

## MINUTES OF JUNE 27, 2022

The regular meeting of the Sussex County Board of Adjustment was held on Monday, June 27, 2022, 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 John Williamson presiding. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Ms. Jennifer Norwood – Planning and Zoning Manager, and Ms. Amy Hollis – Recording Secretary.

The Pledge of Allegiance was led by Mr. Williamson.

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

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

Motion by Mr. Warfel, seconded by Mr. Chorman and carried unanimously to approve the Minutes for the April 18, 2022, meeting. Motion carried 5 – 0.

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

Motion by Mr. Chorman, seconded by Mr. Hastings and carried unanimously to approve the Findings of Facts for the April 18, 2022, meeting. Motion carried 5 – 0.

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

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

### OLD BUSINESS

**Case No. 12684 – Adan Casas** seeks variances from the side yard setback, rear yard setback, and stable structure for personal keeping of animals setback requirements for existing structures (Sections 115-20, 115-25, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located on the west side of Seaford Road approximately .74 miles south of Bethel Road/Camp Road. 911 Address: 30016 Seaford Road, Laurel. Zoning District: AR-1. Tax Parcel 232-12.00-32.00

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 one (1) mail return. The

record was previously left open at the May 2, 2022 meeting for the limited purpose of submitting a proposal of compliance. The Applicant is requesting variances for 5.2 ft. and 4.5 ft. from the 15 ft. side yard setback requirement for an existing detached garage, 4.2 ft. and 3.9 ft. from the 15 ft. side yard setback requirement for an existing porch and dwelling, 40 ft. and 33 ft. variance from the 50 ft. rear yard setback requirement for a stable structure, 34.3 ft. from the 50 ft. side yard setback requirement for a stable structure, and 25.7 ft. from the 50 ft. side yard setback requirement for a stable structure. The stable structure will comply with the 100 ft. setback requirement from neighboring dwellings. These are based on the updated survey provided.

Mr. Guillermo Montalvo Merino, an employee of Sussex County, is interpreting for Mr. Casas.

Mr. Adan Casas was sworn in to give testimony about his application.

Mr. Casas testified that based on the new plan he will be cutting the building in half and reusing the materials to reconstruct on the opposite side away from the rear property line; and that the structure in the rear corner will be removed completely and the shed will be moved to the middle of the property and into compliance.

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

Mr. Williamson closed the public hearing.

Mr. Warfel moved to approve Case No. 12684 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to the exceptionally small buildable area;
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 nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare; and
5. The variances represent the minimum variances necessary to afford relief.

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

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

## PUBLIC HEARINGS

**Case No. 12703 – Jeffrey & Patricia Little** seek variances from the rear yard setback requirement for proposed structures. (Section 115-25, and 115-183 of the Sussex County Zoning Code). The property is located on the east side of Sussex Road approximately 125 ft. from the intersection of Kent and New Castle Roads within the Indian River Acres Subdivision. 911 Address: N/A. Zoning District: AR-1. Tax Parcel: 134-7.00-37.22

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 a variance of 5 ft. from the 15 ft. rear yard setback requirement for proposed decks/covered porch.

Mr. Jeffrey Little was sworn in to give testimony about the Application.

Mr. Little testified that he has a very small lot; that in order to build a home and accommodate the holding tank he needs a variance; that he would like to place his back deck 10 ft. closer to the rear property line; that if approved his structure will be the same distance, as both neighbors adjacent to him, from the bulkhead; that he is doing the best he can with the size of the lot; that the property is unique due to having a bulkhead; that he has to have a holding tank as the sewer is not coming for 3-5 years; that if he changes the placement of the home he will be losing more yard area; that he is concerned about parking because his driveway is less than 30 ft.; that he owns a .75 ton truck and it will be hard to fit in the driveway; that it will not affect the character of the neighborhood as all the houses in the neighborhood are within 10 ft. of the bulkhead; that he has a small blank slate; that it may have been his mistake to purchase a small lot; that it is not an overly large home, he is just restricted by the area of the lot; that the home is 59 ft. deep, but he does not know the square footage; that it is 59 ft. deep to the end of the proposed deck; that the deck will be 10 ft. in length; that is a screened in porch; that the property line ends at the bulkhead; that there is no HOA; that the foundation will be a concrete footer, formed in place; that there will be a two (2) car garage, that will be two (2) stories high; that without the variance he would be left with a 5 ft. screened porch; that the holding tank will be placed on the left side of the property, which will have the wider setback; that if he flips the orientation of the home he would fill the building envelope but it wouldn't leave him any space to park a pontoon boat or a place for the holding tank; that he purchased the property to build a home and park his pontoon boat; that he needs the extra space at the southside of the property to do that; that the only external steps will be off the front door; that the porch will be on the first floor with a separate porch on the second floor; that it will be a 2-story home; that the design was chosen by his wife; that Matt Morgan will be building the home; that the rear of his property would be in line with the neighbors; that he believes that the rest of his block has obtained variances; that he knows that the houses on his block are all less than 15 ft. from the bulkhead but it unaware of how they got to be that way; that he believes the front of the home will also be in line with the neighbors but his primary concern was having his vehicle off of the street; and that there is no off street parking in the neighborhood; that his property line goes from the road to the bulkhead.

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

Mr. Williamson closed the public hearing.

Dr. Carson moved to approve Case No. 12703 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to the exceptionally small buildable area;
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 nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare; and
5. The variances represent the minimum variances necessary to afford relief.

Motion by Dr. Carson, seconded by Mr. Hastings, failed that the **variances be granted for the reasons stated**. Motion failed 2 – 3. **Variance is denied**.

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

**Case No. 12704 – Scott & Kristin Newkirk** seek variances from the front yard setback and side yard setback requirements for a proposed garage. (Section 115-34, 115-182, and 115-183 of the Sussex County Zoning Code). The property is a through lot located on the southeast side of Hickman Drive within the White Creek Manor Subdivision. 911 Address: 725 Hickman Drive, Ocean View. Zoning District: MR. Tax Parcel: 134-12.00-1036.00

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 30 ft. from the 40 ft. front yard setback requirement for a proposed detached garage on a through lot and 3 ft. from the 5 ft. side yard setback requirement for a proposed detached garage.

Mr. Scott Newkirk and Ms. Kristin Newkirk were sworn in to give testimony about their Application.

Mr. Newkirk testified that they are requesting a variance to remove the existing shed and replace it with a detached garage; that the new structure would be 5 ft. closer to the rear property line at Club House Road; that they are looking to maintain the same righthand boundary against their side

property line; that it has no impact on the rest of the neighborhood; that there are other garages in the neighborhood; that this would increase privacy for them and the most affected neighbors; that all of the properties on his road enter from Hickman not from Club House Road; that the backyard of the adjacent properties would be toward Club House Road if they were not through lots; that their home does not presently have a garage; that the structure is set as far back as it is to maintain a distance between the proposed garage and the existing deck off of the house; that if they brought the garage in closer it would impede on the existing deck; that the proposed garage is 26 ft. in depth; that the proposed garage will be within a few feet of the existing deck; that there would be 11 ft. to the rear property marker from the rear of the proposed garage; that the tree would be removed; that they would be doubling the distance of the existing structure; that the back of the proposed structure would be about 1 ft. in front of the tree to be removed; that his property line is 16 ft. from the edge of paving on Club House Road; that there are 3-4 ft. in front of his property to Hickman Road; that his neighbors are in favor; that the HOA President offered a letter of endorsement; that the HOA will approved after the County gives approval; that the existing shed will be removed; that the property is functioned by sewer and water; that the property has two (2) front yards creating the issue; that the house was built prior to their purchase; that he does not anticipate any traffic issues from Club House Road as there is a tree line there also; that the rear of the structure would be about 26 ft. from Club House Road; that there have been no complaints about the existing shed; that the purpose of the new structure is store a vehicle, lawn equipment, kayaks and other recreational items; that it would not be feasible to place the structure in any other way; that the deck is a wood deck; that he believes that the proposed garage is going to be 3-4 ft. away from the existing deck; and that the new structure would not be accessible from the Club House Road side of the property, but only from Hickman Drive.

Ms. Norwood clarified that if the property was not a through lot the setbacks for the proposed structure of less than 600 sf. would be 5 ft. off the side and rear property line.

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

Mr. Williamson closed the public hearing.

Mr. Hastings moved to approve Case No. 12704 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to the property being a through lot;
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 nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare; and

5. The variances represent the minimum variances necessary to afford relief.

Motion by Mr. Hastings, seconded by Mr. Chorman, carried unanimously that the **variances be granted with conditions for the reasons stated**. Motion carried 5 – 0.

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

**Case No. 12705 – Pintail Estates LLC** seeks variances from the side yard setback requirement for a propane tank and HVAC unit. (Section 115-42, and 115-183 of the Sussex County Zoning Code). The property is located on the southwest side of Pintail Drive within the Swann Keys Subdivision. 911 Address: 36953 Pintail Drive, Selbyville. Zoning District: GR. Tax Parcel: 533-12.16-7.00

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 2 ft. from the 5 ft. side yard setback requirement for an HVAC system and 1.5 ft. from the 5 ft. side yard setback requirement for propane tanks.

Mr. Joshua Wagner and Mr. Aaron Jackson were sworn in to testify about the application.

Mr. Wagner testified that they are seeking the variance because they replaced their grandmother's house; that the house was placed in the exact location as the previous house; that the propane tanks and HVAC were placed where they were previously also; that the shed on the map is no longer there; that they have to place a handicap ramp for their grandmother and due to the code it will utilize a large part of the yard; that there are plans for an enclosed deck off the rear of the house; that they would need HOA approval to place the HVAC unit and propane tank at the front of the property to remedy this without the variance; that they avoid placing things to the rear due to the slope of the property; that there could be potential for flooding issues at the rear of the property; that they were issued a temporary certificate of occupancy; that they secured the propane tank and HVAC based on the inspector's instructions; that the ramp will go toward the lagoon and then back towards the front of the property in order to meet County code; that the contractor was Superior Homes; that both adjacent neighbors are okay with the placement; that there have been no complaints about the HVAC or propane tank even prior to the replacements; that the error was not discovered until the inspector came to complete the manufactured home tie down inspection; the propane tanks are from the same company but new tanks; that the HVAC is brand new and on a platform; and that they cannot place the propane tanks on the left side of the dwelling as it is all windows and code does not allow it.

Mr. Jackson testified that their grandparents purchased the property in 1981 or 1982; that his father has passed away; that a sibling of his fathers also passed; that they have an aunt with no children; that three (3) out of the five (5) grandchildren got together to create an LLC for their grandmother's property; that they tore down the old home which was falling apart to construct the

new home for their grandmother and aunt to live in; that the builders placed everything in the previous existing footprint; that the issues came up upon final inspection by the County; that the left side of the property is going to be filled with a handicap ramp; that they do not know the time period for the placement of the ramp; that they were under the impression that Superior Homes was taking care of what was needed in placing the new home; that Superior Homes has not assisted them with correcting the error; and that both homes have been there since his grandparents purchased their lots.

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

Mr. Williamson closed the public hearing.

Dr. Carson moved to approve Case No. 12705 for the requested variance, pending final written decision, for the following reasons:

1. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare; and
2. The variance represents the minimum variance necessary to afford relief.

Motion by Dr. Carson, seconded by Mr. Warfel, carried unanimously that the **variance be granted for the reasons stated**. Motion carried 5 – 0.

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

**Case No. 12706 – George & Jeanne Churchwell** seek variances from the front yard setback requirement for proposed structures. (Section 115-34, and 115-182 of the Sussex County Zoning Code). The property is located on the corner of Baltimore Street and Andrew Street within the Bay View Park Subdivision. 911 Address: 39662 Baltimore Street, Bethany Beach. Zoning District: MR. Tax Parcel: 134-20.11-41.02

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received three letters in support of and none in opposition to the Application, and zero mail return. The Applicant is requesting variances of 14.2 ft. from the 30 ft. front yard setback requirement for the proposed addition and 6 ft. from the 30 ft. front yard setback requirement for proposed steps.

Mr. Warfel recused himself and left chambers.

Mr. George Churchwell and Mr. Mark Redden were sworn in to give testimony about the application.

Mr. Redden testified that this is a beach property with a small lot; that this is a corner lot; that

Andrews Street actually ends shortly after this property; that the owner attempted to purchase the lot behind it but it was not obtained due to the price; that the house is oddly put together and they are attempting to clean up the air circulation and create some additional storage; that there is not much area within the building envelope to accomplish their goal; that the current owners did not build the house but purchased it; that he does not believe it will alter the essential character of the neighborhood as this neighborhood is currently exploding with new homes and renovations; that the owners have made different attempts to accomplish their goal; that they believe it is not practical to build up higher; that they are limiting who is affected; that they do not believe traffic will be impacted; that they believe they will be keeping up with the rest of the neighborhood of large houses on relatively small lots; that they do not believe that this would impact the access of emergency vehicles; that there is currently a two (2) car garage in addition to off street parking in front of the garage; that the storage space they intend to create may be a garage but it is not determined yet; that the home is in a flood zone and the first floor cannot be livable space; that there is room for four (4) cars on the lot as it is; that the living space on the first floor is elevated by a couple feet; that they are adding on rather than building new; that some of the rooms are functional but they are trying to improve what is existing; that they will be about 20-21 ft. off of the edge of paving if approved; that the well in inside of the proposed building lot; that the lot behind his is 1/2 underwater about half of the time but is a buildable lot; that they are proposing to place an elevator and fix the stairs in the addition, this is to allow the owners to age in place; that they are going to use to additional space around the stairs and elevator for expansion; that there will be a new landing and entry door to the house; that they will utilizing the side towards the road for the elevator and stairs; that they will be utilizing the water facing side to create a new master suite and other living space; that the dwelling is two (2) livable floors and one (1) floor of storage; that the top level will be the master suite, with the level below it having an extra bedroom or office space; that lot 32 across the street obtained a variance; that the corner lot across the street is not necessarily on a dead end; that only a few parcels are directly affected by their lot where others would affect more properties; that earlier on they explored multiple different options to accomplish their goal; that the elevator or stairs cannot be driven through so adjusting their location would eat up their entire parking on the Baltimore Street side; that the house is addressed off of Andrew Street but is oriented to Baltimore Street creating some of this issue; and that there is no vehicular access to the dwelling on Andrew Street.

Mr. Churchwell testified that there will be no issue with keeping vehicles off of the road; that there is 5 ft. from the property line to the edge of paving; that the property has sewer but is functioned by a well; that the property does flood, especially with the king tide; that they are not trying to fill the whole lot up with the build but add the stairs and elevator and remodel elsewhere; that the house across the street placed an Evergreen Home and it was too large for the lot; that lot 31 is a one (1) story home of living; that they are in their 60's and are planning to live there for the remainder of their lives; that the home is three (3) stories and carrying groceries up that many stairs is taxing; and that if they were to build on the Baltimore Street side they would lose their additional parking/garage access and it would not suit the neighborhood visually.

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



Mr. Williamson closed the public hearing.

Mr. Hastings moved to approve Case No. 12706 for the requested variance, pending final written decision, for the following reasons:

1. The property has unique conditions due to the exceptionally small buildable area;
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 nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare; and
5. The variances represent the minimum variances necessary to afford relief.

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

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

**Case No. 12707– Starboard Restaurant Inc.** seeks a variance from the maximum fence height requirement for existing and proposed fence. (Section 115-182, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located on the south side of Coastal Highway approximately 210 ft. north of South Street. 911 Address: 19138 Coastal Highway, Rehoboth Beach. Zoning District: C-1. Tax Parcel: 334-13.00-141.00

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 return. The Applicant is requesting a variance of 2.5 ft. from the 3.5 ft. maximum fence height requirement. That 80 ft. of fence is proposed.

Mr. Sean Hearn and Ms. Leah Rizzo were sworn in to give testimony about the application.

Mr. Hearn testified that he resides at the address in question; that the property is zoned commercial; that prior to him residing there it was used as an office by his grandfather; that he resides there full time; that on the north side of the property there is a chain-link fence that runs from the alley behind him to the corner of his rear property and up the side yard; that the existing fence is not in the best shape and he is looking to replace the entire length with a 6 ft. high wooden privacy fence; that when he applied for the permit he was told that he has a 40 ft. setback from the front property line on Coastal Highway and a 30 ft. setback from the alley at this rear property line; that he is seeking a

variance in order to construct a full-height fence like most individuals can in the rear and side yards; that the alley is essentially a shared driveway for his property and the adjacent neighbors and is not a named road but does provide the additional setback requirement; that he wanted the fence to be placed on the property line of his rear yard and go up the side to the front of his house which would be 31 ft. off the pavement; that this was not created by him as the situation was existing; that when he moved in the business to the north of him was not actively open; that now there are customers and staff coming and going; that across the street is a hotel which has flood lights on throughout the night; that the levels of noise, lights and passerby's is extremely heavy from the highway, neighboring businesses and the sideway; that the trigger point for his desire to erect the fence is that his girlfriend who resides with him is being verbally harassed by passerby's while in their side yard; that his own risk he began constructing the fence once obtaining the permit and it has already been a dramatic improvement; that he waited to get further approval before continuing and understands that he must remove at his own cost what was constructed should he be denied; that the fence has allowed them to use their yard as they chose without interruption for the first time since moving in; that the business to the north is a salon but was formerly a barbershop; that the structure was intended to be a dwelling and prior to the use as an office was historically a dwelling; that the neighbors on the south side of his property reside and operate a business out of their property; that the neighbors to the south are okay with the fence; that the neighbors to the north he was unable to make contact with the landlord directly but her property agent said they were okay with it; that across the highway in the woods adjacent to the Marriott hotel there was a large homeless encampment; that when that was broken up it displaced a large transient community who were the individuals creating issues for his girlfriend; that he believes the lights at the hotel being on constantly are intended to be a deterrent; that there is a liquor store on the corner to the north of them and they get a lot of trash in their yard from it; that his fence will be intended to decrease that also but he would maintain the outside of the fence to be debris free as he currently does; that he and the neighbors directly adjacent to him use the rear alley; that the fence at the rear would be in the same place but would be higher than it currently is; that there may be a slight visibility issue, but only the staff of the property to the north of him would be impacted; that the alley is dirt and has no name; that he was surprised to find out that it was an actual road and he has a setback from it; that two (2) neighborhoods behind them is a modular home coop; that the visibility will be impacted as you will not be able to see around the corner of the fence as you navigate the alleyway in the same way you can currently with the chain-link fence; that only staff of the salon pass his property; that his garage already restricts view of the end of the alley; that all of the staff arrive and leave at the same time; that he and the southern neighbor share a driveway with a lane each; and that the rear of each property adjacent to his, with the exception of his most adjacent neighbors, all have fences that butt up to the alleyway.

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

Mr. Williamson closed the public hearing.

Mr. Warfel moved to approve Case No. 12707 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to the exceptionally small buildable area;
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 nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare; and
5. The variances represent the minimum variances necessary to afford relief.

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

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

**Case No. 12708– Charles Van Aulen** seeks a variance from the side yard setback for an existing HVAC (Sections 115-42 and 115-183 of the Sussex County Zoning Code). The property is located on the east side of Laws Point Road within the Swann Keys Subdivision. 911 Address: 36954 Laws Point Road, Selbyville. Zoning District: GR. Tax Parcel: 533-12.16-312.03

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received two letters in support of or in opposition to the Application and zero mail returns. The Applicant is requesting a variance of 0.6 ft. from the 5 ft. side yard setback for an HVAC unit.

Mr. Mark Lilly was sworn in to testify about the application.

Mr. Lilly testified that he is present on behalf of Clayton Homes for Mr. Van Aulen; that they placed the home at his request; they replaced his single wide with a double wide manufactured home; that after the home was placed they had an as-built survey completed which showed that the HVAC system extended over the BRL 0.6 ft. which is equivalent to 7.66 inches; that they trimmed the platform as much as they could but that was the minimum amount that they could get it to; that Mr. Van Aulen spoke to the neighbors on both sides of his property and they were both okay with the placement of the HVAC; that this was not intentionally done and an administrative variance was applied for but did not meet the criteria; that the survey they conducted caught this prior to the County; that there is a two (2) car garage that extends the width of the dwelling all the way to the BRL facing the road; that there is no other available location to place the HVAC; that there is a ground level patio at the rear of the property; that the property is located in flood zone; and that the home was placed in February of 2022.

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

Mr. Williamson closed the public hearing.

Dr. Carson moved to approve Case No. 12708 for the requested variances, pending final written decision, for the following reasons:

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

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

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

#### **ADDITIONAL BUSINESS**

There was no additional business.

**Meeting adjourned at 7:43 p.m.**