

MINUTES OF FEBRUARY 5, 2018

The regular meeting of the Sussex County Board of Adjustment was held on Monday, February 5, 2018, at 7:00 p.m. in the County Council Chambers, 2 The Circle, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Dale Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Ms. Ellen Magee, Mr. Bruce Mears, and Mr. Brent Workman. Also in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Mrs. Jennifer Walls – Planning Manager, and Ms. Christin Headley – Recording Secretary.

The Pledge of Allegiance was led by Mr. Callaway.

Mr. Sharp stated that he received a request from the attorney for Toby Chrostowski & Alexandra Chrostowski to move Case No. 11878 to the front of the agenda.

Motion by Mr. Mears, seconded by Ms. Magee, to move Case No. 11878 to the front of the agenda and to approve the Revised Agenda as circulated and amended. Motion carried 5 – 0.

Motion by Mr. Workman, seconded by Mr. Mears, to approve the Minutes and Findings of Facts for December 11, 2017.

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

ADDITIONAL BUSINESS

Case No. 11878 – Toby M. Chrostowski and Alexandra M. Chrostowski - seek variances from the front yard and side yard setback requirements (Section 115-34B of the Sussex County Zoning Code). The property is located on the north side of Baltimore Street approximately 225 feet west of Andrew Street in Bayview Park. 911 Address: 39667 Baltimore Street, Bethany Beach. Zoning District: MR. Tax Map No.: 1-34-20.11-34.00.

REQUEST FOR A TWELVE (12) MONTH TIME EXTENSION

Mrs. Walls presented the request of the Applicants to extend the approval for the variances for a period of twelve (12) months.

Mrs. Walls read the request into the record. The Applicants submitted a letter explaining that they experienced delays due to engineering and construction issues.

John Sergovic, Esquire, was present on behalf of the Applicants and stated that the Applicants obtained the variance approximately a year ago; that the dwelling is an older house and has some structural issues; and that the Applicants need additional time to address those issues.

Motion by Mr. Mears, seconded by Ms. Magee, and carried unanimously that **the extension request be granted for a period of twelve (12) months.**

The vote by roll call; Mr. Mills – yea, Mr. Workman – yea, Mr. Mears – yea, Ms. Magee – yea, and Mr. Callaway – yea.

PUBLIC HEARINGS

Case No. 12092 – Marvin Weaver - seeks variances from the side yard and rear yard setback requirements (Section 115-25 of the Sussex County Zoning Code). The property is located on the north side of Marina Drive, approximately 450 feet west of the intersection of Woodland Circle and Marina Drive West. 911 Address: 23406 Marina Drive West, Lewes. Zoning District: AR-1. Tax Map No.: 2-34-17.08-127.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. The Applicant seeks a variance of 1.0 feet from the ten (10) feet side yard setback requirement on the southwest side for a proposed garage addition, a variance of 1.8 feet from the ten (10) feet rear yard setback requirement for an existing dwelling, and a variance of 1.5 feet from the ten (10) feet rear yard setback requirement for a proposed addition.

Jay Yoder was sworn in to testify about the Application and he submitted the proposed building plans into the record for the Board to review.

Mr. Yoder testified that he was present on behalf of the Applicants; that he is the owner of Yoder & Sons Construction; that the Applicants recently purchased the Property and propose to construct an addition to the garage; that the Applicants intend to use the garage for a boat; that there is a marina in Angola by the Bay; that the additional foot for the garage will enable the Applicants to properly store their boat; that the rear of the addition will be used for bedrooms; that the Board has approved many variances in the Angola by the Bay community; that the rear of the Property is adjacent to common area; that the variances will not affect anyone to the rear of the Property; that the Property is a double lot; that the dwelling is an existing dwelling and the Applicants propose to add the garage; that the Applicants purchased the Property within the past year; that the Applicants did not create the hardship; that the Applicants are making other improvements to the home; and that there is another boat garage in the neighborhood.

Mrs. Walls advised the Board that the existing dwelling encroaches into the rear yard setback area; and that a Certificate of Compliance was issued in 1985 for a three-room addition.

Mr. Yoder testified that the Applicants propose a door next to the garage door; that the door would allow the Applicants to install a handicap ramp, if necessary, for improved access to the home; that the Property slopes significantly; that the Applicants own two (2) boats; that the Property is a smaller than average lot; that the Property cannot otherwise be developed; that the variances will not alter the essential character of the neighborhood; that the variances requested represent the minimum variances necessary to afford relief; that the Applicants would not be able to fit the boats in a smaller garage; that the homeowners association prohibits the outdoor storage

of boats; that the Applicants do not own a slip at the community's marina; and that he would like additional time to present the Application.

Mr. Mills moved to leave the record open until the end of the public hearings.

Motion by Mr. Mills, seconded by Mr. Mears, and carried unanimously that **the record be left open until the end of the public hearings**. Motion carried 5 – 0.

Mr. Sharp advised the public that individuals who wish to speak about the Application would have an opportunity to do so at the end of the public hearings.

At the end of the public hearings, the Board readdressed Mr. Yoder.

Mr. Yoder testified that the Applicants did not obtain a survey when they purchased the Property and were unaware that the existing dwelling encroached into the rear yard setback area; that he would like additional time to present the case; that there is no living space to the rear of the garage; and that the addition will square up the home.

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

Mr. Mills moved to leave the record open and to schedule a hearing on Variance Application No. 12092 for March 5, 2018.

Motion by Mr. Mills, seconded by Ms. Magee, and carried unanimously that the **record be left open and the hearing rescheduled for March 5, 2018**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Mears – yea, Ms. Magee – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 12093 – Paul Webster & Justin Duhaime - seek variances from the side yard setback requirement (Section 115-25 of the Sussex County Zoning Code). The property is located on the southeast corner of Bald Eagle Drive and 7th Street. 911 Address: 21169 Bald Eagle Road, Rehoboth Beach. Zoning District: AR-1. Tax Map No.: 3-34-19.16-90.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. The Applicants intend to subdivide the Property into two (2) lots (Lots 304A and 306A) and seek a variance of five (5) feet from the fifteen (15) feet side yard setback requirement on the east side of the proposed Lot 304A and variances of five (5) feet from the fifteen (15) feet side yard setback requirement on both sides of the proposed Lot 306A for proposed dwellings on those lots. No variance is sought from the corner front yard setback requirement for proposed Lot 304A along Bald Eagle Road.

Paul Webster was sworn in to testify about the Application.

Mr. Webster testified that the Applicants purchased the Property in August 2017; that the Property measures 100 feet by 100 feet and is improved by a dwelling located in the middle of the

lot; that the Applicants propose to subdivide the Property into two (2) lots measuring 50 feet wide by 100 feet deep; that both lots would be buildable per Sussex County because the lots would revert to the original lot sizes as shown on the Bay Vista subdivision plan; that, if the Property is subdivided as proposed, the side yard setback requirements would be 15 feet rather than ten (10) feet and the Applicants propose these variances to allow for side yard setbacks of ten (10) feet except for the corner front setback which borders Bald Eagle Road; that there are approximately 70 lots in Bay Vista which measure 50 feet by 100 feet; that those lots have side yard setback requirements of ten (10) feet; that there are six (6) corner lots which are also similarly situated; that similar variances were granted to Gaw Ventures Group (Case No. 11742); that the Gaw Ventures property is located on the same block as the Property; that there are some differences between the two applications; that the entrances for the proposed lots will remain off of Seventh Street; that a building envelope with 15 feet side yard setback requirements would only be 20 feet wide; that 15 feet side yard setback requirements are inconsistent with the neighborhood; that the lots were created in the 1950s; that Bay Vista was originally created with lots measuring 25 feet by 100 feet and the restrictive covenants required that 2 lots be used for each house; that the intent of the community was for lots measuring 50 feet by 100 feet; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code; that a dwelling which measures 20 feet wide is not feasible; that the variances are necessary to enable reasonable use of the Property; that the exceptional practical difficulty was not created by the Applicants; that the Applicants called the Planning & Zoning Office prior to purchasing the Property and were told that the Property could be subdivided with 10 feet wide side yard setbacks; that there has been confusion as to the size of the setback requirements for the Property; that the Applicants intend to relocate and renovate the existing dwelling; that the Applicants have cleaned up the Property; that the dwelling had been abandoned for 13 years; that the variances requested are the minimum variances necessary to afford relief; that the Property is located in a flood zone; that the existing Property has topographical conditions which have created an exceptional practical difficulty; that the dwelling needs to be raised and flood vents installed; that the Property is a corner lot; that the Property cannot otherwise be developed; that the Applicants did not create the size of the Property in the original Bay Vista subdivision; that the variances will not alter the essential character of the neighborhood or be detrimental to the public welfare; that the variances represent the least modifications of the regulations at issue; that the garage located on neighboring Lot 89 is under 600 square feet and is five (5) feet from the property line; and that an existing shed on the Property is only 2.5 feet from the property line and that shed will be removed or moved into compliance with the Sussex County Zoning Code.

Mrs. Walls advised the Board that undersized lots created as of a certain date are allowed to have 10 feet side yard setbacks; and that, since the Property is being re-subdivided, AR-1 setback requirements of 15 feet apply to the lots.

Mr. Sharp advised the Board that the Office of Planning & Zoning has historically taken the position with lots in Bay Vista that those lots can be restored to the original 50 feet by 100 feet lots; that the Gaw Ventures case referenced by Mr. Webster had additional variances at issue because Gaw Ventures sought permission to subdivide and turn the lots 90 degrees; that the Applicants in this case are not proposing to turn the lots; and that undersized lots created as of a certain date are allowed to have 10 feet side yard setbacks.

Mr. Webster testified that all structures, including HVAC systems and stairs, will fit within the building envelope if the variances are approved; and that the neighbor across the street approves of the requests.

Justin Duhaime was sworn in to testify in support of the Application. Mr. Duhaime testified he worked with Mr. Webster on the project; and that he affirmed the statements made by Mr. Webster as true and correct.

Mary Beth Dockitty and Grant Dockitty were sworn in to testify in opposition to the Application. Mr. Dockitty submitted exhibits to the Board to review.

Mr. Dockitty testified that the Board previously approved the Gaw Ventures variance application two years ago; that Bay Vista has restrictive covenants which require a setback of 23 feet from the road; that there plenty of lots in Bay Vista which measure 50 feet by 100 feet; that there are not, however, corner lots which measure 50 feet by 100 feet except for the Gaw Ventures property; that the restrictive covenants were created in 1954; that the restrictive covenants have resulted in narrow dwellings; that there are some corner lots which measure 75 feet wide; that his neighbor opposes the Application; that he has a petition with 40 signatures opposing the subdivision of the Property; that he owns Lot 89; that the house built on the Gaw Ventures property looks out of character for the neighborhood; that he is a builder; and that the proposed variances are out of character for the neighborhood.

Mr. Sharp advised the Board that Mr. Dockitty has submitted an order for declaratory judgment from the Court of Chancery; that Gaw Ventures was a party to the Chancery Court action; that the Order references certain deed restrictions applicable to the Gaw Ventures property; that the Order provides that the restrictive covenants prohibit the construction of a dwelling within 23 feet of the road on corner lots; and that the Order does not indicate whether those same restrictive covenants are applicable to the Applicants' property.

Mr. Dockitty testified that he has lived in Bay Vista since 1975; that there is a right-of-way of three (3) feet behind the lots for drainage to the canal; that his property measures 75 feet by 100 feet; that there is no homeowners association; that he wants the Applicants to comply with the setback requirement of 23 feet off of Bald Eagle Road; that he would prefer two ranch-style houses over two large houses but he does not think the Applicants will build ranch-style houses; that he does not oppose setbacks of 10 feet but not on the Bald Eagle Road side; that other houses in the neighborhood have 10 feet side yard setbacks; and that he believed the side yard setback requirements were always 10 feet.

Mr. Sharp stated that lots which were created prior to 1971 were subject to side yard setback requirements of 10 feet but lots which were created after 1971 were subject to side yard setback requirements of 15 feet.

Mr. Dockitty testified that he opposes the setback of 15 feet on the Bald Eagle Road side of the Property.

Mr. Webster testified that he is aware of the restrictive covenants; and that there are six (6)

corner lots which measure 50 feet by 100 feet in the neighborhood.

The Board found that one (1) party appeared in support of the Application.

The Board found that two (2) parties appeared in opposition to the Application.

Mr. Mills moved to take Variance Application No. 12093 under advisement.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the **case be taken under advisement**. Motion carried 5 – 0.

The vote by roll call; Ms. Magee – yea, Mr. Mears – yea, Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway – yea.

At the end of the public hearings, the Board revisited and discussed the Application.

Mr. Mills stated that he believed the Applicants addressed the standards well; that the opposition focused on deed restrictions which are not enforced by the Board; that there are other corner lots which measure 50 feet by 100 feet in the neighborhood; that the dwellings are modest homes; and that the Applicants are improving the Property.

Mr. Mills moved to approve Variance Application No. 12093 for the requested variances (but no variance along Bald Eagle Road) based on the record made at the public hearing and for the following reasons:

1. The Property is unique because it was designed for 2 structures;
2. The Property cannot be developed in strict conformity with the Sussex County Zoning Code and still be handicap compliant;
3. The exceptional practical difficult was not created by the Applicants;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances represent the minimum variances necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Mears, and carried unanimously that the **variances be granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Ms. Magee – yea, Mr. Mears – yea, Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 12094 – Nancy Kelly - seeks variances from the side yard and rear yard setback requirements (Sections 115-34 and 115-183 of the Sussex County Zoning Code). The property is located on the north side of Pine Place, approximately 280.19 feet from the intersection of Birdhaven Street and Pine Place. 911 Address: 31272 Pine Place, Millville. Zoning District: MR. Tax Map No.: 1-34-8.00-98.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no

correspondence in support of or in opposition to the Application. The Applicant seeks a variance of 9.4 feet from the ten (10) feet rear yard setback for an existing shed with deck, a variance of 1.7 feet from the ten (10) feet side yard setback requirement on the southwest side for an existing dwelling, and a variance of 1.3 feet from the ten (10) feet side yard setback requirement on the southwest side for an existing dwelling.

Nancy Kelly was sworn in to testify about the Application. Chad Meredith, Esquire, presented the case on behalf of the Applicant and submitted exhibits into the record for the Board to review. The exhibits included pictures and the building permits of the existing shed.

Mr. Meredith stated that there is a platform which was constructed behind the shed; that the Applicant purchased the Property in October 2017; that the Applicant discovered the encroachments when she was presented with a survey of the Property shortly before settlement; that the dwelling is an older home; that the attached garage was added to the home in 1997; that a building permit was issued for the garage; that no permits were located for the platform attached to the shed; that the attached garage encroaches into the side yard setback area; that deck to the rear of the home is a first-floor deck and is allowed to encroach into the side yard setback area and no variance is needed for that deck; that the Applicant did not construct the improvements on the Property; that the shed meets the setback requirements but the attached platform does not meet those requirements; that the need for the variances was not created by the Applicant; that the prior owner is deceased; that it is believed that the platform was used to store firewood for the home; that there is a fence on neighboring property but the fence was not constructed on the border of the Property; that the location of the fence makes the rear of the Property appear larger than it actually is; that the rear of the Property is located adjacent to undeveloped wooded lots; that an exceptional practical difficulty exists; that the platform is hardly noticeable and removal of the platform would pose no benefit to the neighborhood; that the variances are necessary to enable reasonable use of the Property; that the Applicant did not create the exceptional practical difficulty; that the variances will not alter the essential character of the neighborhood or impair the uses and development of adjacent properties; that the variances will not be detrimental to the public welfare; that the Applicant is unaware of any complaints about the structures; that the requested variances represent the least modifications of the regulations at issue; and that the variances are necessary to afford relief.

Ms. Kelly affirmed that the statements made by Mr. Meredith as true and correct.

Mr. Meredith stated that he was unsure how tall the platform was because the platform was pressed into the ground.

Ms. Kelly testified that there is a well on the Property and the Property is serviced by public sewer and that the Property may have previously been served by a septic system.

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

Mr. Mears moved to approve Variance Application No. 12094 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The exceptional practical difficulty was not created by the Applicant;
2. The Applicant would suffer hardship and costs if required to bring the structures into compliance;
3. The variances will not alter the essential character of the neighborhood; and
4. The variances are the minimum variances necessary to afford relief.

Motion by Mr. Mears, seconded by Ms. Magee, and carried unanimously that the **variances be granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Ms. Magee – yea, Mr. Mears – yea, Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway – yea.

The Board took a ten (10) minute recess.

Case No. 12095 – Donald W. Chapman & Norma M. Chapman - seek variances from the front and side yard setback requirements (Sections 115-42, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located on the west side of Laws Point Road, approximately 2,107.54 feet from the intersection of Swann Point and Laws Point Road. 911 Address: 37035 Laws Point Road, Selbyville. Zoning District: GR. Tax Map No.: 5-33-12.16-259.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. The Applicants seek a variance of 0.4 feet from the ten (10) feet side yard setback requirement on the north side for an existing deck, a variance of 0.6 feet from the ten (10) feet side yard setback requirement on the north side for an existing dwelling, a variance of 1.6 feet from the ten (10) feet front yard setback for an existing shed, a variance of 1.9 feet from the ten (10) feet front yard setback for an existing shed, a variance of 5.4 feet from the ten (10) feet front yard setback for an existing ramp, and a variance of 5.6 feet from the ten (10) feet front yard setback for an existing ramp.

Norma Chapman was sworn in to testify about the Application. Ray Tomasetti, Esquire, presented the case on behalf of the Applicants and submitted exhibits into the record for the Board to review. The exhibits included photographs and a certificate of compliance for the deck and shed.

Mr. Tomasetti stated that the Property is located in Swann Keys; that the Applicants purchased the Property in 1999; that a manufactured home was located on the Property at that time; that, in 2008, the Applicants engaged a manufactured home contractor to remove the manufactured home and place a new one on the site; that a Certificate of Compliance was issued; that the Applicants later retained contractors to construct the deck on the rear of the home and to place the shed on the Property; that there is an asphalt area between the front property lines and the adjacent Laws Point Road; that this asphalt area has created confusion in the neighborhood about the location of front property lines; that no variances are needed on the south side of the Property; that the encroachments on the north side of the Property are nominal encroachments; that the encroachments were discovered when the Applicants obtained a survey as part of the process of selling the Property; that the shed is located in a similar location as other sheds along Laws Point Road; that the Property is unique because

approximately 21 feet of the rear of the Property is located in the lagoon; that the building envelope is small; that the uniqueness of the Property has created an exceptional practical difficulty; that the Property cannot be developed in strict conformity with the Sussex County Zoning Code; that the Applicants relied upon licensed contractors to erect these structures in compliance with the Code; that the Applicants obtained building permits and Certificates of Compliance for all structures; that the variances will not alter the essential character of the neighborhood; that the variances requested are the minimum variances necessary to afford relief; and that the ramp is a temporary structure and can be removed but the ramp has been used by the Applicants for access due to their advanced age.

Mrs. Chapman affirmed that the statements made by Mr. Tomasetti as true and correct.

Mrs. Chapman testified that the shed is detached but is pushed up against the house and that she has received no complaints from neighbors.

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

Ms. Magee moved to approve Variance Application No. 12095 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique because it is small;
2. The Property cannot be developed in strict conformity with the Sussex County Zoning Code;
3. The exceptional practical difficulty was not created by the Applicants as they relied on their contractors;
4. The variances will not alter the essential character of the neighborhood; and
5. The requested variances are the minimum variances necessary to afford relief.

Motion by Ms. Magee, seconded by Mr. Mears, and carried unanimously that the **variances be granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Ms. Magee – yea, Mr. Mears – yea, Mr. Workman – yea, and Mr. Callaway – yea.

Case No. 12096 – Andrew Steiminger - seeks variances from the side yard setback requirement (Sections 115-42 and 115-183 of the Sussex County Zoning Code). The property is located on the west side of Canvasback Road, approximately 1,396.25 feet north of the intersection of Swann Drive and Canvasback Road. 911 Address: 37029 Canvasback Road, Selbyville. Zoning District: GR. Tax Map: 5-33-12.16-346.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of the Application and one (1) letter in opposition to the Application. Mrs. Walls read the letter into the record. The Applicant seeks a variance of 0.7 feet from the ten (10) feet side yard setback requirement on the north side for a proposed dwelling, a variance of 1.7 feet from the ten (10) feet side yard setback requirement on the north side for a proposed dwelling, a variance of 7.0 feet from the ten (10) feet side yard setback requirement on the south side for a proposed

dwelling, and a variance of 6.0 feet from the ten (10) feet side yard setback requirement on the south side for a proposed dwelling.

Andrew Steiminger was sworn in and testified about the Application.

Mr. Steiminger testified that the Property is located in Swann Keys; that the Property was previously improved by a single-wide manufactured home but that home was in poor condition and has been removed; that the Applicant proposes to place a double-wide manufactured home on the lot; that double-wide manufactured homes are common the neighborhood; that the home will be accessed on the other side of the house from where the variance is being requested; that the home will be accessed on the north side of the Property and the rear of the Property; and that the steps will be 5 feet wide.

Mrs. Walls stated that the variance request would need to be increased to accommodate the stairs.

Mr. Steiminger testified that the HVAC system will be on the south side of the Property; that there is a 4 feet tall vinyl fence along the south property line; that the HVAC system will be close to the property line; that he already purchased the house; that the HVAC system can be moved to the north side of the Property; and that he proposes to amend the Application to include a variance of 5 feet on the north side for a proposed HVAC system.

Mr. Sharp stated that the survey provides a “buffer for installation error” and he suggested that the variances being sought would be as follows: 1) a variance of 6 feet on the south side for the proposed dwelling, 2) a variance of 0.7 feet on the north side for the proposed dwelling, 3) a variance of 5.7 feet on the north side for the proposed stairs, and 4) a variance of 5.7 feet on the north side for the proposed HVAC system.

Mr. Steiminger testified that there is 25 feet from the edge of paving of Canvasback Road to the dwelling; that parking in Swann Keys is difficult; that he purchased the home with knowledge that he would need a variance; that single-wide homes are being replaced by double-wide homes; and that he believed the size of the lot created an exceptional practical difficulty

The Board found that three (3) parties appeared in support of the Application.

The Board found that no parties appeared in opposition to the Application.

Ms. Magee moved to approve Variance Application No. 12096 for the requested variances and to include variances of 5.7 feet from the ten (10) feet side yard setback requirements on the north side for the HVAC system and steps based on the record made at the public hearing and for the following reasons:

1. The Property is unique in size as it is under 4,000 square feet; and
2. The Application meets all the standards for granting a variance.

Motion by Ms. Magee, seconded by Mr. Mears, and carried unanimously that the **variances**

be granted for the reasons stated. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Mears – yea, Ms. Magee – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 12097 – Kings Creek Country Club - seeks a variance from the height requirement (Section 115-25 of the Sussex County Zoning Code). The property is located on the east side of Kings Creek Circle at the intersection of Patriots Way and Kings Creek Circle. 911 Address: 1 Kings Creek Circle, Rehoboth Beach. Zoning District: AR-1. Tax Map No.: 3-34-13.00-1158.00 C (portion of).

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of the Application and no correspondence in opposition to the Application. Mrs. Walls read the letter from the Kings Creek Homeowners Association into the record. The Applicant seeks a variance of 58 feet from the 42 feet height requirement for a proposed driving range netting system.

Kevin Wiest, Don Beyerly, and Joel Weiman were sworn in to testify about the Application. Steve W. Spence, Esquire, presented the case on behalf of the Applicant and submitted exhibit booklets into the record for the Board to review.

Mr. Spence stated that the Applicant intends on increasing the height of the netting for its driving range from 50 feet to 100 feet; that the entire property consists of a golf course and a portion of the golf course is used as a driving range; that the increase in height of the netting will protect the 18th hole green and the clubhouse from the driving range; that the driving range is existing and the existing netting has been in place for many years; that the existing netting is as high as 50 feet tall in some areas; and that a variance is needed from the 42 feet height requirement since the fencing is considered a permanent structure.

Mr. Weiman testified that he is the senior designer for McDonald Design Group; that he has been retained by the Applicant to assist with design changes to the course; that he has been working with the club's improvement committee for two years on improving the golf course; that the Applicant intends to improve the practice area; that he was asked to look at the existing driving range and to explore ways to improve it; that the current driving range has many safety issues; that errant shots from the driving range have landed on the golf course, the clubhouse, and parking lot; that he studied a possible relocation of the driving range but relocating the driving range was determined to be infeasible due to the size of the golf course, the cost of relocating holes, and environmental impacts; that, if the golf course was relocated, it would be placed near ponds; that, even if the driving range was relocated, the nets would still be needed; that the location of the driving range is the best location possible; that he worked with a consultant to design the netting; that the consultant recommended a netting structure measuring 135 feet tall surrounding the driving range but this proposal was not well received and was deemed impractical; that the Applicant proposes to install a netting structure measuring 100 feet tall; that the Kings Creek golf membership generally consists of retirees and the Applicant determined that the additional 35 feet was not needed since the users of the driving range would be unlikely to hit balls that far; that there is an existing tree line between the clubhouse and the driving range; that practice areas for golf courses have increased in popularity; that there is tree coverage in the area; that the netting will be a mesh netting strung on steel chords; and that the netting

structure will be 100 feet tall at its highest point.

Mr. Spence stated that the existing tree canopy is approximately 68-75 feet tall but there are some trees which exceed 100 feet tall; and that the netting will exceed the height of the tree canopy.

Mr. Wiest testified that he is the PGA professional at Kings Creek Country Club; that he has been there for 11 seasons; that the golf membership at Kings Creek has increased in recent years; that the existing driving range was previously used as a warm-up range but has evolved in recent years for use as a practice range; that more lessons are being given and the increase in lessons has resulted in greater use of the driving range; that the number of golf balls hit at the range increased from 2,000 per day to 15,000 per day; that players are trying to hit the ball higher and longer; that there has been an improvement in technology in golf balls and equipment which have resulted in players being able to hit the balls higher and farther; that the average age of members at the Club is 63 years old; that a netting structure measuring 100 feet tall will capture most balls hit by members at the driving range; that another club has a netting structure measuring 90 feet tall and many golf balls clear the netting; that he has watched many members hit balls at the range and feels comfortable that the proposed structure of 100 feet will satisfy the Club's purpose; that the use of the golf course has changed to increased driving range use rather than members playing all 18 holes of the course; that the Club wants to stay competitive and make renovations; and that safety is the number one priority.

Mr. Byerly testified that he is the general manager of the Club; that the members desire to improve the safety of the clubhouse; that he handles the operations at the Club; and that the patio of the clubhouse is near the driving range and on two occasions during his recent interview process golf balls landed on the patio.

Mr. Spence stated that the clubhouse patio is approximately 160 yards from the driving range.

Mr. Byerly testified that vendors and employees use the rear of the clubhouse for loading and access and balls tend to land in that area as well; and that amenities have been an issue while balancing safety issues.

Mr. Spence stated that the Property is unique as it is a golf course community and the driving range is an integral part of the course; that the safety issues presented by the range have created a unique situation; that the driving range cannot be relocated elsewhere on the course; that the Applicant explored alternatives; that the Applicant intends to improve the safety of the course; that the changes in golf ball and equipment technology have led to an increase in the safety concerns; that immediate neighbors, including those who will be able to see the structure, support the Application; and that the structure will not alter the essential character of the neighborhood since the golf community remains.

Mr. Weiman testified that black netting will be used to blend in with the surrounding natural elements.

Mr. Wiest testified that the existing netting has not posed a problem for wildlife; and that there are geese on the golf course but they tend to stay away from the driving range.

Mr. Weiman testified that poles for the proposed netting structure will be designed to be wind-

graded and will be safer than the existing netting structure.

The Board found that one (1) party appeared in support of the Application.

The Board found that no parties appeared in opposition to the Application.

Mr. Mears moved to approve Variance Application No. 12097 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique because the existing driving range cannot be relocated and the Applicant has experienced problems with safety and from the existing driving range;
2. The variance will not alter the essential character of the neighborhood; and
3. The requested variance is the minimum variance that will afford relief as the variance requested was less than what was recommended by its consultant.

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

The vote by roll call; Mr. Mills – yea, Ms. Magee – yea, Mr. Mears – yea, Mr. Workman – yea, and Mr. Callaway – yea.

Case No. 12098 – Mountaire Farms - seeks a special use exception to use a manufactured home type structure as an office (Sections 115-114 and 115-210 of the Sussex County Zoning Code). The property is located on the northwest corner of the intersection of John J. Williams Highway (Route 24) and Maryland Camp Road. 911 Address: 29106 John J. Williams Highway, Millsboro. Zoning District: HI-1. Tax Map No.: 2-34-32.00-106.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. The Applicant is requesting a special use exception to use a manufactured home type structure as an office for a period of five (5) years.

Greg Esham was sworn in and testified about the Application.

Mr. Esham testified that a temporary office trailer was previously on the Property but has been removed; that the proposed manufactured home will be placed in the same location as the prior structure; that the proposed manufactured home will measure 12 feet wide by 60 feet long; that the manufactured home will consist of two offices, a bathroom, and a common area; that the facility will be used for by human resources for recruiting; that the current space used by human resources is located across the street in the plant area and there are security and safety issues with the current location; that the proposed location will be easier for prospective employees to find and will avoid confusion; that there is already existing water and electric hook ups for the structure; that the old administrative building is being demolished and turned into a large parking area; that the Property is a large parcel; that the use will not be disruptive to any neighbors; that another 400 parking spaces will be added after the demolition and parking lot is completed; that the wellness center is located next door with parking available; that the proposed structure will be located across the street from the

existing plant; that prospective employees currently have to park on one side of the road and cross a walkway to enter the plant in order to interview for a job; that Mountaire has many new applicants and a high rate of employee turnover; that the use is necessary for hiring purposes; that the Applicant has yet to determine where the permanent building will be located on the Property; that the Applicant seeks approval for five (5) years; and that the use will not substantially affect adversely adjacent and neighboring properties.

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

Ms. Magee moved to approve Special Use Exception Application Number 12098 for the requested special use exception for a period of five (5) years based on the record made at the public hearing and because the use will not substantially adversely affect the uses of the neighboring and adjacent properties.

Motion by Mr. Mills, seconded by Ms. Magee, and carried unanimously that the **special use exception be granted for a period of five (5) years and for the reasons stated**. Motion carried 5 – 0.

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

Case No. 12099 – Sussex Sports Amenities, LLC - seeks a special use exception to use a manufactured home type structure as a temporary kitchen, restrooms, and a golf pro-shop (Sections 115-32 and 115-210 of the Sussex County Zoning Code). The property is located on the south side of Lakeview Drive, approximately 1,373.07 feet west of the intersection of Sound Church Road and Lakeview Drive. 911 Address: 31804 Lakeview Drive, Selbyville. Zoning District: MR-RPC. Tax Map No.: 5-33-19.00-36.01 Lot 2 (portion of).

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. The Applicant is requesting a special use exception to use a manufactured home type structure as a temporary kitchen, restrooms, and a golf pro-shop.

Steve Marsh and Rich Rishel were sworn in and testified about the Application.

Mr. Marsh testified that he is the engineer for the project; that the Property is located in Americana Bayside; that the original special use exception was granted in 2005; that it was renewed in 2013; that the Cove restaurant was built around the structure; that, in 2015, the Applicant decided to move the permanent golf club house to the location where the existing driving range is located; that a master plan was submitted in December 2015 and preliminary site plan approval was received in September 2017; that the Applicant is working on engineering and Sussex Conservation District approvals; that the Applicant anticipates opening the clubhouse by March 2020; that the facility does not adversely affect neighboring and adjacent properties; and that the facility has served as a vital part of the Americana Bayside community.

Mr. Rishel testified that the Applicant will be starting construction of the clubhouse this

summer provided final site plan approval is received this spring; that members are anxious for a permanent facility; and that the permanent facility will be larger than the existing facility.

Mr. Marsh testified that there will be no changes to the structures themselves; that the manufactured homes being used have been built around; and that the only complaints received are from members who question when the permanent clubhouse will be completed.

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

Ms. Magee moved to approve Special Use Exception Application Number 12099 for the requested special use exception for a period of three (3) years based on the record made at the public hearing and because the use will not substantially adversely affect the uses of the neighboring and adjacent properties.

Motion by Ms. Magee, seconded by Mr. Workman, and carried unanimously that the **special use exception be granted for a period of three (3) years and for the reasons stated.** Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Ms. Magee – yea, Mr. Mears – yea, Mr. Workman – yea, and Mr. Callaway – yea.

OLD BUSINESS

Case No. 12070 – David Sroka & Cindy Sroka - seek variances from the front yard, side yard, and rear yard setback requirements (Section 115-25 of the Sussex County Zoning Code). The property is located on the northwest side of Seagrass Court, approximately 250 feet south west of the intersection of Seagrass Court and Sandpiper Way. 911 Address: 29737 Seagrass Court, Dagsboro. Zoning District: AR-1. Tax Map No.: 1-34-7.00-108.00.

Mrs. Walls presented the case which has been tabled since January 8, 2018.

The Board discussed the case.

Mr. Mills advised the Board that he reviewed the record and transcript and was prepared to participate and vote on the Application.

Mr. Mills stated that the lot consists of only 4,000 square feet and the Applicants are unable to build a home consisting of even 1,200 square feet per floor; that houses in the area are larger than the proposed house; that the variances are necessary to enable reasonable use of the Property; that the proposed dwelling is within the character of the neighborhood; and that the only opposition was the homeowners association who owns an adjacent lot.

Mr. Workman moved to approve Variance Application No. 12070 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique in size and shape;

2. The variances are necessary to enable the reasonable use of the Property;
3. The variances will not alter the essential character of the neighborhood;
4. There are similar homes in the neighborhood;
5. The variances requested are the minimum variances necessary to afford relief; and
6. The variances requested represent the least modifications of the regulations at issue.

Motion by Mr. Workman, seconded by Mr. Mills, and carried that the **variances be granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Ms. Magee – yea, Mr. Mears – yea, Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Meeting was adjourned at 10:58 p.m.