

MINUTES OF JUNE 5, 2023

The regular meeting of the Sussex County Board of Adjustment was held on Monday, June 5, 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 - Absent, 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, and staff members Ms. Jennifer Norwood – Planning and Zoning Manager, and Ms. Amy Hollis – Recording Secretary.

The Pledge of Allegiance was led by Mr. Chorman.

Motion by Mr. Williamson, seconded by Mr. Warfel and carried unanimously to approve the agenda as amended with Case No. 12834 being moved to the end of the agenda. Motion carried 4 – 0.

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

Motion by Mr. Warfel, seconded by Mr. Hastings and carried unanimously to approve the Minutes for the April 3, 2023, meeting. Motion carried 4 – 0.

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

Motion by Mr. Williamson, seconded by Mr. Warfel and carried to approve the Findings of Facts for the April 3, 2023, meeting. Motion carried 4 – 0.

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

PUBLIC HEARINGS

Case No. 12831 – Randy Winters seeks variances from the side yard setback requirement for existing and proposed structures (Sections 115-42 and 115-183 of the Sussex County Zoning Code). The property is located on the northwest side of Laws Point Road within the Swann Keys Subdivision. 911 Address: 37007 Laws Point Road, Selbyville. Zoning District: GR. Tax Parcel: 533-12.16-249.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received 7 letters in support of, 15 letters in opposition to the Application, and 2 mail returns. The Applicant is requesting variances of 4.3 ft. and 4.2 ft. from the 5 ft. side yard setback requirement on the south side for a proposed porch and steps.

Mr. James Churchman, Esquire, was present on behalf of the Applicant.

Mr. Churchman requested that the Application be moved to second on the agenda as they are still waiting for someone to arrive.

Motion by Mr. Williamson, seconded by Mr. Warfel, and carried unanimously to move Case 12831 to second on the agenda. Motion carried 4 – 0.

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

Case No. 12832 – Rick Clark seeks variances from the front, side, and rear yard setback, lot coverage, and separation distance requirements for an existing structure (Sections 115-25, 115-172, 115-182, and 115-183 of the Sussex County Zoning Code). The property is located on the southeast side of Topaz Road within the Masseys Landing Manufactured Home Park. 911 Address: 26542 Topaz Road, Millsboro. Zoning District: AR-1. Tax Map: 234-25.00-31.00-4721

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 687 sq. ft. or 23% over the 35% maximum lot coverage, 9.4 ft. from the 20 ft. separation distance requirement between the existing dwelling and dwelling on Lot 10, 13 ft. from the 20 ft. separation distance requirement between the existing dwelling and attached shed on Lot 10, 14 ft. from the 20 ft. separation distance requirement between the existing deck and dwelling on Lot 10, 4.3 ft. from the 5 ft. side on the west side and rear yard setback requirement for an existing deck, 4.9 ft. from 5 ft. rear yard setback requirement for an existing sunroom, 1.3 ft. from 5 ft. side yard setback requirement on the east side for an existing sunroom, and 4.9 ft. from 5 ft. front yard setback requirement for existing dwelling.

Mr. Douglas Annand was sworn in to give testimony about the Application.

Mr. Annand testified that he is representing the Clarks as they are unable to be present; that Mr. Clark and his wife purchased this home at 26542 Topaz Road in Millsboro about 20 years ago; that the home is in the exact condition now as it was when they purchased it; that the home is in Massey's Landing; that the homes in this park are on rented land; that, in 2018, Miller Lewis Surveyors put lots around the dwellings in the park; that the home does not conform to the setbacks of the recently created lots and is too close to the neighboring homes; that the Clarks did not create these nonconformities; that the home is within the AE Flood Zone with a base flood elevation of 6; that the first floor of the home is only about 1 ft. above the adjacent ground; that the home occasionally floods; that the Clarks are asking for the variances in order to elevate their home 3 ft. to an elevation of 8 ft. which would place their home at 2 ft. above base flood elevation; that he does not believe that the Clarks added the deck; that the sunroom is the triangular portion of the

dwelling; that he does not know exactly when they purchased it because there are no deed records; that the first floor of the house has an elevation of about 5 ft.; that they will be utilizing a block piers or a block foundation to elevate the home; that the home was placed prior to the Clarks' purchase; that he does not believe there is a homeowners association and, if so, he has not been made aware; that he believes that Mr. Clark would have mentioned if they needed HOA or landlord approval; that the contractor who will be elevating the house is John Davidson; that they will be lifting the house straight up, moving it forward a little bit so that the entire of the structure will be within the lot and placed back on to the elevated foundation; that the existing deck will not be changed but will be elevated with the dwelling; that there are no steps associated with the deck as it is only accessed from inside of the house; that there is no room for steps; that the steps that are there now are probably 5 ft. or 6 ft. off the lot towards the lagoon and will be removed; that they are unable to modify the existing deck to be more in conformity with the Code as it would likely compromise the integrity of the existing structure to do so; that the dwelling is not a mobile home; and that the existing house is about 15 ft. from the edge of paving on Topaz Road.

Ms. Norwood stated that the sunroom was built in 2002 as a permit was obtained but has not been closed out.

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. 12832 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to the existing structure;
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. Warfel, seconded by Mr. Hastings, carried that the **variances be granted for the reasons stated**. Motion carried 4 - 0.

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

Case No. 12831 – Randy Winters seeks variances from the side yard setback requirement for existing and proposed structures (Sections 115-42 and 115-183 of the Sussex County Zoning Code). The property is located on the northwest side of Laws Point Road within the Swann Keys Subdivision.

911 Address: 37007 Laws Point Road, Selbyville. Zoning District: GR. Tax Parcel: 533-12.16-249.00

Ms. Norwood presented the case

Mr. Churchman was present on behalf of the Applicant.

Mr. Randy Winters was sworn in to give testimony for the Application.

Mr. Churchman stated that he is representing Mr. Winters; that they are seeking variances of 4.3 feet and 4.2 feet from the 5 ft. side yard setback; that the property is unique due to its narrowness and the fact that the home is not centered on the lot which makes it difficult to make any modifications to the home itself; that the stairs which have created an issue are in a weathered state and were in need of being replaced; that the house has been in place for quite some time; that Mr. Winters' wife has fallen down the stairs before which is another reason they were replaced during the renovation of the porch; that the Applicant purchased the property in 2017; that there was a previous variance for the outdoor shower in 2002 granting a variance of 1.4 ft. into the 5 ft. side yard setback; that the Applicant did not create the issue; that the approval of the variance would not alter the essential character of the neighborhood because there have been numerous variances on Laws Point Road which are similar in nature; that he has submitted additional case information to show this point; that Board of Adjustment Case Number 12592 from August 2, 2021, which was similar because some of the main issues were safety, practicability, and efficiency - the same as Mr. Winters; that the stairs are on the back end of the property and serve as the second exit for the dwelling; that the current state of the stairs could pose a potential fire hazard; and that Mr. Winters, during his renovation, moved the direction of the stairs to face the rear of the property rather than in the direction of his neighbor's property.

Mr. Winters testified that on November 9th he filed for a permit to do the restructuring of what was existing; that he sent his fee and check to the County and did not hear anything until he heard from a Constable that he was in violation and needed a variance; that he started his project when he did in hopes that he would be able get it done during the winter months; that he was instructed to stop all work; that the existing steps were deteriorating; that they were about a foot wide at the top and went down to a concrete pad; that the path of the stairs went directly towards their adjacent neighbor's property where a three-story house was recently constructed; that his wife has neuropathy and diabetes causing her to have issues with walking; that his wife is here and can verify his statements; that, during his construction, he decided to redirect the stairs, making the deck one level with the shower and steps coming back down towards the bulkhead; that he believed he was grandfathered in which is why he was not aware of needing a variance until the Constable informed him of the violation; that he would say that the distance from the neighbors is about the same; that there is an existing concrete pad underneath that he did not remove; that he placed posts on each corner of the concrete pad before building the replacement deck; that the two bedrooms are at the rear of the house and there is no fire escape apart from the door that accesses the deck; that the kitchen is located between the entrance and the bedrooms creating a fire hazard by design; that he decided to upgrade the steps and make it easier

for his wife to walk; that he plans on putting up a handrail so that she can go down and walk away from the neighbor's property toward the back and be more stable; that there is one door on the left side of the dwelling; that the home has been there since 1977; that they are just trying to make it safe for anyone coming up the steps to their house; that he will be 70 and his wife is 66 years old; that his wife is very unstable on her feet and has fallen twice going down the steps; that the main intention is to allow her a safe exit if there were to be a fire because her bedroom is located at the rear of the house; that he sleeps in the front of the house because the bedrooms are too small for him but she is comfortable back there and there is a bathroom; that he covered the deck in case of ice or rain to lessen the chance that his wife would fall; that the steps before were about 3' x 5' but the top step was only 12 inches wide; that the shower came up about a foot from where the platform was and he is trying to make the top platform a stable area; that he purchased a new shower but it has not been installed and the old shower is still in place but not in a good condition; that the new shower is sitting on a piece of plywood on the frame and has been since he was notified to cease construction; that the ground under the deck is unstable and always wet because of water that comes over the bulkhead; that it is for the safety of anyone using the steps as he has fallen himself; that he submitted the Application and payment but it was not processed for over a month; that he finally received a call from Alberta in Permitting who informed him that the Constable stated he needed a variance; that the need for a survey also extended the time before he was able to submit for the variance; that he began construction on a weekend but had to leave; that he sent in the paperwork as soon as he could which was the following Monday; that it was a timing issue; that he ended up having to leave with his wife back to Pennsylvania which is where her doctors are located; that the replacement shower is about the same size as the existing; that, if required, he may be able to cut the shower down in size but it is the same dimensions as what is existing; that he may be 8 inches to a foot farther out and closer to his neighbor than what was there prior; that there is still a gap between the properties; that he would still be able to maintain his yard as the deck is not the length of the trailer; that, due to the plumbing and window placement, he could not make the deck any smaller; that putting it back in the same location would require him to tear it all out as the posts are set in concrete; that the rear of the home is bedrooms that are only accessed through a hallway past the kitchen; that the concrete slab was already there but he put the posts on the outside of it; that the deck is still open but has a covering to prevent hazards caused by snow, ice, or rain; that he cannot place the deck more forward due to the placement of the air conditioner, trees, and the garbage and recycling cans; that he had the immediate neighbors surrounding him sign in support of his application; that he submitted photos to his attorney showing properties with decks right up to the property line; that a border was placed on the property line in his absence by the neighbors; that he does not see a difference between what was existing versus what was replaced; that the neighbor most directly affecting just built a new house and the other side is a vacant lot; that the previous owners son wrote a letter verifying the existence of those steps, shower, and air conditioning that had variances when they were installed; that he believed he was grandfathered in and just needed to get a permit; that he thought the placement and use was grandfathered from the 1970s; that he did not set the trailer but rather purchased it as is; that he is trying to keep someone using the steps from getting hurt and suing him; that the overhang of the roof is about 6-8 inches past the deck; that he would be able to trim that back; that all of the water comes to his property; that he would be able to put a gutter on the roof; that his neighbor's property is higher

than his; that he did not do anything final yet because he was told to stop so everything is where it was at that point; that he started his project on the weekend without the permit; that he mailed out the permit application the following Monday; that he was aware he needed permits as he has applied for them before; that the cost was a factor because he needed to get materials to know the cost but he was not sure what all he would need because he is not a contractor; that the neighbor most affected is in opposition to the Application; that they added the roof due to their new neighbor building their house so high that they would be able to see into their outdoor shower; that were his whole family to be present the second, outdoor shower would be used; that there is only one bathroom with a tub in the house; and that he could not move the shower to the other side of the house because he does not know how to rerun the plumbing.

Ms. Diane Winters was sworn in to give testimony on this Application.

Ms. Winters testified that she has neuropathy in her feet; that they tingle and sometimes she does not feel them; that she also has a bunion and hammer toes; that, because of her big toe, she often loses her balance; that her diabetes also has affected her walking; that she has fallen down the stairs to the deck and it left quite a bruise; that when you open the door the steps there are so tiny; and that it would be so much easier if everything was all level.

Mr. Kenneth Schroyer was sworn in to give testimony in opposition to the Application.

Mr. Schroyer testified that he is present representing his son David Schroyer, who owns the neighboring lot to Mr. Winters; that he submitted letters of opposition and included pictures; that, in November, he spoke with County staff regarding the construction on the neighboring property and whether it was permitted, which it was not; that he was told a variance would be necessary as it did not meet the setback requirements; that it was suggested that he call back to get updated information on the status of the investigation; that, when he called again, he was told there was an application; that, in either February or March, he emailed Director Jamie Whitehouse and received no response; that he was provided with the inspectors contact information and they communicated; that he was then told that, as of that time, no variance application had been submitted; that the sign was posted on the property on or around May 15th or 17th; that his son and their builder were provided the setbacks for their property and were able to build within them; that he sent a registered letter to Mr. Whitehouse that was signed for a delivered; that this letter contained 14 letters of opposition to this application; that he is here to oppose the application and ask that the Board enforce the 5 ft. setback requirement of the Sussex County Zoning Code; that he submitted pictures of the porch that was built including the shower, which is sitting on 4x4s; that he had a realtor provide an estimate of their property value and they came to that amount based on the encroachment of the neighbor's setback; that most of the properties in Swann Keys comply with the 5 ft. setback requirement; that they just do not want it there; that they have a door on the other side of the house; that this is just a convenience for them to get out on that side of the house; that he has not walked the neighbor's property; and that his son's home is a garage with two stories above it.

RECESS – 7:10 – 7:15

Mr. Winters testified in response that his neighbor had made mention of the variance not being applied for but it was in his attorney's hands at that time; that it took some time to get the survey that was required with the Application; that he submitted his application with documents as fast as he could; that he is unable to reduce the deck in size without creating an issue somewhere else in its functionality; that he believes the shower was placed so as to not block the windows of the house; that he is asking for the minimum; that he does not want to remove the outdoor shower as it is useful and was previously granted a variance; that he was simply upgrading the shower; that he is willing to install gutters to capture and direct rainfall away from his neighbor's property; and that he still has to install the handrails on the deck.

Mr. Churchman stated in response that his client has invested a substantial amount of money and time into this project; and that they may be able to make some concessions, potentially with maybe the roof and gutter, as referenced earlier.

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

Mr. Chorman closed the public hearing.

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

1. The variances will alter the essential character of the neighborhood; and
2. The variances do not represent the minimum variances necessary to afford relief.

Motion by Mr. Hastings. Motion failed for a lack of a second.

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

1. The property has unique conditions;
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;
5. The variances represent the minimum variances necessary to afford relief; and
6. The approval is subject to the condition that the gutter be no closer to the side yard than the handrails.

Motion by Mr. Williamson, seconded by Mr. Warfel, carried that the **variances be granted with conditions for the reasons stated**. Motion carried 3 – 1.

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

Case No. 12833 – Larry Jackson seeks variances from the front yard setback requirements for existing structures (Sections 115-25 and 115-182 of the Sussex County Zoning Code). The property is located on the southwest side of Zion Church Road approximately 1,475 feet from Broadkill Road. 911 Address: 26596 Zion Church Road, Milton. Zoning District: AR-1. Tax Parcel: 235-8.00-12.00

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 mail return. The Applicant is requesting variances of 10.28 ft. from the 40 ft. front yard setback requirement for an existing porch on pole building and 14.75 ft. from the 40 ft. front yard setback requirement for an existing pole building.

Mr. Larry Jackson and Mr. Larry Coblentz were sworn in to give testimony on the Application.

Mr. Jackson testified that they are here seeking variances from the front yard setback requirement for an existing structure; that Larry Coblentz is his builder; that the footers were already established and passed inspection so they continued on with the construction of the building; that the building was totally framed when he was informed by the inspector that a mistake was made and the building does not comply with the front yard setback and they would need a variance; that the borrow pit is about 40 or 50 ft. to the back of his house; that the building does not affect visibility from the road or getting out of his driveway; that none of his neighbors have had an issue with the building; that the building is to house his RV and to be used as his personal shop; that the pool was removed; that he bought the house in 1991; that the survey is from when he purchased the home; that the front markers on both sides of the property are visible but they are not in the rear; that he has an existing two car garage that is detached from the house; that the septic system is directly behind the house; that the well is located in the front of the property; that he has a buried propane tank to the west of the house; that none of his neighbors have an issue with the building; that the location of the building is the only place on the property that he could put it; that he received permission to place a separate entrance for the building; that the borrow pit goes right up to the rear of his property; that nothing has changed on the survey since 1991 with the exception of the new structure; and that his project has been sitting idle for close to a month because the inspector made a mistake.

Mr. Coblentz testified that he and Mr. Jackson met on the property and staked out the building from the property lines; that the stakes were just over 20 ft. from the rear and 40.6 ft. to the road; that they later found out that the front property line is actually 15 ft. from the road; that

they are 25.3 ft. from the front property line; that they felt the property was unique because of its irregular shape; that on the front towards the house there is a main feed for the wire going to the house; that initially they thought they were going to have to share an entrance with his neighbor because DeIDOT had denied his access but then later agreed if he altered the other entrance to his property; that the building was constructed about two months ago; that the inspector passed the footers as he did not realize how much of an angle there is to the property; that he returned two days later to the connection inspection after the building was erected and that is when he noticed that the structure did not comply with the front setbacks; that the inspector commented that he should have failed them at footers for the setbacks but he did not realize at that time they did not comply; that he ran a line from the front property markers showing that the front property line is 15 ft. from the road; that he feels that they should have been made aware that they needed a new survey when applying for the variance because this project has been placed on hold to apply and he does not want to see Mr. Jackson delayed any longer; that he had a 300 ft. tape stretched across the front, which he feels was accurate, and measured from there to each corner of the building; and that this was done to the best of his knowledge but he is not a surveyor.

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. 12833 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions;
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. Warfel, seconded by Mr. Williamson, carried that the **variances be granted for the reasons stated.** Motion carried 4 - 0.

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

Case No. 12835 – Brenda Marshall seeks variances from the front yard setback requirements for a proposed structure (Sections 115-25 and 115-182 of the Sussex County Zoning Code). The property is a through lot located on the south side of South Shore Drive within the South Shores Subdivision. 911 Address: 2 South Shore Drive, Lincoln. Zoning District: AR-1. Tax Parcel: 230-13.00-387.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support or in opposition to the Application and nine mail returns. The Applicant is requesting variances of 29.8 ft. from the 40 ft. front yard setback requirement for a through lot for a proposed pole building.

Ms. Brenda Marshall was sworn in to testify on the Application.

Ms. Marshall testified that they are requesting a variance for a pole building with the dimensions of 28' by 48'; that the purpose of the building is to store lawn equipment, classic cars, and work vans; that her husband has a business that requires him to have work vans; that, for security issues as well as not cluttering up the neighborhood, he likes to store the vans under cover; that they currently have a two-car garage attached to the house but it houses their personal vehicles; that they need the additional space for his work vans and classic cars that they do not want to be stored outside; that they have no opposition from the neighbors; that one of their neighbors has stated that the placement of the building may help reduce the noise from Fleatown Road; that their property is unique because it has two front yards; that their setback from Fleatown Road is 40 ft. because it is a County Road; that this is the minimum variance they can request; that there is nowhere else on the property to locate the building because of their septic system, geothermal system, and the placement of their driveway; that they submitted a recent survey showing the proposed location of the building; that her husband has a mobile detailing business; that the only vehicles he services at their property are theirs; that they have other neighbors who keep their business vehicles out and she personally does not like how it looks; that their HOA does not restrict them having their vehicles out but they would prefer them to be stored in a garage; that they have maybe 10 ft. from their property line to the edge of the road but she did not measure that; that the placement of the building will not affect visibility for Fleatown Road but rather it will keep them from seeing a lot of traffic and reduce the noise; that they have actually increased visibility by removing some trees; that they have removed trees not only preparing for this building but for the septic system that was installed in November; that they had the survey company stake out the location of the building during the survey; that there is an existing fence adjacent their property line at Fleatown Road that will remain as the proposed building will be 2-3 ft. from the fence which was permitted before they purchased the property; that they bought the property in November 2021; that the geothermal system is pretty much the whole front yard; that the old septic system was directly behind the house and the new system is in the western rear yard; that they have an informal HOA approval which pretty much stated if the County approved so would they; that these are the minimum variances necessary to afford relief; that, if they were to move the garage any more forward, it would not be far enough from the house; that the pole building will be just far enough from the deck attached to the house to allow the lawn mower through; that they may have to modify their deck; and that they need the pole building more than they need the yard right now.

Ms. Norwood stated that, if Fleatown Road was a rear yard, the setback would be 20 feet.

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. 12835 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to being on the cul-de-sac and having an irregular shape;
2. That the variances are necessary to enable the reasonable use of the property;
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. Williamson, seconded by Mr. Warfel, carried that the **variances be granted for the reasons stated**. Motion carried 4 - 0.

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

Mr. Hastings recused himself and left the Council Chambers.

Case No. 12834 – TREW R2, LLC and Newton Farms, LLC seeks a special use exception to operate a potentially hazardous use (feed and grain mill) (Sections 115-111 and 115-210 of the Sussex County Zoning Code). The properties are located on the southwest side of Sussex Highway at the corner of East Newton Road. 911 Address: Sussex Highway and E. Newton Road, Bridgeville. Zoning District: HI-1. Tax Parcel: 530-16.00-11.00 & 12.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received 4 letters in support of, and no correspondence in opposition to the Application, and 1 mail return. The Applicant is requesting a special use exception to operate a potentially hazardous use of a feed and grain mill.

Mr. David Hutt, Esquire, was present on behalf of the Applicants.

Mr. Scott Thompson was sworn in to give testimony on this Application.

Mr. Hutt stated that he is representing the Applicant and their subsidiary of Mountaire Farms; that Mr. Thompson is the Vice President of Operations; that also present are Jerry White Sr. Director of Live Operations, Tanya Rogers-Vickers Director of Environmental Services, and Zach Evans Community Relations Manager; that the subject property is located at Route 113 and Route 404; that the Application is for a special use exception to authorize a feed and grain mill to be operated on this property pursuant to Section 111 and 210 of Chapter 115 of the Sussex County Zoning Code; that, as the Board knows from prior applications, there are two characteristics of a property which would bring them here this evening under those sections of Code; that first would be that the property is

zoned HI-1, which is the County's Heavy Industrial Zoning classification and second is that the proposed use of the property appears on the list of special hazardous uses found in Section 111 of the Code; that, about halfway down the list in Section 111, you will see the phrase flour feed and grain milling; that, as indicated, the Application is for a feed mill that will produce 30,000 tons per week; that the subject property is actually 2 parcels that comprise 167 acres; that these properties were the recent subject of a change of zone application, CZ 2003, which was approved by County Council as Ordinance 2917 on March 28, 2023; that the ordinance changed the designation of these properties on the County's zoning map from AR-1, Agricultural Residential, to HI-1, Heavy Industrial; that a copy of Ordinance 2917 was included in the project book materials submitted to the Board and found at Tab 2 which sets forth the County Council's reasoning for approving this change of zone application; that the question for the Board is whether the public health, safety, morals, and general welfare will be properly protected, and that necessary safeguards will be provided for the protection of water areas or surrounding property and persons; that, as the Board is very familiar with, agribusiness being an important part of Sussex County, particularly through agricultural uses and forestry; that there are some dominant forces outside of tourism on the eastern side of the state in or eastern side of the county; that the Application is one that supports agribusiness at a number of levels, from providing farmers with another location for their grain to be processed, and providing poultry growers with a source of feed for their poultry; that the proposed feed mill use in this location makes sense due to a number of factors and that those factors point to this being the right location; that a special use exception for a grain or milling operation in this location is appropriate and tracks with the County's guidance that you find in its Zoning Code, comprehensive plan, and other land use planning tools that the County has at its disposal, as well as the surrounding uses that already exist at the location; that the subject property borders on Route 113 from north to south of the property; that the southern property boundary is Route 404 or East Newton Road; that the property's western boundary is the Delmarva Railroad and the DelDOT Bridgeville maintenance yard; that the property's most jagged edge is the Polk Branch and Grubby Neck Branch; that, after a review of the property, you will quickly recognize that 3 or 4 boundaries have significant transportation methodologies on them; that obviously Route 113 and Route 404 are recognized as major highways; that the Sussex County Code refers to them as major arterial roadways and DelDOT refers to them as principal; that the western boundary of the property is the railway and was certainly a key reason why this site was chosen for the proposed use; that noted in County Council's approval at Tab 2 there is a letter of support from the Delmarva Central Railroad Company endorsing this use at this location adjacent to its railway; that consistent with the readily available transportation methodologies the state strategies maps that are promulgated by the Office of State Planning Coordination show this area, and site, as being within a Level 2 and Level 3 area; that the Level 2 area indicates area where the State of Delaware anticipates growth in the near term and are areas where the State investments and policy should support and encourage a wide range of uses and are also listed as a priority for job creation and retention; that the future land use map shows this area as an industrial area which supports this use and is consistent with the Application before the Board; that the industrial area, as highlighted in the future land use chapter of the comprehensive plan, is described as being comprised of lands devoted to concentrations of larger industrial uses, including heavy industrial, light industrial, warehousing and flex space, and goes on to state that large, more intensive standalone industrial uses

should also be directed to these areas; that Chapter 4 also talks about one of the themes of the future land use map, as well as the comprehensive plan, is to promote farming and preserve agricultural land values and agribusiness, which of course would all occur with the approval of this special use exception request; that the Economic Development chapter, Chapter 9 of the comprehensive plan, talks in Goal 9.3 that part of the economic development of Sussex County is to preserve and encourage the expansion of the agricultural industry, forestry industry and other similar industries in the County; that this application also touches on the mobility element of the comprehensive plan; that Chapter 13 talks about exploring incentives for businesses to switch from truck to rail freight, which can reduce freight costs and road traffic congestion, and encourages working with railroad partners to aid in the strategic planning efforts to help identify potential rail customers; that, as indicated, this is one of the many reasons this site was chosen for this use; that all of the above speak to the general welfare of the County and how it is benefited by this Application; that the zoning map shows the mix of industrial sites adjacent to the subject property; that the property to the south on the opposite side of Route 404 was part of a change of zone request in 2020, Change of Zone 1919, and the same property owner that they are present for tonight; that rezoning application consisted of the 23.7 acre parcel from C-1 to LI-2; that the first 8 acres is already under construction as the new home of Miller Metal Fabrication; that, again, looking at the zoning map you will see the C-1 General Commercial Zoning District; that the aerial imagery from 2022 shows the site at the same location and the rural nature of the area in general; that, in the upper left corner of the map, you can see the Woodbridge High School Campus, which has an agricultural program; that across the street from the site is Insight Homes and C. Schultz; that, on the same side of the highway as the subject parcel, you have O.A. Newton and Son Farm Ranch Hardware and Irrigation, the Lindenmere Store, and Miller Metal Fabrication; that, if you turn down Emma Jean Lane, you will find The News Print Shop, Old Dominion Freight Line, Eastern Shore Natural Gas' compressor station system, and a solar field; that, while there are no outdoor activities or outdoor storage of materials, which most would assume makes this a light industrial use but the HI-1 zoning is the only zoning that mentions milling and mentions it as pertaining to a potentially hazardous use; that the HI-1 zoning classification was approved in March by County Council; that the zoning states the purpose of the HI-1 Heavy Industrial district as being to provide for a variety of industrial operations to preserve the land in the district for industrial use and to exclude new residential or commercial development, except for certain uses deemed appropriate adjuncts to industrial; that the purpose talks about the exclusion of new residential or commercial development and part of the special use exception they are here for tonight is for the Board to consider the impact on persons and property that are adjacent to the site and one of the reasons why the rezoning was sought because it excluded new residential uses from coming; that the quick tour of the surrounding properties showed that the uses are not residential uses but are commercial or industrial uses; that there are not a lot of residential uses in the area that again makes this an appropriate location for this use; that he asked Mountaire to provide a simple schematic showing the operation of the proposed feed mill which they simplified down to five steps with graphics that are easily understandable; that, in those 5 steps, you can see that ingredients are brought in both by highway and railway, those ingredients are blended into the right recipe for poultry and then made into pellets, those pellets are then stored on the site in feed bins, and then ultimately loaded onto trucks and taken out to various poultry farmers who will use it; that the Board is being asked

about the milling process on this property and whether the public health, safety, morals and general welfare can be properly protected if this operation occurs on the property and then specifically whether there is any additional safeguards that would be necessary to provide protection to water areas or surrounding property and persons; that addressing the public health, safety, morals and general welfare, these types of considerations are often looked at as what are typically considered nuisance factors like noise, vibrations, odors, smoke, toxic gases, and other; that these factors are not associated with the milling operation; that one nuisance factor that could be associated with milling would be dust but, as noted earlier, there is no outside storage or production of materials, making it more of an internal or facility safety issue; that the second part of the Board's consideration is what protections might be necessary for the protection of the surrounding properties and persons, including water areas; that there are no pollutants generated by this milling operation meaning that there are no additional protections or safeguards necessary; that there are a number of departments within the County as well as agencies that will have to continue to review of this ensuring that it is properly constructed; that a short list of those departments and agencies include the Planning and Zoning Commission, the Building Code department, Sussex Conservation District, the Office of State Fire Marshal, DNREC, the Department of Health, and the FAA; that the Applicant would argue that those provide sufficient safeguards to make sure that surrounding persons and properties are protected; that the site plan submitted is conceptual for the proposed mill; that shown on the plan is some storage area for the rail cars and loops around the site; that there is a proposed consideration between DelDOT, the property owner and Mountaire regarding changing how DelDOT access the Bridgeville maintenance yard; that Mountaire has similar facilities very similar to what is being proposed at other locations; that one of those is the feed mill in Scotland County, North Carolina, which is very similar to what is being proposed; that Mountaire won 2022 integrator feed facility of the year from the American Feed Industry Association for the facility in North Carolina; that the North Carolina site, as shown on Google Earth, is a very similar layout to the proposal tonight; that the letters of support referenced at the beginning of the meeting were submitted by Senator David Wilson, Representative Jesse Vanderwende, the Delmarva Chicken Association, and the Woodbridge School District Agriscience Department Ms. Karen Breeding; that the letters of support demonstrate that there is actually a positive impact; that the letter from Ms. Breeding indicated that Mountaire has been a tremendous partner for the Woodbridge Animal Science program of study, as well as the Woodbridge FFA Chapter, that their morals and values in the areas of professionalism, business, business ethics and serving their community make them great mentors for the students and members of Woodbridge School District; that, in addition to being a major employer, Mountaire helps dozens of small businesses thrive, including independent contract growers who rely on income from poultry companies; that the construction of a feed mill will provide a local site for the work based learning opportunities for students who are enrolled in a Delaware pathways program of study; that schools continue to face the challenge of educating students not only on the basic curriculum of reading, writing and math, but also teach career skills; that, as we look at how to meet the challenge of educating students who need career training, we rely on industry partners such as Mountaire to help, instruct, and demonstrate the skills employers desire; that Mountaire is an exceptional partner in educating and enforcing the importance of being responsible, respectful, prideful, and diligent in the workforce; that they have been a gold medal example for the students in terms of current career skills,

safety, technology and development; that their students are better equipped for quality careers when partnered with companies like Mountaire and again these statements are from the Agriscience Department at the Woodbridge School District; that his client's request approval of the special use exception for a potentially hazardous use of a feed mill for the following reasons, first, the Applicant has a track record of properly running facilities and benefiting the public, second, the location is appropriate for the reasons set forth in County Council's adoption of Ordinance 2917, third, a number of State Agencies and County Departments will continue to review numerous facets of this project should it be approved and constructed, fourth, the proposed feed mill is one of the least intensive uses found in the list of potentially hazardous uses, and, lastly, that this use already exists in the immediate area; that, even though the feed mill is one of the least intensive uses that is found in Section 115-111 of the County Code its impact, if approved and constructed, will be very significant to Sussex County and have a great economic influence on the County for a positive benefit; that the feed mill projects to produce 30,000 tons of feed every week with a 3,000,000 bushel storage capacity and it goes from there; that there is a capacity as the conceptual site plan is to hold 100 rail cars; that up to 500 jobs will be created during the construction of this; that the potential people impacted would be farmers, small businesses, mechanics, growers, and many more; that their entrance will likely be off Route 404 rather than Route 113; that, if the center of the rail car track is not used for the feed mill or an office building, it will be agriculturally related; that within the project book materials is a service level evaluation request filed with DelDOT and its response which anticipated a minor impact on the local area roadways which is less than 200 vehicle trips in any peak hour and less than 2,000 vehicle trips per day, and does not require a traffic impact study as a major impact would; that they will still have to complete entrance improvements and there may be other off-site improvements they have to contribute to but otherwise have been deemed a minor impact; that they also had to wait on the change of zoning application and now the Board prior to solidifying any plans; and that tonight's approval would kick into high gear the engineering and push toward agency approvals.

Mr. Thompson testified that right now their plan is a concept but they will stay below the height as required; that Mr. Hutt's presentation was true and correct to the best of his knowledge and belief; that their plan is entirely conceptual pending what DelDOT will approve for them; that there is no plan for inside of the rail car track; that there is potential to move the feed mill operation inside of the rail track or potentially an office building; that they would not allow that area to become overgrown; that there would be 24 / 7 operation but mainly the production on site would be 5 and ½ days to 6 days at most; that they project to employ 84 employees; that, pending approvals, they would anticipate to have building permits within a year after securing their site plan; that they have done some preliminary engineering but have not done a complete site plan yet; that there will be an internal dust collection system; and that they have to comply with the dust hazard regulations and their system would be designed to comply with those.

Mr. Robert Rider was sworn in to give testimony in support of the Application.

Mr. Rider testified that he is present on behalf of the property owners as well as multiple neighboring properties who are in support of the Application; that they have been working with

Mountaire for a long time now and part of their history is in this industry; that they intend to be neighbors of this property for a long time to come; that they are very confident that Mountaire can execute this operation and do it in a safe fashion; that he does remember when this property was a landing strip; that he owns neighboring properties to the south at the corner of Newton Road; and that this property had been in their family for 70-100 years and they did not take this decision lightly to sell it.

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. Warfel moved to approve the application for Case No. 12834 for the requested special use exception, pending final written decision, for the following reasons:

1. The proposed use will not substantially affect adversely the uses of neighboring or adjacent properties;
2. The proposed use will not endanger the public health, safety, morals and general welfare or the neighboring persons or property.

Motion by Mr. Warfel, seconded by Mr. Williamson, carried that the **special use exception for a potentially hazardous use be granted for the reasons stated.** Motion carried 3 - 0.

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

ADDITIONAL BUSINESS

Meeting adjourned at 8:53 p.m.