

MINUTES OF AUGUST 2, 2021

The regular meeting of the Sussex County Board of Adjustment was held on Monday, August 2, 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, Ms. Ashley Paugh – Clerk II, and Ms. Ann Lepore – Recording Secretary.

The Pledge of Allegiance was led by Mr. Williamson.

Motion by Mr. Warfel, seconded by Mr. Chorman and carried unanimously to approve the agenda as presented. Motion carried 5 – 0.

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

Motion by Mr. Warfel, seconded by Mr. Chorman and carried unanimously to approve the Minutes for the May 17, 2021, meeting. Motion carried 5 – 0.

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

Motion by Mr. Chorman, seconded by Mr. Warfel and carried to approve the Findings of Facts for the May 17, 2021, meeting. Motion carried 5 – 0.

The vote by roll call; Mr. Warfel – yea, Mr. Williamson – yea, Dr. Carson – yea, Mr. Hastings – 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. 12585 – Darrell & Naomi Spurlock seek a variance from the side yard setback requirement for an existing structure (Sections 115-42, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located on the northeast side of Blue Teal Road within the Swann Keys Subdivision. 911 Address: 37018 Blue Teal Road, Selbyville. Zoning District: GR. Tax Parcel: 533-12.16-497.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received two letters in support of and one in opposition to the Application and zero mail returns. The

Applicants are requesting a 5-ft. variance from the 5-ft. side yard setback requirement on the south side for an existing structure.

Mr. Darrell Spurlock and Ms. Naomi Spurlock were sworn in to give testimony about their Application.

Ms. Spurlock testified that the property is located in Swann Keys; that the request for a variance is for a structure to act as protection from weather elements when grilling and as a barrier from smoke from the adjacent property; that neighbors smoke on their deck and the smoke blows into the Applicants' yard; that her husband has asthma and cannot be in smoky environments; that Norman Hood, who is a contractor, constructed the lean to; that there is no run off to adjacent properties as there is a rain gutter which comes back onto the Applicants' property; that this lean-to does not block neighboring views of the lagoon; that the contractor did not get a permit but a permit has been applied for; that the property is narrow with the house sitting only 5.9 feet from the property line; that the area is a passage way next to the house so the structure could not be placed elsewhere; that neighbors have submitted letters supporting the request; that they were unable to use the rear porch because of the neighbors' smoke until the lean-to was constructed; that the structure is not visible from the roadway; that it is the minimum variance to allow the structure to remain in its current location; that Mr. Hood had constructed other improvements in the neighborhood and they assumed he obtained the permit; that there is no overhang onto neighboring lands; that the overhang and gutter are on the Applicants' property; that HOA approval is not required; that the lean-to works well and the smoke has not been an issue; that the concrete pad was preexisting; that a fence would not be a sufficient barrier from smoke as the neighbor's deck is elevated; that the lean-to was constructed in April or May 2021; that this is their permanent residence; that they have not discussed the smoke problem with their neighbors; that they did not look at a fence; that the lean-to is also used as protection from weather conditions; that the adjacent neighbor has a 6 ft. tall fence on the property line; that they obtained a variance in 2006; that they can clean the gutters and maintain the structure while staying on their property; and that the neighbors' deck is raised 3-4 feet and the neighbors congregate there.

Mr. Spurlock testified that maintenance can be completed without encroaching on the adjacent property; and that it is a semipermanent structure held with four bolts on the existing concrete slab.

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

Mr. Williamson closed the public hearing.

Mr. Warfel moved to approve Case No. 12585, pending final written decision, for the requested variances for the following reasons:

1. The property has unique physical conditions due to it being narrow and close to a raised deck on the adjacent property;

2. Due to the physical conditions, the property cannot be developed in strict conformity with the Sussex County Zoning Code;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance represents the minimum variance necessary to afford relief.

Motion by Mr. Warfel, seconded by Mr. Hastings, carried that the **variance be granted for the reasons stated**. Motion carried 3 – 2.

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

Mr. Chorman noted that he believed the exceptional practical difficulty was created by the Applicants.

Case No. 12586 – Timothy Goucher & Mary Alice McNamara seek variances 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 Belle Road within the Bayview Park Subdivision. 911 Address: N/A. Zoning District: MR. Tax Parcel: 134-20.11-65.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and one mail return. The Applicants are requesting a 9.3 ft. and a 10 ft. variance from the 30 ft. front yard setback requirement for a proposed structure. Ms. Norwood noted that there is an average front yard setback determination of 25.29 ft.

Mr. Timothy Goucher was sworn in to give testimony about his Application and he submitted exhibits to the Board.

Mr. Goucher testified that his family have been residents of Bay View Park for over 12 years; that he recently sold his cottage and bought this waterfront property; that they propose to construct a house on the lot that will have a 20 foot front yard setback and a 10 foot rear yard setback; that they wanted to move the house more to the front of the property so that adjacent property owner's water view would not be blocked by the proposed dwelling; that he contacted his neighbors to the south and they support the Application; that there is an average front yard setback of approximately 25 feet; that the lot consists of only 5,191 square feet and is shaped like a parallelogram; that a reduced front yard setback would allow for a larger rear yard; that there are existing houses in the area that appear to be built with a 10 ft. rear yard and the front yard variance would allow for the Applicants to maintain a 10 ft. rear yard also; that building to a rear yard setback of 5 feet would adversely impact the water views of neighbors; that the essential character of the neighborhood will not be altered by the variance as there are two residences to the south of the property with similar setbacks and Belle Road is a dead end street; that the variance would bring the front yard setback to 20 feet which is a greater front yard

setback than two of the residences to the south which have front yard setbacks of 19.4 ft. and 17.7 ft.; that the property is served by public sewer and well water; that the well has not yet been drilled; that the house will consist of 3,500 square feet as shown on the drawing but the footprint of the house may be smaller than what is shown on the plans; that it is likely the house will be smaller and narrower than what is shown on the plans; that the property line does not extend into the lagoon; that there will be no steps on the front of the dwelling that will extend farther into setbacks; that the house will be on pilings; that the HVAC will be within the building footprint and may be under the raised deck; that there was no flooding on this property during Hurricane Sandy; that there will be no visibility issues on Belle Road if this variance is granted; that there is no gap between the edge of paving on Belle Road and the property line; that there will be no visibility issues along Belle Road; that, if the request was denied, he would build to the rear yard setback line and block the neighbor's view and he does not want to do that.

Mr. Patrick O'Sullivan was sworn in to give testimony in opposition to the Application and he submitted exhibits to the Board to review.

Mr. O'Sullivan testified that he believes the plan is ambiguous because he does not know the Applicants' plans; that the Applicants did not contact him; that he is opposed to the Application as the setback requirement is 30 ft. and the Applicants are giving themselves a self-granted 25 ft. setback; that the average front yard setback survey is incorrect as two of the properties shown on the survey are not on Belle Road; that the Application has inaccuracies including measurements of the neighboring properties; that the extra 10 ft. would block the view from his home to the south down the bay to the Ocean City skyline; that he finds the additional 5 feet in the front yard to be unacceptable; that other houses in the neighborhood are smaller; that the variances would adversely affect his property values and the enjoyment of his property; that other houses were built prior to the enactment of the Sussex County Zoning Code; that newer houses are built to the 30 foot front yard setback requirement; that he believes the Applicants are using more than allowed; that the houses to the south are not affected by the variance request but the houses to the north are affected; that the lot has not been developed since the 1950s; that the street flooded during Hurricane Sandy; and that the proposed house is large.

Mr. Sharp explained how the average front yard setback is calculated.

Mr. Groucher testified that he is meeting with his architect and should have the final plans for the dwelling within a few weeks.

Mr. Sharp noted that there is some question as to where Lot 23B is on Belle Road or another road and that could affect the average front yard setback calculation.

Mr. Groucher testified that the house will measure 38 feet tall and have 2 garages with 2 stories above the garage.

Mr. O’Sullivan testified that Lots 23A and 23B are located on another road and not Belle Road.

Ms. Norwood stated that the survey referred to a plot book and that the lots on the survey are for this side of the street; that she may need to research Lots 23A and 23B; and that the survey shows Lots 23A and 23B as part of Belle Road but it may be called a different road now.

Mr. Sharp suggested that staff look to see if Lots 23A and 23B are on the same side of the road.

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

Mr. Warfel moved to leave the record open for Case No. 12586 until the Board of Adjustment meeting on September 13, 2021, for the limited purpose of allowing the Applicant to submit an updated drawing showing the location of the proposed dwelling and related structures by August 31, 2021, and to allow public comments specific to the drawing at the Board’s hearing on September 13, 2021.

Motion by Mr. Warfel, seconded by Mr. Chorman, carried to leave the record open for the stated limited purpose and to hold a second hearing on September 13, 2021, for the reasons stated. Motion carried 4 – 1.

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

Mr. Hastings stated that the updated drawing would not affect his decision on the Application.

Case No. 12587 – Rollin & Lisa Bell seek variances from the corner 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 corner of Beach Ave. and Pierce Ave. approximately 818 ft. east of Coastal Hwy. (Rt. 1). 911 Address: 2 Beach Ave., Rehoboth Beach. Zoning District: MR. Tax Parcel: 334-23.06-93.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received three letters in support of and none in opposition to the Application and one mail return. The Applicants are requesting variances of 10 ft. from the required 15 ft. corner front yard setback for proposed cantilevered balconies.

The Board found that Ms. Mackenzie Peet, Esq. was present on behalf of the Applicants, Rollin and Lisa Bell.

Ms. Peet stated that there is a modification to the Application; that the Applicants are requesting a 10 ft. variance for the balcony on the 2nd floor and 5 ft. variances for the balconies on the 3rd and 4th floor to be located on the north side of the dwelling at 2 Beach Avenue; that the front of the property is considered to be the Atlantic Ocean and that there is a corner front setback of 15 ft. which is creating this request for a variance; that the Bells were previously before this Board for a variance from Pierce Avenue for an elevator to accommodate elderly grandparents and a variance to bring the existing dwelling into compliance with County Code; that the variances were granted in March 2020; that, in addition to getting BOA approval, the Applicants also had to go through the DNREC 4-step process of approval; that the 4-step process involves the Regulations Governing Beach Protection and the Use of Beaches and was approved; that the DNREC approval is valid for one year and that approval lapsed during the Covid-19 pandemic; that the Applicants decided that it would be more economical for them to build a new home than to renovate the existing home and they had to go through the DNREC 4-step process again; that the Applicants have received DNREC approval for the plans for a new home; that the house cannot be placed closer to the east due to DNREC requirements; that the lot is unique because it is a corner lot restricting the buildable lot area; that the DNREC building restriction line restricts the placement of the proposed cantilevered balconies on this property; that the angle of the DNREC restriction line from the southeast to northwest further restricts the property in comparison to the immediate neighbor to the south, which is the property that sets the parameters for DNREC's 4-step process; that, because the DNREC building restriction line goes from southeast to northwest, it creates a restricted and reduced buildable lot area compared to the adjacent property which the Bells must conform to; that, given the DNREC building restriction limitations and regulations governing Beach Protection and Use in effect since August 11, 2016, all structures, including the cantilevered balconies, must be constructed seaward of the DNREC building restriction line and be above Base Flood Elevation; that, given these regulations, there is no possibility that the property can be developed in strict conformity with the provisions of the Sussex County Zoning Code; that the exceptional practical difficulty was not created by the Applicants but by the location of the existing home in the setback and the requirement that the cantilevered balconies be constructed seaward of the DNREC building restriction line; that the proposed cantilevered balconies will not alter the essential character of the neighborhood as the Applicants' existing dwelling and proposed improvements are in character with the neighborhood; that there is a neighbor to the north with similar balconies to the proposed balconies; that the Applicants have included letters of support from neighbors with their Application; that the plan was modified after the Applicants spoke with their neighbors; that visibility will not be an issue as cantilevered balconies are designed for maximum visibility; that Beach Avenue is mainly used for pedestrian traffic as access to the beach and is not used in the regular sense of a corner lot which is usually on the corner of two busy roads; that the variance is the minimum variance needed to construct the proposed balconies on the north side of the property; that the footprint of the proposed dwelling is smaller than the existing dwelling; and that the proposed dwelling will meet all setbacks except for the elevator which has approval from BOA Case No. 12425.

Mr. Rollin Bell was sworn in to give testimony about his Application.

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

Mr. Bell testified that Beach Avenue is an actual road but turns into sandy beach access approximately 20 ft. from his dwelling.

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. 12587, pending final written decision, for the requested variances for the following reasons:

1. The variances will not alter the essential character of the neighborhood; and
2. The variances represent the minimum variances necessary to afford relief and represent the least modifications of the regulations at issue.

Motion by Mr. Hastings, seconded by Dr. Carson, carried unanimously that the **variances 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. 12588 – Nasir Mahmood (Aslender Garcia) seeks a special use exception to place a manufactured home (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located on the south side of Asketum Branch Road approximately 0.40 miles west of Shortly Road. 911 Address: 20050 Asketum Branch Road, Georgetown. Zoning District: AR-1. Tax Parcel: 133-9.00-38.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. The Applicant is requesting a special use exception to place a second manufactured home on a farm of less than 50 acres.

Mr. Nasir Mahmood was sworn in to give testimony about his Application.

Mr. Nasir Mahmood testified that the property is used for agricultural purposes; that a second manufactured home is necessary for housing farmworkers; that there are four poultry houses on the property and there are other agricultural uses in the area; that looking after chicken houses is a 24-hour job and that, by having two manufactured homes, the work can be split in half; that the manufactured home is more than 300 ft. away from adjacent property and will not affect the use of neighboring properties; that the septic system is approved for three bedrooms; that the existing

manufactured home has 2 bedrooms and the proposed manufactured home will have one bedroom; that there is a well on the property; that the manufactured homes are single-wide homes; that, though both manufactured homes are the same size, there is a different layout in each home; that he has not communicated with his neighbors; that the second manufactured home is a used dwelling and is on the property but has not yet been hooked up to utilities; that there is no one living on the property at this time; and that the special use exception will not affect traffic in the area.

Ms. Norwood confirmed that there is a septic permit for 3 bedrooms.

Dr. Carson noted that the survey shows that the existing manufactured home has two bedrooms.

Mr. Mahmood testified that the manufactured home is lightly used.

Mr. Sharp stated that the property is approximately 44 acres and, that if a property has less than 50 acres, the property owner needs seek a special use exception to place a second manufactured home on the property; that the standard for this type of special use exception is higher than the regular standard because the standard for a normal special use exception is that the use cannot substantially adversely affect the uses of neighboring and adjacent properties; that the standard for placing more than one manufactured home on a farm of 10 acres or more is that “the granting of this exception will not adversely affect the values or uses of adjacent properties”.

Ms. Norwood noted that, if approved by the Board, the Applicant will have to get agency approvals as well.

Mr. Ruffus Guffey was sworn in to give testimony in opposition to the Application.

Mr. Guffey testified that he owns three properties on Asketum Branch Road including property to the east and across the road; that his family has been farming for 300 years in the State of Delaware; that the subject property is very poorly maintained; that the manufactured homes are existing on the property; that the manufactured homes are at least 20 years old and are very dilapidated; that he has no problems with the agricultural use but the homes are in poor shape; that the Applicant’s property devalues his properties; that the manufactured home was placed 2 years ago and has not moved; that there are weeds up to the windows of the poultry house; that he wants to see the property better maintained; that the manufactured homes are eyesores; and that the homes affect the values of his properties.

Mr. Mahmood testified that he wants the second manufactured home so that the workers can live at and clean up the property; that he plans to set the manufactured home when approved; that there are 2 homes on the lot; that one home will remain in its current location and the other will be moved; that the other home is not yet hooked up to the septic system; that the homes will be skirted; that he cannot afford a double-wide manufactured home; that no one resides in the manufactured

home now; and that he will require the tenant to cut the grass and maintain the home.

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

Mr. Williamson closed the public hearing.

Mr. Hastings moved to deny Case No. 12588, pending final written decision, for the requested special use exception as the use will substantially adversely affect the uses and values of neighboring and adjacent properties.

Motion by Mr. Hastings, seconded by Mr. Warfel, carried unanimously that the **special use exception be denied 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. 12589 – BAR-SGR, LLC seeks variances from the front yard setback requirement for proposed structures (Sections 115-25, 115-82, 115-182, and 115-185 of the Sussex County Zoning Code). The property is located on the north side of Holly Lake Road at the intersection of Holly Lake Road and John J. Williams Highway (Rt. 24). 911 Address: 32087 Holly Lake Road, Millsboro. Zoning District: AR-1/C-1. Tax Parcel: 234-17.00-20.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. The Applicant is requesting a 14.9 ft. variance from the required 60 ft. front yard setback for a proposed campground store.

The Board found that Ms. Mackenzie Peet, Esq., was present on behalf of the Applicant, BAR-SGR, LLC.

Ms. Peet stated that the property is the location of the Holly Lake Campgrounds at the intersection of John J. Williams Highway and Holly Lake Road; that also present is Tony Senn – Applicant Representative, Matthew Brickley – Clifton L. Bakhsh Land Surveyors, and Kenny Hopkins – Manager of Holly Lake Campgrounds; that the property is unique as it has split zoning, Agricultural Residential (AR-1) and General Commercial (C-1) and is subject to two front yard setbacks; that the requested variance is on the C-1 portion of the property and is subject to a restrictive 60-foot setback on both John J. Williams Highway and Holly Lake Road minimizing the buildable lot area; that the existing storage building on the property was misplaced by the pole building contractor thereby creating a unique condition that limits the buildable area for the Applicant to make normal improvements to the property; that, because of the misplacement of the existing storage building, the property cannot be developed in strict conformity with the Sussex County Zoning Code;

that the variance is necessary for the reasonable use of the property; that a variance is necessary for the Applicant to make normal improvements to the property; that the Applicant is replacing its existing campground store; that the exceptional practical difficulty was created by the pole building contractor as a result of the placement of the existing storage buildings; that granting the variance will not alter the essential character of the neighborhood or the Holly Lake Campsite; that the proposed location of the campground store improves the present conditions on the site because the existing campground store is located 12.5 ft. from the existing right-of-way shown on the site plan and the proposed campground store will be located approximately 45.1 ft. from the existing paving of the adjacent road; that this is the minimum variance that will afford relief and will represent the least modification possible of the regulation at issue; and that there is a dedicated 15 ft. DeIDOT right-of-way on the front of the property.

Mr. Kenny Hopkins was sworn in to give testimony in support of the Application.

Mr. Hopkins testified that the existing pole building was built during the summer of 2020; that Delmarva Pole Building was the contractor; that there are no complaints about the building; that the site is served by septic and well; that the proposed camp store will have a snack bar, registration office, a game room, and convenience store; that the pole building complies with the setback requirements but its placement created a problem when trying to build the new campground store.

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

Mr. Tony Senn was sworn in to give testimony in support of the Application.

Mr. Senn testified that he is the General Manager of BAR-SGR, Inc.; that the misplacement of the pole building caused the issue with setbacks; that the plans for the store were drawn to meet the setbacks; and that the designation of the DeIDOT caused the need for a variance.

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. 12589, pending final written decision, for the requested variances for the following reasons:

1. The exceptional practical difficulty was not created by the Applicant;
2. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property; and
3. The variance represents the minimum variance necessary to afford relief and represents the least modification of the regulation at issue.

Motion by Mr. Chorman, seconded by Dr. Carson, carried unanimously that the **variance 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. 12590 – William E. & Carol Hackett seek variances from the side yard setback requirement for proposed and existing structures (Sections 115-25, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located on the east side of Wilson Avenue within the Cape Windsor Subdivision. 911 Addresses: 38827 Wilson Avenue, Selbyville. Zoning District: AR-1. Tax Parcel: 533-20.18-149.00

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 Applicants are requesting 0.8 ft. variance from the required 5 ft. side yard setback on the north side for proposed steps and 4.5 ft. variance from the required 5 ft. side yard setback on the south side for proposed steps and ramp.

Ms. Carol Hackett, Mr. William Hackett, and Mr. Kevin Garber were sworn in to give testimony about the Application.

Ms. Hackett testified that the request is mainly to build a handicap ramp for her disabled husband who goes to dialysis three times per week; that her husband has trouble with stairs; that verification from a medical doctor verifying the need for a ramp has been included with the Application; and that the dwelling has been completed but the ramp has not been built yet.

Mr. Garber testified that he built an addition to the south side of the existing dwelling; that the ramp was shown on the approved plans; that, when the inspector came to the property, he told them a variance would be necessary; that the ramp will be on the south side of the property; that the request is for a 3.6 ft. variance for the ramp; that the ramp will measure 24 feet long; that the house is 24 feet wide with a 13 feet wide addition; that the HVAC would also have required a variance but was moved to comply; that the ramp cannot be built on the north side of the dwelling as that is a rear entrance and would not be convenient for the owner; that the HOA has approved the request; that there is no flooding on the property; that the lot is only 50 ft. wide; that repairs were made to the existing steps on the north side and those steps are in the same location as they were previously located; that approximately 50% of houses in the neighborhood have steps and/or HVAC systems that encroach into setbacks; and that the existing dwelling is not set square on the property; and that the steps will measure 3.6 feet wide.

Mr. Randy Squatrito was sworn in to give testimony in opposition to the Application.

Mr. Squatrito testified that he is representing his mother who lives to the south of this property;

that his mother has owned the property since the 1960s; that there is a flooding issue that has been made worse by the addition to the subject property; that the plumber indicated that the water was due to runoff from the Applicants' property; and that the runoff has been an ongoing issue.

Mr. Garber testified that there was no change made to grading on the property; that he was at the property today and there was no flooding on the property; and that he will make any improvements necessary to the grading.

Mr. Hackett testified that there was no change made to grading on the property and that they have improved the property.

Ms. Norwood stated that a CO was issued for the decks in 1988 and that she is not sure if the home predates the Sussex County Zoning Code.

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

Mr. Williamson closed the public hearing.

Dr. Carson moved to approve Case No. 12590, pending final written decision, for the requested variances for the following reasons:

1. The property has unique physical conditions;
2. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use of the property; and
3. The variances represent the minimum variances necessary to afford relief.

Motion by Dr. Carson, seconded by Mr. Warfel, carried unanimously that the **variances 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. 12591 – Kenneth & Helen Heydt seek variances from the front yard setback requirement for a proposed structure (Sections 115-42 and 115-182 of the Sussex County Zoning Code). The property is located on the southwest side of Camp Arrowhead Road within the Angola Neck Park Subdivision. 911 Addresses: 22750 Camp Arrowhead Road, Lewes. Zoning District: GR. Tax Parcel: 234-12.18-13.00

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 Applicants are requesting the following variances:

- 8.6 ft. from the 40-ft. front yard setback requirement for proposed steps;
- 4.5 ft. from the 40-ft. front yard setback requirement for a proposed manufactured home;
- 11 ft. from the 40-ft. front yard setback requirement for an existing shed; and
- 5 ft. from the 40-ft. front yard setback requirement for an existing shed.

Ms. Norwood noted that there was a previous manufactured home on this lot; that it received a certificate of compliance in 1995; and that there is no record of a building permit for the shed on the property.

Ms. Helen Heydt, Mr. Kenneth Heydt, and Ms. Shelly Brobst were sworn in to give testimony about the Application.

Ms. Brobst testified that she works with Oakwood Homes; that she sold a home to Mr. & Mrs. Heydt; that the dwelling that was removed from the property measured 28 feet by 60 feet; that the proposed home measures 28 feet by 56 feet; that, due to the small building envelope, there is not enough room for a standard home; that the previous home was non-compliant to the new standard for many years; and that the Applicants were unaware that a variance would be required as the home was smaller than the existing home.

Ms. Heydt testified that the lot is diamond-shaped with a 40 ft. front yard setback from Camp Arrowhead Road which leaves very little space for a multi-section home without a variance; that this issue was not caused by the Applicants but is a result of County regulations regarding setback restrictions from the front, rear, and side yard; that the previous home was non-compliant to the new standard for many years; that, if approved, this dwelling will not alter the essential character of the neighborhood but enhance it; and that the new dwelling is being placed in the same footprint as the prior dwelling; that this is the minimum variance that will allow the multi-section home to be placed on the property; that the home is already purchased and it is smaller than the previous home; that the previous home had to be removed as it was destroyed by renters; that they have owned the property for 5-7 years; that the shed will remain on the property; that there were no complaints about the placement of the shed or the previous home; and that the property is served by public sewer and a well.

Mr. Heydt testified that the shed was on the property at least since 1995 and that the property was previously owned by Ms. Heydt's parents.

Ms. Norwood stated that the prior manufactured home measured 26 feet by 56 feet and was placed on the lot in 1993 and a CO was issued for that home.

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. 12591, pending final written decision, for the requested variances for the shed and house for the following reasons:

1. The property has unique physical conditions due to its unique shape;
2. Due to the physical conditions, the property cannot be developed in strict conformity and the variances are necessary to enable 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; 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 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. 12592 – Shirley H. Rozanski seeks variances from the side yard setback requirement for proposed structures (Sections 115-42, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located on the east side of Laws Point Road within the Swann Keys Subdivision. 911 Addresses: 37020 Laws Point Road, Selbyville Zoning District: GR. Tax Parcel: 533-12.16-284.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received two letters in support of and one letter in opposition to the Application and zero mail returns. The Applicant is requesting 2.9 ft. variances from the 5-ft. side yard setback requirement on the north side for proposed HVAC unit, landing, and steps.

Ms. Diane Barrett and Mr. Paul Barrett were sworn in to give testimony about the Application and submitted exhibits to the Board members.

Ms. Barrett testified that she is representing her mother, Shirley Rozanski who was unable to attend the hearing as she is 88 years old and recently had a fall that led her to the hospital; that the request is to place steps and a heat pump in the setback area for three reasons: 1) safety, 2) practicality, and 3) efficiency; that the property is unique because it is a small 40 foot wide property; that the property cannot otherwise be developed; that, when it was purchased in 2003, there was a single-wide manufactured home on the property; that the new steps and heat pump will be placed in the same location as the previous ones; that the proposed steps and heat pump will have a smaller footprint than the prior ones; that the house was not parallel with the property line; that the old steps came straight out and ended on the adjacent property; that the new steps will be contained within the subject property; that the steps are needed for safety reasons; that the landing will be smaller than the prior landing; that there were two letters of support submitted from neighbors; that one neighbor has since

rescinded her support; that the main purpose of this exit is for emergency and not for daily use; that the heat pump cannot be placed on the opposite side of the house as that placement would create a safety issue for the Applicant; that there is an electrical panel nearby as well; that the heat pump cannot be placed in the rear of the home because of flooding when water comes over the bulkhead; that the property is located in Swann Keys; that, before the Applicant purchased the home, the representatives from the retailer assured the Applicant that the dwelling, steps, and heat pump would fit within setbacks; that the Applicant relied on the expertise of professionals and did not create the exceptional practical difficulty; that the requests will not alter the essential character of the neighborhood but will create a better fit as most homes have the heat pump on this side of the homes; that the variances are the minimum variances so that the steps and heat pump will use as minimum space as required by code; and that the requests are for practical and safety purposes only.

Mr. Barrett testified that he thinks that the sales representative from Midway Mobile Home Sales thought that a variance would not be required because the steps and heat pump are smaller than the former steps and heat pump; that the property floods; and that he thinks the builder made a mistake.

Ms. Judith Humphreys was sworn in to give testimony in opposition to the Application and submitted exhibits to the Board members.

Ms. Humphreys testified that she was unaware of the variance for the HVAC; that the house could have been moved over; that she has some confusion over the HVAC placement; that she does not like what she sees on the subject property; that the Applicant needs the steps; that she built the first second story house in Swann Keys and rents it out; that the variances will affect the value of her property; that she has privacy concerns; that she was unaware the prior steps and HVAC encroached into the setback area; and that she would have preferred the house be centered on the lot.

Mr. Sharp explained that, per the Applicant's survey, the steps will project towards the front of the property and the HVAC will be to the rear of the steps.

Mr. Barrett testified that, if the house was moved over towards the south, then a variance would be necessary for the south side of the property.

Ms. Barrett testified that she would have preferred the house be centered on the lot also.

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

Mr. Williamson closed the public hearing.

Mr. Hastings moved to approve Case No. 12592, pending final written decision, for the requested variances for the following reasons:

1. The property has unique physical conditions;
2. The exceptional practical difficulty was not created by the Applicant; and
3. The variances represent the minimum variances necessary to afford relief and represent the least modifications of the regulation at issue.

Motion by Mr. Hastings, seconded by Dr. Carson, carried unanimously that the **variances 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.

The Board also directed Mr. Sharp to send a letter to Midway Mobile Homes.

ADDITIONAL BUSINESS

Mr. Hastings asked if the Board of Adjustment needed to implement a policy regarding video exhibits. Mr. Sharp stated that Staff is working on some policies on how best to handle video exhibits.

Meeting adjourned at 9:12 p.m.