

MINUTES OF FEBRUARY 6, 2023

The regular meeting of the Sussex County Board of Adjustment was held on Monday, February 6, 2023, at 6:00 p.m. in the County Council Chamber, Sussex County Administration Office Building, Georgetown, Delaware. The teleconference system was tested during the meeting by staff to confirm connectivity.

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

The Pledge of Allegiance was led by Mr. Chorman.

Motion by Mr. Warfel, seconded by Dr. Carson and carried unanimously to approve the agenda as amended by moving Case No. 12789 to the rear of the agenda and to move Case No. 12792 to the front of the agenda. Motion carried 4 – 0.

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

Motion by Mr. Williamson, seconded by Dr. Carson and carried unanimously to approve the Minutes for the December 12, 2022, meeting. Motion carried 4 – 0.

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

Motion by Dr. Carson, seconded by Mr. Warfel and carried to approve the Findings of Facts for the December 12, 2022, meeting. Motion carried 4 – 0.

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

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

PUBLIC HEARINGS

Case No. 12792 – Todd and Nina Probel seek variances 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 on the southeast side of Show Jumper Lane within the Showfield Subdivision. 911 Address: 18315 Show Jumper Lane, Lewes. Zoning District: AR-1. Tax Map: 335-8.00-1128.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. The

Applicants are requesting a variance of 5.5 ft. from the 10 ft. side yard setback requirement on the northwest side for a proposed dwelling.

Mr. Warfel recused himself and left the Council Chambers.

Ms. Jennifer Hudson was sworn in to give testimony about the Application.

Ms. Hudson testified that she works for Garrison Homes; that she is representing Todd and Nina Probel who are the land owners of Lot 129 in Showfield; that the Applicants are requesting a 5.5 ft. variance on the right-hand side of the property; that they have reached out to the neighbors on the right and left side of the property, both of who are in favor of this application; that, coming into Showfield, you go straight on the main drag and, when you get to a large house on the corner, this property is right next to it; that the neighboring home was a spec home built by a different builder and, when purchased, the neighbors had some landscaping and stuff done by another company who never verified through a survey; that their irrigation system and some plantings were actually on the Applicants' property; that the neighbors also installed a patio as noted on the survey, which is 2.6 ft. away from the Applicants' property; that the Applicants realized this very early on in the design stage and worked with our architect because originally they were thinking of doing a courtyard driveway; that, looking into that design, it would actually push that garage right next to the neighbor's patio; that they have worked with it and the design and are only asking for a 5.5 ft. variance for one small section highlighted on the survey where they designed it is really just the master bedroom; that they positioned the house toward the living area and staggered it so that the area is not affected; that they are not asking to impose any decks or any patio areas; that the area to the right is a common space area which just has a sidewalk that connects you to a walking path around the pond; that they are not imposing on any neighbor's property or affecting their house; that they feel this request is actually going to make the community look better; that, without this request, the Applicants' home will be basically sitting on top of the house to the left; that, by asking for this variance, it would allow the Applicants to move it more to the right giving more space in between the homes rather than two large homes so close together; that this is not affecting any other house or imposing on their land; that they designed so that the windows would be higher up and have a strategic placement; that there will be a guest room that will only be used when elderly parents come to visit, this will be on the left hand side; that they feel they have done their due diligence to try and design around this property; that this is a proposed plan and they have not started building; that they wanted to do the design and present a full plan rather than have hypotheticals; that the backyard does slope down some; that, per the community guidelines, they have to hold a front setback which is why the house is placed to the front; that they have public water and sewer; that the neighbors on Lot 130 have their patio 2.6 ft. from their property on Lot 129; that, to the other side of the property, is community open space which consists of a walking path that takes you from the main road to the walking trail around the pond; that she submitted pictures to give a better visual; that Garrison Homes is under contract to custom design the home; that the home will fit on the lot without the variance but the variance is being requested just for protection because you can see how close the patio is; that they do feel that this is the main drag within the community; that this was not created by the Applicants which is backed up by a letter stating that the

other property built upon it when they purchased the property and landscaped; that the irrigation system was placed on this property; that none of this was known when the property was purchased until they got a survey; that the irrigation system has been moved back to the correct lot; that they would have to redesign the home to fit on the lot without the requested variance; that the property owners are from Delaware but they moved away and are now retiring and moving back; that there are specific things they were wanting in their retirement home; that, believe it or not, this is downsizing; that she cannot speak for them on whether the Applicants want a smaller house; that they are diligent with the design and location of homes; that she is aware of the ground patio and that they did not break any rules in its placement; that they were trying to be mindful because nobody really wants to walk out of the garage door and have a patio 2 ft. from their house; that they are trying to be friendly neighbors and make their community look nice; that there is no exact reason why they cannot build on that lot; that they are asking for a variance and for them to look at the big picture and grant the variance based on the situation; that the slope of the property does not limit the buildable area; that they wanted to walk out and cannot do that because there is not enough slope but the architectural review committee for Showfield requires a front setback; that she was told a lot had received a variance but, during her research, she found that they got a lot line adjustment not a variance; that it is not specifically the patio that they are trying to overcome but having two larger houses grouped so closely together; that the property is unique because her understanding is that there are many lots with accesses to the community walkway; that she also is of the understanding that there are only two lots left in Showfield that have not been built on; that it is unique in the way the neighboring home was placed and no matter how you design the home for this lot you are going to be sitting with these setbacks they have no matter how small or how large the home is; that one other lot in the neighborhood had a similar issue but was able to adjust the lot line to remedy their issue; that the development is almost complete; that pending the Board's approval the homeowners association would be okay with the request; and that Garrison Homes is a custom builder.

Mr. Tom Monahan was sworn in to give testimony in support of the Application.

Mr. Monahan testified that he is a member of the Architectural Review Committee in the Showfield Homeowners Association; that they are in favor of the variance as long as the total of the setback still remains 30 ft., which is the total setback on the left and right side; that they feel that the builder in this particular situation has been dealt a pretty difficult hand; that the home on the adjacent lot that has been referenced was not built where it was supposed to be built and is encroaching the normal setback lines; that, as far as the neighborhood is concerned, they own the property to the right, the common ground, and do not see any problem with their house being 5 ft. closer; that there is a path that comes through there to the pond and in front of the lot where they will be closest to the adjoining lot; that the path is on the opposite side so there really is no issue from their standpoint; that as long as they are shifting the setback and maintaining that additional distance on the other side they would be okay with that; that they understand the intention is to move a little bit away from the property line on the left; that he believes Ms. Hudson misspoke because the Architectural Review Committee has not approved the request pending the Board's decision but, rather, said that they will not render a decision until the County has rendered its decision; that the setback total would be a

condition placed by their committee within the neighborhood to approve their plans; that, to be clear, the envelope would have to move completely not just adjust 5 ft on the one side; that they abide by restrictive covenants, one of which is an aggregate 30 ft. side yard setback with a minimum of 10 ft. on one side; that as long as there is a 20 ft. setback in the rear, 30 ft. in the front, and an aggregate 30 ft. setback for the side, that would meet their community standards and they would have no reason to deny that; that, from an aesthetic standpoint, in their neighborhood, he thinks that moving the house a little farther away from the one house that they are so close to and have it more centered between their neighbor and the common property would be more aesthetically pleasing for the neighborhood; and that he is just here to say that they are not opposed to the variance that the Applicants have applied for.

The Board found that one (1) person appeared in support of and no one appeared in opposition to the Application.

Mr. Chorman closed the public hearing.

Dr. Carson moved to deny Case No. 12792 for the requested variance, pending final written decision, because the exceptional practical difficulty was created by the Applicants.

Motion by Dr. Carson, seconded by Mr. Williamson, carried unanimously that the **variance be denied for the reasons stated**. Motion carried 3 – 0.

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

Mr. Warfel returned to the Council chambers.

Case No. 12790 – Joshua E. Mueller seeks variances from the maximum fence height requirement for an existing fence and front yard setback requirement for existing structures (Sections 115-25, 115-182, and 115-185 of the Sussex County Zoning Code). The property is located on the southeast side of Peppers Corner Road at the corner of Beaver Dam Road. 911 Address: 34215 Peppers Corner Road, Dagsboro. Zoning District: AR-1. Tax Parcel: 134-15.00-124.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. The Applicant is requesting variances of 4.5 ft. from the maximum fence height requirement for a fence in the front yard setback, 1 ft. from the maximum fence height requirement for a fence, 10 ft. from the 40 ft. front yard setback requirement for an existing porch, and 2 ft. from the 40 ft. front yard setback requirement for an existing dwelling.

Mr. Raymond Blakeney and Mr. Joshua E. Mueller were sworn in to give testimony about the Application.

Mr. Blakeney testified that he is here on behalf of Plitko, LLC, with Joshua Mueller of Barnhill Preserve; that they are requesting a variance on the existing house structure, porch, and steps in the front yard setback; that they are also requesting a variance on the perimeter fence height that encircles the facility; that the existing house has been there for nearly 100 years; that the house was built in 1925 which they believe predates any zoning requirements in Sussex County; that the perimeter fence is a post and wire fence measuring 8 ft. tall; that it is an open fence and not an eyesore; that it is not like a stockade fence; that the fence fits well with the agricultural nature of the area; that it does not block sight at the intersection of Peppers Corner Road and Beaver Dam Road; that Barnhill Preserve is a unique attraction in Sussex County that provides educational opportunities and is an asset to the community; that they have to keep the maintenance right-of-way; that, in regard to the length of time it took to come before the Board, in preparation for the variance application they needed a survey for the site which took an inordinate amount of time as an erroneous survey was submitted and then withdrawn, and now a completed survey which has led them to the hearing today; that, should the variances be approved, they will be moving forward with the site plan for the conditional use; that there is a gap between the edge of paving on Peppers Corner Road and the front yard property line; and that, from just eyeballing, the gap appears to be 10-12 ft.

Mr. Mueller testified that, in regard to the fence, they house exotic animals; that Barnhill Preserve is a small animal sanctuary or zoological facility; that, per the ZAA, Zoological Association of America, you have to have at least an 8 ft. tall fence; that the fence is required in order to contain animals and to be able to obtain a permit while licensed from them; that they are in the process to become accredited by the ZAA and this fence is an absolute requirement; that they will not budge on the height; that the fence is constructed of deer wire and completely see-through; that they did have a shade cloth on at one point but it has been removed; that, when you pull up to the intersection, you can see right through it; that you can still drive around it so, if they need to do work on the ditch which they do, they are able to get around without any problems; that they took the shade down for multiple reasons: (1) being the wind pulling the top down and the concern of the fence being damage and (2) that, when pulling up you could see around it, but it did create a need to pull up farther than he thought you should need to; that, by taking the shade off, it eliminated any obstruction; that he felt it was safer and would increase his chances of an approval; that he is completely surrounded by tax ditches; that the placement of the ditches has dictated placement of structures on the property; that there are a few spots of the tax ditches where they have been converted so you can drive over them; that he has not heard much from the neighbors; that there was some opposition when they were originally going for the conditional use; that everyone, especially his neighbors across the street, have been in huge favor of it; that they try to make sure that they are keeping it clean and there are no eyesores on the property; that the fence is more about safety than anything, like if for some reason there was an animal to escape from its enclosure having a fence of that height would limit the animals ability to get any farther than the perimeter; that they have never had any escapes and would like to keep it that way; that they house twenty (20) different species, small clawed Asian otters, red kangaroos, two species of camels, sloths, aardvarks, lynx, and a lot of different things; that they are open to the public; that the 8 ft. height is required to the top of the wire; that he does need to cut some of the posts off because some do exceed that height; that he did not finish cutting off the fence posts in case he needed to move the fence; that

the highest point of the fence would be 8 ft.; that he did install the fence himself; that the house was built long before he owned the property; that he has constructed everything on the property with the exception of the house; that people park inside of the fenced in area; that you would pull inside and that is where they designated for what is hopefully just their temporary parking; that they are in the process of trying to get the parking moved to the large open lot on the far right of the property; that he was made aware that he needed a variance when he was given a letter by the County saying there was a problem; that he built structures that he was not supposed to build; that he did not know he needed additional approvals to operate; that he thought he was operating under agritourism the whole time and that everything he was constructing was okay; that he then found out that he needed a conditional use and that there was a restriction on the fence height; that, in October 2020, was when he initially found out he was in violation; that his family has lived there since 1998, he thinks, and the house is how it was purchased then; and that the conditional use requires an 8 ft. tall fence.

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

Mr. Chorman closed the public hearing.

Mr. Williamson moved to approve Case No. 12790 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to the tax ditches;
2. The variances for those structures 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 Mr. Williamson, seconded by Dr. Carson, carried unanimously that the **variances be granted for the reasons stated**. Motion carried 4 – 0.

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

Case No. 12791 – Chad J. Parker and Laurel J. Hummel seek variances from the rear yard setback requirements for proposed structures (Sections 115-34, and 115-183 of the Sussex County Zoning Code). The property is located on the northwest side of Gloucester Drive within the Canal Point Subdivision. 911 Address: 41235 Gloucester Drive, Rehoboth Beach. Zoning District: MR. Tax Map: 334-13.00-1505.00

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 variances of 0.1 ft. from the 10 ft. rear yard setback requirement for a proposed deck, 3.2 ft. from the 10 ft. rear yard setback requirement for a proposed deck, 3 ft. from the

10 ft. rear yard setback requirement for a proposed deck and porch addition, and 6.3 ft. from the 10 ft. rear yard setback requirement for a proposed porch addition.

Mr. Chad Parker was sworn in to give testimony about the Application.

Mr. Parker testified that the Applicants are requesting a variance to go over the setback line to the back of their house but not to exceed the property line; that they purchased this home in July 2022; that the back of the property is a protected area; that there would be no encroachment on the neighbor's lands; that their neighborhood's architectural review committee has approved their request; that the way the house sits on the property is unique because when the builder built the house it was placed all the way up against the setback line in the far back corner; that the placement of the house is also why there is more of a variance request for the back left hand side of the house; that the purpose is to be able to extend the back deck and covered porch to make it more usable; that the existing porch is a small screened-in porch; that they are looking forward to just getting a little bit of an outside deck to be able to enjoy their backyard; that they have a disabled family member and this would allow that family member access to the usable deck; that a totter bin is a storage area for their trash bins; that they are redesigning the area where their trash bins sit; that it is a paver area which is uneven; that they are going to shrink that area to store the totters and install an outdoor shower; that they will be installing a concrete pad because the pavers are unlevel and lean down; that they are just trying to make it more usable; that the existing porch is roughly 10' x 10'; that they would take the existing back of the porch and extend the covered porch by 10 ft.; that they would end up with a porch 10' x 20' which extends with the roof line; that they did not ask to go on the other side because it would affect the roof line; that the larger porch is needed for the mobility of their disabled family member; that the current layout is not functionable; that right now he is utilizing a walker but they are anticipating the future need for a wheel chair; that there is a double French door that they wanted to be able to cover; that they want you to be able to walk out from the walk out porch and covered by the deck overhead; that, on the right side of the property, they have a little bit more area on that side; that the house was completed in 2014 by NV Homes; that there are protected wetlands behind them that are owned by the homeowners association; that there are lots with similar rear property lines but none exactly the same; that you can see, from looking at the adjacent properties, that none of them have straight across rear property lines, they are all kind of jagged across the back; that they would not be able to build these structures in the side yard to obtain the desired effect because of the design of the home; that it is extremely pitched along both sides of the house; that there is a drainage easement to the side yard; that it is about a 10-12 ft. drop from the front of the house to the back of the house going toward the wetlands; that they have a 10 ft. setback on each side of the house; that their homeowners association has some covenants about what gets built in between the homes; that the shower and tote bin is the biggest thing that they allow them to put between the homes; that, even though they would benefit from the small lot ordinance because their lot is under 10,000 square feet, they are not able to build to the maximum side yard setbacks due to the restrictive covenants, drainage easement, and slope; that they would be able to get a new drawing to show the minimum variance they are requesting; and that both of their neighbors support of their proposal.

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

Mr. Chorman closed the public hearing.

Mr. Warfel moved to leave the record open with limited purpose as follows:

1. To allow the Applicants to submit a new site plan showing the variances for the deck as matching the variance for the porch on the other side;
2. That the site plan shall be submitted no later than one week prior to the meeting on March 6, 2023;
3. To hold a hearing on March 6, 2023, to allow for comments and questions as to the new site plan only.

Motion by Mr. Warfel, seconded by Dr. Carson, approved that the **record is left open with a limited purpose for the reasons stated**. Motion carried 4 - 0.

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

Case No. 12789 – FDPN Management LLC seeks a special use exception to operate a potentially hazardous use (use of a concrete crusher to support manufacturing and recycling associated with a concrete batching plant) (Sections 115-110 and 115-111 of the Sussex County Zoning Code). The property is located on the west side of Sussex Highway approximately 0.30 miles north of Cannon Road. 911 Address: 20354 Sussex Highway, Bridgeville. Zoning District: HI-1. Tax Parcel: 131-19.00-5.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received zero letters in support of, 61 letters in opposition to the Application, two (2) petitions with 426 and 229 signatures, and zero mail returns. The Applicant is requesting a special use exception to operate a potentially hazardous use of a concrete crusher.

Mr. Michael Riemann and Mr. Frank DiMondi were sworn in to give testimony about the Application.

Mr. DiMondi testified that he would like to start off this evening by reading his notes into the record; that alongside him is Mike Riemann, chief engineer for Becker Morgan; that he is the owner of 131-19.00-5.00 which consists of approximately 5.77 acres of land zoned HI-1, otherwise known as heavy industrial; that he bought the 5.77 acre parcel of heavy industrialized land back in 2008; that it was the zoning of HI-1 that drew his attention; that the purchase price at the time was highly elevated due to its specific zoning; that heavy industrial zoned land is very rare within the County; that, at the time, he thought it was an excellent location right on the highway; that, at the time he purchased the land, the area was much more rural than it is today; that, in a lot of cases, HI zoned land is found off

major traffic arteries thus forcing industrial traffic onto local roads and bridges, which was not the case with this property; that County staff confirmed the zoning designation of HI-1 was established in 1988; that this was 35 years ago and 16 years before construction began on the development of Heritage Shores; that the property at the time of purchase had a very rare junkyard permit which has been maintained to this date and could be a future use of the property; that, because of his business background, his intention of buying the property was to take advantage of the heavy industrial zoning and operate a heavy industrialized type of business under the guidance of the Sussex County Code and regulations; that his background includes over 30 years in the third generation construction supply business; that he has extensive experience in recycling concrete activities; that he has worked well in the past with both the State and different counties to adhere to any and all mandated regulations concerning air and water discharge permits; that this information will be addressed more in their presentation; that his company, FDPN Management LLC, submitted an application on 10/21/2020 to seek permission for a concrete recycling operation that would include limited recycling on site; that, at that time, they decided to pull their application to better address the concerns of the local community; that their goal was to provide as much accurate information concerning their intended use for the property under the County guidelines for a potentially hazardous use; that the application was reviewed by staff and sent out to the Technical Advisory Committee (TAC) members for comments as soon as possible; that he welcomes the opportunity to hopefully clarify their intentions with regard to their application; that, in the past, he has been involved in numerous meetings such as this and has always felt that the facts and knowledge will be critical in the ability to make a sound legal and informed decision but this application has been a little different; that his current tenant on the property has been harassed over the last couple of weeks; that he has personally been contacted on both his personal cellphone and email; that he received an email from the County containing letters asking for the application to be denied, of which he has read every single one; that he understands the anxiety, commotion, and emotion that an application like this can generate; that, as in most cases like this, there has to be an underlying guidance that the Board can and hopefully use to render a final decision; that, in his opinion, that guidance comes from Chapter 115 of the Sussex County Zoning Code, Article 15 for the Heavy Industrial Zoning District; that this is the same zoning code that has been quoted by some of the opposition letters; that the general purpose section known as Section 115-109 specifically states that certain potentially hazardous industries are permitted after public hearing and review to show protection of the public interest and surrounding property and persons; that more specifically, Section 115-111 is labeled potentially hazardous uses; that the Code reads the following uses of the manufacturer compounding, processing, packaging or treatment of products not specifically listed above or below may, which in the opinion of the Director, have accompanying hazards such as fire, noise, vibration, dust or the emission of smoke odor, toxic gases or other pollutants may, and the word may here is very important, if not conflict with any state county or law ordinance, be located in the HI-1 district after the location and the nature of such have been approved by the Board of Adjustment after public hearing; that the Board shall review the plans to make sure their public health, safety, and general welfare will be properly protected and that necessary safeguards will be provided for the protection of water areas surrounding the persons property; that the most important part of the Code in his opinion, is where it states that the Board shall review the plans and statements and can permit such buildings, structures, or uses when it has been shown that

the public health will be protected and that necessary safeguards will be provided for the protection of water and air to the surrounding property and persons; that tonight the Applicant would demonstrate how exactly they plan to protect the general public and most importantly what industry accepted standards they plan to put in place to meet not only their goals but the goals and regulations set forth by the County and State of Delaware; that their plan is to limit as much dust during the recycling operation and put the necessary safety precautions to combat any dust on site so that it does not leave the property; that equipment and technology has dramatically changed over the last 10 years to meet the more stringent air, water, and noise restrictions put in place by the federal government and state authorities; that, as emotions hit a high, it is important to briefly clarify some misconceptions regarding out application; that this property has been zoned HI-1 since 1988; that the property has already received County site plan approval for a concrete ready mix production plant; that the zoning designation provides for a variety of industrial operations, some of which would surprise many in attendance, which include a heliport helistop that does not require any additional hearing; that the allowed permitted uses under the HI-1 zoning code is very broad when it comes to industrial activity; that, without being argumentative, he questions how many of their commercial or residential neighbors knew that their zoning designation went back to 1988 before they bought their property or house; that they are not looking to permit an entire plant but are looking to operate a mobile concrete recycler during limited hours throughout the year; that the recycle use would be a very small – approximately 10% of the overall activity on the site - as compared to the ready mix operation; that the equipment is considered to be very small in size when compared to other heavy industrialized machinery; that the machine is low and very compact, in fact it is transported by being pulled by a normal sized tractor trailer on the highway and local roads; that the machine is highly technical and meets all the necessary federal and state regulations; that the machine they plan to operate is highly technically advanced when it comes to dust and noise suppression; that tonight's approval by the Board is only the beginning and the process of getting the machine certified and approved for operation on the site; that the machine will go through the state permitting process under the division of Air and Waste Management; that it will be certified and inspected by the State to meet all air quality standards; that silica, which he is sure we will hear a lot about tonight, and he understands that reading the opposition letters in of concern regarding the release of silica into the environment; that the machinery is designed to prevent dust from drifting away while in operation; that drone footage, maps, and illustrations will be provided to help clarify and depict the actual distance between our recycling center and the commercial residential area near their property; that silica is a natural product that sometimes can be found in some of the foods we eat each day; that silica can also be found in natural products that are used around a household like sand, stone, brick, and other materials; that silica can also be found in products used in the construction of a home like tile, quartz, granite countertops, and even drywall; that more interesting is that lime powder that is used on the agricultural fields contains crystalline silica dust; that lime as we know is commonly used in the agriculture on the surrounding fields; that their machine is designed to keep the dust to a minimum, not only to protect adjacent property owners but also employees working on the site; that they also plan to use machines like the dust boss, that is approved by OSHA, which uses atomized water droplets to prevent any silica dust from leaving the site; that he is confident that his presentation will get overwhelmed by the opposition if not by facts, but by sheer volume; that he asks before each one of the Board members votes to return

back to the Zoning Code itself and determine whether his team has met Code Section 115-111 and whether you feel that they have shown under the HI-1 zoning that they will put in place the best safeguards to protect the surrounding property and owners; that he is not naïve to think that he can or will be able to convince all of the opposition that the procedures they plan to put in place will make their operation safe for all of their employees on site and their surrounding neighbors; that it is even highly possible, armed with all the facts and information, that some offices would not be receptive to their plan at all; that their hope is that the information that they present to the Board tonight is sufficient enough and proves that they do everything they can to meet the County Code and the strict Federal and State guidelines in regard to keeping the air as clean as possible; that first they would get a construction permit from DNREC; that then they would come out and do what they call an operation check on machinery to make sure that it meets the guidelines that you originally said it would in the application; that there is the initial approval and then follow up inspections; that he does not know the answer 100% but he would imagine that it is probably on a regular basis; that the proposed building would be a pole style building of approximately 7,500 sq. ft. to 10,000 sq. ft.; that he has never operated this type of machinery inside of a building but he has talked about it with the manufacturers; that the obvious concerns are typically about the dust and dust control which vary from state to state; that the way the machinery is designed is to mitigate the dust so even operating outside there should be minimal dust produced; that right now they are going through conceptual plans for a potential warehouse or a combination of warehouse and mini-storage for the parcel he owns to the north; that the concrete batching plant will open with or without the use of the crusher; that, in 2001, he sold his previous business and, at that time, they owned multiple concrete locations where they did crushing; that the machinery is mobile to allow them to utilize the equipment at other sites should there be a need; that the model they chose goes on the back of a tractor trailer, meets the DelDOT transportation requirements, and has no additional transportation requirements; that the majority of the concrete to be crushed would be returning to the same site it originated from; that, after a concrete truck goes to a job and returns, the question become what do you do with the excess yards of concrete left in the truck; that they either get turned into small blocks to become retaining blocks or they make them small enough to be crushed; that it will be a recycling center so they will accept recycling material; that a lot of their materials will be graded to DelDOT and go back out to their projects; that the crushed concrete will be stockpiled in the storage bins on the property; that they are cautious with how much water they use to limit the dust because some of the complaints would then become about the water runoff; that, when they utilize the new boss system, it is atomized water droplets rather than being overpowering like sprinkler heads; that they are similar to ski cannons where they draw in and push out really small water vapors; that the idea behind the water vapors is to attack whatever dust is in the air, grab it without the whole gush of water, and it decreases the amount of water runoff; that it is similar to some of the newer irrigation technology; that, currently, there is nothing on the site except for an auto repair business which is the office shown on the plan; that there is no concrete batching equipment on the site right now; and that the site was originally a junk yard.

Mr. Riemann testified that they are here tonight to request approval of a special use exception for the concrete recycling facility; that they are not here to seek approval for the concrete batching plant that plans have already been approved for; that those plans are on file at the Sussex County

Office, including all of the relevant agency approvals, such as DelDOT, Sussex Conservation District, DNREC, Fire Marshal, Public Works, etc.; that, to give an idea of the overlay of the land in this area, you can see the subject property highlighted in yellow and then you can see a half mile ring / radius and a one mile ring / radius to give a sense of where the site sits relative to Heritage Shores which is in the top right of the display; that the property sits off Route 13; that there are a number of commercial properties located along that corridor and you can see the surrounding agricultural land; that the property is adjacent to the town limits of Bridgeville; that you can see the adjacent junkyard / salvage yard operation; that you can see the recently approved 7-11 convenience store to the south; that this site is 5.65 acres with an existing building; that it has access to Route 13; that it was previously approved as an auto repair shop; that they did a drone recording taking off from the subject property; that the drone takes off from the center of their property; that, to give a bird's eye view, the drone is looking north towards Heritage Shores; that you can see the residential community off in the distance; that this aerial also shows the homes on the north side along the highway; that the zoning to the north of their property is CR-1; that, to the south, is the town of Bridgeville C-1 zoned land; that, to the west, is the town of Bridgeville AIOZ, Agricultural Industrial Overlay Zone, land; that they reached out to the Town early on to confirm some of the zoning of the adjacent properties and have submitted the email confirming such; that the Agricultural Industrial Overlay Zone, from reading the Town of Bridgeville's Code, references the priority towards agricultural use of land as a preference rather than a residential development; that, as Mr. DiMondi has indicated, there are a number of uses that are permitted by right in the zoning code under the HI-1 zoning district; that a list of those particular uses is heliport, asbestos production, dredging bases, engine testing, processing and storage of shortening, concrete products or mixing and batching plants, sawmills, and many more uses that are permitted by right within the Zoning Code and would not be subject to public hearings; that this property was zoned HI-1 in 1988 as Mr. DiMondi stated; that these are the uses intended for this zoning district and for this particular property; that, as such, it should be expected that there be some level of noise, dust, vibration, odor, et cetera; that the baseline here is not zero; that the baseline is that this in an industrial zoned property and HI's limited zoning in the County; that, if you look at the zoning map, there are very limited opportunities for HI zoning throughout the county as much of the HI zoning is already occupied by existing manufacturing or similar uses; that he feels that it is important to acknowledge the criteria for the special use exception which states such exception will not substantially adversely affect the uses of adjacent and neighboring properties; that, just to repeat, they can have an adverse effect on the neighboring properties, it just cannot be substantial; that this is the standard they must meet in addition to the other standards that were mentioned; that they will comply with this standard and will talk more about the safeguards as well as they go through the Application; that they have received an approved site plan for the concrete batching facility which is on file with Sussex County; that they are maintaining the existing building on site; that the site plan has received approval from DelDOT; that it is a right out and left in access only; that the bulk of the batch plant is located toward the west portion of the facility with a stormwater management facility located along Route 13; that the proposed location of the recycling operation is going to be located at the location shown on the plan; that there are a lot of benefits to recycling concrete; that one of those is landfill use; that, rather than concrete being dumped in a landfill, that material would be reused in construction projects throughout the area, as new landfills take a long time to accomplish and existing ones fill up fast; that,

in addition, would be truck traffic as the recycling of materials would limit the distance traveled for these materials and use existing routes for construction traffic; that there is a lot of construction activity within Sussex County so there is certainly a need for a use like this; that aggregates on site being utilized for concrete mixing can reduce landfill waste and the need for additional mining; that the result is high grade material that can be used for DelDOT based road projects; that it will also save a lot of water by reusing concrete versus creating new concrete; that they can save about 13,160 gallons of water per year with the recycling process; that the equipment itself is a mobile unit that can fit on the back of a flatbed truck and not a large permanent piece of machinery; that all of the concrete crushing is an internal process of the machinery; that the technology for this process has increased significantly over the years; that all of the crushing and grinding activity happens internal to the facility or to the machine which includes additional sprayers and dust control measures to help mitigate the dust that would result; that this is not a 24/7, 365 day a year operation but, rather, is a limited operation; that they propose that they would be acceptable to a condition that limits the times and number of days, et cetera; that the most they would ever expect to produce from this particular machine would be about 125,000 tons a year which would equate to about 71 days using eight hour work days and would be considered extremely aggressive; that they do not really think that they would get to that number; that the point is that this would a limited operation throughout the year; that, to reiterate on some of Mr. DiMondi's points, this project would go through DNREC Air Quality for approval and a permit, subject to their processes; that this project will comply with all DNREC requirements regarding air quality to ensure that any dust or emissions from the site are in compliance with their requirements; that this is sort of step one for the process of operating this machinery; that the dust suppression as indicated on the conveyors themselves are all water misting; that they would be on the conveyor coming out and again the actual crushing is inside the machine; that, in addition, they are going to implore what is called a "dust boss" on site, which is a particular piece of equipment that meets military grade specs for demolition and dust control, throughout the site itself; that noise is obviously always an issue; that the chart on the right is for this particular unit in operation and as you can see the farther away you move from the operation the noise decibels drop, which would be expected; that the chart shows decibel levels for a number of specific uses to include an air conditioner at 60 decibels, a conversation at 65 decibels, city traffic at 78 decibels and a chainsaw at 110 decibels; that this is just the baseline and looking at the location of this particular unit and, if it were sitting outside, not within a structure, their nearest resident is actually across the highway from them at about 140 meters, which would be equivalent to about 60-65 decibels or conversation level; that the noise on the highway is going to be louder than this machine would be at that particular location; that he wants to address that from reading through the opposition that potentially placing this machine inside of a building would alleviate some of the concerns; that they have had a lot of conversations about it and would be agreeable to placing this particular unit inside of an enclosed structure so that the dust and noise would be mitigated; that all of the information presented tonight to this point has been if the machinery was placed outside; that they are willing if the Board so chooses to place a condition on this application to place this particular equipment inside of a building; that, to recap, recycling is a good thing especially in the construction industry and limiting items that would otherwise be in landfills is a good thing; that this is not a 24/7 operation rather limited throughout the year; that they would be agreeable to placing limitations on the number of days for operation and limiting their hours

to operate the concrete recycling machinery; that their proposed hours are Monday through Saturday 7 am to 5 pm; that there will be no recycling on Sunday and they will not exceed 75 days per year; that these are their proposed limitations; that they do not believe this application will create a significant adverse impact as it relates to noise, dust, traffic, etc. given the mitigation measures that they have discussed and by placing the machinery inside of a building; that again this property has been zoned this way since 1988 and is one of the very few HI zoned properties in the county; that this project did go through the Technical Advisory Committee to which some responses were received but none noted any negative concerns; that the agencies that responded include DelDOT, DNREC, Fire Marshal, Public Works, and more; that as a reminder the baseline standard for adverse impact is not zero but rather than it cannot be a significant adverse impact; that he believes by placing the machinery inside a building will have a profound improvement on the overall application and significantly limit the impact on the surrounding properties; that any building that would be designed to house this would have to meet all OSHA requirements for workplace compliance to include any filtration and ERP systems which would be a part of the design; that OSHA would be the predominant regulating agency for concerns regarding the operation of this machinery inside of a building; that they would need to get a revised final site plan to show the location of the approval by the Board; that he saw the comment made by DelDOT in regard to the placement of the stormwater management which surprised him as they had already approved the stormwater management and entrance which meet their requirements; that he presumes the reviewer did not understand that; that they did account for the other parcel and potential uses in their DelDOT application and entrance plans so there would only be one access point with an interconnection; that the uses were accounted for in the calculation for traffic generation; that the traffic generation on the approved plan from DelDOT had that the proposed warehousing to the north generating more traffic; that the total traffic that the entrance was approved for is 276 total trips per day; that it is calculated as “one in, two out”; that the majority of the trips would be the warehousing rather than the concrete which would be about 30 trips; that, to address the Town of Bridgeville’s submission, they have an email correspondence from 2020 to confirm the zoning of the adjacent properties and their annexation; that, also in that email, they inquired as to what could be done in the agricultural industrial overlay zone to which they were told it could not be residentially developed; that they further looked into what the base zoning was because the agricultural industrial overlay zone also permits what the base zoning does as well as promoting agricultural use for that area; that the base zoning when the adjacent properties were annexed into the Town was C-1, commercial; that there was a comment made that there are plans to develop it as a residential property and he thinks there is some question as to whether or not that can be achieved in its current zoning condition; that regardless of that and whether or not that is a desire of their neighbor to the west or not, their property has been zoned HI-1 well before that property was annexed into the Town; that their drone footage did not show across the highway but the slide on the noise levels showed the distance from the properties across the highway; that the homes across the highway are much closer but the opposition letters received, to which they were responding and focusing their efforts, were mainly Heritage Shores residents; that the noise level associated with their machinery would be far less than the traffic noise occurring between their property and those across the highway; that there are bins shown on the approved site plan that would hold materials on the site; that they have not done a specific noise study on the site with loaders but there will be other transportation

activity occurring regardless; that before beginning operation of this equipment they would need approval via the DNREC Air Quality Permit; that they do not believe there will be significant water runoff created by their mitigation efforts; that, if they are to be approved and place the equipment inside of a building, it would go back for site plan approval and be located in the same place as their proposed equipment; that presently there is some woodland to the north as far as a natural barrier; that they would not be opposed to adding some additional landscaping across any of the boundaries of the property; that the way DeIDOT looks at trip as any time a car enters the property that is one and when that same car leaves that is two; that the DeIDOT entrance plan was approved for 276 trips per day; that the site is designed so that any run off generated would be collected in the stormwater management facility; that the stormwater went through a review process through the conservation district which is a delegated agency of DNREC for which they have approval; that there is an outfall drainage pipe that ties into the adjacent road draining system on Route 13; that the intent is that the site is graded to drain to that location; that the traffic numbers include the proposed use of the crusher; and that they would not need to update the use with DeIDOT because they look at the impervious nature of the site but, if the Board wanted them to, it would not be an issue.

RECESS 8:14 – 8:20

Mr. Demetrios Kaouris stated that he is present in opposition on behalf of Passwaters Farm, LLC, who is the developer of the Heritage Shores Community. Mr. Kaouris was sworn in to testify.

Mr. Kaouris testified that Heritage Shores community is still in the development stage; that, when completed, they anticipate having approximately 2,000 homes with the potential for expansion with some other land that has been subject to various annexations into the Town of Bridgeville; that he makes note that some of the properties are located in close proximity to this site, some of which are approximately 1,600 ft. from the site; that also of note is that the Applicant's property shares a common boundary line with property owned by Cannon Road Farms Two, LLC, which is parcel number 131-19.00-8.04 and located directly to the west of the site and which is planned for residential development at some point; that the owners of that property have submitted opposition to this application also; that the Code says that the crushing of stone is an inherently dangerous activity which is governed by Section 115-111 of the Code; that the Code section says that the Board is required to deny the Application unless the Applicant can establish and demonstrate that the public health, safety, morals and general welfare will be property protected and that the necessary safeguards will be provided for the protection of water areas or surrounding property and persons; that the Board must also, when evaluating these applications, pay particular attention to protection of the County and its waterways from the harmful effects of air or water pollution of any type; that he would submit to the Board that the Applicant has not met that burden under the circumstances of this case and the evidence is insufficient to find that the public health, safety and general welfare will be properly protected; that he would also submit that the crushing of concrete in close proximity to a densely populated area and adjacent to a city does not make good planning sense; that this activity should be located in an industrial park or in other industrial use areas where their impact on people and residential communities will be limited; that the use is just not a good fit for the area; that he has submitted into

the record a letter dated January 27, 2023, which details some of the issues and concerns, a notion of publication which indicates the health concerns of those who work in close proximity to silica dust, and a publication entitled Toxicology Profile for Silica as prepared by the US Department of Health and Human Services and the serious ill impacts from crystalline silica; that he acknowledges that this study was in relation to workers and not necessarily people who live in close proximity to these kinds of sites but nevertheless it is instructive for the types of impacts that can be felt by crystalline silica; that he thinks you will see and ultimately have this type of product becoming airborne and going into various places throughout the Town of Bridgeville and various communities that are located adjacent to this particular property; that there is no doubt that, when there is crushing of concrete and stone, there will be materials that will be airborne and crystalline silica that will be created; that the Board is tasked with paying particular attention to the safety of the County and its residents; that, during the application process, it was noted that some of this aggregate is going to be stored outside where it is going to dry out and blow around; that he believes this application is rife with potential problems and potential ill health effects to the public and neighboring property owners; that he commends the Applicant for proposing to place this machinery inside of a building; that, if the Board is inclined to grant the application, which he still thinks should be denied, the Board should at least impose that as a condition for approval; that he would also recommend that the stockpiles similarly have some type of enclosure to prevent aggregate from flowing on to other areas including the Heritage Shore development area; that he asks that the Application be denied; that his client does not own the property of Cannon Roads Farm Two, LLC, rather it is another developer that they are in close coordination with; that his client would desire to purchase the property but he is not sure if it is going to be as a partnership or joint venture; that he believes that the property was part of an annexation plan and may have been annexed into the Town already; that the Sussex County Airport confirms that the prevailing wind is from the South from March through October of each year; that they believe it would be beneficial if they were to enclose the area where the aggregate material is stored; that he looked for studies on the effects surrounding crystalline silica in a residential setting but it is probably harder to measure with people moving in and out of neighborhoods so it is hard to get an accurate measure of how long they stayed in a particular place; that he would say the zoning designation is consistent but its only consistent if it can meet the standard of the safety issue and given the inherent dangerousness of cutting open stone and letting aggregate and silica into the environment, he does not think that can be done in this instance; that, in response to the regulation and permitting by other agencies, he would say that perhaps that should have been obtained beforehand so that the evidence would be before this Board which requires them to meet the health, safety, and welfare standards; that he believes in some ways that they are speculating now as to what approvals might take place; that he understands the position that they should rely on some extent that the government agencies are doing their jobs but they have seen agencies that have got it wrong and this should be the last bastion to stop a potentially dangerous activity from infiltrating what would be a pretty dense developed area; that he does not have a client in attendance to confirm his statements tonight; that he affirms the testimony he has given to be true and correct; that he is a licensed Delaware attorney; that his client would not like to see this activity take place in such close proximity given the other potential issues impacted with it; that, if this were to be approved, his client would prefer an enclosed structure rather than a piece of equipment out in the open; that they believe this will negatively impact his client's ability to develop

the rest of their community; that people evaluate communities prior to purchasing and the placement of a concrete crushing plant nearby would be taken into consideration before the buy a residence; that he would say the primary issue is the dust that is going to potentially go into the atmosphere but there are concerns about traffic and noise increasing; that he did not hear a great explanation during the Applicant's presentation of what happens with all that water that gets sprayed on everything; that it has to go somewhere and he thinks they could acknowledge that it ultimately could go into the adjacent ditches which could cause problems; that there are so many variables that go into this and it is hard for anyone to scientifically test given than people go in and out of neighborhoods; that it also needs to be considered that this is a community for individuals over 55 years old that has a lot of amenities on side; that a lot of these people stay on the property or Heritage Shores and, given the close proximity, he believes it poses an even greater danger than to a community where people go in and out to work, travel, or have young children with activities; that his client is also concerned about the impact this will have on their golf course; and that the potential of airborne substances increases a possibility that people may not play.

Mr. Timothy Sutton was sworn in to give testimony in opposition to the Application.

Mr. Sutton testified that he resides in Heritage Shores; that his backyard faces south so he would be downwind of the cement plant in question; that he found and is submitting data from the Annals of Occupational and Environmental Medicine, Volume 27, Article Number 3, Year 2015, titled Ventilation impairment of residents around a cement plant which concluded "ventilation impairment rate is higher in the more exposed group of residents. This also includes silicosis, asbestosis, toxins, lead, and multiple pneumoconiosis."; that another article from the Annals of Occupational and Environmental Medicine, Year 2016, Issue 28, Number 17, titled Emphysema prevalence related air pollution cause by a cement plant, stated "After adjustment for age, sex, BMI and smoking, the prevalence of emphysema in the more exposed group living outside and around the cement plant to the air pollution was higher than the control group"; that there is data around but you have to hunt for it; that he is a Registered Nurse, Master's Nurse, and also a Registered Respiratory Therapist; that the point about silicosis is the fact of the particle size; that, when you are talking about particles sized at five microns to two microns, easily inhaled, and they go right into your lungs; that the Applicant mentioned silica in bricks and cement but those are not in an aerosol form and you are not breathing in the brick dust; that he has lived in Delaware for three years now and in the summertime he has to water his plants daily because it is so dry and they suck up water like crazy; that, if you have got powdered rocks in piles, they are going to dry out and blow dust around because it is always windy in Delaware; that he did not hear anything about what is going to keep the dust down once it is crushed; that they did not talk about the particle size that comes out of the machinery; that he is concerned with where the trucks will be when going into the property - will they be lined down Route 13; that the increased number of trucks idling is going to create air pollution which is a quality of life issue; that there is such thing as chronic silicosis which takes a long time and there is accelerated silicosis or subacute which takes two to five years and there is acute silicosis which is the type that takes a shorter period of time to present; that another issues comes from the recycling of concrete from other sources; that some sources may contain a variety of toxic content like salt, heavy

metals, metalloids, polyaromatic carbon, hydrocarbons, lead, asbestos, and other chemicals; that he feels that the unknown of the materials could be a little demonstrative; that he would like everyone to take a deep breathe, do not blow it out, take another breathe on top of it, and another one on top of it, this is how a person with COPD feels every moment of their life; that he wants you to ask yourself is this the kind of place you would see for your mom or family to live next to; and that the residents of Heritage Shores are already at risk for everything because of their age and this would be another thing that would put them at risk.

Mr. Tom Laiacona was sworn in to give testimony in opposition to the Application.

Mr. Laiacona testified that he is a resident of Heritage Shores; that he agrees with Mr. Sutton and Mr. Kaouris; that he questions why the property was not rezoned; that he now understands that the zoning of the property is not something that the Board has jurisdiction over; that the Applicant purchased the property in 2008 but he made no decisions for the use of the property until 2020; and that he questions why the Applicant did not ask for the use of the crusher when he received site approval for the batching plant.

Mr. Marcell Hayes was sworn in to give testimony in opposition to the application.

Mr. Hayes testified that he lives across the highway from the subject site; that he is a 5th generation Sussex County resident; that he has lived at his home since 1956; that, in 1988, the property was rezoned for the use of a helipad for the Delaware State Police headquarters but the headquarters ended up in a different location; that the Applicant has not produced any solid evidence that there would be no emissions of dirt, dust, water containers, and other; that he lives on a property that uses groundwater which comes from adjacent properties; that this water will now include silica and other chemicals which he will have to drink; that his neighbor is present also; that they have lived in the same neighborhood for 40 years which consists of 15-20 homes that are directly across the street from the proposed crusher; that his other information was already submitted into evidence; and that his home is within 50 yards of the subject site.

Ms. Aliceanne Zaras was sworn in to give testimony in opposition to the Application.

Ms. Zaras testified that she is a resident of Heritage Shores; that, while in the audience, she looked up some articles referencing studies of contaminants in the air; that the EPA has a study online called Particle Pollution and Your Patient's Health; that she believes the article may be intended for doctors but could answer some questions about pollutants in the air; that recently she has noticed on Route 13 and Cannon Road that a new 7-11 is being constructed as a truck stop; that this property is a double lot; that she suspects they are putting in another turn lane so that tractor trailers and other trucks can make a turn onto Cannon Road and then into the 7-11; that there is also a traffic light at Cannon Road; that this property is about three parcels south of the Applicant's property; that her concern is the trucks coming down and their ability to stop in time for the light that is there; that she noticed that the Applicant's site has an ingress and egress onto Route 13; that the truck traffic heading

to the 7-11 are going to be passing over when the trucks from the concrete plant are trying to get onto Route 13; that she is concerned about increased accidents in this area; and that it is beyond her comprehension how the Board can even consider moving this application forward with the amount of publicly identified health and environmental risks and opposition from the surrounding community.

Ms. Roseanne Cholewinski was sworn in to give testimony in opposition to the Application.

Ms. Cholewinski testified that she is a resident of Heritage Shores; that it is nice to know that the concrete crusher has the capacity to have some sort of sprayer to subdue some of the dust that would be accumulated from that particular piece of equipment; that the other issue is also the stockpiles that she believes the owner alluded to that will not be under cover and not sprayed in any way to contain the dust; that the owner stated he would have one portable crusher but what prevents him from the following month bringing in four or five other crushers; that the wooded area to the north of his property, which he does not own, could potentially become a storage area for his materials; that she questions how he can make a statement like that when he does not own the property and it would create more of a hazard; and that, in any event, concrete crushing operations are necessary for construction and road materials but it is not imperative that this type of facility and industry be located in an agricultural and residential area in which they currently reside.

Mr. Clifford Oliver was sworn in to give testimony in opposition to the Application.

Mr. Oliver testified that he is a resident of Heritage Shores; that he makes his comments tonight as a private citizen; that it is worth noting that he has over 40 years of land use management experience and, until last year, served on Bridgeville's Planning and Zoning Commission; that, as a result of the recently concluded town redistricting and election process, he is now the Town of Bridgeville's Commissioner-elect for District 1 which abuts the subject property; that this means after being sworn in he will represent the residents of the Town that line in a portion of Heritage Shores closest to the site; that he will also in the foreseeable future represent the over 400 future residents of Heritage Shores Phase 6 where some of the homes will be located as close as 1,200 ft. to the site which is the section of Heritage Shores right at the main entrance to the South of Heritage Shores Drive closest to the subject property; that he is the author of an editorial that was recently in the Seaford Star and the Cape Gazette entitled "Crushing Our Community's Dreams"; that he would encourage the Board members to read the article; that the state of their knowledge concerning human health effects of inhaling fine particulate silica matter continues to evolve; that he will point out scientific research almost always lacks the reality of the situation in the field; that environmental health science extensive research is often triggered by a cluster of unexplained illnesses within a community; that he is sure at some point in history people were told that inhaling asbestos was not harmful by those with a vested interest; that we now know what the ugly truth is; that let's not expose the nearby residents of the proposed site to particulate dust in the hope that they do not become the future subjects of a study to examine unexplained illness in our community; and that he trusts you will make the right decision and put the health concerns of the citizens ahead of other interests.

Mr. Peter Castelli was sworn in to give testimony in opposition to the Application.

Mr. Castelli testified that he is a resident of Heritage Shores; that he wants to thank the Applicant for answering as many environmental concerns; that more important is the guarantee of adverse effects so we can all scientifically say what would be the best outcome when this facility is built; that they have residents and family members who have emphysema; that the point is that you cannot guarantee unforeseen illness which can resurrect in the years to come; that his other concern is that the people who are buying homes in Heritage Shores or future homes to be built and this would deter them; that he understands the importance of the Applicant's business but believes that it should be built in an area in a more secluded location and not right on top of a residential community; and that they want a guarantee that the water would be able to control the dust produced on site because they do live in a very windy area.

Mr. Bruce Nowak was sworn in to give testimony in opposition to the Application.

Mr. Nowak testified that he is a resident of Heritage Shores; that the Applicant does not meet the criteria for a special use exception; that they said that neighboring properties are similarly zoned; that he looked up the definition of similar which means almost exact, this is from the Oxford dictionary, some synonyms include the same way and identically; that he does not seem the similarities between the Applicant's properties and those that neighbor it; that the Applicant also stated that the adjacent properties are vacant which is not true because Bridgeville Automotive is right next door and is not vacant; that the Application needs to be redone because it is not satisfactory in any way; that there is a violation on the property for a driveway that has poured crushed stone, for which a stake was placed by James Smith of DelDOT with a placard asking the property owner to call him; that the property owner did not obtain a permit for the driveway; that there was no transparency prior to the meeting; that the Applicant did not submit an exhibit book, which he knows is not a requirement; that he questions where is the testing for this use; that crystalline silica is a group 1 carcinogen which comes from Jim Carlucci's email sent as a package; that OSHA has cited crystalline silica for irreversible lung damage and is listed in the Code of Federal Regulations; that, once the genie is out of the bottle and affects their area, there is no amount that this County can apologize to people suffering from irreversible lung damage; that the potential for hazardous dust should be made known to Federal, State, and County employees who could have a need to visit the property in the event there was an emergency; that how would these individuals be protected without knowing of the potential hazard; that the Applicant has been in the cement business for 30 years and could not answer how many trucks it would take to deliver 125,000 tons per year; that he figured the answer in less than three minutes, that it would take 10,000 trucks on an annual basis; that how can he trust someone with hazardous materials when he could not calculate the amount of trucks required for that amount of materials; that the fans and atomized water machines will increase the level of noise from the property, he knows this from the fans placed on the golf courses in the summertime; that looking at the specs for the machinery he is talking about it, Rubble Master RM-90 GEO, has an output of 220 tons per hour if he is buying brand new; that, as far as trips are concerned and this being a business that means employees included in those trips generated; that this operation showed on the

plat that is was going to have 20 parking spaces which showed 20 trucks located there; that you may have seen his email, which he hopes you did, but if the Applicant has any experience with Atlantic Concrete which operates in Kent and Sussex County because he went to one of their locations and did an observation of the property before they withdrew their previous application; that, based on his three hour observation, there was 61 entrances and exits at that time from the concrete batching facility; that he did the math and based on the number of trucks he has he would exceed his allotted trips per day; that this site is not a borrow pit so all aggregate materials, sand and stone, will be delivered; that he explains the process for how concrete is produced; that he questions how they would place a building around a concrete crusher; that the traffic concerns from this proposed use is a major concern; that a traffic study done on main rural highways in 1964 by OIDA, Owner/Operator Independent Drivers Association Foundation Inc, by conclusion stated that if traffic slows cars moving at a higher rate of speed crash into the slower vehicles; that these trucks pulling out onto the highway are going to cause accidents; that the Applicant has not indicated he will have any type of testing done to show that these particulates have not left the property, he is just stating that they will not and to trust him; that this use only benefits the Applicant and not the community; that there has been nothing shown as far as a plan should the crystalline silica leave the property; that he questions who will foot the bill if the area where to be contaminated by crystalline silica; that construction and demolition are dirty; and that he questions where the materials are going to be coming from and the possible contaminants in them.

Mr. Tom Moran was sworn in to give testimony in opposition to the Application.

Mr. Moran testified that he is a resident of Heritage Shores; that he is also a Commissioner in the Town of Bridgeville who represents Heritage Shores; that he is here tonight speaking as a resident of Heritage Shores; that, after tonight's testimony, everyone should understand the potential health effects that have been well documented; that there were also submissions from attorneys, HOAs, and the Town of Bridgeville Manager who wrote an extensive letter; that the Town of Bridgeville noted inconsistencies with the zoning and conflicts with the future land use and growth areas within the Town based on their 2018 Comprehensive Plan; that he finds it interesting that there were no environmental considerations and no environmental impact statements; that there was no sampling plan which is critical when dealing with construction and demolition waste because you need to know what is coming in; that there is a potential for asbestos and lead; that there are different techniques of analyzing the concrete before it enters the doors yet no plan has been shown; that there is a pond on the property to the rear of the subject site which will likely have air contaminants getting into it; that those contaminants will then get into the groundwater; that their concern is not just the crushing process but also the storage of the product after crushing; that their mitigation of dust is all through the use of water which then gets into the groundwater; that it is also interesting that Howard Ritter and Company recently was thinking about doing the same thing and apparently made a moral decision to withdraw their application for the crusher; that he noticed that, when the Applicant mentioned Section 115-111, he omitted the words morals and general welfare; and that Ritter protected Lewes and they are asking the Board to protect them.

Mr. Phil Clark was sworn in to give testimony in opposition to the Application.

Mr. Clark testified that he is a resident of Heritage Shores; that he agrees with all of the concerns about health, airborne particles, and the noise but he does think that the majority of residents are also concerned about the overall impact and the value of their homes; that who would want to buy a property or a home here next to a concrete crusher; that he knows that he would not have bought here if it had existed when he moved in; that what will this use do to the infrastructure of Heritage Shores if they do not build out the 1,800 or 2,000 homes and, if the residents have to pay that bond, that will significantly impact their lives because taxes will increase and it will cost them a great deal financially; that he wants to address that it may mostly be residents of Heritage Shores speaking but there are many others who live closer that will be impacted also; that the bottom line is that if this is approved this operation will be detrimental to their health, quality of life, and a violation of the Sussex County Comprehensive Plan; that the Comprehensive Plan is very detailed as you all probably know; that it is important that commercial and industrial development occurs in a scale, intensity, and distance appropriate to residential areas; and that it is just too close.

Mr. Ray Papszycki was sworn in to give testimony in opposition to the Application.

Mr. Papszycki testified that he is a resident of Heritage Shores; that he and his wife have lived there for the past six and a half years; that they are approximately 0.715 miles from the proposed crusher site entrance; that there are so many other existing and newly built homes that are within less than a half mile from the proposed crusher site; that he wants to address the financial stability of the Town of Bridgeville if there are no new home buyers and no new tax revenue and it does not sound like a very good or practical business model; that the Town of Bridgeville about 19-20 years ago was almost bankrupt or bankrupt to where there are now; that Bridgeville and Heritage Shores cannot absorb a \$30 million dollar bond without any new buildings; that his point is that the remainder of the homes in Heritage Shores being built is necessary to make their situation financially viable; that the decision of the Board tonight will impact the entire Town of Bridgeville, Heritage Shores, approximately 900 homes being built, and 1,800 residents; that there are also two additional residential communities being considered directly across from the proposed crusher site on Route 13; that his concern is not necessarily for the adults but the children of the area; that they, as residents of Heritage Shores, also spend a lot of time outside for which he believes there is no amount of controls that can be put in place to cover the potential hazards; that, when voting tonight, please think of the morals, health, and financial stability of the Town of Bridgeville; that he believes there are other locations that could be considered which would not have the hazardous health and financial impact that this decision will have on Bridgeville, Heritage Shores, and the surrounding community; that the decision made by the Board tonight or in the future will outlast each member's individual terms; and the he hopes that the final decision will be in the best interest of the people the Board serves in Sussex County.

Ms. Joyce Jones was sworn in to give testimony in opposition to the Application.

Ms. Jones testified that she lives on Sussex Highway across the highway from the subject site; that her property is 50 yards from the proposed concrete crusher; that she has lived there for over 50 years; that she can only imagine what her golden years are going to be with this concrete crusher across the street with the pollution, trucks, and noise; that she understands about the zoning and operating a business but she also understands that they have a right to live in an area that does not have pollutants; that money is not always the priority, there is the quality of life; and that she is asking for the Board to vote “no” so that her years left here will have the quality of life.

Ms. Phoenix Wilson was sworn in to give testimony via telephone in opposition to the Application.

Ms. Wilson testified that she is a resident of Bridgeville; that her family lives on the local farm to the north of the proposed concrete crusher; that her family had been there for over 65 years; that they actively farm and harvest crops every season; that she believes that the concrete crusher and proposed toxic chemicals would harm their crops which are sold locally; that she believes this will be toxic to humans; that the concrete crusher should not be approved; that they believe it will be harmful to everyone around it, including livestock, wild animals and the people; that she is only 22 years old and does not want to live the rest of her life with this piece of machinery only 200 ft. from their property line; that the wind would blow the particles all over the place; and that she is in opposition.

Ms. Maria Payan was sworn in to give testimony via telephone in opposition to the Application.

Ms. Payan testified that she is a resident of Selbyville; that she is here as co-founder of Sussex Health and Environmental Network, which is a coalition of stakeholders who work to ensure a clean and healthy environment for all; that one of the things they do is focus on environmental health threats, environmental justice issues, and contaminated water and air by creating an outreach network with stakeholders, and this includes residents; that she would like to speak about respirable dust, which is invisible to the human eye, and poses serious health hazards; that exposure to crystalline silica dust can lead to silicosis, lung cancer, and COPD; that you have heard testimony from OSHA but they deal with workers; that, if you look on the Agency of Toxic Substances and Diseases Registry, there are studies that talk about the effects, not in workers, but within the surrounding communities; that the nature of the dust particles is the risk of inhalation and exposure that goes far behind the actual site; that the particle size is very important in determining the potential associated health hazards; that particles smaller than 200 microns are able to penetrate the natural body defenses and travel to the lungs which leads to the various health hazards; that the size of the dust particles which dictates how far the matter will travel is another factor; that research shows that a particle of 10 microns at 6.2 mph wind speed is able to travel 1.1 miles, and at 12.4 mph it is able to travel 2.3 miles; that a particle of 5 microns at 6.2 mph wind speed is able to travel 4.5 miles, and at 12.4 mph is able to travel 9 miles; that this clearly goes way beyond the site; that she believes that this is something that the Zoning Code requires the Board to take a look at which is the health impact on the neighboring community; that the Applicant referenced the Zoning Code and say may, which may is not the same as shall; that just

because it is a heavy industrial site if it is potentially hazardous it requires this hearing because it is not a guarantee that you can do that in the zoning because the Board has to consider the health impact of the neighboring properties and impacts to the community; that a health impact assessment and an environmental impact assessment should both be done by an independent source; that this property shares a fence line with a 55 plus community which is also within its permitted zoning designation; that the silica dust is a hazard and it is sure affect many of the residents; that, when speaking of the elderly or young children, items that affect breathing tend to affect them more; that a lot of the elderly population do tend to have existing health conditions such as COPD; that they recommend denial of the Application unless and until the necessary health and environmental impacts have been done by an independent source; that she questions the type of noticing that was sent out because there is a large population of Haitian, Hispanic, or individuals that have a primary language other than English; and that she would thank everyone for participating in the process to maintain quality of life here in Sussex County.

Ms. Francis Tingle was sworn in to give testimony via telephone in opposition to the Application.

Ms. Tingle testified that she is a resident of Greenwood; that her property is 6 miles northeast of the subject site; that we are all in the Chesapeake Bay watershed; that she would like to think she is speaking for the people utilizing groundwater or well water here but there are many other people located downstream; that she questions if the County keeps this in mind also; that she makes the distinction between DNREC and Sussex Conservation District, as two completely separate agencies; that the approval of this would mean there are two places within 15 minutes of each other which raises an incredible concern for highway safety; that DelDOT has already conducted studies and identified a rapid increase in fatalities in our area due to many factors you would see on a daily basis including chicken trucks, construction equipment, farm operations, tourists, school buses, new drivers, and new residents; that there was also a recent approval for the expansion of natural gas; that to add concrete trucks is going to increase the rates of risk especially considering the number of young drivers and new residents to the area; that she does not find the presentation by the Applicant to be compelling at all and if anything they are woefully unprepared; that what they are suggesting is a no brainer for her and that it should be for the County as well; that they should have done some site work and talked about soil testing; that in Sussex County we are not talking about clay; that she thinks in other counties they are doing more due diligence at protecting the environment from operations than anything that was mentioned here; that, as far as the proposed building is concerned, they did not know a size how they were going to clean the dust that would build up inside, how often the doors were going to be open, and would that flow out; that the Applicant should be able to say how often these items are checked by those regulating agencies; that it did not take her long to find some studies relating to stone and concrete crushing and the effects on health; that the National Institutes of Health, National Library of Medicine at the National Center for Biotechnology Information has an article called Air Pollution and Stone Crushing Industry and Associate Health; that another relates to the policy and industry implementations called Departmental considerations and concrete recycling which is from 2017 presentation by Tara Cavalline, Ph.D., P.E. Assistant Professor, UNC Charlotte; that the

Applicant did not mention basic things such as redundant perimeter controls like trenches, buffers, berms, silt fences or high performance perimeter controls such as covers, catch basins, bioswales, or sediment traps which tend to be fairly routine in operations like this; that she thinks that the County should use this as an opportunity to learn about this technology and what is good practice so they can evaluate these applications; and that it is also an opportunity to show the residents that they are represented and their voices are heard.

Ms. Deborah Beeler was sworn in to give testimony via telephone in opposition to the Application.

Ms. Beeler testified that she is a resident of Heritage Shores; that almost all of them have heard the cry for help of “I can’t breathe” and know what the consequences were; that approving of the concrete crusher to operate near residential and recreational areas, schools, playgrounds, farms, trails and anywhere a breathe is taken is it any less criminal than what happened to cause a slow suffocating death; that it is incredible and unbelievable that the citizens have to come together once again to protest the violation of this unprotected right to breathe clean air; and that the use of concrete crushing will put toxic dust in the air which will undoubtedly leave the property to be breathed in by the nearby residents.

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Mr. Riemann testified in response to the opposition that the study mentioned by the legal counsel who spoke was in reference to an occupational study that related to the effects of someone working in a facility every day and is not a study of neighboring properties; that he believes that gentleman responded to a question that he was unable to find any studies that showed a negative impact to surrounding properties; that some individuals referenced cement plants which you must be careful because there is a distinction between a cement plant and a concrete plant as they are two different materials; that cement is an add mixture that mixes with water, aggregate, sand, and other materials to create concrete; that cement and concrete are not the same things so we need to be careful when looking at things online and coming across cement plant; that Mr. DiMondi purchased the property in 2008 and, if many remember, that was a tough time for the construction industry; that he thinks we all remember the housing market and construction were in a serious decline; that it took some time for that market to rebound; that any number of individuals can say that they need to demonstrate that there are no emissions and that there is no impact but unfortunately that is not true nor is it what the Code says; that the Code says that we cannot have a significant adverse impact; that again the baseline is not zero and he believe that to be an important distinction within the Code; that he recalls stating that the stockpiles would be sprayed with water to mitigate dust and showed pictures of the dust boss equipment; that an individual on the phone stated that Sussex Conservation District and DNREC are not affiliated which is just not true because SCD is a delegated agency of DNREC; that, to answer all of the questions about studies, and them not having any; that it is not how the process works; that the process with DNREC air quality permitting is a multi-step process; that you physically test the machine on-site and sample to prove that you are in compliance with the emission

requirements of the air permit study; that it is a bit of a “Catch 22” situation in that you have to go through the land use process to even get to the point of testing; that he assures that if you do not meet those air quality standards set forth by DNREC then you would not receive your permit; that they have implemented a number of measures that go above and beyond the call here in terms of this site and with the machinery itself; that this machinery is state of the art and is the latest technology available; that it has all of the added technology by enclosing the operation internally and by having sprayers to help keep the dust down; that, to add to it, they have proposed putting it in a building which it would be fair to say is even more cutting edge as it is not the usual practice; that this practice would be similar to that of a transfer station which are for the storage and transfer of solid waste materials; that they have proposed additional landscaping around the perimeter if that was something that the Board would find to be an added benefit and they would be happy to do that; that he believes it is important to understand that the entire operation of this facility, all of the materials associated are natural materials, being stone, sand, aggregate and et cetera; that the cement itself, which is a product made elsewhere that mixes with those products to ultimately make concrete, is stored inside a silo, and not outside or exposed; that all of the mixing operation happens internally before it is discharged into a concrete truck; that there has not been any evidence that has been presented that even being near a concrete plant where the activity happening is harmful; that someone has mentioned that Heritage Shores would not be able to continue their build out of the community which is a fair concern but looking at Atlantic Concrete’s location in Lewes which was there for decades and had no impact on the build up around their facility; that, in fact, some of the development in that area is much closer than what they are talking about here; that it is important to note that they do not use Google to decide what to do here; that there is a process which starts with the Comprehensive Plan then to zoning and the site plan, which goes through the Code and agency permits such as DelDOT, Sussex Conservation District, and Fire Marshal; that this process is achieved over an extended period of time; that the possible or potential of neighboring properties is a quite a hinderance to his client who has owned his property since 2008 which has been zoned this way since 1988; that the potential of development versus development are not equivalent; that it is their testimony that it does not need to be in a building to meet the Code; that they are attempting to be as respectful as possible to the testimony that they received and go the extra mile to enclose the machinery to give the neighbors more comfort; that the stockpiles will be enclosed on three sides but will not have a top; that this is not a 365 day, seven day a week operation; that their proposal is to condition it at a maximum of 75 days total within the year, and not including Sundays; that the batch plant is separate from the use of the concrete crusher; that the batch plant will be moving forward regardless of the approval for the crusher; and that their approval plan for the trips associated with the concrete plant was 26-30 trucks a day on average which included the crushing activity.

Mr. DiMondi testified in response to the opposition that the property to the north of the subject site is owned by him; that it is zoned CR-1; that he has heard a number of comments about traffic but this project and site was taken to DelDOT multiple times and has received their approval; that cement itself is a byproduct among crushing, it just depends on what type of stone that you are crushing; that limestone can be crushed for the production of cement and oddly enough is the same lime that goes on the agricultural fields spoke about earlier; that the lime being put down by the farmer would create

more dust than their site; that they will be doing everything in their power to mitigate their site from becoming dusty; that this particular byproduct from the crushing will go out for roads and is a replacement for crush and run because it does not meet the industry standard to go in the mix for concrete; that they are confident that the equipment they selected will keep the dust down; that it is over \$1,000,000 piece of equipment so the idea is that it is designed to minimize it to begin with; that he cannot say exactly what and how the building is going to be cleaned; that enclosing the stockpiles is not a feasible option; that they got site plan approval for those aggregates which are sand and stone that are uncovered; that he does not know of any concrete plant unless you are located in a northern climate or harsh environment where they would want the sand and stone to be heated so that it is not frozen when added to the mix which can be detrimental to the concrete mixture; that what happens at a lot of concrete plants depends on how much money they want to spend; that a lot of producers will have forms available to create concrete blocks with the left over materials which then become barriers that you see in aggregate storage bins; that there can be an installation of some very extensive recycling operations which basically separates the cement slurry from the mix and you end up getting sand and stone on the other side that gets reused; that the slurry mix, if clean enough, sometimes can even be recycled; that it would get sucked out of a pond system and goes back to the plant and actually adds the batch water back again into the mix; that the third way is archaic but still being done and approved by DelDOT which is a series of pit systems; that it is a series of ponds that go downhill and the water kind of flows on through and the water gets purer and at the end gets thrown back to the batch plant; that the sand and stone mixture get scooped by a loader and gets sold as a kind of construction fill material; and that, if they are not approved, then they will institute a recycling system.

The Board found that no one appeared in support of and sixty-eight (68) people appeared in opposition to the Application.

Mr. Chorman closed the public hearing.

Dr. Carson moved to deny Case No. 12789 for the requested special use exception, pending final written decision, because the Applicant has failed to demonstrate that the special use exception will not substantially affect adversely the uses of the neighboring and adjacent properties.

Motion by Dr. Carson, seconded by Mr. Warfel, carried unanimously that the **special use exception be denied for the reasons stated**. Motion carried 4 – 0.

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

ADDITIONAL BUSINESS

None.

Meeting adjourned at 10:41 p.m.