located; that there are drainage issues on their properties; that the shed is stick built; that the shed was built quickly; that the old shed was serviced by electricity; that the builder did not go onto her property when the shed was built but someone poured leftover concrete on her lot; that she does not like the location of the shed; that the side door to the Applicant's dwelling is used frequently; that walkway between the shed and house is often used; and that she does not know how they would be able to move the shed because of the walkway.

Ms. Trapp stated that the neighbor in opposition also appears to have setback violations with structures on her property but she did not take any measurements of those structures.

Mr. Herold testified that he required that drains be installed on the Property and that water drains to the culvert; that gutters have been added to the shed; that there is a crawl space to the home and, if the shed were moved closer to the home, it would block access to the crawl space; that all neighboring properties have garages or sheds near property lines; and that he was surprised to receive the violation notice.

Mr. Herold affirmed the statements made by Ms. Trapp as true and correct.

Ms. Magee stated that most applicants request a variance before building a structure.

Mr. Herold testified that he was not on the Property when the shed was constructed.

Ms. Cahill testified that her parents acquired her lot in 1976 and she inherited the lot; that her family applied for a variance for an addition but the variance was denied so the addition was never built; that there is a shed in the rear corner of her lot; and that her shed may be a non-conforming structure.

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

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

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case be **taken under advisement**. Motion carried 5 – 0.

After the completion of the public hearings, the Board revisited the case for discussion.

Mr. Mills stated that he is not convinced that the difficulty for the shed was not created by the Applicant.

Mr. Sharp reminded the Board that there two variances being requested, one for the shed and one for the front yard steps.

Ms. Magee stated she is not convinced that the difficulty for the shed was not created by the Applicant and that she wants to send a letter to the reputable builder of the shed.

Mr. Workman stated that he has a problem with the shed; that he thinks the shed needs to be moved; and that if any repairs needed to be done they would be trespassing.

Mr. Mills stated that as a homeowner you know that you cannot build something that close; that he thinks it was the desire of the homeowner to build the shed that close and the contractor did so; and that the neighbor knew the shed could not be that close.

Mr. Mills moved to approve Variance Application No. 12116 for the requested front yard variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to its size;
2. The exceptional practical difficulty for the steps was not created by the Applicant; and
3. The requested front yard variance is the minimum variance necessary to afford relief.

Mr. Mills moved to deny Variance Application No. 12116 for the requested side yard variances based on the record made at the public hearing and for the following reasons:

1. The exceptional practical difficulty had been created by the Applicant.

Motion by Mr. Mills, seconded by Mr. Mears, and carried unanimously that **the front yard variance be granted for the reasons stated and the side yard variances be denied for the reasons stated**. Motion carried 5 – 0.

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

**Case No. 12117 – Joseph Burr & Monica Ogle** - seek a special use exception to operate a commercial dog kennel (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located on the south side of Pit Road, approximately 1,376 feet southeast of Old Meadow Road. 911 Address: 10980 Pit Road, Seaford. Zoning District: AR-1. Tax Map No.: 2-31-12.00-112.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. The Applicants seek a special use exception for a commercial dog kennel.

Monica Ogle and Joseph Burr was sworn in to testify about the Application. Tim Willard, Esquire, presented the case on behalf of the Applicants and submitted exhibits for the Board to review.

Mr. Willard stated that the Property is zoned AR; that the request is for a commercial kennel; that a special use exception for a commercial kennel is required if the owner is breeding animals or has five (5) or more animals over six (6) months of age; that the Applicants have bred Shiatzus and Dachshunds on the Property; that these dogs are small dogs; that there is no longer a pool on the Property though it is shown on an older aerial photograph; that the Property is improved by a ranch-style home with an attached garage; that the rear yard is fenced in with a wire fence; that the Applicants keep small dogs in the garage and operate a grooming business on the Property; that the Applicants have approval from Sussex County for the grooming business; that the Applicants have executed a contract to build a new 6 feet tall fence in the rear yard; that Ms. Ogle has spoken with her neighbors and 13 neighbors signed a petition supporting the Application; that the Applicants have no intention of boarding dogs on the Property; that the Applicants propose to limit the number of dogs on the Property to 12 and that all dogs will be under 15 pounds; that the dogs will primarily be in the home and will only be outside in the fenced-in area; that the Applicants breed 1-2 litters per year and sell the puppies; that there are no signs on the Property advertising the kennel; that all visitors to the kennel are by appointment only; that the kennel will not be used to house dogs owned by persons other than the Applicants; and that the kennel will only be used for breeding.

Ms. Ogle affirmed the statements made by Mr. Willard as true and correct. Ms. Ogle testified that all the dogs on the Property are her personal pets but she does breed puppies for sale.

Mr. Willard stated that the Applicants will not house dogs for other persons for a fee; that

attached to the Application is a probation before judgement for cruelty to animal misdemeanor; that the Applicants used to operate a daycare for old horses; and that the Applicants were working with animal control to help feed the horses.

Ms. Ogle testified that an SPCA officer came to their home and the officer complimented her on how she cares for her dogs; that the Applicants have lived in the home for one year and seven months; that she has received no complaints about her dogs; that the Property is almost one acre in size; that there are woods and a preserve located to the rear of the Property; that her nearest neighbor works nights and sleeps during the day; that she purchased spray collars to limit the barking of her dogs and her neighbor has not complained about the barking; that the dogs are not outside when the owners are not present; and that she is concerned about theft of her dogs and the proposed fence will help alleviate that concern.

Paul Reiger was sworn in and testified in opposition to the Application. Mr. Reiger testified that there was a case from 2007 where a special use exception and variance for a commercial dog kennel was overturned by the Court; that he is confused how the Applicants can have a special use exception for a commercial kennel and have nowhere to put the dogs; and that he is confused as to the requirements of a kennel.

Ms. Cornwell explained that open runs, cages, or kennels have setback requirements but the Applicants are seeking an interior kennel.

Beth Kopicki, Robert Johnson, George Uccello, and William Johnson were sworn in and testified in opposition to the Application.

Ms. Kopicki testified that she lives five houses down from the Property; that believes there are 30 homes on Pit Road; that she was never notified of the hearing but lives greater than 200 feet from the Property; that noise is a concern; that there are other dogs in the neighborhood; that she has never noticed anything out of the ordinary with dogs barking in the area; that she does not object to the Application provided that the number of dogs are limited and the noise is controlled and does not increase; and that she had previously seen dogs on the Property but was unaware that the Property was used for a kennel.

Mr. Uccello testified that he is concerned with noise; that there is no problem with noise from the kennel currently; and that he did not know that the Applicants were using the Property for a kennel until this application was filed.

Mr. Robert Johnson testified that he was alarmed by the commercial kennel use; that the homes along Pit Road are very close together; that the neighborhood is a quiet residential area; that he questions if the Applicants rent or own the home; and that he does not object to the Application if the noise is controlled.

Mr. William Johnson testified that he was also alarmed by the sign stating commercial kennel

use; that he never knew the Applicants had dogs; and that, if they keep quiet, he is okay with the use.

Mr. Willard stated that the Applicants own the Property and the size of the dogs is what is important.

Paul Reiger submitted an exhibit for the Board to review. The exhibit was Jones v. Board of Adjustment case.

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

The Board found that five (5) parties appeared in opposition to the Application.

Mr. Mills moved to approve Special Use Exception Application No. 12117 for the requested special use exception based on the record made at the public hearing, with the conditions that there be no more than twelve (12) dogs at a maximum of fifteen (15) pounds, and because the use will not substantially adversely affect the uses of the neighboring and adjacent properties.

Motion by Mr. Mills, seconded by Mr. Mears, and carried unanimously that **the special use exception with conditions be granted for the reasons stated**. Motion carried 5 – 0.

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

**Case No. 12118 – Donald Dzedzy & Margaret Dzedzy** - seek variances from the front and side yard setback requirements (Sections 115-25 of the Sussex County Zoning Code). The property is located on the north side of Seagrass Court, approximately 641 feet west of Seagrass Plantation Lane. 911 Address: 29766 Seagrass Court, Dagsboro. Zoning District: AR-1. Tax Map No.: 1-34-7.00-101.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of and one (1) letter in opposition to the Application. The Applicants seek a variance of 10.0 feet from the thirty (30) feet front yard setback requirement and a variance of 7.0 feet from the ten (10) feet side yard setback requirement for a proposed dwelling.

Ms. Cornwell advised the Board that, due to the new Code amendments, the Applicants only need side yard variances and no front yard variance is needed for the proposed dwelling.

Donald Dzedzy was sworn in to testify about the Application.

Mr. Dzedzy testified that he owns adjacent property; that the Property was willed to three daughters in 2014; that, in 2016, the prior owners placed the Property for sale and obtained a variance from the side yard setback requirement for a proposed dwelling; that he purchased the Property in July 2017 and removed the existing dwelling and shed; that the Board granted an



extension of the variance approval for an additional year; and that proposed dwelling will be moved closer to the front yard to provide neighboring properties with better views of the water.

Ms. Cornwell advised the Board that a front yard variance was not needed due to averaging the front yard setbacks of neighboring properties.

Mr. Dzedzy testified that he intends to invert the front yard and the rear yard so that the dwelling is closer to the front yard property line and farther from the rear yard property line; that his dwelling on the neighboring lot is 19.3 feet from the front property line and he obtained a variance for that dwelling; that when the community was developed, it was assumed that the street was the rear yard and the water was the front yard; that a conceptual drawing of the proposed dwelling does not match up with the survey and leaves a discrepancy of 8 inches; that the prior owners who obtained the variance did not obtain a true survey; that he requests a variance of 7 feet on each side of the Property; that the dwelling will be 28 feet wide and will be consistent with other dwellings in the neighborhood; that dwelling will consist of approximately 2,900 square feet; that other homes in the neighborhood consist of approximately 3,000 square feet; that the previously approved dwelling was approximately 1,500 square feet; that the Property is narrow; that the previous house and shed have been removed; that dwelling will be consistent with the front yard setback to the house to the southwest and with the rear yard setback of the house to the northeast; that the previously granted variance does not provide enough space for the proposed dwelling; that the dwelling will be an asset to the neighborhood; that there are no flooding problems in the rear of the Property but there are some flooding problems in the front yard; that the home will be located on pilings; that vehicles will be parked underneath the home; that there is 2 feet from the edge of paving of Seagrass Court and the front property line; and that all steps and HVAC systems will fit within the building envelope and no variances will be needed for those structures.

Dean Campbell, Esquire, was sworn in to testify about the Application.

Mr. Campbell testified that he appearing on behalf of the Hargrave family; that his clients do not oppose the front yard variance request but they oppose the side yard variance requests; that the previous dwelling on the Property was built in the 1960s; that there are small cottages in the neighborhood; that the Applicant has created the difficulty; that the Applicant was aware of the narrowness of the Property when he purchased the Property; that his clients' lot is narrower than the Property; and that the proposed dwelling will be too close to the Hargraves' property line.

Ms. Cornwell advised the Board that the Property is located in a flood zone and that the dwelling will need to meet flood zone regulations.

Mr. Mears stated that he assumes that FEMA regulations may have limited the Applicant's ability to renovate the prior dwelling on the Property.

Mr. Campbell testified that he does not think the Applicant has met the standard that the variance requests are not the minimum variances necessary to afford relief; and that the proposed dwelling is nearly double the size of the previously approved dwelling.

Mr. Dzedzy testified that the previous house was in poor condition and needed to be removed; that the proposed dwelling is 27.5 feet wide; that the previously approved house was 1.5 stories tall; that the proposed dwelling will be taller; that prices of homes on the water have skyrocketed and the economics do not work for smaller homes on the water; that it would be difficult to build a house that would economically work on the Property; that he bought the Property with the impression that the previously approved variance would allow him to build a dwelling; that he will have look for new plans if the variance is denied; that he intends to sell the Property; that the Property is wider in the front yard than the rear yard; that he bought the Property with the intent of developing it in such a fashion so as not to impede his view and the view from the Hargroves' property; and that, if he sells the Property, he intends to put a deed restriction to prohibit construction within 30 feet of the bulkhead.

Mr. Sharp stated that the side yard setback requirements for the Property were previously 10 feet but are now 5 feet due to the recent Code amendments which were passed.

Mr. Dzedzy testified that he proposes to build the dwelling 3 feet from the side property lines; that the dwelling will be 30 feet from the rear property line and 20 feet from the front property line; that his neighboring lot is 72 feet wide; and that the Property was originally part of Lot 102 and those lots were subdivided in the 1960s.

Ms. Cornwell advised the Board that the survey states that average front yard setback is 28.5 feet.

Mr. Sharp stated that a variance is needed from the front yard setback requirement; and that the variances needed are a variance of 2.0 feet from the five (5) feet side yard setback requirements on each side and a variance of 10.0 feet from the thirty (30) feet front yard setback requirement.

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

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

Motion by Mr. Mears, seconded by Mr. Workman, and carried unanimously that the **case be tabled until May 7, 2018**. Motion carried 5 – 0.

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

**Case No. 12119 – Terry Upsher** - seeks variances from the front yard and side yard setback requirements on a through lot (Sections 115-42 and 115-183 of the Sussex County Zoning Code). The property is located on the south side of Fisher Road. 911 Address: 28324 Fisher Road, Milton. Zoning District: GR. Tax Map No.: 3-34-10.00-98.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. The Applicant seeks a variance of 1.2 feet from the forty (40) feet front yard setback requirement for a proposed dwelling, a variance of 6.0 feet from the ten (10) feet side yard setback requirement on the east side for a proposed dwelling, a variance of 9.1 feet from the ten (10) feet side yard setback requirement on the east side for a proposed HVAC system, and a variance of 9.9 feet from the ten (10) feet side yard setback requirement on the east side for proposed steps.

Gil Fleming, Wileen Upsher, and Terry Upsher were sworn in to testify about the Application.

Mr. Fleming testified that the Property is a through lot adjacent to Fisher Road and West Springfield Drive; that the Applicants are replacing a 1980s singlewide manufactured home with a doublewide manufactured home; that the proposed dwelling measures 28 feet wide by 56 feet long; that the septic system is already installed on the Property and was used for the prior dwelling; that the Property is unique because it is a through lot; that the Property cannot be developed in strict conformity with the Sussex County Zoning Code; that the Applicants wish to upgrade their home to allow for more living space; that the exceptional practical difficulty was not created by the Applicants because the Property is a through lot and the location of the septic system presents problems; that the requests will not alter the essential character of the neighborhood; that there are other variances in the area; that the requests are the minimum variances necessary to afford relief; and that the existing septic was also used for the singlewide home.

Mr. Upsher testified that he spoke with his neighbors and they do not object to the Application; that the new doublewide home is an upgrade from the existing singlewide home; that the septic system was approved for the placement of the new manufactured home within tolerance with the doublewide home; and that the proposed doublewide home has the same number of bathrooms as the singlewide home.

Mr. Fleming testified that the proposed dwelling will be on a permanent, mobile home foundation.

Ms. Cornwell stated that DNREC typically requires a separation distance of 10 feet from the septic system and a dwelling; and that DNREC will sometimes grant a waiver to reduce that separation distance to 5 feet but she rarely sees waivers allowing for a separation distance of less than 5 feet.

Mr. Fleming stated that the septic system drain field is closer to West Springside Drive; that there were no other options to place the home elsewhere on the lot; and that the house is designed

with a front door on the west side of the dwelling and a rear door to the side yard on the east side.

Mr. Upsher testified that his fence is on the neighboring property to the east and he maintains the area between the side property line and the fence; that the Property is accessed from a driveway off Fisher Road; and that there is no access to West Springside Drive.

Mr. Fleming testified that the HVAC system could be moved to the front yard; and that there is no way to turn the house perpendicular and to fit on the lot without a variance.

The Board found that one (1) party appeared in support of the Application.

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

Mr. Mears moved to approve Variance Application No. 12119 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to it being a through lot and the location of the septic system;
2. The Property cannot be developed in strict conformity with the Sussex County Zoning Code;
3. The exceptional practical difficulty has not been created by the Applicant;
4. The variances will not alter the essential character of the neighborhood;
5. The improvements will enhance the character of the neighborhood; and
6. The requested variances are the minimum variances necessary to afford relief.

Motion by Mr. Mears, seconded by Ms. Magee, and carried unanimously that the **variances be granted for the reasons stated**. Motion carried 5 – 0.

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

**Case No. 12121 – David Quigley** - seeks variances from the side yard setback requirement (Sections 115-25, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located on the west side of Cool Spring Road, approximately one mile north of Stockley Road. 911 Address: 20356 Cool Spring Road, Milton. Zoning District: AR-1. Tax Map No.: 2-34-5.00-38.11.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of the Application from the adjacent neighbor and no correspondence in opposition to the Application. Ms. Cornwell read the letter of support into the record. The Applicant seeks a variance of 7.5 feet from the fifteen (15) feet side yard setback requirement on the north side and a variance of 0.6 feet from the fifteen (15) feet side yard setback requirement on the north side for an existing barn.

David Quigley was sworn in to testify about the Application. Mr. Quigley testified that the pole barn was constructed parallel to the street; that the side property line has a steep angle; that the

builder acquired all the building permits; that he called the Planning and Zoning Office about the requirements for the overhang for the pole barn and he was told that the overhang could encroach into the setback area; that the pole barn does not encroach into the setback area; that the septic system is exactly 10.5 feet from the pole barn; that the rear yard is wooded with wetland areas; that there is no other place on the lot where the pole barn could be located and that he explored other options; that the pole barn was built to look like a barn; that the pole barn is not out of character with the neighborhood; that there is a ten (10) feet overhang off the side of the pole barn; that the pole barn encroaches less into the side yard near the front yard but encroaches farther into the side yard near the rear yard due to the angle of the side property line; that the overhang is supported by posts; that the overhang is an open, lean-to; and that the builder was Delmarva Pole Buildings.

The Board found that one (1) party appeared in support of the Application.

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

Mr. Mills moved to approve Variance Application No. 12121 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to the location of the septic;
2. The exceptional practical difficulty has not been created by the Applicant because he relied on the builder;
3. The variances will not alter the essential character of the neighborhood;
4. The improvements enhance the character of the neighborhood; and
5. The requested variances are the minimum variances necessary to afford relief.

Motion by Mr. Mills, seconded by Ms. Magee, and carried unanimously that the **variances be granted for the reasons stated and that a letter be sent to the builder**. Motion carried 5 – 0.

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

**Meeting was adjourned at 9:43 p.m.**