

MINUTES OF AUGUST 3, 2020

The regular meeting of the Sussex County Board of Adjustment was held on Monday, August 3, 2020, at 6:00 p.m. in the County Council Chamber, Sussex County Administration Office Building, Georgetown, Delaware. Members of the public also attended this meeting by teleconference. 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 Chair Ellen Magee presiding. The Board members present were: Ms. Ellen Magee, Mr. John Williamson and Mr. Brent Workman. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney and staff members Mr. Jamie Whitehouse – Director of Planning and Zoning, Ms. Christin Headley – Planner I, and Ms. Ann Lepore – Recording Secretary.

The Pledge of Allegiance was led by Ms. Magee.

Mr. Whitehouse stated that Staff request to move the Approval of the Minutes and Findings of Fact for June 15, 2020 to the end of the agenda. Motion by Mr. Williamson, seconded by Mr. Workman, and carried unanimously to approve the amended agenda. Motion carried 3 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Williamson – yea, and Ms. Magee – yea.

OLD BUSINESS

There was no old business to be heard.

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

PUBLIC HEARINGS

Case No. 12443 – Bay Shore Community Church seeks a special use exception to operate a day care center and a variance from the maximum fence height requirement (Sections 115-23, 115-182, 115-185 and 115-210 of the Sussex County Zoning Code). The property is located on the west side of London Avenue approximately 167 ft. southwest of Lighthouse Road (Rt. 54). 911 Address: 38288 London Avenue, Unit 6, Selbyville. Zoning District: AR-1. Tax Parcel: 533-18.00-61.02

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received a 65-signature petition in support of and no correspondence in opposition to the Application and one mail return. The Applicant is requesting a special use exception for a daycare center for up to 55 pre-school children.

Mr. Jeremy Ferruccio was sworn in to give testimony about the Application.

Mr. Ferruccio testified that Bayshore Community Church recently began a church campus at

the subject property; that he was unable to have a site plan prepared in time for the hearing; that Bayshore Community Church has operated its day school at the Gumboro location for approximately 16 years; that they wish to serve the community in Selbyville by opening a dayschool at this location to serve up to 55 children; that it will not substantially affect adversely the uses of neighboring properties because there is adequate parking for drop off and pick up; that drop off is generally early mornings and pick up is late afternoons; that there is minimal traffic throughout the day; that there are commercial buildings nearby and to the rear of the site; that there is a construction storage building nearby; that children will be inside the building except during limited outside time; that the outside playground area will be fenced in and away from traffic; that the Applicant requests a variance from the minimum fence height requirement; that he spoke with neighboring businesses which include a bakery and a thrift shop and they do not object to the request; that the traffic on the site seems light; and that childcare licensing review is forthcoming.

Ms. Rachel Hall was sworn in to give testimony about the Application.

Ms. Hall testified that she operates the daycare at the other location which has 100 children; that there was a drop in children due to Covid-19; that the facility will have two preschool rooms and two school age rooms with a ratio of 15:1; that there will be two exit points on the building; that the only entrance onto the playground will be through the building; that this is the first step in the licensing process; that the property is serviced by well and septic; that the hours of operation will be Monday through Friday 6:30 am – 6:00 pm; that there will be 5 – 6 employees; and that the building will be used as a church on Sundays.

Mr. Whitehouse advised the Board that the fence will measure 6 feet tall and will be located along Lighthouse Road and a variance is needed for the fence height.

Mr. Ferruccio testified that there will be approximately 20 feet from the edge of Lighthouse Road to the playground; that there will be strict security measures including a keyless entry system with a pin pad for parents; that there will be closed circuit TV; that there is no other area to place the playground; that there is a ditch in the rear yard; and that he believes the site plan should be ready in 2 weeks.

Ms. Hall testified that the fence needs to be 6 feet tall due to childcare licensing regulations; that the property is unique as it is a leased property with an L shaped building with a large parking lot; that the only area to build a playground would be in the front of the building closest to Lighthouse Road; that a fence of 6 ft. is necessary for the safety of the children who will use the playground; that the exceptional practical difficulty was not caused by the Applicant but by the uniqueness of the lot; that the fence will not block visibility along Lighthouse Road; that the fence will be a white vinyl fence; and that she tested the visibility of the fence when pulling out onto Lighthouse Road from London Avenue.

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

Ms. Magee closed the public hearing.

Mr. Williamson moved to leave the record open for the limited purpose to allow the Applicant to submit a site plan and photographs by August 14, 2020, and to place the Application on the agenda for the meeting on August 17, 2020, where the Board may questions of the Applicant.

Motion by Mr. Williamson, seconded by Mr. Workman, carried unanimously that the **application be left open for the stated limited purpose and to place the Application on the agenda for the August 17, 2020, meeting.** Motion carried 3 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Williamson – yea, and Ms. Magee – yea.

Case No. 12453 – Paul Antonio seeks variances from the front yard, rear yard and corner front yard setback requirements for proposed structures (Sections 115-25, 115-182 and 115-183 of the Sussex County Zoning Code). The property is located on the north side of Garfield Avenue within the Edgewater Acres subdivision. 911 Address: 39176 Garfield Avenue, Selbyville. Zoning District: AR-1. Tax Parcel: 533-20.18-187.00

Ms. Headley presented the case and stated that the Office of Planning and Zoning received five letters in support of and two letters in opposition to the Application and zero mail returns. The Applicant is requesting the following variances for a proposed dwelling:

- 15 ft. from the required 30 ft. front yard setback.
- 5 ft. from the required 15 ft. rear yard setback.
- 10 ft. from the required 15 ft. corner front yard setback.

Paul Antonio and Joseph Day, III, were sworn in to give testimony about the Application.

Mr. Antonio testified that the property is unique as there is an abandoned paper street at the side of the property which increases the side yard setback from 5 ft. to 15 ft.; that the paper street is used as a driveway; that the model home chosen by the Applicant will not fit on the parcel without the variance; that the exceptional practical difficulty has not been caused by the Applicant but by the size of the property; that he acquired the property on February 5, 2020; that he has made no changes to the property; that it will not alter the essential character of the neighborhood but improve it by building a new house; that the existing house is old and has been vacant for a long time; that the request will allow him to build the new house; that the variance is the minimum variance to afford relief; that neighbors support the request; that the one neighbor in opposition was confused; and that the request is only for the corner front and not the additional variances requested.

Mr. Day testified that there is only one variance needed and that a blueprint is part of the packet.

Mr. Sharp stated that the Board needs to see a survey where the proposed house will be located so that the Board can more accurately determine the variances needed.

Mr. Antonio testified that the proposed house only needs a variance from the west corner front yard setback requirement; that the house will be 5 feet from Garfield Avenue; and that he believes he can have the survey ready for the next meeting.

Board members requested that a survey be submitted showing the location of the proposed dwelling and related structures on the property.

Mr. Sharp suggested that the Board leave the record open until the next meeting to allow the Applicant to provide an updated survey showing the proposed construction and for the Board to determine what variances are needed; and that the record also be left open for interested parties to have an opportunity to speak about the Application at the next meeting based on the new survey.

Mr. Williamson moved to leave the record open until the meeting on August 17, 2020, and adopted Mr. Sharp's comments as part of his motion.

Motion by Mr. Williamson, seconded by Mr. Workman, carried unanimously that the **Application be left open until the August 17, 2020, meeting.** Motion carried 3 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Williamson – yea, and Ms. Magee – yea.

Mr. Sharp advised the Applicant that submission of the survey the week prior to the next Board meeting would be preferred and he told the Applicant to look on the Board's website for examples of site plans.

Case No. 12455 – Pot-Nets Homes, LLC seeks a variance from the separation distance requirement between units for proposed structures (Sections 115-25, 115-172 and 115-185 of the Sussex County Zoning Code). The property is located on the north side of Sloop Avenue approximately 450 ft. west of Ringbolt Avenue within the Pot-Nets Bayside Manufactured Home Park. 911 Address: 28176 Sloop Avenue, Millsboro. Zoning District: AR-1. Tax Parcel: 234-30.00-3.00-56182

Mr. Whitehouse 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 twenty-nine mail returns. The Applicant is requesting a 3 ft. variance from the required 20 ft. separation distance between the manufactured home on Lot E-4A and the gazebo on Lot E-5. This property is identified as Lot E-4A on the survey presented by the Applicant.

Mr. Lincoln Davis was sworn in to give testimony about the Application.

Mr. Davis testified that the Application meets the criteria for a variance; that the Applicant placed the new home and it meets all setback requirements but does not meet the separation distance requirement from the gazebo on the neighboring lot; that the gazebo is only 6 feet from the property line and 17 feet from the house; that the lot is very narrow with a newly constructed home and attached garage; that the new home meets setbacks but the gazebo on the adjoining property created the separation distance encroachment; that it is not economically feasible to relocate the home or to make the home narrower; that the gazebo on the adjacent lot was installed prior to 1998 when the understanding was that ground level structures were not subject to the side yard setback and building separation requirements; that the gazebo has been in place for at least 22 years and having it remain will not alter the essential character of the neighborhood or affect property values; that the 3 ft. request is the minimum variance to afford relief to allow the gazebo to remain on lot E-5 as the current owner would prefer not to have it removed; that the owner of Lot E-5 has submitted a letter in support of the request; and that the property is subject to a ground lease.

The Board took a five-minute recess.

Dr. Carson and Mr. Chorman joined the meeting at 6:55 p.m. Mr. Sharp gave a brief overview of the current application before the Board which Mr. Davis affirmed.

Mr. Davis directed the Board Members to the exhibits submitted with the Application.

Mr. Whitehouse stated that he did not find a building permit for the gazebo and that there have been other variances granted in the neighborhood.

Mr. Davis testified that the surveyors caught this error as part of the CO process.

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

Ms. Magee closed the public hearing.

Mr. Williamson moved to approve Case No. 12455 pending final written approval for the variance as the property is unique in size; that the exceptional practical difficulty was not created by the Applicant; that the gazebo was preexisting; and that it is the minimum variance necessary to afford relief.

Motion by Mr. Williamson, seconded by Mr. Workman, carried unanimously that the **variance be granted for the reasons stated**. Motion carried 5 – 0.

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

Case No. 12456 – Thomas M. O’Hagan seeks variances from the rear yard setback requirement and

from the minimum aggregate front yard and rear yard requirements for proposed structures (Sections 115-34, 115-183 and 115-188 of the Sussex County Zoning Code). The property is located on the northwest side of Tower Place approximately 488 ft. east of Watch Tower Drive within The Overlook subdivision. 911 Address: 30603 Tower Place, Selbyville. Zoning District: MR-RPC. Tax Parcel: 533-20.00-96.00

Ms. Headley 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 2 ft. variance from the required 10 ft. rear yard setback for a proposed screen porch.

Mr. Thomas O'Hagan was sworn in to give testimony about the Application.

Mr. O'Hagan testified that the property is unique as there is currently a 12 ft. by 14 ft. patio but the building setback line is only 10 ft.; that the property is adjacent to a marsh; that the backyard is 40 ft. X 50 ft. but as it backs up to the creek, no construction is allowed; that the property cannot otherwise be developed for a screen porch without the variance; that it was not created by the Applicant but by the uniqueness of the property; that it will not alter the essential character of the neighborhood as there are many screen porches in the area; that the mosquitoes from the marsh in the rear of the property have created the necessity to screen in the patio; that the bugs make the outdoor space largely unusable; that it is a minimum variance to screen in the current patio and not to further encroach into the setbacks; that the porch will project no farther than the existing patio; that there were 3 villas constructed at the same time; that the middle villa had a porch constructed at the same time the villa was constructed (Lot 114); that Lot 115 constructed a porch later; and that all porches measure 12 feet by 14 feet.

Mr. Whitehouse stated that there are other porches within the building envelope and there are other variances in the neighborhood due to alignment issues.

Mr. O'Hagan testified that the angle of the lot and the house creates the need; that the patio extends 14 feet from the house; that the porch will go 12 feet from the house; that both neighbors in the villa have screened in porches; that he could not build a smaller porch; that there are no steps from the porch as it exits to pavers; that there are no drainage issues; that HOA approval is needed and an application to the homeowners association has been submitted.

Mr. Sharp asked for clarification on the variance needed from the aggregate required for front and rear yard.

Mr. Whitehouse stated that an additional variance of 9.27 ft. from the required 40 ft. minimum aggregate setback requirement is also needed.

Mr. O'Hagan testified that the marsh has created the exceptional practical difficulty due to the

bugs; that the porch would be impractical if smaller; and that he did not realize the bug problem when he bought the Property.

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

Ms. Magee closed the public hearing.

Mr. Chorman moved to approve Case No. 12456 for the variances as requested due to the closeness and the angle to the property line; that granting the variances will not alter the essential character of the neighborhood; and that they are the minimum variances necessary to afford relief from the mosquitoes and pests in the rear yard.

Motion by Mr. Chorman, 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. Workman – yea, Mr. Williamson – yea, Ms. Magee – yea, Dr. Carson – yea, and Mr. Chorman - yea.

Case No. 12457 – Andrew Goldberger & Susan Behan seeks a variance from the front yard setback requirements for proposed steps. (Sections 115-42 and 115-182 of the Sussex County Zoning Code). The property is located on the west side of Barney Lane, approximately 952 ft. south of Double Bridges Rd. 911 Address: 34750 Barney Lane, Frankford. Zoning District: GR. Tax Parcel: 134-19.00-343.00

Mr. Whitehouse 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 an 18.9 ft. from the required 30 ft. front yard setback for steps.

Mr. Andrew Goldberger was sworn in to give testimony about the Application.

Mr. Goldberger testified that this is the second time that he is in front of the Board of Adjustment for a variance for this property; that his builder could not attend the hearing; that, in 2019, the Board granted a variance for the front porch; that the steps were to project into the side yard; that the house was built closer to the south side of the property and, therefore, the steps would project too close to the creek; that the development was created in 1968 with a cul-de-sac that was never installed; that the house has to be elevated for flood reasons; that the property is adjacent to Miller Creek; that, when the house was elevated, the steps went out an additional 5 feet; that the Board previously determined that the property had a unique size and shape; that the property is irregular in shape due to being bounded by Barney Lane on the east, the lagoon on the west, and Millers Creek on the south; that the property is located at the end of Barney Lane in the location of a proposed cul-de-sac that was not built; that the house was built to meet the prior variance approval; that an elevation certificate determined that the house needed to be elevated to meet FEMA flood regulations therefore creating

the need for additional steps; that the builder was unaware of this until the final construction survey; that the property cannot be developed in strict conformity with the Sussex County Zoning Code; that the parcel's shape and size was previously determined to restrict construction of a typical house plan of similar character to others nearby; that, if the cul-de-sac did not exist on paper, there would not be a need for the variance; that the subdivision was created in 1967; that the property narrows to the rear; that the buildable width of the rear of the lot is only 26.6 feet; that FEMA regulations necessitated that the house be elevated on pilings; that steps were constructed to span from the house floor elevation to the existing grade; that it is necessary for the steps to project to the front of the dwelling; that this is the only entrance to the dwelling; that the exceptional practical difficulty was not created by the Applicant but by the misplacement of the house; that it was discovered by the Applicant when the pilings were placed; that it was cost prohibitive to move the pilings; that it will not alter the essential character of the neighborhood but will improve it; that it is the minimum variance to afford relief and to allow the steps to remain in the current location; that cars park parallel to the steps; that the house sets back farther from the road than neighboring homes; that no entity will construct the cul-de-sac; that there are a mix of homes in the neighborhood; that the steps are the only access to the house; and that steps to the side of the house would project into the water.

Mr. Whitehouse stated that there is an open building permit and that the building permit plans likely differ from the prior survey presented to the Board.

Mr. Goldberger testified that the steps project 13 feet; that moving the steps to the other side would block boat storage; that the steps could not be placed to the rear due to the layout of the house; that the steps cannot be turned either; that the house is 15.2 feet from the neighboring lot to the north and was originally planned to be 11 feet from that lot; that the surveyor changed the pins without his knowledge; that the moving of the pins created a problem; that there is flooding from Miller Creek and rip rap was needed along Miller Creek; and that he did not expect the surveyor to move the house 4 feet.

Ms. Susan Behan was sworn in to give testimony about the Application.

Ms. Behan testified that when the pilings were installed, they realized that they were in the wrong place; that they spoke with the builder and it was cost prohibitive to move the pilings; that the Applicant agreed to apply for a variance; that this practical difficulty was not created by the Applicant but by the builder who placed the dwelling too far south on the lot; that the builder agreed to reinforce the land; and that they were unaware that they needed a second variance for the steps until after the house was completed.

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

Ms. Magee closed the public hearing.

Mr. Chorman moved to approve Case No. 12457 for the variance that the variance will not alter the essential character of the neighborhood; that it is the minimum variance necessary to afford relief; and the exceptional practical difficulty was not created by the Applicants.

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

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

Case No. 12458 – Michelle Blattenberger seeks a special use exception to operate a day care center (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located on the corner of Sandy Lane and Pine Cone Drive within the Pot-Nets Coveside Manufactured Home Park. 911 Address: 36247 Sandy Lane, Millsboro. Zoning District: AR-1. Tax Parcel: 234-25.00-27.00-17530

Ms. Headley 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 seven mail returns. The Applicant is requesting a special use exception to operate a daycare center for 9 – 12 children.

Ms. Michelle Blattenberger was sworn in to give testimony about the Application.

Ms. Blattenberger testified that she has been operating a day care center for approximately two years in Delaware; that she has over twenty years' experience operating a licensed daycare center in New Jersey; that the property is located in Pot-Nets; that she would like to move to level two in licensing which would allow up to twelve children; that it will not affect the neighboring properties as there is adequate parking onsite; that the hours of operation are Monday – Friday from 7:30 am – 5:30 pm; that the property is a corner lot of 0.25 acres and is not near the waterways; that there is a fenced in back yard; that she has received no complaints from neighbors; that the property is up to code with Pot-Nets and OCCL; that the lot next door is vacant and cannot fit a new manufactured home; that there should be minimal increase in traffic as many of her clients have multiple children; that she expects possibly two additional cars per day for drop off and pick up; that there are two employees, one is her husband who resides at the dwelling and another who resides in the Pot-Nets development; and that there have been no issues with noise or lighting.

The Board found that one person appeared in support of and none in opposition to the Application.

Mr. Lincoln Davis, who was sworn in for previous case, testified that the Pot-Nets Community endorses Ms. Blattenberger's business and her service to the community is appreciated.

Ms. Magee then closed the public hearing.

Dr. Carson moved to approve Case No. 12458 for the special use exception for a daycare center as such exception will not substantially affect adversely the uses of neighboring and adjacent properties.

Motion by Dr. Carson, seconded by Mr. Workman, carried unanimously that the **special use exception be granted for the reasons stated.** Motion carried 4 – 1.

The vote by roll call; Mr. Workman – yea, Mr. Chorman – nay, Mr. Williamson – yea, Dr. Carson – yea and Ms. Magee – yea.

Case No. 12459 – Destorage.com, LLC (Cellco Partnership d/b/a Verizon Wireless) seeks a special use exception to place a telecommunications tower and a variance from the side yard setback requirements (Sections 115-82, 115-183, 115-185, 115-194.2 and 115-210 of the Sussex County Zoning Code). The property is located on a through lot on the southwest side of Dupont Boulevard approximately 830 ft. northwest of Handy Road. 911 Address: 28862 Dupont Boulevard, Millsboro. Zoning District: C-1. Tax Parcel: 233-5.00-101.00

Mr. Whitehouse 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 enable a 150 ft. telecommunications monopole and the Variance is for 27 ft. from the required 50 ft (being 1/3 the height of the tower) side yard setback requirement on the southeast side.

The Board took a six-minute recess.

Mr. John Tracey, Esquire, presented the Application on behalf of the Applicant, Cellco Partnership. Mr. Andrew Petersohn, Ms. Sue Manchel, and Mr. Petros Tsoukalas were sworn in to give testimony about the Application.

Mr. Tracey stated that this Application is for a new telecommunications monopole and associated equipment shelter; that the tower will measure 150 ft. tall which includes the 5 ft. lightning rod; that the property is location on Route 113 between Millsboro and Dagsboro; that the property is approximately six acres in size and is zoned C-1; that there is an active self-storage business on the site; that the tower will be located on a paved portion of the site use for car and machine storage; that the area is largely dominated by commercial uses; that the tower will meet County Code for the height restrictions, street setbacks, and lighting; that one setback variance is being requested; that, according to the F.C.C. license, it is incumbent to provide reliable service to customers and to take efforts to increase service when necessary; that the need and demand for cellular service continues to grow; that under the current circumstances we are also using cellular service to work from home and to educate from home; that 70% of calls to 911 lines are made from cellular telephones; that whenever possible

the Applicant likes to collocate with an existing tower but that is not always possible; that the Applicant looked for other properties to collocate; and that Mr. Petersohn will present the reasons why this is not possible for this location.

Mr. Petersohn testified that he is a consultant for the Applicant; that he prepared propagation models; that the map shows Route 113 running north to south; that the dotted icons are the existing Verizon facilities; that the green areas show where Verizon has strong in-building coverage; that the yellow shows the areas where there is strong in-vehicle coverage; that there is a lack of strong in-building coverage surrounding the proposed building; that the facilities in the area are all experiencing an overloading of their facilities during busy hours on the network; that the anticipated demand is expecting to increase up to 46% from 2017 through 2022; that Verizon looked for existing towers before submitting this proposed site; that there were four existing structures in a two mile radius; that two of those four structures are already being utilized with antennas; that there are two other towers one of which is approximately one mile north and the other further north from the proposed site and they are both too far north to address the coverage issue in this area; that sites which are too close to one another would lessen the ability of the sites to carry capacity; that, if this site is approved, there would be up to twelve antennas and some ancillary equipment on the ground; that the coverage would be increased along this Route 113 corridor; that the emissions from this site would be less than 1.5% of the applicable standards at all locations surrounding the facility; and that the F.A.A. does not require lighting on the tower, however, lighting will be provided in accordance with Sussex County Code.

Mr. Tsoukalas testified that his firm did the civil engineering work for this site; that the tower is 145 ft. monopole which is a tubular steel tower; that there will be a 5 foot lighting rod on top of the tower; that the tower is going to be fixed to the ground with a site specific foundation; that the cabinet type equipment and a standby generator will be placed at the base of the tower; that the area measuring approximately 30 ft. X 40 ft. will be fenced; that the tower will be located in the southeast corner of the property; that the monopole will be approximately 23 ft. from the eastern property line and 67 ft. from the southern property line; and that the tower is designed to carry an additional three carriers.

Mr. Tracey stated that this site is developed and an existing developed portion of the property is being used; that there are a number of constraints at this location; that the existing stormwater facility, the existing septic fields, the existing buildings and utilities dictate the area which could be used to place the tower; that the site is unique in that it is a through lot with two road frontages; that the small commercial lot adjacent to this property prevents the Applicant from meeting the setback requirements; that it was not created by the Applicant as they are working on a previously developed lot; that, if the small lot adjacent to the property had not been carved out, no variance would be needed; that it is the minimum variance requested to afford relief; that it will not alter the essential character of the neighborhood; that there will not be any adverse effect on adjacent properties as it is in an area with heavy commercial use; that minimal traffic is generated and there will be no impact on public resources; that the tower produces no smells; that the tower does not tax resources; that the Applicant did not create the property or the exceptional practical difficulty; that the Applicant focused on the

commercial side of the property; and that the property cannot otherwise be developed without the variance.

Mr. Petersohn and Mr. Tsoukalas affirmed the statements made by Mr. Tracey as true and correct.

The Board found that one person appeared by teleconference in support of and none in opposition to the Application.

Mr. Andy Strine was sworn in to give testimony about the Application,

Mr. Strine testified that he represents DEStorage.com; that they support the Application; that there is no other logical area to place the tower on this site; that they could not place the tower in the stormwater area due to stability reasons and the effect on utilities; and that the tower will not negatively affect the business on site.

Ms. Magee then closed the public hearing.

Dr. Carson moved to approve Case No. 12459 for the special use exception to place a telecommunications tower as it will not substantially adversely affect the uses of neighboring or adjacent properties and to approve a 27 ft. variance from the side yard setback requirement as it will not alter the essential character of the neighborhood and it is a minimum variance to afford relief; and that the application also meets the standards set forth in Sussex County Code 115-194.2.

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

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

Case No. 12460 – Scott A. Hutton & John A. Randolph seek variances from the front yard setback requirement for proposed structures (Sections 115-42 and 115-182 of the Sussex County Zoning Code). The property is located on the northeast side of Bay Front Road approximately 40 ft. southeast of Monroe Avenue. 911 Address: 502 Bay Front Road, Milton. Zoning District: GR. Tax Parcel: 235-4.17-28.00

Ms. Headley 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 1 ft. variance from the 5 ft. average front yard setback for a proposed projecting bay window feature and a 3.5 ft. variance from the 5 ft. average front yard setback for proposed steps.

Mr. Scott Hutton was sworn in to give testimony about the Application.

Mr. Hutton testified that he purchased the site in 2002 and removed the condemned structure existing on the site; that, since that time, it has been maintained as a natural site; that, in 2002 a variance to build into the front yard setback was approved; that the DNREC dune restriction line has since changed; that the lot consists of less than 10,000 square feet and the DNREC restriction line cuts across the site; that variances are being requested to build the proposed dwelling; that the house to the northeast of the subject property is located 1 inch from the property line; that the proposed steps on the subject property would sit back farther from Bay Front Road than the adjacent house; that the house would meet the 5 ft. setback but the steps and bay window that would encroach; that the house has been designed to be as narrow as possible to fit on the lot; that as this lot is also in a FEMA velocity zone so the house has to be raised therefore creating the need for front steps; that the property is unique because the usable area has been reduced by 60% due to the dune restriction line; that the DNREC dune line is not new but the restrictions have been tightened such that the Applicants cannot build over the dune line as they could have done in 2002; that the original house was much larger; that it cannot otherwise be developed as the design has been changed to meet the setbacks on the north and east side and to allow for the septic system on the south side; that the DNREC restriction line has reduced the buildable area on the property; that it will not alter the character of the neighborhood; that the building has been designed with historical coastal buildings used as a design model for this dwelling; that the dwelling will enhance the neighborhood; that it is a minimum to afford relief; that the Applicants were inspired by the light saving museum in designing the house; and that the lot is currently vacant.

Ms. Headley advised the Board that the average front yard setback requirement limits structures to 5 feet from the front property line even if the average is lower.

Mr. Hutton testified that Bay Front Road essentially dead ends at the property; that he bought the lot with his brother, who has since passed away; that he is moving to Broadkill Beach to care for his parents; and that he cannot shrink the house more.

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

Mr. William Culver was sworn in to give testimony in opposition to the Application.

Mr. Culver testified that he owns the property at 408 Bay Front Road; that he has owned his property since the 1960s; that he owns the lot west of the site and his septic system is on that lot; that there are pipes under Bay Front Road; that he is opposed to the variance request as he has concerns about emergency vehicles being able to gain access if the house is built that close to the road and that the hardship have been created by the design of the house.

Ms. Eve Reed was sworn in to give testimony in opposition to the Application.

Ms. Reed testified that she lives at 504 S. Bayshore Drive which is near the site; that she is opposed to the Application as she has concerns about emergency vehicles being able to gain access to the neighborhood; that she built her home 4 years ago and no variance was needed; that her lot has frontage on Bay Front Road and South Bayshore Drive.

Mr. Hutton testified that the septic system will be in the southeast corner of the lot.

Ms. Magee then closed the public hearing.

Mr. Williamson moved to deny Case No. 12460 for the variances as the Applicant failed to demonstrate why the property cannot be developed in strict conformity and that the exceptional practical difficulty is being created by the Applicant.

Motion by Mr. Williamson, seconded by Mr. Chorman, carried unanimously that the **variances be denied for the reasons stated.** Motion carried 5 – 0.

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

Mr. Sharp reminded the Board that the minutes and findings of fact were moved to the end of the agenda.

Motion by Dr. Carson, seconded by Mr. Williamson, and carried unanimously to approve the Minutes for the June 15, 2020, meeting. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Chorman – yea, Mr. Williamson – yea, Dr. Carson – yea and Ms. Magee – yea.

Motion by Mr. Williamson, seconded by Mr. Chorman, and carried to approve the Findings of Facts for the June 15, 2020, meeting. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Chorman – yea, Mr. Williamson – yea, Dr. Carson – yea and Ms. Magee – yea.

Meeting adjourned at 9:34 p.m.