

## MINUTES OF DECEMBER 21, 2020

The regular meeting of the Sussex County Board of Adjustment was held on Monday, December 21, 2020, 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 Chair Ellen Magee presiding. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, Mr. John Williamson. Mr. Brent Workman - Absent. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney and staff members Mr. Jamie Sharp – Director of Planning and Zoning, Ms. Jennifer Norwood - Planning and Zoning Manager, and Ms. Ann Lepore – Recording Secretary.

The Pledge of Allegiance was led by Ms. Magee.

Motion by Dr. Carson, seconded by Mr. Chorman, and carried unanimously to approve the agenda. Motion carried 4 – 0.

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

Motion by Mr. Williamson, seconded by Dr. Carson, and carried unanimously to approve the Minutes for the October 19, 2020, meeting. Motion carried 4 – 0.

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

Motion by Mr. Chorman, seconded by Mr. Williamson, and carried to approve the Findings of Facts for the October 19, 2020, meeting. Motion carried 4 – 0.

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

Chair Magee read the mask policy.

### PUBLIC HEARINGS

**Case No. 12505 – Michael & Theresa Baril** seeks variances from the corner front setback for proposed structures (Sections 115-25 and 115-182 of the Sussex County Zoning Code). The property is located on the northeast corner of the Woodland Circle and Holly Court intersection within the Angola by the Bay Subdivision. 911 Address: 23026 Holly Court, Lewes. Zoning District: AR-1. Tax Parcel: 234-11.20-365.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. The Applicant is requesting variances of 5 ft. from the 15 ft. corner front setback for proposed steps; 7 ft. from the 15 ft. corner front setback for a proposed screen porch; and 5 ft. from the 15 ft corner front setback from a proposed deck. Ms. Norwood noted that the deck can encroach 5 ft. into the front yard setback and will comply with County Code.

Mr. Michael Baril and Ms. Theresa Baril were sworn in to give testimony about the Application.

Mr. Baril testified that the property is unique as it is irregular and narrow; that the request is to build a 6 ft. x 34 ft. deck from the front door to the proposed screen porch; that, due to the sharp angles of the building setback line, the porch cannot be built within the setbacks; that the exceptional practical difficulty was not created by the Applicants but by the uniqueness of the property; that the property has an extreme angle; that the variances will not alter the essential character of the neighborhood as the screen porch will not extend beyond the sidewalk already existing on the property; that the variances requested are the minimum variances and only one corner of the porch will encroach due to the sharp angles; that there is grass between the road and the property line; that there is approximately 30 feet from the road to the sidewalk on the lot; that the deck and screen porch will be located within the sidewalk area; that the garage is already on the property; that the steps will project towards the driveway approximately 3 feet; that the steps will be within the building setback line; that the site is served by public water and sewer; that the HOA has approved the request; that the steps in the front will remain and there are no issues with the front steps; and that the steps for the screen porch will measure 3 feet by 3 feet.

Ms. Baril testified that the Applicants did not realize the extreme angle of the lot; that half of the porch will meet the setback requirements; and that the proposed structure will not create any visibility issues in the neighborhood.

Ms. Norwood advised the Board that the garage is less than 600 square feet and complies with the setback requirements.

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

Following the conclusion of Case No. 12505 Ms. Magee closed the public hearing.

Dr. Carson moved to approve Case No. 12505 for the requested variances; that the property has unique physical conditions; that the variances will not alter the essential character of the neighborhood; and that the variances are the minimum variances to afford relief.

Motion by Dr. Carson, seconded by Mr. Williamson, carried unanimously that the **variances be granted for the reasons stated.** Motion carried 4 – 0.

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

**Case No. 12506 – Jessica F. Peake** seeks variances from the front yard and rear yard setback requirements for proposed structures (Sections 115-82, 115-182 and 115-183 of the Sussex County Zoning Code). The property is located on the east side of Coastal Hwy. (Rt. 1) approximately 300 ft. south of Jefferson Bridge Rd. 911 Address: 32967 Coastal Highway, Bethany Beach. Zoning District: C-1. Tax Parcel: 134-17.11-40.00

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or none in opposition to the Application and four mail returns. The Applicant is requesting variances of 40 ft. from the 60 ft. front yard setback and 5 ft. from the 5 ft. rear yard setback for a proposed mini-golf course. Mr. Whitehouse noted that County Council approved Conditional Use 2222 on June 9, 2020 for the use of a mini-golf course; that the Board of Adjustment denied variances from the front yard, rear yard, buffer requirements from the Combined Highway Corridor Overlay Zone, and parking space requirements on March 2, 2020.

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

Ms. Mackenzie Peet, Esq. was present on behalf of the Applicant, Nick's Golf Bethany Beach, LLC and property owner, Jessica F. Peake. Nick Geracimos, Jack Burbage, and Dean Geracimos, who are business partners of the proposed project, Eric Kells of McCrone Engineering were present and Kathy Pioreschi participated via teleconference on behalf of her mother Jessica F. Peake.

Ms. Peet stated that there are two requests as part of filing a new variance application; that first the Board must determine if there has been a substantial change in the circumstances or conditions of the property or in the proposed use or plan for use; that second, if the Board determines that there has been a substantial change, then the Applicant respectfully requests the Board's consideration of two variances from the front yard setback and rear yard setback requirements for the proposed structures; that the property is located on the east side of Coastal Highway (Rt. 1) approximately 300 ft. south of Jefferson Bridge Road with an address of 32967 Coastal Highway, Bethany Beach; that the property is the former location of Beach Liquors which has since moved across the highway; that the property consists of 0.46 acres and is zoned General Commercial (C-1)

with a 60 ft. front yard setback, a 5 ft. side yard setback, a 20 ft. side yard setback on the northwest portion of the property bordering the Medium Density (MR) district, and a 5 ft. rear yard setback; that the properties to the north and east of this property are also zoned C-1; that there is one property to the north that is zoned High Density Residential (HR-1) and a single parcel zoned MR to the northwest of this parcel; that the properties on the western side of Coastal Highway are zone C-1 and MR; that the Applicant is retrying this application; that the Applicant previously submitted an Application heard by this Board on February 17, 2020, continued to March 2, 2020, requesting a variance of 45 ft. from the 60 ft. front yard setback requirement, a variance of 5 ft. from the 20 ft. landscape buffer of the combined highway corridor overlay zone and a variance of 119 parking spaces from the 120 required onsite parking spaces; that the Board denied all three variance requests in a split three-two decision; that the Applicant submitted a request for rehearing which was also denied; that, in addition to the variance request, the Applicant applied for and received a conditional use approval from Sussex County Council on June 9, 2020, to operate a miniature golf course on the subject property; that County Council found that the said use is in accordance with the Comprehensive Development Plan and promoted the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County; that the Conditional Use is for general convenience and welfare for the inhabitants of Sussex County; and that the Conditional Use was approved subject to the following conditions:

- A. The use shall be limited to a mini golf course and uses associated with that activity.
- B. The signage shall comply with the sign requirements for the underlying C-1 zone.
- C. There shall be fencing along the Route One boundary of the property to prevent golfers and golf balls from inadvertently leaving the property and getting near the Route One right-of-way. The location and type of fencing shall be shown on the Final Site Plan.
- D. The applicant shall comply with all of DelDOT's requirements.
- E. At least 18 parking spaces shall be provided. These spaces must either be on-site or on an adjacent property pursuant to a Shared Parking Agreement.
- F. All lighting shall be downward screened and shielded so that it does not shine on neighboring properties or roadways.
- G. Any dumpsters shall be screened from view from neighboring properties or roadways.
- H. The entrance to the site shall be oriented to the north and east side so that families and golfers enter from that side and are discouraged from walking along Route One to enter the property.

- I. The applicant shall comply with all requirements of the Sussex Conservation District (SCD) regarding stormwater management on the site. The Final Site Plan shall contain the approval of the Sussex Conservation District.
- J. The Site Plans shall include a landscape plan that identifies the landscaping within the buffer area required by the Combined Highway Corridor Overlay Zone (CHCOZ).
- K. Failure to comply with any of these conditions shall be grounds for the termination of the Conditional Use approval.
- L. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Ms. Peet stated that, as previously stated, the Applicant is before the Board with two requests; that the first request requires the Board to determine if there has been a substantial change in the circumstances or conditions in the property or in the proposed use or plan for use; that, if the Board agrees that there has been a substantial change as the facts support, then the criteria for granting a variance will be presented; that the Board of Adjustment is a quasi-judicial body; that, in the court of law, there is a principle called *res judicata* which means a matter that has been adjudicated and decided then you cannot sue again to get a different result; that the same principle applies to Board of Adjustment decisions; that, in 1987, a case was appealed from a 1984 decision of the Sussex County Board of Adjustment; that, in that case, the Superior Court decided that the Board of Adjustment erred in failing to consider the substantiality of change in the proposed use; that the Board's decision was reversed and remanded for further consideration; that, in Kollock vs. Sussex County Board of Adjustment, Judge Chandler stated the rules regarding finality of decisions in zoning cases are no different from such rules in other areas of law; that Judge Chandler held that "while a Board cannot change its decision once made, it can consider a new application for similar relief if there has been a substantial change in the circumstances or the conditions affecting the property or in the proposed use or plans for use"; that, in the Kollock case, the Court found that the Board could grant a second application which had a substantial change from the original application; that the burden of proof regarding the changed circumstances lies with the Applicant; that, in the Kollock case, it was before the Board of Adjustment to decide if there was a substantial change in circumstances; that the Court also stated there must be a material change affecting the merits of the Application; that it is the Applicant's position that there is a material change affecting the merits of this Application; that the Application first submitted and heard by the Board was a request for a 55 ft. variance from the front yard setback, a 15 ft. variance from the landscape buffer and a variance from the parking requirements; that original request was later amended when safety concerns were raised; that the hearing held on February 17, 2020, was continued to allow the Applicant time to address the safety concerns and to submit a copy of the

lease and a shared parking agreement; that, on March 2, 2020, the Applicant appeared before the Board with a modified Application requesting variances of 45 ft. from the front yard setback, 5 ft. from the landscape buffer requirement and relief from the parking requirement; and that the Applicant believes that there has been a substantial change for the following reasons:

1. A conditional use of land was granted for the property by Ordinance 2713 specifically addressing parking concerns addressed by this Board. That conditional use permits parking on-site and on the adjacent property and therefore, eliminates the need for a variance from the parking requirement. This qualifies as a substantial change in circumstances or conditions affecting the property.
2. The location of parking has changed to provide a more sensible and safe location that will buffer the course from the highway. This qualifies as a substantial change in circumstances or conditions affecting the property.
3. A conditional use of land was granted for the property previously addressing the Board's safety concerns requiring the installation of a fence between the golf course and Route 1. This qualifies as a substantial change in circumstances or conditions affecting the property.
4. There is a guard rail proposed to address the safety concerns expressed by the Board.
5. There is no longer a need to request a variance from the buffer requirement for the overlay zone. This qualifies as a substantial change in circumstances or conditions affecting the property.
6. The entire structure has been set back farther from Route 1 to address safety concerns.
7. The front yard variance request is now for 40 ft. and not the original 55 ft. and 45 ft. requests. This qualifies as a substantial change in circumstances or conditions affecting the property.
8. There is now a rear yard variance request.

Ms. Peet stated that for all these reasons the Applicant requests that the Board vote to approve the request for a new application for similar relief as there have been a number of substantial changes in circumstances and conditions affecting this property and in the proposed use or plan for use.

Mr. Nick Geracimos was sworn in to give testimony about the Application. Mr. Geracimos

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

Dr. Carson moved to hear the Application as a substantial change in circumstances and conditions has been shown by the Applicant.

Motion by Dr. Carson, seconded by Mr. Williamson, carried that the **case be heard**.

The vote by roll call; Mr. Williamson – yea, Dr. Carson – yea, Ms. Magee – yea and Mr. Chorman - yea. Motion carried 4 – 0.

Ms. Peet stated that the Applicant is requesting variances from the front yard and rear yard setback requirements for proposed structures in the amount of 40 ft. in the front yard and 5 ft. in the rear yard; that Nick Geracimos is the founder of Nick's Mini Golf, a family-owned business in existence since 2015, with six miniature golf course locations in the Delmarva region which employs approximately 30 people; that Nick Geracimos has partnered with Jack Burbage for this project; that the mini-golf is a family-owned and family oriented business that will embrace the family atmosphere in Bethany Beach and will enhance the existing commercial use and provide for commercial growth and jobs in Bethany Beach; that Mr. Burbage owns the adjacent lot and is agreeable to the structure being up to the property line; that the proposed course will be 20 ft. off the front property line to address safety concerns raised by the Board; that parking will be in the front yard and the entrance will be same location as it currently exists; that there will be a guardrail and a 42 inch tall fence to keep balls off the highway; that there is significant bicycle parking in the area; that the existing building does not conform with current County Code and that any proposed structure at this site would require a variance because the 60 ft. setback renders 50% of the building envelope unusable; that no traffic impact study was required by DelDOT; that there is a lease in effect for the site; that the building is empty; that the property is located along the Route 1 corridor within a tear drop shaped commercial area bordered on the east by Routh 1, bordered on the west by South Pennsylvania Avenue, and bordered to the north by Jefferson Bridge Road; that the unique, irregular shaped lot is narrow and shallow to the south and wider to the north which precludes the development of an 18-hole miniature golf course without the granting of the variances; that the lot's uniqueness and irregularity existed prior to the Applicant's lease of the property; that, due to the uniqueness of the property, the property cannot be developed in strict conformity with the Zoning Code; that the property cannot be developed without a variance; that the exceptional practical difficulty was not created by the Applicant; that the variances will not alter the essential character of the neighborhood; that the property is zoned C-1 and surrounded by C-1 parcels with the exception of one adjacent lot zoned MR; that the use will provide recreation for residents and tourists of Bethany Beach; that the vegetative areas will remain where feasible during and post construction and a landscape plan will be prepared; and that the requested variances represent the minimum variances that will afford relief and represent the least modifications possible.

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

Mr. Nick Geracimos testified that he has spent a lot of time, resources and energy to bring an forward an Application that he believes is substantially changed from the previous application; that safety concerns have been addressed; that this is a business that will complement surrounding businesses; that there will be off-site parking and a path to the sales center for the golf course; and that there will be a retaining wall around the entire course; and that the maintenance can be performed without entering the adjoining property.

Mr. Jack Burbage was sworn in to give testimony about the Application.

Mr. Burbage testified that he spoke to the owners of Mickey's Crab House and they have no objection to the Application; that he believes the concerns raised by neighbors with the prior application have been addressed; that he is the owner of the property to the east and has no issue with the rear yard variance request; and that there is a shared parking agreement for 11 spaces on his other lands.

Mr. Dean Geracimos was sworn in to give testimony about the Application.

Mr. Dean Geracimos testified that he hands the public relations for the business; that there is excitement in the area for the proposed golf course, particularly with the restaurants; that there is a need in the area for this type of business; and that no one opposes the golf course.

Ms. Kathy Prioreshi was sworn in on teleconference to give testimony in support of the Application.

Ms. Prioreshi testified that she is calling in on behalf of her mother, Jessica Peake, owner of the property; that the property has been in her family since the 1970s; that her family is happy that this will be a community oriented business; and that she requests the Board's approval this evening.

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

The Board found that there were no further callers on teleconference in support of or opposition to the Application.

Following the conclusion of Case No. 12506 Ms. Magee closed the public hearing.

Mr. Chorman moved to table Case No. 12506 until the meeting of January 4, 2021.

Motion by Mr. Chorman, seconded by Mr. Williamson, failed as it did not meet the necessary three votes to carry the motion. Motion failed 2 – 2.



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

Dr. Carson moved to approve Case No. 12506 for the variances because the property is unique; that the exceptional practical difficulty was not created by the Applicant; that the variances will not alter the essential character of the neighborhood; and that the variances requested are the minimum variances to afford relief.

Motion by Dr. Carson, seconded by Mr. Chorman, carried that the **variances be granted for the reasons stated.** Motion carried 3 – 1.

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

**Case No. 12507 – Scott E. & Elisabeth H. Kammerer** seeks a variance from the maximum fence height requirement for an existing fence (Sections 115-34, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located on the northeast side of Fisher Street within the Silver Lake Manor Subdivision 911 Address: 20591 Fisher Street, Rehoboth Beach. Zoning District: MR. Tax Parcel: 334-20.09-41.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received four letters in support of and one in opposition to the Application and one mail return. The Applicant is requesting a variance of 1 ft. from the 7 ft. maximum height requirement for an existing fence.

Mackenzie Peet, Esq. was present on behalf of the Applicants, Scott & Elisabeth Kammerer.

Ms. Peet stated that the subject property is in the Silver Lake Manor subdivision and located on the north side of Fisher Street in Rehoboth Beach; that the property consists of approximately 5,000 square feet and is located in the Medium Density Residential District (MR); that, for the MR district, there are a 40 ft. front yard setback and 10 ft. setback on both the front and the side yards; that the average front yard setback for Fisher Street is 19.5 ft.; that County Code allows for reduced setbacks of 5 ft. for both side and rear yards on lots under 10,000 square feet; that the structures on this lot therefore meet the setbacks; that the Applicant filed this request following a complaint that was submitted to the Planning and Zoning Department by a neighbor; that four neighbors have submitted letters of support; that a notice of violation was issued for building without a permit but the permit was issued on the same day which may have been delayed due to the Covid; that the second notice of violation issued to the Applicants was for the violation of the maximum height requirement of 7 ft.; that the request for a variance is for relief from the maximum height requirement; that the Applicants recently installed a pool and 37 ft. of fencing around the swimming pool for privacy; that the property is narrow and appears to have been subdivided from a larger parcel; that the portion of the property where the swimming pool is located is raised and created the unique physical condition on the site; that the portion of the fence that is non-compliant with County Code is approximately five

panels of fencing and is on the portion of the property that has been raised and cannot be reduced; that these sections of fence are located on top of a retaining wall; that a variance of 1 foot 2 inches is needed rather than 1 foot as noted on the Application; that the property is unique as it is a narrow lot measuring 50 feet wide; that the exceptional practical difficulty was not created by the Applicants but by the fence contractor; that the fence height cannot be reduced; that the fence was permitted and compliant with County Code with the exception of the five panels that are above the permitted height; that the variance will not alter the essential character of the neighborhood; that the variance requested is the minimum variance request to allow the fence to remain in its current location; and that the fence was permitted by a building permit.

Mr. Scott and Ms. Elisabeth Kammerer were sworn in to give testimony about the Application. Mr. and Ms. Kammerer affirmed the statements made by Ms. Peet as true and correct.

Ms. Kammerer testified that they contracted with Anthony Sylvan Pools to complete the improvements on the property; that the Contractor subcontracted the work for the fence to Blue Heron; and that there were no changes made to the building plans following the issuance of the permit.

Ms. Peet stated that the area in question is an L-shaped portion of the fence with 5 panels but the survey indicates that more panels are at issue.

Mr. Kammerer testified that he signed for the building permit; that, when you are on his property, the fence is 6 ft. tall but when you go on the other side it is 8 ft. tall because of the retaining wall; that the neighboring property is lower so the fence appears taller on that side; and that the front yard of the property is level with neighboring lands but the neighboring land slopes to the rear.

Ms. Irene Zarechnak was sworn in to give testimony in opposition to the Application.

Ms. Zarechnak testified that the rear of the Kammerer lot is her side property line; that the land is flat in the neighborhood; that she questions why the pool was raised; that the fence blocks the natural sunlight to the perennial garden on her property; that she requests that the Board deny the request for a variance; and that she submitted pictures by email.

The Board took a seven-minute recess to allow Staff the opportunity to see if Ms. Zarechnak's email was received.

After the recess, Mr. Whitehouse stated that the email was not received, and he spoke with Ms. Zarechnak who stated that she could send the pictures if requested.

The Board discussed this issue and concluded that there is enough information in the record to continue without Ms. Zarechnak's pictures.

Mr. Sharp stated that copies of the building permit were made during the recess and have been

submitted to Board members.

Ms. Peet stated that the complaint was issued after the fence was built; that Mr. Kammerer then obtained the building permit; that the Applicants relied on their builders and the Applicant let the builders go from the job; and that the only issue is with the fence.

Ms. Kammerer testified that the Applicants had to get new builders and that the wall is poured.

Mr. Kammerer testified that the fence is 6 feet tall all around the pool; that the retaining wall is around the pool as well; and that the area that is an issue is where the yard slopes.

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

Following the conclusion of Case No. 12488 Ms. Magee closed the public hearing.

Mr. Williamson moved to approve Case No. 12507 for the variances because the exceptional practical difficulty was not created by the Applicants; that the variance will not alter the essential character of the neighborhood; and that the variance requested is the minimum variance to afford relief.

Motion by Mr. Williamson, seconded by Dr. Carson, carried unanimously that the **variance be granted for the reasons stated**. Motion carried 4 – 0.

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

The Board also directed Mr. Sharp to send a letter to the Applicants' builder.

**Case No. 12508 – Louis J. Cuck & Ludovic Bertaut** seek variances from the side yard, front yard and maximum fence height setback requirements for proposed structures. (Sections 115-42, 115-182, 115-183 and 115-185 of the Sussex County Zoning Code). The property is a through lot located on the northeast side of Dunbar Street and the southwest side of Hebron Road approximately 212 ft. northwest of Norwood Street. 911 Address: N/A Zoning District: GR. Tax Parcel: 334-13.15-1.01

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received two letters in support of and three letters and a 32-signature petition in opposition to the Application and six mail returns. The Applicant is requesting the following variances:

- 3.3 ft. from the 10 ft. side yard setback requirement for a proposed dwelling.
- 5 ft. from the 10 ft. side yard setback requirement for proposed HVAC.
- 10 ft. from the 40 ft. front yard setback requirement from Hebron Road for a proposed

swimming pool.

- 10 ft. from the 40 ft. front yard setback requirement from Hebron Road for a proposed shed.
- 3.5 ft. from the 3.5 ft. height requirement for a proposed fence from Hebron Road.

Mr. Louis Cuck and Mr. Ludovic Bertaut were sworn in to give testimony about the Application.

Mr. Cuck testified that the side yard variances are not being requested as the dwelling and HVAC will meet side yard setbacks.

Mr. Whitehouse stated that the Applicant did not include the side yard requests in the Application but, since the survey showed the need for the side yard variances, staff included those requests in the Application for completeness.

Mr. Cuck testified that they are not seeking the side yard variances.

Mr. Sharp stated that this lot does not receive the benefit of the small lot ordinance because the lot is greater than 10,000 square feet; that the survey shows a house that is 47.4 foot wide and that side yard variances would be needed based on that survey.

Mr. Cuck testified that the house will only be 43 feet wide and no side yard variances will be needed; that the Board can disregard the site plan as it pertains to the house and HVAC as those structures will comply with the setback requirements; that the property is a through lot with frontages on Dunbar Street and Hebron Road; that the front setback off Dunbar Street is 30 ft. and the front setback off Hebron Road is 40 ft.; that, within the community of 98 lots, 93 lots have only one front yard setback and five are through lots having two front yard setbacks; that the combined front and rear yard setbacks in the community range from 40 ft. to 50 ft. total but, for the five through lots, it is 70 ft; that these setbacks disproportionately place limitations on the ability of these properties for comparable and equitable development; that the property is not a perfect rectangle as it has two different lengths; that the northeast side is 170.99 ft. and the southwest side is 148.70 ft.; that the lot is smaller than what zoning would require if a new lot was created; that, with 70 ft. setbacks, it is difficult to create a backyard with a pool and shed when 70 ft of the lot is unusable and the differing lengths of the lot increase that limitation; that, with the 70 ft. in setbacks, there is no other location on the lot to place such structures that do not infringe on the back part of the proposed home; that the non-conforming lot was not created by the Applicant; that 83 of the 98 homes in the community are less than 10,000 square feet and automatically receive reduced setbacks; that building this proposed dwelling with accessory structures is not asking for anything greater than what already exists in the community; that building this home will increase the character of the neighborhood and will increase the value of the property that people already own in this community; that having an empty grass lot creates a haven for people outside the community to dump garbage and takes away from the character of the neighborhood; that the intent is to build a retirement home and become a positive presence in the community; that it is the minimum variance because of the through lot; that there will only be

single access to the lot from Dunbar Street and there will no access to Hebron Road; that a 10 ft. rear yard is the standard for 93 of the 98 homes in the community; that the 7 ft. fence is needed for the general safety and privacy of the property due to the heavy traffic, new bike path, and pool; that there is a bike path along Hebron Road; that the pool requires at least a 4 ft. fence; that they have contacted the community group New Beginnings to explain the request; that the Applicants prefer not to build a three-story home because they feel such a home would be outside the character of the neighborhood; that there is space to the rear of the proposed dwelling they wish to use it as a back yard and not have the structures crowded together; that there is approximately 12 ft. from the property line to the edge of paving for the bike path; that granting the variance for the fence would not create a visibility issue for traffic; that there is public sewer; there will be a well for the water; that the fence will go to the rear of the lot; and that they did not look at moving the fence farther away from Hebron Road.

Mr. Bertaut testified that there is 33 feet from the property line to the center of Hebron Road.

Mr. Brian Ulishney was sworn in to give testimony in support of the Application.

Mr. Ulishney testified that he owns the lot three properties away from Mr. Cuck and Mr. Bertaut's property; that the majority of lots are more typical standard rectangular shaped lots; that variances would not be typically needed to make those lots most useful; that there are five properties out of the 98 that are very different; that the through lot, double frontage limits the use by 30 ft. or more than other properties; that the property is also denied access from frontage on Hebron Road; that treating Hebron Road as a front yard is a limitation as it is effectively the back yard of the property; that, due to the shape of the lot, the Applicants also lose approximately 20 ft.; that, given the limitations on this property, the request for variances seem reasonable and, if granted, do not provide the owners with anymore access than any other property in the development; that, as property owner with similar setbacks, he was unaware of the through lot issue when he purchased the property; that the property was previously overgrown and the Applicants have cleaned up the site; that a 3 story house would not be desirable; and that he supports the request as it is minimal, reasonable and will not alter the character of the neighborhood.

Mr. Douglas Lingenfelter was sworn in to give testimony in support of the Application.

Mr. Lingenfelter testified that he is the owner of the property to the left of the subject property (Lot 1); that the request for variances is reasonable; that the through lot status was not disclosed to him during the purchase process; that 10 ft. is a reasonable request for a pool and a shed for what is effectively a back yard; that the Junction & Breakwater Trail is being expanded; that the fence will provide privacy; that he has not built on his lot but plans to do so in the future; that, as the immediate adjacent property owner, he has no objection to the fence height; and that there are similar 7 ft. fences in the area.

Mr. Whitehouse confirmed that since 2011 there have been no variances granted for the five through lots in this community and that the Board denied Case No. 12333 on July 15, 2019.

Ms. Brenda Milbourne was sworn in to give testimony in opposition to the Application.

Ms. Milbourne testified that she is the executive director of the community; that there is a resident living on lot four of the five through lots and there was no variance needed for that property; that West Rehoboth is a unique community; that the community feels that the Applicants do not want to be part of the community; that there are several new homes and they all work together as a community and there is no segregation; and that, if this variance is granted, it may create a precedent for future variances.

Mr. Sharp clarified that the entrance to the Applicant's property will be on Dunbar Street and there will be no entrance on Hebron Street.

Mr. Trey Edwards was sworn in to give testimony in opposition to the Application.

Mr. Edwards testified that he is the secretary of Westside New Beginnings, LLC, in West Rehoboth; that there is no HOA for this community; that this community has the Westside New Beginnings, LLC, where they come together as homeowners and renters to handle problems that come up in the community; that the Board members of the Westside New Beginnings voted to oppose the request for a variance on the merit of property value; that the higher the property value will create hardship for the existing residents who are mostly low-income earners and senior citizens; that granting the variance will alter the character of the neighborhood by making it unaffordable for the current residents; and that he is asking the Board to deny the request.

Ms. Stephanie Shelton was sworn in on teleconference to give testimony in opposition to the Application.

Ms. Shelton testified that granting the variance would change the character of the neighborhood; that the Applicants knew they bought a small lot and they should build within the setbacks; that the fence will block her view of the road; and that she opposes the request for a variance.

Ms. Mary Ellen James was sworn in on teleconference to give testimony in opposition to the Application.

Ms. James testified that she is opposed to variances in general except in extreme circumstances; that she built her home in 2018 and is a full-time resident; that she wishes to preserve West Rehoboth as a community; and that homes should be built within the confines of County Code without having to infringe upon neighbors.

Mr. Cuck testified that he is not requesting a variance for the dwelling, only for the pool, shed, and fence height; that they are not asking for access to Hebron Road; that they had no idea

when they purchased the property that it was a through lot; and that they are not asking for anything that is not already established in 93 out of 98 lots.

The Board found that two persons appeared in support of the Application, two persons appeared in opposition to the Application, and two persons appeared via teleconference to oppose the Application.

Following the conclusion of Case No. 12508 Ms. Magee closed the public hearing.

Mr. Williamson moved to deny Case No. 12508 for the variance because the exceptional practical difficulty is being created by the Applicant; that granting the variances will alter the essential character of the neighborhood and substantially and permanently impair the use or development of adjacent properties, and that the requests do not represent the minimum variances to afford relief.

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

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

**Case No. 12509 – Kevin & Patricia O’Reilly** seek variances from the front yard and rear yard setback requirements for proposed and existing structures. (Sections 115-34, 115-182 and 115-183 of the Sussex County Zoning Code). The property is located on the west side of Hassell Avenue Extension within the Bay View Park Subdivision. 911 Address: 34967 Hassell Avenue Ext., Bethany Beach. Zoning District: MR. Tax Parcel: 134-20.11-22.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or none in opposition to the Application and zero mail returns. The Applicant is requesting a 9 ft. variance from the 30 ft. front yard setback for a proposed addition and a 12 ft. variance from the front yard setback for steps.

Mr. Kevin O’Reilly and Ms. Patricia O’Reilly were sworn in to give testimony about the Application.

Mr. O’Reilly testified that the property is unique; that the property is 50 ft. by 100 ft.; that the property is narrow and the only area for an addition is the front yard; that the house is a three bedroom home with one bathroom and limited closet space; that an addition would allow for a master bathroom and more closet space; that the house was built in 1984 as a small summer vacation home; that they will be spending more time here throughout the year and need additional space; that the essential character of the neighborhood will not change; that the proposed addition does not impact the development of the adjacent properties; that the front of the house will match up with the front of the house to the south; that there are only four homes on the west side of Hassell Avenue Ext. and only

one home on the east side; that many of the homes in the neighborhood do not meet the 30 ft. front yard setback; that the new porch and addition gives the house additional curb appeal; that the roof line of the addition will match the roof line of the existing house; that the variance of 9 ft. from the 30 ft. front yard setback is the minimum that provides additional space for the master bath and closet space; that the property is located towards the end of Bayview Park and the end of Hassell Avenue; that there are many curves and turns before Hassell Avenue turns into Hassell Avenue Extended; that some houses along Hassell Avenue have less than 30 feet front yard setbacks; that, when turning onto Hassell Avenue Extended from Hassell Avenue, the sight line to the addition does not appear to stick out towards the road; that the roof line of the addition will match the roof line of the existing house; that, from the ground level to the addition is entirely open; that the addition will not alter the essential character of the neighborhood; that there will be support posts under the addition; that the curve of the road gives the appearance that the house with addition matches the house on the adjacent property even though they are set back differently from the road; that they have spoken with neighbors and received positive feedback for the addition; that the addition will match the addition to the house to the south of the site; that the deck will be removed; that steps do not currently exist and would be new construction; that there is a well in the front yard and will not be impacted by the addition; and that they will be able to park a car under the addition.

Ms. O'Reilly testified that they can park 7 cars on the site.

Mr. Sharp stated that there appears to be three variances needed for the structures.

Mr. O'Reilly stated that they had flooding problems after Hurricane Sandy; that the bulkhead is the property line; that there is very little space between the property line and the edge of paving; and that granting the variance will not create visibility issue for traffic on Hassell Avenue Ext.

Ms. Norwood stated that a rear yard variance is not needed and that the survey submitted does not appear to be to scale.

Mr. O'Reilly testified that he could submit the original survey with the scale to staff.

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

Ms. Magee stated that she believes a correct survey should be submitted to staff.

Following the conclusion of Case No. 12509 Ms. Magee closed the public hearing.

Dr. Carson moved to leave the record open until January 4, 2021, for Case No. 12509 for the limited purpose of receiving an original copy of survey from the Applicant so that staff can accurately calculate the measurements and the variances needed.

Motion by Dr. Carson, seconded by Mr. Chorman, carried unanimously that the **record be**



**left open until the January 4, 2021 meeting.** Motion carried 4 – 0.

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

**Additional Business**

There was no additional business to be heard.

**Meeting adjourned at 8:53 p.m.**