

## MINUTES OF FEBRUARY 21, 2022

The regular meeting of the Sussex County Board of Adjustment was held on Monday, February 21, 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 John Williamson presiding. The Board members present were: Dr. Kevin Carson, Mr. Jeff 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, Mr. Chase Phillips – Planner and Ms. Ann Lepore – Recording Secretary.

The Pledge of Allegiance was led by Mr. Williamson.

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

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

Motion by Mr. Warfel, seconded by Mr. Chorman and carried unanimously to approve the Minutes for the December 20, 2021, meeting. Motion carried 5 – 0.

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

Motion by Mr. Hastings, seconded by Mr. Warfel and carried unanimously to approve the Findings of Facts for the December 20, 2021, meeting. Motion carried 5 – 0.

The vote by roll call; Dr. Carson – yea, Mr. Chorman - yea, Mr. Hastings – yea, Mr. Warfel – yea, and Mr. Williamson – 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. 12648 – Katherine Benton** seeks a special use exception to operate a tourist home (Sections 115-32, 115-34, 115-183, 115-185, and 115-210 of the Sussex County Zoning Code). The property is located at the northwest side of Creek Road within the Blackwater Village Subdivision. 911 Address: 34085 Creek Road, Dagsboro. Zoning District: MR. Tax Map: 134-11.00-358.00

Mr. Williamson recused himself and left chambers.

Mr. Phillips stated that this case was tabled at the previous hearing to allow for an absent Board Member to review the tape and be prepared to vote on a motion.

Mr. Chorman stated that he has reviewed the video of the last meeting and all exhibits related to this Application and is prepared to vote on the Application.

Mr. Warfel moved to deny Case No. 12648 for the requested special use exception, pending final written decision, because the Applicant failed to demonstrate that the special use exception will not substantially adversely affect the uses of neighboring and adjacent properties.

Motion by Mr. Warfel, seconded by Mr. Chorman, carried that the **special use exception be denied for the reasons stated.** Motion carried 3 – 1.

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

Mr. Williamson returned to chambers.

### **PUBLIC HEARINGS**

**Case No. 12655 – Edwin & Candice Kelly** seek variances from the front yard setback requirement for proposed structures (Sections 115-34 and 115-182 of the Sussex County Zoning Code). The property is a through lot located on the east side of Cove Way and the west side of Coastal Highway within the Cotton Patch Hills Subdivision. 911 Address: 29563 Cove Way, Bethany Beach. Zoning District: MR. Tax Map: 134-5.00-138.00

Mr. Phillips 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 variances a 10 ft. variance from the 40 ft. front yard setback requirement from Coastal Highway for a proposed second floor deck and steps.

Mr. Edwin Kelly was sworn in to give testimony about the Application.

Mr. Steven Benton was sworn in to testify on behalf of Edwin Kelly

Mr. Kelly testified that he is the Applicant and owner; that Steven Benton is his design consultant; that their homeowners association approved the proposal contingent on County approval; that the homeowners association setback requirement is 25 feet and they meet that requirement; that there are other homes within the neighborhood that are within the setbacks; that some of the trees are on his property and some are not; that there is a large buffer of trees in the back yard; that he spoke with the neighbors and they have no issue with his variance request; that all the trees block views and noise from Coastal Highway; that a neighbor has a deck which

projects beyond 40 feet; that the property is served by central water and sewer; that there is at least one other home with a deck with jacuzzi; that the size of the deck is fairly typical of his community; that he bought the property “as is”; that the property is a through lot; that the steps are within the 10 ft. setback variance request; that the house on the other side of his neighbor has a first floor deck; that, in order to accomplish what he is trying to, this is the minimum deck size; that this home was built by a prior owner; and that he purchased the property 2 years ago.

Mr. Benton testified that the house exists and there is already a deck at the setback line; that the Applicants are requesting a 10 ft. variance to expand the deck; that the property line to the road edge is approximately 30 feet; that the house is 48 feet to the property line and is 85 to 90 feet to the edge of paving of Coastal Highway; that the steps are set in about 2 ft.; that the variance needed for the steps is 8 feet; that, due to the size of the hot tub, this request is the minimum size deck for safety reasons; and that the Applicants need an area around the hot tub to walk around.

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

Mr. Williamson closed the public hearing.

Dr. Carson moved to approve Case No. 12655 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to the two front yard setbacks;
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. Chorman, carried unanimously that the **variances be granted for the reasons stated.** Motion carried 5 – 0.

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

**Case No. 12656 – Michael Walton** seeks a variance from the side yard setback requirement for a proposed structure (Sections 115-25, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located at the north side of Concord Road approximately 0.94 miles east Sussex Highway (Rt. 13). 911 Address: 10059 Concord Road, Seaford. Zoning District: AR-1. Tax Map: 132-2.00-95.00

Mr. Phillips 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 10 ft. variance from the 15 ft. side yard setback requirement on the west

side for proposed addition to a pole barn. Mr. Phillips noted that a pole building was built in 2004 and a certificate of compliance was issued.

Mr. Michael Walton was sworn in to give testimony about his application.

Mr. Walton testified that he had a tree fall on the east side of his property onto a shed; that he would rather put an addition on to his pole barn instead of rebuilding his shed; that his property is narrow as it is only 100 ft. wide; that he would have more room on his driveway by doing as proposed; that his property is not considered wetlands but is located adjacent to a river; that his neighbor's pole barn is 3 ft. from his property line; that he would like to keep the same size structure as an addition to his pole barn, as a lean-to; that the lean-to will have a concrete floor and will be used for his boat and tractor; that the pole building and driveway were preexisting when he purchased the property; that a 16 ft. lean-to would be the minimum he needs to obtain relief; that the structure of his and his neighbors' structures are off set and there is no safety concern with them being close together; that a 16 ft. by 30 ft. lean-to is what he is looking to construct; that the lot is wooded again limiting his ability to build; that the structure cannot be placed elsewhere on the lot; that his well is on the north side of the pole building and the septic system is on the north side of the house; that he is moving the shed to obtain more relief on the other side on the property; that the pole building is not parallel to the lot line; and that his property has well and septic in the rear.

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

Mr. Phillips confirmed that variances needed for the pole building would be 5.2 feet on the southwest side of the pole building and 2.8 feet on the northwest side of the pole building.

Mr. Williamson closed the public hearing.

Mr. Hastings moved to approve Case No. 12656 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to the exceptionally small buildable area;
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 Dr. Carson, carried unanimously that the **variances be granted for the reasons stated.** Motion carried 5 – 0.

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

**Case No. 12657 – Ronald J. & Lisa K. Masi** seek variances from the front yard, rear yard and side yard setback requirements for existing and proposed structures (Sections 115-25, 115-182, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located at the east side of Peppers Corner Road approximately 192 ft. north of Lizzard Hill Road. 911 Address: 34461 Peppers Corner Road, Frankford. Zoning District: AR-1. Tax Map: 134-18.00-40.00

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 12 ft. variance from the 40 ft. front yard setback requirement for a proposed extension of an existing deck, a 5 ft. variance from the 5 ft. side yard on the north side for an existing deck, and a 5 ft. variance from the 5 ft. side on the north side and rear yard setback for an existing shed.

Mr. Ronald Masi was sworn in to give testimony about his application.

Mr. Masi testified that he is looking to extend his deck and put a roof over it; that the deck would run the width of the house; that the property is only 100 ft. x 75 ft.; that someone is building behind him and he is looking to keep his property up to standard; that his steps come out slightly more than the 8 ft.; that nothing around him can be developed due to wetlands; that his additions will enhance the property; that from the road to his deck is 28 ft.; that the lot was this size when purchased and all structures were placed thereon by him; that he obtained permits and his footer failed which is why he needs the variances; that he has attempted to contact the owner of the lot next to him for purchase as he has been taking care of it for twenty-five (25) years; that he went off a previous survey and ended up placing his shed on neighbor's property; that development is coming to the property to the rear of the lot; that there will only be one set of steps and no new steps with the deck expansion; that the previous variance was done over the phone through contractors; that the previous structure was demolished; that there is a septic mound in the rear yard, limiting his placement of all other structures; that there are three structures on his property; that the deck in the rear yard was placed 10 years ago without a permit and is elevated by about 1 ½ ft.; that the shed was placed in 2003 and he had no permit; that he has had no complaints about his structures; that the other deck is about 2 ft. high and was placed around the same time as the shed; that there are 3 steps to that deck; that the other deck is attached to the home and was placed at the same time as the house; that he cannot do much with a rancher style home; that the rear deck floats over top of the septic mound and he has no plans to enclose that; that the survey indicated the distance between the property line and the edge of the road is difficult to measure; that the larger shed is on 6x6 posts and he would need a forklift to move it; that the house is on a concrete slab; and that he and the contractors did not plan for the addition of the front porch when he constructed the house.

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

Ms. Norwood noted that a variance was also needed from the front yard setback requirement for existing steps.

Mr. Williamson closed the public hearing.

Mr. Hastings moved to deny Case No. 12657 for the requested variances, pending final written decision, for the following reasons:

1. That Applicants failed to demonstrate that, due to the physical conditions, the property cannot be developed in strict conformity with Sussex County Zoning Code and that the variances are necessary to enable the reasonable use of the property; and
2. The exceptional practical difficulty was created by the Applicants.

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

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

**Case No. 12658 – Thomas A. Habowski** seeks a variance from the maximum fence height requirement requirements for a proposed fence (Sections 115-25, 115-182, and 115-185 of the Sussex County Zoning Code). The property is located on the east side of John J. Williams Highway approximately 0.89 miles north of Angola Road. 911 Address: 21191 John J. Williams Highway, Lewes. Zoning District: AR-1. Tax Parcel: 234-11.00-504.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received five (5) letters in support of and no correspondence in opposition to the Application and zero mail returns. The Applicant is requesting 2.625 ft. variance from the 3.5 ft. maximum height requirement for a fence in a front yard setback. She noted that the shed has been moved into compliance with the Code.

Mr. Thomas A. Habowski was sworn in to give testimony about his application.

Mr. Habowski testified that he is seeking to place a fence on the front of his property directly across from a fire department; that this would reduce light and noise produced from the neighbors across the street, as well as trash from the roadway; that he checked with his neighbors and they are in support and they would be looking to do a fence also; that his co-habitant works long shifts as a 911 dispatcher and the lights from the fire company are disturbing to their sleep schedule; that the fence construction started prior to the variance application; that the fence will

be 73 ½ inches high painted metal on wooden posts; that the fence will be 8 ½ ft. off the roadway and blend in with trees already existing; that he would feel safe maintaining / servicing the fence being that close to the road; that, from the edge of the pavement to the proposed fence location, is 8 ½ ft.; that the fence is constructed of the same material as a pole barn; that he believes that this will look much better than vinyl siding; that he believes any reverberating noise will be directed back at the source (the fire company); that the vegetation is no longer providing the desired effect; that he does not believe planting new trees would be a gamble to even have them survive into maturity; that he is unaware of the 15 ft. right-of-way being on his property; that he would remove the fence in the event that the right-of-way was extended; and that he understands the risk of constructing within the right-of-way.

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

Mr. Williamson closed the public hearing.

Mr. Warfel moved to approve Case No. 12658 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to the exceptionally small buildable area;
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 Applicant;
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 Mr. Hastings, carried unanimously that the **variance be granted for the reasons stated.** Motion carried 5 – 0.

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

**Case No. 12659 – Richard M. & Elizabeth C. Littleton** seek a variance from the rear yard setback requirement for a proposed structure (Sections 115-34 and 115-183 of the Sussex County Zoning Code). The property is located at the northeast side of Candleberry Drive within the Bayside Community. 911 Address: 30177 Candleberry Drive, Selbyville. Zoning District: MR. Tax Map: 533-19.00-1629.00

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 2 ft. variance from the 10 ft. rear yard setback requirement for a proposed three season room.

Mr. Richard M. Littleton and Ms. Elizabeth C. Littleton were sworn in to give testimony about their application.

Mr. Littleton testified that they are seeking a 2 ft. variance off the rear yard property line; that the landing off the back door is 2 ft. into the 10 ft. setback; that they are asking for the width of the landing as the variance for functionality purposes; that the property was bought “as is” and this is the first upgrade / modification being made to the exterior of the home; that the properties adjacent to them are all duplex homes and 30 ft. wide; that they own 12 ft. out from the end of their home; that the proposed room would be 10 ft. x 14 ft., and put them at the edge of their property; that the 2 ft. variance is a necessity in order to gain access to this proposed room; that the hurricane bolts surrounding the framework would prospectively weaken the overall home structure if they were to install a different door; that approximately sixty (60) homes in the neighborhood and well over half are estimated to have an enclosed three seasons room; that their HOA approved their proposal pending County approval; that they have approval from adjacent neighbors in email form; that they also plan to put in a paver patio at ground level; that the steps for the proposed room will be embedded in the foundation of the room; that, due to the front setback requirement, their home is more to the rear, and his neighbors are not in need of variance due to this; that the elevations of each home are not the same as the others in the neighborhood; that they purchased the home in 2015 and have been full-time residents since 2018; and that, if they were denied the variance, they would be left with an 8 ft. wide room, which severely limits use.

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

Mr. Williamson closed the public hearing.

Mr. Hastings moved to deny Case No. 12659 for the requested variances, pending final written decision, for the following reasons:

1. The property does not have unique conditions; and
2. The Applicants failed to demonstrate that the property cannot be developed in strict conformity with the Sussex County Zoning Code.

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

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



**Case No. 12660 – J&J Cooper Family, LLC** seek variances from the side yard setback requirement for existing structures (Sections 115-25, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located at the south side of Venture Lane within the Whites Neck Village subdivision. 911 Address: 35934 Venture Lane, Millville. Zoning District: MR. Tax Map: 134-8.00-24.00

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 no mail returns. The Applicant is requesting a 5.6 ft. variance from the 10 ft. side yard setback requirement on the west side for an existing shed and a 6.5 ft. variance from the 10 ft. side yard setback requirement on the west side for an existing garage.

Mr. Guy Cooper was sworn in for testimony about the application for J&J Cooper Family, LLC.

Mr. Cooper testified that his father passed away and the property was left to him and his mother; that they were unaware of the violations; that he is trying to clean up this non-conforming setback from 1985 as the property has been sold “as is”; that, if his father had he known about the setback, he would not have built the structures in violation; that there have been no complaints from anyone else in the community; that the variances are the minimum variances to afford relief; that he is doing this as a courtesy to the buyer of the property; that there is one garage with a lean-to but the shed closest to Venture Lane has been removed; that the property is on county sewer and water currently but was served by septic and well when the structures were constructed; that the septic was located on the south side of the property, where the lean-to is located, and would have limited the buildable area; that, at the time the buildings were placed, there were trees also limiting the buildable area; that the garage measures approximately 24 feet x 24 feet; that the lean-to comes off about 8-10 feet; and that the garage is wider than the lean-to.

Ms. Allison Newsom and Mr. James Maloney were sworn in to testify their support of this variance.

Ms. Newsom testified that they have had a chance to review the variances needed but were unaware when they put the offer in on the home that it was not in compliance; that they obtained a survey and then were made aware of the non-compliance.

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

Mr. Williamson closed the public hearing.

Mr. Chorman moved to approve Case No. 12660 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to the exceptionally small buildable area;
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. 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; Dr. Carson – yea, Mr. Chorman - yea, Mr. Hastings – yea, Mr. Warfel – yea, and Mr. Williamson – yea.

**Case No. 12661 – Karen & James Wright** seeks a variance from the maximum lot coverage requirement (Sections 115-25 and 115-172 of the Sussex County Zoning Code). The property is located on the east side of Berry Street within the Bay City Manufactured Home Park. 911 Address: 25859 Berry Street, Millsboro. Zoning District: AR-1. Tax Map: 234-24.00-34.00-53131

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received thirteen correspondences in support of and one in opposition to the Application and one mail return. The Applicants are requesting a variance of 273.15 square feet variance from the 35% maximum lot coverage variance.

The Board found that Mr. Chad Lingenfelder, Esq., was present on behalf of the Applicants. Ms. Karen Wright and Mr. James Wright were sworn in to give testimony about their application.

Mr. Lingenfelder stated that there is a history with this property dating back to 2007; that the previous owners applied for a variance request for a shed and porch and were denied; that his clients do not own the property but Bay City Mobile Home Park does; that the Applicants are renters who purchased the mobile home on the lot; that his clients are not responsible for the placement of the home on the lot; that the previous owners' variance application was denied and they applied for a re-hearing in 2010, which was also denied; that Bay City took on the property and made the necessary corrections for compliance by removing the porch and shed; that the lot sat vacant for eleven years until his clients purchased the mobile home; that the lot consists of 5,424 square feet, the mobile home is 1,792 square feet, which is 33% of the lot taken up by just the mobile home; that the shed and porch consist of 336 square feet; that there is significant stormwater and groundwater issues within Bay City; that his clients are looking to build raised structures so not to impede on water drainage; that the prior structures were not elevated; that raising the structures will allow for water to flow underneath the structures; that the Applicants believe the former variance was denied due to the addition of structures that were completed prior

to the variance request; that the Applicants have no storage options for outdoor equipment on their property; that the Applicants have a golf cart and patio furniture; that his clients have no history to the previous issues with the property; that his clients have done everything in their power to help mitigate the water issues on their property by placing a stone driveway; that they have submitted photo evidence of the stormwater and groundwater issues; that more erosion has occurred since the last variance request; that the greater erosion has created a greater need for these structures; that the shed will match the house; that the property is unique; that the Applicants are asking for minimum variance needed to use the property to the best of their ability; that the neighborhood dates back to the 1970s; that the size of the home was placed by prior owners; that the lot is unable to be enlarged due to placement; that his clients intend to use this as a full-time residency; that the Applicants would only be using a small portion of actual ground by using posts to elevate the structures; that the shed will be elevated one foot and the porch will be elevated 3-4 feet; that stormwater problems have increased since the 1970s; that the property is near a federal wetland and the bay; that the property cannot otherwise be developed; that the shed will also house tools; that the exceptional practical difficulty was not created by the Applicants; that the Applicants did not place the home on the lot; that the lot was vacant for 11 years; that the shed and porch will match the house; that the structures will be similar to other structures in Bay City; that there is vegetation and a proposed fence to limit view of the proposed shed; that there is no proposed outdoor shower; that there are other lots with more lot coverage that have variances or were grandfathered in; and that the variances will not alter the essential character of the neighborhood.

Ms. Wright testified that they are asking for a shed, which everyone else in the park has; that they are in possession of items that require storage; that they have a pontoon boat and golf cart; that they are the only lot that consists of a home only; that they intend to make it a home but are unable to reside there full-time due to lack of storage options; and that they tried to get additional land to lease from the landlord but were unable to do so.

Ms. Wright affirmed the statements made by Mr. Lingenfelder as true and correct.

Mr. Sharp noted that 35% of 5,391 square feet is 1,886.85 square feet and that the existing dwelling consists of 1,792 square feet thereby leaving 94.85 square feet available for development; and that, if the shed and porch consist of 336 square feet, the Applicants need a variance of 241.15 square feet.

Mr. Preston Miller was sworn in to testify in support of the Application.

Mr. Miller testified that he lives three blocks from the lot in question; that Bay City was designed for smaller trailers; that the neighborhood is not livable without having a shed; that everyone has boats and / or golf carts; that decks are needed; that the home was an eyesore for over ten years prior to the Wrights' purchase of the home; and that the Applicants have done a good job with the property.

Mr. Dan Wien was sworn in to testify in opposition of this application. Mr. Wien also submitted exhibits for the Board to review.

Mr. Wien testified that he lives adjacent to the lot in question on the south side; that Bay City started allowing doublewide trailers rather than singlewide trailers and created these issues; that he has owned his property since 1972; that the lot coverage rule is to keep from overbuilding sites; that there are flooding problems; that there is no stormwater program; that Bay City has failed to try to mitigate the stormwater issues; that he provided picture evidence of the water issued faced in Bay City; that other manufactured homes have fill and push water to Berry Street; that the installation of fill dirt in the neighborhood started in 1998 and led to a worsening of flood problems; that he is there to protect his property; that there are no retention swales; that most houses are level with the road; that the additional structures will block views; that there have been 12 floods since 1998; and that he is asking for the Board to uphold the Code.

Ms. Pat Wyl was sworn in over the phone to testify in opposition of this application.

Ms. Wyl testified that she lived in Bay City from 1999 to 2013 and, during that time, residents sued the landowner due to flooding on their lots in 2007; that they were one street over from Berry Street and the lots around them were higher forcing water to their lot; that they won their lawsuit and were compensated; that she objects to the variance because it creates more issues with flooding; that she does not believe raising the shed will mitigate any flooding; that her daughter's shed is on blocks and water pools around the shed; that she has moved to Pot Nets; that Lot 1 is not a standard lot as it is elevated while other lots on Berry Street are lower; that, as a former neighbor, they suffered in Bay City due to the storm water runoff; that the support letters appear to be from raised lots not lower lying lots; that even normal rain creates problems; that DNREC has opined as to the drainage issues; that she has life-long friends in Bay City; that the low-lying lots suffer; and that neighbors cannot walk outside due to the runoff issues.

Mr. Lingenfelder stated that the shed and porch are 336 square feet; that they are asking for 241.45 square feet variance; that the percentage is less than what they initially asked for; that one of the opposition does not reside there and has not lived there for some time so she is a non-interested party; that he sees no violations against this property from the County or federal government; that a CO was issued for the house on Lot 1; that the Applicants have not caused the stormwater problem; that all opposition is against the neighborhood not his clients; that there is no run-off; that the issue is stormwater; that he argues there is no proof to show that his clients adding a shed and porch will not adversely impact the already existing water issues; that there have been no experts to state that these additions would create more issues; that he is unaware of the amount of variance requested by the prior owners; that Lot #3 is two houses North of Lot #1 which is the lot in question; and that Bay City told them there was recently a variance granted for the same type of request.

Ms. Norwood elaborated that the lot is 5,391 sf.; that the minutes from December 21, 2009 indicate that it was a 659.15 sf variance request from the 35% lot coverage; that there is one variance of record granted in 2011 for Lot #3 on Berry Street for maximum lot coverage, 1,960 sf over the maximum lot coverage; that there was an amendment in 2010 to a variance request in Bay City; and that the lot coverage requirement was put in place in the 1970s and has not been amended since that time.

Ms. Wright testified that they could put down pavers without having a variance; that they spoke with a neighbor who owns a low-lying property and the neighbor supports the request; that Berry Street is no different than other streets in Bay City; that she is unaware of the size of her neighbors shed, but they have two decks, a shed, and an outdoor shower; that they looked at a smaller shed but it is not feasible, they would like to go bigger actually but are seeking the minimum to be able to accommodate their stuff; that they have no shade on their lot; that there are other options but they are not as feasible, practical, or nice looking, such as pavers or an enclosed trailer; and that she sought out support from those with lots that were low lying.

The Board found that four individuals appeared in support of and two individuals appeared in opposition to the Application.

Mr. Williamson closed the public hearing.

Mr. Warfel moved to leave Case No. 12661 open for Planning & Zoning staff to provide copies of the previous variance request and rehearing request documents for this property and to allow the Applicants and the public to comment on these documents only.

The motion failed for lack of second.

Dr. Carson moved to approve the request for rehearing as the Applicants have demonstrated that there has been a substantial change in circumstances and conditions affecting the property.

Motion by Dr. Carson, seconded by Mr. Chorman, carried unanimously.

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

Dr. Carson moved to approve Case No. 12661 for the requested variance, pending final written decision, for the following reasons:

1. The property has unique conditions due to the exceptionally small buildable area;

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

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

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

### **ADDITIONAL BUSINESS**

Mr. Chorman stated that he may not be present at the meeting of March 7, 2022.

Dr. Carson stated that he will not be present at the meeting of March 21, 2022.

**Meeting adjourned at 9:29 p.m.**