

MINUTES OF JUNE 18, 2018

The regular meeting of the Sussex County Board of Adjustment was held on Monday, June 18, 2018, at 7:00 p.m. in the County Council Chambers, 2 The Circle, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Dale Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. Bruce Mears, Ms. Ellen Magee, Mr. John Mills, and Mr. Brent Workman. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Mrs. Jennifer Walls – Planning Manager and Ms. Christin Headley – Recording Secretary.

The Pledge of Allegiance was led by Mr. Callaway.

Motion by Mr. Mears, seconded by Mr. Mills, and carried unanimously to approve the revised agenda as circulated. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Ms. Magee, and carried unanimously to approve the Minutes and Findings of Fact for April 16, 2018. 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.

OLD BUSINESS

Case No. 12151 – Albun, LLC seeks a special use exception for promotional activities as accessory uses to a speedway (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located on the south side of Speedway Rd. between Dupont Blvd. (Rt. 113) and Bethesda Rd (Rd. 326). 911 Address: 22206 Speedway Rd., Georgetown. Zoning District: AR-1. Tax Map: 133-2.00-22.00, 133-2.00-23.00, 133-2.00-24.00, & 133-2.00-24.01

Mrs. Walls presented the case that has been left open since June 4, 2018.

John Minutoli and Brett Deyo were sworn in to testify about the Application. Tim Willard, Esquire, presented the case on behalf of the Applicant.

Mr. Willard stated that he appeared in front of the Board last time with a letter from the Applicant; that the Board wanted to hear more detailed testimony from the Applicant; that there were two previous Special Use Exceptions granted identical to this one; that the request is not a specific request regarding the type of events; that the events are infrequent; and that the Applicant intends to hold 2-3 events per year with a maximum of 6 events per year.

Mr. Minutoli testified that his family owns Albun, LLC; that they have owned the speedway since 2005; that he manages the lease with the racetrack; that it has operated as a racetrack since the property was purchased by Albun, LLC; that the type of events that have been there are tractor shows, carnivals, and rodeos; that there will be two to three events per year; that there will be no overnight events; that he knows the neighbors; that there are all good relationships

with the neighbors; that Brett Deyo operates the track; that the intent of this request is the same as it has been in the past; that there have been two car shows since Mr. Deyo has been operating the track; that a list of possible events includes car shows, circuses, festivals, food trucks, and community focused events for locals and supported by locals; and that the list was entered into the record as an exhibit.

Mr. Deyo testified that he is the tenant of the property; that there are twelve to fourteen races per year; that the race track operates from March to November; that there is parking for 4,000 cars, seating for 2,000 people, and the pits hold 1,000 people at full capacity; that there is a full kitchen and concessions; that a fence surrounds the track; that there were two “cruise-in” charity events in October and July of last year; that his intention is to get the community involved; that the events benefit the ambulance, fire, and local charities; that he has a great relationship with the neighbors; that the races and other events will mostly occur on Friday nights; and that the events will not exceed 2,000 people.

Mr. Minutoli affirmed the statements made by Mr. Willard as true and correct.

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

Mr. Mears moved to approve Special Use Exception Application No. 12151 for the requested special use exception based on the record made at the public hearing and because the uses will not substantially adversely affect the uses of the neighboring and adjacent properties with the condition that there are no more than 2,000 people at such events.

Motion by Mr. Mears, seconded by Ms. Magee, and carried unanimously that **the special use exception be granted with the condition that the events do not exceed 2,000 people in attendance and for the reasons stated.** Motion carried 5 – 0.

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

PUBLIC HEARINGS

Case No. 12155 – Proximity Malt, LLC seeks a variance from the rear yard setback for a proposed structure (Section 115-107 of the Sussex County Zoning Code). The property is located on the southwest corner of St. George Rd. and Bi-State Blvd. (Rt. 13). 911 Address: 33222 Bi-State Blvd., Laurel. Zoning District: LI-2. Tax Map: 332-3.00-56.00

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. The Applicant seeks a variance of 19.3 feet from the forty (40) feet rear yard setback requirement and a variance of 20.7 feet from the forty (40) feet rear yard setback requirement for an existing holding tank.

Ring Lardner, Jason Lord, and Matt Musial were sworn in to testify about the Application and submitted an exhibit booklet for the Board to review.

Mr. Lardner testified that the tank is a 400,000-gallon post-treatment holding tank; that to the north of the property is St. George's Road; that to the east of the property is Bi-State Boulevard (Rt. 13) and two residential properties; that to the west of the property is the Norfolk Southern Railroad; that to the south of the property is residential property; that the property is zoned LI-2; that the surrounding properties are zoned AR-1; that the property has on-site disposal of wastewater; that they updated the wastewater treatment plan and disposal field; that the wastewater will be disposed of off-site; that there once was a lagoon system underground; that the system was previously designed without the use of setbacks; that, during construction, the contractor installed the existing tanks incorrectly; that this is the only location where the tanks fit; that the property is unique as it is located along three different rights of way; that the setbacks were interpreted differently by the engineering company; that another agency dictates the location of the system and the size of the treatment plant; that strict conformance with the setbacks would result in insufficient storage for the wastewater; that the current operation on site was a grain facility and has been redeveloped into a malt facility; that the silos on the site existed prior to the holding tank; that the use will not alter the essential character of the neighborhood; that it is the minimum variance requested in order to meet outside agency requirements; that the initial design included on-site disposal, but after further review, the only option was off-site disposal which must be treated; and that DNREC requires the holding tank.

Mr. Lord testified that the two tanks are an equalization tank and a post-treatment tank; that DNREC requires tanks of approximately the size of these tanks; that the tanks cannot be located elsewhere on the property; that the Applicant takes grain and produces malt; that the treated wastewater will be conveyed to the south to be disposed of; that this is sub-surface disposal, not spray irrigation; that the grain being turned into malt creates wash water that has to be properly treated and disposed of; that the process is basically washing grain, but DNREC defined the wash as waste water; that Proximity Malt has an agreement with the property owner; that they removed the office building and added office trailers; and that, after resubmitting the site plan, staff found that the forty (40) feet setback was not met.

Ms. Magee questioned the definition of a structure.

Mr. Sharp recited the Code's definition of a structure.

Mr. Lord testified that the holding tanks have metal sides.

Mrs. Walls stated that a revised site plan has not yet been approved and that they are awaiting the outcome of this hearing.

Mr. Mills stated that the interpretation of the code was that the railroad was not considered AR-1.

Mr. Lardner testified that the railroad company owns its right-of-way; and that the tanks were designed to be 20 feet from the rear property line.

Mr. Lord testified that, prior to construction, the placement of the tanks was staked out and were skewed from the property lines and that there will be 88,000 gallons a day disposed off-site.

Mr. Musial testified that the Applicant has owned the property since 2016 and has operated its business since December 2017; there are currently 16 employees; that they plan to increase to 22 employees; that they are processing test batches currently; that the old spur was ripped out; and that there are no complaints from neighbors.

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

Mr. Mills moved to approve Variance Application No. 12155 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to the structures being built too close to the property line;
2. The variances are necessary to enable reasonable use of the property;
3. The exceptional practical difficulty has not been created by the Applicant;
4. The requested variances are the minimum variances necessary to afford relief; and
5. The variance requests are not detrimental to public welfare.

Motion by Mr. Mills, seconded by Ms. Magee, and carried unanimously that the **variances be granted for the reasons stated**. Motion carried 5 – 0.

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

Case No. 12156 – Martha Rothenberg seeks a variance from the maximum fence height requirement for a proposed structure (Section 115-185 of the Sussex County Zoning Code). The property is located on the south side of Clay Rd., approximately 500 feet west of Kings Hwy. 911 Address: 34166 & 34170 Clay Road, Lewes. Zoning District: AR-1. Tax Map: 334-6.00-46.00

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. The Applicant seeks a variance of 1.0 foot from the seven (7) feet maximum fence height requirement for a proposed fence measuring 270 feet long.

Mr. Sharp stated that the existing structures on the property are pre-existing, non-conforming structures and that the only issue before the Board is the height of the fence.

Martha Rothenberg was sworn in to testify about the Application. Ms. Rothenberg submitted a Power Point presentation to the Board.

Ms. Rothenberg testified that she wishes to construct a privacy fence on the east and south sides; that the east side of the property abuts a large parking lot and a doctor's office; that the doctor's office has a security light on at all times; that there is road noise from nearby Kings Highway and Route 1; that the proposed fence will dampen the noise and highway traffic; that there is a commercial development to the east; that when the house was initially built, she did not know an eight feet tall fence would be needed; that she has spoken with the adjacent doctor's office and they are not interested in adjusting the lighting; that the location of the lights on the doctor's office requires her to have an eight foot fence in order to block the lighting; that a taller fence will block more noise as well; that the neighbor's house has an existing fence where she will start the proposed fence; that the fence will begin well past the forty (40) feet front yard setback requirement; that the fence would be thirty (30) feet along the rear yard; that she wants to fence along the entire rear yard; and that the variance is needed for the rear yard and the east side yard.

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

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

Mr. Mills moved to approve Variance Application No. 12156 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to it being adjacent to a commercial property with security lighting;
2. A variance is necessary to enable reasonable use of the property;
3. The exceptional practical difficulty has not been created by the Applicant;
4. The variance will not alter the essential character of the neighborhood;
5. The security lighting alters the essential character of the neighborhood; and
6. The requested variance is the minimum variance necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Mears, and carried unanimously that the **variances on the rear and east side of the Property, for a total of 270 feet of fencing, be granted for the reasons stated.** Motion carried 5 – 0.

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

Case No. 12157 – Concord Flea Market, LLC seeks a special use exception for an outdoor promotional activity (Sections 115-72 and 115-210 of the Sussex County Zoning Code). The property is located on the north side of Concord Rd. (Rt. 20), approximately 480 feet west of Concord Pond Rd. 911 Address: 10599 Concord Rd., Seaford. Zoning District: B-1. Tax Map: 132-2.12-5.00

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of the Application, one (1) letter in opposition to the Application, and one

(1) letter that was neither supporting or opposing. The letters were read into the record. The letter of opposition stated concerns with trash, noise, traffic, drugs, prostitution, and other crime. The Applicant requests a special use exception for an outdoor promotional activity that consists of a flea market.

Jeron Bryant and Rohit Patel were sworn in to testify about the Application.

Mr. Bryant testified that the property is used for the Deluxe Dairy Market; that he proposes to have a flea market on the property; that there will be no permanent structures and no property will be left overnight; that the hours of operation would be Thursday, Friday, and Sundays; that the flea market would not be open on Saturdays; that the property is cleaner than it has ever been since he has been there the past three months; that he has improved the property; that he is working with Troop 5 to clean up the area; that he is trying to bring the community together; that he intends to have a community garden on the site; that he eventually wants to have events for the community; that one of the canopies measures 90 feet by 21 feet; that the other canopies measure 10 feet by 20 feet; that there is separate parking for the store and the flea market; that there will be a slight increase in the traffic but he does not expect it be a large increase; that Troop 5 has increased its presence; that he lives nearby; that it will not be as large scale as other local flea markets; that he eventually wants to fence in the property due to crime in the area; that he would like to help clean up the community and he feels this will help do that; that there are some shady individuals in the area; that he has witnessed arguments in the area but no shootings; and that he is surprised to hear that there was a written letter in opposition.

Mr. Workman stated that he has concerns with the tables and tents being too close to Rt. 20.

Mr. Bryant testified that he plans to plant sunflowers in the front yard to prevent parking along Route 20; that there would be parking for approximately 50 to 60 cars for the flea market; that he has been in operation for about two and a half months; that he is the tenant of the property; that he no site plan has been approved through Planning and Zoning; that the property is approved to have a convenience store; and that he has permission from the owner and a contract to hold the flea market.

Mr. Patel testified that he is the manager for the LLC that owns the property; that a lease was signed permitting the flea market use and the cleanup of the property; that the lease states that the tenant is responsible for obtaining all necessary approvals and permits; that he believes this will help the community; that there is not much shopping in the area; and that there are no issues with parking or traffic.

Mr. Mills stated that the property owner is responsible for what happens on the property.

Mr. Sharp stated that the lease can state it is the tenant's responsibility of what happens on the property and to obtain approvals.

Mr. Bryant testified that the flea market is a separate use from the store; that there will be

designated parking for the flea market patrons; that the items will be stored on a trailer and the market will be shut down every night; that there will be two portable bathroom facilities located on site; that he plans for the hours of operation to be Thursday and Friday from 10:00 A.M. to 7:00 P.M. and Sundays from 10:00 A.M. to 5:00 P.M.; that he does everything by himself and will have no employees other than his wife; that there are existing trees, bushes, and fencing on the property; that he would like to eventually add more fencing; and that the drawing he provided is not to scale.

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

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

Motion by Mr. Mills, seconded by Mr. Mears, and carried unanimously that **the special use exception be left open for the limited purpose to refer the case to the Planning and Zoning Commission for recommendation.** Motion carried 5 – 0.

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

Case No. 12158 – Christian & Barbara Willey a special use exception to use a manufactured home type structure as a temporary office and storage (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located on the south side of Abbott’s Pond Rd., approximately 1,228 feet west of Shawnee Rd. (Rt. 36). 911 Address: 16136 Abbott’s Pond Rd., Milford. Zoning District: AR-1. Tax Map: 130-5.00-79.00

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. The Applicant requests a special use exception to retain a manufactured home type structure for an office and storage.

Christian Willey and Barbara Willey were sworn in to testify about the Application.

Mr. Willey testified that he is an electrical contractor; that he uses the manufactured home as an office for his electric business; that the manufactured home is also used for storage for personal and business items; that there is a bathroom in the manufactured home; and that there is no kitchen facility in the unit.

Mr. Sharp advised the Board of the difference between a medical hardship request and the renewal of using a manufactured home as an office and that the Board is responsible for making sure there is no disrepair to the manufactured home or neighbor issues.

Mr. Willey testified that the roof was remodeled to a metal A-Frame roof; that he keeps the manufactured home in good shape; that he uses it for storage for his business; that there are also two (2) sheds, the dwelling, and a pool on the property; that the property was 3.5 acres and now it is 4.19 acres; that the use will not substantially affect adversely neighboring and adjacent properties; and that

he has good neighbors.

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

Mr. Mears moved to approve Special Use Exception Application No. 12158 for the requested special use exception for a period of five (5) years based on the record made at the public hearing and because the use will not substantially adversely affect the uses of the neighboring and adjacent properties.

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

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

The Board took a ten (10) minutes recess.

Case No. 12159 – John & Roe Cassie seek variances from the front yard and rear yard setbacks for an existing structure (Section 115-25 of the Sussex County Zoning Code). The property is located on the north side of Hayes Ave., approximately 268 feet west of Jefferson Ave. 911 Address: 13030 Hayes Ave., Selbyville. Zoning District: AR-1. Tax Map: 533-20.19-55.00

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of the Application and five (5) letters in opposition to the Application and read the letters of opposition into the record. Mrs. Walls stated that the previous application was denied and that a temporary Certificate of Occupancy has been issued by staff. The letters of opposition stated concerns with the dwelling and deck being built after it had already been denied and the dwelling being out of character with the neighborhood. The Applicant seeks a variance of 0.2 feet from the thirty (30) feet front yard setback requirement for an existing dwelling and a variance of 4.5 feet from the fifteen (15) feet rear yard setback requirement for an existing two-story deck.

Mr. Sharp stated that the Board previously denied an application for this property; that, the Board must first determine whether there is a substantial change prior to deciding the application on the merits; that Kollock v. Sussex County held that rules regarding the finality of decisions in zoning cases are no different than such rules in other areas of law; that, in particular, the principles of res judicata and collateral estoppel apply in zoning cases and have resulted in the rule that ordinarily a board of appeals or adjustments has no power to reopen or review its own decision by vacating, revoking, rescinding, or altering it after it has been made; that, while a board cannot change its decision once made, it can consider a new application for similar relief if there has been a substantial change in the circumstances or conditions affecting the property or in the proposed use or plans for the use; that generally, the burden of proof of changed circumstances is on the

applicant; that a determination of whether sufficient changed circumstances exist is a question of fact to be resolved in the first instance by the Board; that the burden of proof is on the Applicants; and that what is being proposed must be substantially different than the previously denied request.

Tim Willard, Esquire, presented the case on behalf of the Applicants and submitted exhibits for the Board to review.

Mr. Willard stated that the Applicants are no longer requesting side yard variances and that the previous denied requests included a variance request of 7.0 feet from the thirty (30) feet front yard setback requirement, a variance of 5.0 feet from the fifteen (15) rear yard setback requirement, and a variance of 6.0 feet from the ten (10) feet side yard setback requirement.

John Cassie, Roe Cassie, Richard Evans, Anthony Balsamo, and Russell Hammond were sworn in to testify about the Application.

Mr. Evans testified that he is the draftsman; that he designs residential homes in the area; that he has been in business of drafting residential plans since 1994; that the dimensions of the dwelling were originally 30 feet wide by 51.3 feet deep with a ten (10) feet deck; that the house plans were revised after the original variance application was denied; that the house was moved closer to the rear by approximately 7 feet; that the dimensions of the dwelling were reduced; that the dwelling is 49.3 feet deep; that the deck remained the same; that the initial house plan was based on what they believed they could get a variance for; that he called the County about the proposal; that the staff at Planning & Zoning said to plan on getting a variance; that the initial variance request failed; that, after the variance application was denied, the Applicants contacted him to redesign the house; that there was a discrepancy of the rear yard setback showing on the survey and the rear yard setback cited by County officials; that he called staff at Planning and Zoning and was told that a setback of 10 feet from the water in the rear was okay; that he modified the house enough to fit within the setbacks cited by the Planning & Zoning staff; and that the variance was applied for after he designed the plans.

Mrs. Walls stated that the recent ordinance passed earlier this year reduced the rear yard setback to 15 feet; that first-floor decks are allowed to encroach into the rear yard setback area 5 feet but the problem is that second floor decks are not allowed to encroach.

Mr. Evans testified that he does not perform surveying work; that the design was based on a request and information from the surveyor and builder; and that he designed the home knowing the Applicants would need a variance.

Mr. Cassie testified that he was aware that the builder sought variances for the previous plans and was denied; that he worked with his builder and architect to redesign the plans; that he relied on his builder, surveyor, and architect; that he believed that he would not need a variance after the plans were redesigned; that he was unaware of the encroachments until he received a violation notice from the County last summer; that he told his builder to stop construction immediately to see what needed to be done; that his builder told him that everything was okay; that his builder told him that the issue

was that the County thought the second floor deck would enclose the first-floor deck; that there is no enclosure to the decks; that he was under the impression that a balcony over the first-floor deck was not considered an enclosure; and that there are few small items to finish in the house but the construction is nearly complete.

Mr. Willard stated that, if five feet were removed from the second-story deck, the Applicants would not be here because the deck would no longer be covered.

Mr. Sharp stated that the new ordinance reducing the setback requirements for this lot was passed earlier this year; and that the dwelling was constructed in 2017 prior to the ordinance change.

Mr. Willard stated that the subdivision was created in 1966 and is a non-conforming subdivision; that the homeowners' association requires a ten feet rear yard setback; that the Gibson case addresses res judicata when multiple approvals have been granted in a neighborhood; and that there are about 17-18 homes in the neighborhood that encroach into the twenty (20) feet rear yard setback and the Board has approved variances in the neighborhood.

Mr. Balsamo testified that he presented the original variance request; that, after the original variance request was denied, he reached out to the Applicants, the architect, and the surveyor; that the home was redesigned; that the plans were submitted to the County and approved; that the surveyor staked out the new house to be built; that the footers were inspected and approved; that Planning & Zoning did not handle the footer inspection; that he was not aware that a second variance was needed after the dwelling was built; and that the second-story deck was designed as a balcony and not designed as a roof to the deck below.

Mr. Hammond testified that he based the setbacks for the property off other surveys he prepared in the area; that the map in 2015 showed the property was zoned C-1; that the 2015 site plan was created to show the variance request; that he worked with the owner and builder on the plan; that the site plan was a proposed site plan; that he staked out the house at a thirty (30) feet front yard setback after the original variance was denied; that he was told by the builder that the original variance request was denied; that he used setbacks for neighboring communities; that he made an error by not calling the County to verify the setbacks; that the front yard setback encroachment may have been an error made during construction; that he did not know the builder would continue to build the deck at that time after it being staked out; that he staked out the foundation; that he communicated with the builder regarding setback requirements; that the finished product was surveyed to the exterior corners and not the foundation; that he received information to stake out the dwelling without the decks included; that the final as-constructed survey included decks; that, once the house was staked out, he did not return to the Property until surveying for the final as-built survey; that he does not create the proposed location survey prior to construction unless it is requested by the builder; that he relies on the builder; and that he was provided foundation plans to stake out the house.

Mr. Evans testified that the dwelling is 49.3 feet deep; that the dwelling consists of 2 stories in a Cape Cod style; that the dwelling was moved towards the rear; that the outdoor shower was

removed; that the dwelling was shrunk 2 feet; that the porch in the rear was converted to a deck; that there were changes made to the stairs on the side of the dwelling; that, architecturally speaking, the deck could be shortened; that the front of the dwelling cannot be reduced; and that the foundation drawing would typically have the deck on it as well.

Mr. Balsamo testified that the front of the dwelling cannot be brought into compliance; that he would have to change the structure of the entire top deck in order to bring it into compliance; that the top deck is not cantilevered; that, if a portion of the top deck was removed, there would be a six feet by six feet post in the middle of the first floor deck in order to support the shortened second story deck; that the deck has to be structurally sound; that shortening the second-floor deck would require the complete reconstruction of both the first-floor and second-floor decks; that the foundation was set to meet the setbacks; that the siding caused the initial encroachment; and that the first request for a front yard variance was the Applicants' desire and the second request for a front yard variance is an error.

Mr. Willard stated that there is a precedent that has been set by the Board; that other variances have granted in the neighborhood and those variances are relevant to the character of the neighborhood; that the uniqueness about the neighborhood is the Board has found that all criteria for granting a variance have been met approximately 17 times; that there are rear setbacks within the neighborhood that are closer than twenty feet; that it is relevant to the character of the neighborhood; that he feels this information is significant; that the restrictive covenants of the homeowners' association be submitted into the record as an additional exhibit; that the restrictive covenants call for a rear yard setback of 10 feet; that there are various types of houses in the neighborhood; that the neighboring lot, Lot 54, had a shed directly on the lot line of the lagoon; that the neighbor harassed the Applicants; that the neighbor of Lot 54 was arrested; that a letter of support was received from Stephen Lyons, who owns a nearby property, stating the Applicants' dwelling raises the property values of neighboring homes and enhances the neighborhood; that the property is unique because it is an existing non-conforming lot and neighborhood; that it is a 5,000 square foot lot zoned AR-1; that being on the lagoon also makes it unique; that the Maryland state line is across the street; that it probably could otherwise be developed but not reasonably; the small lot was not created by the Applicants; and that the balcony is the minimum variance necessary.

Mr. Cassie testified that he retained professionals to guide the job from start to finish after the first denial; that he affirmed the statements made by Mr. Willard as true and correct; that he did not create the need for a variance because he relied on professionals; that he has been vacationing in the area for years; that he came to the area to build a retirement home for his family; that the issues that have been happening while building the home caused financial harm; that the neighbors commercial vehicle is being parked on his property; and that he has been harassed by a neighbor.

Teresa Pyle was sworn in and testified in opposition to the Application. Mrs. Pyle testified that she lives five lots down on Lot 12; that she has a small lot; that the lots in the neighborhood measure 50 feet by 100 feet; that the property owner was well aware of the setbacks; that the deck was still built in blatant disregard for the Sussex County Zoning Code; that majority of the residents

spoke in denial of the requests made in 2016; that the home was built anyway, after being denied variances; that the closeness to the neighbors increases the risk of fires spreading; and that the size of the home reduces the space for parking.

Charles Pyle was sworn in and testified in opposition to the Application. Mr. Pyle testified that lives on Lot 12; that his family has owned the property since 1965; that additions have been built and have complied with code; that he does not understand having a large house on a small lot; and that he wishes to keep the development uniform in a way everyone can be happy.

Charles Meade was sworn in and testified in opposition to the Application. Mr. Meade testified that his home was built in 1985; that the architect and builder he hired knew how to follow the Code; that it is the Applicants' fault for not retaining better professionals; that a home can be built there according to the Code; that the house is beautiful but does not fit on the lot; and that, if the Applicants would follow the Code, all would be good.

Rosemary Meade was sworn in and testified in opposition to the Application. Mrs. Meade testified that she noticed, after the first denial, the home was almost immediately built; that she called the Planning and Zoning staff; that the inspector stated the building could not be stopped; that the inspector stated he could stop the certificate of occupancy from being issued; and that she did not just sit there and let the home be built.

Mr. Willard stated that there are properties which have been granted rear yard variances in the community but not on Hayes Avenue; and that there are properties on Hayes Avenue which have received variances.

Mr. Cassie testified that the builder recommended the architect; that the builder hired the surveyor; that the Applicants relied on the architect, builder, and surveyor when the building started; that construction was finished in April; that a violation notice was issued in Fall 2017; that building of the deck was halted after receiving the violation notice and he told the builder to straighten it out; that the builder told him that the rear yard setback was 10 feet and that the issue had been worked out; that the building was completed; that he called and spoke with the builder and was told everything was okay; that he filed for a variance when he found out the balcony was not allowed; and that all the houses along the lagoon are built like their house.

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

The Board found that four (4) parties appeared in opposition to the Application.

Motion by Mr. Mills, seconded by Mr. Mears, and carried unanimously that **there is a substantial difference in the variance requests and that the Board should hear the case.** Motion carried 5 – 0.

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

yea, and Mr. Callaway – yea.

Mr. Mears moved to approve Variance Application No. 12159 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The exceptional practical difficulty has not been created by the Applicants as they relied on their builder and other professionals;
2. The variances will not alter the essential character of the neighborhood; and
3. The requested variances are the minimum variances necessary to afford relief.

Motion by Mr. Mears, seconded by Mr. Workman, and carried unanimously that the **variances be granted for the reasons stated**. Motion carried 5 – 0.

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

Case No. 12160 – Joe & Mary Lynn Stone seek a variance from the front yard setback for a proposed structure (Section 115-34 of the Sussex County Zoning Code). The property is located on the east side of Dune Rd., approximately 121 feet south of E. Bayberry Rd. 911 Address: 46 Dune Rd., Bethany Beach. Zoning District: MR. Tax Map: 134-17.16-110.00

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received two (2) letters in support of the Application and no correspondence in opposition to the Application and read the letters of support into the record. The Applicants seek a variance of 5.0 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling.

Greg Hastings was sworn in to testify about the Application.

Mr. Hastings testified that he is representing the Applicants; that the existing dwelling was built prior to 1969 and predates the Sussex County Zoning Code; that the existing dwelling was also built prior to the development of the Middlesex Beach Homeowners' Association; that the dwelling is 23.8 feet from the front property line; that the homeowners' association requires that, if substantial renovations are done, the existing restrictive covenants must be met; that the current setback requirement under the Middlesex Beach deed restrictions are twenty-five (25) feet from the front property line; that they can meet DNREC requirements in the rear yard; that the Applicants are requesting a variance of five (5) feet from the thirty (30) feet front yard setback requirement in order to meet the homeowners' associations requirement of a twenty-five (25) feet front yard setback; that they must move the existing wall 2.1 feet in order to meet the homeowners' association requirement; that there are other variances within the neighborhood; that the dwelling is one of the oldest homes in Middlesex Beach; that the property is located along the Atlantic Ocean; that the property is unique; that it cannot otherwise be developed; that the issue was not created by the Applicants because the dwelling is already existing; that the proposed dwelling will not alter the essential character of the neighborhood because it will be consistent with the front setback of 25 feet; that it is the minimum

variance needed to afford relief; and that the average front yard setback along Dune Road is 26.7 feet.

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

Ms. Magee moved to approve Variance Application No. 12160 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Application met all criteria for granting a variance; and
2. There is no possibility the property can be developed in strict conformity with the Sussex County zoning ordinance.

Motion by Ms. Magee, seconded by Mr. Mears, and carried unanimously that the **variance be granted for the reasons stated**. Motion carried 5 – 0.

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

Case No. 12161 – Kenneth J. Glick seeks variances from the minimum lot depth requirement and the minimum lot size requirement for a proposed parcel (Section 115-25 of the Sussex County Zoning Code). The property is located on the northwest corner of Greely Ave. and 3rd St. 911 Address: 18799 Greely Ave., Lincoln. Zoning District: AR-1. Tax Map: 230-6.17-53.00 & 230-6.17-54.00

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. The Applicant seeks a variance of 11.35 feet from the one-hundred (100) feet lot depth requirement for proposed Lot 2, a variance of 10,464 square feet from the 32,670 feet minimum lot size requirement for proposed Lot 2, and a variance of 4,000 square feet from the 32,670 feet minimum lot size requirement for proposed Lot 1. The Property consists of 2 parcels and Applicant seeks to adjust the lot lines for those parcels. The existing lot line runs through the existing dwelling; which is a legal, non-conforming structure over 100 years old.

Ken Glick was sworn in to testify about the Application.

Mr. Glick testified that he purchased the property as is; that the house was existing with the property line through it; that the new lot will conform with neighboring lots; that he wishes to create two similarly sized lots; that the property line currently runs through the dwelling; that there are different lot sizes in the neighborhood; that there are smaller lots in the area; that the property consists of two lots and he wishes to keep two lots but reconfigure the lot lines; and that, if the application is approved, Lot 2 will be accessed from Small Avenue.

Mr. Sharp stated that the front yard for Lot 2 would be considered the Small Avenue side of the lot and the front yard for Lot 1 would be considered the Greely Avenue side of the lot; and that 3rd Street would be considered the corner front yard.

Mr. Glick testified that the property is unique in that it consists of two separate lots with a property line going through the house; that he plans to place a small dwelling on Lot 2; that he installed a new septic system on the lot and he can place a standard septic system on Lot 2; that he submitted a letter from DeIDOT; that the variances are necessary to enable reasonable use of the Property; that it was not created by the Applicant because he did not create the lot lines; that it will not alter the essential character of the neighborhood; and that it is the minimum variance needed to afford relief.

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

Mr. Mills moved to approve Variance Application No. 12161 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to it a lot line run through an existing dwelling;
2. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
3. The exceptional practical difficulty has not been created by the Applicant;
4. The variances will not alter the essential character of the neighborhood;
5. The requested variances are the minimum variances necessary to afford relief; and
6. The requested variances are not detrimental to public welfare.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the **variances be granted for the reasons stated**. Motion carried 5 – 0.

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

Case No. 12162 – Billy D. Moore seeks a variance from the maximum fence height requirement for an existing structure (Section 115-185 of the Sussex County Zoning Code). The property is located on the north side of Sharptown Rd. (Rt. 24), approximately 148 feet west of Old Hickory Rd. 911 Address: 6883 Sharptown Rd., Laurel. Zoning District: AR-1. Tax Map: 432-11.00-40.05

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. The Applicant seeks a variance of 2.5 feet from the 3.5 feet maximum fence height requirement for an existing fence within the front yard setback.

Billy Moore and Lori Moore were sworn in to testify about the Application.

Mr. Moore testified that he thought he had to measure forty (40) feet from the road, not the property line; that he measured 48 feet from the centerline of the road in order to find where the property line was; that he installed the fence where he measured; that he needs the fence in order to keep privacy; that Nanticoke Fence Company was contracted to install the fence; that he told the fence

company to start at a certain point; that a permit may not have been acquired but he relied on the fence company to acquire one; that the bushes in the front have been removed; and that the fence is used for privacy.

Mrs. Moore testified that the property is unique in that it is close to the neighboring property where there are civil issues; that she wants security and peace of mind; that the fence is a barrier from the neighboring property; that she needs security and privacy for family, structures, and vehicles; that the fence will not alter the essential character of the neighborhood; that the fence does not cause obstruction of views; that the fence is a white vinyl privacy fence and will require minimal upkeep; that it is the minimum variance request because the fence is six (6) feet tall; that pictures were submitted with the application showing the placement of the fence and the changed to the property; that the variance is only needed for 20 feet of the fence in the front yard; and that there were bushes in the neighborhood and a car recently drove through the bushes.

Mr. Moore testified that the view from the street was improved by removing the bushes and replacing them with a fence.

Mrs. Moore reviewed the pictures submitted with the Application.

Joseph Patchett was sworn in to testify in opposition to the Application. Mr. Patchett testified that the fence diminishes the view down the road; that he cannot see traffic coming down the road; that he owns the adjacent property; that his son lives there; that he disliked the bushes when they were there; that the bushes blocked the view then; that the fence blocks the view now; and that the fence is along his property line.

Matthew Patchett was sworn in to testify in opposition to the Application. Mr. Patchett testified that he is not against the fence; that he is against the variance request; that the forty (40) feet front yard setback should be met; that the fence takes away the view down the road; that the Applicant started to put the fence up first before contacting a fence company; that the Applicant should have to stick to the code; that his son rides his bike up and down the road and he can no longer see him to keep an eye on him; and that he does not object to the fence if it complies.

Mr. Moore testified that there is a four (4) feet chain-link fence around the rear yard; that the trees in the front yard block the neighbor's view more than the fence; and that his neighbor's house sits farther back from the road than his house.

Joseph Patchett testified that his home is 88 feet from the road and that, in 1979, there were no houses on the road.

Scott Wingate was sworn in to testify in support of the Application. Mr. Wingate testified that he is in the support of the fence; that the fence company was who started to install the fence, not Mr. Moore; and that he is the next-door neighbor.

Brenda Wingate was sworn in to testify in support of the Application. Mrs. Wingate testified that she supports the request; that it was hard to see down the road with the previously existing bushes; that the fence is attractive and looks much better; and that she can see better with the fence installed and no bushes.

Lori Phippin was sworn into testify in support of the Application. Ms. Phippin testified that she lives nearby and is at the Property regularly; and that the road is a busy road and the fence has improved the vision in the neighborhood.

The Board found that four (4) parties appeared in support of the Application.

The Board found that three (3) parties appeared in opposition to the Application.

Mr. Mills moved to approve Variance Application No. 12162 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to it previously having a natural buffer of bushes which was partially destroyed by a car;
2. The exceptional practical difficulty has not been created by the Applicant because he relied on the fence company;
3. The requested variance is the minimum variance necessary to afford relief; and
4. The requested variance is not detrimental to public welfare.

Motion by Mr. Mills, seconded by Mr. Mears, and carried unanimously that the **variance be granted for the reasons stated**. Motion carried 5 – 0.

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

Meeting was adjourned at 11:05 p.m.