

MINUTES OF JUNE 26, 2023

The regular meeting of the Sussex County Board of Adjustment was held on Monday, June 26, 2023, at 6:00 p.m. in the County Council Chamber, Sussex County Administration Office Building, Georgetown, Delaware. The teleconference system was tested during the meeting by staff to confirm connectivity.

The meeting was called to order at 6:00 p.m. with Chairman Jeffrey Chorman presiding. The Board members present were Dr. Kevin Carson, Mr. John T. Hastings, Mr. Jordan Warfel, Mr. John Williamson, and Mr. Jeffrey Chorman. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, Mr. Vince Robertson - Assistant County Attorney, and staff members Mr. Chase Phillips – Planning and Zoning Planner II, and Ms. Ann Lepore – Recording Secretary.

The Pledge of Allegiance was led by Mr. Chorman.

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

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

Motion by Mr. Hastings, seconded by Dr. Carson and carried unanimously to approve the Minutes for the April 17, 2023, meeting. Motion carried 5 – 0.

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

Motion by Mr. Williamson, seconded by Mr. Warfel and carried to approve the Findings of Facts for the April 17, 2023, meeting. Motion carried 5 – 0.

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

PUBLIC HEARINGS

Case No. 12839 – Karen L. Mensonides and Barbara Blades seek variances from the lot width and lot area requirements for proposed lots (Sections 115-82 of the Sussex County Zoning Code). The property is located on the north side of Lighthouse Road approximately 125 feet east of Willow Lane. 911 Address: 37543 Lighthouse Road, Fenwick Island. Zoning District: C-1. Tax Parcel: 134-23.20-58.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and two (2) mail returns. The Applicants are requesting a 1,068 square foot variance for proposed Parcel A, a 1,058 square foot variance for Parcel B, a variance of 15.02 feet from the 75 feet lot width requirement for Parcel A,

and a variance of 15.03 feet from the 75 feet lot width requirement for Parcel B.

Mr. Sharp recused himself and left the Council Chambers.

Mr. Robertson stepped in as acting counsel.

Mr. Robert Nash was sworn in to give testimony on the Application.

Mr. Nash testified that he is present on behalf of the Applicants and Merestone Consultants; that the Applicants inherited the property; that subdividing the property is the best way to use it as there are two persons who inherited the land; that the property is only about 75 feet wide; that what they are trying to do is divide the property into two parcels; that there is room on the east side to provide an easement to the back parcel; that, in order for the parties to use the property in equal management, they believe this is the best way to do it; that the property lies in an area of multifamily or multi-unit development and manufactured home parks; that they do not believe this will substantially change the character of the neighborhood; that, if approved, these are the minimum variances requested to afford relief; that this property is located between other small lots; that they believe this will be fitting of the neighborhood; that the plan is to put a single-family home on the rear parcel; that he does not believe they will be building a mansion; that the plan is to put a 12 ft. easement along the eastern property line because of the placement of the existing house; that the proposed dwelling would comply with all setbacks and requirements; that there is no variance request for the setbacks on either parcel just for the width and lot size of the proposed lot; that they realize they will be limited with the size of the dwelling they can build; that the property has public water and sewer; that, in the rear of the property, there is a ditch but the lot does not flood much; that the front of the property is 59.97 feet wide; that he believes W. Maryland Avenue to the rear is just a paper street; and that W. Maryland Avenue does not touch the subject property and they have no access to it.

Ms. Karen L. Mensonides was sworn in to give testimony in support of the Application.

Ms. Mensonides testified that she is one of the owners of the property; that she and her aunt inherited the property; that her grandparents bought the property in 1969 for \$3,500; that her grandmother's intentions when she passed away were to ensure that the property stayed in the family; that they would like to subdivide the parcel to keep it in the family; that they are not planning for multifamily or any giant homes; that they may even place a single-wide trailer on the back lot; and that she does not know why it was zoned commercial but that is not what they intend to use it for.

The Board found that one (1) person appeared in support of and no one appeared in opposition to the Application.

Mr. Chorman closed the public hearing.

Mr. Williamson moved to approve the application for Case No. 12839 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to the flooding at the rear of the property;
2. That, due to the physical conditions, the property cannot be developed in strict conformity with Sussex County Zoning Code, and the variances are necessary to enable the reasonable use of the property;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances represent the minimum variances necessary to afford relief.

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

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

Mr. Sharp returned as counsel for the Board.

Case No. 12836 – Keith Shellhamer seeks variances from the front yard setback requirement for existing structures (Sections 115-25 and 115-182 of the Sussex County Zoning Code). The property is located on the northwest side of Hickory Manor Road approximately 382 ft. from Vines Creek Road. 911 Address: 31650 Hickory Manor Road, Frankford. Zoning District: AR-1. Tax Parcel: 134-11.00-21.02

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application, and zero mail returns. The Applicant is requesting variances of 9.9 ft. from the 40 ft. front yard setback requirement for an existing dwelling, porch, and steps.

Mr. Keith Shellhamer was sworn in to give testimony about the Application.

Mr. Shellhamer testified that, when he bought the property, he received a plot plan; that he found one property pin at the lower end of the property 8 ft. off the road; that he assumed the upper property line was close and looking at the plot plan it looked like it goes right to the road; that they then found out that the property line was 16 ft. into the neighbor's yard off the road; that this puts them to close to the front property line; that the house is 49 ft. from the road; that he was not trying to place his house forward of the neighbors; that he even placed the house back farther than he thought and they still encroach on the front yard setback; that he submitted pictures of the measurements he took; that the foundation was dug, footer inspection completed and passed; that once the house was placed and he scheduled the next inspection at which they noticed the property line issue; that he already has a pole building permit approved for the same property; that they are

not at final inspection yet; that he was trying to get the closure inspection done; that the house came like shown in the pictures; that he assumed with the footer passing that it would have been caught or they would not have proceeded with the foundation and placing the house; that the home is a Beracah Home; that the footer was done by Vernon King; that he bought the house wholesale and is doing things as much as he can; that he staked off the property; that there is a slight curve to his front property line; that there is a swamp and flood zone behind him; that, due to the angle of the lot, it was tough to fit the foundation or the septic system; that there is a lot to squeeze into a small lot; that there are wetlands to the rear of the property; that he spoke to the neighbors on both sides; that, when you stand on his front, porch you can see the faces of the neighboring houses; that the proposed pole barn, which a permit has been approved for, is shown on the plot plan; that he has well and septic on the property; that the pole building will be about 5 ft. from the house; that the house is one level containing 1,500 sq. ft.; that the house sits 30 ft. from the property line and 49 ft. from the road; that the porch sits away from the property line more than the section of house that they measured from; and that the distance from the front property line to the road is 19 ft.

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. 12836 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to the shape of the lot, the wetlands to the rear, and the slope;
2. That, due to the physical conditions, the property cannot be developed in strict conformity with Sussex County Zoning Code, and the variances are necessary to enable the reasonable use of the property;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances represent the minimum variances necessary to afford relief.

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

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

Case No. 12837 – David C. Eppes seeks variances from the corner front and rear yard setback requirements for a proposed swimming pool and the maximum fence height requirement in a front yard for a proposed fence (Sections 115-34, 115-182, and 115-185 of the Sussex County Zoning Code). The property is located on the southeast side of Collins Avenue on the corner of Mary Avenue

within the Indian Beach Surf Club Subdivision. 911 Address: 34 Collins Avenue, Dewey Beach. Zoning District: MR. Tax Map: 334-23.06-63.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application, and zero mail returns. The Applicant is requesting variances of 5 ft. from the 15 ft. corner front yard setback requirement for a proposed pool, 1 ft. from the 6 ft. rear yard setback requirement for a proposed pool, and a variance of 0.5 feet from the maximum fence height requirement of 3.5 feet for a proposed fence in a front yard.

Mr. Warfel recused himself and left the Council Chambers.

Mr. David C. Eppes was sworn in to give testimony for the Application.

Mr. Eppes testified that this same variance request was submitted and approved back in 2011; that the pool was never built; that the house that was built was very large because the lot was very large and very expensive at the time; that swimming pools were kind of optional then and now have become almost mandatory; that the aerial maps from the County are not up to date as some of the properties around his have been redeveloped; that the area surrounding his property is full of pools; that he could build a long skinny lap pool without a variance but he does not believe that to be the best use as people tend to want a larger pool; that he is proposing to place a 10' by 20' pool; that a major mitigating factor is that there are paper roads in Indian Beach; that Mary Avenue is a paper road which separates his lot from the lot to the east; that the lot to the east received a side and rear yard variance and his fence is placed right on Mary Avenue; that swimming pools are what is expected in today's market; that he submitted a survey done last month by Foresight; that the survey shows the proposed 10' by 20' pool and fence; that he would like to put the fence on the property line to allow maximum space for the pool; that he submitted pictures of the surrounding properties showing the neighbor's pool and how Mary Avenue is not a street but rather land with trees; that Indian Beach is very picky about keeping the side roads passable and being respected as road but not navigated; that he believes his lot is 90' by 100' but is not sure; that his lot is slightly irregular and not exactly a rectangle; that the proposed fence will meet the code requirement for a pool; that Mary Avenue is overgrown and that is how the HOA prefers it; that occasionally someone will use Mary Avenue as a cut through; that he did not seek or need HOA approval; that the bylaws and rules for the HOA were written around 1952 and is about three pages long with minimal restrictions; that there is no architectural review process; and that the previous opposition to his request sent in a letter but has since moved.

Ms. Jane Patchell, Esquire, and Mr. Lawrence Radanovic were sworn in to give testimony in opposition to the Application.

Ms. Patchell stated that she is present on behalf of Mr. Radanovic and the North Indian Beach Homeowners Association; that, when the Applicant's house was being built there was an issue with

the driveway and the HOA gave permission for the developer to infringe upon Mary Avenue to install a driveway because there was not sufficient room on the lot for a turnaround for the garage; that it is not the HOA's position that Mary Avenue is impassable; that the lot that required a variance is much smaller in size than the subject property; that the property next door required a 2 ft. variance and is a 60 ft. wide lot, which is 30 ft. narrower than the subject property, and is 33 1/3% smaller; that, if you look at the plan, there are various depth lots; that there was no request in the Application for a variance from fence height; that the Applicant has alluded to another pool in the neighborhood located on a roof and potentially he could do the same; that the subject property is currently for sale; that they request the Application be denied as the Applicant does not meet the criteria necessary for a variance; that the Applicant is requesting a 150% larger variance to install a pool on his lot which is already 30 ft. wider than the adjacent property with a swimming pool; that the Applicant has failed to demonstrate how his property meets the criteria necessary for a variance to be granted under the Sussex County Code and Delaware Law; that they have, in fact, presented evidence that he fails to meet any of the criteria necessary and request that the variances be denied; and that typically an applicant would revise their application to show additional variances needed.

Mr. Radanovic testified that he is present representing the North Indian Beach Community Association; that the lot in question is not unique; that the subject lot is one of the largest lots in the neighborhood; that his lot is also 90 feet by 100 feet; that he believes there are 36 developed lots in North Indian Beach; that there are five pools in North Indian Beach; that, of those five pools, only one required a variance; that the lot in need of the variance is across Mary Avenue immediately east of the subject lot and that lot only measured 60 feet wide and needed a much smaller variance; that the subject lot is not any different than any other lot on Collins Avenue and has a similar depth to other lots on Collins Avenue; that some lots on Collins Avenue are only 85 feet deep; that there are no unique topographic conditions on the lot; that the subject lot is the same size as his lot; that the Applicant states that he could build a pool on the lot without the need for a variance; that he believes it is an economic reason for seeking a variance; that there is no mention of the pool being necessary to enable the reasonable use of the property; that, based on the lack of pools in the neighborhood, it would not seem that a pool is necessary to enable reasonable use of the property; that the developer was also the Applicant under the business he represented making this a situation created by the Applicant; that Mary Avenue is passable; that there is a footpath that North Indian Beach members are permitted to use; that he affirms the statements made by Ms. Patchell to be true and correct; that he does not know if the HOA would have opposition to the request for the fence as it has not been discussed by them; that the issue of the fence is new and a separate issue and he cannot say there would be no objection by any member of the association; that the HOA owns the road; that, if the HOA chose to do so, they could clear the rest of Mary Avenue and pave it; that being overgrown is not unique to Mary Avenue; that Mary Avenue is not grown up because of the encroachment; that they do not walk on the part of Mary Avenue that the Applicant uses for his own purposes but rather use the neighborhood walking path; that he is representing the HOA but there was no vote taken but there were emails circulated to a limited number of HOA members; that there are two other members present tonight; that the majority of the Board were in favor of him representing the HOA tonight; that the HOA feels that he would be encroaching on the privacy of the neighbor to the south of him

because there is so little yard in that back; and that the neighbor to the south, Tom Ruins who is HOA president, likes to sit out there a lot.

Mr. Eppes testified in response that he disagrees with the statement that he in some way obstructed Mary Avenue; that you could walk Mary Avenue on foot but it is impassable by anything other than a path; that, when installing the driveway, they wanted to make it easier to navigate to turn into the garage; that they asked the HOA and they gave their approval but he does not understand the relevance of this to the application; that four of the pools in the neighborhood are located around his property; that, in terms of placing a pool on the roof, it requires a tremendous amount of steel to support the weight of a pool which is not a possibility at this point; that regarding the neighbor who has a pool and abuts to Mary Avenue, they installed a fence along Mary Avenue and the HOA did not object to it; and that the house is currently listed for sale.

The Board found that no one appeared in support of and two (2) people appeared in opposition to the Application.

Mr. Chorman closed the public hearing.

Dr. Carson moved to deny the application for Case No. 12831 for the requested variances, pending final written decision, because the exceptional practical difficulty was created by the Applicant.

Motion by Dr. Carson, seconded by Mr. Hastings. Motion failed 2 – 2.

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

Mr. Williamson moved to approve the application for Case No. 12831 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to the paper road;
2. The variances will not alter the essential character of the neighborhood; and
3. The variances represent the minimum variances necessary to afford relief.

Motion by Mr. Williamson, seconded by Dr. Carson. Motion failed 2 – 2.

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

Due to a lack of three affirmative votes for the approval of the Application, the requested variances are **denied**.

Mr. Warfel returned to the Council Chambers.

Case No. 12838 – Joseph Burr and Monica Ogle seek a special use exception to operate a commercial dog kennel (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located on the south side of Pit Road approximately 1,376 feet southeast of Old Meadow Road. 911 Address: 10980 Pit Road, Seaford. Zoning District: AR-1. Tax Parcel: 231-12.00-112.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received 13 letters in support of, zero in opposition to the Application, and zero mail returns. The Applicants are requesting a special use exception to operate a commercial dog kennel.

Ms. Monica Ogle and Mr. Joseph Burr were sworn in to give testimony on this application.

Ms. Ogle testified that they are requesting a special use exception because they have more dogs than they are allowed; that they have 10 dogs; that their dogs are small; that they have put up a privacy fence around their yard which their dogs can access through a dog door from their house; that their dogs cannot go out at night; that the fence is to keep their dogs from seeing and barking at people and other dogs in the neighborhood; that she is a breeder and operates her grooming business from the property; that she has approval to run her business from home because she has no employees; that she grooms dogs 3 days a week; that they have maybe 1-2 litters of puppies a year but it is not their primary job; that Mr. Burr works a 40 hour week and she works 3 days a week grooming; that she got signatures of their neighbors within 200 ft. that they do not oppose her application; that the last time they were here the man who opposed did not even live on their street; that the majority of the neighbors from 5 years ago are no longer there; that none of their neighbors have issue with this; that some of their neighbors did not even know they had dogs; that everything is exactly the way it was 5 years ago; that they are only here because they have to renew the special use exception; that they no longer have dachshunds just the shih tzus; that the dogs are their personal dogs; that, since COVID, her business has really slacked off; that she has been doing this for 15 years and has lost a lot of clients themselves or the dogs; that she maybe grooms 5 dogs in 3 days; that they do not have any large dogs; that they do not board dogs but she has on occasion watched her son's dogs; that there is no advertisement on the property; that all visitors to the kennel are by appointment only; and that they are in agreement with the prior conditions placed on their approval.

Mr. Burr testified that their dogs are indoor dogs; that their opposition last time was told that they lived too far away; and that part of the issue is the use of the word kennel because they are not a kennel.

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

Mr. Chorman closed the public hearing.

Mr. Warfel moved to approve the application for Case No. 12838 for the requested special use exception, pending final written decision, because the proposed use will not substantially affect adversely the uses of neighboring and adjacent properties subject to the following conditions:

1. The approval is for a period of five (5) years;
2. There shall be no more than twelve (12) dogs to be housed at one time; and
3. All of the dogs in the kennel should weigh less than fifteen (15) pounds.

Motion by Mr. Warfel, seconded by Mr. Hastings, carried that the **special use exception be granted with conditions for the reasons stated.** Motion carried 5 - 0.

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

Case No. 12840 –Terry L. and Lora L. Lowery seek variances from the front yard setback requirements for an existing structure (Sections 115-34, 115-182, and 115-185 of the Sussex County Zoning Code). The property is located on the corner of Lake Shore Drive and Lakewood Drive within the Lochwood Subdivision. 911 Address: 14 Lakeshore Drive, Lewes. Zoning District: MR. Tax Parcel: 234-11.00-186.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received 29 letters in support, zero letters in opposition to the Application, and zero mail returns. The Applicants are requesting variances of 23.7 ft. from the 30 ft. front yard setback requirement for an existing shed.

Mr. Terry L. Lowery and Ms. Lora L. Lowery were sworn in to testify on the Application.

Ms. Lowery testified that they are requesting a variance because their house was built facing Lakewood Drive but their address is Lakeshore Drive; that you can see from the pictures that there was nowhere else for them to put their shed; that they placed the shed in a back corner; that they did a wonderful job on it; that, in a picture they submitted, you can see the front of the shed and the septic caps; that they put landscaping around the shed and made it look very nice; that they keep their property clean; that it does not hurt the neighborhood; that they are here because they got a letter saying that they needed to apply for a variance for the placement of their shed; and that she is not sure how long the shed has been in place exactly.

Mr. Lowery testified they cannot use that section of property for anything else because of the septic placement; that, from the edge of the road to the shed, is probably 20 ft. or more; that the shed is on a concrete slab; that the shed is 6 ft. from the rear property line; that the neighbor behind them has a row of pine trees that run their property line; that the trees were so close to their property line that about half of the trees are on his property so he gave enough distance to account for that; that the shed measures 8 feet by 16 feet; that the septic system is parallel to Lakeshore Drive and limits where

the shed could be located; that the shed was placed 2-3 years ago; that there have been no complaints about the shed; and that their property lines are marked.

Ms. Gail Tarlecki was sworn in to testify on the Application.

Ms. Tarlecki testified that she is the Community Association Manager; that she is no stranger to the Board as she has received a variance in the past; that the Lochwood community was turned over in 1974; that there is an addressing problem on the Lowerys' parcel; that, in the past, they have been regularly visited by the constables; that there are still some lots being developed; that, on a drive through of the community, it was noted that the shed was not in compliance; that the Lowerys' property is beautiful and they are the type of neighbors you would want in your community; that the shed faces in the same direction as their house; that this whole process has cause the Lowerys a great deal of stress and angst; that she believes it was an honest mistake and is not even really sure why they need a variance but here we all sit; that the HOA approved an architectural application that was submitted with their plot map; that, when she looked at it, she can honestly say, that it did not look like it was bothering anybody or anything; that they got a permit and nobody said this is wrong; that they all believed in good faith that they were doing the right thing; that there is no entrance to Lakeshore Drive; and that there have been no complaints from the neighbors.

Ms. Susan Greco was sworn in to give testimony in support of the Application.

Ms. Greco testified that the Lowerys' property is an asset to the neighborhood; that their property is always neat and clean; and that their shed is adorable.

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

Mr. Chorman closed the public hearing.

Mr. Hastings moved to approve the application for Case No. 12840 for the variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to being a corner lot;
2. That, due to the physical conditions, the property cannot be developed in strict conformity with Sussex County Zoning Code;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances represent the minimum variances necessary to afford relief.

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

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

Case No. 12841 –Tammy and James Compton seek variances from the side yard setback requirements for a proposed structure (Sections 115-25, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located on the northwest side of Jordan Avenue within the Morning Side Village II Subdivision. 911 Address: 11220 Jordan Avenue, Bridgeville. Zoning District: AR-1. Tax Parcel: 430-19.00-284.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received one letter in support of, zero letters in opposition to the Application, and zero mail returns. The Applicants are requesting a variance of 10 ft. from the 15 ft. side yard setback requirement on the northeast side for a proposed building.

Ms. Tammy Compton and Mr. James Compton were sworn in to give testimony on the Application.

Ms. Compton testified that they are seeking to build a pole shed on the backside of their property; that there is a 10 ft. section of open space between their property and the property next door which Dale Wheatley has given her permission to use; that there is no other location in the development that has that; that Mr. Wheatley said that he thought it was for a utility easement but that he owns it and gives her permission to use it for whatever she needs it for as she has been maintaining it for 18 years; that behind their home is a branch of the Nanticoke; that no one can build there; that behind their house where the woods are it drops off probably 15 ft.; that she recently got married and they are combining 2 homes and vehicles; that, currently, they have a small shed and the garage attached to the home which is about the same size as the shed; that they have no room for storage; that the proposed building they need is 30' by 40'; that, if they did the 15 ft. variance off that 10 ft. right of way there, it would put the pole barn behind the home, at least 15 ft. of it, and they would not be able to drive into it; that they do not find placing the pole building behind their house to be appealing; that their neighbor most directly affected submitted a letter in support; that her neighbor just recently built a three-car garage; that, on the other side of her property, is a big retention pond blocking the view from the neighboring lot; that the neighboring homes across the street do not face in the direction of her home and would not be impacted; that they have septic and Tidewater; that the septic is located on the south side of their property so they could not locate the building there and it would be on the opposite side from the existing driveway; that they have a permit to build the pole building which has been approved; that the builder applied for the permit; that, initially, they had the distance at 32 ft. from the property line but it is more like 15 ft.; that the 10 ft. right of way is level ground; that it is all wetlands behind their property; that there is nothing else in their backyard other than a fire pit; that they would not be able to access the garage from the driveway if they moved the structure to be located more behind the house; that she works at Delaware Electric and designed the neighborhood's electric so she does not understand why there would be a utility right of way between her and her neighbor's property; that she does not think they would be able to turn the garage for the

entry to face the neighbors and still be able to access it from their driveway; that they have a couple classic cars and a motorcycle; that, if they move the building any farther up, it would hinder their ability to get into the backyard with any kind of lawn mower or anything; that they also plan to put their grill under the lean-to; that the patio is 8 ft. wide; that you will not be able to see the porch from the road; that, looking at the online mapping, it does not show the property accurately; that they have HOA approval; and that, if they were going to encroach on the rear, they would adjust the size of the building to fit.

Mr. Compton testified that they are combining two households; that they are not looking to collect more but just store what they already have; that the pole building will not be out of character with the neighborhood; that the proposed porch off the pole building is the covering for the pedestrian entrance to the building; that they are also proposing a roll-up door on that side to get lawn equipment in and out; that moving the building up would impede any entrances or exits for the backyard; that off the front of the building on the plan is just the apron; that they do not have final plans as they have been going back and forth with the builder; that they do not want to run the driveway behind their house; that it would be impractical and look stupid to put the building behind the house; that the small lean-to is set behind the house slightly; that their stuff is currently outside and the weather is beating it up; that they have not paid the builder anything yet because they were waiting to see if they received the variance; that the building will be used for his classic cars that are currently sitting outside; and that the depth of the pole building could be adjusted but the width cannot.

Ms. Melanie Robb was sworn in to testify in support of the Application by telephone.

Ms. Robb testified that she could not be in person and submitted a letter; that she and her husband wanted to verbally state that they do not have any issues with the approval of this variance; that the Comptons have one of the nicest homes in the neighborhood; that the renderings they have seen are beautiful; that this is going to make their neighborhood nicer; that, over the last several years, a few of the neighbors have added either garages, pole barns, sheds, or additions to their properties; that their neighborhood is almost 20 years old; and that they would be the neighbors most impacted but do not have any concerns or issues with this being approved.

The Board found that one (1) person appeared in support of and no one appeared in opposition to the Application.

Mr. Chorman closed the public hearing.

Dr. Carson moved to approve with the condition that there is no encroachment on the rear yard setback for the application for Case No. 12841 for the requested variances, pending final written decision, for the following reasons:

1. The exceptional practical difficulty was not created by the Applicants; and
2. The variances represent the minimum variances necessary to afford relief.

Motion by Dr. Carson, seconded by Mr. Hastings, carried that the **variances be granted with conditions for the reasons stated.** Motion carried 4 - 1.

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

ADDITIONAL BUSINESS

Discussion Regarding Telephonic Participation

The Board discussed the possible removal of the telephonic participation option that was imposed during the Covid-19 pandemic.

The Board concluded that they needed more information and this matter will be discussed again at the next meeting.

Meeting adjourned at 8:44 p.m.