MINUTES OF JANUARY 5, 2026

The regular meeting of the Sussex County Board of Adjustment was held on Monday, January 5, 2026, at 6:00 p.m. in the County Council Chamber, Sussex County Administration Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Mr. John Williamson presiding. The Board members present were Dr. Lauren Hitchens, Mr. Nathan Kingree, Mr. Shawn Lovenguth, 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. Ann Lepore – Recording Secretary.

The Pledge of Allegiance was led by Mr. Williamson.

Motion by Mr. Lovenguth, seconded by Mr. Kingree and carried unanimously to approve the agenda as amended. Motion carried 4 – 0.

The vote by roll call: Mr. Kingree – yea, Dr. Hitchens – yea, Mr. Lovenguth – yea and Mr. Williamson – yea

Motion by Mr. Kingree, seconded by Mr. Lovenguth and carried unanimously to approve the Minutes for the November 3, 2025, meeting. Motion carried 4 – 0.

The vote by roll call: Mr. Kingree – yea, Dr. Hitchens – yea, Mr. Lovenguth – yea and Mr. Williamson – yea

Motion by Dr. Hitchens seconded by Mr. Kingree and carried to approve the Findings of Facts for the November 3, 2025, meeting. Motion carried 4 – 0.

The vote by roll call: Mr. Kingree – yea, Dr. Hitchens – yea, Mr. Lovenguth – yea and Mr. Williamson – yea

PUBLIC HEARINGS

Case No. 13152 – James Mendelsohn seeks a variance from the maximum fence height within the front yard setback requirement for a proposed structure (Section 115-25 and 115-185 of the Sussex County Zoning Code). The property is located on the northwest side of Wilson Myrtle Lane. 911 Address: 31199 Wilson Myrtle Lane, Millsboro. Zoning District: AR-1. Tax Parcel: 234-29.00-59.01

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received a petition with four signatures in support of and no correspondence in opposition to the Application, and zero mail returns.

The Applicant is requesting the following variance:

- 2.5 foot variance from the 3.5 foot maximum height for a fence in the front yard setback.

James Mendelsohn was sworn in to give testimony for the Application.

Mr. Mendelsohn testified that he recently moved to the property; that he rescues dogs and cats and wants to keep them safe; that he is requesting this variance to keep his dogs from jumping over the fence; that his dog was able to jump the fence at his previous house and was hit by a car so now he wants to make sure he prevents that from happening ever again; that he wants to increase the fence height from the 3.5' height in the front yard to a 6' fence which is a height the dogs will not be able to clear; that the fence will be located 15 feet from the front property line; that, if the fence was set back 30 feet, it would be in the septic drain field; that he obtained signatures from all of his neighbors granting him permission to have the fence at that height; that he combined 2 lots into one lot; that the fence will be located a couple of feet away from the mound septic tank; that fence will be a wooden fence and it will not create any issues with sight lines on any roads; that the fence will start at the edge of the driveway; that his property sits at the end of Wilson Myrtle Lane which is a dead end so there is no real traffic that will be affected by the fence; and that Wilson Myrtle Lane is a gravel road.

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

Mr. Williamson closed the public hearing.

Dr. Hitchens moved to approve the application for Case No. 13152 for the requested variance, pending final written decision, for the following reasons:

1. The property has unique physical conditions due to the septic system drain field;
2. The property is secluded on a dead-end road and the fence will not create problems for vehicles;
3. That, due to such physical circumstances and conditions, there is no possibility that the property can be developed in strict conformity with the Sussex County Zoning Code;
4. The variance is necessary to enable reasonable use of the property;
5. The exceptional practical difficulty has not been created by the Applicant;
6. The variance will not alter the essential character of the neighborhood;
7. The variance will not substantially or permanently impair the appropriate use or development of adjacent property;
8. The variance will not be detrimental to the public welfare;
9. The variance represents the least modification of the regulation at issue; and
10. The variance represents the minimum variance necessary to afford relief.

Motion by Dr. Hitchens, seconded by Mr. Lovenguth, carried that the **variance be approved for the reasons stated.** Motion carried 4-0.

The vote by roll call: Mr. Kingree – yea, Mr. Lovenguth – yea, Dr. Hitchens – yea and Mr. Williamson – yea

Case No. 13153 – Marvin Montoya seeks variances from the side yard setback requirement and separation distance requirements for a proposed structure (Section 115-25, 115-172 and 115-183 of the Sussex County Zoning Code). The property is located on the southeast side of Center Avenue within the Sea Air Village Manufactured Home Park. 911 Address: 19939 Center Avenue, Lot D69, Rehoboth Beach. Zoning District: AR-1. Tax Parcel: 334-13.00-310.00-3048

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received two letters in support of and no correspondence in opposition to the Application, and 12 mail returns.

The Applicant is requesting the following variances:

- 5 ft. variance from the 5 feet. side yard setback on the southwest side for a proposed landing with steps;
- 9.7 ft. variance from the 20 feet separation distance requirement for a proposed landing with steps from the existing manufactured home from Lot D71; and
- 7.9 ft. variance from the 20 feet separation distance requirement for a proposed landing with steps from the existing manufactured home from Lot D71.

Marvin Montoya was sworn in to give testimony for the Application.

Mr. Montoya testified that he bought the manufactured home 11 years ago; that the variance he is requesting is to replace the stairs in the side of his trailer as the current metal ones are the original stairs from the home and are starting to crumble and fall into disrepair; that he intends replace the steps with wooden steps and a landing with railings for safety purposes; that the steps and landing will be no larger than the current steps and landing and will be located no closer to the property line; that he spoke with the neighbor to the side yard and the neighbor supports the request; that the landing will measure 3 feet by 7 feet; and that he has asked permission of Sea Air Village to have the steps encroach and Sea Air Village approved the request.

Ms. Norwood stated that the manufactured home and all of the structures are considered non-conforming and that is how it is allowed to remain.

Mr. Montoya testified that the home is a 1980s model; that neighboring homes are older; that the landlord required a larger landing but allowed him to construct a smaller landing for emergency access.

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

Mr. Williamson closed the public hearing.

Mr. Lovenguth moved to approve the application for Case No. 13153 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique physical conditions;
2. The steps are failing and need to be replaced;
3. That, due to such physical circumstances and conditions, there is no possibility that the property can be developed in strict conformity with the Sussex County Zoning Code;
4. The variances are necessary to enable reasonable use of the property;
5. The exceptional practical difficulty has not been created by the Applicant;
6. The variances will not alter the essential character of the neighborhood;
7. The variances will not substantially or permanently impair the appropriate use or development of adjacent property;
8. The variances will not be detrimental to the public welfare;
9. The variances represent the least modifications of the regulations at issue; and
10. The variances represent the minimum variances necessary to afford relief.

Motion by Mr. Lovenguth, seconded by Dr. Hitchens, carried that the **variances be approved for the reasons stated**. Motion carried 4 - 0.

The vote by roll call: Mr. Kingree – yea, Dr. Hitchens – yea, Mr. Lovenguth – yea and Mr. Williamson – yea

Case No. 13156 – Recordo and Veronica Nock seek variances from the rear yard setback requirement for an existing structure (Section 115-25 and 115-183 of the Sussex County Zoning Code). The property is located on the east side of Chaplains Chapel Road. 911 Address: 19614 Chaplains Chapel Road, Bridgeville. Zoning District: AR-1. Tax Map: 430-23.00-44.03

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

The Applicants are requesting the following variances:

- 8.8 ft. variance from the 20 foot rear yard setback requirement for existing pole barn
- 9.8 ft. variance from the 20 foot rear yard setback requirement for existing pole barn

Recordo Nock was sworn in to give testimony for the Application.

Mr. Nock testified that he retired from the Department of Corrections last year; that he had a pole building placed on the property for storage of his motorcycle and equipment for his construction business; that the pole building is 18 feet tall; that he utilized the Jim Weller for the construction of the building and the contractor told him that he did not need a permit as the structure would be placed

on top of a concrete slab and they were not putting any posts into the ground; that the company came in and put the building up and, afterwards, he received a letter from the County stating that he is in violation of the rear yard setback line; that, had he known of the permit requirement in advance, he would have sought the permit before placing the structure; that the subcontractors came from North Carolina and installed the structure within 2 days; that the structure is 9.8 feet over the setback requirement and, if he could move it, he would but since the structure is on the concrete slab with the steel walls it cannot be moved; that the structure would have been in compliance with the County if the contractors had gotten the permits as required; that he entrusted the contractors to handle the permits and necessary procedures to build the pole barn and they did not comply with the County regulations; that the pole building is adjacent to a field which is to be developed in the future; that he has read the letter in opposition and believes it is not accurate; that there are no drainage or runoff issues; that the pole building is 30 feet by 60 feet; that he added gravel to the pole building; that the pole building is guttered to drain onto his property; that the property does not flood; that the septic system is located behind the dwelling; that that the building is built in the location that it is because the septic drain field is between the home and the current location of the pole building and that was the determining factor in its placement; that the pole building could have been placed in compliance with the Code even with the septic system; that he keeps his equipment in the pole building for personal use; that he could have turned the pole building to comply with the Sussex County Zoning Code had he known; that he took down a fence; that there are trees on the property line; and that the neighbors have sheds in the rear yard.

Mr. Sharp informed Mr. Nock that there was a complaint submitted about the concern of the water runoff from the building and draining onto the neighboring property.

Mr. Nock testified that the building has gutters on it and the drain spouts are pointed to his driveway, which is gravel, so the water is being absorbed by that surface, and it does not drain toward any neighboring property.

Jason Perry was sworn in to give testimony in opposition to the Application.

Jason Perry testified that he owns the lot identified as 430-23.00-44.04 which is the neighboring property to the south; that there are trees on the property line; that he has a 16 foot by 12 foot shed; that there are water run-off issues; that there are two properties to the rear which are not yet developed; that the building is an eyesore; that the large building is “massive”; that his biggest issue with this whole building is the fact that if he is granted the variance, being that there are other properties behind him that are not purchased yet who is to say that if they put a pole building in there, then we will have serious issues in regards to their placement; that the Applicant’s building, regardless of where it is located, it is an eyesore; that it is just a very large building; that the Applicants build wherever they want; that the building would be an eyesore even if it fit within the building envelope; and that the building was erected in a few days.

Elmer Perry was sworn in to give testimony in opposition to the Application.

Elmer Perry testified that there was a drought in 2025; that there has not been a rainy season since the pole building was erected; that he lives next door to the Applicants and has submitted the letter of opposition; that the lot has the house and the drainage field on a small footprint; that they have a very nice house and it is not small as it consists of approximately 2,000 square feet; that that takes up a large portion of the lot footprint; that then the Applicant built this massive building in the rear yard that could be a five-car garage; that these structures have taken most of the one acre piece of property and he does not know how much water will sit on the surface; that there is standing water on the front side of this property when it does rain; that the water table in that area is up high; that, when there is such a massive building back there and it is close to the property line, who can say how much water is going to be pushed on to the neighbor's property; that there are two lots in the back and, if they come in and put up a building, the amount of impervious surface will cause a lot of runoff; that his problem is with the water runoff and what happens later on with the amount of water that comes off any buildings and it overwhelms the septic drainage field; that, when Mr. Nock is pulling pieces of equipment into the pole barn, it compacted that soil; that he questioned what happens to all the rainwater from that; that he believes the Applicant should go to his contractor to fix the problem; that he believes the pole building can be placed in compliance with the Code; and that there is a similar large building in the neighborhood.

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

Mr. Williamson closed the public hearing.

Mr. Lovenguth moved to table the application for Case No. 13156 for the requested variances, until the next meeting.

Motion by Mr. Lovenguth, seconded by Mr. Kingree, carried that **the application be tabled until January 26, 2026**. Motion carried 3 - 1.

The vote by roll call: Dr. Hitchens – yea, Mr. Kingree – yea, Mr. Lovenguth – yea and Mr. Williamson – nay

Case No. 13157 – James Swalm, Jr. seeks variances from the rear yard setback requirement and separation distance requirements for proposed structures (Section 115-25, 115-172 and 115-183 of the Sussex County Zoning Code). The property is located on the north side of Center Avenue and the east side of Tanglewood Avenue within the Sea Air Village Manufactured Home Park. 911 Address: 19998 Center Avenue, Lot C94, Rehoboth Beach. Zoning District: AR-1. Tax Parcel: 334-13.00-310.00-56929

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received two letters in support of and no correspondence in opposition to the Application, and nine mail returns.

The Applicant is requesting the following variances:

- 6 foot variance from the 20 feet separation distance requirement for a proposed sunroom to shed on Lot 95;
- 6.8 foot variance from the 20 feet separation distance requirement for a proposed outdoor shower to manufactured home on Lot 93; and
- 1 foot variance from the 5 feet rear yard setback requirement for a proposed outdoor shower.

During testimony, it was discovered that the outdoor shower would be detached from the manufactured home, and a variance is not required for the outdoor shower.

James Swalm was sworn in to give testimony for the Application.

Mr. Swalm testified that he is proposing to build a screened in porch that would require a variance from the neighbor properties due to the separation requirements; that the lots within Sea Air are small and unique which makes having structures like the screened in porch difficult without variances; that many residents within Sea Air have similar porches so this is not something out of the normal; that the need for the variances are as follows; that the property is unique; that the dimensions of the surrounding lot and the build-out create a challenge in placing the screen and porch and maintaining the minimum separation distance required by the Code; that the community was laid out in the 1950s and the 1960s and the lots are very small in comparison to the size of what a modern manufactured home would be; that the property cannot otherwise be developed; that, due to the physical circumstances of not only the Applicant's lot, but also the adjoining lot, the back rear corner of the screened in porch could not be developed in strict conformity with the Sussex County Zoning Code; that the Applicant wants to build a screened in porch consistent with the size of the other screened in porches in the community but could not do that without violating the separation distance; that the variances are necessary to enable the reasonable use of the property with the screened in porch; that the need for the variance is not created by the Applicant; that the neighboring shed in question is placed on the exact boundary of my neighbor's property and it is currently not in conformity with the current code but it has been there so long that it has been grandfathered in, which creates practical difficulty; that the variance will not alter the essential character of the neighborhood: the variance, if authorized, would not permanently impair the appropriate use of or development of the adjacent property and would not be detrimental to the public welfare thereof; that Aimee Bennett, the manager of Sea Air Village, wrote in support of the Applicant for the variance; that Ms. Bennett noted that she was before the Board in January 2023; that the exceptional practical difficulties include that there is substantial flooding, the shed and that the lots are disproportionately narrow and smaller than those that would be approved under county current standards and, as a result, the variance would not alter the characteristics of the community; that many, if not the majority, of homes within Sea Air Village have additions, porches, screened rooms, and similar improvements; that the practical difficulties are not in the Applicant's making and believes the request is reasonable; that the Applicant

should be afforded reasonable use of the lot, consistent with other homes in the community; that the variance is the minimum variance to afford relief; that the variance represents the least modification possible of the regulation at issue; that the placement of the screened in porch relative to the neighbor's shed conforms with similar placements within the community; that there are two reasons of wanting to put the screened in porch up; that one is the Applicant's growing family with a total of 9 grandchildren and 10 adults with all the kids and the spouses; that, given the configuration of the property right now, it is very difficult to have more than one family down at a time which represents a challenge; that the space with the screened in porch is necessary because that essentially extends our community space to allow the reasonable use of the property; that the second driving factor for wanting a screened porch in particular is that the Applicant has a deck but there are many days and evenings where the mosquito infestation is so bad that the Applicant cannot be on the deck for more than 30 seconds or a minute; that Ms. Bennett mentioned the water issue in her letter and there is a water drainage issue at the back of the community; that, whenever there is a significant rain, the entire area floods and our property is one of five that floods; that the property borders the country club and there is a fence there with the berm on the other side and the water sits on that side of the fence; that that is 20-30 feet from the deck and all of that water that sits there just creates a massive mosquito infestation; that there is the desire is to give everybody a place where they could enjoy an outdoor space, semi-outdoor space, in a mosquito-free environment when that is necessary.

Mr. Sharp noted that the County previously grandfathered all structures in Sea Air Village in 2007 and considered them non-conforming structures and that the Board previously approved variances in 2023 for the existing structures on the lot.

Mr. Swalm testified that the screened in porch will take over the current deck and close in the entrance to the home; that the stairs will come off the rear of the porch and will go down to a concrete slab that will have an outdoor shower on the back of it; that the outdoor shower could be free-standing and does not need to attach to the home.

Ms. Norwood stated that, if the outdoor shower was unattached, no variance would be needed for that structure.

The Board discussed the Application and asked questions of the Applicant about the size and placement of the screened in porch.

Mr. Swalm testified that the deck was built about a year and a half ago and the back edge of the deck butts up to where the door to the home is; that, if they chose to build the deck any farther toward the front yard, there would have been no way to enter the home; that the edge of the proposed screened in porch is butting up to the decking; that the thought was, build it that way so you can literally go out of the home onto the deck and then that would require the screened in porch to be built covering the other door; that there are significant flooding issues along that side of the property which limit the buildable area and the location of possible structures; that, if they were to shorten the deck there would possibly be an issue with the placement of the pylons and decking that is already approved

and the entrances to the home; that the deck is usable at times; that he could narrow the screen porch to reduce the variance needed but that is not preferred; and that he is aware that the placement of the screen porch could affect the neighboring property's building envelope.

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

Mr. Williamson closed the public hearing.

Mr. Lovenguth moved to reopen the public hearing to ask additional questions of the Applicant, seconded by Mr. Kingree.

Motion carried 4-0.

The vote by roll call: Mr. Kingree – yea, Dr. Hitchens – yea, Mr. Lovenguth – yea and Mr. Williamson – yea

Mr. Lovenguth asked about the property line and if it is on a slight angle?

Mr. Swalm stated that that is the corner in question that creates the need for the variance because the front of the property is larger and the lot slopes in at a diagonal; that he does not want to change the size of the proposed screened in porch as it will significantly minimize the amount of useable area; that being that the separation is due to the distance between his porch and the neighbors shed he should not be penalized because that shed is grandfathered in and allowed to be closer than any new structures; that his neighbor cannot remove the current shed and ask for a larger one in the same location as there is a large well next to the shed which limits the size he has in that location.

Mr. Williamson closed the public hearing.

Dr. Hitchens moved to deny the application for Case No. 13157 for the requested variance, pending final written decision, for the following reasons:

1. The property does not have unique physical conditions;
2. The property could otherwise be developed in conformity with the Sussex County Zoning Code;
3. The variance is not necessary to enable reasonable use of the Property;
4. The exceptional practical difficulty is being created by the Applicant;
5. The variance will alter the essential character of the neighborhood;
6. The variance will substantially or permanently impair the appropriate use or development of adjacent property;
7. The variance will be detrimental to the public welfare; and
8. The variance sought is not the minimum variance necessary to afford relief.

Motion by Dr. Hitchens, seconded by Mr. Lovenguth, carried that **the variance be denied** for the reasons stated. Motion carried 4 - 0.

The vote by roll call: Mr. Kingree – yea, Dr. Hitchens – yea, Mr. Lovenguth – yea and Mr. Williamson – yea

ADDITIONAL BUSINESS

None.

Meeting adjourned at 7:48 p.m.