

MINUTES OF JANUARY 9, 2023

The regular meeting of the Sussex County Board of Adjustment was held on Monday, January 9, 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 Jeff Chorman presiding. The Board members present were: Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. John T. Hastings, Mr. Jordan Warfel - Absent, 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. Hastings and carried unanimously to approve the agenda. Motion carried 4 – 0.

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

Motion by Mr. Williamson, seconded by Dr. Carson and carried unanimously to approve the Minutes for the November 7, 2022, meeting. Motion carried 4 – 0.

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

Motion by Mr. Hastings, seconded by Dr. Carson and carried to approve the Findings of Facts for the November 7, 2022, meeting. Motion carried 4 – 0.

The vote by roll call; Mr. Williamson – yea, Dr. Carson – 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. 12777– John Bobeck seeks variances from the side yard and rear yard setback requirements for an existing garage (Sections 115-34 and 115-183 of the Sussex County Zoning Code). The property is located on the southeast side of Hidden Acre Drive within the Hidden Acres Subdivision. 911 Address: 32113 Hidden Acre Drive, Frankford. Zoning District: MR. Tax Parcel: 134-11.00-76.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received two letters in support of, none in opposition to the Application, and zero mail returns. The Applicant

is requesting variances of 0.7 ft. from the 10 ft. side yard setback requirement on the north side and 1.9 ft. from the 10 ft. rear yard setback requirement for an existing detached garage.

Mr. John Bobeck was sworn in to give testimony about the Application.

Mr. Sharp provided the Board with a recap of the prior application heard by the Board for this property in Case No. 12732. Mr. Sharp stated that the earlier request was denied because it was thought that the pole building measured 20 feet by 30 feet; that the smaller building size reduced the setback requirements to 5 feet and no variance would be needed; that the Board's decision was subject to a final inspection by the Planning & Zoning staff; and that the inspector determined that the pole building actually measured 20 feet by 32 feet so the variances are needed.

Mr. Bobeck testified that he appreciates Mr. Sharp giving a recap of the last meeting and what happened when he had this building constructed; that his neighbor who owned the property before him had built the house; that he said that the prior owner centered the house on the lot; that they were able to find one (1) pin and checked the lines; that it looked like he centered the house on the property; that it was 26 ft. to either side, 38 ft. to the back and front; that they decided to place the pole building but it turns out that they were off by a couple inches on the left hand side; that he forgets who he talked to on the phone but they told him he needed to get a variance; that they told him he would need a survey to apply for the variance; that, when he received the survey, is when he found out that it was off by 2 ft. in the back; that he is here to ask for a variance for 2 ft. back and another 2 inches to the left hand side; that it really was an honest mistake; that hindsight being 20/20, if he had to do it over again, he would have gotten the survey done first; that he apologizes for the last meeting and the mix up with the size of the building; that he had it in his head that it was 20' x 30'; that, when he got home that night and measured, it was 32 ft. that he knew he would again throw himself to the mercy of the board; that he bought the property in 2020 at which time the seller told him that the house was built in the center of the property; that they were able to locate pins in two (2) of the corners but one of the markers was a tree which had rotted out; that he used a tape measurer to mark out where the property lines would be and believed that he was accurate; that he then hired Delmarva Pole Buildings to install the pole building; that none of the required inspections were completed prior to construction of the building; that his plan for the building is a workshop and storage for his vehicle; that he has received no complaints but actually receives compliments about the building; that he has installed electric to the structure for which he pulled a permit; that he has received driveway approval; that there is a buffer of trees behind the property which is farmland; that there was an engineer brought out and met with the County who approved everything except for the final inspection as to the placement of the building; that he has a well and septic which limits the ability to place the pole building; that there is a concrete apron off the building; that the bump out shown on the survey is actually steps; that when they first measured the property thinking that the house was centered he thought that he had 38 ft. from the house to one (1) side of the pole building; that the pole building is 20 ft. wide which would have left him with an additional 10 ft. and exactly what he needed in order to pass inspection; that he measured the building after the last meeting and called the County who said they would be sending someone to measure it; that, for some reason, Delmarva Pole Buildings sent him two (2) coffee cups;

and that he did have some neighbors submit emails of support.

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

Mr. Chorman closed the public hearing.

Dr. Carson moved to approve Case No. 12777 for the requested variances, pending final written decision, for the following reasons:

1. The variances for the structure 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
2. The variances represent the minimum variances necessary to afford relief.

Motion by Dr. Carson, seconded by Mr. Hastings, carried unanimously that the **variances be approved for the reasons stated**. Motion carried 4 – 0.

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

Case No. 12778 – Jaymo Holdings LLC seeks variances from the front yard setback requirement for existing structures (Sections 115-25 and 115-182 of the Sussex County Zoning Code). The property is located on the north side of Teatown Road approximately 580 ft. east of Deep Grass Lane. 911 Address: 13941 Teatown Road, Lot 1, Greenwood. Zoning District: AR-1. Tax Parcel: 130-5.00-9.03

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. The Applicant is requesting variances of 4.2 ft. from the 40 ft. front yard setback requirement for an existing manufactured home, 6.6 ft. from the 40 ft. front yard setback requirement for a set of steps, and 1.2 ft. from the 40 ft. front yard setback requirement for an existing manufactured home.

The Board found that Ms. Mackenzie Peet, Esquire, was present on behalf of the Applicant.

Mr. Moe Adams was sworn in via telephone to give testimony about the Application.

Ms. Peet stated that the property is located at 13941 Teatown Road in Greenwood and is identified as Tax Map Parcel 130-5.00-9.03; that the property is zoned AR-1 (Agricultural Residential); that all of the Sussex County properties in the nearby vicinity are also zoned AR-1; that the Applicant submitted Exhibits A through F with the Application and the subsequently submitted an updated survey reflecting the stairs; that Exhibit A included the property information, deed of record, confirmation that the Applicant is the record owner of the property, legal description, a survey

from 2013 that showed the previously existing manufactured home on the site, and the permit that stated there was a 40 ft. front yard setback; that, nevertheless, the installer placed the home in the front yard setback including the stairs; that Exhibit B was a copy of the Applicant survey to supplement the application; that Exhibit C includes the relevant sections of the Sussex County Zoning Code; that Exhibit D includes aerial maps of the property; that the final documents in the record include the previous approval identified as Case Number 11188; that Case Number 11188 was for a special use exception specifically because they were trying to relocate a manufactured home that was previously on a larger tract of land and a variance from the front yard setback; that, in that case, there was a variance for 6.8 ft. that was sought from the front yard setback requirement for that home; that the record in that case reflected that the previously existing manufactured home had been on the property since the 1970s; that there was an irregular lot that created the hardship at the property; that the property line runs with an existing tax ditch which still limits the development of the site and buildable area of the site; that the property could not be built in strict conformity with the Code; that there is also mention in that approval that this home existed as a manufactured home prior to the stick built homes around the property; that everyone has always known this property as having a manufactured home which they believe is relevant; that Section 115-29 of the Code authorizes the Board to grant requests that meet specific criteria as described in the Applicant's Board of Adjustment application; that the property is a six (6) sided uniquely shaped property with a limited building envelope; that the boundary runs in part with the center of the nearby branch; that the presence of the branch restricts construction in the rear yard portion primarily because, in talking with her client, not Moe Adams but his other partner Jay Roberts, there is some moisture in the back that limits construction; that this is a reason they believe the home was previously located in a similar location on the property; that the manufactured home is currently existing and was placed by a contractor; that the granting of the variances is therefore necessary to remedy this error by the contractor and installer of the manufactured home and stairs in the front yard setback to enable reasonable use of the property; that the exceptional practical difficulty has not been created by the Applicant but by the manufactured home installer that placed the home and stairs in the front yard setback; that, notably, her client cannot obtain a certificate of occupancy without obtaining a variance or moving the now permanently affixed structure; that the home has been anchored and it would be extremely cost prohibitive for them to move the structure; that the variances, if granted, will not alter the essential character of the neighborhood based on the record of the previous location; that the previous home was located in the front yard setback as well and to a greater degree as reflected in the survey that was submitted into the record; that, as stated, other stick built homes nearby that were fully aware of this home and its then-existing location which is relevant because the property is still improved with the manufactured home in a similar but improved location; that the variances requested are the minimum variances necessary to afford relief; that the permit for the current home was issued for a 27' x 48' manufactured home; that they do not have any information about the previously existing home but imagine it was similar in size; that both dwellings are considered a single-wide or single-family manufactured home, so they would say it is consistent, if not, the same as the previous dwelling; that the steps would be an addition to what was previously approved but cannot say as the historical records were not as detailed as they are currently; that the property is served by well and septic; that they used an old survey; that this was discovered at inspection; that they then called Planning and Zoning who

informed them they needed to proceed with the variance application or move the structure; and that, at that point, the manufactured home was affixed to the property and anchored.

Mr. Adams testified that the septic is located on the right side of the house but he does not recall how far back; that the septic is located within the building area; that the statements made by Ms. Peet are true and correct; that he has not been to the property in a bit but, from what he recalls, there is a gap between the property line and the edge of the paving of the road; that there is low lying area on the property; that the property slopes from front to back; and that the rear of the property is more difficult to build on.

Ms. Norwood stated that the footer inspection passed but the issue was discovered at the final inspection.

Ms. Peet stated that the Applicant believes the error was made due to the assumption that the prior home was properly placed on the lot.

Mr. Michael Wilcox was sworn in to give testimony in opposition to the Application.

Mr. Wilcox testified that his property is across the street from the subject site; that some of the statements made by Ms. Peet are inaccurate; that there have been surveyors out there many times before the manufactured home was installed; that he personally spoke with the surveyors; that he understands that it is hearsay but the surveyors even said that there is no way the manufactured home can fit on this property; that the property is not just a little wetland like the owner states but is marsh wetlands; that the side of the house is probably 8 ft. from the creek; that the Applicant brought in a whole mess of sand and built up the property; that the Applicant then came in and started putting the blocks and everything in; that it was definitely a single-wide manufactured home there before and was, in no way, a double-wide; that the water that runs down that road and underneath the house is enormous; that they have up just a silt fence which is full of debris; that the debris will end up in the creek and wetlands; that, in the spring when the snow melts and rain goes in there, he believes there will be water under that house; that he fears someone will spend their hard earned money buying this property and then they are in trouble; that what do they do then with a home on top of a creek; that he believes going into it they knew the house was going to be too big; that he has seen the owners come down multiple times with the surveyors; that they have moved the stakes on multiple occasions; that he thinks the double-wide is too big but a single-wide would be fine; that, even with a single-wide, you would be close to the water but not have half of the house in the creek; that the creek runs right down the side of the house; that, when the owner says it is a little wet, it is actually a swamp land; that, if it was really wet you probably could not even walk on it; that the septic system is by the road; that it is a peat system and they did a really good job; that he thinks the house is just too big for the lot; that they are trying to manipulate their creek and pushing it so they have more property; that it is just not right; that he objects to the home being that close to the road; that people fly up and down the road; that there is a mixed use of vehicle using the road from cars to tractor trailers to combines; that it is a long straight road; that there is 360 degrees of farmland in this community; that the combines

and tractor trailers go up and down the road five (5) to six (6) times a day; that, if there are any cars parked on the side of the road, it will create an issue for rural traffic to get by; that he saw the property when nothing was there but a creek running through; that the body of water goes underneath the road and into the rear of their property; that there is a section of ground that has been cleared which is very low; that on the right side of the driveway is the septic system; that he thinks they thought to themselves that it would be easier to ask forgiveness than to get permission; that he thinks they rushed it in and then said “oops, we need more variances”; that the rear and west side of the property are likely unbuildable due to the swampy and wet conditions; that there is no levelness to the property - rather it is all downhill; that the location was probably the only location it could be placed; that he feels this home is double the size of the previous manufactured home; that the trailer before was a little longer but it was not impeding anything; that now that the house has been moved back and is right by the creek; and that he does not know if they used old surveys but they had all of those guys out there like ten (10) times surveying the property before and during the dirt and even after the home was placed.

Ms. Lisa Wilcox was sworn in to give testimony in opposition to the Application.

Ms. Wilcox testified that she also lives across the street from the subject property; that her concern with the trailer for her is more environmental because she watched them take loads of dirt and push it so much into the creek that it does not flow anymore over to their side; that the creek is now blocked for all of the fish, frogs, livestock, and wildlife that have been using it for years; that she is not an expert on water but, if the water does not flow, then, eventually, it will dry up; that they watched with amazement of how many times people were trying to make it work; that they were out there at 9 or 10 o'clock at night or as late as they could get away with at night working as fast as they could; that they were doing all kinds of stuff on the property and whether it is the owner's fault or the construction people she is not sure; that her problem is the blocking of the waterway; that the Applicant's side was a lot wider before they brought in the sand and made it smaller; that now the water barely trickles through when before it was full flowing; that now, when it rains, there is nowhere for it to go; that she is unsure of which way the water flows as she has never sat and watched it; that she does know that the land does get wet and flooded; that her concern is them piling dirt so they could build up the land and block the water more to put the trailer there; that, when they moved in, the trailer was not there; that the trailer there before had burned down a while before; that the property would flood when there was nothing on it; that, from what their neighbors told them, the previous trailer was a 1970s single-wide which was placed a little closer to the road; that it was not a big trailer which took up a smaller portion of the property and the creek was fine; that her dogs have been walking on the subject property and she keeps them from going over there because it is a muddy mess; that they moved to their property in 2006; that correction it was a year and a half ago; that she is not good with dates; and that the subject property was empty and they got to witness all the craziness going on in the last few months with the placement of the trailer.

Mr. Joel Isaacs was sworn in via telephone to give testimony in opposition to the Application.

Mr. Isaacs testified that he lives next door to the Wilcoxes and directly across the street at an angle from the subject property; that there were no permits posted at any point on the property; that heavy machinery was used up until midnight on several occasions over a 2-3 week period; that, after the property was purchased, they cleared a section of the property and brought in seven (7) or eight (8) loads of fill dirt and pushed the dirt towards the creek; that the back corner of this double-wide trailer which is now in place of the single-wide trailer whose rear corner was falling into the creek; that he has lived here since 1999-2000; that the gentleman who lived there prior is now deceased and the property cleared after his passing; that the septic system installed is very close to the road; that he questions the distance requirement from the septic system to the road; that, during the issues with this property, they make note that a number of individuals were trespassing on their property to do work on the subject site; that the septic system is where the prior owner used to park his car; and that he is concerned where the prospective occupant will be parking its car.

Ms. Peet stated that this is the first she is hearing a lot of this information; that her client can confirm this but her understanding is that the septic was permitted; that any environmental concerns she believes should be directed to DNREC; that she is not aware of any present environmental issues with the property; that the purpose of this hearing is to seek approval of the manufactured home in its present location; that she would like to afford her client a chance to respond to the comments of opposition; that she is tempted to ask for a continuance because her other client who has more information on DNREC and the possible environmental issues was not able to be present for the call; that she is not sure if that would be a motion the Board would entertain but she is limited in the knowledge about any of the issues that were just raised; that the property is for resale; that there are purchasers under contract who need the certificate of occupancy to move forward with the sale; and that the County has a copy of the septic permit as that is required when applying for the permit but she is not aware if that was submitted to be part of the record.

Mr. Adams testified that, regarding the creek that runs along the side of the house, he can assume if it would create a problem for them it would also create a problem across the street; that the creek runs across the street also; that he is unsure how anyone would have a house in the area if the creek posed that much of a problem; that his partner Jay has more of the details of putting the house together; that he is trying to get his partner on the line, as he was unavailable to be on at the start of the meeting; that, as far as the concerns to parking, he is pretty sure that you have to have a driveway on the property; that he does not have the survey in front of him but he is pretty sure that there is a driveway on that property; that, in regards to the comments of individuals parking on the neighbor's property, he can definitely say that it was not him or his partner; that it was likely the contractors or someone doing work in regard to the well or septic and he does apologize as they did not approved of that; and that they have heard no issues from the County on the home being placed on this property.

The Board found that no one appeared in support of and three (3) people appeared in opposition to the Application.

Mr. Chorman closed the public hearing.

Mr. Hastings moved to deny Case No. 12778 for the requested variances, pending final written decision, for the following reasons:

1. The exceptional practical difficulty was created by the Applicant;
2. The variances for those structures will 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 do not represent the minimum variances necessary to afford relief.

Motion by Mr. Hastings. The motion failed for a lack of a second.

Dr. Carson moved to leave the record open for Case No. 12779 until the Board's meeting on February 20, 2023, with limited purpose per the conditions noted below:

1. To allow the Applicant to submit further information on septic and well placement, and any additional information from DNREC or any other appropriate government agency that are needed related to the drainage ditch, the placement of the home and the effect on the creek;
2. To allow the Applicant and the public to comment only on the additional information provided and for that limited purpose only; and
3. To add the Application as an Old Business item on the agenda for the meeting on February 20, 2023.

Motion by Dr. Carson, seconded by Mr. Williamson, carried unanimously that the **record be left open with limited purpose for the reasons stated.** Motion carried 4 – 0.

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

RECESS 7:58 PM – 8:05 PM

Case No. 12779 – Hugh Fuller seeks variances from the minimum lot width requirement for proposed lots (Sections 115-25 of the Sussex County Zoning Code). The property is located on the southeast side of Postal Lane across from Linden Lane. 911 Address: N/A. Zoning District: AR-1. Tax Map: 334-12.00-688.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of, one (1) letter in opposition to the Application, and zero mail returns. The Applicant is requesting a variance of 50 ft. from the required 150 ft. lot width requirement for two (2) proposed lots.

Mr. Hugh Fuller was sworn in to give testimony about the Application.

Mr. Fuller testified that he has an acre of land on Postal Lane; that most of the properties there are all 100 ft. wide properties with houses; that, facing to Postal Lane, there is only one lot left that does not meet that same standard; that there is one other lot that received approval for four (4) units to be placed on the parcel which occurred in August; that he is asking for two (2) lots on two (2) separate parcels; that he has DelDOT approval for placement of the driveways; that the proposed entrances would be to the right of the entrance to Sandy Brae across the street; that the property to the left of the proposed site is owned by him also and was originally part of Aydelotte Farm which is to the left; that his other property on Postal Lane has 79 ft. of road frontage; that 100 ft. of road frontage would actually be larger than several properties on the other side of the road but still be in conjunction with everything in the surrounding area; that sewer and water are available on the site; that he understands one of the objections to his proposal was from Aydelotte Farms and access from their property but there is no way that he could access their property because of the trees that go across the whole property line; that he would have no need to access through their property as he received approval for the placement of two (2) driveways on Postal Lane; that their objection was that the back of the house would be facing their property but no matter what is built the rear will be facing their properties; that the homes he is proposing would be in conjunction with what the properties look like on that road; that Aydelotte Farms does not access onto Postal Lane but rather onto Plantation Road; that the two (2) driveways proposed would be side by side; that his lots are not part of Aydelotte Farms or their homeowners association; that the closest lot to him from Aydelotte Farms which the HOA references as being in conjunction with his lot is out of character with the neighborhood as it is larger than all of the other lots within the subdivision; that Sandy Brae does have access onto Postal Lane; that his property and others on that side are more in line with Sandy Brae's community; that the entire community of Aydelotte Farms is surrounded by arborvitaes; that there are two (2) properties up the road that have multifamily structures on the property; that the uniqueness of the property is that it is oversized for the area it is in; that, if he built a house on this lot, it would stick out by being bigger than all the other homes that are around it; that, to be in conjunction with everything in the area, it would be better to have two (2) smaller lots with two (2) smaller houses; that currently on larger lots people are building bigger houses; that the property can be developed but it would be out of scope with what is there currently; that his house beside this property is a 900 sq. ft. cottage; that a house on this property as it is now would be out of character with his other property; that his other property is the original farm house that was there; that, when he bought the property, which Aydelotte Farms came from it was purchased from the Aydelotte Family; that he only recently purchased this property in April when the owner passed away and it was put into a trust but he has been in this area since he was thirteen (13) years old; that this was not created by the Applicant because he did not create the property; that the lot was this way when he purchased the property; that this lot was created when all of the other lots were subdivided; that, from looking at the lot sizes, in all forms, he is sure that they would have separated it into two (2) lots had they had plans on selling it but at that time they did not have those plans; that this subdivision will not alter the essential character of the neighborhood because it will be in conjunction with the exact same look of all the homes that are there; that all of the homes around are ranchers; that there is only one (1) other two-

story home in the area and it is in Aydelotte Farms; that he is asking for the minimum variance to afford relief to be able to place two (2) single family homes on two (2) individual lots, one (1) for him and the other for his sister; that he could potentially sell one of them now that his sister has her own house; that he thinks Aydelotte Farms would be very pleased with what he would be putting there; that the farmhouse he just remodeled really looks like it is a part of the community; that he just remodeled the little house right next to the subject property; that he has never seen a back up of traffic from Sandy Brae; that his current houses driveway is accessed off a turn lane on Postal Lane; and that he has a letter of no objection from DelDOT.

Ms. Norwood advised the Board that the lot is not a through lot.

Ms. Kathy Davison was sworn in to give testimony in support of the Application.

Ms. Davison testified that she represents the Sandy Brae Homeowners Association; that they reached out to Mr. Fuller as soon as they saw the notice on the property in the paper; that he has been very forthcoming and transparent with what he wants to do on the properties; that they have watched him remodel the smaller property on the corner and it is very tasteful; that she would say that it is much more tasteful than what Mr. Hete has done on the property farther up Postal Lane; that the Warrington's property is also not as tasteful as they are operating a junk business on the property which they received approval to do; that they have confidence in the fact that what will be constructed will be tasteful and complimentary to what Sandy Brae presents; that their only concern would be the placement of the driveways because one (1) appears to come out almost right in front of Linden Lane; that their second concern would be the safety for the residents of Sandy Brae when once again Postal Lane has a hole punched in its brand new road for connections; that they were far from pleased with what happened to their community when the Hete houses were placed and they were hooking them up; that the road was closed, there was limited support from DelDOT, and there was an enormous amount of traffic in Sandy Brae; that they would like to make sure that there is cooperation and communication when this would be happening; that this would likely create a three (3) or four (4) day problem for their immediate area; that they hope if and when this is done that the Board wants this be a safe procedure rather than what they experienced in the month of December when the Hete properties were connected; that the properties she is speaking about are up the road from Mr. Fullers property; that what ended up being placed on that property also did not match what was shown at their public hearings, rather they are old looking stick-built singlewide manufactured homes; that their overall concern with the recent developments on Postal Lane is what is the plan overall for this road; that she is a twenty-one (21) year resident, full time, of Sandy Brae and there has been a large increase in traffic even over the past five (5) years; that they are just trying to be conscious of all of the new activity and the impacts it will have on their neighborhood; that they have no concerns with the design, how the properties will look, or Mr. Fuller's intentions based on what they have seen so far; that Postal Lane is a connector between Plantation Road and Coastal Highway; and that the entire month of December they seemed to be caught in the tail end of DelDOT finishing up projects.

Ms. Cindy West was sworn in to give testimony in opposition to the Application.

Ms. West testified that she is representing Aydelotte Estates and the Board of Directors for their HOA; that she submitted a letter in opposition; that the Aydelotte Farm was at the corner, where this development is, twenty (20) years ago that the bulk of that parcel of land was sold and Aydelotte Estates Community was built; that Ruby Aydelotte, the primary owner, kept the corner which had her home and the perfectly square one (1) acre lot; that she does not know the reason this property was kept but it has now been sold upon her death; that the Aydelotte Estates Community completely surrounds these properties on three (3) sides; that they reviewed Mr. Fuller's application and the criteria for a variance; that she does not believe that some of the criteria have been fully met and wants to address why with the Board; that the uniqueness of the property, there are none, it is a perfectly square one (1) acre parcel of flat ground; that the owner stated that the property is larger than others in the area but there are a lot of other lots in the area; that the lot directly adjacent to his is very large at 37,430 sq. ft.; that the large size of the lot is not part of the uniqueness of the property; that she believes the subdivision of this lot would be for the potential financial gain which also does not qualify as uniqueness; that this property can be developed without subdividing; that the property has no issues, is flat, has access to public water and sewer, and a location that is feasible; that this is created by the Applicant because the current dimension of the lot does not create a difficulty but rather the owners desire to subdivide does; that Mr. Fuller also states that he was not aware that a variance would be required to subdivide the lot; that Mr. Fuller is a real estate consultant in the area and has been for years; that she thinks that knowing about variances and requirements would have been something that would not be a surprise to him; that the condition of Postal Lane is a mess due to the approval of conditional uses and development up the street; that Postal Lane is a two (2) lane road with a 30 mph speed limit that intersects with Plantation Road; that the addition of two (2) more driveways, that are going to be blind because of the location and vegetation, would be an accident waiting to happen; that the property itself is awkwardly shown, rather plopped into the midst of their community; that the way the homes would be built the backs of homes would be facing their community where all the residents would be looking at the backs of the homes; that they understand that Sandy Brae has the impression that the homes are going to be a certain style or they trust that they are going to be okay, they just do not know based on their experience with the homes up the street placed by Mr. Hete; that they do not know the design, the structure, the aesthetics, or how they will be set; that they are concerned that the placement of these homes will affect the character of the neighborhood as well as their property values; that they are concerned with the resale value of their homes if this property is developed as Mr. Fuller is proposing; that they do not believe that four (4) of the criteria have been met; that their concern is also with a busy Postal Lane and the addition of two (2) driveways contributing to a busier and more dangerous traffic situation; that they are a private community with private roads; that they will not grant access through their community for construction vehicles, parking, or anything on their roads or properties; that it may impact Sandy Brae because construction vehicles are probably going to have to park in their neighborhood; that there is a potential for serious issues here, of safety, aesthetics, and just the whole situation; that she believes the County Code was put in place for a reason and should be followed; that the County Code was strictly enforced and followed twenty (20) years ago when their homes were built and should be also with this request; and that they unfortunately know that any house on the subject property will have

the rear facing their neighborhood and it is a concern of theirs.

Mr. Fuller testified that the property will get public sewer and water; that he submitted that with his application; that the property is unique because, if he does build a house on it, it would be much larger than the other homes on that street; that the houses in the area are rancher style homes all the way across the whole street; that, if he builds one (1) home on the lot, it has the potential to be a 7,000 or 8,000 square foot home; that, with their barrier around the property, in question they would not see a one-story home but with a larger home they would be able to see into the backyards of the neighbors in Aydelotte Estates; that, as far as the traffic concerns, this is nothing new in the Lewes, Rehoboth Beach area, or anywhere on the Eastern Shore; that all of the roads within one block of Route 1 from Lewes to Ocean View are busy roads and others are still able to build on their properties; that traffic should not be the main deterrent; that he would be willing to work with the County and the neighboring properties as to when they would install the sewer to create the smallest impact; that he is not in a rush to build; that he was looking to build for him and his sister at one (1) point but he definitely would still like to build for himself; that the other lot up the road which gained approval for four dwellings is a perfectly square lot with no water or ponds on it and they were able to put four (4) houses on it; that he sent out information on what he is proposing to the Aydelotte Estates HOA, same as he did for Sandy Brae, and had they contacted him like Ms. Davidson he would have given them any information they asked for; that he is going from a 42 ft. tall house and looking to build a one-story home; that he wants to be able to walk around because he is getting older and his knees do not work as good; that he bought the Aydelotte farm house but on the corner is a huge old pole barn that he would consider an eye sore yet no one made mention of it; that Aydelotte Estates had the same opportunity to purchase the property that he did; that the property sold for \$800,000; that he looked at doing a conditional use similar to the property up the street but not as seriously as he was looking at his proposal before the Board; that he had thought about two (2) townhomes facing a shared driveway but the backs would be facing the neighboring properties and he figured they would have more issue with the orientation of those houses than what he has currently proposed; that he does not believe that placing two (2) ranchers or two (2) smaller homes would be out of character with that whole community; that he believes one (1) large house would really look out of place; that his current lot is about 79 ft. wide, very narrow and about 179 ft. deep; that he remodeled the entire house on that property from floor to roof to ceiling joist; that the entire house was under construction and he never had to use neighboring properties for anything; that he does not see how construction on an acre of land would put construction vehicles on any other property; that traffic is bad on that road but it is mainly the speed at which people travel; that he has never seen traffic back up and he is close to an intersection; that he has never witnessed people having trouble getting in and out of Sandy Brae; that he is sure its happened but he has never witnessed it; that this is not about financial gain but rather something that he was building for himself and his family; that regardless of what he does for a living this was for him and where he planned to live and still does; that putting a large home next to his existing property would be out of character with the neighborhood; and that half acre lots are still very large lots in conjunction with what is in the surrounding area.

Ms. Kathy Hailey was sworn in to give testimony in opposition to the Application.

Ms. Hainey testified that they never received any information to the Aydelotte Estates HOA; that she is the treasurer of the HOA and picks up the mail every other day at the Nassau post office; that they have received nothing; that all of the information they received was online or what they acquired from the sign; that, at the back of Aydelotte Estates, there is maybe 10-12 ft. between the road and the barrier this is about 6-7 shrubs; that this barrier would not block anything that is there; that their one (1) resident who lives next to the lot does have a large lot but it is the largest in their community; that she has about $\frac{3}{4}$ of an acre but most of their lots are probably just maybe half a lot maybe a little bit higher; that it depends on where you live in the community; that the lot backs up against Postal Lane and to have two (2) more driveways and more traffic on the road will be detrimental; that it is a two (2) lane road with a 30 mph speed limit which is not obeyed; that, in the summer time, the traffic regularly backs up; and that her concern is for the safety of not only the person that may live in this home but also their residents because there is a lot of traffic in part due to the new development by Schell Brothers on Cedar Grove Road with the addition of 205 homes that use Postal Lane to reach Route 1.

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

Mr. Chorman closed the public hearing.

Mr. Hastings moved to approve Case No. 12779 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions;
2. The exceptional practical difficulty was not created by the Applicant and;
3. The variances represent the minimum variances necessary to afford relief.

Motion by Mr. Hastings, seconded by Dr. Carson, that the variances be granted for the reasons stated. Motion failed 2 – 2. Pursuant to Board Rule 6.5, the Application was denied for failure to receive 3 affirmative votes.

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

Mr. Williamson and Mr. Chorman both noted that they believed the need for the variances was being created by the Applicant.

RECESS 7:58 – 8:05

Case No. 12780 – Sea Air Village seeks variances from the separation distance requirements for proposed structures (Sections 115-25 and 115-172 of the Sussex County Zoning Code). The property

is located on the corner of Center Avenue and Tanglewood Avenue, Lot C94, within the Sea Air Village Manufactured Home Park. 911 Address: 19998 Center Avenue, Rehoboth Beach. Zoning District: AR-1. Tax Parcel: 334-13.00-310.00-3369

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 178 mail returns. The Applicant is requesting variances of 0.7 ft. from the 10 ft. separation distance requirement between accessory structures from a shed on Lot B-95 to a proposed shed, 7.1 ft. from the 20 ft. separation distance requirement between the manufactured home on Lot B-93 for a proposed manufactured home, 3.9 ft. from the 20 ft. separation distance requirement between the proposed manufactured home and shed on Lot B-93, 6.9 ft. from the 20 ft. separation distance requirement between the proposed manufactured home and shed on Lot C-92, 9.1 ft. from the 20 ft. separation distance requirement between the proposed landing and the manufactured home on Lot C-92, 5.1 ft. from the 20 ft. separation distance requirement between the proposed manufactured home and the manufactured home on Lot C-92, and 4.9 ft. from the 20 ft. separation distance requirement between the proposed manufactured home and the manufactured home on Lot C-92.

Ms. Aimee Bennett was sworn in to give testimony about the Application.

Ms. Bennett testified that she is here to request a few variances; that the property is unique due to it being a corner lot which is more sizeable than other interior lots in the community however it is uniquely narrower than the surrounding lots; that the lot is uniquely narrow which has caused the surrounding lots to create a placement challenge for this manufactured home; that this lot was laid out with others in the community in the 1950s and 1960s; that the lot sizes are small in comparison with the modern-day manufactured homes; that they selected a standard size floor plan that is consistent with what they would put on similar sized corner lots but are unable to place it on the lot while maintaining the required setbacks; that the narrow shape of the surrounding lots and the build-up thereof has made it difficult to place a new manufactured home consistent with others in the neighborhood while maintaining compliance with the Sussex County Zoning Code; that, in regard to cannot be otherwise developed, due to physical circumstances on this lot and the adjoining lot, the property cannot be developed; that to ensure conformity with the Sussex County Zoning Code they propose to place a normal width size manufactured home that is consistent with other homes in the community and a standard size shed that is consistent with other new homes in the community; that they are unable to do so without violating the separation distance requirements between the neighboring manufactured homes and their accessory structures, such as sheds, the stairs, or HVAC systems; that the variances are necessary to enable reasonable use of the property and changing placement within the lot will not eliminate the need for variances; that there are some barriers to developing the home or developing the lot; that the streets are higher than the lots; that on the west side of the lot is a culvert that carries water; that, when there is an overflow the side of the lot, that goes down Tanglewood, is always moist and would require additional reinforcements with piers that they are required to put underneath the manufactured home; that, in addition to that, they have learned since replacing and exploring placement issues that the water line actually truncates at the edge of

between lot C92 and C94, so it does not go all the way into the interior of the end cap lot; that this would require them to run new infrastructure to place the home elsewhere within the lot; that the exceptional practical difficulty has not been created by the Applicant; that the property itself is sufficient to contain the proposed home within the lot with limited accommodation, however, the neighboring lots being narrow has caused the development of the lots to be near the lot lines and it appears impossible to place a home on the property without violating separation distance requirements; that this exceptional practical difficulty was created by the unique conditions of the property itself and the development of the adjacent lots; that the existing home on the lot is failing and the existing homeowner seeks to replace the home with a new build; that the home currently on the lot is a 1975 model; that, while the home is almost an equal size and width, the new builds come a little bit longer and that is why they are running into placement issues at the back of the lot; that the variances will not alter the essential character of the neighborhood nor will they substantially or permanently impair the appropriate use or development of adjacent property, nor will they be detrimental to the public welfare thereof; that the variances are being sought to replace an aging and failing home that currently exists on the lot and to add to conformity of the community by modernizing the homes within the community which will subsequently add value and improve the characteristics of the neighborhood; that these variances are the minimum variances that should be afforded to the lot; that the variances sought are the minimum and necessary to afford relief; that the variances requested represent the least modifications to the regulation at issue; that while the modifications to the placement of the home could be made, the overall need for an exception for the various distances cannot be entirely averted in any one scenario; that the placement requested conforms with similar placements in the community which will help future placement needs of neighboring homes as they arise in years to come; that, as a reminder for the Board, though she is sure that you are familiar, Sea Air Village was planned and developed prior to Sussex County Zoning Code requirements and setbacks being put into place; that because the unit is failing, if the variances are not granted the home would probably be surrendered at which point it would be demolished and the need for a new home on the lot would still be present; that they are dealing with a materials issue; that the company which they purchase homes from is not offering a narrower unit; that they do offer a single-wide unit but historically on corner lots they have placed doublewides because they can accommodate making it the standard placement in their community; that the current home on the lot is a single-wide with a full size addition, making it the dimensions of a double-wide; that it is not the width that is an issue but the length; that single-wides are nearly equal in length to the double-wides; that they could shift the placement slightly but would have to redevelop the driveway and would run into issues at the back corner of the home where it is just 5 ft. off the lot because the lot is diagonal there, there is a fence, and it would cause them to shift dramatically forward; that, if they moved the home forward, they would need to find placement for the driveway; that what the map does not show is that the corner below and to the left of the existing driveway is almost all swamp; that, if they move the home up they only have, from the closest corner, 20-21 ft. from the stairs to place the driveway, a standard parking space is roughly 12 feet by 20 feet; that the shifting of the home placement would still not alleviate the need for variance and would reduce the other requirements on the lot; that another part of the uniqueness is that the buildings on Lot 92, they are unaware of the record of when they were placed in relation to the setback requirements, but it is nearer to the lot line than most homes;

that, if they were to move the dwelling over, they would still have to shift forward on the lot to maintain the 5 ft. setback in the rear which would truncate the space available for a driveway because from the edge of the driveway over would not support it; that they have tried to maintain conformity with what the other house placements on the street were; that what is not shown on the map picture is that where the purple line across Tanglewood, on the other side of the street is where all of the community water is; that the roads are higher than the lots, which should not have happened in the first place, and it directs the water towards the back of the property to keep it from going into peoples lots; that placing a single-wide is only a difference of a few feet and with what is currently placed there they are not making a substantial change; that they are able to get single-wide homes but historically their corner lots are at a premium so they would have to change their pricing if the lot was no longer going accommodate a double-wide which would be a financial change for them; that the property is fully developed and there is no room for any more lots; that she would not refer to the lot as marshy but it does get a lot of moisture that begins at about the edge of the existing driveway; that she would be more comfortable moving the shed up or over into the wet area, if that would assist the Board in making the decision about the variances; that the proposed shed could be moved forward; and that they amend their application to remove the variance request for the shed.

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

Mr. Chorman closed the public hearing.

Mr. Williamson moved to approve Case No. 12780 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to the front left corner of the lot;
2. That, due to the physical conditions, the property cannot be developed in strict conformity with Sussex County Zoning Code and the variances for those structures are necessary to enable the reasonable use of the property;
3. The exceptional practical difficulty was not created by the Applicant;
4. 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
5. The variances represent the minimum variances necessary to afford relief.

As part of this motion, Mr. Williamson noted that the variance for the shed was not included in the approval as the Applicant has withdrawn that request.

Motion by Mr. Williamson, seconded by Dr. Carson, carried unanimously that the **variances, except for the shed, be granted for the reasons stated.** Motion carried 4 – 0.

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

Case No. 12781– Sea Air Village seeks variances from the separation distance requirements for proposed structures (Sections 115-25 and 115-172 of the Sussex County Zoning Code). The property is located on the southeast side of Center Avenue, Lot D41, within the Sea Air Village Manufactured Home Park. 911 Address: 19883 Center Avenue, Rehoboth Beach. Zoning District: AR-1. Tax Parcel: 334-13.00-310.00-3375

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 178 mail returns. The Applicant is requesting variances of 7.5 ft. from the 20 ft. separation distance requirement between the shed and the manufactured home on Lot D-39, 1 ft. from the 10 ft. separation distance requirement between the shed and the shed on Lot E-42, 13.6 ft. from the 20 ft. separation distance requirement between the manufactured home and the shed on Lot E-42, 6.3 ft. from the 20 ft. separation distance requirement between the manufactured home and shed on Lot E-42, 3.4 ft. from the 20 ft. separation distance requirement between the HVAC and screen porch on Lot D-43, and 0.4 ft. from the 20 ft. separation distance requirement between the manufactured home and screen porch on Lot D-43.

Ms. Aimee Bennett was previously sworn in to give testimony about the Application.

Ms. Bennett testified that the uniquely narrow dimensions of this lot create a challenge in placing the manufactured home and maintaining minimum separation between homes and accessory structures; that this lot was laid out with others in the community in the 1950s and 1960s, prior to the current county requirements for separation distances; that the lot sizes are small in comparison with the size of the modern-day manufactured home; that they have selected a standard size floorplan for this home that is comparable to other new homes in the community but are still unable to place on the lot with the required setbacks; that the narrow shape of the lot and the previous build out of the surrounding adjacent lots makes it difficult to place a new manufactured home on the property consistent with others in the neighborhood while maintaining compliance with Sussex County's Zoning Code; that, due to the uniqueness of the property, the property cannot be developed in strict conformity with the Sussex County Zoning Code; that they have proposed to place a normal width size manufactured home that is consistent with other new homes in the community and a standard size shed that is consistent with other new homes in the community but are unable to do so without violating the separation distance requirements between neighboring manufactured homes and accessory structures; that the variances are necessary to enable reasonable use of the property and, without the variances, the property cannot be developed; that the exceptional practical difficulty has not been created by the Applicant; that the property is quite narrow which greatly limits the buildable area; that the neighboring lots are also narrow causing development of nearby lots to be nearer to lot lines / neighboring homes; that it appears impossible for a home to be placed on the property without violating the separation distance requirements; that the exceptional practical difficulty was created by the unique conditions of the property and the development of adjacent lots; that the variances 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 public welfare; that they are seeking the variances to add to the conformity to the community and to modernize the homes within the community which will subsequently add value and improve the characteristics of the community/neighborhood; that the variances sought are the minimum variances necessary to afford relief; that the variances requested represent the least modifications possible of the regulations at issue; that the home is the narrowest currently available and minimizes the need for variances on the property; that there is a 1 ft. separation between the proposed manufactured home and the proposed shed on this lot; that this is the minimum distance when trying to fit the structures on the property; that moving the shed would alter the variance request; that this distance is pretty standard based on the proximity of the lots; and that they could move the shed forward slightly but it would create a greater need for variance from other neighboring lots.

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

Mr. Chorman closed the public hearing.

Dr. Carson moved to approve Case No. 12781 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique physical conditions;
2. The variances for those structures will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare; and
3. The variances represent the minimum variances necessary to afford relief.

Motion by Dr. Carson, seconded by Mr. Williamson, carried unanimously that the **variances be granted for the reasons stated.** Motion carried 4 – 0.

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

Case No. 12782– Sea Air Village seeks variances from the separation distance requirements for proposed structures (Sections 115-25 and 115-172 of the Sussex County Zoning Code). The property is located on the northwest side of Atlantic Avenue, Lot E74, within the Sea Air Village Manufactured Home Park. 911 Address: 20040 Atlantic Avenue, Rehoboth Beach. Zoning District: AR-1. Tax Parcel: 334-13.00-310.00-3148

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 178 mail returns. The Applicant is requesting variances of 9.2 ft. from the 20 ft. separation distance requirement from the landing to HVAC on Lot E-76, 6.1 ft. from the 20 ft. separation distance requirement from the landing to the manufactured home on Lot E-76, 2.1 ft. from the 20 ft. separation distance requirement from

the manufactured home to the manufactured home on Lot E-76, 2.1 ft. from the 20 ft. separation distance requirement from the manufactured home to the shed on Lot E-76, 1.4 ft. from the 10 ft. separation distance requirement from the shed to the shed on Lot E-76, 4 ft. from the 20 ft. separation distance requirement from the shed to the manufactured home on Lot D-75, 7.7 ft. from the 20 ft. separation distance requirement from the manufactured home to the manufactured home on Lot D-75, and 6.5 ft. from the 20 ft. separation distance requirement from HVAC to the landing on Lot E-72.

Ms. Aimee Bennett was sworn in to give testimony about the Application.

Ms. Bennett testified that the uniquely narrow dimensions of this lot create a challenge in placing the manufactured home and maintaining minimum separation between homes and accessory structures; that this lot was laid out with others in the community in the 1950s and 1960s, prior to the current county requirements for separation distances; that the lot sizes are small in comparison with the size of the modern-day manufactured home; that they have selected a standard size floorplan for this home that is comparable to other new homes in the community but are still unable to place on the lot with the required setbacks; that the narrow shape of the lot and the previous build out of the surrounding adjacent lots makes it difficult to place a new manufactured home on the property consistent with others in the neighborhood while maintaining compliance with Sussex County's current zoning code; that she is submitting a photo to better show the need for variance; that she wants the Board to understand that this lot is heavily tree lined; that they would incur a large cost to remove the trees; that the placement of the home on this lot is in order to preserve as many trees as possible; that, due to the uniqueness of the property, the property cannot be developed in strict conformity with the Sussex County Zoning Code; that they have proposed to place a normal width size manufactured home that is consistent with other new homes in the community and a standard size shed that is consistent with other new homes in the community but are unable to do so without violating the separation distance requirements between neighboring manufactured homes and accessory structures; that the variances are necessary to enable reasonable use of the property and, without the variances, the property cannot be developed; that the exceptional practical difficulty was has not been created by the Applicant; that the property is quite narrow which greatly limits the buildable area; that the neighboring lots are also narrow causing development of nearby lots to be nearer to lot lines / neighboring homes; that it appears impossible for a home to be placed on the property without violating the separation distance requirements; that the exceptional practical difficulty was created by the unique conditions of the property and the development of adjacent lots; that the variances 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 public welfare; that they are seeking the variance to add to the conformity to the community and to modernize the homes within the community which will subsequently add value and improve the characteristics of the community / neighborhood; that the variances sought are the minimum variances necessary to afford relief; that the variances requested represent the least modifications possible of the regulations at issue; and that the home is the narrowest currently available and minimizes the need for variances on the property.

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. 12782 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique physical conditions;
2. That, due to the physical conditions, the property cannot be developed in strict conformity with Sussex County Zoning Code and the variances for those structures are necessary to enable the reasonable use of the property;
3. The exceptional practical difficulty was not created by the Applicant;
4. 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
5. The variances represent the minimum variances necessary to afford relief.

Motion by Mr. Hastings, seconded by Mr. Williamson, carried unanimously that the **variances be granted for the reasons stated.** Motion carried 4 – 0.

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

ADDITIONAL BUSINESS

Mr. Sharp announced the passing of former Board Member Margaret Hudson. It was noted that she was a Board Member from 1980 through 1998. The Board sends its condolences to her family.

Meeting adjourned at 8:45 p.m.