

MINUTES OF JUNE 2, 2025

The regular meeting of the Sussex County Board of Adjustment was held on Monday, June 2, 2025, at 6:00 p.m. in the County Council Chamber, Sussex County Administration Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Jeffrey Chorman presiding. The Board members present were Mr. John Williamson, Mr. Jeffrey Chorman, Mr. Travis Hastings, Dr. Kevin Carson, and Mr. Shawn Lovenguth. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, Vince Robertson, Esquire – Assistant County Attorney, and staff members Ms. Jennifer Norwood – Planning and Zoning Manager, Ms. Marina Truitt, and Ms. Jessica Iarussi – Recording Secretary.

The Pledge of Allegiance was led by Mr. Chorman.

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

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

Motion by Mr. Williamson, seconded by Dr. Carson and carried unanimously to approve the Minutes for the April 7, 2025, meeting. Motion carried 5 – 0.

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

Motion by Dr. Carson seconded by Mr. Lovenguth and carried to approve the Findings of Facts for the April 7, 2025, meeting. Motion carried 5 – 0.

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

OLD BUSINESS

Case No. 13060 – Trinity Commercial Holdings, LLC seeks a special use exception to operate a potentially hazardous use (Construction and Demolition Debris Recycling) (Sections 115-111 and 115-210 of the Sussex County Zoning Code). The properties are located on the South side of Fleatown Road and East of North Old State Road. 911 Address: 11663 Windmill Lane, Lincoln. Zoning District: HI-1/ GR. Tax Parcel: 230-19.00-111.00

Mr. James Sharp, Esq., recused himself from this hearing and Mr. Vince Robertson, Esq., sat in his place.

Mr. Robertson stated this is a follow up to the prior hearing at which the record was held open for the Applicant to submit a new site plan showing the proposed 30 foot vegetative buffer and to allow the public to comment on the revised site plan; that there are two things that the Board needs to consider is Section 115-111 potentially hazardous uses and also the special use exception; that the special use exception will not substantially affect adversely the uses of adjacent neighboring property but, because this also has the additional layer of the potentially hazardous use, the rule and the Code is the Board shall review the plans and statements and shall not permit such building structures until it has been shown that the public health, safety, morals, and general welfare will be properly protected and that the necessary safeguards will be provided for the protection of water areas or surrounding property and persons.

Mr. David Hutt, Esq., spoke on behalf of the Applicant and stated that there was concern raised by the Board of Adjustment members and then the public, at the Board of Adjustment meeting on April 28, 2025; that the concerns that were referenced related to landscaping and how this might be viewed from properties outside of this property itself, particularly those across Fleatown Road and Old State Road; that there was a particular emphasis on the individuals who were there before the concrete batching plant was installed; that one thing that was done was to more accurately represent the existing wooded areas on the site and every tree that exists was

identified and located on this landscaping plan; that there is a landscaped berm that is provided in this plan that is 550 feet long, from one end to the other; that it goes across the entire frontage along Fleatown Road and then goes across the western boundary all the way down to where there is an existing fence and that is noted on the plan and then that existing fence runs the remainder of the western property line and wraps around the southern property line; that the berm is 40 feet wide and 6 feet high with approximately 100 trees planned to be planted; that the 100 trees would exceed the minimum requirements for a landscaping buffer; that there is a proposal to planted an additional 70 trees along the south side of the concrete crushing machine where there is currently a privacy fence already installed; that there has been an addition of 176 trees to be planted along the south where the property adjoins the new Forest Landing Community between the berm and the area by the fence; and that they will be a mixture of evergreen trees and deciduous trees for more of a year round buffer.

Mr. Mark Davidson was sworn in to give testimony about the Application.

Mr. Davidson testified that the trees that are planned to be placed along the berm will be four to six feet in height when planted and should grow to ten feet within the five years as required by the Code; that having a berm with a heavy planted vegetation cuts down the sound and it will reduce as you continue to move away from the machine; that the noise will start to suppress itself and the berm will take up the sound like in a bubble; that, as the sound is moving away from the machine, it will hit that berm and the vegetation will soak up some of that energy from the sound wave and it will start knocking that sound out; and that, by the time that the berm is established, then these trees are planted you will significantly see a reduction in sound coming from the machine.

Mr. Raymond Shelton & Mrs. Norma Shelton were sworn in to give testimony on this application.

Mr. & Mrs. Shelton testified in opposition to the Application that the operation is creating dust and contamination of the water.

Mr. Chorman closed the public hearing.

Dr. Carson moved to deny the application for Case No. 13060 for the requested special use exception, pending final written decision, because the proposed use will substantially adversely affect uses of neighboring and adjacent properties.

Motion by Dr, Carson, seconded by Mr. Hastings, carried that the **special use exception be denied for the reasons stated.** Motion carried 3 - 2.

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

PUBLIC HEARINGS

Case No. 13069 – Blue Strategy, LLC seeks variances from the front and side yard setback requirements for an existing structure (Section 115-82, 115-182, and 115-183 of the Sussex County Zoning Code). The property is located on the east side of Harbeson Road. 911 Address: 18473 Harbeson Road, Milton. Zoning District: C-1. Tax Map: 235-30.00-22.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received zero letters of support, zero letters of opposition, and zero mail returns.

The Applicant is requesting the following variances:

- 5.81 ft. from the 20 ft. side yard setback requirement on the north side for an existing structure;

- 5.62 ft. from the 20 ft. side yard setback requirement on the north side for an existing structure;
- 7.45 ft. from the 60 ft. front yard setback requirement for an existing structure; and
- 7.4 ft. from the 60 ft. front yard setback requirement for an existing structure.

Mr. Mark H. Davidson and Mr. William Hall were sworn in to give testimony about the application.

Mr. Davidson testified that he was representing the Applicant, Blue Strategy, LLC, whose principal owners are Will and Christina Hall; that they also own Straight Line Solutions, LLC, which is currently operating on the property; that the business has been operating for approximately 15 years and they specialize in commercial parking lot striping, crack filling, and sealcoating; that the Applicant is applying for a 5.81 foot variance on the normal 20 foot side yard setback and a 7.45 foot variance on the normal 60 foot front yard setback for an existing building being converted from residential storage to storage on a C-1 General Commercial land; that the property was zoned Commercial in 1991 and is bordered by another C-1 property to the south, the Beaver Creek Subdivision to the east, which is zoned AR-1 Agricultural Residential, along with a single family residence to the north; that across the street there are more C-1 zoned properties; that, in February of 2019, the Applicant constructed this existing building for personal residential storage until they constructed a pole building at their personal residence in April of 2022; that, once they moved their belongings to their new pole building, they began using this location for commercial storage for their business; that when changing from an AR-1 to a C-1 use for this property the setbacks changed, requiring a 40 foot front yard setback to become a 60 foot front yard setback; that the side yard setback would normally drop to 5 feet on the sides but, when the property is adjoining to a residential parcel it becomes a 20 foot side yard setback; that the building itself currently sits almost 62 feet from the front right of way line and then there is a required 10 feet of dedicated right of way to DelDOT which makes the property about 7.5 feet shy of the meeting that front yard setback; that the property to the north has a planted vegetative buffer to provide screening from the Applicant's property; that the Applicant is proposing to put in a solid privacy fence along that northern property line; that there is a heavily vegetated buffer along the rear of the property that was planted by the Beaver Creek Subdivision to screen their property owners from the C-1 zoning neighboring them; that the Applicant is proposing to put in a six foot privacy fence along that rear property line to add to the screening of their business from those property owners; that the property is unique given its zoning classification of C-1, General Commercial having permitted uses of both residential and commercial, creating an exceptional practical difficulty given the conflicts within the existing regulations to ensure compatibility of the existing uses on the property with the surrounding properties; that the existing building cannot be used without major structural modifications for business activities as designed by the zoning laws not created by the Applicant; that there are emergency exits from the front, but all of the business comes and goes from the entrances on the rear of building; that the only plan for the front of the building will be some kind of stormwater management.

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 the application for Case No. 13069 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique physical conditions with its size;
2. The exceptional practical difficulty is not being created by the Applicant;
3. The variances will not alter the essential character of the neighborhood; and
4. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Hastings, seconded by Mr. Lovenguth, carried that the **variances be approved for the reasons stated**. Motion carried 5 - 0.

The vote by roll call: Dr. Carson – yea , Mr. Williamson – yea, Mr. Lovenguth – yea , Mr.

Hastings – yea, and Mr. Chorman – yea.

Case No. 13074 – Jayne Tamburello seeks variances from the side yard setback requirements for a proposed structure (Section 115-183, 115-25 and 115-185 of the Sussex County Zoning Code). The property is located on the southeast side of Coventry Drive within the Red Mill Farms Subdivision. 911 Address: 31490 Coventry Drive, Lewes. Zoning District: AR-1. Tax Map: 334-5.00-45.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received zero letters of support, zero letters of opposition, and zero mail returns.

The Applicant is requesting the following variance:

- 3 ft. from the 5 ft. side yard setback requirement on the south side for a proposed detached carport.

Ms. Jayne Tamburello was sworn in to give testimony about the Application.

Ms. Tamburello testified that she owns a lot in Red Mills Farm and all of the properties in there are odd shaped and her lot is pie shaped; that her neighbor has put in a fence along the shared property line of her driveway; that she wants to put in a carport to keep her vehicles from being exposed to the elements all of the time; that she does not want an actual garage due to the high cost of one; that, with the fence along her driveway, it makes maneuvering a car around in the driveway more difficult and that is why the use of a carport would be a better option than a larger structure of a garage; that the carport would be 2 feet from the neighbor's fence running parallel to the property line; that, due to the structures in her back yard (i.e. a pool and a shed), there is no other place to put the carport; that the well is located in the front of her property so nothing can be placed in the front yard; that she has spoken to her neighbor and there was no concern about the placement of the carport; that the driveway turns; that the carport cannot easily be seen from the road; that the property is located off a cul-de-sac; that no homeowner association approval is required; that the property is adjacent to the bike trail; that she added the fence due to her dogs; that the carport will be made of wood; that she can maintain the carport on her property; that the carport will not impact the neighbor's ability to maintain his fence; that the dwelling was placed by a prior owner; that the roof of the carport will slant towards the rear yard; that she placed the pool; that there was a septic system on the property but it has been abandoned; that the property is served by central sewer; and that the carport will be 2 feet from the side property line.

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 the application for Case No. 13074 for the requested variance, pending final written decision, for the following reasons:

1. The property has unique physical conditions due to the shape;
2. The exceptional practical difficulty has not been created by the Applicant;
3. The prior owner placed the dwelling and driveway on the property;
4. This variance will not alter the essential character of the neighborhood; and
5. The variance represents the minimum variance necessary to afford relief.

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

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

Case No. 13075 – Michael Mocion seeks variances from the separation distance requirements for proposed structures (Sections 115-50, 115-182, 115-183, and 115-188 of the Sussex County Zoning

Code). The property is located on the south side of Sandy Point Road within the Bahamas Beach Subdivision. 911 Address: 632 Sandy Point Road, Bethany Beach. Zoning District: HR-2. Tax Map: 134-17.00-44.00-26

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received zero letters of support, zero letters of opposition, and one mail return.

The Applicant is requesting the following variance:

- 21.6 ft from the 40 ft. separation requirement for a proposed structure.

Mr. James Churchman, Esq., appeared on behalf of the Applicant.

Mr. Churchman stated that the Applicant needs a variance for the 40 foot separation distance requirement on his property; that they are requesting a 21.6 foot variance from the 40 foot separation distance requirement; that this is the Applicant's second home and he is looking to move down here permanently and needs more space to accommodate his family; that the Applicant bought the property in 2020 but the home was built in 1993; that the community has clusters of condominiums that are considered multifamily units, generally group in three or four that are connected to each other by a shed in the rear; that the side yard or front yard setbacks are not applicable except to exterior parcels of the property; that the Applicant has family who likes to visit; that the dwelling has 2 bedrooms and 1.5 bathrooms; that the Applicant wants to add onto the house since the current unit is approximately 800-1,050 square feet and that is not large enough for his family; that the proposed addition is about 16 feet by 24 feet (or 380 square feet); that the proposed addition is going to mirror the original condominium itself with the same color scheme and the same elevation as it will go over the original stairs along the side of the building; that the stairs are going to be moved to the front and there is going to be an extension of the front deck area; that the Applicant has one of the smaller lots within the community and, because of that, he is limited on what he can do to add to his home; that this lot is approximately 2,298 square feet and most lots within the community range from 2,000 square feet to 4,500 square feet; that the lot is unique as it is a squarish lot with a 90 degree turn; that the front property line curves; that the 40 foot distance requirement between multifamily units creates no possibility that this property can be developed in strict conformity with the applicable zoning code due to the uniqueness and situation; that the law itself is irregular and it is significantly limited by the separation distance requirements; that, if you were to go with the applicable distance requirement, you would not be able to build at all on that property as it is not even 40 feet in separation; that any development of the property is inapplicable; that these structures on the neighboring lands were not placed there by the Applicant, the Applicant himself did not build this house and he has not made any additions except for this proposed addition so far; that the unnecessary hardship and exceptional practical difficulty were not created by him; that there was no opposition to the Application and the only concern was the possibility of a tree needing to be removed but a survey will need to be completed first to determine whose tree it actually is; that the variance will not alter the essential character of the neighborhood or substantially or permanently impair the uses of neighboring and adjacent properties; that the Applicant spoke with the neighbor about the Application and there was no opposition to the request; that the variance is the least modification possible of the regulation at issue; that the Applicant looked at other options; that the reason for this size of an addition was to be able to accommodate an additional bedroom, bathroom and living space; that, no matter what size addition they choose, the 40 foot separation requirement would impede on that construction; that there are several instances where a variance has been granted for similar applications asking for the change in the distance requirement within this community.

Mr. Sharp questioned the findings of fact presented which predated the Supreme Court's decision in *Verleysen*.

Mr. Churchman cited the Susan Thompson and Stanieslewski cases which were similar facts.

Mr. Williamson stated that the homes in Bahama Beach Cottages are small and that the

exceptional practical difficulty is being created by the Applicant; that the lots are not unique to the community; and that the variances the Applicant seeks are more than double prior variances that were granted by the Board.

Mr. Churchman submitted proposed findings of fact.

Mr. Michael Mocion was sworn in to testify about the Application.

Mr. Mocion testified that the statements made by Mr. Churchman were true and correct; that he wants the addition to allow for his family to visit; that he would like the addition to be 380 square feet; that 24 feet by 12 feet is the smallest he could go; that there is water to the rear yard; that there is no flooding in the rear yard; that some water puddles in the area; that he plans to address that in construction; that most units are 2-3 bedrooms; that his unit is smaller than other units; that the neighboring unit is larger but on a smaller lot; and that the area between Unit No. 27 is fenced with no access.

Mr. Sharp stated that, if the Applicant were to construct a 12 foot by 24 foot addition, the variance needed would be 17.6 feet rather than 21.6 feet.

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

Mr. Chorman closed the public hearing.

Mr. Lovenguth moved to deny the application for Case No. 13075 for the requested variance, pending final written decision, for the following reasons:

1. The property does not have a unique physical condition; and
2. The variance sought does not represent the minimum variance necessary to afford relief and that even a variance of 17.6 feet is too large.

Motion by Mr. Lovenguth, seconded by Mr. Hastings, carried that **the variance be denied for the reasons stated**. Motion carried 5 - 0.

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

Case No. 13076 – Michael Harrell seeks a variance from the rear yard setback requirement for an existing structure (Section 115-25, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located on the northwest side of Chartres Street. 911 Address: 19129 Chartres Street, Lewes. Zoning District: AR-1. Tax Map: 334-12.00-1011.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received zero letters of support, three letters of opposition, and zero mail returns.

The Applicant is requesting the following variance:

- 10 ft. from the 10 ft. rear yard setback requirement for an existing deck and paver patio.

Mr. Michael Harrell and Ms. Debbie Latham were sworn in to give testimony about this application.

Mr. Harrell testified that he had a deck built three years ago and now wants to add patios to each side of the deck so that his husband (who has mobility issues) can get down to the ground level via a slope surface rather than stairs; that the current deck was found to be built without a permit but he is currently working to get that problem fixed and now wants to add the patio which will encroach into the rear yard setback; that he also wants to construct a retractable awning over the patio; that the deck and patio are behind the house and out of view; that there is common area to the rear of the property; that the deck is elevated 15-18 inches with 2-3 steps to the ground; that he plans to install

the patio on both sides to keep it level; that the patio will be at ground level; that the deck was built in 2019-2020; that there is 15 feet from the house to the rear yard property line; that the patio and deck will be approximately 18" above grade at the rear but at grade at the house; that the property slopes in the rear and this will keep everything level and have a ramp installed; that there is a 1 foot slope from the house to the rear yard property line; that the structures are 6 inches tall at the house and 1 foot at the rear yard; that he did not yet obtain homeowner association approval but plans to apply for the same; that he spoke with his next door neighbor and there was no concern over what was planned to be installed; and that all aspects of the deck and patios would be within the property fences so that any maintenance that would be done to them will not affect any neighboring properties.

Ms. Latham testified that she is a friend of the Applicant; that, when the deck was built there was no HOA, the development was still under the control of the developers but now there is the Architectural Review Board from the HOA who is concerned about the patios being added; that they are worried that the Applicant will build without permits and deal with the consequences later like with what happened with the deck; and that the Applicant is trying to comply with the rules and procedures.

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 deny the application for Case No. 13076 for the requested variance, pending final written decision, for the following reasons:

1. The exceptional practical difficulty has been created by the Applicant;
2. The variance will alter the essential character of the neighborhood; and
3. The variance sought is not the minimum variance necessary to afford relief.

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

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

Case No. 13078 – Handley Orr seeks variances from the side yard setback requirements for an existing garage and shed (Section 115-25, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located at the corner of Linn Woods Lane and Peppers Creek Road within the Linn Woods Subdivision. 911 Address: 32196 Linn Woods Lane, Dagsboro. Zoning District: AR-1. Tax Map: 134-6.00-265.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received zero letters of support, zero letters of opposition, and one mail return.

The Applicant is requesting the following variances:

- 3.1 ft. from the 15 ft. side yard setback requirement on the east side for a garage.
- 5.4 ft. from the 15 ft. side yard setback requirement on the east side for an attached shed.

Mr. Handley Orr was sworn in to give testimony about the Application.

Mr. Orr testified that he wanted to build a garage on the lot adjoining to his but, when he went through permitting, it was denied due to not being allowed to have an empty lot with only a garage per the Code; that he decided to combine the 2 lots into 1 lot and he completed a lot consolidation to correct this issue which then brought up the problem of the existing garage being too close to the side yard property line; that the garage was built in 2005 by a prior owner with a permit; that, when he purchased the home on the original lot, there were stakes to mark the property lines and that is what he followed; that it was discovered that those stakes were in the wrong location and that is why he

now needs the variance to make the garage and the shed to be in compliance with the Code; that, once he had a new survey completed, they found that the placement of both structures are now within the setback areas; that no neighbors have complained about the location of either the shed or garage; that a neighbor wanted him to take down trees, which he did, only to later discover that the trees are actually on the neighbor's land; that their HOA is no longer established so there is no agency to get permission from; that the HOA only collects money for the roads; that the well and septic are on the other side of the lot; that the garage has been there for 20 years – including 10 years before he bought the property; and that the shed is part of the garage.

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 the application for Case No. 13078 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique physical conditions;
2. The exceptional practical difficulty has not been created by the Applicant;
3. The variances will not alter the essential character of the neighborhood; and
4. The variances represent the minimum variances necessary to afford relief.

Motion by Mr. Hastings, seconded by Mr. Williamson, carried that **the variances be approved for the reasons stated**. Motion carried 5 - 0.

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

ADDITIONAL BUSINESS

There was no additional business.

Meeting adjourned at 8:20 p.m.