

MINUTES OF AUGUST 1, 2022

The regular meeting of the Sussex County Board of Adjustment was held on Monday, August 1, 2022, at 6:00 p.m. in the County Council Chamber, Sussex County Administration Office Building, Georgetown, Delaware. The teleconference system was tested during the meeting by staff to confirm connectivity.

The meeting was called to order at 6:00 p.m. with Chairman Jeffrey Chorman presiding. The Board members present were: Dr. Kevin Carson - Absent, Mr. John T. Hastings - Absent, Mr. Jordan Warfel, Mr. John Williamson, and Mr. Jeffrey Chorman. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Ms. Jennifer Norwood – Planning and Zoning Manager, and Ms. Amy Hollis – Recording Secretary.

The Pledge of Allegiance was led by Mr. Chorman.

Motion by Mr. Warfel, seconded by Mr. Williamson and carried unanimously to approve the agenda. Motion carried 3 – 0.

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

Motion by Mr. Williamson, seconded by Mr. Warfel and carried unanimously to approve the Minutes for the June 6, 2022, meeting. Motion carried 3 – 0.

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

Motion by Mr. Warfel, seconded by Mr. Williamson and carried to approve the Findings of Facts for the June 6, 2022, meeting. Motion carried 3 – 0.

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

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

PUBLIC HEARINGS

Case No. 12723– Reuben and Brenda Wilkinson seek variances from the front yard and side yard setback requirements for proposed structures (Sections 115-34, 115-182, and 115-183 of the Sussex County Zoning Code). The property is located on the east side of Bay Run within the Keen-Wik Sound subdivision. 911 Address: 37038 Bay Run, Selbyville. Zoning District: MR-RPC. Tax Parcel: 533-19.00-346.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received three (3) letters in support of and zero letters in opposition to the Application and zero mail returns. The Applicants are requesting variances of 3.2 ft. from the 10 ft. side yard setback requirement on the south side for proposed foyer addition, 2.7 ft. from the 10 ft. side yard setback requirement on the south side for proposed porch addition and 14.6 ft. and 1.7 ft. variances from the 30 ft. front yard

setback requirement for proposed attached garage.

Mr. Reuben Wilkinson and Ms. Brenda Wilkinson were sworn in to give testimony about this Application.

Mr. Wilkinson testified that he and his wife are seeking variances for their Delaware home; that the variances are for an entryway and a two (2) car garage; that they purchased this home two (2) years ago and plan to make it their retirement home; that, in September, he will be retiring and they will be relocating to Delaware as permanent residents; that they are seeking the variances due to the unique shape of their property; that their lot is not a traditional square or rectangle but more of a parallelogram; that, due to the size and shape of the lot, as well as its location between the canal and roadway, they are unable to build onto the home without a variance; that the homes within their community of Keen-Wik Sound vary greatly from one another as evidenced by pictures submitted with the Application; that they have submitted photos of other homes in the neighborhood that are similar in size and style to their entryway request; that their most adjacent neighbor as well as others in the neighborhood also have two (2) car garages; that 100 of the 120 homes have garages and 80 of those 100 have two (2) car garages; that he knows specifically of two (2) homes in the community that have obtained variances to build closer to the road than permitted by traditional setbacks; that they have shared their proposed renovation design with their neighbors and three (3) of the neighbors closest to them have signed letters in support; that the dimensions of the entryway proposed are 4.5 ft. x 9 ft. which is the minimum size that would allow the enough clearance to open the door and for a small coat closet; that the dimensions of the garage will be 24 feet x 22 feet and are smaller than the industry recommended size for a two (2) car garage; that the size will allow them just enough space to store two (2) or their four (4) cars and their bicycles and, hopefully, his tools; that they purchased the home as it is; that they will be removing the deck off of the rear of the house and replacing it with a new deck and sunroom but that renovation does not require variances; that the 5.8 ft. off of the side of the house is for expansion of living space; that they realized last year the square footage of the home is a little small for their use and, rather than adding a second story, because of the future stair use, they decided to add on to the first floor living area; that the home consists of less than 1,300 square feet; that they are adding a loft bedroom; that they have three (3) sons; that his wife wanted to make sure that they have three (3) additional bedrooms to accommodate their sons should they all visit at once; that the additional 5.8 ft. will be an extension of the common living area which will have an open concept floor plan; that they will also be remodeling the kitchen; that the home was built in the late 1980s and is a great home for vacationing but was in need of some updating as it will be their permanent home now; that they are also looking to expand their laundry area; that currently they have a stackable washer and dryer; that the plan is to extend their living space, laundry area, as well as bedroom and bathrooms; that they are rotating their front entry way because of wind related issues and the constant replacement of front / storm door related items; that the prevailing wind has posed a problem for them; that the direction the home faces currently receives a higher amount of wind and rain; that they have been fortunate to not experience major flooding at their property; that they have lived there for two (2) years; that they will seek HOA approval upon the decision of this Board; that there is about 10-15 ft. between their front property line and the edge of paving; that the support letters

submitted are from the most adjacent neighbors; that they shared conceptual drawings as well as their plans with the neighbors; that all exterior projections are accounted for in the request for variances; that they did not look at placing their garage on the other side of the house as that is where the current entryway is located; that they had not considered utilizing the rear of their property as it butts up to the canal; that they get a good deal of shade in the rear yard and enjoy spending a lot of time out there; that they have public utilities; that the neighbors to the south received a variance last year to extend their garage; that other neighbors on East Stoney Run have received variances also; that their neighbor to the south assisted them with the process for obtaining a variance; that he does not know for sure who received a variance and who has not received a variance but, based on placement of some structures, he would assume that several of their neighbors received variance for different structures; that, if their lot was a typical rectangle shape, they would not need a variances; that they have owned the property for two (2) years; that the Application incorrectly states that they purchased the property in July 2021; that they were fortunate that it did not need renovations and they were able to enjoy the property until now; that the south side of the dwelling is proposed to have two (2) bedrooms and the entry way; that the left side of the house is bedrooms; that the proposed garage will have an entry into the home to the main living area rather than a bedroom; and that, as they move into retirement and are living there full-time, they will need all of this living space.

Ms. Wilkinson testified that the addition is for when their three (3) sons come to visit at the same time; that they spoke with the property owners to their south first as they would be the most directly affected; that none of the neighbors had an issue with what they are proposing; that where the proposed addition is located adjacent to the bedrooms of the dwelling; that the proposed addition is to their living area; that the variances granted were for garages; that there are a few variances approved on their road; that, when you enter the proposed entryway, you will be entering into living space; that their present living space is very small; and that they enter directly into the living room currently and it is a very small space.

Mr. Greg Warrington was sworn in to give testimony in support of the Application.

Mr. Warrington testified that his property is to the north of the Wilkinsons' property; and that he has no objection to what the Wilkinsons are proposing.

Ms. Norwood noted that the Board approved a front yard variance on nearby property for a garage addition in Case No. 12597.

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

Mr. Chorman closed the public hearing.

Mr. Warfel moved to approve the application for Case No. 12723 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique physical conditions due to the location and design of the existing house;
2. That, due to the physical conditions, the property cannot be developed in strict conformity with Sussex County Zoning Code and the variances are necessary to enable the reasonable use of the property;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare; and
5. The variances represent the minimum variances necessary to afford relief.

As part of his motion to approve, Mr. Warfel conditioned the approval on the Applicants obtaining approval from their homeowners association and providing the Office of Planning & Zoning with a copy of the homeowner association approval.

Motion by Mr. Warfel, seconded by Mr. Williamson, carried that the **variances be granted with conditions for the reasons stated**. Motion carried 3 – 0.

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

Case No. 12724– Glenn, Brandon, and Jamie Fleming seek a special use exception to operate a commercial dog kennel on a property of less than 5 acres and variances from the 200 ft. required distance from any lot line (Sections 115-20, 115-23 and 115-210 of the Sussex County Zoning Code). The property is located on Woodpecker Road approximately 479 feet from Old Carriage Road. 911 Address: N/A. Zoning District: AR-1. Tax Parcel: 531-14.00-31.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support, two (2) letters in opposition to the Application, and zero mail returns. The Applicants are requesting a special use exception for a commercial dog kennel and variances of 40 ft. from the 200 ft. setback requirement for a kennel, 32 ft. from the 200 ft. setback requirement for a kennel, 200 ft. from the 200 ft. setback requirement for a kennel.

Ms. Jamie Fleming was sworn in to give testimony about this Application.

Ms. Fleming testified that she is seeking a variance for a kennel for breeding purposes; that the kennel will not be used for boarding of dogs; that there will not be traffic associated with the kennel except for the sale of puppies; that the variances are needed for the acreage requirement as they do not meet the 5 acre minimum; that the most adjacent neighbors have said that they do not oppose the requests; that she has placed the structure as far into the property as she can to be away from the neighboring properties; that the dogs being bred are small breed dogs that will not be left outside for long periods of time; that the breed is quiet; that she will be placing fencing to limit noise

also; that she needs the kennel to be placed prior to the issuance of licensing; that they own Parcels 31, 30, 65, and 109 shown on the tax map; that the entire structure will be on Parcel 31; that they were considerate of placing this away from the neighboring dwellings; that the building will be measure 20 feet by 36 feet with 8 feet runs on the outside; that the structure would house 12-15 dogs permanently; that the licensing requires a separate building for the mother and puppies which would be a smaller building on the property and not require any variances; that 2-3 dogs would be bred at the same time and use that additional building; that a client that recently retired and pushed up her timeline by about two (2) years; that she was promised the business of this individual; that they are a small breed dog that rarely barks; that she currently has three (3) dogs that bark and would be placed on the side away from the neighboring dwellings; that they are French Bulldogs; that the dogs range in size from 16 lbs. to 25 lbs.; that the fence would be a white vinyl fence, as it is double paned, and will be as high as County Code allows; that the additional fencing would serve a dual purpose of protection for the animals as well as noise abatement; that the dogs will have indoor / outdoor access but she has no problem with having them remain indoors after a certain hour; that she has gone through everything that the State requires as far as licensing; that the lot is currently still wooded so a portion would be cleared for the placement of the kennel; that the business is currently operating out of her home with less dogs than she will be with approval; that the business is currently on Parcel 109 and operates out of a room of her house; that, once the business is turned over to her, there will be a total of twelve (12) or thirteen (13) females and one (1) male; that they would range in ages from not yet ready to breed to almost retired from breeding; that the number of dogs does not include the puppies as they will not be staying permanently; that there will fourteen (14) total adults for breeding purposes; that the dogs will be bred once a year; that each female could potentially have three (3) to eight (8) puppies; that they do not start until the age of two (2) and skip a heat between breeding; that each female would be retired by the age of six (6); that she will be staggering the pregnancies of the dogs so as to not have too many litters at the same time; that licensing requires a separate space for the mother and puppies; that Parcel 110 is owned by the State and is a social work house; that Parcel 29 is an adjoining neighbor; that she was trying to place the building as close to the woods as possible to minimize noise; that she was unable to get an official site plan at this time; that her family owns the four (4) adjoining lots; that the lot on the corner was formerly owned by her family also but was sold; that, prior to the sale of the lot on the corner, her family owned a combined 5 acres; that this was not a plan at the time that the property was sold; that two (2) businesses have been run off of this property in the past, including a Christmas tree business and an electrical business; that, if the property on the corner lot was not sold, she would not need that variance from the acreage requirement; that the building itself will be either a shed or pole building type structure; that everything around their property is a rural farm use type area; that you would not be able to see the building from the road but would have to access it from the driveway; that, from a distance, it will appear to be a barn type structure with a fence around it; that there will be no signs or advertisements on the property; that the variances are from the 200 ft. distance requirement from the property line and the 5 acre requirement; that the property will be staying within their family from now on; that a portion of the property that was sold was owned by her grandparents; that a decision was made in the interest of her grandmother to sell off a portion; that her brother, father, and she now own the property together; that her father was a part owner of the corner property when it was sold; and that she is trying to do everything in the proper

way and could have easily done this without the appropriate permissions.

Mr. Glenn Fleming was sworn in to testify about this Application

Mr. Fleming testifies that his parents bought the corner lot in the 1950s; that he is in possession of the original deeds to the property from his parents; that his father passed away from cancer; that his mother was residing the home by herself when she developed dementia; that she was in need of assistance at that point; that she sold the corner lot to build an addition onto her sister's home in Salisbury; that he believes he, his sister, and mother were the owners of the property at that time; that the properties have been in their family for a long time; that he survived both his mother and sister and has added his children to the remaining family properties; that the property on the corner was sold with a purpose rather than just for a sale; that the original deeds are from 1955; that the properties have been in this shape since they were purchased by his parents; that they were sold off in sections; that he was two years old when they moved out there; and that his parents purchased five (5) lots over a period of time.

Mr. Ron Russell was sworn in to testify in opposition to this Application.

Mr. Russell testified that the Henrys live next door; that most of the opposition here tonight lives on the adjacent properties within 1,000 feet; that he resides a couple of lots away; that he has known the Flemings for years and has no animosity towards them but his interest is the neighborhood; that some of the individuals have lived in the area for 40 years; that an adjacent neighbor has a medical condition that is worsened by stress and anxiety; that the Henrys live about 160 ft. away from the proposed commercial dog kennel; that they know the intentions but they must go by the data in regards to kennels; that CDS is an advocacy group who represent individuals that have issues with traffic lights and dog kennels in their area; that he also will be referencing information from the Center for Disease Control and the Occupation Safety and Health Administration; that noise is not the issue but sound is; that sound is measured in intensity by measuring decibel level; that decibels are not a standard 10 unit increase but a 10 times increase of sound; that the higher you go up, for example an increase of 50-100 decibels increases in sounds intensity by 100,000; that one neighbor has a French Bulldog and they can bark at a range of 80-100 decibels; that human exposure to sound at 70 decibels can cause stress and at 80 decibels for two (2) hours or more can cause hearing damage; that he worked at a DuPont manufacturing site and any noise level over 80 decibels they were required to wear ear plugs; that, according to OSHA, exposure to decibel levels over 80 can lead to higher heart rate, respiration rate, and tinnitus (ringing in the ears) may occur; that fences and trees provide virtually no protection for sound traveling; that the trees in their area have leaves to the tops of the tree but not towards ground level; that, in the winter, the trees do not maintain their leaves; that the Applicants stated in their application that the building on the outside would look like a building found in a rural area and the fencing placed around it would look more traditional as well as help to cut down on noise; that the Henrys who live the closest to the proposed kennel are going to be subject to 70 plus decibels of noise; that the noise will definitely affect Mrs. Henry and aggravate her disease due to stress; that the sound that will travel through to the other neighboring properties will not likely

affect their health but will definitely be a nuisance with potential constant barking; that noise levels within a dog kennel can exceed 100 decibels; that the sound will travel; that they have presented scientific information in regards to the noise and its impact on neighboring properties and are asking, based on that the variances, be denied; that the essential character of the neighborhood will be affected; that, in one study, the value of homes depreciated by 30% when next to a dog kennel due to the associated traffic noise; that quality of life and health of neighbors would be directly affected by this dog kennel; that he has lived there 40 years and would not have built his home there if the kennel already existed; that the neighbor that owns a French Bulldog is a few lots from him and the other neighbor who has a health concern; that he is not aware of any complaints of this dog but it is one dog and not 16; that he owns a dog that does bark very rarely; that the trees are oaks, gums, and maples, which are deciduous trees not evergreens; that there is large shrubbery but not sound barrier shrubbery; and that, if a fence is put up, he might not be able to see their property in the winter months.

Mr. David Milliken was sworn in to testify in opposition to the Application.

Mr. Milliken testified that he resides on Parcel 56; that he owns the French Bulldog that was previously spoken about; that his dog is eleven (11) years old; that he can attest that his dog has a very shrill and annoying bark sometimes; that he loves his dog but cannot imagine having fifteen (15) of them; that the noise from that many dogs would be a bit much echoing through the woods; that he has resided in the neighborhood for fifty-six (56) years, which is all his life; that he grew up next door to his current home; and that Mr. Russell stated everything else.

Mr. James Henry was sworn in to testify in opposition to the Application.

Mr. Henry testified that he resides at Parcel 59.01 directly adjacent to the Applicants' property; that his wife has systemic lupus and is very susceptible to stress; that, when he and his wife were looking for property in Delaware, they found the lot the currently live on; that they liked that it was a residential area with no poultry houses or commercial properties on Old Carriage Road; that it was a fully wooded lot which they had cleared to place their home; that they have spent a great deal of investment to make this retirement home what they wanted; that they have done a lot of work to bring their property value up; that the thought of a commercial dog kennel next to his property turns his stomach; that there has been construction going on next door already; that, if the Application is approved, it will change the neighborhood and will ruin the ambiance; that he brought a video with sound of a dog kennel but did not submit to evidence; that he attests that the video is not pleasant; that the Application sent to him by staff showed a building with dimensions of 24 feet by 60 feet; that he considers that building to be rather large; that he is concerned where is the feces going to go; that he is also concerned about the manning of this kennel; that he is concerned if someone will be there to quiet the animals; that he has concerns if the water from washing out the kennels will go into the groundwater systems; that he considers this to be disgusting; that, once this is approved, they can do what they want over there to include bathing and sheering of dogs; that he is concerned with who is going to monitor their use; that he finds it disturbing that after 17 years of residing here that he had to ride by a sign to find out that a commercial dog kennel is going to be built next to their home; and

that his wife is not here tonight because of her anxiety about this.

Ms. Jacqueline Carnck was sworn in to testify in opposition to the Application.

Ms. Carnck testified that she resides on Parcel 59.02; that they are new to the neighborhood; that they have lived there about a year and a half; that they moved there specifically for the peace and quiet; and that she feels that the dog kennel is not going to afford her that peace and quiet.

Ms. Fleming testified that, due to these being short-haired dogs, there is no sheering; that bathing is on an “as needed” basis; that it is in the interest of their health to not bath them frequently; that the feces will be taken by the State after being placed in a dumpster on the premises; that the washing down of the kennels will be at a minimum; that this is a rural area which sees the use of tractors and airplanes in addition to the spraying of chemicals which likely enter the groundwater; that, once operational, someone would be onsite at all times; that her goal is to make this her full-time job; that the dogs she has that do bark they would be placed on the side facing away from the neighbors to minimize sound to the neighbors; that she has had up to four (4) French Bulldogs in her home and received no complaints even when taking them outside; that she will be shrinking the kennel down in size compared to the documents submitted; that the size of the building will be the minimum that she needs for the dogs and storage of necessary materials; that the additional building will be a shed with a desk to hold her paperwork to be separate from her residence; that the kennel will be heated, air conditioned, have water access at all times, indoor / outdoor areas and covering from the sun as required by the State; that there will be ventilation with fans as they are required also; that the plan is to have those vents to facing their property; that this is a fairly significant investment and she is aware of the five (5) year term of approval by the Board; that this is a private kennel and there will be no signage; that person employed on the premises will be her, her children, and, potentially, one other person for when she is not available; that the maximum amount of dogs on the property could potentially be thirty-three (33) dogs; that the puppies would only be on site for eight (8) weeks before being sold; that the building plan she is looking at is a 30 foot by 40 foot building; that the open runs are a requirement but they can be covered; that they need to have additional space as to not urinate and defecate in the area in which they sleep; that she tried to acquire the documents prior but was unable; and that she believes she can get the site plan by the end of the month.

Ms. Fleming submitted an exhibit to the Board.

The Board found that one (1) person appeared in support of and seven (7) persons appeared in opposition to the Application.

Mr. Chorman closed the public hearing.

Mr. Warfel moved to leave the record open for the limited purpose of allowing the Applicants to submit a site plan of the proposal by August 31, 2022, and to schedule the matter for a hearing on September 12, 2022, with comments at the hearing only as to the new site plan.

Motion by Mr. Warfel, seconded by Mr. Williamson, carried that the **record be left open for the limited purpose for the reasons stated.** Motion carried 3 – 0.

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

Case No. 12725– Terry Gray seeks variances from the side yard setback requirement for a proposed garage (Sections 115-25 and 115-183 of the Sussex County Zoning Code). The property is located on the east side of Fisherman Drive within the Coolspring Manor subdivision. 911 Address: 28331 Boater Place, Milton. Zoning District: AR-1. Tax Parcel: 334-10.00-228.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received seven (7) letters in support of and none in opposition to the Application and one (1) mail return. The Applicant is requesting a variance of 8.1 ft. and 8.3 ft. from the 15 ft. side yard setback requirement on the east side for a proposed attached garage.

Mr. Terry Gray was sworn in to give testimony about this Application.

Mr. Gray testified that he purchased the property a year ago; that the property did not have a garage when he purchased it; that there are houses in the neighborhood that have garages; that he also owns a property in north Wilmington that has a two car garage; that he has a full size F250 pickup, a full size older style Bronco, and a Mazda 626; that he looked at a bunch of different scenarios for placing a garage on this property; that, on the left side of his home, are the bedrooms, the septic system with drain field, HVAC unit, and propane tank; that, off the back of the house, is a deck and small porch; that the proposed location was the best option for the property; that the adjacent neighbors are all in support; that he is proposing a two car garage; that the house is set to one side of the property and is not centered on the lot; that the house is a Nanticoke Home and, when placed on the foundation, it is not square; that he could not place the garage in another location; that where the garage will be placed is the best option to for entry into the home; that the proposed garage is consistent with the other garages in the neighborhood; that it is a small development of about 30-40 houses; that there is one house that he knows of that has a pole barn but all the others have more traditional two car garages; that there is one new house going up at the other side of the development; that the shed is going to be moved to the back of the property; that the shed in the rear of the property has been removed; that the propane tank is buried; that the septic is located in the northwest portion of the building envelope; that he would like to put his vehicles in the garage; that he travels to Florida and would like to secure his vehicles while away; that he did not think that far ahead when purchasing the property; that he is looking to place the garage to mirror his functionality of property to his existing home in Wilmington; that all of the neighbors are in support; that the HOA is in support also; that he did not think of doing a one-car garage because he would have to make it much longer to accommodate his vehicles; that he also thought about the aesthetics of the neighborhood and that the majority of homes have a two-car garage; that the driveway is off of Boater Place; that there will be no projections off the garage; and that he liked the house and the price was decent but he did not do much research before purchasing.

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

Mr. Chorman closed the public hearing.

Mr. Warfel moved to approve the application for Case No. 12725 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to the exceptionally small buildable area;
2. That, due to the physical conditions, the property cannot be developed in strict conformity with Sussex County Zoning Code and the variances are necessary to enable the reasonable use of the property;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare; and
5. The variances represent the minimum variances necessary to afford relief.

Motion by Mr. Warfel, seconded by Mr. Williamson, carried that the **variances be granted for the reasons stated**. Motion carried 3 – 0.

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

Case No. 12726– Judith Belk seeks variances from the lot width and depth requirements, minimum lot size requirement, side yard setback requirement, rear yard setback requirement, and front yard setback requirement for proposed lots and structures (Sections 115-25, 115-182, and 115-183 of the Sussex County Zoning Code). The property is located on the northwest side of Seagrass Court within the Seagrass Plantation subdivision. 911 Address: 29742 Seagrass Court, Dagsboro. Zoning District AR-1. Tax Parcel: 134-7.00-106.00

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 variances of 15,242 sf. variance from the 20,000 sf. minimum lot size requirement for a parcel (both lots), 52.65 ft. from the 100 ft. lot width requirement for a parcel (residual lands on survey), 52.35 ft. from the 100 ft. lot width requirement for a parcel (Lot 1 on survey), 1 ft. from the 5 ft. side yard setback requirement for a lot less than 10,000 sf. (both proposed lots), 5 ft. from the 15 ft. rear yard setback requirement for a lot less than 10,000 sf. (both proposed lots), and 10 ft. from the 30 ft. front yard setback requirement for both proposed parcels. The Applicant proposes to subdivide the property into two lots identified as “Lot No. 1” and “Residual Lands” as shown on a partitioning survey dated September 17, 2021.

Mr. Tim Willard, Esquire, appeared on behalf of the Applicant and he submitted exhibits on

behalf of the Applicant.

Mr. Willard stated that he is here representing Judith Belk, the property owner; that this is a unique property; that this is not a part of the Seagrass subdivision; that the subdivision was approved many years ago but these lots were already in existence; that, in the 1920s and 1930s, these properties were used as fishing camps; that this property was formerly owned by Ms. Belk's grandparents; that, over time, the property has been passed down to family members; that, in 2009, there was a house with existing lines on the property which were removed; that the dwelling on the property was in a setback violation per the individual that represented Ms. Belk at the time, which was inaccurate information due to the construction of the home in the 1930s; that the dwelling predated the Sussex County Zoning Code; that, after the lines were removed, she purchased the property and removed the home due to its dilapidation; that there has been no building on the property since that time; that the history and lots are unique; that, in 2018, there were two variances that were approved on this street for lots of similar size; that, to do what she is attempting, it requires the variances first; that the proposed lots do not meet the current requirement for the AR zoning district; that there are smaller lots adjacent to this property; that they are looking for equal widths on these lots; that each lot would consist of 4750 square feet; that they are also asking for variance requests for the setbacks on the property based on the size of the property; that they are asking for a setback of 20 ft. from the front, 10 ft. from the rear, and 4 ft. from the side yard; that, in 2018, the property to the right of this one was granted a variance for a lot smaller than what they are proposing; that these setbacks would allow for a more reasonable dwelling to be placed on the lot; that the previous Board found that it was not created by the Applicant, it would not alter the essential character of the neighborhood, and it was the minimum variance necessary; that variance was granted in February and in April of the same year Parcel 101 was also granted a variance; that this lot is only 36 ft. wide and asked for similar setbacks for the front; that he believes that the Board has already determined that this property would meet all five qualifications based on past approvals; that it was proposed to reinstate the lot line but they would still have been seeking variances for the setbacks; that Ms. Belk is wanting to make the two lots equal in size; that she is not proposing to build on either lot at the moment; that she is doing her estate planning; that he believe the request for setback reduction is a prerequisite to the partition of the property; that, if the variances for the setbacks are not approved, it would make it more difficult to construct on the property in the future; that they are trying to clean up an error from twenty (20) years ago; that he does not believe that plans would need to be submitted for dwellings to be constructed on the property as the Board has previously issued approvals for lots of similar if not smaller size with the reduced setbacks; that the owner could come back to the Board in the future with plans to ask for setback reductions; that the layout of the lot was altered in the past due to estate planning and the sale of the property from one cousin to another; that there was formerly a dirt road with a temporary easement that became permanent for the resident to access their properties through Seagrass Court; and that, because of property values, they are improving the area.

Mr. Sharp stated that the Board typically requires a site plan showing the proposed building plans when reviewing applications for setback variances and that the Code limits how long variance approvals are valid if no construction takes place.

Mr. Willard stated that, if the Board is inclined to not grant the variances, for the side yard, rear yard, and front yard setback reductions without a formal plan then he would withdraw those requests as they are not ripe due to the lack of a site plan; and that this request to withdraw those requests would be to avoid a res judicata issue in the future.

Ms. Judith Belk was sworn in to give testimony about this Application.

Ms. Belk testified that all the statements of Mr. Willard were true and correct; that her family has owned this property since the 1930s; that the reason for the requests is because she has two (2) siblings, a brother and sister, that will be inheriting the properties from her upon her death; that she is trying to prepare both of these properties for their use upon her demise; that she wants there to be no question as to the equal and buildable lots being passed to them; that one of her siblings would be able to apply for the variances in the future but the other would not be in a position to do so; that the lot lines predate zoning; that the dwelling was removed in 2009; and that she was told she had to remove it.

Mr. Donald Moore was sworn in to give testimony in support of the Application.

Mr. Moore testified that he owns a house down the street from Ms. Belk's property; that it has been in his family since 1951; that it was his parents before being passed to him; that he is in favor of her proposal; that the lots in this area are small; that these lots were sold to Ms. Belk's whole family with the exception of a few lots; that, at the time, this size of lot was all that was needed but as times have changed they are very small; that the area is seeing a large increase in development; that the property is very unique bayfront property; that it would be best to maximize the potential for each of these lots by granting the variance requests; and that he is in support of the Application and it does not affect him though he is in close proximity to the property.

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. Warfel moved to approve the variances for lot width and lot size for the proposed lots requested in the application for Case No. 12726, pending final written decision, for the following reasons:

1. The property has unique conditions due to the way the lots were combined previously at closing;
2. That, due to the physical conditions, the property cannot be developed in strict conformity with Sussex County Zoning Code and the variances are from the lot size and lot width requirements necessary to enable the reasonable use of the property;

3. The exceptional practical difficulty was not created by the Applicant;
4. The variances from the lot size and lot width requirements will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare; and
5. The variances from the lot size and lot width requirements represent the minimum variances necessary to afford relief.

Motion by Mr. Warfel, seconded by Mr. Williamson, carried that the **variances from the lot width and lot size requirements be granted for the reasons stated.** Motion carried 3 – 0.

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

Mr. Warfel moved to approve the Applicant’s request to withdraw the requests for variances for the front, side, and rear yard setback requirements for Case No. 12726.

Motion by Mr. Warfel, seconded by Mr. Williamson, carried that the **variance requests for the front yard, side yard, and rear yard setback requirements be withdrawn.** Motion carries 3 – 0.

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

Case No. 12727– John Sulecki seeks a variance from the front yard setback and maximum height requirements for a proposed pool, deck, and fence (Sections 115-34 and 115-183 of the Sussex County Zoning Code). The property is located on the northeast side of Old Mill Court within the Mill Run Acres Subdivision. 911 Address: 36838 Old Mill Court, Ocean View. Zoning District: MR. Tax Parcel: 134-12.00-1853.00

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 variances of 12 ft. and 22 ft. from the 40 ft. front yard setback requirement for an existing pool and deck and 1.8 ft. from the 3.5 ft. maximum fence height requirement for an existing fence in the front yard setback. The property is a through lot and the variances are from the Route 349 side of the property.

Mr. John Sulecki was sworn in to give testimony about this Application.

Mr. Sulecki testified that his wife just retired and they decided to install a pool for therapy purposes; that he has a knee replacement; that they sold their home in Pennsylvania and used some of the extra money from that to build the pool; that they retained a contractor and proposed a location; that he had to get the permits; that, on 9/28/21, he went to pick up the permits for the pool and the deck; that, at that time, the County was made aware of the size and location of the pool; that he took the permits home and upon review he noticed the 40 ft. setback from the rear property line; that he

believed that setback requirement was just for the home so he called the County and spoke with staff to confirm the setback; that he was told that the setback was for the home only and not for the semi-inground pool and deck; that he was told he had to maintain 6 ft. distance from the property line and he indicated that he could double that distance; that he made a mistake by not getting that in writing but it was just a phone conversation; that he started his project with approval from the HOA; that, upon completion, he called for an inspection and was told that he needed to 40 ft. off the property line; that the inspector called the Office of Planning and Zoning to confirm the setback required for the pool; that the proposed option for compliance was to apply for the variances; that he contacted the Office of Planning and Zoning to inquire about his conversation regarding the setbacks but the conversation was not recalled by staff; that he does not believe there was malintent and he understands the volume of calls received by Planning and Zoning; that he based his project on one phone call; that the pool was installed and is not in compliance which is why he is here and looking for relief; that there is no fence at the rear of the property but there is a fence around the pool; that he received approval for a fence to be placed at 3 ft. high rather than 4 ft. because the pool is slightly elevated above ground level; that a neighbor adjacent has a pool that is not fenced in as it is above ground; that his pool is 24 inches down and 24 inches up in regards to being an inground / above ground pool; that the tree line behind the home is beneficial to protection of their yard; that he did his due diligence for research on the permits and he was devastated that the inspector told him he was not in compliance; that there have been no complaints about the structures; that there is no vehicular access to the road to the rear; that the property is served by public water and sewer; that the pool and deck is not visible from the front yard; that the pool is visible in two (2) spots where trees were replaced in the rear yard; and that there is a gap between his property and the road of about 8 ft.

Mr. John Garfolis was sworn in to testify in support of this application.

Mr. Garfolis testified that he is the president of the Mill Run Homeowners Association; that a letter was sent in support of the Application; that the proposal was approved after review; that they reviewed the placement, setbacks and information provided by the contractor; that they had confidence in the home owner's research and review based on past performance with projects within the neighborhood; that all former projects were completed within code and compliance; that he was assigned those projects due to his background in project management; that they are confident that Mr. Sulecki would not have gone forward with his project had he not been sure of the information received by the County; and that, for all of the above reasons, they are in support of the Application for variances and its approval.

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

Mr. Chorman closed the public hearing.

Mr. Williamson moved to approve the application for Case No. 12727 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique physical conditions as it is a through lot;
2. The exceptional practical difficulty was not created by the Applicant; and
3. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare.

Motion by Mr. Williamson, seconded by Mr. Warfel, carried that the **variances be granted for the reasons stated**. Motion carried 3 – 0.

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

ADDITIONAL BUSINESS

None.

Meeting adjourned at 8:12 p.m.