

## **MINUTES OF JUNE 7, 2021**

The regular meeting of the Sussex County Board of Adjustment was held on Monday, June 7, 2021, at 6:30 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 6:30 p.m. with Chairman John Williamson presiding. The Board members present were: Mr. Jeff Chorman, Mr. John T. Hastings, Mr. John Williamson, and Mr. Jordan Warfel. Dr. Carson arrived later in the meeting. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Ms. Jennifer Norwood – Planning and Zoning Manager, and Ms. Ann Lepore – Recording Secretary.

The Pledge of Allegiance was led by Mr. Williamson.

The Agenda was revised to move Old Business to the end of the meeting.

Motion by Mr. Warfel, seconded by Mr. Chorman, and carried unanimously to approve the agenda as revised. Motion carried 4 – 0.

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

Motion by Mr. Chorman, seconded by Mr. Hastings, and carried unanimously to approve the Minutes for the April 12, 2021, meeting. Motion carried 3– 0.

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

Motion by Mr. Hastings, seconded by Mr. Chorman, and carried to approve the Findings of Facts for the April 12, 2021, meeting. Motion carried 3 – 0.

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

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

## **PUBLIC HEARINGS**

**Case No. 12563 – Zachary Hess** seeks a variance from the maximum fence height requirement for a proposed fence. (Sections 115-34, 115-182 and 115-185 of the Sussex County Zoning Code). The property is located on a through lot on the on the northwest side of Hickman Drive and the southeast side of Club House Road within the Whites Creek Manor Subdivision. 911 Address: 739 Hickman Drive, Ocean View. Zoning District: MR. Tax Parcel: 134-12.00-1030.00

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 a 2.5 ft. variance from the maximum fence height requirement of 2.5 feet for a fence in the front yard setback on a through lot.

Mr. Zachary Hess was sworn in to give testimony about his Application.

Mr. Hess submitted six letters in support of his Application from the Homeowners Association and neighbors.

Mr. Hess testified that he is seeking a 2.5 foot height adjustment for the safety of his children and dogs for a proposed fence; that the property is unique as it is a through lot and has two front yard setbacks; that the “rear” of the property backs up to Clubhouse Road, which has a lot of traffic; that, for zoning purposes, Clubhouse Road is considered a front yard; that the house also fronts onto Hickman Drive which is within the development and is less traveled; that, because it is a through lot with two front yards, a fence of 3.5 ft. is permitted and a fence of 6 ft. is requested for the safety of his two toddlers and three dogs; that Clubhouse Road has extremely high traffic with many speeders; that the exceptional practical difficulty was not created by the Applicant but by the fact that the property has two front yard setback requirements; that he has witnessed the death of animals along Clubhouse Road; that the variances will not alter the essential character of the neighborhood as the adjacent property has a six-foot tall fence and the proposed fence would be a continuation of the neighbor’s fence parallel to Clubhouse Road; that the homeowners association permits this fence as well; that the development is Whites Creek Manor; that he purchased the property in February 2021; that neighbors support the request; that he has improved his yard by removing over 30 overgrown trees which has improved sightlines along Clubhouse Road; that the fence would not create any visibility issues for vehicular traffic; that this is the minimum variance to keep this fence at the same height as his neighbor and to protect his children and dogs from a busy road; that the fence height would be 4 ft. along the side of the house; that the shed has been removed and the concrete pad will be used for a fire pit.

Mr. Williamson noted that traffic is heavy along Clubhouse Road.

Mr. Hess testified that he removed trees that actually touched Clubhouse Road; that there is a 16 foot gap between the road and the fence; that the removal of the trees improved the situation; and that he has no direct vehicular access to Clubhouse Road.

Ms. Norwood stated that a variance of 2.5 ft. from the maximum height from the 3.5 ft maximum fence height on the property line parallel to Clubhouse Road and a variance of 0.5 ft. from the maximum height from the 3.5 ft maximum fence height on the property line at the side of the house in the 40 ft. front yard setback.

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

Mr. Warfel moved to approve Case No. 12563 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to being a through lot and the existing neighbor's fence;
2. That, due to the physical conditions, the property cannot be developed in strict conformity;
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. Chorman, carried unanimously that the **variances be granted for the reasons stated.** Motion carried 4 – 0.

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

**Case No. 12564 – Dan Krausz** seek variances from the front yard setback requirements for proposed structures (Sections 115-34 and 115-182 of the Sussex County Zoning Code). The property is a through lot located on the west side of Arabian Parkway and the east side of Tennessee Walk within the Arabian Acres Subdivision. 911 Address: N/A. Zoning District: MR. Tax Parcel: 334-10.00-35.00

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 the following variances:

1. 5 ft. from the required 30 ft. front yard setback on Arabian Parkway for a proposed dwelling.
2. 6 ft. from the required 30 ft. front yard setback on Tennessee Walk for a proposed dwelling.
3. 15.4 ft. from the required 30 ft. front yard setback on Tennessee Walk for a proposed dwelling.
4. 5.5 ft. from the required 30 ft. front yard setback on Tennessee Walk for a proposed dwelling.
5. 7 ft. from the required 30 ft. front yard setback on Tennessee Walk for proposed steps.
6. 17 ft. from the required 30 ft. front yard setback on Tennessee Walk for a proposed deck.

Mr. Freddy Bada and Mr. Dan Krausz were sworn in to give testimony about the Application.

Mr. Bada testified that the lot is owned by Mr. Krausz and he is the Applicant's architect; that the property is a triangular, through lot with two front yard setbacks; that the house is orientated towards Arabian Parkway; that Tennessee Walk is a paper street and has not been developed; that the lot is a triangular shape with a small building envelope; that the Applicant was unaware of the building setback lines when he purchased the property; that he tried to design other houses but they would not fit within the building envelope either; that he even tried a ranch house; that the variances will not

alter the essential character of the neighborhood; that the proposed dwelling will be a small, 2 story house consisting of approximately 1,500 square feet and will blend in with the other houses in the neighborhood; that he could not fit a modular home on the lot; that the requested variances are the minimum variances to allow for a small home to be constructed on the lot; that the HVAC and steps will not encroach farther into the setbacks; and that building the proposed dwelling will not cause any visibility issues on Arabian Parkway.

Mr. Krausz testified that he submitted the soil and septic design; that the design showed that the location of the proposed house would be the best area for a standard septic system; that the septic system will have to be placed elsewhere on the lot at a greater cost; that there is no septic permit at this time; that he doubts Tennessee Walk will be developed; that the house may consist of 1,700 square feet; and that he cannot squeeze a one story house on the lot.

Mr. Bada testified that the septic system led to the house's location also; that he does not know what the current plan for Tennessee Walk will be as the area is currently wooded; and that the steps on the Tennessee Walk side of the lot were designed to minimize the need for the variance.

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

Mr. Chorman moved to approve Case No. 12564 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to the triangular shape of the 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 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; and
5. The variances represent the minimum variances necessary to afford relief and represent the least modifications of the regulations at issue.

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

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

**Case No. 12565 – Michael Kelly** seeks variances from the corner front yard setback requirements for proposed structures (Sections 115-25, 115-182 and 115-185 of the Sussex County Zoning Code). The property is located on the east side of Wilson Avenue within Cape Windsor Subdivision. 911 Address: 38765 Wilson Avenue, Selbyville. Zoning District: AR-1. Tax Parcel: 533-20.14-70.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received one letter in support of and none in opposition to the Application and two mail returns. The Applicant is requesting variances of 3.5 ft. and 3.9 ft. from the required 15 ft. corner front yard setback for a proposed deck extension and a variance of 12.1 ft. from the required 15 ft. corner front yard setback for a proposed accessory structure.

Mr. Michael Kelly was sworn in to give testimony about his Application.

Mr. Kelly testified that the open existing deck encroaches approximately 2 ft. into the setback; that the deck was built in 2017; that, when the deck was built, the side yard setback was 10 feet and it is now 5 feet; that the house was built to the 10 foot setback restriction; that he wishes to enlarge the deck and convert it to a sunroom; that the proposed structure would include an extension measuring 4 feet by 12 feet; that the deck and shaded area shown on the 4.23.21 survey will be the sunroom; that the steps will comply with the setback requirements; that the property is unique as it is on Old Lighthouse Road on one front and Wilson Avenue on another side; that there was confusion regarding the setbacks even for the Planning and Zoning Office; that the second request is for a proposed garage in the rear of the property; that the garage will consist of less than 600 square feet; that the rear of the property is approximately 30 ft. wide making it difficult for any building to fit there; that the garage would be 3 ft. from the corner front yard property line; that there are two letters of support from neighbors; that there are tiebacks from the bulkhead which extend 6 ft. onto the property making it impossible to move the garage farther back on the lot; that not much can be done in that area of the property; that the garage will measure 20 feet by 24 feet; that they want the garage for storage; and that the garage needs to be the proposed size in order to fit a car.

Ms. Norwood stated that Lincoln Drive is along open space; that Planning & Zoning ran the corner front yard along that whole side of the lot; that the Director determined the line along Lincoln Drive and Old Lighthouse Road to be the corner front yard; that Lincoln Drive is a paper street; and that, if this was not a corner front yard, there could have been a 5 foot setback along Old Lighthouse Road.

Mr. Kelly testified that DelDOT does not oppose the access; that the property does not have much storage and the garage will provide storage; that there will not be a driveway to the garage; that the house is not on pilings; that there is no garage on the property; that Old Lighthouse Road is a dead end road with approximately 9 to 10 homes located off Old Lighthouse Road; that the garage will measure 1 story and be approximately 12-15 feet tall; that he doubts the proposals will present visibility concerns; that it is not good for the vehicle to be left outside; that there is approximately 15 feet from the edge of paving of Old Lighthouse Road to the property line and the garage will be approximately 18 feet from the edge of paving of Old Lighthouse Road; that he would have to remove the deck to make the sunroom comply; and that there are no bug issues on the property.

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

Mr. Hastings moved to approve the variances requested for the sunroom and to deny the variance requested for the garage as he did not believe variance for the garage was the minimum variance necessary to afford relief.

Motion by Mr. Hastings, seconded by Mr. Chorman, carried that the **variances for the sunroom be granted and the variance for the garage be denied.** Motion carried 3 – 1.

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

**Case No. 12566 – Lindsey Smith** seeks a special use exception operate a day care center (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located on the west side of Deerfield Lane at the intersection with West Stein Highway. 911 Address: 25362 Deerfield Lane, Seaford. Zoning District: AR-1. Tax Parcel: 531-12.00-70.00

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.

Ms. Lindsey Smith was sworn in to give testimony about her Application.

Ms. Smith testified that she is the owner and sole provider at her family daycare which recently closed; that she recently purchased a larger home and is requesting the special use exception to move her prior daycare business to the new location; that she cared for eight children at the prior location; that she has the potential to be licensed to care for nine children because of the square footage in her daycare room; that the daycare will not affect the adjacent and neighboring properties; that the driveway houses 4 cars and there are 2 spaces for parents to drop off children; that the hours of operation will be 7:15 am – 5:00 pm; that there will be no other employees; that the daycare will be located in her home which is in a residential area; that there will be a fenced in outdoor play area; that she has spoken to neighbors and there is no opposition to the Application; that there is farmland across the road from her home; that Deerfield Lane is a private road; that her daycare business will generate approximately 10 vehicle trips per day; that she had hoped to re-open her business on June 14, 2021, but is waiting for Fire Marshal approval and results from the drinking water test; that she installed a water treatment system; that 5 families will use her daycare; that she purchased the property on May 21, 2021, and operated her old business until June 3, 2021.

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

Mr. Williamson closed the public hearing.

Mr. Chorman moved to approve Case No. 12566, pending final written decision, for the requested special use exception for a daycare business because the use will not substantially affect adversely the uses of neighboring and adjacent properties.

Motion by Mr. Hastings, seconded by Mr. Warfel, carried unanimously that the **special use exception be granted for the reasons stated.** Motion carried 4 – 0.

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

**Case No. 12567 – Anthony A. Kempski, Jr.** seek variances from the front yard setback and rear yard setback requirements for existing and proposed structures (Sections 115-42, 115-182 and 115-183 of the Sussex County Zoning Code). The property is located on the southwest side of Forest Drive within Orchard Manor Subdivision. 911 Address: 28296 Forest Drive, Millsboro. Zoning District: GR. Tax Parcel: 234-34.08-95.00

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 the following variances:

1. 6.7 ft. from the required 30 ft. front yard setback for proposed steps.
2. 9.45 ft. from the required 30 ft. front yard setback for a proposed deck.
3. 2.5 ft. from the required 5 ft. rear yard setback for an existing shed.
4. 2.3 ft. from the required 5 ft. rear yard setback for an existing shed.
5. 2.0 ft. from the required 5 ft. rear yard setback for an existing shed.

Mr. Anthony Kempski, Jr. was sworn in to give testimony about his Application.

Mr. Kempski submitted updated answers to the criteria for granting a variance.

Mr. Kempski testified that the steps have degraded from heavy use and need to be replaced; that a more supportive, larger landing is needed for safety to accommodate a family member who is confined to a wheelchair; that the family owns a handicap van with a portable ramp but a front deck is needed to allow for the front door to be opened when the wheelchair is on the deck; that the current home is situated too close to the setback to achieve this goal; that the side door enters into laundry area and is too narrow for a wheelchair to navigate; that the wheelchair is a Broda model and is a large wheelchair; that the front door is the only option and a more narrow deck or steps would not allow the wheelchair to be secured on the front deck while the door is open; that the difficulty was not created by the Applicant but by the existing dwelling being located too close to the front setback line; that the variances will not alter the essential character of the neighborhood as there are existing steps that are in disrepair; that the new deck, steps, and railing will be aesthetically beneficial to the neighborhood and are consistent with the other properties on this private road; that the 8 foot width of the deck and steps is the minimum safe distance to be able to push a chair up the ramp, position safely on the deck, and open the front door; that they have had difficulty at other locations with opening the door and maneuvering the wheelchair; that the sheds and screen porch were existing on

the property when the property was purchased by the Applicant; that the property is served by public water and sewer; that there is no gap between the gravel road and the property line; and that the deck will be open.

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

Mr. Warfel moved to approve Case No. 12567 for the requested variances, pending final written decision, for the following reasons:

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

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

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

**Case No. 12568 – Mary Ann Brewer** seek variances from the side yard setback requirements for proposed structures (Sections 115-25, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located on the southeast side of Bayview East within Bayview Estates Subdivision. 911 Address: 38825 Bayview East, Selbyville. Zoning District: AR-1. Tax Parcel: 533-19.00-132.00

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 3.5 ft. and 4.0 ft. from the required 10 ft. side yard setback on the north side for a proposed attached garage and breezeway.

Ms. Mary Ann Brewer was sworn in to give testimony about her Application.

Ms. Brewer testified that the only buildable area for a garage on her property is the front due to the setbacks on the other three sides; that the property is unique; that the house is set back from on the lot; that the lot is water front property; that the lot is wider in the front than the rear; that the garage will accommodate a recreational vehicle; that the variance is required to allow the owner to build a 24' x 25' garage without blocking more than half of the house frontage; that the Applicant did not determine the placement of the house as it was existing when purchased in 2006 and, therefore, the Applicant did not create the difficulty; that the proposed garage with the variances will be similar in



size and character to the properties in the neighborhood; that the variances are the minimum variances as the house is 11.6 ft. from the side yard; that the homeowners association has approved the request and the adjacent neighbor has no objection to the request; that the property is served by public sewer; that there is a well which is located behind the dwelling; that the access to the garage would be from the driveway; that to access the garage from another location would mean getting approval from DelDOT and be a farther distance from the house for the Applicant to walk; that the garage cannot be any smaller as it would not accommodate the RV; that the garage roof will be attached to the house; that it will be a two-car garage and will also be used to store a car; that the garage cannot be closer to the driveway as it will impede the kitchen window and the front door; that the dwelling consists of approximately 1,200 square feet; that part of the lagoon is in the rear yard; that she looked at turning the garage but still needs room to turn the RV around; and that she believes she has designed the garage so that it will not look like a garage.

Mr. Sharp explained to the Applicant that the side yard setback is 10 ft. and not 11.6 ft. which is the distance to the dwelling from the property line.

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

Mr. Hastings moved to deny Case No. 12568 for the requested variances for the following reasons:

1. The Applicant has failed to demonstrate that the property cannot be developed in strict conformity with Sussex County Zoning Code or that the variances are necessary to enable the reasonable use of the property; and
2. The variances do not represent the minimum variances to afford relief or represent the least modifications of the regulation at issue.

The motion failed for lack of a second.

Mr. Warfel moved to approve Case No. 12568, pending final written decision, for the requested variances for the following reasons:

1. The property has unique physical conditions due to the location of the house;
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 reasonable use;
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. Chorman. Motion failed 2 – 2.

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

Pursuant to Board of Adjustment Rule 6.5, three affirmative votes are needed to approve the variance application so the Application was denied.

**Recess 8:12 p.m. – 8:19 p.m.**

**Case No. 12569 – Lisa & David A. Wenerd, Sr.** seeks variances from the rear 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 north side of Woodland Court South withing the Angola by the Bay Subdivision. 911 Address: 33173 Woodland Court South, Lewes. Zoning District: AR-1. Tax Parcel: 234-12.17-103.00

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 a variance of 10 ft. from the required 20 ft. rear yard setback for a proposed detached accessory structure.

Mr. David Wenerd was sworn in to give testimony about his Application.

Mr. Wenerd testified that he needs space between the proposed garage and the existing dwelling to be able to use the property to its fullest; that, if the garage is not setback to 10 ft., the garage will be too close to the dwelling and will not line up with the driveway area and plans for a future porch; that there is no other area on the property to place the proposed garage; that the location of the dwelling is on the right of the lot; that a side porch is also part of the future plans; that the proposed garage will not alter the character of the property or the neighborhood but will enhance the look and increase the property value; that the proposed size of the garage will be used for storage; that it will accommodate the Applicants' needs and put the garage far enough from the street; that there are no complaints from the neighbors about the proposal; that the Applicants have owned the lot for 5 years; that the proposed garage will be 19 ft. tall at the peak of the roof with an attic for additional storage; that the proposed garage will have a lean to; that, if the garage was pushed forward, it would be on the steps; that the property is served by County water and sewer; that the lean-to will be 8 feet wide; that, even if there was no lean-to, a variance would be needed; that the house is 2,200 square foot and the proposed porch will measure 20 ft. x 12 ft.; that the property is 10,000 square feet in size; that the garage will measure 728 square feet; that they do not want to remove some of the landscaping on the side of the property; that the rear of the property is adjacent to a common area; that the garage could be moved forward but it would encroach on the area where the porch is proposed; that the garage will be used for a workbench and cars; and that the homeowners association has approved the request.

Ms. Lisa Wenerd was sworn in to give testimony about her Application.

Ms. Wenerd testified that she and her husband are working with a blank slate and are trying to make the property unique; that they wanted a detached garage; that there is landscaping on the side that they wish to keep; that there is a similar property in the area that they are taking some ideas from; that they are downsizing and trying to accommodate their needs; and that neighbors support the request.

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

Mr. Chorman moved to deny Case No. 12569, pending final written decision, for the requested variance for the following reasons:

1. The property does not have unique physical conditions which have created an exceptional practical difficulty for the Applicants;
2. The exceptional practical difficulty has been created by the Applicants;
3. The requested variance will alter the essential character of the neighborhood; and
4. The variance does not represent the minimum variance to afford relief.

Motion by Mr. Chorman, seconded by Mr. Hastings, carried that the **variance be denied for the reasons stated**. Motion carried 3 – 1.

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

Dr. Carson joined the meeting at 8:40 p.m.

**Case No. 12570 – Keystone Novelties Distributors, LLC (Tanger Properties LP)** seeks a special use exception to place a tent for special events (Sections 115-80 and 115-210 of the Sussex County Zoning Code). The property is located on the northeast side of Coastal Highway (Rt. 1) approximately 0.24 mile northwest of Holland Glade Road. 911 Address: 36470 Seaside Outlet Drive, Rehoboth Beach. Zoning District: C-1. Tax Parcel: 334-13.00-325.16

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 mail returns. The Applicant is requesting the Special Use Exception for a period of five (5) years during the 4<sup>th</sup> of July season.

Mr. Fred Young was sworn in to give testimony about the Application.

Mr. Young testified that the request is for a special use exception for Keystone Novelties to operate a tent at the Tanger Outlet; that there is a limit of three days per County Ordinance for a

special event; that this request is to begin sales on June 22 and the final sales to be on July 4; that the tent would be erected a day or two before June 22 and removed within a day or two after the sale is complete; that the tents are rented; that an inspection would be conducted to ensure that the tent is structurally sound; that this is in a commercial zone and will be in operation during this time; that the owner of the property has approved the request and agreed to it for the next several years; that the tent will take 8-9 parking spaces; that there will no parking in an area of approximately 20 feet around the perimeter of the tent for safe ingress and egress for customers; that it will not create any visibility issues for traffic on Route 1; that there would be a pod storage for inventory; that, if County Ordinance requires a handicapped parking spot, the Applicant would bring in a temporary handicapped sign and place it close to the tent; that tents cannot be locked so there are employees in the tent at all times for security; that usually 2 employees are on staff at all times; that all the fireworks are ground-based fireworks such as sparklers; that this special use exception will not substantially adversely affect the uses of neighboring and adjacent properties; that the Applicant has been in business for 25 years in 10 states; that the tent will measure 20 feet by 40 feet; that they will need 3 days before and 3 days after the sale to set up and tear down; that it should help the adjacent businesses as people stop to shop in the tent they generally patronize some of the nearby businesses; and that the hours of operation are from 9:00 am through 9:00 pm daily and 9:00 am through 10:30 pm on July 3 and 4.

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

Mr. Williamson closed the public hearing.

Mr. Chorman moved to approve Case No. 12570, pending final written decision, for the requested special use exception to place a tent for special events because the tent will not substantially affect adversely the uses of neighboring and adjacent properties subject to the following conditions:

1. The approval shall be valid for a period of three years for a 20 ft. x 40 ft. tent and pod storage unit with sales from June 22 – July 4 with three days for setup and take down;
2. That a signed lease between the Applicant and Tanger Outlets be submitted to the Planning and Zoning Department.

Motion by Mr. Chroman, seconded by Dr. Carson, carried unanimously 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. Warfel – yea, Mr. Williamson – yea, Mr. Hastings – yea and Mr. Chorman - yea.

### **OLD BUSINESS**

**Case No. 12557 – Key Properties Group, LLC (Elmer G. Fannin)** seek variances from the front yard setback requirements and the landscape buffer requirement in the Combined Highway Corridor Overlay Zone (CHCOZ) for existing and proposed structures (Sections 115-82, 115-182 and 115-

194.1 of the Sussex County Zoning Code). The property is located on the northeast side of Coastal Highway (Rt. 1) approximately 546 ft. southeast of Kings Highway. 911 Address: 18315, 18321, 18327 Coastal Highway and 34670, 34673, 34677, 34682, 34703, 34704 Villa Circle, Lewes. Zoning District: C-1. Tax Parcels: 334-6.00-74.00, 75.00 & 70.01 (Portion of).

Mr. Hastings was not present for the public hearing and he recused himself from voting on this case.

Mr. Warfel asked for clarification from Counsel regarding the previous variance application.

Mr. Sharp explained that the previous application was approved for the larger building; that the Applicant did not begin work prior to the expiration period for the variance; and that the request for relief from the CHCOZ buffer zone has been reduced.

Mr. Warfel moved to approve in part and deny in part Case No. 12557, pending final written decision, the approval is for the requested variances for the larger building for the following reasons:

1. The property has unique physical conditions due to the location of the larger building;
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 reasonable use;
3. The exceptional practical difficulty has not been created by the Applicant;
4. The requested variances will not alter the essential character of the neighborhood;
5. The variances represent the minimum variances to afford relief.

As part of his motion, Mr. Warfel moved to deny the variances for the smaller building as it does not meet any of the criteria listed above.

Motion by Mr. Warfel, seconded by Dr. Carson, carried that the **variances be approved in part and denied in part for the reasons stated.** Motion carried 4 - 0.

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

### **ADDITIONAL BUSINESS**

The Board members discussed changing the meeting time.

Motion by Dr. Carson, seconded by Mr. Chorman have Board of Adjustment meetings began at 6:00 pm from the first meeting in July until the Board revisits this at a future date. Motion carried 5 – 0.

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

Ms. Norwood announced that the meeting of July 19, 2021, will be cancelled.

**Meeting adjourned at 9:27 p.m.**