

MINUTES OF JANUARY 8, 2018

The regular meeting of the Sussex County Board of Adjustment was held on Monday, January 8, 2018, at 7:00 p.m. in the County Council Chambers, 2 The Circle, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Dale Callaway presiding. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, and Mr. Brent Workman. Mr. John Mills was absent. Also in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Ms. Janelle Cornwell – Planning & Zoning Director, Mrs. Jennifer Walls – Planning Manager, and Mr. Jamie Whitehouse – Planning Technician.

The Pledge of Allegiance was led by Mr. Callaway.

Motion by Mr. Mears, seconded by Ms. Magee, to approve the Revised Agenda as circulated and amended. Motion carried 5 – 0.

Motion by Mr. Workman, seconded by Mr. Mears, to approve the Minutes and Finding of Facts for November 6, 2017.

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

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of the Application and one (1) letter in opposition to the Application, and read the letters into the record. Mrs. Walls advised the Board that the Applicant also submitted five (5) additional letters of support with the Application. The Applicants seek a variance of 10.0 feet from the twenty (20) feet rear yard setback requirement for a proposed dwelling with a covered deck, a variance of 6.0 feet from the ten (10) feet side yard setback requirement on the northeast side for a proposed dwelling with a covered deck, a variance of 6.0 feet from the ten (10) feet side yard setback requirement on the southwest side for a proposed dwelling with a covered deck, and a variance of 10.0 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling.

David Sroka was sworn in to testify about the Application and submitted exhibits for the Board to review.

Mr. Sroka testified that the Applicants propose to construct a dwelling on the Property; that

the Property measures 40 feet wide by approximately 102 feet deep; that the Property is narrow and the narrowness makes it impossible to construct a dwelling on the Property in compliance with the Sussex County Zoning Code; that the proposed dwelling will be placed on pilings and will be similar to other homes in the neighborhood; that the dwelling will not alter the essential character of the neighborhood; that the dwelling will enhance the neighborhood; that the variances requested are the minimum variances necessary to afford relief; that Seagrass Plantation owns an adjacent lot which is used for access to the water; that the Applicants recently replaced the bulkhead and raised it; that there are five (5) similar homes on nearby lots; that he purchased the Property in 2015; that he did not use a realtor when purchasing the lot; and that lots in the neighborhood range from 30 feet to 50 feet wide.

Mrs. Walls advised the Board that a variance was granted for Lot 101 (as shown on the tax map) and that the Property is not within a subdivision.

Mr. Sroka testified that the lots with similar sized dwellings to the proposed dwelling are larger lots than the Property and are located in Seagrass Plantations.

Ms. Cornwell advised the Board that Seagrass Plantations is a residential planned community and has different setback requirements than are in place for the Property.

Mr. Sroka testified that the home on Lot 101 is similar to the proposed dwelling; that there was a dwelling previously on the Property and the previous home can be seen on the picture with the water skier; that the previous house was a Cape Code style home; that the previous home was a large home that filled the lot; that the home was removed by a prior owner; that water does not typically come over the bulkhead; that the deck will be elevated; that the Property has a pier and boat lift; that stairs will be located within the footprint of the proposed deck; that there will be no stairs projecting into the side yard or front yard; that the HVAC system will be elevated but will be located below the deck; that the Property is served by central water and sewer; and that the front property line matches the edge of paving of the adjacent street.

Mrs. Walls read a letter of opposition to the Application into the record from the Board of Seagrass Plantation who own the neighboring property.

Mr. Sroka testified that there would be parking for up to 2 cars under the home; that the Property will have other parking spaces as well; that the neighboring lot owned by the homeowners association is used for a fishing pier and kayak access; and that he was unable to find a home that would fit within the building envelope

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

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

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

1. The Property is unique in size and shape;

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

Motion by Mr. Workman to approve the variance failed due to lack of a second and Mr. Workman withdrew his motion.

Motion by Mr. Mears, seconded by Ms. Magee, and carried unanimously that the Application be **tabled until January 22, 2017**. Motion carried 4 – 0.

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

Case No. 12076 – Donald J. McCann - seeks a variance from the front yard setback requirement (Sections 115-42, 115-182, and 115-185 of the Sussex County Zoning Code). The property is located on the southeast corner of the intersection of East Fairfax Court and Lord Calvert Drive. 911 Address: 32530 East Fairfax Court, Millsboro. Zoning District: GR. Tax Map No.: 2-34-29.00-620.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. The Applicant seeks a variance of 19.7 feet from the thirty (30) feet front yard setback requirement along East Fairfax Court for a carport.

Donald McCann, Scott Brown, Edward Underwood, and Clarence Becker were sworn in to testify about the Application. Rick Berl, Esquire, presented the case on behalf of the Applicant and submitted exhibit booklets for the Board to review. The exhibits included a photograph, drawings from the contractor, a building permit / sign, and letters from neighbors.

Mr. Berl stated that the Property is located in the Captain's Grant subdivision; that the dwelling was built in 1988; that a one-car garage was added in the early 1990s; that the Applicant purchased the Property in July 2013 and added a carport; that the carport is used to protect the Applicant's car from the elements; and that the Applicant retained Mr. Brown to construct the carport.

Mr. Brown testified that he is a general contractor; that he entered into a contract with the Applicant to construct the carport; that he obtained the building permit for the carport; that he left a copy of a schematic of the carport with the building permit office; that he was not notified by any Sussex County officials about issues with the proposed location of the carport; that the building permit states that the setback from East Fairfax Court is 30 feet but no Sussex County official pointed this out to him when he obtained the permit; that he assumed that he would be able to build the carport as proposed since he was not told otherwise by Sussex County; and that, if he had known about the encroachment at that time, he would not have constructed the carport.

Mr. Berl stated that Mr. Brown reasonably relied on Sussex County officials at the time

the building permit was issued; that the Property is a corner lot thereby reducing the building envelope; that the garage was already in existence at the time the Applicant acquired the Property; that the construction of the carport off the garage was the only logical place the carport could be located; that the Applicant would not have constructed the carport had he known of the encroachment; that the Applicant reasonably believed that all necessary approvals had been obtained; that the variance has no adverse effect on the neighborhood; that most of the neighbors have submitted letters supporting the Application; and that the variance requested is the minimum variance necessary to afford relief.

Mr. Becker testified that he is a neighbor of the Applicant; that carport is a nice carport; and that he and his neighbors do not object to the carport.

Mr. Underwood testified that he lives across the street from the Applicant; that he has no issue with the carport; and that the carport enhances the neighborhood.

Mr. McCann affirmed the statements made by Mr. Berl as true and correct.

Mr. Brown testified that it would cost at least \$5,000.00 to remove the carport because it is connected to the garage and the roof of the garage would need to be repaired.

Mr. McCann testified that the Property is served by central water and sewer but was previously serviced by well and septic; that there are no visibility concerns with the intersection of Lord Calvert Drive and East Fairfax Court; that the neighbor most impacted by the encroachment supports the Application; that the carport is 26 feet from the edge of paving of East Fairfax Court; and that he has received no complaints about the encroachment.

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

Mr. Mears moved to approve Variance Application No. 12076 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The location of the carport is a logical location as an extension of the garage and access to the street;
2. The exceptional practical difficulty was not created by the Applicant;
3. The builder made a mistake;
4. The carport has no walls so it presents no visibility concerns; and
5. The variance will not alter the essential character of the neighborhood.

Motion by Mr. Mears, seconded by Ms. Magee, and carried unanimously that the **variance be granted for the reasons stated**. Motion carried 4 – 0.

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

Case No. 12077 – Catherine F. Christiansen - seeks variances from the corner front and rear yard setback requirements (Section 115-25 and 115-182 of the Sussex County Zoning Code). The property is located on the east side of Boat Dock Court East at the corner of Boat Dock Court, Boat Dock Court East, and Woodland Circle. 911 Address: 33769 Woodland Circle, Lewes. Zoning District: AR-1. Tax Map No.: 2-34-11.20-273.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. The Applicant seeks a variance of 7.6 feet from the twenty (20) feet rear yard setback requirement for an existing sunroom and a variance of 3.9 feet from the fifteen (15) feet corner front yard setback requirement along Woodland Circle for an existing dwelling.

John McGee was sworn in to testify about the Application and submitted pictures into the record for the Board to review.

Mr. McGee testified that the Property is owned by his mother and is under contract to be sold; that his mother lives in an assisted living facility; that the original dwelling was constructed in 1972 with proper permits; that the Property is irregularly shaped; that the porch addition was placed with proper permits as well; that the structures were believed to conform to Sussex County zoning requirements and homeowner association covenants; that the addition has been on the Property since 1984 / 1989 with proper permits received; that the Applicant would suffer a hardship if the structures were removed; that the owners followed all rules and regulations when placing the dwelling and addition; that the certificates of compliance were received; that the variances will not alter the essential character of the neighborhood; that the Property borders common area owned by the homeowners association; that the common area is located on the side of the Property closest to the encroachments; and that the structures have not adversely affected neighboring properties.

Mr. Sharp advised the Board that variances are also needed for the handicap ramp.

Mr. McGee testified that the ramp was installed because his mother's husband had mobility issues and needed the ramp to access the home; that the buyer intends to keep the ramp; that neighbors have not complained about the encroachments; that encroachments do not pose any visibility concerns with traffic along Woodland Circle; that the Property is served by central water and sewer but was previously served by well and septic; and that the location of the well and septic may have led to the placement of the sunroom in its present location.

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

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

Mrs. Walls advised the Board that the Applicant needs a variance of 18 feet from the twenty (20) feet rear yard setback requirement and a variance of 8.5 feet from the fifteen (15) feet corner yard setback requirement for the handicap ramp.

Mr. Mears moved to approve Variance Application No. 12077 for the requested variances,

including the variances for the handicap ramp, based on the record made at the public hearing and for the following reasons:

1. The Property is unique due the dwelling being built in 1972;
2. There is no possibility the property can be developed in strict conformity with the Sussex County Zoning Code due to the placement of the well and septic;
3. The exceptional practical difficulty has not been created by the Applicant;
4. Certificates of Compliance were issued;
5. The variances will not alter the essential character of the neighborhood; and
6. The requested variances are the minimum variances necessary to afford relief.

Motion by Mr. Mears, seconded by Ms. Magee, and carried unanimously that the **variances be granted for the reasons stated**. Motion carried 4 – 0.

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

Case No. 12078 – Carl R. Doll & Lora J. Doll - seek variances from the side yard and rear yard setback requirements (Section 115-25 of the Sussex County Zoning Code). The property is located on the west side of Grant Avenue, approximately 834 feet south of the intersection of Grant Avenue and Lincoln Drive. 911 Address: 38794 Grant Avenue, Selbyville. Zoning District: AR-1. Tax Map No.: 5-33-20.18-29.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. The Applicants seeks a variance of 4.5 feet from the twenty (20) feet rear yard setback requirement for a dwelling and a variance of 4.5 feet from the ten (10) feet side yard setback requirement on the north side for a dwelling.

Carl Doll was sworn in to testify about the Application and submitted an exhibit into the record for the Board to review.

Mr. Doll testified that the homeowners association has approved the proposal; that the previous home on the Property was a manufactured home that has been demolished; that the Property is an exceptionally small lot measuring 50 feet wide by 90 feet deep; that the dwelling meets the community setback requirements; that the Property is located in Cape Windsor, which was created 50 years ago; that the Property is adjacent to a lagoon in the rear; that the proposed dwelling will consist of approximately 1,934 square feet and will be a two-story dwelling on pilings; that the HVAC system will be located on the south side of the Property and will meet the Sussex County setback requirements; that the Applicants propose to place a garden on the south side of the Property; and that there are no parking issues in the area.

Mrs. Walls stated that the HVAC system, gas system, and outside shower will fall partially within the setback area on the south side of the Property so variances will be needed for those structures as well.

Marty Serge was sworn in to testify in support of the Application. Mr. Serge testified that

site plan prepared by Russell Hammond is the correct site plan; that the HVAC system, outdoor shower, and gas system will be located within the building envelope and no variances are needed for those structures; that, when he designed the home, he understood from the surveyor that the side yard setback requirements were 5 feet; that he helped to design the home and shrunk the home to meet the Sussex County zoning requirements but could not meet the requirements; that Cape Windsor has five (5) feet side yard setback requirements; and that the original survey only showed the Cape Windsor setback requirements.

The Board found that two (2) parties appeared in support of the Application.

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

Ms. Magee moved to approve Variance Application No. 12078 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to its small size;
2. The exceptional practical difficulty has not been created by the Applicant;
3. The subdivision has been in place for a long time;
4. The variances will not alter the essential character of the neighborhood; and
5. The requested variances are the minimum variances necessary to afford relief.

Motion by Ms. Magee, seconded by Mr. Mears, and carried unanimously that the **variances be granted for the reasons stated**. Motion carried 4 – 0.

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

Case No. 12079 – Mark McCreary - seeks a special use exception for a garage / studio apartment (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located on the north side of Wilgus Cemetery Road, approximately 2,200 feet west of the intersection of Wilgus Cemetery Road and Bayard Road. 911 Address: 34615 Wilgus Cemetery Road, Frankford. Zoning District: AR-1. Tax Map No.: 5-33-6.00-115.08.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. The Applicant seeks a special use exception for a garage / studio apartment.

Mark McCreary was sworn in to testify about the Application.

Mr. McCreary testified that he purchased the Property in 2005; that the structure where the apartment is proposed to be located was on the Property at that time and was used as an apartment by the previous owner; that the structure was constructed prior to the dwelling and was used as the prior owner's residence; that, from 2005 to 2015, the Property was rented but the outbuildings were not part of the lease; that the outbuildings were used for storage of tools, furniture, and personal belongings; that he moved to the Property in April 2015 and demolished existing paneling, cabinets, flooring, etc.; that he renovated the structure but did not know that the previous

owner failed to obtain permits for the original work; that his 62 year-old sister suffers from arthritic knees and hands and would benefit from first-floor living quarters, as well as having family on the premises; that his neighbors have indicated support for the Application; that the apartment will have a bathroom and cooking facilities; that the structure had a bathroom and kitchen when he purchased the Property; that the Property consists of 1.23 acres; that there are residences, farmland, and a large wooded parcel consisting of approximately 100 acres nearby; that the Property is fairly isolated; and that he has a designated parking space for the apartment.

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

Ms. Magee moved to approve Special Use Exception Application Number 12079 for the requested special use exception based on the record made at the public hearing and because the structure has been on the Property since 2005 and the use will not substantially adversely affect the uses of the neighboring and adjacent properties.

Motion by Ms. Magee, seconded by Mr. Workman, and carried unanimously that the **special use exception be granted for the reasons stated**. Motion carried 4 – 0.

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

Case No. 12080 – Mike Mullen & Carol Mullen seek variances from the side yard and rear yard setback requirements (Section 115-25 of the Sussex County Zoning Code). The property is located on the west side of Taft Avenue, approximately 191 feet south of the intersection of Old Lighthouse Road and Taft Avenue. 911 Address: 38818 Taft Avenue, Selbyville. Zoning District: AR-1. Tax Map No.: 5-33-20.18-158.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received two (2) letters in support of the Application and no correspondence in opposition to the Application. Mrs. Walls read the two letters of support into the record. The Applicants seek a variance of 4.6 feet from the twenty (20) feet rear yard setback requirement for a proposed dwelling and a variance of 4.4 feet from the ten (10) feet side yard setback requirement on the south side for a proposed dwelling.

Mike Mullen was sworn in to testify about the Application.

Mr. Mullen testified that the Property is located in the Cape Windsor development; that the Property measures 50 feet wide by 90 feet deep; that the Applicants propose to construct a home on the Property; that the home will measure 34 feet wide with side steps measuring 4 feet wide; that the home will be used as a retirement home; that the Applicants are unable to build a home to fit their needs within the building envelope; that the variances will not alter the essential character of the neighborhood; that the home will be an asset to the community; that the HVAC system will be located within the building envelope; that the home will include a two-car garage; that the dwelling is located closer to the rear yard in order to provide parking in the front yard; that the dwelling will be elevated six cinder blocks high but there will not be parking underneath the home; and that his neighbors support the Application.

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

Ms. Magee moved to approve Variance Application No. 12080 for the requested variances based on the record made at the public hearing and for the following reasons:

1. Cape Windsor is an older community with smaller lots; and
2. The Applicants have met the standards for granting a variance.

Motion by Ms. Magee, seconded by Mr. Mears, and carried that the **variances be granted for the reasons stated**. Motion carried 4 – 0.

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

Case No. 12081 – Semaan Abboud - seeks a special use exception to operate a day care facility (Sections 115-80 and 115-210 of the Sussex County Zoning Code). The property is located on the north side of Long Neck Road, approximately 3,293 feet east of the intersection of School Lane, Banks Road, and Long Neck Road. 911 Address: 32695 Long Neck Road, Millsboro. Zoning District: C-1. Tax Map No.: 2-34-24.00-40.09.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of the Application and no correspondence in opposition to the Application. Mrs. Walls read the letter of support into the record. The Applicant is requesting a special use exception to operate a day care facility.

Tanya Gibbs was sworn in to testify about the Application and submitted pictures for the Board to review.

Ms. Gibbs testified that she has been a licensed child-care provider for 12 years; that she wants to provide quality childcare in the area; that the Property is located in Long Neck; that there is adequate space for parking; that there is a unit adjacent to her rental unit and she hopes to expand her business to that unit at some point; that the landlord is a surgeon and he owns nearby properties as well; that the facility will not adversely affect nearby businesses; that there is adequate space for a fenced-in play area; that the facility will be open Monday through Friday from 6:30 a.m. to 5:30 p.m.; that the children served will be aged pre-school to age 12; that the facility will serve approximately thirty (30) children; that the facility is located away from the road; that the facility will employ 6-8 persons; that she has operated a home daycare for 12 years; that she will likely close the home daycare; that the nearby units are commercial units; that the surrounding area is commercial; that the use will not substantially affect adversely the uses of neighboring and adjacent properties; and that the unit consists of approximately 1,500 square feet.

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

Mr. Mears moved to approve Special Use Exception Application Number 12081 for the requested special use exception based on the record made at the public hearing and because the Property is in a commercial zone and the use will not substantially adversely affect the uses of the

neighboring and adjacent properties.

Motion by Mr. Mears, seconded by Mr. Workman, and carried unanimously that the **special use exception be granted for the reasons stated**. Motion carried 4 – 0.

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

Case No. 12082 – Gregory N. Johnson - seeks variances from the side yard and rear yard setback requirements (Section 115-42 of the Sussex County Zoning Code). The property is located on the east side of Mt. Pleasant Road, approximately 1,594 feet south of the intersection of Phillips Landing Road and Mt. Pleasant Road. 911 Address: 31297 Mt. Pleasant Road, Laurel. Zoning District: GR. Tax Map No.: 4-32-6.00-16.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. The Applicant seeks a variance of 4.9 feet from the ten (10) feet side yard setback requirement on the south side for an existing shed, a variance of 6.2 feet from the ten (10) feet rear yard setback requirement for an existing shed, and a variance of 6.3 feet from the ten (10) feet rear yard setback requirement for an existing shed.

Greg Johnson was sworn in to testify about the Application.

Mr. Johnson testified that the shed was constructed by a prior owner in 1984; that the previous owner applied for a building permit; that a Certificate of Compliance was issued in 1985; that the previous owner mistakenly believed that the shed complied with the Sussex County Zoning Code; that the Property was recently sold and a survey prepared for the settlement showed the encroachments; that the shed has been on the Property for 34 years; that the shed has been renovated and its appearance has been improved; that the shed is used strictly for storage; that the surrounding area is rural and there are many poultry houses nearby; and that he recently sold the Property.

Mrs. Walls stated that a building permit and a Certificate of Compliance were issued and that no variance was granted for the shed.

Mr. Johnson testified that he does not believe that additions have been made to the shed since it was originally constructed; that he lived nearby and owned the Property for a brief time; that he constructed the dwelling on the Property but did not make any additions to the sheds; that the sheds have been on the Property since 1984; that the shed is located on a concrete pad and is served by electric; that the shed cannot be moved into compliance; that the panhandle portion of the Property is difficult to use because it is so narrow; that he is unaware of any complaints about the shed; that the Property is served by well and septic; and that the septic system is located in the front yard and the well is located between the house and the shed.

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

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

Mr. Workman moved to approve Variance Application No. 12082 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to the shape and size;
2. The variances are necessary to enable reasonable use of the Property;
3. The shed was not on the Property when the Applicant purchased the lot;
4. The variances will not alter the essential character of the neighborhood; and
5. The requested variances are the minimum variances necessary to afford relief.

Motion by Mr. Workman, seconded by Mr. Mears, and carried that the **variances be granted for the reasons stated**. Motion carried 4 – 0.

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

Case No. 12083 – Lloyd Behney - seeks a special use exception for an indoor shooting / archery range (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located on the northeast corner of the intersection of Parker Road and Bethel Road. 911 Address: 38531 Parker Road, Millsboro. Zoning District: AR-1. Tax Map No.: 3-33-15.00-20.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. The Applicant is requesting a special use exception for an indoor shooting / archery range.

Chad Behney, Jeff Behney, and Lloyd Behney were sworn in to testify about the Application and submitted exhibits for the Board to review.

Jeff Behney testified that he purchased the Property with his brother and father a year ago; that he and his brother and father are firemen and machinists who work on government projects and have security clearances; that he and Chad Behney previously worked for the Department of Corrections and have multiple certifications; that a range master will be onsite at all times the range is in operation; that all employees will have appropriate certifications; that the Property consists of 10.65 acres; that the building is a concrete structure with a metal roof; that an indoor archery range will be constructed with a rubber backstop; that the range will be inspected daily; that the shooting range will have restricted access; that the archery range will be separate from the gun range; that Meggitt Training Systems will design the range; that the range will be designed with safety features and air filtration systems; that the range will be constructed of concrete and steel; that the indoor range will be a “building within a building”; that the range will be designed to pull air away from the shooters; that the building will be designed to limit noise and debris outside the facility; that the noise heard outside the range will be similar to the noise from a regular conversation; that the facility will be regularly cleaned and inspected; that the range will use state of the art lead removal and air purification systems; that all persons at the range will wear appropriate safety equipment; that all range users will be required to follow certain rules; that all firearms will be inspected; that safety procedures will be in place at all times; that the range will have noise canceling insulation to lessen the sound of the range; that the Applicants will host

classes and league shooting activities; that the range will work with first responders; that there is a demand for this service; that the facility will be climate controlled; that there are empty lots adjacent to the site; that the noise outside the range will be no more than 60 decibels; that his neighbor owns 3 adjacent lots and did not object to the proposal; that individuals in the parking lot will not be able to hear the range; that there will be no outdoor live shooting; that he anticipates operating the facility six days a week; that the facility will be surrounded by a fence; that the facility will be staffed by range masters and other personnel; that the facility could be ready by the spring; and that they intend to seek permission for a retail center in the range as well.

Floyd Behney testified that he intends to buy a nearby property as well; that the sound technology greatly limits the noise impact from the range; and that the Environmental Protection Agency discourages the practice of commercial outdoor firing ranges.

Jeff Behney testified that the range will be used by law enforcement personnel; that the parking lot will be lit by security lighting; that the parking lot can serve approximately 50 cars; that, if they seek the retail use, they will have to go through the site plan review process; and that the Applicants seek the approval for a period of five (5) years.

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

Ms. Magee moved to approve Special Use Exception Application Number 12083 for the requested special use exception for a period of five (5) years based on the record made at the public hearing and because the use will not substantially adversely affect the uses of the neighboring and adjacent properties.

Motion by Ms. Magee, seconded by Mr. Workman, and carried unanimously that the **special use exception be granted for a period of five (5) years and for the reasons stated.** Motion carried 4 – 0.

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

OLD BUSINESS

Case No. 12069 – Nan Martino - seeks a variance from the front yard and side yard setback requirements (Section 115-34 and 115-185 of the Sussex County Zoning Code). The property is located at the end of Oakwood Court, approximately 300 feet east of the intersection of Cedarwood Drive and Oakwood Court. 911 Address: 6 Oakwood Court, Lewes. Zoning District: MR. Tax Map No.: 2-34-11.00-175.00.

Mrs. Walls presented the case which has been tabled since December 18, 2017.

The Board discussed the case.

Ms. Magee stated that she does not know where else the pole building could have been placed on the lot; and that the Applicant unfortunately relied on the builder regarding the placement

of the pole building.

Mr. Workman stated that he believes the builder made a mistake.

Mr. Mears stated that this is a hardship on the Applicant.

Mr. Callaway recommended that a letter be sent to the builder.

Mr. Mears moved to approve Variance Application No. 12069 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique;
2. The structures cannot be moved into compliance;
3. There is no possibility the Property can be developed in strict conformity with the Sussex County Zoning Code;
4. The exceptional practical difficulty has not been created by the Applicant;
5. The Applicant relied on her builder;
6. The variances will not alter the essential character of the neighborhood; and
7. The variances requested are the minimum variances necessary to afford relief.

Motion by Mr. Mears, seconded by Ms. Magee, and carried that the **variances be granted for the reasons stated**. Motion carried 4 – 0.

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

Meeting was adjourned at 9:10 p.m.