

## MINUTES OF DECEMBER 12, 2022

The regular meeting of the Sussex County Board of Adjustment was held on Monday, December 12, 2022, at 6:00 p.m. in the County Council Chamber, Sussex County Administration Office Building, Georgetown, Delaware. The teleconference system was tested during the meeting by staff to confirm connectivity.

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

The Pledge of Allegiance was led by Mr. Chorman.

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

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

Motion by Mr. Williamson, seconded by Dr. Carson and carried unanimously to approve the Minutes for the October 3, 2022, meeting. Motion carried 5 – 0.

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

Motion by Mr. Hastings, seconded by Dr. Carson and carried to approve the Findings of Facts for the October 3, 2022, meeting. Motion carried 5 – 0.

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

### **OLD BUSINESS**

**Case No. 12738–Gwendolyn and Jeffrey Smith** seek variances from the side yard setback requirement for existing structures (Sections 115-42 and 115-183 of the Sussex County Zoning Code). The property is located on the northwest side of Russell Street within the Delaware Oyster Farms Subdivision, Lot 54. 911 Address: 28272 Russell Street, Millsboro. Zoning District: GR. Tax Parcel: 234-35.05-70.00

Ms. Norwood introduced the case and noted that the case was tabled with the record closed to allow the board members not in attendance to listen to the case and vote.

The Board discussed the lot consolidation and staff confirmed that the Applicants purchased the adjacent lot.

Dr. Carson moved to approve the application for Case No. 12738 for the requested variances, pending final written decision, for the following reasons:

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

Motion by Dr. Carson, seconded by Mr. Hastings, carried that the **variances be granted for the reasons stated**. Motion carried 3 – 2.

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

Mr. Warfel stated that he believed the exceptional practical difficulty was being created by the Applicants.

### **PUBLIC HEARINGS**

**Case No. 12765– Curt and Michelle Snyder** seek a variance from the minimum lot width requirement for two proposed lots (Sections 115-25 of the Sussex County Zoning Code). The property is located on the southwest side of Dirickson Creek Road across from Jan Mar Lane. 911 Address: N/A. Zoning District: AR-1. Tax Parcel: 134-21.00-14.02

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of, one (1) letter in opposition to the Application, and one (1) mail return. The Applicants are requesting a 17.5 ft. variance from the 150 ft. lot width requirement for a proposed lot. This application pertains to proposed “Lot 1” as shown on a site plan dated August 11, 2022.

Mr. Curt Snyder and Ms. Michelle Snyder were sworn in to give testimony about their application

Ms. Snyder testified that they are requesting to split the property in two (2) lots; that the intention is to keep the property for their family; that she went through a nightmare with her family not having family property divided evenly after the passing of her parents; that they have two (2) children and are hoping to divide this parcel in two (2) lots; that, when they purchased the lot, the front easterly corner towards the road was originally the septic field for the lot next door and is

probably owned by the person opposing the Application; that they did not want to be able to build on their lot because they had a flag lot; that they wanted no one to be able to build behind them; that the property lines for that septic field were abandoned and put back into their lot which gave them room for two (2) septic fields; that the architect had told them, if they wanted to split it and had it soil tested, that it could be divided into two (2) lots; that both lots would consist of over two (2) acres; that she does not have the exact acreage because the property totals 5.15 acres; that they are about 16 ft. short when you divide that full property line in half to get 150 ft. of road frontage, one (1) lot was going to be 134 ft. and the other 150 ft.; that the existing neighborhood directly across the street is mostly made up of lots ½ acre or less; that there is a cul-de-sac and then an adjacent part was originally part of a farm that was split into four (4) or five (5) acres; that the lots across the street and down the road are all smaller lots; that they are not trying to subdivide into townhouses or lots of single-family homes; that there will still be over two (2) acres for each lot; that the rear portion of the property consists of restricted wetlands; that the proposed lots will be long, narrow, and deep; that the septic fields are towards the front of the property; that there is nothing presently on the property other than two (2) sheds for the storage of maintenance equipment; that, the way the architects split the lot, it would require variances for the road frontage on one (1) of the lots; that they figured it would be best to leave one (1) lot at regulation size and seek a variances for the other rather than seek two (2) variances; that Millers Neck Creek runs behind their property; that Dirickson Creek would be towards the bottom of the screen where the creek tributaries split; that it is called Dirickson Creek Road because the road goes all the way down to that cul-de-sac but the body of water is actually Millers Neck Creek; that subdivision is the Estuary where they have built docks to go in on the water; that it is unsettling the amount of building going on out there; that there is no way to have small lots past Millers Neck Creek which is where the bridge crosses the creek; that everything out there is similar in size to their property; that you can see across the street there is a conclave of about six (6) houses on quarter acre lots; that they will have enough buildable width once these lots are created to construct dwellings without the need for additional variances; that her husband is in the building field so they did look up the setbacks and requirements for the property; that the soil has been analyzed twice since they purchased the property and is approved for septic; that where they are was initially a large farm that was subdivided into four (4) portions; that the reason behind the subdivision is that, the farther down the property you go, the lower the elevation is and it becomes less buildable due to the sea level line; that their property is at the sea level line; that they will have some grading, but not much, with dirt coming in; that a lot of the lots in that area extend farther out extending into the water and have wetlands farther in towards the front of the property than theirs; that their neighbor to the left has a pole barn in the front of his property, meaning there is no way the front is his septic, and there is no other way to build; that the property to the right has the pipe stem that is owned by the people in the rectangle which is why he gave them back the septic field; that they did not want anyone to build on the flag lot behind them; that the neighbors wanted water access and for no one to build behind them which is why they allowed them to reabsorb their septic field; and that the restrictive covenant of the HOA is that there cannot be a manufactured home which they would not build.

Mr. Snyder testified that you can barely get to the dock at the rear of the property; that they have 2 (two) sheds on the property for storage; that, in the field behind there, is a huge subdivision

going in; that when you get farther down towards Dirickson Creek there are subdivisions; and that they wanted water access also and have a dock on their property.

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

Mr. Chorman closed the public hearing.

Mr. Hastings moved to approve the application for Case No. 12765 for the requested variance, pending final written decision, for the following reasons:

1. The property has unique conditions;
2. The exceptional practical difficulty was not created by the Applicants;
3. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare; and
4. The variance represents the minimum variance necessary to afford relief.

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

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

**Case No. 12766–Robert and Catherine Debes** seek a variance from the rear yard setback requirement for a proposed structure (Sections 115-25 and 115-183 of the Sussex County Zoning Code). The property is located on the northwest side of Plover Lane within the Estuary Subdivision. 911 Address: 24062 Plover Lane, Frankford. Zoning District: AR-1. Tax Parcel: 134-19.00-812.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support or in opposition to the Application and zero mail returns. The Applicants are requesting a variance of 2 ft. from the 10 ft. rear yard setback requirement for a proposed porch extension.

Mr. Robert Debes and Ms. Catherine Debes were sworn in to testify on their application.

Mr. Debes testified that they purchased the home and the outside porch is about 10' x 12'; that they installed a gas fireplace; that the installation of the fireplace made the porch smaller; that their daughter Stephanie has cerebral palsy and is in a motorized wheelchair; that, for their daughter to fit on the porch and have any type of maneuverability, they would not be able to place any furniture to utilize the space; that the space is too tight; that they want to expand the porch so their daughter will have a way to get in and out of the house safely and easily; that they also want their daughter to

be able to enjoy sitting outside; that, to reasonably use the space, they need to extend the porch by 2 ft. and make the roof come out 2 ft. farther; that, before the fireplace was installed, the porch was still too small for reasonable use because her wheelchair needs to be able to do a 360 degree turn; that, if any furniture was placed in the porch, there will not be any room for their daughter's wheelchair; that they plan to extend the porch back another 2 ft. and to the left 4 or 6 more feet; that they have spoken with their neighbors and everyone has been positive; that the concrete paver patio is not currently existing; that, if they do not move the porch outward, it will be too slim; that about another 2 ft. beyond their request the grade of the property begins to slope; that they will need HOA approval but were told to do this first and then request from the HOA; that they will be installing all-season, easy breeze windows; that they are not really windows but more like a tough plastic; that he was impressed with the demonstration of the windows and their functionality; that the builder placed the home; that a 14 ft. deep porch is the minimum needed to reasonably use the porch in a wheelchair; that they will make 2 ft. work but of course they would like it to be more; and that they are pretty experienced at giving and taking and doing what needs to be done to make everyone comfortable.

Ms. Debes testified that the outside porch is 8' x 10'; that they will be installing easy breeze windows; that they are installing a 36-inch door; that they are building steps with a railing and a ramp to allow their daughter handicap access; that the ramp will not interfere with their setbacks; that they lose 2 ft. from the fireplace; that they were not aware when they were asked about adding the fireplace that it would create this situation making their porch unusable; that their daughter is getting better at driving the wheelchair; that they will not be placing a table just a chair for them to sit in; that they live without tables, even in their home, so that they keep things open for their daughter; and that her name is spelled Catherine and not Cathrine as noted on the Application.

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

Mr. Chorman closed the public hearing.

Mr. Williamson moved to approve Case No. 12766 with the condition that the Applicants obtain approval from their HOA for the application, pending final written decision, for the following reasons:

1. That, due to the physical conditions, the property cannot be developed in strict conformity with Sussex County Zoning Code and the variance is necessary to enable the reasonable use of the property;
2. The exceptional practical difficulty was not created by the Applicants;
3. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare;
4. The variance represents the minimum variance necessary to afford relief; and
5. The approval represents a reasonable accommodation to a person with a disability.

Motion by Mr. Williamson, seconded by Dr. Carson, carried that the **variance is granted for the reasons stated**. Motion carried 5 – 0.

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

**Case No. 12767– Thomas and Lisa Kiracofe** seek variances from the maximum fence height requirement for an existing fence (Section 115-25, and 115-185 of the Sussex County Zoning Code). The property is located on the southeast side of West Mint Place within the Mulberry Knoll Subdivision. 911 Address: 34810 West Mint Place, Lewes. Zoning District: AR-2. Tax Parcel: 334-18.00-146.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received sixteen (16) letters in support of, zero in opposition to the Application, and zero mail returns. The Applicants are requesting variances of 2.5 ft. from the 3.5 ft. maximum fence height requirement for a fence 80 ft. in length and 0.5 ft. from the 3.5 ft. maximum fence height requirement for a fence 8 ft. in length.

Mr. Thomas Kiracofe and Ms. Lisa Kiracofe were sworn in to give testimony about their application

Mr. Kiracofe testified that the fence he installed was something he and the neighbor agreed to put up; that the neighbor's lot backs up to his lot; that the neighbor's lot is relatively small and measures 85' x 85'; that they discussed that they would both like a bit more privacy; that he agreed to put the fence in after obtaining the permit; that he read the permit after it was issued and the way it was stated on the setback for the side it said "blank slash side setback"; that he honestly believed that he could take the fence all the way out to the front corner of his lot at full height because that is what he and the neighbor were wanted to do for privacy; that he installed it that way; that, when the County inspected the fence, he was told that he had exceeded the height limit within the 30 ft. front yard setback; that, by looking at the 30 ft. setback, he thought it was cleared by the permit; that he thought, if he put a fence across the front of his lot, that it had to be at that height; that he did not realize that the side was included; that it is a relatively quiet street with only four (4) houses; that all of the neighbors have agreed that this will not affect the character of the neighborhood; that he left the front section of fence at a lower height so that it would be visible when he pulled out of the driveway; that he was trying to do the right thing; that he does not believe the fence will affect the character of the neighborhood; that the intent of the fence was for him and the neighbor to have more privacy; that reducing the height of the fence within the 30 ft. front setback would not afford them the privacy that they have been afforded by the fence being there; that there is no HOA approval needed; that he does not believe it will cause any traffic issues; that the distance between the end of the fence and the edge of paving is 17 ft.; that the neighbor he made the agreement with is the corner lot owned by George and Maryanne Bell; that their neighbors' backyard that butts up to their side yard; that, if the neighbors had obtained the permit, there may have been different requirements; that he only installed the side

yard fence which abuts to the existing fence that runs along their rear property line; that the house was purchased as it stands; that they purchased the house as a foreclosure; that the former owners made an addition of a garage with rooms above it; that the price was listed at reasonable price which is the only reason they considered purchasing a house of this style; that he signed for the permit and built the fence; that he knew the height could not be above 7 ft. and the fencing was available; that this fence also affords the privacy they were looking for; that he wanted the neighbors to still have a view of Love Creek and the water from their back porch; that the fence will still allow for separation when out in their backyard; that, in his case, this is such a quiet street that it does not really have an impact but he could see in other locations that it could be an issue; that the front property line is 15 ft. from the edge of paving and the fence is 2 feet from the front property line; that the neighbors enter and exit the property through that side of the yard; that there are probably other houses in the neighborhood that have a similar setup to theirs and the their neighbors; that there are a number of houses that face Mulberry Knoll Lane; that there are a number of other houses that could face the same issue; that their neighbor faces Mulberry Knoll Lane; that their neighbor is about 30 ft. back from Mulberry Knoll which is why he is so close in the back; that the fence is on his side of the property line; that he would be able to wash his side of the fence but he would not necessarily be able to do theirs without permission; that he would consider it the neighbors' prerogative and responsibility; and that he would keep his side clean.

Ms. Kiracofe testified that it is a very quiet street; that all of the neighbors have submitted letters of support; that both they and their neighbor wanted to have this increased level of privacy; that if you are in your yard you might as well bring your chair over; that the fence is on their property; that they have known each other for twenty (20) years and they are fine with their neighbors; that the neighbors' deck is also facing that side of the property; that they have not experienced issues with trespassing; and that they have a fence behind them for which they maintain the side facing into their property but it is not their fence.

Staff confirmed that the variances needed are a variance of 0.5 feet from the 3.5 feet fence height requirement for 8 feet of fencing and a variance of 2.5 feet from the 3.5 feet fence height requirement for 22 feet of fencing.

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

Mr. Chorman closed the public hearing.

Mr. Hastings moved to approve the Application for Case No. 12767 for the requested variances, pending final written decision, for the following reasons:

1. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare; and
2. The variances represent the minimum variances necessary to afford relief.

Motion by Mr. Hastings, seconded by Mr. Warfel, failed that the variances be granted for the reasons stated. Motion failed 2 – 3. **Pursuant to Board rules the Applicants failed to receive 3 affirmative votes for approval of the variance application so the variances are denied.**

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

**Case No. 12768 – Gordon W. and Lynne C. Emminizer** seek variances from the side yard setback requirement for existing structures (Sections 115-42, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located on the southeast side of Laws Point Road within the Swann Keys Subdivision. 911 Address: 36990 Laws Point Road, Selbyville. Zoning District: GR. Tax Parcel: 533-12.16-297.00

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 (1) mail return. The Applicants are requesting a variance of 3.4 ft. from the 5 ft. side yard setback requirement on the southwest side for an existing shed.

Mrs. Shannon Carmean Burton, Esquire, appeared on behalf of the Applicants.

Mrs. Carmean Burton stated that she is here on behalf of the Applicants; that her clients have applied for a side yard variance; that the original request was for a 3.4 ft. variance for an existing shed; that there was a variance obtained in 2004 so, to the extent that the variance approval did not cover any of the other issues related to this property, the Applicants are going to try and address those tonight as well; that the Applicants reside in New Freedom, Pennsylvania; that they were unable to attend the meeting tonight but have submitted sworn affidavits setting forth their testimony and authorizing her to represent them; that, in attendance on behalf of the Applicants, is Robin Palumbo Thompson, a realtor with Northrop Realty, who represented the Applicants listing and sale of the property; that the property is located at 36990 Laws Point Road, Selbyville; that the Applicants purchased the property on May 16, 1988; that, at the time of purchase, the property was improved with the existing shed; that a variance was applied for and obtained for the side yard setback requirement in 2004 for a proposed sunroom on the existing deck and to extend the deck; that the variance was approved in Case Number 8509 and the findings are included as an exhibit to the packet; that, at that time, the Applicants were unaware that there were any encroachments into the setbacks other than the proposed improvements that they were seeking; that many years later they entered into a contract to sell the property on August 17, 2022; that the contract was to sell the property to Gilbert and Jeanine Braun who, just prior to closing, engaged Cotton Engineering to prepare a boundary survey of the property; that this survey was received at the closing table and was submitted to Planning & Zoning for review; that it was at that submission that they were told they would need a variance for the shed; that it was difficult to obtain a copy of what was approved in the 2004 variance approval but they did receive it even though they are unsure as to what exactly was approved; that the survey showed that the shed encroached



into the 5 ft. side yard setback by 3.4 ft.; that, originally, the survey, which had to be updated because the surveyor did not show the distances on the north side of the property for the two (2) sets of steps and the additional storage area; that the original entrance on the north side of the property should have been addressed in 2004 like the shed but for whatever reason it was not; that those additional variances would be 1.6 ft. for the steps in the side yard towards the front of the property, 1.8 ft. for the storage structure, and 0.6 ft. for the steps off the deck; that the surveyor updated the survey a couple weeks ago and it was submitted into the record; that, upon learning of the encroachment, the Applicants promptly filed for a variance on behalf of the Brauns to bring the property into compliance with the zoning code; that the property is unique because it is a small and narrow lot; that the lot is only 40' x 100'; that the lot is located within the Swann Keys Subdivision; that the exceptional practical difficulty is due to the uniqueness of the property and not due to circumstances or conditions generally created by the provisions of the Zoning Code; that the Applicants had no control over the size of the lot; that there have been many variances approved within this community because the lots are small; that they had no control over the placement of the home or the shed; that the shed was and is in its current location when they purchased the property in 1988; that there is no possibility that the property can be developed in strict conformity within the provisions of the zoning code; that, to comply, the Applicants would have to remove the shed which is wired for electric through an underground cable and junction box which have been in place for thirty-four (34) years; that the storage structure and steps on the north side of the property provide storage and ingress and egress to the home; that variances are necessary to enable reasonable use of the property; that the Applicants did not create the exceptional practical difficulty, nor did the Brauns; that it was the Applicants' belief, until receipt of the survey, that all improvements were placed and constructed in compliance with the applicable zoning laws; that this belief was supported by the issuance of the variance in 2004; that the variances will not alter the essential character of the neighborhood, nor substantially or permanently impair the appropriate use or development of adjacent property, nor will be detrimental to the public welfare; that there have been numerous variances granted within the Swann Keys Subdivision due to the small size of lots; that the improvements have been in their current locations for many years, as set forth in the affidavits; that the Applicants have owned this home since 1988 and have never received any complaints about the location of any of the improvements on the property; that the variances requested are sufficient to bring all of the existing improvements into compliance with the Sussex County Zoning Code; that the variances represent the minimum variances necessary to afford relief and represent the least modifications possible of the regulations at issue; that, on the northern side, there are three sets of steps; that the area in question is a storage area that is similar to a small shed; that the storage area was not covered by the variance in 2004 and should be 5 ft. from the side lot line; that it was very difficult to ascertain exactly what was approved back in 2004 other than the deck and sunroom; that there is a walkway with a couple stairs and then it is the deck which is 4 ft. from the lot line; that initially it was only the shed at issue because there were distances that were not noted on the north side of the property; that they had these additional items corrected on the survey to bring the entire property into compliance with this variance request; that there is nowhere to put the shed if it were to be moved; that the lots are so narrow; that they proposed at closing to relocate the shed but there are not alternative options for placement; that the deck is an elevated deck; that the shed was in place when the owners purchased the property in 1988; that the shed was there and the deck built

around it; and that the deck extension was constructed in 2004.

Ms. Robin Palumbo Thompson was sworn in to give testimony about the Application.

Ms. Palumbo Thompson testified that the representations made by Mrs. Burton are true and correct to the best of her knowledge; that the shed is on a slab of concrete; that the shed is not portable; that the deck eliminates a secondary placement option for the shed; that they are unsure if shed was built on-site or just placed already built; and that, from her recollection, it is a couple inch slab of concrete.

Ms. Norwood noted that the other structures on the property can be handled through the administrative variance process.

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

Mr. Chorman closed the public hearing.

Mr. Warfel moved to approve the application for Case No. 12768 for the requested variances, pending final written decision, for the following reasons:

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

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

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

**Case No. 12769–Cortney Horne** seeks a variance from the front yard setback requirement for an existing and proposed structure (Sections 115-42, 115-182, and 115-185 of the Sussex County Zoning Code). The property is located on the west side of East Lagoon Road within the Dogwood Acres Subdivision. 911 Address: 30835 East Lagoon Road, Dagsboro. Zoning District: GR. Tax Parcel: 134-6.00-123.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of, one (1) letter in opposition to the Application, and zero mail returns. The Applicant is requesting a variance of 5.6 ft. from the 17.6 ft. average front yard setback requirement for a proposed addition.

Mr. Courtney Horne was sworn in to give testimony about their application.

Mr. Horne testified that he purchased this property last year; that, when they went to get a permit to do an addition to it, they realized that it is a non-conforming building; that the building is currently at a 14 ft. setback which should be 17.8 ft.; that they had it surveyed and where they thought the property lines were are actually closer which is when they became aware of the problem; that, in 2018, the person that built this home applied for a variance which was denied; that he does not know the whole situation; and that they then built it and had another hearing and were approved.

Mr. Sharp provided the Board with a history of the prior Board decisions.

Mr. Horne testified that they are here to seek a variance for an addition to make the dwelling longer; that they need the variance because the property line is not straight to the road but angled; that, were the property line straight, it would take it to 11 ft. rather than 14 ft.; that, according to the architect, there is no other way to build it with the second floor with the stair landing to match up; that, if they moved it back and created an L, it would not line up; that there is no other way of doing it which led to the application for variance; that the two (2) properties before him are 31 ft. and 33 ft., which are both closer to the street than he is; that the property on the other side of him is within the 17 ft. that is required; that the street is not straight; that he owns property across the street also; that the street is 2 ft. on his property on one side of the street and not where it should be on the other side of the street; that, from his house to the edge of the street, is 23.1 ft.; that the street is 26 ft. wide; that there is a right-of-way that is 30 ft.; that everything in front of the property is grass which is their responsibility to maintain; that, when he first moved in, the inspector came by and told them to cut the grass and that it was their responsibility to maintain it; that they are responsible of maintaining up to the road though they do not own it; that the road was pretty much just placed where they thought it was supposed to be; that he believes when the house was built they did corner pin to corner pin and drew a straight line; that the parcel was formerly multiple lots, and had a pin in between the corner pins, which did not have a straight front property line and led to the discrepancy; that the parcel was created by consolidating three (3) lots into one (1); that they plan to remove the guest house in the future; that the rear of the garage is 27 ft. from the back of the property line on the right side of the property; that the garage will be 38' x 30'; that the addition to the house will be 24' x 20'; that the garage will be elevated with concrete; that the addition to the house will be two (2) stories and adds two bedrooms; that the addition will be a bedroom on top of a bedroom; that they have four (4) children; that the bedrooms in the house are currently the size of a closet; that the bedroom dimensions are 8' x 8' and 10' x 12'; that he plans to retire in a few years and move to this property permanently; that they are trying to make some more room for their kids; that he cannot build the addition in any other way as the stairway will not line up; that, in order to meet code for the rise and run, it has to be

done this way; that, if he was to move it in and back, he would have to remove the retaining wall; that would create its own issues because they are using the existing hallway, which goes into one of the other bedrooms, to make part of the stairwell; that, if the house was tilted 3 ft. more, it would keep more of a straight line; that they have 20-23 ft. of property still there, even though they say he does not own it but he has to maintain it; that there is 12 ft. from the corner to his property line; that the distance to the edge of paving at the edge of the house is 23.1 ft.; that it would be 20 ft. give or take from the property line to the edge of paving; that the powerlines are on the other side of the road; that the pole on his property just feeds his home; that the shipping container on the property is temporary; that the container has been there 8 months; that they applied for a permit to convert it to a shed but have changed directions and are proceeding with the addition; that they obtained a permit for the garage; that the foundation and footer have been poured; that the framing for the garage will be done in two (2) weeks; that, once the garage is done, the container will be leaving; that the septic is still in place; that they received approval to relocate part of the septic and all of their approvals have taken this into account; that, at one time, the yard sloped where the garage is but it has been leveled out; that the retaining wall is on the other side of the property where the house is; that, at the time the retaining wall was built, the slope went down pretty far; that they are limited with placement of improvements because of the retaining wall; that, behind the retaining wall and the proposed addition drops, the ground off about 6 ft.; that the garage will be for parking his truck; that he has a proposal to do new septic tanks and drainage field; that the septic will be moved to the right of the dwelling; that this leaves him with a 14 ft. driveway to go around to the garage; that they were told they could make the septic drain field larger if they wanted to; that the addition has to stop at 20 ft. because of the septic placement; that the placement of the septic tanks is limiting their addition; that this addition is the size needed to accommodate the needs of his family; and that he is requesting a variance of 6.8 ft.

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

Mr. Chorman closed the public hearing.

Mr. Hastings moved to approve the application for Case No. 12769 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to the shape and slope of the property;
2. The exceptional practical difficulty was not created by the Applicant;
3. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare; and
4. The variances represent the minimum variances necessary to afford relief.

Motion by Mr. Hastings, seconded by Mr. Warfel, carried that the **variances be granted for the reasons stated**. Motion carried 4 – 1.

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

**Case No. 12770– Christopher and Lisa Smith** seek a variance from the front yard setback requirement for a proposed addition (Sections 115-25, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located on the southeast side of South Seaview Drive within the Seabreak Subdivision. 911 Address: 31719 South Seaview Drive, Bethany Beach. Zoning District: MR-RPC. Tax Parcel: 134-13.00-1143.00

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 a variance of 10 ft. from the 30 ft. front yard setback requirement for a proposed addition.

Mr. James Fuqua, Esquire, appeared on behalf of the Applicants.

Ms. Lisa Smith was sworn in to give testimony in regards to the Application.

Mr. Fuqua stated that he is the attorney on behalf of the Applicants Christopher and Lisa Smith; that the Application is for a 10 ft. front yard variance for an addition to an existing dwelling; that the Smiths' home is located on Lot 44 in the Seabreak development on Route 1 just north of Bethany Beach; that the Applicants purchased this home in 2017 and did extensive renovations; that the Applicants own another home in Seabreak and have since 1997; that they are proposing to build a 16' x 14' addition to the house on the front corner; that the Applicants recently became grandparents for the first time and are planning to add some additional bedrooms for their extended family and guests; that there is a unique physical condition peculiar to the property that results in an exceptional practical difficulty; that Exhibit 1 is a Google photo of the house and the surrounding area; that the arrow points to the house in question; that the Smiths' house is the next to last house on the east side of Seaview Drive; that their property partially fronts on the cul-de-sac which is a typical circular paved cul-de-sac; that Exhibit 2 is the tax map for Sussex County, which shows the lot dimensions as laid out within the Seabreak Subdivision and that, unlike the vast majority of cul-de-sacs, this one is rectangular; that this cul-de-sac only fronts on the Smiths' side of the road; that the rectangular cul-de-sac actually splits the Smiths' lot, resulting in 34 ft. of frontage on the north side of the property which has a depth of 129.5 ft. while the south side of the lot has 29 ft. of frontage only has a depth of 114 ft.; that Exhibit 3 is a survey showing the existing dwelling and the proposed addition; that the addition would actually be set back 38 or 39 ft. which is in excess of the 30 ft. setback requirement, were it not for the rectangular cul-de-sac; that this cul-de-sac only exists on paper and not in the field; that the south corner of the addition would have a 20 ft. setback from its closest point which is where the 10 ft. variance request comes from; that Exhibit 4 is the same survey but portraying a typical cul-de-sac showing that there would be no need for variance were it a standard cul-de-sac; that the cul-de-sac is in reality part of the paved driveway; that the house to the north of the Smiths' property is much closer to the road; that the proposed addition will not be as far out as the neighbor's house; that

Seabreak has the same restrictive covenant of 30 ft. for the front yard setback requirement; that, on September 1, 2022, the Seabreak Home Owners Association approved a 10 feet front yard variance for the proposed addition, which is the same variance the Applicants seek from the Board; that included with the application is the certificate of approval from the HOA; that he believes the record establishes the legal criteria for the variance has been met; that the lot is unique because of the rectangular cul-de-sac; that the addition cannot be built without the requested variance; that the difficulty was not created by the owners but was created when the cul-de-sac was laid out as part of the subdivision; that the variance will not alter the essential character of the neighborhood; that he thinks it is clearly documented by the fact that the HOA approved the same variance request; that this is the minimum variance request to afford relief; that, were this not a rectangular cul-de-sac, there would be no need for variance; that there are no steps or anything coming off the addition to the best of their knowledge; that they will be using the main entrance to the dwelling; that the proposed circular cul-de-sac was done as an average typical sized cul-de-sac and created by the architect; that the triangular part of the cul-de-sac for all intent and purpose is part of the Smiths' driveway; that there is still enough room for emergency vehicles to turn around; that all of the other houses on the street meet the setbacks but are closer to the street than the Smiths' house; that the addition is going to be two (2) bedrooms to be used as a room for the grandchild and a play room or guest room; that when you live at the beach you get a lot of guests at your house; that the cul-de-sac is paved and maintained by the HOA; and that the corner piece is part of the Applicants' driveway and is maintained by them.

Ms. Smith testified that all the statements of Mr. Fuqua are true and correct to the best of her knowledge; and that there are no additional steps which will protrude off the addition into the front yard.

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

Mr. Chorman closed the public hearing.

Mr. Warfel moved to approve the application for Case No. 12770 for the requested variance, pending final written decision, for the following reasons:

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

Motion by Mr. Warfel, seconded by Dr. Carson, carried that the **variance be granted for the**

**reasons stated.** Motion carried 5 – 0.

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

**ADDITIONAL BUSINESS**

**Meeting adjourned at 7:55 p.m.**