

MINUTES OF JULY 15, 2019

The regular meeting of the Sussex County Board of Adjustment was held on Monday, July 15, 2019, 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 Chair Ellen Magee presiding. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, Mr. Vincent Robertson, Esquire – Assistant County Attorney, and staff members Ms. Janelle Cornwell – Planning and Zoning Director, Mr. Jamie Whitehouse – Planning Manager, Ms. Samantha Bulkilvish, Planner, and Ms. Ann Lepore – Recording Secretary.

The Pledge of Allegiance was led by Ms. Magee.

Motion by Mr. Workman, seconded by Dr. Carson, and carried unanimously to approve the revised agenda. Motion carried 5 – 0.

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

PUBLIC HEARINGS

Case No. 12327 – Service Glass Co., Inc seeks a special use exception to use a manufactured home type structure for an office (Sections 115-80 and 115-210 of the Sussex County Zoning Code). The property is located on the southwest corner of Figs Rd. and W. Stein Hwy. (Rt. 20). 911 Address: 6102 W. Stein Hwy., Seaford. Zoning District: C-1. Tax Parcel: 531-12.00-43.00

Ms. Bulkilvish 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 one mail return. The Applicant is requesting a renewal of Case Number 11346 granted on March 24, 2014 for a special use exception to use a manufactured type structure as an office for a five-year period.

Mr. Sharp recused himself from this hearing and Mr. Vince Robertson, Assistant County Attorney, took Mr. Sharp's place.

Michelle Booth was sworn in to give testimony about the Application. Mr. James Fuqua, Esquire, presented the Application on behalf of the Applicant and submitted an exhibit booklet and letter of support from the property owner, Mr. Donald Ward.

Mr. Fuqua stated that this is an application for a renewal of Special Use Exception for a manufactured home type structure as an office for Service Glass Co., Inc.; that the business is located on the south side of West Stein Highway and fronts on Figs Road; that the business has been in existence for over 30 years; that there are seven employees and a number of subcontractors employed by Service Glass Co.; that this Special Use Exception was originally granted in 2009, renewed in 2014 and the Applicant is now requesting an additional five years; that in 2014 the Board found that the use did not have any adverse effect on adjacent or neighboring properties; that the skirting was

installed on the manufactured structure as required; that the Applicant did consider a permanent building but it is not economically feasible as the property is not owned by Service Glass; that nothing significant has changed for the use or in the area over the past five years; and that the continued use will not substantially affect adversely the uses of adjacent and neighboring property.

Ms. Booth affirmed the statements made by Mr. Fuqua as true and correct.

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

Dr. Carson moved to approve Application No. 12327 for a Special Use Exception for a period of five years as it will not substantially affect adversely the uses of adjacent and neighboring properties.

Motion by Dr. Carson, seconded by Jeff Chorman, and carried that the **special use exception be granted for a period of five (5) years the reasons stated.** Motion carried 5 - 0.

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

Case No. 12328– Faith United Methodist Church seeks variances from the front yard setback requirements for proposed and existing structures (Sections 115-82 and 115-182 of the Sussex County Zoning Code). The property is located on the southwest corner of Church St. and Canal Crossing Rd. 911 Address: 19940 Church St., Rehoboth Beach. Zoning District: C-1. Tax Parcel: 334-13.20-36.00

Ms. Bulkilvish 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 eight mail returns. The Applicant is requesting a 58 ft. variance from the required 60 ft. front yard setback for an existing church with a proposed ramp.

Mr. Sharp recused himself from this hearing and Mr. Vince Robertson, Assistant County Attorney, took Mr. Sharp's place.

Michael Cohalan, Architect, was sworn in to give testimony about the Application. Mr. Cohalan presented the case on behalf of the Applicant and referred to his electronic presentation.

Mr. Cohalan testified that this Application is for Faith United Methodist Church to expand the existing church which has been in existence prior to zoning code; that the property is unique as it is only 0.41 acres in the shape of the letter L; that the required 60 ft. setback covers more than 50% of the existing church building and that the church is only 7.15 ft. from Church Street; that strict enforcement of the 60 ft. front yard setback would preclude construction anywhere but in the rear of the church which is needed for parking; that it was not created by the Applicant as the church was built in the early 20th century; that it will not alter the essential character of the neighborhood as this

building has been in existence for almost 100 years; that the addition will be designed to keep the character of this historic building; and that it is a minimum variance to add a ramp to the front of the existing church.

The Board found that thirteen people appeared in support of and none in opposition to the Application.

Mr. Workman moved to approve Application No. 12328 as the size and shape of the lot make it difficult and unique; the building is old and the variance is necessary to enable the use of the property; the variance will not alter the essential character of the neighborhood; and this is a minimum variance to afford relief with the least modifications.

Motion by Mr. Workman, seconded by Dr. Carson, and carried that the **variance be granted for the reasons stated**. Motion carried 5 - 0.

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

Mr. Sharp returned to Council Chambers and Mr. Robertson left.

Case No. 12333 – Bryan Ulishney & John Kadash seek variances from the front yard and side yard setback requirements for proposed structures (Sections 115-42 and 115-182 of the Sussex County Zoning Code). The property is a through lot located on the east side of Norwood St. approximately 29 ft. east of Dunbar St. in the West Rehoboth subdivision and on the west side of Hebron Rd. 911 Address: 158 Norwood St., Rehoboth Beach. Zoning District: GR. Tax Parcel: 334-13.16-61.00

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received no correspondence in support of and two letters in opposition to the Application and two mail returns. The Applicants are requesting the following variances:

- 29.83 ft. from the required 40 ft. front yard setback from Hebron Road for a proposed dwelling.
- 33 ft. variance from the required 40 ft. front yard setback from Hebron Road for a proposed HVAC Unit
- 33 ft. variance from the required 40 ft. front yard setback from Hebron Road for a proposed second HVAC Unit
- 29.75 ft. from the required 40 ft. front yard setback from Hebron Road for a proposed dwelling.
- 30.92 ft. from the required 40 ft. front yard setback from Hebron Road for proposed steps.
- 19.5 ft. variance from the required 30 ft. front yard setback from Norwood Street for a proposed dwelling.

Bryan Ulishney and John Kadash were sworn in to give testimony about the Application. Ms. Taylor Trapp, Esquire, presented the Application on behalf of the Applicants.

Ms. Trapp stated that the property is unique due to the shape and size of the lot; that the property is a through lot with two front yard setbacks making the building envelope too small to build a reasonable size home; that the lot consists of less than 10,000 square feet; that there is a sidewalk along Hebron Road; that it cannot otherwise be developed without the requested variances as the home could not exceed 560 square feet if built within the setbacks; that there is less than 2,000 square feet in the triangle portion of the lot; that the exceptional practical difficulty was not created by the Applicants; that the Applicants own the property (Lot 4) adjoining the property on this Application, but have no plans to join the lots or to build on the vacant lot at this time; that the property's unique shape and narrowness existed prior to the Applicants' purchase of the property; that the variances will not alter the existing character of the neighborhood as many of the lots are pre-existing small lots with dwellings that are built within setbacks; that building this home will increase the value of homes in West Rehoboth; that the only access will be from Norwood Street; and that the variances are the minimum variance requests to allow the Applicants to build a reasonably sized home.

Mr. Ulishney testified that the property is serviced by public water and sewer; that it will be a two-story home; that there will be no curb cut onto Hebron Road as it was denied by DeIDOT and the only access will be from Norwood Street; that there is approximately 10 ft. from the property line to the sidewalk and approximately another 5 ft to the edge of paving on Hebron Road; and that there will be no visibility issues having the home closer to the road.

Mr. Ulishney affirmed the statements made by Ms. Trapp as true and correct.

Eleanor Marchtmon, Laura Matheu, Brenda Milbourne, Tara May, Stephanie Shelton, Gwendoline Ballen Blackburn, Barbara Baker, Angelita Jarvis, Carman Blackwell and Michael May were sworn in to give testimony in opposition to the application.

Ms. Marchtmon testified that she opposes the Application; that she lives on Dunbar Street; that there are mostly single-story homes in the area; that there are larger, 2-3 story homes as well but those homes are not in the character of the neighborhood; that a two-story home will alter the character of the neighborhood; that her mailbox was recently moved by contractors; that the Applicants are cleaning up the lot; and that she has lived in the neighborhood for 41 years.

Ms. Matheu testified that she submitted a letter opposing this application; that the proposed house will overshadow the home of Ms. Shelton; and that she has concerns about the fencing.

Ms. Shelton testified that she owns lot 2 on Norwood Street next to the Applicant's property and that granting the variances would make the proposed home too close to her home.

Ms. Ballen Blackburn testified that she is a local realtor; that the buyers sent a letter requesting some of Ms. Shelton's property; that the Applicants stated they were building a small cottage on each of their lots; that now the plans have changed from what the Applicants originally stated; that most of the neighbors have lived in West Rehoboth their entire lives; that the subdivision is not far from downtown Rehoboth; that most of the homes in the area are mobile homes; that a two-story home will overshadow neighbors; and that the Applicants failed to meet the criteria for granting a variance.

Ms. Milbourne testified that she is concerned about the safety of Ms. Shelton in case of fire should the variances be granted for this home to be built.

Ms. May testified that she and her husband own lot 3 next to Ms. Shelton; that they are building a three-story home; that the lot is narrow but they are building within the building envelope; that her family currently lives in D.C. but plan to make the home in Rehoboth Beach their primary residence within four to five years; that she supports development but feels the current residents and properties need to be respected; that she was confused why the variances from Hebron Road are considered front yard variances; that she believes the Applicants could meet the setback requirements; and that there is a bike lane along Hebron Road.

Mr. Sharp explained that, when a property is a through lot, it has a road in front and a road behind and the property is considered to have two front yard setbacks.

Ms. Blackwell testified that she is speaking for Ms. Shelton; that she lives in the neighborhood; that the Applicants should build within the building envelope; that they knew what they were buying when they purchased the lot; and that she is concerned for Ms. Shelton's safety.

Ms. Hood Baker testified that she grew up in this neighborhood; that there was a house on the lot previously; that she is concerned about the size of the variances requested; that granting these variances will set a precedent for granting future variances; that it will alter the character of the neighborhood; and that there is room to build a decent sized house.

Ms. Jarvis did not testify as other speakers gave the same testimony that she would have given.

Mr. May testified that a variance is not necessary to enable the reasonable use of the property; that he has safety concerns for Ms. Shelton and for all the bike traffic on Hebron Road; that it is not a minimum variance to afford relief; and that he asks that the Board deny the request.

Ms. Trapp stated that most of the comments were opinion and did not address the legal standards for granting a variance; that when a neighbor's dwelling is close to their own property line, it should not prevent the Applicants from getting a variance on their property; that the neighbor who constructed a 3 story home did not have a through lot; and that, if an average front yard setback was measured, she thinks it would be less than 30 ft.

Mr. Ulishney testified that placing the dwelling within the building envelope would mean reducing the house by 380 square feet which would make the house too small to be feasible.

Mr. Kadash testified that they wish to retain the integrity of the neighborhood; that they are building a cottage style home; that he regrets not communicating this to the neighbors; and that the architect originally designed a larger home but the design was then scaled back.

Ms. Ballen Blackburn testified that she is in possession of a boundary survey for the property of John Kadash and Bryan Ulishney, a letter from the Applicants requesting support for the variance application and a notification from the Board of Adjustment regarding this public hearing; and that, if the Applicants build on both properties, it will smother the smaller properties.

Ms. Blackwell asked for clarification on the building setbacks and the variances requested. Mr. Sharp showed Ms. Blackwell the survey showing the setbacks and variance requested. Ms. Blackwell testified that she is opposed to the variance requests.

The Board found that no one appeared in support of and nine (9) people appeared in opposition to the Application.

Mr. Chorman moved to deny Variance Application No. 12333 as the Applicants have not met the five criteria for granting a variance as the exceptional practical difficulty has been created by the Applicants and will alter the character of the neighborhood.

Motion by Mr. Chorman, seconded by Mr. Workman, and carried that the **variances be denied for the reasons stated**. Motion carried 5 - 0.

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

Case No. 12334 – Dean Pitmon seeks variances from the front yard setback and side yard setback requirements for proposed and existing structures (Sections 115-42, 115-181 and 115-182 of the Sussex County Zoning Code). The property is located on the south side of White Deer Rd. approximately 154 ft. east of Susan Beach Rd. 911 Address: 6034 White Deer Rd., Delmar. Zoning District: GR. Tax Parcel: 532-11.00-33.10

Ms. Bulkilvish 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; and that there were previous variances of 8 ft. from the 40 ft front yard setback and 3 ft. from the 10 ft. side yard setback granted for this property on May 20, 1996. The Applicant is requesting the following variances:

- 8.7 ft. from the required 40 ft. front yard setback for a dwelling.

- 13.7 ft. from the required 40 ft. front yard setback for a proposed deck and ramp.
- 5.4 ft. from the required 10 ft. side yard setback on the west side for a dwelling.

Dean Pitmon was sworn in to give testimony about the Application.

Mr. Pitmon stated that he plans to build a second floor addition and a sunroom in the rear of the dwelling which do not require variances and a handicapped ramp in the front of the home which will require a variance; that variances were granted in 1996 but no survey was obtained at that time; that the property size is 100 feet wide by 150 feet deep; that the property cannot otherwise be developed for a handicapped ramp due to the lot size, the location of the septic system, and other improvements; that the septic system is located to the east of the pool; that it was not created by the Applicant but by the company who placed the modular home there in 1987, hence the original variances; that it will not affect the residential feel and function of the neighborhood; that there have been no complaints regarding the house or the setbacks; that there is approximately 8 ft. from the property line to the edge of paving; and that it is the minimum variance request to install a wheelchair ramp and decking to access the front entrance of the dwelling.

Mr. Sharp advised the Board that, historically, a survey was not required for a variance application; that currently a survey is required for all variance applications; and that staff has learned that, at times, variances were granted by the Board only to later discover that a new survey showed that the structure was not located per the prior variance application.

The Board found that two people appeared in support of and none in opposition to the Application.

Mr. Williamson moved to approve Application No. 12334 as the Applicant has met all the criteria for granting a variance.

Motion by Mr. Williamson, seconded by Dr. Carson, and carried that the **variances be granted for the reasons stated**. Motion carried 5 - 0.

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

Case No. 12335 – Dennis T. & Mary R. Rodgers seek a variance from the front yard setback requirement for proposed garage (Sections 115-25, 115-182 and 115-185 of the Sussex County Zoning Code). The property is located on the southwest side of Country Rd. and Shortly Rd. 911 Address: 20843 Country Rd., Georgetown. Zoning District: AR-1. Tax Parcel: 133-5.00-33.19

Mr. Whitehouse 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 a variance of 20 ft. from the required 30 ft. front yard setback from Country

Road for a proposed pole building.

Dennis Rodgers and Mary Rodgers were sworn in to give testimony about the Application.

Mr. Rodgers testified that the plan is for a two-car garage that will line up with the existing driveway; that the original plan was for a garage measuring 40 feet by 30 feet but was reduced to 30 ft. by 36 ft.; that the property is unique as the house faces Shortly Road but is addressed on Country Road and also because it is the access lane to the property to the rear which is owned by relatives; that the house was constructed with the idea that Shortly Road was the front yard and Country Road was the corner front yard; that the driveway comes from Country Road; that the only logical area on the property to place this pole barn would be the proposed location of the building; that the current condition was not created by the Applicants but by the placement of the house, well, and septic system by the builder; that there is a ditch and septic system on the property; that the placement of the proposed pole barn will not affect or alter the character of the neighborhood or impact future development of adjoining properties nor be an impact to public welfare; that it is a minimum variance following the reduction in size of the original pole barn design; that the building permit states that the setback is 40 feet from Shortly Road; that the well and septic system had to be separated; that the septic system and ditch limited the placement of the house; and that they have already reduced the size of the proposed pole barn.

Betty Marker and Ralph Clausen were sworn in to give testimony in opposition to the Application.

Ms. Marker testified that she lives on Shortly Road on the other side of Country Road; that, since that Applicants built their home, she has flooding on her property; that she is concerned that if there is additional building it will cause more flooding on her property; that she is concerned about swale maintenance; that she has no problems with the garage; and that there is a tax ditch nearby.

Mr. Clausen testified that there is a tax ditch that runs on the south side of the Applicant's property; that the water drains from Ms. Marker's property to that tax ditch; that, since the house was built, the water backs up on Ms. Marker's property because the pipe is too small; and that his lot drains to 2 tax ditches.

Ms. Magee advised Ms. Marker and Mr. Clausen to reach out to the Tax Ditch committee and let them know of the flooding problems.

Ms. Rodgers testified that there is no tax ditch committee for this area; that she has called regarding this issue; that the tax ditch slopes; and that she removes garbage from the ditch regularly.

Mr. Clausen and Ms. Marker testified that they are not opposed to the variance request provided that the Applicants do not build in the swale.

The Board found that one person appeared in support of and two persons appeared in opposition to the Application.

Mr. Chorman moved to approve Variance Application No. 12335 as the Applicants have met all five criteria for granting a variance.

Motion by Mr. Chorman, seconded by Mr. Workman, and carried that the **variance be granted for the reasons stated**. Motion carried 4 - 1.

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

The Board took an eight (8) minute recess.

Case No. 12336 – Michael & Donna Beck seek variances from the rear yard setback requirements for proposed structures (Sections 115-25, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located on the north side of William Dorsey St. approximately 595 ft. west of Silo Blvd. in the Lewes Crossing subdivision. 911 Address: 14503 William Dorsey St., Lewes. Zoning District: AR-1. Tax Parcel: 334-5.00-1438.00

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received one letter in support of and none in opposition to the Application and one mail return. The Applicants are requesting the following variances:

- 6 ft. from the required 10 ft. rear yard setback for a proposed screened porch.
- 8 ft. from the required 10 ft. rear yard setback for a proposed uncovered deck.

Michael Beck was sworn in to give testimony about the Application.

Mr. Beck testified that the property is unique as it has an odd shape with a curved property line; that the property is sits adjacent to the community clubhouse; that the property cannot otherwise be developed without a variance; that the only place to add a screened porch is on the rear of the home; that, while the screened porch will be on the property, it will be only 4 ft. from the property line; that this was not created by the Applicant as when he purchased the home he saw 50 – 60 ft. behind the home and did not realize that the rear property line was so near the dwelling; that the property is located on a cul-de-sac; that the rear of the house is only 1 foot from the setback line; that the rear of the house faces a retention pond and walking path; that the house is 69 feet from the walking path; that the nearest home to the rear of his property is 213 feet away; that the lot is small; that his neighbors do not object to the Application; that his neighbor's house is 20 feet closer to the road; that he purchased the property in late 2018; that the seller did not disclose where the rear property line was located; that the open space to the rear of the lot is owned by the homeowners association; that the variances will not alter the essential character of the neighborhood as there are

11 homes in close proximity with screened porches; that the porch will be small; that the porch will measure 10 feet by 25 feet and is narrow; that his father-in-law, who is 83 years old, likes to sit in a screened porch; that there are large mosquitos in the rear yard; that the retention pond attracts bugs; and that it is a minimum variance to allow for a relatively narrow porch and small grilling deck.

Mr. Whitehouse noted that a blanket side yard variance of 5 feet was granted in the neighborhood.

Mr. Beck testified that he cannot build these structures in the side yards; that the homeowners association does not object to the request but he is still going through the HOA approval process; that the steps will be no closer than 2 feet from the rear property line; that the steps come from the deck; that the outdoor shower is within the building envelope; that he has no information on the drainage easement; that utilities come to the front of the house; and that the trash enclosure is located within the building envelope.

During discussion, it was determined that an additional variance of 8 ft. from the required 10 ft. rear yard setback for proposed steps is required.

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

Mr. Workman moved to table Case No. 12336 until the August 5, 2019, meeting.

Motion by Mr. Workman, seconded by Dr. Carson, carried unanimously to **table this case until the next meeting on August 5, 2019**. Motion carried 5 – 0.

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

Case No. 12337 – Ariel Gonzalez seek variances from the front yard setback and side yard setback requirements for proposed and existing structures (Sections 115-25 and 115-183 of the Sussex County Zoning Code). The property is a landlocked parcel on the northside of Saw Mill Rd. approximately 0.47 miles from Pine Rd. 911 Address: 20116 Saw Mill Rd. Georgetown. Zoning District: AR-1. Tax Parcel: 135-4.00-11.01

Mr. Whitehouse 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 variance of 9 ft. from the required 15 ft. side yard setback on the east side for proposed and existing structures.

The Board found that the Applicant was not present.

Mr. Sharp stated that, per Sussex County Code § 115-208G, “Any applicant or appellant to

the Board who fails to appear, or appear by agent, for a hearing before the Board shall be considered to have withdrawn its application or appeal. Whenever an applicant or appellant fails to withdraw an application or appeal as provided in Subsection **F** hereof or fails to appear, or appear by agent, for a hearing before the Board, an application or appeal substantially similar shall not be reconsidered sooner than one year after the previous failure to withdraw or failure to appear.”

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

Motion by Dr. Carson, seconded by Mr. Williamson, and carried unanimously that **Case No. 12337 be denied for lack of representation.** Motion carried 5 – 0.

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

Case No. 12338 – Charles Schertle seeks variances from the front yard setback and side yard setback requirements for an existing structure (Sections 115-82, 115-182, and 115-183 of the Sussex County Zoning Code). The property is located on the northwest corner of Dupont Blvd. (Rt. 113) and Kerlyn Dr. 911 Address: N/A. Zoning District: C-1. Tax Parcel: 133-16.00-95.03

Mr. Whitehouse 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 seeking variances of 26.1 ft. and 11 ft from the required 60 ft. front yard setback for an existing structure; and that the Applicant requests a variance from the side yard setback but Staff has determined that the side yard variance is not required.

Charles Schertle and Thomas Nickerson were sworn in to give testimony about the Application.

Mr. Schertle testified that the property is unique as it is a narrow, commercially zoned property; that the vast majority of the property is wetlands and woodlands; that the present physical characteristics of this property make it impossible and impractical to build a structure elsewhere; that the area where the structure is being constructed is the only area of clearing on the lot; that a variance is necessary to create a reasonable use of the property; that the Applicant did not create the exceptional practical difficulty; that the Planning and Zoning office gave him incorrect information regarding the setbacks; that the Application was then filed after he had already laid a concrete foundation, erected walls, and installed roof trusses; that granting the variances will not alter the essential character of the neighborhood as it is zoned commercial; that the variances will not substantially or permanently impair the uses of adjacent property or be detrimental to the public welfare; that the Applicant has worked with a nearby HOA and contributed to road improvements; that there have been no complaints from neighbors; that the requested variances are the minimum variances request to allow the building under construction to remain in its present location; that the nearest residence is located to the rear of

the property and woods separate the residence from this structure; that there is a coffee shop and dentist office nearby; that the site is adjacent to Route 113 and will not interfere with traffic along Route 113; that the nearest dwelling is over 100 feet from the Applicant's property; that the property has wetlands and slopes; that he cannot build in the rear of the lot; that he consulted with his engineer about the construction; that he did not want to clear the woodlands for environmental reasons; that 1/3 to 1/2 of the lot is wetlands; that he hired construction workers off Craigslist and this was the first time he built a structure; that he relied on Planning & Zoning staff; that he laid out the building with his mason and his manager; that there is approximately 100 feet from the front property line to Route 113; that the wetlands, large mature trees, and standing water limit where the structure can be placed; that the main entrance to the property is off Kerlyn Drive; and that he is working with his engineer on agency approvals for the site.

Ms. Cornwell advised the Board that the Applicant called the Planning & Zoning office and was given the building setbacks but the office does not issue building permits.

Mr. Schertle testified that he called Planning & Zoning prior to construction and he explained that he was constructing a storage building and was told that all he needed was to meet the setback requirements.

Ms. Cornwell advised the Board that the billboard on the property is older and is not part of this application.

Mr. Schertle testified that the concrete has been laid; that this is the only spot on the property that is high and dry; and that the structure cannot be smaller.

Mr. Whitehouse stated that the building permit application has been filed.

Mr. Schertle testified that, even if the building was moved back to the slope, a variance would still be needed; that the property is not part of the adjacent subdivision; and that he is not sure what he would do if the Application was denied.

Ms. Cornwell stated that, if the variance is approved, the Applicant still must go through the site plan review process.

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

Stephen Ross was sworn in to give testimony in support of the Application.

Mr. Ross testified that he lives on Kerlyn Drive close to the Applicant's property; that he supports the variance request; that the property is unique as it is steep and slopes down to Betts Pond; that there is a large drop off from the front of the property to the rear of the property; that a large

portion of the property is wetlands which is covered with woodlands; that there are large, mature trees on the property which measure 3 - 4 feet in diameter on the property that would be very costly to remove; that there are 7 houses along Kerlyn Drive; that a large area of the property is swamp or marsh; and that the Applicant would need 8 – 10 feet of fill if the building was built elsewhere on the lot.

Mr. Workman moved to table Case No. 12338 until the August 5, 2019, meeting.

Motion by Mr. Workman, seconded by Mr. Chorman, carried unanimously to **table this case until the next meeting on August 5, 2019**. Motion carried 5 – 0.

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

ADDITIONAL BUSINESS

Discussion regarding the time Board of Adjustment meetings will begin. The Board and Staff members discussed changing the time that the Board of Adjustment meetings will begin. It was decided to change the meeting time to 6:00 p.m. beginning in October 2019, for a period of six months. This item will be on the February 2020 agenda for further discussion.

Meeting was adjourned at 10:44 p.m.