

## **MINUTES OF JANUARY 23, 2023**

The regular meeting of the Sussex County Board of Adjustment was held on Monday, January 23, 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, 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 Dr. Carson, seconded by Mr. Warfel and carried unanimously to approve the agenda. Motion carried 5 – 0.

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

Motion by Mr. Warfel, seconded by Mr. Hastings and carried unanimously to approve the Minutes for the November 21, 2022, meeting. Motion carried 5 – 0.

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

Motion by Mr. Hastings, seconded by Mr. Warfel and carried to approve the Findings of Facts for the November 21, 2022, meeting. Motion carried 5 – 0.

The vote by roll call; Mr. Williamson – yea, Dr. Carson – yea, Mr. Warfel – yea, Mr. Hastings – 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. 12783 – Michael and Robyn Mooney** seek variances from the front yard setback requirements for proposed structures (Sections 115-42, and 115-182 of the Sussex County Zoning Code). The property is located on the southeast side of Pine Needle Drive within the Pine Crest Terrace Subdivision. 911 Address: 30319 Pine Needle Drive, Ocean View. Zoning District: GR. Tax Map: 134-9.00-109.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received six (6) letters in support of, three (3) letters in opposition to the Application, and zero mail returns.

The Applicants are requesting variances of 15 ft. from the 30 ft. front yard setback requirement for a proposed dwelling.

Dr. Carson left Chambers.

Mr. Michael Mooney and Ms. Robyn Mooney were sworn in to give testimony about the Application.

Mr. Mooney testified that there is an existing structure that they plan to tear down and they plan to rebuild a new house; that the property is located off a cul-de-sac; that they bought this property in 2019 with the intention to retire there eventually but have lived up the street since 2006; that their driveway is off the cul-de-sac on one side of the property; that the property used to be two lots that were combined to make one lot; that, from looking at the property, if the cul-de-sac were not there, it would have a straight property line across; that, from that straight property line, they would comply with the 30 ft. setback requirement the same as if their request is granted with the cul-de-sac and a reduced setback to 15 ft.; that the cul-de-sac combined with the 30 ft. setback is creating the hardship; that the rear of their property also extends into the water which is unbuildable and reduces their buildable area; that the side yard setback from the canal also restricts the buildable area; that the property would be a complete square were it not for the cul-de-sac; that they have talked with neighbors who have lived there for decades and they do not recall a cul-de-sac ever being there; that 30 ft. back from the cul-de-sac would cut their current house on the property in half and be where the buildable area would start; that, looking at the back right of their property, there is no space there adding to the hardship; that they are seeking the 15 ft. setback so they can move the house forward and everything will be in line with the 30 ft. setback will be more consistent with the rest of the street; that the property was like this when they bought it; that their goal is to build a new home and retire at this property, sooner rather than later; that Greg Hastings, the architect, placed the structure on the survey in the proposed location; that their plan was, upon approval of the 15 ft. setback, to then work with the architect to design their home; that this is a large project for them; that they met with the architect twice; that, after the second meeting, he chose to see if they can get the variance granted; that, either way, he will have decisions to make after the result of this hearing and did not want to invest a lot of time and money if the variances are denied; that their plan is to have the house placed on stilts and be a two story house; that, as far as the concerns for parking, they will be able to park cars underneath of the house; that there is an existing deck in the middle of that half circle that is the cul-de-sac and there have been no issues with turning around now; that, if he was to go 15 ft. back from that, they will still have plenty of space in the front to turn around; that it is almost as if he is giving them more space to turn around when all is said and done; that, from the yellow line to the deck, is not even 83 ft.; that, if they go back 16 ft. from that yellow line, it is going to push the structure back; that the mailman has no problem turning around because he is in a truck; that the traffic will back up as it has been for the 15 years he has been in the area; that the proposed structure will be 15 ft. off the cul-de-sac property line; that they do not have an HOA; that, on the property currently, there is a trailer / mobile home underneath the northern part of the A-frame house; that his understanding is the prior owner purchased in 1990 and took the trailer, turned it, and put the A-frame over it; that

it was kept as a trailer for the purpose of lower taxes; that they put a 12' x 10' shed on the property; that they were trying to get a proposed footprint for the approval rather than a formal plan before getting any type of approval; that the pool will be placed in an east - west direction; that, if the variance was granted for the proposed footprint, they would then get formal plans and go through the permitting process from there; that he has envisioned more for this property; that he has children and grandkids; that he figured they would have celebrations at this property with their entire family; that he was trying to make his property more of a square by asking for the setback reduction in the front yard otherwise he will have to make significant changes to the placement of the structure on the lot; that, if they had a straight front property line, their proposed structure would meet the 30 ft. setback requirement; that, when looking at this, he was using the perspective that he did not create the property lines; that the home needs to be torn down and they were not in a place to afford it for the last four years; that they are simply asking for a little relief from given the hardship created by the structure of the lot and the 50 ft. in the water; that the proposed structure will be aesthetically pleasing and have no impact on anyone in a negative way; that they are just wanted a setback to be as if they had a square lot; that, if the variance is not granted, they have to go to the drawing board to sort out what they can place on the lot within the buildable area; that he spoke with Greg Hastings to ask for the drawing that is submitted which shows to scale the footprint of the proposed dwelling; that, if the variance is approved, then they would go back to design the layout of the home; that Greg Hastings has been very responsive and they should be able to have the site plan very quickly; that there is no paving on their road as it is gravel; that, consistently, if you go up the street, it shows that the neighbors' driveways are part of the street on the mapping; that the pool they have talked about is going to be in the air so the support associated need to be heavy duty; that he is not an engineer but that is the only thing he can think he is referencing; that they have had flooding on the whole property; that the flooding has come up to their steps but never breached their house; that the water has breached the bulkhead to the rear of the property; that they get water in their yard but it has not flooded any structures; and that they park in the grass.

Ms. Mooney testified that they just want to be in line with all the neighbors; that, if their property line was straight and not a cul-de-sac, they would not be here today; that why their property line dips in like that does not make any sense because in the 16 years they have lived on the street there was never a turn around there; that 30 ft. back from the circular line to the structure that is currently there would be in the middle of the living room; that the cul-de-sac is not there but rather their grass, driveway, ramp, and mailbox; that the drawing that was done by Greg Hastings and submitted was in lieu of the Applicants spending additional money on an architect doing plans before they were approved for the reduced setback they are requesting; that Mr. Hastings drew to scale something similarly placed to where they want to put the structure; that it is not exactly what will be built but in the location of the proposed structure; that their plan is not to design the house around the curve of their property line and she is unsure why it was drawn that way; that they do not want the house to look like a box; that the Board would be approving a house to go in the location of the footprint that they have proposed; that the cul-de-sac does not exist but is a line on a drawing that they have to deal with; that all of their parking will end up being under the house; that the proposed house will be in line with the neighboring house to the north; that they are looking to be in line with the

other homes on the street; that, if they have to go with the 30 ft. setback, they would be setback farther than the other houses; that every year the prior owner just kept building on to what was existing; that the pool is not going to be as big as shown on the proposal; that the additions done by the architect are to scale; that the sun deck will be about 80 ft. in length and span the rear of the house if they build out as far as they are allowed to with the 10 ft. side yard setbacks; that, if they were to move the house back, they would have to cantilever the pool over the canal; that they believe their neighbors would have more of a problem with that; that they were looking to have more bedrooms in the proposed house; that the drawing submitted, which is to scale, is where they would like to be able to place the house; that it is proposed to be that far forward and back on the lot and at the width shown; that, like her husband said, they have children and were looking to do a kind of their side our side thing; that the proposed house will be the size shown but may not look exactly like this; that, if the variance is not granted, then the side of the property towards the water will be a lot smaller than the other side of the house; that they are not asking to be any closer to the street; that they did a consult with Greg Hastings about the footprint of the structure after receiving feedback from Ms. Norwood; that they submitted a drawing which is to scale showing what the house is going to look like; that it might be tweaked slightly with the size of the pool but the deck is going to run the full back of the house; that the pilings are going to go where they are shown on the drawing presented; that the size of the house will not change; that they will call Greg Hastings tomorrow for an updated site plan showing the dimensions and variances needed; that it has reached the steps in their backyard; that they have never had people parking in the cul-de-sac; and that they will have the dimensions shown on the new plan.

Ms. Jodie McLaughlin was sworn in to give testimony in opposition to the Application.

Ms. McLaughlin testified that she lives next door to the Mooneys; that she is submitting documents into the record for the Board to review; that her husband, Rick Franco, is here with her also; that she wishes to address the fact that the lines on the tax maps are incorrect which has a huge bearing on where the cul-de-sac should be; that she submitted letters of opposition; that the reason she is here is because she has learned new information since the required submission date of January 13<sup>th</sup>; that she was unaware of the five criteria for a variance; that just yesterday her husband spoke with the Mooneys concerning their proposal at which time they realized there was some confusion on the Mooneys' part about owning two separate lots with differing setback needs rather than one larger lot; that the gentleman who sold them the lot was Bob Haberle; that he wanted to subdivide, at some point, but she does not believe he was able to formally do so; that she has a letter from September 13, 1968, referred to as "the Wilgus Letter", which explains why that lot was not going to be two lots; that the letter goes on to explain why it needs to be just one lot; that her family has a long history on Pine Hill Drive which goes back to the beginning in 1968; that they would object to anything other than a 30 ft. setback from the front property line at their southwest corner; that referring to criteria number one to the uniqueness of the property; that most 50 ft. and 100 ft. lots on their road have real property water amenity; that the Mooneys stated that they thought they were restricted and they might have to build out into the water but, of course, we know the DNREC has all rights to the water and we just get to enjoy it; that it really should be known as they are required to get permits for docks and float docks; that the Mooneys' property is not unique to the Pine Crest Terrace Community as other

lots at the corners of the lagoon and main channel are laid out similarly with turnarounds intended; that, when someone buys property, they usually would do the research on the tax maps and have surveys done so there are no surprises especially considering they own another property within the same subdivision just up the street; that, to criteria number two, cannot otherwise be developed; that with a height limit of 42 ft. and standard setbacks all of the stick built and modular homes on their road have already an average or above square footage with a relatively small footprint because they are all two or three story homes; that all but one of those homes is on a 50 ft. lot; that they have to be realistic because the lot design was intended for mobile homes; that the Mooneys' drawing is confusing and they think that they could find a good architect and could design an adequately large home adhering to the standard setbacks; that, for example, if you look at their home, which is 24 ft. by 50 ft. and could be placed along the north property line with even an extension along the east of their property and there would probably still be room for a decent sized pool along the creek line; that they have expansive water frontage with three docks, two jet ski ramps, and a boat ramp; that they will always have an unobstructed view of the water and marsh no matter how they situate their home; that criteria number three such exceptional practical difficulty has not been created by the Applicants; that they just do not believe that there is a situation for the Mooneys that they could not build a nice home on their lot while still adhering to the standard setbacks; that they see homes with extra amenities going up on similar size and shape lots all around the area that were once mobile home lots; that criteria number four, will not alter the essential character of the neighborhood; that this is the main reason that they are here tonight and why they are objecting to a front yard variance; that Code Section 115-182 refers to the setback being the average to those on the same side of the street; that the average actually is 30 ft.; that setbacks are intended for residential amenities such as uniform appearance, vehicular access, privacy, visual access, natural lighting, and sound insulation; that any setbacks other than 30 ft. next to them denies them of those amenities; that they do not wish to feel boxed in or lose southwest light to their great room; that they feel as immediate next door neighbors that they are singularly affected; that they are the only full-time residents and work regular weekday hours they depend on nighttime quiet; that a pool on a lot that floods regularly in an environmentally sensitive area where sound is magnified is a big concern; that the increase in light pollution and noise late into the night can affect many homeowners; that they have had quite a bit of issue with congestion at the dead end of the road with a lot of people parking there, and blocking their driveway and mailbox; that they are also under the impression, which may be incorrect, that there is really no way yet to know if a pool would be approved; that their understanding from the neighbors was that the biggest issue was that they did want to be able to put in a pool which is why they wanted to bring the house a little bit more forward; that she thinks the Mooneys' proposed design shows an extension on the homes northwest corner, which is highlighted on one of the handouts, and could potentially be extended even farther to the 15 ft. frontage; that this is just a design and they have no guarantees should they receive the variance that they will not utilize that entire space, creating a loss of natural light, privacy, and even changing the air flow along their southwest corner; that they do not even know where the property line arcs across their yard, so a home just jutting forward is totally out of character on their road; that criteria number five regarding the minimum variance; that this evening's issue really is that front yard setback and they feel that they do not need a variance; that the Mooneys' back property line is not unique and their front property line was intended for the good of the

neighborhood; that setbacks enhance the neighborhood and they should create value for all; that they feel a variance for the Mooneys has the ability to take value from their property; that the term value is not just monetary but the worth in things such as personal space and privacy, adequate parking for visitors and residents, safety, respect, and simple residential amenities such as views of wildlife, greenery and clean waterways; that the Board's decision can determine if they can continue to enjoy the home they designed twelve years ago adhering to the setbacks; that their home is just under 3000 square feet; that it is not on pilings because, at that time they built, in 2010, they were told they could not go on pilings because it is Section 404 wetlands; that, at that time, no one on that street had used pilings; that they are above the 100 ft. flood line; that they used two courses of cement on their foundation; that they have flooding issues which comes up the boat ramp and down the road; that it floods to the point they have had to move their vehicles to the community across the street; that the water goes over the tops of their muck boots; that they have flooding issues even on regular storms now; that the mapping systems yellow line is not accurately placed; that, if the Mooneys could keep to the 30 ft. setback, the problem is you have to start measuring off the arc and back 30 ft.; that she understands that is their problem; that they have 33.89 ft. from their corner back before that arc starts, and, by that drawing, they could have an architect design a house to fit without the need for variance; that they designed their house with the natural light in mind because they are here all the time; that, if their driveway gets iced over, the sun helps to melt that also; that they just really want to make sure that their line is back 30 ft. like everyone else's setback; that it was her understanding that the cul-de-sac is their property line and that the setback would have to run along the arc; that the cul-de-sac was there when she was a child, that she is unsure of when it was removed; that she is unsure if the prior owner received a variance but she does not know how the current house is where it is; that the photo on the map is not accurate for the location of property lines and is outdated because there is a home built on the other side of them that is set back 30 ft.; that the home across the street, Parcel 108, is set back 30 ft. off the cul-de-sac; that she has had conversations with the owner Mr. Corrozi about that and he said that when he built he knew he had to build that far back even though it was not ideal; that, if the variance was granted and the Applicants do not have to abide by the arc, they just ask that the house not be placed more forward of their home's placement; that she wants them to be able to build a beautiful home but believes they should have to follow the setbacks; that she would like a site plan to show what they are requesting also; that the lack of knowing what they are placing makes her nervous; that, if they placed their home in line with the rest on the street, she would be happy; that she likes to hear they will be parking under their house because it is kind of dangerous there sometimes when you can barely get one car in between the way people park; that, in the summertime, it just explodes on their street; that they have a large driveway which unfortunately became a turnaround which has cause them damage; that the boat ramp is owned by the Mooneys; that she believes they allow some neighbors to use it but a lot of times there is a chain across it; that it looks like it is for the community because of where it was placed; and that the Mooneys did not put it there.

Ms. Maureen Edner was sworn in to give testimony in support of the Application via phone.

Ms. Edner testified that she lives on the other side of the McLaughlins' lot; that she is questioning how far into the setback the proposed house will be; that they signed that they are in favor

of the variance for the Mooneys but they do want to comment that they want the setback to be 30 ft. from the regular street at the northwest property corner; and that they want them to have the same setback that they and the rest of the neighbors have.

Ms. Mooney testified that she thinks they are in agreement with the neighbors; that all they really want is to be 30 ft. from what everyone is calling the northwest corner; that the structure will be in line with the neighbor's houses; that the cul-de-sac is throwing them off and the drawing they had; that the cars they see are not their cars; that the part about the ramp is true; that, when they first moved there, they did let other neighbors use the ramp; that the previous owner had a chain across which they thought was mean and not very neighborly; that, over the last year, they have put the chain back up because some people were taking advantage by dropping their boat in the water and leaving their car; that they thought they might end up liable for something; that the chain is back up and they rarely let people use it but only when they are there and approve; that the cars at the end of the road are from the neighbors across the street from them; that those neighbors have a lot of children and grandchildren; that they have two driveways and a yard and will continue to be neighborly and not have people park on the street; that they see their neighbors' concerns and have no plans to do what they were thinking; and that they do not want to push their house in front of their neighbors' house.

Mr. Mooney testified that if they can have the opportunity to continue their case to submit a revised plan they will have it measured 30 ft. back from the northwest corner straight down and place their structure there; and that they are okay with staying 30 ft. back from the normal line.

Ms. Marsha Thomas was sworn in to give testimony in support of the Application via telephone.

Ms. Thomas testified that she and her husband are owners of Lot 11, 30318 Pine Needle Drive in Pine Tree Terrace; that the Mooneys are their neighbors diagonally across the street; that the McLaughlins are directly across the street from them; that they have owned the property for approximately 34 years; that they purchased it from the McCabes, who were the original owners; that she believes Pine Tree Terrace was established about 55 years ago; that a few of the original purchasers still remain in the neighborhood; that the lots are from the middle of the road and about 40-50 ft. into the lagoon; that, when they purchased their property, it was a manufactured home; that later, when they replaced it, they were unable to get a bank mortgage because the sidelines were not correct; that, after resolving their issue, they ended up with a lot 52.5 ft. in width and consistent with other paperwork for their lot; that the residents own part of the street and are responsible for the maintenance so she does not see an issue with parking on the street and what they call the cul-de-sac; that she wonders why you would not be able to park on your own property; that their granddaughter lived there for a time and occasionally would have parties which led to people parking on the street; that, as neighbors, they try to be cordial but at a point in time there was a dead end and no outlet sign at the end of the street; that those signs were stolen and never replaced; that they do not have a current stop sign going to Sandy Cove Road; that the residents are responsible for all of the road maintenance; that it is a headache to get residents to contribute their portion of maintenance fees; that there was

never a well established cul-de-sac at the end of the road; that, when Mr. Haberle was working on that ramp, there previously had been a dipped down and hap hazard ramp to get in and out of the water; that she called the County about the ramp and its status regarding permits; that she was told there was no permit, one was not needed because the ramp was already there and if there was it would have been opened as a public ramp; that Mr. Haberle let their 13 year old son use the ramp to put his boat in and out; that the chain was put across the ramp because people were taking advantage of the access; that she is in support because they will be pulling their mobile home out and will want to build; that she believes people will be opposed to what they want to build; that no one ever tried to get variances before because the original owners were set in their ways and no one wanted to give in; that, with the flooding, they have had as high as 43 inches of water on their property; that they looked like boat houses; that the area has had major issues; and that they had issues when public sewer and water were being installed years ago.

The Board found that two (2) people appeared in support of and one (1) person appeared in opposition to the Application.

Mr. Chorman closed the public hearing.

Mr. Warfel moved to leave the record open for the limited purpose of allowing the Applicants to submit a more complete site plan by February 27, 2023, and for comments only as to the updated site plan and for a hearing to be scheduled on March 6, 2023.

Motion by Mr. Warfel, seconded by Mr. Hastings, carried unanimously that the **record be left open for the limited purpose and for a hearing to be held on March 6, 2023**. Motion carried 4 – 0.

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

### **RECESS 7:23 – 7:28**

Dr. Carson returned to chambers.

**Case No. 12784 – Theodore and Candy Mills** seek variances from the side yard setback and rear yard setback requirements for an existing shed (Sections 115-42, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located on the southeast side of South Bay Shore Drive at the corner of Adams Avenue. 911 Address: 201 South Bay Shore Drive, Milton. Zoning District: GR. Tax Parcel: 235-4.17-5.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of and no correspondence in opposition to the Application, and zero mail returns. The Applicants are requesting variances of 4.5 ft. from the 5 ft. side yard setback requirement



on the southwest side and 3 ft. from the 5 ft. rear yard setback requirement for an existing shed.

Mr. Theodore Mills was sworn in to give testimony about the Application.

Mr. Mills testified that they are requesting variances of 4.5 ft. from the 5 ft. side yard setback and 3 ft. from the 5 ft. rear yard setback requirement for an existing shed; that the shed has been there for approximately 30 years; that they want to relocate the shed so it is entirely on their property; that the shed is presently partially on the neighboring lot about 4 ft.; that it is a 10 x 10 ft. shed that was built in place; that the shed is sitting on cinder blocks; that, as far as uniqueness, most lots in that section of Broadkill are very small; that their lot is one of the smallest at 50' x 80'; that they recently had a new septic system installed which is taking up almost the entirety of their property; that the septic tanks themselves are on the Adams Avenue side of the lot; that they had to have reinforced tanks installed and paved over them because it is also their parking area; that the peat beds are in the front yard so the proposed location for the shed is really their only option; that, due to the small size of their house, the shed is their main storage; that they cannot otherwise develop the property because of the septic system; that other lots in the area also have similar sheds located close to the property lines; that the variances are the minimum variances necessary; that they are basically giving 2 ft. to the neighbor to the rear and 6 inches to the side because it will be placed at the corner of the existing house; that the house at 203 South Bay Shore Drive is literally inches from their property line and closer to the street; that it is kind of a "give and take" where they are close to them and they are going to be close to them; that it is one shed shown as an overlay on the plan of existing and proposed locations; that the shed has not been moved yet and is still on the neighbor's property; that the neighbor's house is about 6 inches or less at one point from their property line; that the neighbor's house sits a little bit cockeyed; that they do not have currently have an issue with the neighbor; that they have central water; that the house was on the lot when they purchased it; that they previously shared a cesspool with the lot to the rear of them; that the situation with the Taylors was no longer working so they had their own system installed; that their house does not have a garage; that his wife purchased the house before they were married; that they have been married for 36 years so she has owned it for close to 40 years; that there have been no complaints about the shed other than the Taylors wanting it to be moved off their lot; that they are planning to redo the siding and the roof of the shed if they are permitted to move it; that the shed needs a bit of work; that they had about a foot of water on their property during Hurricane Sandy but that is the only time he can recall recently that water was on the lot; that the way the shed sits, it is up on two blocks, they did not get any water in it but there was a few inches of water in their house; that, once the shed is placed in its new location, they would do the renovations; that they had not thought about renovating before moving the shed; that they want to do metal siding which will require minimal maintenance; that the current shed has lasted 30 years so hopefully it will last another 30 years; that the door of the shed will open towards their septic system; and that their shed does not have a ramp, it is just a step.

Ms. Mackenzie Peet testified on behalf of her clients, Frank and Laura Taylor, in support of the Application.

Ms. Peet stated that she represents her clients, the Taylors, who own the property behind the Applicants; that her clients have asked the Applicants to move the shed; that her clients are in support of the requested relocation to remedy the encroachment issue; that she has been to this property and can speak to the limited buildable area; that seeing the plans the only additional point would be to consider installing rain gutters and to provide proper notice to the Taylors when they plan to relocate the shed, subject to the Board's approval; that her clients do not care about when or how they redo the roof and siding; that they have recently sent a letter asking for five days' notice related to the shed's relocation, the name of the contractor, and proof of their assurance to install rain gutters; that the Taylors also reasonably request to avoid any damage to her clients' property; and that future maintenance should not be a concern of her clients as there should be sufficient room between the shed and their property in its proposed location.

Ms. Linda Bronson and Mr. Michael Csuy were sworn in to testify in opposition to the Application.

Mr. Csuy testified that they are the owners of 203 South Bay Shore, which is the lot that is going to be encroached on by the 6-inch margin; that they do not mind being reasonable and shrinking the variance to accommodate this to some degree but 6 inches feels inordinately close; that, if they or the future owner of the subject property wanted to install a fence, there may not be enough room to do so; that he would like clarification on the variance, is the footprint from a birds-eye view, from the farthest point of the roof line or the body of the shed; and that a 90% encroachment just feels inherently wrong.

Ms. Bronson testified that there is an overhang on this shed so, if it is 6 inches from the side base, then it probably crosses the plane of their lot line; that they are not opposed to encroaching but 6 inches is too close; that they are new owners who have been there since last year; that they do not know how far their house is from the property line; that she is sure it is close but they did not build the home; that they purchased it last year and do plan to rebuild; that where the home is placed is of no fault of their own but they do not want to keep perpetuating everything against the property line because nobody is going to be able to move or navigate anywhere; that, if they or the neighbor wanted to put a fence, you cannot run a lawn mower or get a weedwhacker in that 6 inches so the area is just not maintainable; and that they were hoping that they could get it 2 ft. into the setback.

Mr. Mills testified that as far as the overhangs go, the peak of the roof has no overhang on the 203 South Bay Shore side rather the overhangs are on the Taylors' side and the side facing Bay Shore Drive; that the overhangs are minimal at like a half-inch trim; that coming away from the property they could probably manage 12 inches; that the 6 inch request gave them a total of about 18 inches between the house and the shed; that the drawing shows 12.6 ft. from the corner of the house to the property line, that the shed is 10 ft., so they wanted to leave a little bit of room on the front side so they could at least get in there to do the siding work, assuming they would do the work after it was relocated; that, going 12 inches, these dimensions would leave them with at least a minimal amount

of room to get in between the house and the shed; that the 6 inches previously requested allowed them 18 inches to get in between the shed and the house; that going 12 inches off the property line would allow them a foot between the house and shed; that they will find a way to make it work; that, at that distance, it would allow the neighbors to place a fence; that they will still be able to access the doors of the shed; that they will not be able to open both doors at this distance but they may be able to reconfigure the doors when they renovate the outside, or possibly go to a single door; that they did not consider spinning the shed because the Taylors have put a fence from the corner of their property that goes to the back of their fence; that they now have to try to maneuver around this fence to move the shed and honestly do not know how until they actually try to move it; that, by the rough measurements, they should be able to slide it over, slide it back, and then over again; that they were going with the 2 ft. on the Taylors' side for the maintenance issue because they knew that was going to be a problem; that the shed was built in place 30 years ago; that the history there is that the Taylors had a survey done, probably close to 40 years ago, and that, as he recalls, were not able to accurately determine the boundary between the two lots so they always just sort of split the difference; that then over the years there has been a falling out which led to the septic system separation and now moving the shed; that, with the addition of the fence, it would make renovations to the back of the shed difficult; that they can get to it from their side but they would have to be on the Taylors' property to put the other side on; that the fence is like a four inch post; that it would not be easy but it is not impossible; that it is not possible to adjust the dimensions of the shed; that this shed is not a prefab, it was built in place; that the construction of the shed is similar to that of a house, the walls are 2 x 4 frame, 16 inch centers; that they have not considered cutting it in half or shrinking it because they want to save the shed; and that he and his father-in-law built it together and there is sentimental value as he is no longer with them.

The Board found that one (1) person appeared in support and two (2) people appeared in opposition to the Application.

Mr. Chorman closed the public hearing.

Mr. Hastings moved to approve with conditions Case No. 12784 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to the fact that the shed needs to be moved;
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.

As part of his motion to approve, Mr. Hastings required that the Applicants install gutters on the shed, place the shed no closer than 1 foot from the rear property line, and provide appropriate notice to all neighbors prior to relocating the shed.

Motion by Mr. Hastings, seconded by Dr. Carson, denied that the **variances be granted with conditions for the reasons stated.**

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

**Case No. 12785 – Lloyd Harrison** seeks a variance from the maximum fence height requirement for a proposed fence (Sections 115-34, 115-182, and 115-185 of the Sussex County Zoning Code). The property is a through lot located on the southeast side of Robinsons Drive approximately 620 ft. southwest of Silver Lake Drive. 911 Address: 38254 Robinsons Drive, Rehoboth Beach. Zoning District: MR. Tax Map: 334-20.09-36.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received five (5) letters in support of, no correspondence in opposition to the Application, and zero mail returns. The Applicant is requesting a variance of 1 ft. from the 3.5 ft. maximum fence height requirement for an existing fence.

Mr. Lloyd Harrison was sworn in to give testimony about the Application.

Mr. Harrison testified that the variances brought up is from the maximum height requirement for a fence but, in reality, he had it much differently; that he is going to read what he submitted which dealt with the five questions; that it is really a 1 ft. fence height variance at 3.5 ft. to 4.5 ft. at 38254 Robinson Drive along the property and rear lot line adjacent to Anna B Street; that the property is unique because Robinson Drive connects Route 1 to Silver Lake Drive in Dodds Addition; that both pedestrian and vehicular traffic have grown greatly since 2000; that his Robinson Drive property is one of the only four Robinson Drive through lots; that the lots are grouped side by side; that the first two of these lots have 6 ft. fences along Anna B Street; that the fourth lot is vacant; that the property is 50 ft. wide along Anna B Street; that the 50 ft. width encompasses a 24 ft. picket fence and a 26 ft. garage entrance area; that the garage is accessed by Anna B Street; that the adjacent vacant lot is a very busy cut through from Anna B Street to Robinson Drive, as well as a visitor parking area; that DelDOT recently recognized the increase in congestion and added speed limit signs, a stop sign, and constructed a sidewalk down the length of Robinson Drive; that the traffic increase is a problem because drivers trying to avoid the congestion on Robinson Drive really rush down to the dead end using his driveway by his fence to turn around; that the property cannot otherwise be developed because the fence height is needed for personal safety and security due to the increased congestion and traffic on Robinson Drive; that the 4.5 ft. fence height provides additional security while fitting in well with the residential character of the neighborhood; that any reduction in the existing fence height would lessen security and safety while causing considerable unnecessary expense; that this was not created by the Applicant because the need for a higher fence is the result of growth in pedestrian and vehicular traffic on Robinson Drive and the adjacent vacant lot; that the DelDOT safety improvements, increased traffic, and parking on the vacant lot have all created the need for the higher fence; that the fence contractor applied for and was granted both the County approved building permit

as well as the final inspection; that the variance will not alter the essential character of the neighborhood; that the Robinson Drive neighborhood has numerous high fences; that their existing 4.5 ft. picket fence is well within the neighborhood's character, with exception because it is lower; that the two (2) adjacent neighbors have solid 6 ft. privacy fences around their property and, at the end of Anna B Street, there is a 7 ft. privacy fence; that the variance request is the minimum to afford relief; that the 1 ft. variance provides the least modification necessary to improve rear yard security by further discouraging climbing intruders as well as screening the view; that the fence construction has been approved by the County; that there will be no additional cost involved, while the safety and security of his rear yard will remain; that they respectfully request the 1 ft. height variance from 3.5 ft. to 4.5 ft. for the existing rear picket fence be granted; that he does not recall why his previous request was denied but does remember a remark that was made about using too much of the land; that he took the square footage of the house and garage which was about 40% of his property; that adding the largest pool they could do, which is a small pool, would be about 43% of his residential lot that would be used; that he has looked through the Code and could not find where there is a square footage limit on residential lots but he could be wrong; that one substantial difference is that he got a setback survey on the property, which before he was talking about the 30 ft. setback and this survey which was done roughly a year ago revealed the fact that the setback was only on one side, and 15 ft. on the other side; that, at that time, he was not talking about an entire fence and the entire backyard in the same manner; that he was looking to put the pool back in here before and the fence is now with the setback what it is he can put in a hot tub or something like that and fit it in; that the purpose of the fence is to keep people off his property; that the previous request was for both the safety of the pool and trespassing; that the fence now is serving a different purpose; that the problem now is people driving down and turning around in his driveway because they cannot read the sign that says dead end; that they are so close to the dead end which has been increasing the number of people walking back there; that he has a problem with people coming through there with their dogs; that, in one particular year, he does not recall which year, he was missing a lot of landscaping equipment out of his garage; that he now has all of his equipment locked up tight; that, if you were to go to Rehoboth Beach in the summer time, you can see how much the traffic is really increasing; and that, on a particular day, he did a traffic count that resulted in 62% of the traffic coming of the white bridge turned up Robinson rather than go down Silver Lake Drive to Dewey Beach because they were trying to get out of town.

Dr. Carson moved to approve the request for rehearing as the Applicant has demonstrated that there has been a substantial change in circumstances and conditions affecting the property due to the increase in trespassers and a change in plans from the Applicant's prior application.

Motion by Dr. Carson, seconded by Mr. Warfel, carried 4 – 1.

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

Mr. Harrison testified that he had a contractor come to get a permit because they wanted to build a pool; that the contractor was told they could not get a permit because they needed a variance; that he came over on a Friday afternoon and asked if an owner could apply for a building permit, to which he was told yes; that he then asked about the same permit, after looking through the history, he was also told no; that the fence is already built; that he did not put the fence in, rather a contractor placed the fence after obtaining a building permit and getting a final inspection; that the fence was installed over a year ago; that he found out recently from talking that the fence was too high; that he is here to get a variance for this little portion of the fence that is there; that there are 6 and 7 ft. fences in the neighborhood; that he has the smallest and lowest fence in the neighborhood; that all he is trying to do is keep people out of his yard and be able to use his rear yard; that he is unable to use his front yard because there are so many people walking by; that, at the time of his previous application and the 30 ft. setback requirement, he was told it would have cut the pool in half by placing the fence; that he does not recall talking about the height of the fence at that time because he was talking about the pool and its size; that the pool they talked about was 10' x 18', which is the smallest pool they offer; that he does not remember the 4 ft. fence requirement being spoken about; that the company he used to install the fence also put up two other 6 ft. fences; that the company he used was Eastern Shore Porch and Patio; that he did not pay the contractor until the job was finished, which he confirmed with the County and was told April 12, 2022; that, when he originally purchased the property, there was a fence already installed; that it was a wooden fence on the property line all the way around; that he did not get the other permit he was seeking; that he came to the Board to get a variance because he wanted to be within the rules; that there are an awful lot of fences out here which are not necessarily in compliance; that he is planning to continue his pavers in the back yard; that the lot actually dips down; that he surveyed it the other day to verify and his lot dips down as you go back; that the inside of the fence is going to be 3.5 ft. and on the outside it would be 4.5 ft. because he has to level out his yard for the pavers; that he wants the 4.5 ft. fence for security reasons outside; that, on the inside, he wanted to protect the kids from getting out of course; that he wants to have the security problem solved because he is living next to a vacant lot; that the fence is his solution to his problem; and that he has received compliments from the neighbors.

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

Mr. Chorman closed the public hearing.

Mr. Hastings moved to approve Case No. 12785 for the requested variance, pending final written decision, for the following reasons:

1. The property has unique conditions as it is a through lot;
2. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare; and
3. The variance represents the minimum variance necessary to afford relief.

Motion by Mr. Hastings, seconded by Dr. Carson, that the **variance be granted for the reasons stated.** Motion carried 3 – 2.

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

**RECESS 7:23 – 7:28**

**Case No. 12786 – Marcus Dodge** seeks variances from the side yard setback requirement for proposed structures (Sections 115-42, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located on the northwest side of Blue Teal Drive within the Swann Keys Subdivision. 911 Address: 37031 Blue Teal Road, Selbyville. Zoning District: GR. Tax Map: 533-12.16-426.00

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 two (2) mail returns. The Applicant is requesting variances of 2.2 ft. from the 5 ft. side yard setback requirement on the south side for two (2) proposed sheds.

Mr. Marcus Dodge was sworn in to give testimony about the Application.

Mr. Dodge testified that he is requesting two storage sheds for the side of his house; that Ms. Norwood came up with the numbers but he is not sure if it is going to come out right; that he believes he has a 10 ft. setback but it is a 5 ft. setback; that he has no outside storage other than a walkway that he puts things under but it is not weatherproof; that he has spent over \$4,000 in replacing equipment over the years; that his tools are in his attic; that he does all of his own work; that he just cannot lug stuff up and down three (3) flights of stairs anymore; that the sheds will be constructed of wood; that one shed will be placed and the other built on-site and attached to the house; that the sheds will match the white siding; that 12 ft. of the walkway is going to be cut out to place one of the sheds; that he never thought of the shed built on to the house as an addition; that there are several of them around in Swann Keys that are built right onto the house; that, if that creates a problem, it does not have to be built onto the house because they make sheds that are not attached; that both sheds will be 12' x 7' in size; that they will be different in appearance because the one shed in the back of the house has the roof coming off the side of the house; that the first shed is a prefab and will be brought it and set in place and the second shed would be built on-site; that he has twenty some odd feet from the house to the stairwell that goes up to the side door; that the shed should not be covering any windows because the house is pretty high; that the windows on his house are slightly taller than he is; that, because of the angle of the roof, he does not believe the sheds will be covering any windows; that the foundation of his house is 5 ft. up before you get to the siding; that the shed will have a barn style roof; that the sheds will have gutters on them to avoid water running towards the house; that they do not make a 7 ft. shed; that sheds are either 8 ft. or 6 ft. so this request accounts for a bit of leeway that could come from any overhangs; that he previously had a variance for the front yard setback requirement to build

the house; that his house is 30 ft. from the road and about 10 ft. from the back which is the water; that, once you go under 6 ft. for a shed, it is pretty small; that the door to the shed will be facing the back of the house so there will be no issue with opening the door; that the other shed will open out towards the side; that there is no other option for the placement of the sheds; that the right side of the home is 4 ft. and the neighbors have a fence on that property line, and the HVAC and propane tank; that the back of the house is the water and there really is no room there; that his wife would not let him place the sheds in the front of the house; that his lot is the same as other lots around him; that, since he has owned the property, it has flooded twice at the back of the house, once with Hurricane Sandy and one other time; that he does not have parking under the house; that he can fit probably six cars in the front, four parking normally and then, if he had to squeeze two cars lengthwise, he could but that would be close to the road at that point; that the house is surrounded by concrete; that the concrete goes to the property line; that he has two plastic storage containers on his sidewalk for hand tools and chairs, which would be moved probably to the back porch and under the house, if the variances are granted; that he has been talking about doing this for year; that about eight years ago he put in a building permit but after it was issued they told him he would need variances; that, at that time, he could not afford it so he waited and now it is \$100.00 more; that his neighbors have no issue with it; that they are all very close; that his neighbor to the right has pretty much the exact same shed design on his house; that all of his neighbors have sheds; and that the rear patio has steps on both sides.

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

Mr. Chorman closed the public hearing.

Mr. Warfel moved to deny No. 12786 for the requested variances, pending final written decision, because the exceptional practical difficulty was created by the Applicant and not by the uniqueness of the property.

Motion by Mr. Warfel, seconded by Dr. Carson, carried unanimously that the **variances be denied for the reasons stated.** Motion carried 4 – 1.

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

**Case No. 12787– Douglas and Christie Conaway** seek variances from the maximum fence height and front yard setback requirements for proposed and existing structures (Sections 115-34, 115-182, and 115-185 of the Sussex County Zoning Code). The property is a through lot located on the west side of Apple Court within the Quillens Point Subdivision. 911 Address: N/A. Zoning District: MR. Tax Map: 134-5.00-381.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received one letter in support of, four (4) letters in opposition to the Application, and zero mail returns. The Applicants are requesting variances of 5 ft. from the 40 ft. front yard setback requirement for an



elevated deck on a through lot and a variance of 3.5 ft. from the 3.5 ft. maximum fence height requirement for a fence in the front yard.

Mr. Douglas Conaway and Ms. Christie Conaway were sworn in to give testimony about the Application.

Mr. Conaway testified that he is an owner of Lot 72 in the Quillens Point waterfront community that was developed back in the 1980s; that the property is a through lot with roadways on Apple Court and to the rear is Cedar Neck Road, giving them two front yards; that their building restriction line along Cedar Neck Road is 40 ft. which is the longest property line of their lot and consumes the majority of the building area; that the building restriction line on Apple Court is 30 ft.; that their driveway will be on Apple Court and not on Cedar Neck Road; that, when designing their house to try and reduce the intrusion into the rear building restriction line, they reduced the size of their deck from 12 ft. to 8 ft.; that their request for variances was submitted to the architectural review committee of Quillens Point and their approval letter is in the packet; that he was told that, because they have two front yards, the maximum fence height on a front yard is 3.5 ft. so they have requested a taller fence along the back property line at Cedar Neck Road; that there is more traffic along that road; that they may potentially put in a pool or something down the road in their backyard and do not want to be limited to a 3.5 ft. high fence on all four sides of the property; that the property to the left does have a fence 6 ft. high surrounding their backyard; that, even if the Board approves, they will have to go back to the architectural review committee for any fence and submit a site plan for their final approval; that their property would require approval from both the HOA and the County; that there is an artesian well for the community, which are multiple wells that feed the entire community; that they have County sewer; that the HOA has approved their request for the balcony; that he spoke with several neighbors, explaining what they were doing, and there were no issues; that the biggest issue they had is with a neighbor at Parcel 224.05 who was upset because they are building a house and taking his view away; that this neighbor is not a part of the community and is located on the other side of Cedar Neck Road; that this neighbor had the opportunity to purchase the lot and keep it open but he did not; he does not have any issues with a natural buffer but, if they decided to put in a pool, they have to maintain a 4 ft. high barrier but are restricted to 3.5 ft. high; that this would require them to come back for a variance; that he is not a wealthy man and does not like paying the money twice to come back; that he was inclined to add it in and save himself the cost down the road; that he has heard talk of a plan to expand Cedar Neck Road but he does not know how true that is; that there is no more growth on the road so it makes sense to him; and that he was not aware of opposition and did not know he could see it.

#### **Recess 8:54 – 8:59 – Applicant review of submitted opposition comments**

Mr. Conaway testified that he believes there was an error on his part when he talked about the fencing he was told that Sussex County Code would allow up to a 7 ft. fence without getting some special regulations; that he put 7 ft. down on the variance application but going back and researching he found that Quillens Point has a restriction of 4 ft.; that he would request to adjust his request to 4

ft. to be in line with the Quillens Point HOA regulations and to quell some of the concerns that have been brought forth; that the property has double front yards; that they worked with an architect to design the home themselves; that, on the right side of the house, they plan to put the propane tanks; that, on the left side of the property, there is a possibility in the development, for an accessory structure in the future and they did not want to close off that option and have to come up with an alternative plan later; that the lot next to them has a 6 ft. high fence but, from reading the opposition, it sounds like there was no variance; that, from speaking with the architectural review committee, it was also kind of sketchy as to how they got approval for that 6 ft. fence, that somebody knew somebody was stepping down from the board, approved it, and then left the board; that their plan was not to build something on Cedar Neck Road but place a fence along that property line; that a 4 ft. high fence is fine with them and all that the covenants of Quillens Point allows; that the placement of the house is to give them a little more room in the front; that the driveway is going to be tight because of the design of the lot and with the placement of the garage they are trying to make sure that they have enough area for parking; that you can see from the picture that everyone likes to park in front of that lot and they do not want to be the people that park in front of everyone else's house like the complaints heard in previous cases tonight; that they are just trying to put in a driveway that will suit their vehicles; that the plan for the fence is to eventually replace the existing fence, which is in shambles, with another wood picket fence; that the existing fence has been there probably since the 1980s; that they do not plan on doing the fence right away but do not want to have to come back for another variance; that they believe they can do it within two years; that they spoke with both neighbors, on the left and right, who were fine with their proposal; that the current fence is not on their property line; that the replacement fence will probably be moved in a little because there are some trees along the roadway and the current fence goes in and out of them; that they will probably place the fence about 4 ft. off the road; that on the weekend the road gets a little busy because of the VFW, some of which is pedestrian traffic; that there is a new development going in down the road and a few other communities that are now being built so he is assuming that the road traffic will increase by cars and foot traffic; that the road is going to approximately 10-12 inches higher than the ground level; that measuring from the road the fence will be 3.5 ft. but from the interior of the property it would measure 4 ft.; that there are no steps to the elevated deck; and that the deck is for a grill to be accessed off their kitchen because they are getting older.

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

Mr. Chorman closed the public hearing.

Mr. Hastings moved to approve with condition Case No. 12787 for the requested variances, as modified, pending final written decision and HOA approval, for the following reasons:

1. The property has unique conditions due to being a through lot;
2. The exceptional practical difficulty was not created by the Applicants;

3. 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
4. The variances represent the minimum variances necessary to afford relief.

As part of his motion, Mr. Hastings conditioned the Board's approval on the Applicants submitting to the Office of Planning & Zoning documentation evidencing that the fence has been approved by the Applicants' homeowners association.

The Board's approval was based on the request that the fence height be 4 feet rather than 7 feet as originally proposed.

Motion by Mr. Hastings, seconded by Mr. Williamson, carried unanimously that the **variances, as modified and with condition, be granted for the reasons stated.** Motion carried 5 – 0.

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

### **ADDITIONAL BUSINESS**

**Meeting adjourned at 9:11 p.m.**