

MINUTES OF MAY 1, 2023

The regular meeting of the Sussex County Board of Adjustment was held on Monday, May 1, 2023, at 6:00 p.m. in the County Council Chamber, Sussex County Administration Office Building, Georgetown, Delaware. The teleconference system was tested during the meeting by staff to confirm connectivity.

The meeting was called to order at 6:00 p.m. with Chairman Jeffrey Chorman presiding. The Board members present were Dr. Kevin Carson, Mr. John T. Hastings, Mr. Jordan Warfel, Mr. John Williamson, and Mr. Jeffrey Chorman. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, 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. Hastings, seconded by Mr. Warfel and carried unanimously to approve the agenda. Motion carried 5 – 0.

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

Motion by Mr. Williamson, seconded by Mr. Hastings and carried unanimously to approve the Minutes for the March 6, 2023, meeting. Motion carried 5 – 0.

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

Motion by Dr. Carson, seconded by Mr. Warfel and carried to approve the Findings of Facts for the March 6, 2023, meeting. Motion carried 5 – 0.

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

PUBLIC HEARINGS

Case No. 12811 – Tilcon Materials, Inc. seeks renewal of a special use exception to operate an asphalt batching plant (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located on the west side of Joseph Lane approximately 1,745 feet north of Bunting Road. 911 Address: 22351 Joseph Lane, Georgetown. Zoning District: AR-1. Tax Parcel: 133-6.00-53.09

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 the renewal of a special use exception for an asphalt batching plant.

Mr. Hastings recused himself and left the Council Chambers.

Mr. David Schnackenberg was sworn in to give testimony about the Application.

Mr. Schnackenberg testified that he works for Allan Myers; that they have an asphalt plant on the property; that they are seeking a renewal of the approval for the asphalt plant that has been at that site for over 20 years; that they have received no complaints since their last renewal; that they have also renewed their permits with DNREC; that he is not aware of any noise issues or complaints; that there are some trees that are utilized as a buffer; that there is a mining operation where they are dredging sand is operating around them; that the Applicant purchased the plant in 2009; that they use natural gas; that they store the materials in silos; that, when there is a need for materials, the trucks would come and get it; that they only make the mix when they have orders and it is weather permitting; that they are not operating in the rain or winter; that they operate less than 200 days per year; that they use recycled materials; that they operate at 50 trucks a day in trips in and out; that their property is the dark area within the mining operation; that they do not use water; that they heat up the stone and sand which is mixed in the asphalt cement and recycled material; that Allan Myers, as a company, operates in several states; that, overall, they have a below average occurrence of safety incidents for their type of manufacturing process; that their entry road has posted speed limit signs but you would not be able to travel very fast due to the curves in the road; that he does not believe you would be able to drive faster than 20 mph and certainly a loaded truck could not even go that fast; that they have an air quality permit through DNREC which requires twice a year testing; that they also test their stormwater twice a year; that he is not sure there is a lot of vibration unless you are relatively close to the machinery; that it is a large drum that spins; that there can be some sound associated with the operation but it is not significant from across the water; that the road leading into their operation is Josephs Road; and that they have patched the road but believe it is a public road.

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. 12811 for the requested special use exception for a period of five (5) years, pending final written decision, because the proposed use will not substantially affect adversely the use of neighboring and adjacent properties.

Motion by Mr. Warfel, seconded by Dr. Carson, carried that the **special use exception be granted for a period of five (5) years the reasons stated.** Motion carried 4 - 0.

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

Mr. Hastings returned to the Council Chambers.

Case No. 12817 – Coastal One Properties, LLC seeks a special use exception to place an off-premises sign (Sections 115-80, 115-81, 115-159.5, and 115-210 of the Sussex County Zoning Code). The property is located on the northeast side of Coastal Highway (Rt. 1) approximately 1,800 feet northwest of Holland Glade Road (Rt. 271). 911 Address: 19563 Coastal Highway, Rehoboth Beach. Zoning District: C-1. Tax Parcel: 334-13.00-325.33

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and two (2) mail returns. The Applicant is requesting a special use exception for an off-premises sign.

Mr. Jason Dean was sworn in to give testimony on the Application.

Mr. Dean testified that he is representing Coastal One Properties, LLC; that they are looking to install a billboard on the property located at 19563 Coastal Highway, Rehoboth; that, under section 115-159(5)(b), they meet the front, side, and rear yard setbacks; that the billboard will have one sign per side with no more than two signs and will not be located within 150 ft. of a dwelling, church, school, or public lands; that the adjacent Route 1 has four or more travel lanes; that the separation distances are well met with the adjacent billboards being 4,108 ft. and 2,388 ft. from other billboards, which exceeds the 600 ft. minimum separation distance requirement; that the billboard will be 35 ft. tall and does not exceed the maximum of 600 sq. ft. per side; that they have a letter of no objection from DelDOT; that the billboard will be a static billboard; that he does not know the owner's intentions in the future but, if it was to be an electronic message center, that would require him to come back before the Board; that, on the property itself, the billboard will be located in front of PetSmart; that this property is the location of the old Kmart shopping center; that the placement of their billboard would meet all of the requirement of an electronic message center in the future; that the placement of this billboard should increase the neighboring property values; that the neighboring properties are all zoned commercial; that the billboard will have LED lighting controlled from timers and photo cell technology; that it is 23 ft. to the bottom of the sign itself; that the sign should present no visibility concerns; and that he is not aware of any discussion with the neighboring property owners but this hearing was advertised.

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. 12817 for the requested special use exception, pending final written decision, because the proposed use will not substantially affect adversely the uses of neighboring and adjacent properties.

Motion by Mr. Williamson, seconded by Dr. Carson, carried that the **special use exception be granted for the reasons stated.** Motion carried 5 - 0.

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

Case No. 12818 – Kimberly A. Morrow seeks a special use exception to operate a commercial dog kennel on a property of less than 5 acres (Sections 115-20, 115-23, and 115-210 of the Sussex County Zoning Code). The property is located on the southeast side of Fawn Road approximately 0.54 miles from Sugar Hill Road. 911 Address: 10244 Fawn Road, Greenwood. Zoning District: AR-1. Tax Map: 430-11.00-100.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received one letter in support of, no correspondence in opposition to the Application, and no mail returns. The Applicant is requesting a special use exception to operate a commercial dog kennel on a property of less than five (5) acres.

Ms. Kimberly A. Morrow was sworn in to give testimony about the Application.

Ms. Morrow testified that she is seeking a special use exception to operate a dog kennel on her property; that she has under the five acres as required by code; that she has 2.94 acres that were purchased in April of last year; that commercial makes it sound larger but the maximum dogs she would like to have is ten; that there are two homes on the property; that, on the survey provided, you can see there is a larger house to the left and a smaller one to the right; that she would be using the smaller home to operate the kennel; that it is a one bedroom home that would be converted to a kennel for the dogs to be kept inside; that the home is made of concrete and block, which helps with the sound also; that there are no neighbors very close to her; that she has spoken with some of her adjacent neighbors; that there is a language barrier between her and one of the adjacent neighbors; that the property to the rear of her is a field with the house more to the front of the property; that, on the other lot behind her, there are three chicken houses; that the building consists of 900 square feet; that the property had the two residences when she purchased it; that her house is the larger of the two; that her daughter was living in the smaller house but she is about to move out which prompted her to seek approval for the kennel; that the dogs will be kept inside and there will be no outside runs; that she has a fenced in yard now but plans to install a smaller 6 ft. privacy fence where the dogs will be let out for bathroom breaks; that they will remain close to the house and be brought back in after their bathroom break; that this will just be for boarding potentially on a seasonal basis; that the kennel would be divided between the two rooms; that it would have five kennels in each room which allows her to have larger kennels; that she is assuming that the dogs would be boarded between five to seven days but it could be for a night or two; that the proposed hours of operation would be from 7:00 am until 10:00 am and then from 4:00 pm to 5:00 pm for drop off and pick up; that she does not expect there to be a lot of traffic; that she plans on planting evergreens to create a barrier between her property and Lots 33 and 34; that the neighbor on Lot 30 is excited for her business venture and has started making improvements to her property prior to her opening; that the fence would come off the back of the building and enclose a portion of the yard closer to the houses; that there is a tax ditch along her property; that fecal matter will be picked up after every bathroom break; and that the structure is

located almost in the center of the property.

Mr. Joe Donovan was sworn in to give testimony in support of the Application.

Mr. Donovan testified that he sold this property through Emmert's Auctions about two years ago; that he had decided to clean up the property and the existing houses; that the house she is proposing to turn into kennels is exactly what that should be; that house has all concrete floors; that there is enough separation between the properties; and that he does not foresee any issues with the neighboring houses.

Mr. Michael Watson was sworn in to give testimony in opposition to the Application.

Mr. Watson testified that the Application states it is submitted due to the characteristics that have prevented being a commercial dog kennel; that there is also the problem of not meeting the five acre legal requirement or the 200 ft. setback; that there is not one spot on the whole lot that would be 200 ft. from the neighboring property; that this is a family residential area and not a commercial area; that the Applicant is applying for a commercial dog kennel approval; that all 34 lots in the Fawn Grove Subdivision have a restrictive covenant as part of their deed of ownership which states that commercial activity of any kind is not permitted; that all owners were given and signed a copy of these restrictions at their time of purchase; that the Applicant also states that there will be no adverse effect on the neighboring properties; that this will increase traffic, noise pollution, and create a hazard to families; that the Applicant's admission to using the sonic device to control barking is an admission that she may be adding an unwanted disturbance to the neighborhood; that the Applicant also does not take into account that these devices have been shown to provide no benefit whatsoever and have been deemed cruel to the animals on which they are used; that he is submitting a statement put out by the Royal Society for the Prevention of Cruelty to Animals which states that not only do the devices not work but they cause long term psychological harm to the animals; that there are a number of family dogs and cats in the area; that he has two cats himself; that he is concerned that these devices would harm the neighboring animals which he will not tolerate; that the prospect of those who may drop off or pick up animals from this location are going to create a disturbance to the serenity of the area; that he is concerned with privacy and security of people walking around behind houses and looking in through windows of the neighboring houses; that this operation would lower the value and desirability of the properties in the area; that, not only is the Applicant seeking to violate the County Code, but the Applicant is also seeking to encumber the rights of her neighbors; and that he would ask that the Board deny the Application and not allow a special permission for one resident that is at odds with the reasonable assumptions of safety, privacy, and peace that are currently enjoyed by the residents of the neighborhood.

Ms. Frances Stangl was sworn in to give testimony in opposition to the Application.

Ms. Stangl testified that she is a resident of the Fawn Grove Subdivision who owns three parcels; that their neighborhood took a direct hit from the recent tornado and many of their neighbors

are unable to attend tonight because they are still balancing the burden of clean up and work; that she is submitting the two phases of Fawn Grove with the restrictions; that this is a terrible way to meet your new neighbor; that she would like to say that all of the people in the neighborhood are nice people; that, generally speaking, the homes are all custom built by the original owners nearly 30 years ago; that they do not have a lot of turnover of property; that the house in question is a small block one-story house that does not meet the deed restrictions as is; that they live and let live but this request goes too far; that they have all invested there with the security of the deed restrictions to protect their investments; that asking for an exception to that to operate a 24/7 business in a residential area is asking a little bit too much; that Section 115-20 of the Zoning Code references permitted uses which mentions single family dwellings; that the Applicant already said there is two dwellings on the property which they have not raised a concern about; that they believe that having traffic to the property within the neighborhood of 34 homes would be out of line with their expectations; that their concerns are the amount of dogs permanently on the property and who enforces the operations; that they are also concerned with the safety of their children and pets should any of the dogs get loose from her property; that they are also concerned with the larger impact of the change in character to their neighborhood by bringing in traffic and noise from the animals barking which will then cause their animals to bark; that they had put one of their lots up for sale, had a buyer, and the deal fell through because they heard a neighbor's dog barking; that most of the homes in their development sell for \$400,000 to \$900,000 and the record will show that; that this use is not characteristic of their neighborhood; that most of their lots are one to ten acres; that they do feel that there is quite a bit of risk with this and ask that it be denied on those merits; that, when she purchased her properties, it was all farmland; that her house was the second house built; that there is a list of prohibitions in the deed restrictions; that she has a significant interest in the denial of this application as she owns two unimproved lots in addition to her home; and that she is not anti-dog and owns a dog herself.

Mr. Bruce Marshall was sworn in to give testimony in opposition to the Application.

Mr. Marshall testified that he is a resident of Fawn Grove who owns Lot 96; that one of his biggest concerns is dogs barking at night; that he is unsure of what avenue he would have to take if there were to be an issue from this approval; that he has been on his property for about 23 years; that they built their home as a retirement investment; that his home is worth quite a bit right now; that he questions whether this use will hurt his property value; that he is concerned with the potential increase in traffic; that he believes the neighborhood to be a tight community; that he is concerned with who would be coming to the neighborhood to board their dogs; that he was one of the properties affected by the tornado; that, when speaking with the police, he was informed that people were stealing from affected properties; that he hopes the request is denied; and that the HOA does not own the roads.

Ms. Robin Williams was sworn in to give testimony in opposition to the Application via phone.

Ms. Williams testified that she is a resident of Fawn Grove; that she is in opposition to the proposed commercial use of the property; that the property does not meet the requirements of the

Code; that she has a background in working with veterinarians; that she does not believe that the home is large enough to accommodate that many dogs within the two rooms; that noise is a concern for her and the neighbors, even with the trees buffering and the sonic device; that she believes what is proposed is cruel to the animals by having them inside the majority of the time; that she also has a dog and is concerned for his well-being; that traffic is a concern as there is a large deer population in the area; that, last winter, two deer ended up in her front yard by individuals not obeying the speed limit; that she is also concerned about the dog waste; and that she is concerned about groundwater contamination because of the tax ditch.

Ms. Jennifer Miller was sworn in to give testimony in opposition to the Application via phone.

Ms. Miller testified that she resided in Fawn Grove; that she is opposed to the commercial use on the property; that traffic is a major concern as there is no shoulder to their road; that leaving the dogs indoor with the bark controlling device does not sound ideal to her as an animal lover; and that the possibility of their property value decreasing and loss of quality of life is distressing.

Ms. Carol Moore was sworn in to give testimony in opposition to the Application via phone.

Ms. Moore testified that she is a resident of Fawn Grove; that she is opposed to the proposed use; that it does not fit the character of the neighborhood; and that she is concerned about the noise and traffic.

Mr. John Gaunt was sworn in to give testimony in opposition to the Application via phone.

Mr. Gaunt testified that he is a resident of Fawn Grove; that he is opposed to the proposed commercial use; that he has concerns about the noise because the sounds from barks can travel over a mile; and that he has questions about future growth.

Mr. Wayne Morra was sworn in to give testimony in opposition to the Application via phone.

Mr. Morra testified that he is a resident of Fawn Grove; that he has invested a lot of money into his property; that he moved here from Kent County to get away from the commercial areas; that he enjoys sitting out on his deck; that he is concerned at what effect this will have on their neighborhood; that this violates their restrictive covenants; that he is concerned about the potential increase in traffic; that he loves dogs and has his own; and that he does not believe that this is the area for this use.

Ms. Morrow testified in rebuttal that she purchased this property from a real estate agent and, at no point in time, was she made aware of any deed restrictions for the homes; that, had she known about the covenants, she would not have purchased in a deed-restricted neighborhood because she has been self-employed for her entire career; that she had never seen these restriction documents nor were they made aware to her; that the sonic egg to control barking was referred to her by her vet; that

she does not currently own the device and has never used it before; that, regarding concerns of traffic, this would likely be more of a seasonal operation and not be ten cars coming and going every day; that the dogs will be kept inside; that she has family and friends that have 4 or 5 dogs and they have not had to obtain permissions; that they have a neighbor, who is not present, that has a dog kept outside and it barks day and night constantly; that she understands the concerns; that she has a cattle fence surrounding her property to keep animals in; that she would also be installing the second fence that would create a privacy for the dogs while outside; that she cannot speak for the people that would be coming to her home but she hopes they would be good people; that will be no outside runs; that what she is proposing to provide inside is twice as big as what average boarding places offer, which are 4' x 6' boxes with an outside area of concrete; that she is proposing to have furniture inside of their kennels to sleep on to give it more of a home away from home feel; that overnight boarding will be offered; that she owns 3 dogs; and that, at most, there will be 13 dogs on the property.

The Board found that one person appeared in support of and ten people appeared in opposition to the Application, five of who participated via telephone.

Mr. Chorman closed the public hearing.

Dr. Carson moved to deny the application for Case No. 12818 for the requested special use exception, pending final written decision, because the Applicant has failed to demonstrate the special use exception will not substantially affect adversely the uses of neighboring and adjacent properties.

Motion by Dr. Carson, seconded by Mr. Hastings, carried that the **special use exception be denied for the reasons stated**. Motion carried 4 - 1.

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

RECESS 7:19 – 7:25

Case No. 12819 – Frank Garrison seeks a variance from the maximum fence height requirement for a proposed structure (Sections 115-34 and 115-185 of the Sussex County Zoning Code). The property is a lot located on the northwest side of Rogers Avenue within the Ann Acres Subdivision. 911 Address: 20980 Rogers Avenue, Rehoboth Beach. Zoning District: MR. Tax Map: 334-20.13-41.00

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 no mail returns. The Applicant is requesting a variance of 1 ft. from the 7 ft. maximum height requirement for a proposed fence.

Ms. Frankie Garrison was sworn in to testify on the Application.

Ms. Garrison testified that she is the Applicant's mother and also the owner of the property; that they are requesting an 8 ft. tall fence to ensure the safety and privacy of their property; that they purchased the property in 2019 with the existing one-story cottage; that, in the future, they would like to install a pool; that they are requesting an 8 ft. fence because their contractor said that, by the time they would build up the ground in the back to place the pool with a wooden deck, the fence would then be just over 7 ft. from inside their yard; that, along one side and the rear of the property, there is an existing 8 ft. high fence on the neighbor's property; that, on the other side, there is a fence at 42 inches tall; that the neighbors do not object to the proposal; that they are requesting to start the fence at 8 ft. high where their patio begins on the left side of their property for privacy reasons; that the existing wooden fence in the pictures belongs to the neighbors; that they would be placing their fence on the line of their property; that they had a survey completed; that they have not had any conversations with the neighbors since having the survey completed; that the neighbor told them that he planned on putting up a new fence; that the meeting was advertised but they live out-of-state and have not heard from them; that they will be using a white vinyl fence; that they would power spray the fence to keep it clean; that their plan in the future is to have an inground pool with a wooden deck around it to allow for water drainage; that the fence is not just for the pool but for safety and privacy; that, last summer, two grown men across the street came onto their property when she had two young children with her; that, if they had their own privacy fence, their yard would be closed off so that nobody would be able to come on to their property; that they would prefer an 8 ft. fence so as to not see the neighbor's fence; that their patio is raised up also and adding to the fence height will add to their privacy; that the patio on the side is raised up pavers; that, in the future, they would go through the proper process for installing a pool but for now their concern is safety and privacy; that their lot is pretty flat; that the property is not unique and of is a similar size and shape to neighboring properties; that they are just looking to make their home and space there nicer for the community; that their house is on a dead end street; that she is not aware whether the neighbor previously had a variance for their fence to be 8 ft. high; that privacy to her also means noise level; that they have been there during the summer when the neighboring properties have been rented out and it can get quite loud into all hours of the night; that they have done a lot of improvements to the property since they purchased it; and that they have invested a lot into this property and enjoy using their property but are hoping to gain some additional privacy.

Mr. Frank Garrison was sworn in to give testimony via telephone.

Mr. Garrison testified that he wants to add context to the Application; that some of the hardships that face the property come from the surrounding properties on either side; that both of the neighboring houses are 5 ft. or less off the property line; that the placement of the fence will block the line of sight into their home; that his mother addressed the partying and people trespassing in the past; and that they have camera footage from their security cameras to back up those statements.

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

Mr. Chorman closed the public hearing.

Mr. Hastings moved to approve the Application for Case No. 12819 for the requested variance, pending final written decision, for the following reasons:

1. The property has unique conditions due to the adjacent properties being developed so closely to the lot;
2. The exceptional practical difficulty was not created by the Applicant;
3. The variance will not alter the essential character of the neighborhood; and
4. The variance represents the minimum variance necessary to afford relief.

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

Mr. Warfel moved to deny the Application for Case No. 12819 for the requested variance, pending final written decision, for the following reasons:

1. The property is not unique; and
2. The request is a want and not a need.

Motion by Mr. Warfel, seconded by Mr. Williamson, carried that the **variance be denied for the reasons stated**. Motion carried 4 - 1.

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

Case No. 12821 – Donovan Builders and Renovations LLC seeks a special use exception and a variance from the maximum square footage requirements for a proposed garage / studio apartment (Sections 115-40, 115-42, and 115-210 of the Sussex County Zoning Code). The property is a lot located on the southeast side of Pinetown Road within the Pinetown Subdivision. 911 Address: 30122 Pinetown Road, Lewes. Zoning District: GR. Tax Map: 334-4.00-26.00

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 no mail returns. The Applicant is requesting a special use exception for a garage / studio apartment and a variance of 262 sq. ft. from the maximum square footage requirement of 800 sq. ft.

Mr. Warfel recused himself and left the Council Chambers.

Mr. Joe Donovan was sworn in to give testimony about the Application.

Mr. Donovan testified that he is present to request a special use exception and variance to place a garage / studio apartment that exceeds the 800 square footage maximum; that this property is

located on a dead-end road that is its own community; that the existing house will be the only original structure left as he has or is removing all other structures on the property; that the existing house sits 6 inches from the property line and has since the 1950s; that it is a small Cape Cod-style home that, once renovated, will be a two-bedroom, one-bathroom dwelling; that his plan is to move his mother into the home after renovation; that he plans to put the garage / studio apartment on the property to house a groundskeeper to maintain the property and keep an eye on his mother; that the neighborhood is underdeveloped; that removing the existing home and building new would not fit the character of the neighborhood; that the inside of the house is all oak and looks great; that he would like to build a garage / studio apartment in the back of the property; that he was confused on the square footage and how it is measured when he was filling out the Application; that, without the fire door, dry wall, and stairwell, the structure would comply with the 800 square foot maximum; that he believes the structure would comply because you do not live in the stairwell; that the property is unique because of the existing dwellings placement and that a new house would not fit the character of the neighborhood; that he is limited with options for the existing dwelling because of its age and non-conforming status; that the setbacks for the property are 10 feet, 10 feet, and 30 feet; that the property has public sewer and a well; that he has spoken with a few people in the area and there was no objection or negative comments; that he has already begun to clean up the property; and that there will be dedicated parking for both the house and apartment.

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

Mr. Chorman closed the public hearing.

Dr. Carson moved to table the application for Case No. 12821 until the Board's meeting on May 15, 2023.

Motion by Dr. Carson, seconded by Mr. Williamson, carried that the **Application be tabled for the reasons stated**. Motion carried 4– 0.

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

Mr. Warfel returned to the Council Chambers.

Case No. 12823 – Yong J. Park, et al. seek variances from the 200 ft. and 50 ft. commercial poultry building setback requirements from boundary lines and an existing dwelling and side yard and rear yard setback requirements for accessory structures (Sections 115-20, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located on the west side of Mount Pleasant Road approximately 0.15 miles south of Lucky Lane. 911 Address: 31568 Mount Pleasant Road, Laurel. Zoning District: AR-1. Tax Map: 432-6.00-8.01

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received

no correspondence in support of, one (1) letter in opposition to the Application, and no mail returns. The Applicant is requesting variances of 41 ft. from the 200 ft. setback requirement from an existing dwelling on proposed Lot 1 to the existing chicken house on residual land (marked as #1), 12.5 ft. from the 50 ft. setback requirement on the south side for the existing chicken house (marked as #2), 12.7 ft. from the 50 ft. setback requirement on the south side for the existing chicken house (marked as #3), 7.1 ft. from the 20 ft. rear yard setback requirement for the existing shed (marked as #5), 9.3 ft. from the 15 ft. side yard setback requirement on the north side for the existing shed (marked as #6), 19.6 ft. from the 50 ft. setback requirement on the north side for the existing manure shed (marked as #7), and 20.8 ft. from the 50 ft. setback requirement on the north side for the existing manure shed (marked as #8).

Mr. Steve Adkins and Mr. Yong J. Park were sworn in to give testimony for the Application.

Mr. Adkins testified that Mr. Park owns the subject property with his sister and brother-in-law; that they are desiring to separate the existing house from the existing farm; that there are permits for all of the structures that were obtained in the 1980s and 1990s; that none of the structures were placed by Mr. Park or any of the other current owners of the property; that they are creating one lot to separate the existing home; that this proposed lot conforms to the County Code; that the lot will be 0.75 acres in size with 150 feet of road frontage; that the residual lands will also meet the County Code for a parcel of land with commercial poultry houses; that both the residence and poultry houses conformed to the Code when they were built but do not conform now; that this alone makes the property unique; that all of the improvements are existing and there are no proposed additions to the properties; that this problem was not created by the Applicant, Mr. Park, as he bought this farm in 2005; that this will not alter the character of the neighborhood as there are multiple poultry farms in the area; that he did his best to minimize the variance requests and has only asked for what is required; that everything on the property was permitted and CO'd at the time of placement; that the Applicant lives on the neighboring farm to the north; that there have been multiple farms in the area that require this kind of clean up for not meeting the current requirements for a poultry house; that the chicken houses are still in use; that the Applicant has no need for the house on the property; that they are aware should any of the existing poultry houses need to be replaced that they would have to come back for a variance; and that there will be no change in ownership of the parcel where the poultry houses are located.

Mr. Park testified that their plan is to sell the house.

Mr. Darrell Hill was sworn in to give testimony in opposition to the Application.

Mr. Hill testified that he lives in the neighboring subdivision of North Towns End II; that the notice they received in the mail was a bit confusing to them; that they are assuming that they are going to build the buildings from their property lines out but the buildings that are there now are plenty close enough to their properties; and that he would like to show the group the plan of what is being requested.

RECESS 8:20 – 8:22

Ms. Kathleen Cordrey was sworn in to give testimony in opposition to the Application.

Ms. Cordrey testified that she questions what would happen in the future if these variances are granted; that she questions whether they would be able to add chicken houses to the property; that she questions if they were to do anything in the future whether they would receive notice; and that she questions whether the granting of this variance would allow him to do more in the future.

Ms. Eugenia Harris was sworn in to give testimony in support of the Application.

Ms. Harris testified that she lives in the neighboring subdivision of North Townes End II; that now that she understands what the Applicant is requesting that she is in support of the request; that she is present because she lives behind the subject property and was concerned that they were adding chicken houses; that it is his property and right to do so; and that now that she knows they are not moving the chicken houses closer she has changed her mind and is in support of the Application.

Ms. Kathy Dykes was sworn in to give testimony in opposition to the Application.

Ms. Dykes testified that she lives in the neighboring subdivision of North Townes End II; that she questions if they could all be notified in the future should the Applicant submit something; and that they were not aware of what was going on until the last minute which created confusion.

Ms. Annie Adkins was sworn in to give testimony in opposition to the Application.

Ms. Adkins testified that she lives in the neighboring subdivision of North Townes End II; that she is still in opposition, not to begrudge him of what he wants to do with his property but rather because she has lived in Sussex County for 47 years and has witnessed how the poultry industry is a big money maker; that she has seen that a lot of times the small guy is pushed aside; that she and her husband lived 4.5 miles away from their current neighborhood prior to purchasing a lot in North Townes End II; that they purposefully rode around and looked for a lot that was not close to chicken houses; that she is aware there are some in the area; that, after purchasing their lot, they waited three years before building their home just to make sure that they would not be subject to the smell of chicken houses and manure; that their choice has been a pleasant one but they cannot predict the future; that her concern is that the Applicant may use the lands to operate a mega chicken farm; that they are asking their voice be heard as the small property owner who is trying to get away from the chicken houses; that she asks that the request be denied for their sake; that they are a neighborhood of 73 homes; that it is a nice neighborhood made up of retirees and families; and that they have not had any issues with the smell but do have a lot of flies.

Mr. Donald Dykes was sworn in to give testimony in opposition to the Application.

Mr. Dykes testified that he lives in the neighboring subdivision of North Townes End II; that his concern is the few available lots left to be built upon in their neighborhood; that their property is their life investment; that he hopes you would vote no because of what may come in the future; and that he is concerned for if they ever try to sell their home.

Ms. Cordrey testified again that she is still opposed to this; that she is aware that rules and regulations can change; that she just does not feel comfortable with it; that she believes that they will have a better chance later on of doing something if this variance is approved; that she chose this area because there was no pollution; and that she thinks that this will affect their home values.

The Board found that one (1) person appeared in support of and eight (8) people appeared in opposition to the Application.

Mr. Chorman closed the public hearing.

Mr. Hastings moved to approve the application for Case No. 12823 for the requested variances, pending final written decision, for the following reasons:

1. The property has been in existence since the 1980s and nothing on the property is changing;
2. The variances will not alter the essential character of the neighborhood; and
3. The variances represent the minimum variances necessary to afford relief.

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

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

ADDITIONAL BUSINESS

Meeting adjourned at 8:40 p.m.