

MINUTES OF AUGUST 16, 2021

The regular meeting of the Sussex County Board of Adjustment was held on Monday, August 16, 2021, at 6:00 p.m. in the County Council Chamber, Sussex County Administration Office Building, Georgetown, Delaware. The teleconference system was tested during the meeting by staff to confirm connectivity.

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

The Pledge of Allegiance was led by Mr. Williamson.

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

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

Motion by Mr. Warfel, seconded by Mr. Chorman and carried unanimously to approve the Minutes for the June 7, 2021, meeting. Motion carried 5– 0.

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

Motion by Dr. Carson, seconded by Mr. Warfel and carried to approve the Findings of Facts for the June 7, 2021, meeting. Motion carried 5 – 0.

The vote by roll call; Mr. Warfel – yea, Mr. Williamson – yea, Mr. Hastings – yea, Dr. Carson – 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. 12593 – Joseph A. & Andrea G. Vai seeks a variance from the side yard setback requirement for a proposed structure (Sections 115-42,115-183 & 115-185 of the Sussex County Zoning Code). The property is located on the west side of Mallard Drive within the Swann Keys Subdivision. 911 Address: 37041 Mallard Drive, Selbyville. Zoning District: GR. Tax Parcel: 533-12.16-94.00.

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received two letters in support of and none in opposition to the Application and one mail return. The Applicants

are requesting a 3.5 ft. variance from the 5 ft. side yard on the side of the lot adjacent to Lot 53 for a proposed shed. Ms. Norwood noted that the Board of Adjustment Case No. 12545 was heard on April 20, 2021, and the variance request, in that case, was denied.

Mr. Sharp stated that there was a similar application for this property presented earlier this year so the Applicants will have to demonstrate that there has been a substantial change in the circumstances or conditions affecting the property or in the proposed use or plans for the use; that a determination of whether sufficient changed circumstances exist is a question of fact to be resolved by the Board and the burden of proof is on the Applicants; that, to have the new variance request heard on the merits, the Applicants must first show that there is sufficient change to have this application heard; that, after the Applicants address the change in circumstances, the Board can make a motion regarding that change and, if the Board finds that there has been sufficient change, then the Applicants may present the new variance application.

Ms. Mackenzie Peet, Esq., was present on behalf of the Applicants Joseph Vai and Andrea Vai, who are the property owners of 37041 Mallard Drive, Selbyville.

Ms. Peet stated that included with the Application are Exhibit A – details the property and deed information, Exhibit B – survey of current conditions and a drawing by Mr. Vai showing the proposed shed, Exhibit C – relevant sections of the Zoning Code, Exhibit D – aerial maps of the property, Exhibit E – images of the current conditions on the site including the existing shed, Exhibit F – property’s land use history, Exhibit G – neighboring properties with similar sheds located in the side yard setbacks; that the property is located in Swann Keys and is subject to the small lot ordinance; that, on April 19, 2021, the Applicants appeared before the Board requesting a variance of 5 ft. from the required 5 ft. side yard setback to replace an existing 8 ft. x 12 ft. shed and to construct a 10 ft. x 24 ft. shed on the property line; that the prior application was unanimously denied; that the Applicants now come before the Board with two requests as part of filing the new variance application for relief; that, as previously stated by Mr. Sharp, the Applicants are before the Board with two requests; that the first request requires the Board to determine if there has been a substantial change in the circumstances or conditions in the property or the proposed use or plan for use; that, second, if the Board determines that there has been a substantial change then the Applicants request that the Board consider a 3.5 ft. variance request from the 5 ft. side yard setback requirement for a proposed 10 ft. x 20 ft. shed to be located 1.5 ft. from the property line; that the Board of Adjustment is a quasi-judicial body; that, in the court of law, there is a principle called *res judicata* which means a matter that has been adjudicated and decided then you cannot sue again to get a different result; that the same principle applies to Board of Adjustment decisions; that, in 1987, a case was appealed from a 1984 decision of the Sussex County Board of Adjustment denying petitioner Hattie Kollock a second application for a special use exception to place a manufactured home in a residential area of Sussex County zoned Agricultural Residential; that this case is illustrative for the issue at hand that the Board must decide tonight; that, in that case, the Superior Court decided that the Board of Adjustment erred in failing to consider the substantiality of change in the proposed use and the Board’s decision was reversed and remanded for further consideration; that, in Kollock, the Judge

ruled that the finality of decisions in zoning cases are no different from such rules in other areas of law; that Judge Chandler held that “while a Board cannot change its decision once made, it can consider a new application for similar relief if there has been a substantial change in the circumstances or the conditions affecting the property or in the proposed use or plans for use”; that, in the Kollock case, the Court found that the Board could grant a second application which had a substantial change from the original application; that it is the Applicants’ position that there is a material change affecting the merits of this Application; that, specifically, the Applicants were originally seeking a 100% variance in the side yard; that the Applicants recognized that the shed could be smaller and placed farther from the property line and the Applicants changed the proposed plan and are now seeking a 3.5 ft. variance to place a smaller 10 ft. x 20 ft. shed; that the Applicants made this change after understanding that the previous request did not meet the minimum criteria; that, for these reasons, the Applicants request that the Board vote to approve the request to consider a new request for similar relief as there have been substantial changes to the proposed use; that some of the uniqueness of the property was not addressed at the prior hearing; that part of the property is located in the lagoon; that the original variance request asked for 100% relief; that, as this is a 5 ft. setback, the change in the request is over 30% which represents a substantial change; that there has been no substantial change in the conditions of the property since the prior application; that a portion of the property is in a lagoon; and that there are 3 other cases which were approved for similar relief.

Mr. Joseph Vai was sworn in to give testimony about the Application. Mr. Vai affirmed the statements made by Ms. Peet as true and correct.

Mr. Williamson asked if there was anyone present in the room or by teleconference that wished to comment on the issue of whether the request is substantially different from the previous application.

The Board found that no one appeared in person or by teleconference who wished to comment on this issue.

Mr. Warfel moved to hear the Application as a substantial change in circumstances and conditions has been shown by the Applicants. Mr. Warfel noted that the variance is 30% less than previously requested and the shed is smaller.

Motion by Mr. Warfel, seconded by Mr. Chorman, carried that the **case be heard**.

The vote by roll call; Mr. Williamson – nay, Dr. Carson – nay, Mr. Hastings – yea, Mr. Warfel – yea, and Mr. Chorman - yea. Motion carried 3 – 2.

Ms. Peet stated that the Applicants are requesting a variance from the side yard setback for a proposed shed at their retirement home which they have owned since 2000; that they are getting ready to relocate to this property and need additional storage; that the request is to remove an 8 ft.

x 12 ft. shed and replace it with a 10 ft. x 20 ft. shed which will include the removal of a second 6 ft. x 8 ft. shed located in the rear of the property; that the lot shape and buildable lot area are unique in that the lot is narrow at 50 ft. wide; that the lot is shallow even though it extends 100 ft. in length because the rear yard of the property is partially located in the lagoon, creating a unique and limited buildable lot area that restricts the placement of the shed; that approximately 20 ft. of the 100 ft. depth of the lot is located in the lagoon; that, because of the narrowness and shallowness of the lot, there is no possibility that the shed can be placed within the setbacks and in strict conformity with the provisions of the Zoning Code; that the shed cannot be placed on the other side of the lot due to the placement of the HVAC system and propane tanks; that, if the shed was placed in strict conformity, it would block access from the driveway to the rear of the property; that the shed cannot be placed in the rear as the Applicants propose to make an addition to the home in the future; that the proposed addition would not allow for additional storage; that the exceptional practical difficulty is a result of the narrowly shaped lot created in the 1960s by the developers of this community and was originally classified as a mobile home park; that the house and existing shed were located on the lot when the Applicants purchased the property; that the proposed shed's location is 1.5 ft. from the property line and will not alter the essential character of the neighborhood or district; that there are similarly situated sheds in the community; that there are three examples of similar sheds which are 1.0 ft., 1.7 ft., and 1.5 ft. from the property lines; that there are two letters of support from neighbors; that HOA approval is not required; that there are no flooding issues on the property; that the variance is the minimum variance needed to place the proposed shed on the property and will allow adequate access to the side yard for maintenance purposes; that there is cantilevered decking and hardscape on the site; that the addition has not yet been built; that she is not sure if the cited cases had room in the rear yard for a shed; that the shed will be placed over stone; that the shed will have vinyl siding; that the Applicants did not explore a smaller shed; and that the shed will be used for storage.

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

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

Mr. Williamson closed the public hearing.

Mr. Hastings moved to deny Case No.12593 for the variance as the Applicants have failed to demonstrate that the property cannot be developed in strict conformity and because the exceptional practical difficulty is being created by the Applicants.

Motion by Mr. Hastings, seconded by Dr. Carson, carried that the **variance for the shed be denied**. Motion carried 3 – 2.

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

Case No. 12594 – Jon Binnix seeks variances from the side yard setback requirement for a proposed structure (Sections 115-42, 115-182, and 115-183 of the Sussex County Zoning Code). The property is located on the north side of Piney Point Road within the Piney Point Subdivision. 911 Address: 38222 Piney Point Road, Ocean View. Zoning District: GR. Tax Parcel: 134-9.00-221.00

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 three mail returns. The Applicant is requesting variances of 2.3 ft., 2.9 ft, and 3.3 ft, from the 5 ft. side yard setback on the east side for the proposed steps and landing.

Mr. Jon Binnix was sworn in to give testimony about his Application. Mr. Binnix submitted an exhibit to Board members for review.

Mr. Binnix testified that he is applying for a variance because he is proposing to place steps off the existing house so that the railing will not block the view of the door; that the property is unique in that the front of the house faces the side road; that the property is very narrow; that the house is under roof and is the same as on the permit; that this request is for an open staircase from the front door; that this will not alter the character of the neighborhood but enhance it; that this is an older neighborhood with no homeowners association; that the house is in a flood zone and the variances will not affect traffic or create any visibility issues; that there is no opposition from neighbors; that this is the minimum only for the steps; that the pilings were set to 11 feet; and that there is 12 ft. from the ground to the door.

Mr. Warfel stated that the Applicant could put the landing off the door and meet building code.

Mr. Binnix testified that his design looks better and is already under construction; that he was in a hurry to build the house; that there is a canal to the rear and the house faces the east; that the property is served by public sewer and the well is on the southeast corner of the lot; that the rail will be 36” composite rail; that the steps will come straight out from the house, down to a landing and then continue towards the south property line; that he wants to have a nice entry way; that his ex-wife owns Lot 13; that the homeowners association owns land to the east and there is a private road there; and that there is not much traffic on the private road.

Ms. Norwood stated that the east side is considered the side yard because the east is a private road akin to a driveway; and that the house can face any direction.

Mr. Binnix testified that the concrete pad to the west is used by his neighbor but encroaches onto his lot; that there will be no steps towards the north as it would block access to the driveway; that he is using the existing driveway and has not explored if he has a legal right to access the property through property owned by Eagle Pond Homeowners Association; that there is an old boat ramp at the end of the easement; that the garage is located in the same spot as it was previously; that he used

the private road for access to the prior dwelling; that he removed the prior home and garage; that he had a blank slate to work with when designing this home; that the small lot ordinance did help when designing the house; that there is about 6 feet to the paving of the road; that the lot line is angled; and that he does not want to block the view of the front door.

Ms. Norwood noted that the property also benefits from the average front yard setback reduction.

Mr. Binnix testified that the house is set back farther than the average front yard setback; that, if the Application is denied, he will look at other options; and that the railing will block the view.

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

Mr. Williamson closed the public hearing.

Dr. Carson moved to deny Case No. 12594 for the requested variances as the exceptional practical difficulty is being created by the Applicant.

Motion by Dr. Carson, seconded by Mr. Chorman, carried unanimously that the **variances be denied**. Motion carried 5 – 0.

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

Case No. 12595 – Charlene Wildonger seeks a special use exception to operate a daycare center (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located on the northeast side of Dove Road approximately 0.24 mile southeast of Old Furnace Road. 911 Address: 23679 Dove Road, Seaford. Zoning District: AR-1. Tax Parcel: 231-12.00-424.00

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.

Ms. Charlene Wildonger was sworn in to give testimony about her Application.

Ms. Wildonger testified that she is requesting a special use exception to operate a large capacity daycare for 12 children in her home; that the dwelling is 120 ft. from Dove Road; that there is an addition on the rear of the home for the daycare center; that there is a fenced play area for the children; that the hours of operation will be from 7:00 am – 5:00 pm Monday through Friday; that she has 13 grandchildren; that the daycare is not currently in operation; that Fire Marshal approval has been received for the daycare; that there is an above-ground swimming pool on the property that is locked; that the daycare children will not use the pool; that the pool is 5 feet tall; that the rear yard is surrounded by woods; that there is adequate parking on the property for drop-off and pick-up; that

there will be one employee who is a licensed certified teacher; and that the use will not substantially adversely affect the uses of neighboring and adjacent properties.

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

Mr. Williamson closed the public hearing.

Mr. Hastings moved to approve Case No. 12595, pending final written decision, for the requested special use exception for a daycare business because the use will not substantially affect adversely the uses of neighboring and adjacent properties.

Motion by Mr. Hastings, seconded by Mr. Warfel, carried unanimously that the **special use exception be granted for the reasons stated**. Motion carried 5 – 0.

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

Case No. 12596 – Steve Oliver seeks a variance from the rear yard setback requirement for a proposed structure (Sections 115-34 and 115-183 of the Sussex County Zoning Code). The property is located on the northwest side of Brinleigh’s Way within the Admiral Chase Subdivision. 911 Address: 17263 Brinleigh’s Way, Lewes. Zoning District: MR. Tax Parcel: 335-8.00-1178.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of and two letters in opposition to the Application and one mail return. The Applicant is requesting a 2.5 ft. variance from the required 10 ft. rear yard setback for a proposed screened porch on an existing concrete patio.

Mr. Steve Oliver was sworn in to give testimony about his Application.

Mr. Oliver testified that the property is unique as the building setback line goes through the concrete pad at the rear of the house; that the property is on a cul-de-sac with a curved frontage; that the concrete pad is approximately 20 ft. x 8 ft. in area; that the screened porch cannot be placed on the side of the house because that is where the HVAC is located; that steps are not required for the screened porch; that his family wants to screen in the porch due to the excessive amount of bugs in the rear yard; that the Applicant was unaware that he would not be able to screen in the patio; that he assumed all lots could have porch; that he had a contract for this lot and was unable to purchase a different lot; that the Evergreene was the builder and the lots were promoted as having the option to have a screened in porch; that he learned at closing that he would not be able to construct a porch without a variance; that the curve on the cul-de-sac makes the building set back line also curve in the front and therefore move the house farther back on the lot; that there are similar screened porches in the area; that there is a stormwater ditch nearby; that there are many insects in the rear yard; that it

was approved by the Admirals Chase Homeowners Association; that he has support from his neighbors; that he has spoken to his nearest neighbor in the Showfield subdivision who visited his lot and has given his support; that the porch will match the other porches in the development; that there are two 20 ft. buffers for a total of 40 ft. of wooded land between the Admirals Chase subdivision and the Showfield subdivision; that the HVAC will be located to the side of the porch; that there will be no steps from the porch; that the door from the dwelling is centered on the porch; that the door from the porch will go towards the north side; that this is the minimum variance to screen in the existing concrete patio; and that there is no flooding on the property.

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

Mr. Newton testified that he is the nearest property owner to the Applicant with only a 20 ft. buffer between their properties; that the Applicant should have known about the building setback line cutting across one corner of his property; that a porch can be built on the patio just not as big a porch as the Applicant would like; that the patio on this property is already smaller than the neighbor's patio; that the patios are not all uniform; and that this was foreseeable.

Mr. Oliver testified that there is a hedgerow between his property and Mr. Newton's property; that he spoke with the owner of Lot 1067 and that owner did not oppose the request; and that he was unaware of the opposition from Showfield until recently.

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

Mr. Williamson closed the public hearing.

Mr. Hastings moved to approve Case No. 12596, pending final written decision, for the requested variance for the following reasons:

1. The property has unique physical conditions because it is placed on a cul-de-sac;
2. The exceptional practical difficulty has not been created by the Applicant; and
3. The variance represents the minimum variance necessary to afford relief and represents the least modification of the regulations at issue.

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

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

Case No. 12597 – Walter M. & Carol A. Rykiel seeks a variance from the front yard setback requirement for a proposed structure (Sections 115-34 and 115-182 of the Sussex County Zoning

Code). The property is located on the east side of Bay Run within the Keenwick Sound Subdivision. 911 Address: 37034 Bay Run, Selbyville. Zoning District: MR. Tax Parcel: 533-19.00-345.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received two letters in support of and none in opposition to the Application and one mail return. The Applicant is requesting a 10.8 ft. variance from the 30 ft. front yard setback requirement for a proposed garage addition.

Mr. Walter M. Rykiel was sworn in to give testimony about his Application.

Mr. Rykiel testified that this property is in a quiet, residential development of 240 homes; that the requested variance will not alter the essential character of the neighborhood; that where the proposed addition is to be placed is close to the cul-de-sac which has little traffic; that the variance will have no meaningful impact on the neighborhood; that the adjacent neighbors have given their support; that, if this variance is approved by the County, the Applicants will also need approval from the homeowners association but he doubts it will be a problem; that the home is not parallel to the road; that the variance is needed to make the garage usable; that the existing garage is unusable but with the extension, both cars will fit in the garage; that the addition will be constructed to match the existing house and garage and the garage will have the same roofline; that the existing garage is 143” on the south side and 171” on the north side; that the proposed addition would be approximately 47’ to the edge of paving on Bay Run; that there is no flooding on the property; that he did not build the dwelling but purchased the property with the dwelling existing; and that there is a bedroom to the side of the garage so the garage extension cannot be placed there.

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

Mr. Williamson closed the public hearing.

Mr. Chorman moved to approve Case No. 12597, pending final written decision, for the requested variance for the following reasons:

1. The property has unique physical conditions because the property sits on an angled road and the property line is angled to the house;
2. The exceptional practical difficulty was not created by the Applicants;
3. The variance will not alter the essential character of the neighborhood; and
4. The variance represents the minimum variance necessary to afford relief and the least modification of the regulation at issue.

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

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

Mr. Hastings recused himself from the next hearing and left chambers.

Case No. 12598 – Douglas & Kathleen Tucker seeks variances from the rear yard and side yard setback requirements for an existing structure (Sections 115-25, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located on the north side of Bethel Road approximately 377 ft west of Oneals Road. 911 Address: 8185 Bethel Road, Seaford. Zoning District: AR-1. Tax Parcel: 132-11.00-56.00.

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received one letter in support of and none in opposition to the Application and zero mail returns. The Applicants are requesting the following variances:

1. 0.7 ft. from the required 20-ft. rear yard setback for an existing pole building.
2. 1.7 ft. from the required 15-ft. side yard setback on the east side for an existing pole building.
3. 1.3 ft. from the required 15-ft. side yard setback on the east side for an existing pole building.

Mr. Douglas Tucker was sworn in to give testimony about his Application.

Mr. Tucker testified that he had a pole building constructed on his property; that he measured for the placement of the pole building but, due to the angle of the property line, he made an error regarding the placement; that there is a hedgerow between the subject property and the adjacent property and the Applicant thought that was the property line; that the hedgerow is on the adjacent neighbor's property a foot or two from the property line; that the property to the rear is an empty field; that he discussed with his neighbor where the property line was located but, after the survey was completed, he realized that they were both wrong; that the pole building could not be placed elsewhere on the property as he was trying to keep it away from the drain field; that the property is served by well and septic; that the building could not be moved as it is on a cement slab; that a building permit was obtained by the Applicant; that the building was built by Amish Tradesmen; that he had a survey completed and discovered that he was within the setbacks; that the adjacent neighbors are in support of the Application; that the variances requested are the minimum variances to allow the pole building to remain in its current location; that there is no driveway to the pole building; and that the property is also improved by a house and pool.

Ms. Norwood noted that, if the pole building was set 14 feet from the side property line, the Applicants could have applied for an administrative variance.

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

Mr. Williamson closed the public hearing.

Mr. Warfel moved to approve Case No. 12598, pending final written decision, for the requested variances for the following reasons:

1. The property has unique physical conditions because the property has an unusual shape;
2. That, due to the physical conditions, the property cannot be developed in strict conformity with the zoning code;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances represent the minimum variances necessary to afford relief.

Motion by Mr. Warfel, seconded by Mr. Chorman, carried unanimously that the **variances be approved for the reasons stated**. Motion carried 4 – 0.

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

Mr. Hastings returned to Chambers.

Case No. 12599 – Matthew & Jacquelyn Rhinehart seek variances from the front yard, corner front yard, side yard, and rear yard setback requirements for proposed and existing structures (Sections 115-82, 115-182, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located on the northeast side of Hebron Road at the intersection of Hebron Road and Harmon Street. 911 Addresses: 19875 Hebron Road, Rehoboth Beach. Zoning District: C-1. Tax Parcel: 334-13.19-77.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of and two letters and a 38-signature petition in opposition to the Application and zero mail returns. The Applicants are requesting the following variances:

1. 1.9 ft. from the 5 ft. required side yard setback for existing dwelling.
2. 5 ft. from the 5 ft. required side yard setback for existing boardwalk & proposed outside shower.
3. 4.6 ft. from the 5 ft. required side yard setback for existing 2nd story deck and steps.
4. 4.1 ft. from the 5 ft. required rear yard setback for existing 2nd story deck and steps.
5. 3.8 ft. from the 5 ft. required rear yard setback for existing 2nd story deck.
6. 0.7 ft. from the 15 ft. required corner front yard setback for the existing dwelling.
7. 9.2 ft. from the 15 ft. required corner front yard setback for the existing second story deck.

8. 9.1 ft. from the 15 ft. required corner front yard setback for the existing second story deck.
9. 11.1 ft. from the 15 ft. required corner front yard setback for existing dwelling and proposed 2nd floor addition.
10. 7.1 ft. from the 15 f.t required corner front yard setback for existing boardwalk/front porch.
11. 21.4 ft. from the 40 ft. required front yard setback for existing and proposed structures.

Ms. Norwood noted that the existing non-conforming dwelling with a front porch / boardwalk is 18.6-ft from the property line.

Mr. Sharp stated that there was a prior decision from several years ago in addition to a Superior Court decision for this property; that the Applicant, in that case, was the prior owner of the property; that the previous owner sought four variances – 9.2 ft., 9.6 ft., 9.1 ft., and 22 ft. for existing structures and the requests were denied by the Board of Adjustment; that the Board used the unnecessary hardship standard which is found in the State Code and County Code; that, when it was appealed to the Superior Court, the Court found that the Board used the wrong standard and reversed the Board’s decision; that Court’s decision did not result in the issuance of a variance but allowed the Applicant to reapply for the variances which did not happen; and that the current situation is that there is a property with some structures on it and some additional structures being proposed.

Mr. Freddy Bada, Mr. Matthew Rhinehart, and Ms. Aleksandra Jankovska Fallang were sworn in to give testimony about the Application.

Mr. Bada testified that Mr. Rhinehart was not the person who applied for the original variances; that the Applicant recently purchased the property; that the property was developed in the 1940s prior to the current zoning regulations; that the existing home has been on the property since 1949; that, as a result of the current setback regulations, the house now sits entirely over the setbacks; that this property is also subject to a corner-front setback requirement; that no further work can be performed to the house since the entire house lays over the setbacks; that the exceptional practical difficulty was not created by the Applicant but by the previous owner; that the Applicant is trying to make improvements to the house for his family and will not add to the existing footprint; that this will not alter the character of Hebron Road as it is a mixed use area with both commercial and residential; that granting these variances will allow the Applicant to make improvements to the property and improve the area; that the Applicant had included an outdoor shower on the existing deck / boardwalk but is willing to remove that from the current request; that this is a minimum request as the Applicant is not adding to the footprint of the existing house and he will be removing the gazebo from the property; that the house was built in 1949 and the additions were completed prior to the adoption of the Sussex County Zoning Code; that the decking around the existing building is to remain but it is

not shown on the A1 site plan; that the survey dated January 26, 2021, shows the existing improvements that will remain; that the focus of the Application is on building the second story to allow the house to be more functional; that the house is currently a Cape Cod style home; that the proposed house will have 2 stories; that the steps will not project farther; that there will not be an outdoor shower; that he estimates that 90% of the property is covered with structures; that the pole barn in the rear is used for storage; and that the house has an attic that is finished but is not habitable since the ceiling is less than 7 feet tall.

Mr. Rhinehart testified that the property had not been maintained by the prior owner; that he is aware of the issues with the property created by the previous owner and that his goal is to improve the property; that the decks around the existing house are ground level but the decks around the pole barn are elevated; that there is approximately 36" between the edge of paving of the street and the property line; that there is not much traffic in the area; and that he intends to use the property for a single-family dwelling.

Mr. Sharp stated that based on the drawing submitted by the Applicant is very difficult to understand what is existing, what is being proposed, and what variances are needed.

Ms. Brenda Milburn, who is the Executive Director of West Side New Beginnings, was sworn in to give testimony in opposition to the Application.

Ms. Milburn testified that Harmon Street is a busy street with many large delivery trucks going to nearby businesses; that the bikes exiting from the bike trail turn down Harmon Street to avoid the busier Hebron Road; that the community opposes the request; that she has concerns about parking; that there is not enough room for trucks to turn on the street; and that trucks have hit bushes when attempting to turn.

Ms. Tara May was sworn in to give testimony by teleconference in opposition to the Application.

Ms. May testified that there were two previous requests for variances in the West Rehoboth area and both were denied; that the new owner of the property created this hardship by knowing that the previous variances were not approved; that this will set a precedent for the area; that there is an efficiency apartment in the pole building; that there are parking issues for the lot; that bikers are in the community due to the proximity to the bike trail; that parking in front of the house poses issues; and that the elevated decks are not permitted.

Mr. Robert Paul was sworn in to give testimony by teleconference in support of the Application.

Mr. Paul testified that the Applicant is not asking to increase the footprint of the existing building; that the proposed addition will be an asset to the neighborhood; that there is parking for at

least four vehicles; that large trucks do not use Harmon Street; and that there is a 3 story warehouse nearby that is an eyesore.

Mr. Rhinehart testified that there are parking issues; that the shallow well and gazebo will be removed to create additional parking on the lot; that the site uses public water and sewer; that 2-3 cars can be parked in the front yard; that the owner of the lot to the south has agreed to allow him to stage construction materials on their property during the renovations; that the encroachments will not disrupt traffic; that there is not an efficiency unit in the barn; that the upper level of the barn was studded out but was not finished and will not be used as residential space; that the wiring in the pole building was done incorrectly and has to be pulled out; that he believes the prior owner did a poor job of building the pole building; that he agrees the Board should have denied the prior application; and that the decks on the pole barn may not be necessary but it would be a huge financial burden to have them removed.

Mr. Bada testified that the existing footprint will not be expanded; that more than 50% of the house is in the setback area; that the steps are close to the property line and are the only steps to the second floor; that he estimates it will cost \$6,000-10,000 to move the steps; that the Applicant will be reducing the footprint; that it is an existing residence for over 70 years; that the Applicant has no control over trucks or bicycle traffic in the area; and that the Applicant is trying to make the dwelling more functional.

The Board found that one person appeared in support of and two people appeared in opposition to the Application.

Mr. Warfel moved to leave the record open for Case No. 12599 until the Board of Adjustment meeting on September 20, 2021, for the limited purpose of allowing the Applicant to submit a detailed drawing showing the location of the proposed dwelling and related structures by August 31, 2021, and to allow public comments specific to the drawing.

Motion by Mr. Warfel, seconded by Mr. Hastings, carried to leave the record open until September 20, 2021, for the limited purposes and for the reasons stated. Motion carried 5 – 0.

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

Case No. 12600 – Saul Holdings Limited Partnership seeks a special use exception for an outdoor display or promotional activities (Sections 115-80 and 115-210 of the Sussex County Zoning Code). The property is located on the northwest corner of West Way Drive and Coastal Highway (Rt. 1). 911 Address: 33546 Market Place, Bethany Beach. Zoning District: C-1. Tax Map: 134-17.00-52.08

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received one letter in support of and none in opposition to the Application and zero mail returns. The Applicant

is requesting to renew an existing special use exception for an outdoor display or promotional activities for a period of five years. Ms. Norwood noted that this property has received previous approvals in 2011 and 2016.

Mr. Henry Bennett was sworn in to give testimony about his Application.

Mr. Bennett testified that he is with Bennett Orchards a sixth-generation farmer from Frankford, Delaware; that he is the market manager for the Farmer's Market at Sea Colony; that the market takes place every Wednesday from 8:00 am – 12:00 noon at this property between June to the Wednesday before Labor Day; that the market has been in operation for ten years; that it is a producer's only farmer's market; that there is no music or disturbance to neighbors; that everything is removed after the market closes; that they have the support of the owner of the shopping center and the owner has submitted a letter of support for the Application; that the farmers rely on this revenue from this market to continue farming which also aligns with the Sussex County Comprehensive Plan as a way to preserve, promote and strengthen agricultural presence in the County; that only a small area of the parking lot is used by the farmer's market; and that the request is to continue this use for another five years.

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

Mr. Williamson closed the public hearing.

Mr. Hastings moved to approve Case No. 12600, pending a final written decision, for the requested special use exception for a Farmer's Market for five years every Wednesday from June through the Wednesday before Labor Day because the use will not substantially affect adversely the uses of neighboring and adjacent properties.

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

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

ADDITIONAL BUSINESS

There was no additional business.

Meeting adjourned at 9:02 p.m.