

MINUTES OF FEBRUARY 17, 2020

The regular meeting of the Sussex County Board of Adjustment was held on Monday, February 17, 2020, at 6:00 p.m. in the County Council Chambers, 2 The Circle, Georgetown, Delaware.

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, and Mr. Brent Workman. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney and staff members Mr. Jamie Whitehouse – Interim Planning & Zoning Director, and Ms. Ann Lepore – Recording Secretary.

The Pledge of Allegiance was led by Ms. Magee.

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

Motion by Mr. Williamson, seconded by Dr. Carson, and carried unanimously to approve the Minutes as amended for the December 16, 2019, meeting. Motion carried 5 – 0.

Motion by Mr. Williamson, seconded by Mr. Chorman, and carried to approve the Findings of Facts as amended for the December 16, 2019, meeting. Motion carried 5 – 0.

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

OLD BUSINESS

There was no old business to be heard.

PUBLIC HEARINGS

Case No. 12411 – Cyril H. Price & Doris Davis Price seek variances from the road frontage requirement for proposed lots (Section 115-25 of the Sussex County Zoning Code). The property is located on the south side of Mount Joy Rd. (Rt. 5) approximately 0.32 mile northwest of John J. Williams Hwy. (Rt. 24). 911 Address: 30692 & 30882 Mount Joy Rd., Millsboro. Zoning District: AR-1. Tax Parcel: 234-29.00-31.00

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 variances of 22.56 ft and 54.49 ft. from the 150 ft. lot width requirement for proposed lots. The variance of 22.56 feet pertains to proposed Parcel “A” and the variance of 54.49 feet pertains to proposed Parcel “B” as shown on a survey dated November 26, 2019.

Cyril Price was sworn in to give testimony about the Application. Mackenzie Peet, Esq.

presented the Application on behalf of the Applicants.

Ms. Peet stated that the property is zoned AR-1; that the Applicants require variances from the road frontage requirements for the subdivision of their property into two lots; that the property consists of 16.293 acres; that the Applicants propose to subdivide the Property into 2 lots: Parcel A which will consist of 15.332 acres and Parcel B which will consist of 0.961 acres; that the Applicants have lived on this property since 1974; that the Applicants seek the approval of these variances before proceeding with the subdivision of their property; that if approved, Parcel B, approximately one acre, will be transferred to the Applicants' son; that the property is unique as it has two dwellings on one parcel; that the property was previously subdivided which previously reduced the road frontage; that there is not enough frontage on the existing parcel to allow for 150 ft. of road frontage on the proposed lots; that the property cannot be subdivided without the variance; that the variances are necessary to enable the reasonable use of the property; that the exceptional practical difficulty was not created by the Applicants; that the parcel had two dwellings with separate septic systems prior to the Applicants' purchase of the property; that the variances will not alter the essential character of the neighborhood as the subdivision will be consistent with surrounding parcels and dwellings; and that this is the least modification to allow for the subdivision of the property.

Mr. Price testified that the homes were built in the late 1930s; that the houses have been remodeled; that there is a shared driveway which is also used for the Nanticoke Pow Wow; and that he affirmed the statements made by Ms. Peet as true and correct.

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

Mr. Chorman moved to approve Case No. 12411 for the variances as the variances will not affect the essential character of the neighborhood, that the variances are the minimum variance requests, and that, due to the physical circumstances of the property, there is no other way to subdivide without granting the variances.

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. 12412 – Patrick F. & Lauri M. FitzGerald seek variances from the front yard, side yard and rear yard setback requirements for proposed and existing structures (Sections 115-34, 115-182, 115-183 & 115-185 of the Sussex County Zoning Code). The property is located on the northwest side of Anna B St. within the Silver Lake Manor subdivision. 911 Address: 38291 Anna B St., Rehoboth Beach. Zoning District: MR. Tax Parcels: 334-20.09-39.00

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 one mail return. The Applicant is requesting a 1.7 ft. variance from the required 20 ft. front yard setback for a proposed porch and bathroom addition.

Patrick Fitzgerald and Lauri Fitzgerald were sworn in to give testimony about the Application.

Ms. Fitzgerald stated that the house is small and on a small lot; that the Applicants wish to expand the house to include an additional bathroom and more living space as their family prepares to move here permanently; that the proposed addition would include a front porch, bathroom, and closet; that the cottage is quaint but there are taller houses in the neighborhood; that the Applicants have owned the Property for 15 years; that they plan to move to the Property from their home in Baltimore; that there is no other way to expand the house; that the property is unique as it has an unusual shape which is almost a square (70 ft. X 75 ft.); that the shallowness of the lot has made it difficult to develop within the current setbacks; that, due to the irregularity of the lot, there is no other way to add additional room and keep the architecture of this mid-century Cape style home; that there are six members in the family and it is challenging to accommodate everyone, but believe that the practical difficulty was created by the house's existing shape and lot size; that it will not alter the essential character of the neighborhood as the spaces are designed to keep the character of the house; that the neighbors have been informed of the request and there have been no complaints; and that it is a minimum variance as it would be difficult to get the bathroom and porch anywhere else on the lot.

Mr. Fitzgerald testified that the front addition will extend no farther than the side of the house or the front of the house; and that the porch will consist of approximately 300 square feet.

Ms. Fitzgerald testified that, if the porch were to be reduced in size, it would not be functional for the family to sit comfortably and to be able to open a door into the porch; that she is an interior designer and did the layout herself; and that there will be two steps coming off the front of the porch.

Mr. Fitzgerald testified that there will be steps off the front of the house and a variance will be needed for the steps; and that he is a contractor and will store tools in the locker on the side of the house.

Mr. Whitehouse advised the Board that the shed will need a variance of 1.5 from the 5 feet side yard setback requirement on the northwest side and a variance of 1.0 feet from the 5 feet rear yard setback requirement.

Mr. Fitzgerald testified that the shed was on the property when they purchased the house; that the shed is on a pad and cannot be moved; that sheds on neighboring properties in that corner are near the property lines also; that the property is served by public water and sewer; that the house is approximately 20 feet from the edge of paving of the street; that HVAC system complies with the setback requirements; that the architect prepared the drawings; that the shed is within the property line; and that the shed is bolted to the floor.

Ms. Fitzgerald testified that the shed is on a wooden frame and could be moved.

Mr. Fitzgerald testified that he could move the shed if needed; though it may be challenging to keep with the structural integrity.

Mr. Whitehouse stated that the dwelling predates the enactment of the Sussex County Zoning Code and is considered a non-conforming structure but the following variances are needed:

- 1.7 feet from the 20 feet front yard setback requirement for the proposed addition
- 4.7 feet from the 20 feet front yard setback requirement for proposed steps
- 4.94 feet from the 5 feet side yard setback requirement on the northwest side for the existing shed
- 4.90 feet from the 5 feet side yard setback requirement on the northwest side for the existing shed
- 1.0 feet from the 5 feet rear yard setback requirement for the existing shed

Mr. Whitehouse answered questions from the Board about the building permit history for the Property.

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

Dr. Carson moved to approve Case No. 12412 for the variances for the porch and steps as the Applicants have met the criteria for granting a variance and it will not affect the essential character of the neighborhood, and to deny the variances for the existing shed.

Motion by Dr. Carson, seconded by Mr. Chorman, carried unanimously that the **variances be approved in part and denied in part 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. 12413 – Peggy Greenwell seeks a variance from the side yard setback requirements for an existing structure (Sections 115-25, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located on the northwest side of Jetty Ln. within the Marina at Peppers Creek subdivision. 911 Address: 38141 Jetty Ln., Dagsboro. Zoning District: AR-1. Tax Parcel: 233-7.00-245.00

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received three letters in support of and one letter in opposition to the Application and one mail return. The Applicant is requesting a 3 ft. variance from the required 5 ft. side yard setback on the southwest side for an existing shed.

Peggy Greenwell and James Thomas Greenwell were sworn in to give testimony about the Application.

Ms. Greenwell testified that the property is unique as it slopes down in the rear; that there is a flooding issue which they are working on with the developer and that there is a swale in the backyard; that the rear yard floods when it rains and the flooding compromises the soil; that there is a hill in the rear yard; that there is no other place on the property to place the shed due to the drainage issue; that the HVAC system is on the other side of the house; that the situation was caused by the developer, Insight Homes, who has not yet corrected the drainage problem; that the Applicants purchased the property at the end of 2018; that the Applicants went to the Marina at Pepper's Creek Homeowners Association and received an approval; that they were unaware that a building permit was required from Sussex County as they relied on information provided to them by Seascape; that the shed has been on the property for 11 months; and that Pine Ridge sold them the shed.

Mr. Greenwell testified that Seascape told them the shed could be placed 2 feet from the property line.

Mr. Whitehouse advised the Board that a building permit was issued for the dwelling in 2018; that the dwelling passed inspection in October 2018; that the shed was presumably not on the property at that time; that a notice of violation was served on the Applicants; and that the building permit was subsequently applied for by the Applicants.

Mr. Greenwell testified that the Applicants moved into the house in November 2018.

Ms. Greenwell testified that the shed was built in March 2019; that they went to their neighbors before building the shed; that there is no concrete pad under the shed; and that the shed is not tied to the house.

Mr. Greenwell testified that the shed was purchased from Pine Ridge; that one of the reasons they chose this neighborhood was the fact that sheds were allowed by the HOA; and that the information given to them by the HOA was that the shed had to be two feet off the house and two feet off the property line.

The Applicants submitted pictures of the shed and the flooding in their yard.

Ms. Greenwell testified that as soon as she knew a permit was necessary from Sussex County, she applied immediately for the permit and for the variance.

Charles Cimino and Robert Connor were sworn in to give testimony in support of the Application.

Mr. Cimino testified that he is a neighbor of the Greenwells; that, while he does not have a

shed on his property, he supports the Application; that there is flooding in the rear of the property; that the developer has been there 5 times to fix the drainage problems; and that the Applicants have more water in their yard than he does.

Mr. Connor testified that he lives in the neighborhood; that the ditch in his rear yard is always wet; that he is a member of the Architectural Review Committee (“ARC”); that the HOA rules require a 2’ separation distance; that he has a shed but his lot is larger; that there are other sheds in the neighborhood; and that there are flooding issues in the area.

Ray Steele was sworn in to give testimony in opposition to the Application.

Mr. Steele referenced a letter from the ARC which the Board has a copy of; that there are eleven sheds in the neighborhood; that all sheds are in the rear yard except for two; and that if the Applicants could move the shed over, he would not object to an administrative variance up to one foot.

Ms. Greenwell testified that the shed measures 8 feet by 8 feet; that there is no other place to locate the shed; and that the ARC denied a smaller shed.

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

Mr. Chorman moved to approve Case No. 12413 for the variance because the exceptional practical difficulty was not caused by the Applicant but by the flooding in the rear of the property; that there is no other place to put the shed; and that it will not adversely affect the essential character of the neighborhood.

Motion by Mr. Chorman, seconded by Mr. Workman, carried unanimously that the **variance be granted for the reasons stated**. Motion carried 4 – 1.

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

The Board took a seven-minute recess.

Case No. 12414 – Carroll W. Brasure, Trustee seeks a variance from the rear yard setback requirements for an existing structure (Sections 115-25, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located on the east side of Dickerson Rd. approximately 340 ft. north of Lighthouse Rd. (Rt. 54). 911 Address: 38187 Dickerson Rd., Selbyville. Zoning District: AR-1. Tax Parcel: 533-18.00-24.00

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 7.9 ft. variance from the required 20 ft. setback for an existing storage building.

Carroll W. Brasure was sworn in to give testimony about the Application. Tim Willard, Esq. presented the Application on behalf of the Applicant.

Mr. Willard stated that the Applicant owns a pest control and basement business which is growing; that the Applicant seeks a variance for a lean-to that is attached to a building to the rear of the property; that the office building is located in the middle of the lot and an L-shaped storage building is located to the rear; that the L-shaped building covers most of the rear lot line at the setback line; that the L-shaped building was constructed in 1977; that, approximately 20 years ago, the lean-to was constructed to store a tractor; that the lean-to was enclosed and is approximately 10 feet wide and 55 feet long; that the lean-to projects into the rear yard setback; that the lean-to is not often used; that it will not alter the essential character of the neighborhood as the surrounding area is wooded and the shed exists and has not adversely affected neighboring properties; that there is a tax ditch prong adjacent to the rear of the Property which parallels the rear property line and creates a natural buffer with neighbors; that the Property is unique as it has a unique shape, being longer on the north side than the south side; that access to the rear of the property is limited, so the storage shed for the tractor could not be placed elsewhere on the property; that the Applicant did not create the exceptional practical difficulty, the shape of the lot, and the elongated existing building caused the difficulty; and that this is a minimum variance to afford relief and to allow the storage shed to remain in its current position.

Mr. Willard submitted pictures for the Board to review.

Mr. Brasure affirmed the statements made by Mr. Willard as true and correct.

Mr. Brasure testified that part of the lean-to was existing for about 15-18 years and he recently added to the square footage of the building; that no chemicals are stored in the lean-to; that there is only 1 entrance to the lean-to; that he uses it to store his Jeep; and that he has received no complaints about the structure.

Mr. Willard stated that a shed is also located on the Property.

Mr. Whitehouse stated that a CO was issued for the shed and it is eligible for relief under the administrative variance process.

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

Dr. Carson moved to approve Case No. 12414 for the variance as the lot is unique, and that it will not adversely affect the essential character of the neighborhood as the lean-to has been there in some form for almost 20 years.

Motion by Dr. Carson, seconded by Mr. Williamson, 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. 12415 – Mary C. Harry-Wolf seek variances from the rear yard setback and side yard setback requirements for existing and proposed structures (Sections 115-25, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located on the northwest side of Anchor Watch Loop within the Marina at Peppers Creek subdivision. 911 Address: 31192 Anchor Watch Loop, Dagsboro. Zoning District: AR-1. Tax Parcel: 233-7.00-228.00

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received no correspondence in support of and one letter in opposition to the Application and one mail return. The Applicant is requesting a 5 ft. variance from the required 5 ft. rear yard setback for an existing shed, a 2 ft. variance from the required 10 ft. rear yard setback for a proposed sunroom and a 0.7 ft. variance from the required 5 ft. side yard setback on the northeast side to allow the relocation of an existing shed.

Mary Harry-Wolf and Albert Wolf were sworn in to give testimony about the Application and they submitted exhibits to the Board to review.

Mr. Wolf testified that he has one shed that currently violates the setbacks; that he would like to relocate the shed but there is not room on the property to relocate it due to the drainage issues; that, when the shed was delivered, he had to wait to set the shed due to moisture in the yard; that the location of the shed is the only place it can be located; that the shed houses his golf cart and that he is handicapped and needs the golf cart for mobility; that the shed also houses a lawn mower; that the shed is a necessity; that moving the shed closer to the dwelling would block egress from bedroom windows in case of fire; that they have 2 sheds on the lot and one shed is proposed to be moved to the side of the house; that the Applicants propose to construct a sunroom which measures 9.6 feet by 20 feet and they need a variance for the sunroom as well; that the shed can be relocated off the rear property line by 3 feet; that the relocated shed will need a small side yard variance; that it is a small lot that backs up to common ground; that the berm to the rear of the lot is 9 feet tall; that neighboring property would not be affected by the granting of variances; that there is a 12 ft. easement between lot 20 and 21 which is a sewer line; and that these are minimum variances to allow for the construction of a sunroom, to move the existing shed where the proposed sunroom will be to the east side of the house and to allow the large shed to remain on the northwest side of the property.

Ms. Harry-Wolf testified that Pine Ridge Barns installed the shed; that, if the shed were moved, it would be too close to the house; that there is common property behind the home which consists of a large berm; and that there were flooding issues which have been rectified.

Matt Whalen was sworn in to give testimony about the Application.

Mr. Whalen testified that he is the contractor for the Applicants; and that there will be steps off the side of the sunroom but will not encroach farther into the setback than the sunroom

Mr. Whitehouse clarified based on the newly submitted drawing and the Applicants' testimony that the variances needed are as follows:

- 1.25 ft. from the required 5 ft. side yard setback to move the existing shed to the east side of the dwelling.
- 2 ft. variance from the required 5 ft. rear yard setback to move the existing shed on the northwest side of the property.
- 2 ft. from the required 10 ft. rear yard setback for a proposed sunroom.
- 2 ft. from the required 10 ft. rear yard setback for proposed steps.

Mr. Wolf testified that he needed larger doors to drive into the shed in the northwest corner; that he has owned the large shed for 1 year but the smaller shed for 5 years; and that his contractor said that he did not need a building permit.

Ms. Harry-Wolf testified that the shed was located in this position because it was the only place where it could be located; and that there have been no complaints about its location.

Ms. Lepore noted that a rear yard variance was approved in September 2019 (Case No. 12361) for a proposed addition and a variance was approved in 2014 (Case No. 11374) for a rear yard deck. Both cases were in this neighborhood.

Chris Luxenberger was sworn in to give testimony in support of the Application.

Mr. Luxenberger testified that he supports the Application; that he lives adjacent to the property; that he received a similar variance; that he has no issues with the sheds; that the berm is owned by the homeowners association; that there is approximately 20 ft. between the berm behind the house to the next property; that there is a slight depression where water accumulates; that no one sees the shed; and that the homeowners association has approved the request.

James Greenwell, Peggy Greenwell, and Charles Cimino, who were previously sworn in, gave testimony in support of the Application.

Mr. Cimino testified that he lives across the street from the Applicants; that he cannot see the

shed due to the hill; and that there is common area to the rear of the lot.

Mr. Greenwell testified that the shed is not visible from the street; that he supports the Application; that there is soft ground in the area and that posed trouble with moving the shed.

Ms. Greenwell testified that the shed installation company did not inform the Applicants that a building permit was required when the shed was purchased and that she supports the Application.

Ray Steele, who was previously sworn in, gave testimony in opposition to the Application.

Mr. Steele submitted an exhibit to Board members and testified that the Applicant was aware that permits were required by Sussex County; that he does not oppose the variance for the sunroom; but that he does object to the 12 ft. X 14 ft. shed as it is currently located on HOA property and should not be allowed to encroach onto other's property. He has no issues with the other shed.

Ms. Harry-Wolf testified that the shed to the side of the house will not be attached to the house.

Mr. Wolf testified that, if the shed in the rear yard is moved, he is not sure how he would be able to open the doors or use the shed and that, if it was located close to the house, it would block access to the house.

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

Mr. Workman moved to table the Application until the meeting on March 2, 2020.

Motion by Mr. Workman, seconded by Dr. Carson, carried unanimously that the **application be tabled to the March 2, 2020, meeting.** Motion carried 5 – 0.

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

Case No. 12416 – Jessica F. Peake seeks variances from the front yard setback requirements for proposed structures, the landscape buffer requirement in the Combined Highway Corridor Overlay Zone (CHCOZ), and from the number of required parking spaces. (Sections 115-82, 115-162, 115-182 and 115-194.1 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 five letters in support of and none in opposition to the Application and three mail returns. The

Applicant is requesting a 55 ft. variance from the required 60 ft. front yard setback for a proposed miniature golf course, a 15 ft. variance from the required 20 ft. landscape buffer requirement of the Combined Highway corridor Overlay Zone, and a variance of 119 parking spaces from the required 125 on-site parking spaces (leaving six total and 22 shared spaces with the adjoining site).

Mackenzie Peet, Esq., presented the Application on behalf of the Applicant, Nick Geracimos who was present with his project manager, Mike O'Neill. Mr. Geracimos and Mr. O'Neill were sworn in to give testimony about the Application.

Ms. Peet stated that this is a 0.46 acre parcel of land on the east side of Route 1 just south of Bethany Beach; that the land is zoned general commercial (C-1); that the C-1 district requires a 60 ft. front yard setback and 5 ft. rear and side yard setbacks; that the property is located near residential and commercial uses including hotels and restaurants; that the Holiday Inn Express and Ocean Suites hotels support the Application; that the Applicant operates 6 similar facilities in the area including one in Dewey Beach; that the Applicant has a hearing before the Planning & Zoning Commission next month; that the lot is unique with an irregular tear-drop shape; that the lot is shallow and narrow to the south and wider to the north; that the unique shaped lot does not allow the 18-hole miniature golf course to be built within the front yard setback of the C-1 or Combined Highway Corridor Overlay Zone (CHCOZ); that the variances are necessary to enable reasonable use of the Property; that the exceptional practical difficulty has not been created by the Applicant but by the lot's uniqueness; that the lot's shape was created prior to the Applicant's lease agreement; that granting the variances will not alter the essential character of the neighborhood as it is zoned C-1 and is surrounded by C-1 lots with one adjacent lot zoned MR; that the proposed uses will provide recreation to the Bethany Beach area; that the use will be seasonal in nature; that there are multiple access points for the site; that one of the owners of the golf course owns a neighboring parcel; that additional landscaping will be planted; that the site does not have sufficient parking for this use so the Applicant will share parking with its neighbor; that there will be more pervious surface than exists currently; that this is the minimum variance to afford relief and that it is a seasonal use property; that there will be two entrances to the property; that one entrance fronts directly on Route 1 and the second off Jefferson Bridge Road through the Holiday Inn Express hotel where the shared parking will be; that the second request is for 15 ft. from required 20 ft. buffer in the CHCOZ; that the lot is unique due to its shape; that it cannot otherwise be developed; that the exceptional difficulty was caused by the uniqueness of the lot; that there will be additional landscaping provided; that it is a minimum variance to afford relief; that the third request is from the parking requirements from Sussex County Code §115-162; that the zoning code does not provide for a parking requirement for an outdoor commercial use; that an indoor commercial use is the most closely related use; that an indoor commercial use would be required to have 125 parking spaces; that there is a distinction between indoor and outdoor commercial uses and that 125 parking spaces are not required for the use of a miniature golf course; that the expected patrons of the golf course will be mostly pedestrian coming from the Sea Colony development or local hotels where they have parked their cars; that that most parking required would be 36 spaces (2 per golf hole); that the Applicant proposes there will be six onsite parking spaces and 44 off-site shared parking spaces which will be shared with the Holiday Inn Express; that there will

be a lease with the owner of the Holiday Inn Express to allow for the shared parking; that this will also go before the Planning and Zoning Commission for a Conditional Use permit and, as part of that application, DelDOT provided a letter stating that the use of a miniature golf course will cause fewer than 500 trips per day; that the Applicant anticipates that most of the traffic will come from the same side of Route 1 but they have no data to support that; that the billboard will remain on the site; and that the Property is used for Beach Liquors now.

Mr. O'Neill testified that there will be pilings measuring 8 inches in diameter with rope going through them and 42-inch netting around the golf course; that the design was based around the existing entrance; that the design uses the same driveway as Beach Liquors; that it would be difficult to park closer to Route 1; that there is no curbing on the front of the site; that there is no shrubbery in the front yard; that he has a blank slate upon which to work; and that the golf course could not be flipped to have the course closer to the rear yard than the front yard.

Mr. Geracimos testified that his property at Dewey Beach is also an 18-hole golf course and it is tight; that all of his other golf courses are 18 hole courses; that to make the golf course only 9 holes would put him in a disadvantage with his competitors in the area.

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

Ms. Peet stated that she was unsure if the Holiday Inn Express site was underparked or overparked; that she believe 1-2 spaces per hole is the maximum needed; that there is no sidewalk or multi-modal pathways required; that there is no gap to the edge of paving of Coastal Highway from the front property line; and that the lot is uniquely shaped.

Paul Reiger and Keith Steck were sworn in to give testimony in opposition to the Application.

Mr. Reiger testified that he questioned why the conditional use was not before the variance request.

Mr. Whitehouse stated that they are two different applications and the Applicant choose to address the variances before proceeding with the conditional use.

Mr. Reiger testified that he believes this application should have gone to the Commission and Council first; and that he has serious concerns about parking.

Mr. Steck submitted exhibits to the Board to review.

Mr. Steck testified that he has several issues with this application; that, in the interest of transparency, the advertisement should have listed this as a golf course; that the application should have gone through the conditional use process first; that the variances of 55 ft. from the front yard and 15 ft. from the CHCOZ are too extreme; that the front yard variance request is a 92% reduction

and the landscape variance request is a 75% reduction; that he has safety concerns for both drivers and patrons; that the golf course presents a visibility concern; that there are no sidewalks; that there are pedestrian safety concerns; and that parking is a concern.

Ms. Peet stated that there is another miniature golf course along Route 1 near Super G; that the kiosk measures 12 feet by 17 feet; not 10 feet by 10 feet as shown on the first plan; that there are 2 letters supporting the request from neighbors; and that there will be 5 feet from Route 1.

Mr. Geramicos testified that his other sites have at most 18 parking spaces.

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

Mr. Chorman moved to keep the public hearing open and to continue the public hearing on March 2, 2020.

Motion by Mr. Chorman, seconded by Dr. Carson, carried unanimously that the **public hearing remains open and placed on the agenda for the March 2, 2020, meeting.** Motion carried 5 – 0.

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

Case No. 12417– Wilkinson Development, LLC seeks a variance from the side yard setback requirements for a proposed dwelling (Sections 115-25 and 115-182 of the Sussex County Zoning Code). The property is located on the east corner of Arbor Cir. and Woodridge Dr. within the Woodbridge subdivision. 911 Address: 22144 Arbor Cir., Milton. Zoning District: AR-1. Tax Parcel: 234-10.00-327.00

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received no letters in support of and seven letters in opposition to the Application and zero mail returns. The Applicant is requesting a 1.5 ft. variance from the required 10 ft. side yard setback on the south side for a proposed home.

Bryan Elliott was sworn in to give testimony about the Application.

Mr. Elliott testified that he is a representative of Insight Homes; that the lot is unique as it is small and narrow front to back; that the lot is one of the smallest lots in the neighborhood; that the variance is necessary to enable the reasonable use of the Property; that the lot cannot otherwise be developed for a reasonable sized modern home without the variance; that the practical difficulty was not created by the Applicant but by the unique building envelope of the lot; that the proposed dwelling will enhance the neighborhood and will not alter the essential character of the neighborhood; that a

smaller home would hurt the resale value of homes in the neighborhood; that the request is the minimum variance to afford relief; that the house will have an 1,800 square foot first floor with a porch; that the width of the rear yard is the issue; that there is common area to the rear yard; that there is an easement between the properties; and that the home designs have been approved by the developer and are similar to the existing homes.

Laurie Chakin and Laurence Kamlot were sworn in to give testimony in opposition to the Application.

Ms. Chakin testified that granting the variance for a model home could set a precedent and that would be detrimental to the look of the community; that approval of this variance would encourage others to also seek variances; that current residents chose different lots or smaller homes to comply with County setbacks; that 77 lots have been sold but not all have been developed at this time; and that the builder should find another model which would meet setbacks.

Mr. Kamlot testified that he is opposed to the Application as granting the variance will create a precedent; that he is a retired surveyor; that approximately 1/3 of the lots in the neighborhood have been built; that the lot is small; that Insight Homes built a home different from others in the neighborhood and those homes are larger than ones built by other builders; that the Applicant should provide a strong argument why a smaller dwelling could not be placed on the lot; that the fact that this is a small or simple variance request should not be the reason for granting the request; and that he is concerned about setting a precedent in the neighborhood.

Mr. Elliott testified that the lot is different from the vast majority of lots in the neighborhood; that this will be the model home; that the variance will not alter the essential character of the neighborhood; that the HVAC and steps will be within the building envelope; and that there is 0.25 ft. on the opposite side of the house to allow a little leeway, which could be reduced and therefore make the variance request 1.3 ft. instead of the 1.5 ft. requested.

Mr. Whitehouse noted that this subdivision is a cluster subdivision so the small lot ordinance does not apply.

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

Mr. Chorman moved to deny Case No. 12417 for the variance as the Applicant failed to demonstrate that the property cannot be developed in strict conformity with County Code and that the Applicant has created the exceptional practical difficulty.

Motion by Mr. Chorman, seconded by Mr. Williamson, carried that the **variance be denied for the reasons stated**. Motion carried 3 – 2.

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

ADDITIONAL BUSINESS

The Board discussed changing the meeting time for the summer months. Motion by Dr. Carson, seconded by Mr. Workman to change the meeting time to 7:00 p.m. beginning with the first meeting in May. Motion carried 5-0.

Meeting was adjourned at 10:20 p.m.