

## **MINUTES OF MARCH 10, 2025**

The regular meeting of the Sussex County Board of Adjustment was held on Monday, March 10, 2025, at 6:00 p.m. in the County Council Chamber, Sussex County Administration Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Mr. John Travis Hastings presiding. The Board members present were Mr. John Travis Hastings, Mr. Shawn Lovenguth, 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, Ms. Hannah Wyatt – Recording Secretary.

The Pledge of Allegiance was led by Mr. Hastings.

Motion by Mr. Williamson, seconded by Mr. Lovenguth and carried unanimously to approve the agenda. Motion carried 3 – 0.

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

### **PUBLIC HEARINGS**

**Case No. 13033 – Melissa Burbage** seeks a special use exception for a commercial dog kennel (Section 115-72 of the Sussex County Zoning Code). The property is located East of Pyle Center Road. 911 Address: 35025 Pyle Center Road, Frankford. Zoning District: B-1. Tax Parcel: 533-6.00-25.01

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received one letter in support of the Application, zero letters in opposition to the Application, and zero mail returns. The Applicant is requesting special use exception for a commercial dog kennel.

Ms. Melissa Burbage and Mr. John Gilman were sworn in to give testimony for this application.

Ms. Burbage testified that Mr. Gilman is the property owner; that she proposes to operate doggy daycare center from 9am to 5pm; that there would be no boarding of dogs; that the use will not substantially affect adversely the uses of neighboring and adjacent properties; that there will be a 4 foot tall fence around the building so she does not feel that the kennel would bother the neighbors; that barking should not be an issue because her hours of business are when most people are at work; that there is a dog place sitting business already there; that she would have 10-15 dogs per day maximum; that there will be no overnight boarding of dogs; that there will be no pet grooming services; that she would have no employees as she will be running the center; that she was going to put some trees to give the dogs shade; that the kennel is located far off the road; that she started the business in November 2024; and that there have been no complaints since starting the kennel in November.

Mr. Gilman testified that all surrounding properties are residential; that some of the residences

are second homes; that he operates the gym that is located on the property and traffic is not an issue as he only meets a fraction of traffic that is allowed to go through there; that he has generally 40 vehicle trips per day for the gym and the DelDOT entrance permit allows for up to 200 vehicle trips per day; that his property worked the best for her business because he has 8 acres and can meet all the code requirements; that there will be a 200 foot buffer from the kennel to adjacent properties on the sides, rear, and front; that there is no problem with parking; that there is a 20 foot landscape buffer except in the rear yard; that he has discussed the application with neighbors and they have expressed no issues with the use; that the gym operates from 6am to 9pm Monday through Friday; that he plans to build a house on the site; and that the property is zoned B-1.

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

Mr. Hastings closed the public hearing.

Mr. Williamson moved to approve the special use exception for a period of five (5) years with the condition that there is no overnight boarding, pending final written decision, because the proposed use will not substantially affect adversely the use of the adjacent or neighboring properties.

Motion by Mr. Williamson, seconded by Mr. Lovenguth, carried that the **special use exception be approved with condition for the reasons stated.** Motion carried 3 - 0.

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

**Case No. 13036 – Timber Creek West, LLC** seeks a special use exception for an off-premises billboard (Sections 115-159.5(B) and 115-80 of the Sussex County Zoning Code). The property is located on the south side of Coastal Highway, west of Camelot Drive. 911 Address: 19470 Coastal Highway, Rehoboth Beach. Zoning District: C-1. Tax Parcel: 334-13.00-305.02

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application, and zero mail returns. The Applicant is a special use exception for an off-premises billboard

Mr. Dale McCallister and Mr. Mason Dyer were sworn in to give testimony for this application.

Mr. Dyer testified that he is one of the owners of the property; that they are seeking approval for a proposed billboard; that there was a Shell gas station on this property; that they were entered into a Brownfields program through DNREC which allowed them to have the gas pumps and gas tanks removed underground and any environmental remediation work to be completed; that the removal of the gas station led to a decrease in income for the property; that the billboard will help recover some of that lost income; and that he has spoken with neighbors and they support the request.

Mr. McCallister testified that the billboard will measure 12' x 48'; that they will remove an existing flag pole that is located 40' from the front property line and replace that flagpole with a billboard; that they want to remove the Shell gas sign and install a billboard in that location; that they have a Department of Transportation letter of no objection; that the sign meets the setback requirements; that there will no increase in the number of signs on the property; that the billboard will be a monopole, flag-style billboard; that the billboard will be 30' tall; that the bottom of the billboard will be elevated enough so that there will be a 16' clearance for vehicles to pass underneath the sign; that the billboard will be a static billboard because the Applicant cannot meet the DelDOT electronic message center requirements; that the billboard will have proper lighting which will benefit the parking lot by making it brighter; that the property is used as a strip mall along Route 1 in a commercial area; that there is a small gap between the property line and the edge of paving of Route 1; that the sign will have no effect on traffic; that the prior canopy on the property was 14' tall; and that they spoke to the tenants of the complex and they are fine with the proposal.

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

Mr. Hastings closed the public hearing.

Mr. Lovenguth moved to approve the application for Case No. 13036 for the requested special use exception, pending final written decision, because the proposed use will not substantially affect adversely the uses of adjacent and neighboring properties.

Motion by Mr. Lovenguth, seconded by Mr. Williamson, carried that the **special use exception be approved for the reasons stated**. Motion carried 3 - 0.

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

Dr. Kevin Carson arrived at Chambers.

**Case No. 13037 – Yasin & Layla, LLC** seek a variance from the rear yard setback for a proposed structure (Sections 115-183 and 115-83.15 of the Sussex County Zoning Code). The property is located on the southeast side of John J. Williams Highway and north of Oak Orchard Road. 911 Address: 31507 Oak Orchard Road, Millsboro. Zoning District: C-2. Tax Parcel: 234-29.00-263.12.

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 Applicant is requesting an 8 feet variance from the 30 feet rear yard setback requirement for a proposed structure

Mr. Mahmut Yilmaz and Ms. Layla Yilmaz were sworn in to give testimony for this application.

Mr. Yilmaz testified that he received zoning approval last year; that he received state agency approval from DelDOT, the State Fire Marshal, and Sussex Conservation District; that he spoke to all neighbors and they have no objection; that he owns the shopping center next to it; that he has purchased all the material already to build the building because he was under the impression that he was good to go but then he ran into the setback problem when he started breaking ground; that there are building materials on site; and that he plans to build a trampoline park with an indoor sports center with softball, baseball, pool tables, etc., to have a place for kids to go and not be on electronics.

Ms. Norwood noted that there was an error on the setback information request form; and that the Planning Commission has not yet approved the site plan as it is waiting on the Board's decision on the variance.

Mr. Yilmaz testified that he agrees with Ms. Norwood; that the building will be located 20 feet from the rear property line; that he learned of the issue after the building was designed; that he planned to break ground in December 2024; that the rear yard adjacent to residential lands is fenced; that there are 4 trailers of building materials on a neighboring lot; that he has a lot of letters of support from neighbors; that the entrance will be shared with the shopping complex this will give two entrances to the building; that DelDOT took part of the property which led to the north side of the property being set back farther than the south side of the property; that the building is 198 feet long; and that the variance needed is 8 feet.

Mr. Therman Hopkins was sworn in to give support of this application.

Mr. Hopkins testified that he has a church close by and they have an after-school program and they feed the homeless; that, if this variance is approved, the structure would be beneficial to them because it would be good for the community and the kids; and that the Applicant's proposal will create jobs and be a good addition to the area and community.

The Board found that one person appeared in support of and no persons appeared in opposition to this application.

Mr. Hastings closed the public hearing.

Dr. Carson moved to approve the application for Case No. 13037 for the requested variance, pending final written decision, for the following reasons:

1. The variance will not alter the essential character of the neighborhood; and
2. The variance sought is the minimum variance necessary to afford relief.

Motion by Dr. Carson, seconded by Mr. Lovenguth, carried that the **variance be approved for the reasons stated.** Motion carried 4-0.

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

**Case No. 13038 – EVG / Admiral Ventures, LLC** seeks variances from the height requirement for a proposed fence and from the landscaping requirements in the Combined Highway Corridor Overlay Zone (CHCOZ) (Sections 115-185 & 115-194.1 of the Sussex County Zoning Code). The property is located on the north side of Coastal Highway and south of Robinsons Drive. 911 Address: 38158 Robinsons Drive, Rehoboth. Zoning District: C-1. Tax Parcel: 334-20.09-47.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of the Application, zero (0) letters in opposition to the Application, and one (1) mail return. The Applicant is requesting 5 feet variance from the 20 feet landscape buffer requirement and a 3.5 feet variance from the 3.5 feet maximum height requirement for a front yard fence.

Mr. Mark Davidson, Mr. Tim Naughton, and Mr. Eric Wahl were sworn in to give testimony for this application.

Mr. Davidson testified that he represents EVG / Admiral Adventures; that Mr. Wahl is a licensed landscape architect; that Mr. Naughton is the managing member of the LLC; that the property is adjacent to Route 1 in the Forgotten Mile; that the north side of the property abuts to Anna B Street; that the south side of the property is adjacent to Robinsons Drive; that the property has an area of 0.67 acres; that the parcels behind this property are zoned commercial but are currently being used for residential purposes; that this property has been used for banks in the past; that this property is proposed for 7 single-family townhomes under condominium ownership; that the property has a unique shape; that the property is wide but not deep; that the property is unique as it is only 100 feet deep; that the entrance to the property will be from Robinson Drive and the exit will be onto Anna B Street; that no vehicular access to Route 1 was permitted by DelDOT; that the drive aisle will be in the rear yard and will be parallel to Route 1; that the drive aisle will be a one-way road; that DelDOT required noise abatement with the construction of a fence; that landscape planning will be indigenous to the area and will provide a soft visual buffer between the roadway and proposed development; that parking will be located under the houses; that there will be additional parking near Robinsons Drive; that what they are requesting are the minimum variances necessary; that the property is unique due to its narrow depth and the roads on 3 sides; that Coastal Highway is considered the corner front yard with a 15 foot setback but the CHCOZ requires a 20 foot landscape buffer; that the variances are necessary to enable reasonable use of the property; that the property cannot otherwise be developed; that the restriction of access from Coastal Highway forces safe access from the other public roads with a safe access drive along the rear of the property that further restricts the size of each of the dwelling units; that the exceptional practical difficulty was not created by the Applicant because the limited depth of the property and having three sides abut public rights-of-ways with a restriction from access to Coastal Highway was not created by the Applicant; that the lot was created before the

Applicant purchased it; that the variances will not alter the character of the neighborhood because the landscape buffer will provide a soft visual buffer between the roads and the dwellings; that, to help with noise mitigation, they need to place this 7 foot tall fence at the front of the property; that DelDOT is requesting the placement of this 7 foot tall fence; that the fence height would not alter the character of the neighborhood; that the property owner across the street had to place a similar fence as well for noise mitigation; that the fence is the minimum variance because it is what DelDOT is requiring them to do; that there is no obstruction for vehicles because the fence is placed 5 feet back off the property line per DelDOT request; that the fence will meet DelDOT's site triangle standards; that the bank had a similar plan with a drive aisle and DelDOT wanted to keep that drive aisle; that the drive aisle was directed by DelDOT; that the fence will be a solid panel fence; that there is approximately 8 feet to the sidewalk and 13 feet from Route 1; that there are four additional spaces; that the buildings will meet the setback requirements; that the buildings meet the Fire Marshal requirements also; that the variances requested are the minimum variances necessary to afford relief; that the plan provides adequate space for dwelling units, safe pedestrian movements, and safe vehicular movements; and that the requests will not otherwise impair the public health, safety, comfort, morals, or general welfare or create a nuisance, diminish or impair property values in the neighborhood.

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

Mr. Hastings closed the public hearing.

Mr. Williamson moved to approve the application for Case No. 13038 for the requested variances, pending final written decision, for the following reasons:

1. The exceptional practical difficulty was not created by the Applicant;
2. The DelDOT requirements have created a difficulty for the Applicant;
3. The variances will not alter the essential character of the neighborhood; and
4. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Williamson, seconded by Mr. Lovenguth, carried that the **variances be approved for the reasons stated.** Motion carried 4 - 0.

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

**Case No. 13040 – Old Bay Road, LLC** seeks variances from the front yard setback for a proposed structure and the landscape buffer requirements in the Combined Highway Overlay Zone (CHCOZ) for a proposed structure (Sections 115-77.1, 115-82, 115-182, and 115-194.1 of the Sussex County Zoning Code). The property is located on the southwest side of Coastal Highway and northeast side of Old Bay Road. 911 Address: N/A. Zoning District: C-1. Tax Parcel: 334-20.09-215.00.

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received zero correspondence in support or in opposition to the Application, and zero mail returns. The Applicant is requesting a 20 feet variance from the 30 feet front yard setback requirement and a 10 feet setback from the 20 feet landscape buffer requirement.

Mr. Webster Gray and Mr. Chris Pfeifer were sworn in to give testimony for this application.

Mr. David Hutt, Esquire, presented the Application for the Applicant.

Mr. Hutt stated that the property is located along the Forgotten Mile near Rehoboth and Route 1; that he represents the contract purchaser; that there are other businesses nearby including El Azteca, Tidal Waves, and Valero; that the Dunes Hotel and Spring Lake housing development are also nearby; that Rehoboth Ale House, Just in Thyme, and other businesses are located across Route 1; that there is a mixture of commercial businesses along Route One and higher density residential properties in the area; that Old Bay Road is the front for the property and Coastal Highway is the rear yard; that the entrance is from Old Bay Road; that no rear yard variance is being sought; that the variances needed are 30 feet from the 40 feet front yard setback off Old Bay Road and 10 feet from the CHCOZ requirement; that the CHCOZ requires 10 plants every 20 feet but that will be reduced by 50% to prevent overcrowding; that the property is unique because of the triangular shape of the lot and is not wide nor long; that, without the variances, the lot is not usable; that this property was before the Board of Adjustment in 2003 to be used as retail on the first floor and residential above that; that the Board granted that variance; that, in the prior application, the structure was oriented towards Route 1 so the setback was 60 feet; that the Applicant now seeks to use the property solely for residential use; that the property is vacant; that the 2003 plan never materialized; that the widest part of the lot is 101 feet; that the variances are necessary to enable the reasonable use of the property; that the situation is not being created by the Applicant as a prior owner created the shape of the lot; that the variances will not alter the character of the neighborhood as there is a mixture of residential and commercial all along the highway; and that the variances requested are the minimum variances necessary to afford relief as these requests are much less than the case that went in 2003.

Mr. Gray affirmed the statements made by Mr. Hutt as true and correct.

Mr. Hutt stated that the structure will be a multi-family structure with apartments or condos; that the Applicant intends to have 5 units on the site; that the project will meet all parking requirements; that the property was purchased in 2005; that there is a sidewalk along Route 1; that that no variance is needed for the parking lot; that Old Bay Road is a two-lane road; that they have not met with DelDOT yet about the project; that steps and HVAC will be located within the building envelope; that there is a gap between the property line and Old Bay Road; and that there have been conversations with the neighboring property owners.

Mr. Pfeifer testified that he is the Applicant's engineer; that the Applicant will have to go to DelDOT to confirm the site triangle proposed is acceptable; and that there is a 10 foot gap between

the property line and Old Bay Road.

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

Mr. Hastings closed the public hearing.

Mr. Lovenguth moved to approve the application for Case No. 13040 for the requested variances, pending final written decision, for the following reasons:

1. The Property is unique due to its physical conditions;
2. The exceptional practical difficulty was not created by the Applicants; and
3. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Lovenguth, seconded by Dr. Carson, carried that the **variances be approved for the reasons stated**. Motion carried 4 - 0.

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

**Case No. 13041 – Delmarva Armory, LLC** seeks a special use exception for a rifle and pistol range (Sections 115-23(A) and 115-25 of the Sussex County Zoning Code). The property is located on north side of East Line Road, Millsboro. 911 Address: 38531 Parker Road, Millsboro. Zoning District: AR-1. Tax Parcel: 333-15.00-20.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received zero correspondence in support or opposition to the Application, and zero mail returns. The Applicant is requesting a special use exception for a rifle and pistol range.

Mr. Jeffrey Behney, Mr. Lloyd Behney, and Mr. Chad Behney were sworn in to give testimony for this application.

Mr. Michael Smith, Esquire, presented the Application on behalf of the Applicant.

Mr. Smith stated that the Application is for an outdoor rifle and pistol range; that this property has had a special use exception approved in 2018 for an indoor range; that, prior to the expiration of that approval, the Applicant applied for a conditional use for an indoor range and that application was approved in 2024; that there is no conditional use for the outdoor range; that Cypress Swamp is approximately 2 miles away; that a property about 400 feet away was approved for an outdoor range in September 2024; that the name of that range is Whiskey Ridge; that Whiskey Ridge has a 20 feet tall U-shaped berm for up to 14 shooters; that the sound from that range carries; that the proposed range will have a maximum of 10 shooters; that this property is in rural area as he explained and showed on a map; that the property is near the Maryland line; that



the facility has 14,800 square feet in the indoor range; that they plan to plant trees and to install a vegetative berm; that there will be poles installed to support the berm; that there is about 1 home per 22 acres in this area of the county; that the Applicant is buying 200 trees to plant along the property line; that the berm that is existing is 330 feet long, 150 feet wide and more than 20 feet tall; that the range is over 100 yards away from any dwellings; that the neighboring property is a farmer and is in full support of the Application; that they follow the EPA Best Practices Manual for berms; that the berm will avoid wetlands; that there are no tax ditches or wetlands on the site; that the stormwater pond is manmade and is isolated; that the western berm, which is closest to the residences, has a greater height to provide additional sound deflection; that they have a company that cleans the lead up for the indoor range and will also do so for the outdoor range; that they will not discharge firearms within 15 feet of the road or within 100 yards of a dwelling as is required under Delaware law; that the building and fence in front of the berm will limit access to the range; that houses cannot be seen from inside the berm; that shooting will occur within a building to outside targets; that each lane in the range building has ballistic matting; that the ammunition in the range is restricted so that no handmade ammunition or ammunition with greater than 3,000 feet per second are permitted; that there is a forested strip to the rear of the berm; that 7 police forces regularly use this facility for training; that they received multiple letters from different police departments; that there is a critical need for the range; that the range will be closed to the public on Mondays so that only law enforcement officials can use it; that law enforcement officials need long range shooting opportunities for necessary training and licensing; that the business has all their licensing needed to operate; that they did sound testing and from the parking lot the shooting is equivalent to the sound of a conversation; that there will be no trap or skeet shooting; that the use will not substantially affect adversely the uses of neighboring and adjacent properties; that the hours of operation would be 10am -5pm Tuesday to Sunday and Mondays are for police and they would possibly have to extend to 9pm depending on the training; that the largest caliber being shot is 308; that the Council had concern about sound with the 8 lanes for shooting and he says that 2 shots would have to go off at the exact same time for sound to double if not the soundwave will not change.

Jeff Behney affirmed the statements made by Mr. Smith as true and correct.

Mr. Smith submitted additional exhibits to the Board.

Mr. Smith stated that Whiskey Ridge uses 50 caliber ammunition and the Applicants uses lower caliber ammunition; that there is a paradox of sound waves as the most it can increase is 2 times; that there was no intention in 2018 to do the outdoor range; and that plans later changed.

Jeff Behney testified that he has received no complaints about the range; that he is a retired Department of Corrections officer; that he estimates 3-4 hours per day with the outdoor range; that the berm will be 100 yards deep and 60 feet wide; and that the outdoor range is not staffed so users will have to go to the indoor range first to use the outdoor range.

Lloyd Behney testified that there were no plans in 2018 for the outdoor range but that the customers later suggested the outdoor range due to a lack of options in the area.

Jason Lovins was sworn in to give support to this application.

Mr. Lovins testified that he is currently Chief of Police at South Bethany Police Department; that there is a lot of additional training being required now for law enforcement officials and the problem with that is police had no training facilities in Delaware until Delmarva Armory opened; that he has been all over and been to many ranges and he believes that Delmarva Armory has the best and safest shooting range he has been to.

Nick Yatsko and Casey Crapps were sworn in to give support to this application.

Mr. Yatsko and Mr. Crapps are the firearms instructor at the Lewes Police Department.

Mr. Yatsko testified that they are mandated to do a lot of training; that they have tried 3 other facilities and they have not been able to train properly at these facilities due to size or safety concerns; that, at Delmarva Armory, they can safely and effectively train; that they have been able to double their training time since having the outdoor range; and that they will start shooting right at dusk to give officers a low light training for shooting.

Mr. Crapps testified that low light training is right at dusk and gives officers an additional training opportunity.

Bud Sipple and Tatum Kane were sworn in to give support to this application.

Mr. Sipple testified that they live right beside the facility and they cannot hear the shooting in their home; that it is a well-run facility and he does not see where anyone should have a problem with the noise; that they have been outside and have people over and you can hardly hear the outdoor range; that it is usually only a couple people at a time that are shooting at the outdoor range so it does not affect their daily lives as there is not high traffic and not a lot of noise from this facility.

Ms. Kane testified that they have a Weiner dog and the shooting does not bother the dog either; that the range has no effect on them; and they can use the outside area of their property.

Mr. Hastings closed the public hearing.

The Board found that five (5) persons appeared in support of and no persons appeared in opposition to the Application.

Mr. Lovenguth moved to approve the application for Case No. 13041 for the requested special use exception for a 5 year period, pending final written decision, because the proposed use will not substantially affect adversely the uses of adjacent and neighboring properties.

Motion by Mr. Lovenguth, seconded by Mr. Williamson, carried that the **special use exception be approved for five (5) years for the reasons stated.** Motion carried 4 - 0.

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

### **ADDITIONAL BUSINESS**

**Meeting adjourned at 8:34 p.m.**