

## MINUTES OF MAY 17, 2021

The regular meeting of the Sussex County Board of Adjustment was held on Monday, May 17, 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: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings - Absent, Mr. John Williamson, and Mr. Jordan Warfel. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Ms. Jennifer Norwood – Planning and Zoning Manager, Mr. Nick Torrance – Planner I and Ms. Ann Lepore – Recording Secretary.

The Pledge of Allegiance was led by Mr. Williamson.

Motion by Dr. Carson, seconded by Mr. Chorman and carried unanimously to approve the agenda as presented. Motion carried 4 – 0.

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

Motion by Mr. Chorman, seconded by Dr. Carson and carried unanimously to approve the Minutes for the March 15, 2021, meeting. Motion carried 3 – 0.

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

Motion by Dr. Carson, seconded by Mr. Chorman and carried to approve the Findings of Facts for the March 15, 2021, meeting. Motion carried 3 – 0.

The vote by roll call; Mr. Warfel – abstained, Mr. Williamson – yea, Dr. Carson – 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. 12527 – Kathleen D. Stone & John C. Meyer** seek variances from the side yard, front yard setback requirements, and the landscape buffer requirement in the Combined Highway Corridor Overlay Zone (CHCOZ) for proposed structures. (Sections 115-82, 115-182, 115-183, 115-185 and 115-194.1 of the Sussex County Zoning Code). The property is located on the west side of Carolina Street approximately 90 ft. northeast of Coastal Highway (Rt. 1). 911 Address: 38439 Carolina Street, Dewey Beach. Zoning District: C-1. Tax Parcel: 334-20.09-167.00

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

two letters in support of and none in opposition to the Application and one mail return. The Applicants are requesting a 4 ft. variance from the 5 ft. side yard setback requirement on southeast side for HVAC, a 2 ft. variance from the 5 ft. side yard setback requirement on the northwest side for steps, a 4 ft. variance from the 5 ft. side yard setback requirement on the northwest side for an outdoor shower, a 16 ft. variance from the 40 ft. front yard setback requirement for porch and steps, a 10 ft. variance from the 40 ft. front yard setback requirement for a dwelling, and a 20 ft. variance from the Combined Highway Corridor Overlay Zone (CHCOZ) requirement along Route 1. Ms. Norwood noted that there is an existing fence and trees along the property line on Route 1 and that a variance was granted in 2014 from the maximum fence height requirement.

The Board found that Ms. Mackenzie Peet, Esq. was present on behalf of the Applicants, Kathleen D. Stone & John C. Meyer.

Ms. Peet stated that the subject property is located on the east side of Route 1 heading north in the area commonly referred to as the “Forgotten Mile”; that the Applicants are present to answer questions regarding their Application; that the Applicants are requesting five variances this evening but are not seeking variances from the side yard setback requirements; that the proposed dwelling will have the outdoor shower and HVAC systems flush with the dwelling; that the existing dwelling is non-conforming and needs to be replaced; that this property is a 5,334 square foot lot and is in the General Commercial Zoning District and is subject to setbacks of 40 ft. on the front, 5 ft. on the side, and 5 ft. on the rear; that based on the average front yard setback requirements the front yard setback for this property would be 32 ft.; that the Applicants purchased this lot in 2014; that the building is towards the rear of the property but is almost entirely within the front yard setback and CHCOZ setback areas; that the existing dwelling is in need of repair which prompted this Application; that the current home was built on a cinder block foundation and the house is not level; that there were holes drilled into the cinder block in the basement and when it rains the water gathers in the yard and shoots through the holes in the cinder block and pours into the basement; that there are two sump pumps to help relieve the problem; that the Applicants invested in a \$40,000 rubber membrane surrounding the foundation but it has not corrected the issue; that the first variance is a 6.2 ft from the 32 ft. average front yard setback for the proposed porch and stairs to be located 25.8 ft from the front property line; that the proposed porch and steps will be in the same location as the existing porch and steps; that the second variance will be a 2.4 ft. variance from the 32 ft. average front yard setback for the proposed dwelling to be located 29.6 ft. from the front property line; that the third variance is a 20 ft. variance from the 20 ft. landscaped buffer requirement for the existing fence and trees located in that area; that, technically, the fence is grandfathered in as it was in place prior to the adoption of the CHCOZ; that the Applicants would like to include this variance for completion for the entire property; that the fourth variance is for a 34.2 ft. variance from the 60 ft. requirement for the CHCOZ district for the proposed porch and stairs to be located 25.8 ft. from the front property line; that the fifth variance is for a 30.4 ft. variance from the 60 ft. requirement for the CHCOZ district for the proposed dwelling to be located 29.6 ft. from the front property line; that the property is a uniquely shaped flag lot with a uniquely shaped buildable area which includes the Applicants’ driveway that limits the buildable area; that these conditions have created an unusually shaped buildable area and an exceptional

practical difficulty; that the basement flooding from the unstable cinder block is unique and requires the demolition and construction of a replacement dwelling; that the current conditions on the lot restrict the Applicants' reasonable use of the property to make normal improvements to the aged existing structure; that, because of the physical conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Code; that the buildable area is in the rear which is the location of the driveway and the only access to the property; that the existing dwelling has been located in the front yard setback for decades and was not created by the Applicants; that the Applicants are proposing to make improvements to remedy the issues with the existing dwelling and will not be increasing the non-conformity of the dwelling; that it will not alter the essential character of the neighborhood as the Applicants are proposing to rebuild the proposed structure in the same location as the existing structure; that there has been no opposition from neighbors and two letters of support have been included with the Application; that these requests are the minimum variances necessary to afford relief and will represent the least modifications possible of the regulations in issue; that lots 5 and 6 were all one parcel originally but were subdivided and the easement historically existed over the front parcel; that the front is considered to be Route 1 but the access is from Carolina Street; that the new dwelling will be on a foundation; and that Ms. Peet directed the Board to videos of the water pouring in to the basement which were played for the Board.

Ms. Kathleen Stone was sworn in to give testimony about the Application.

Ms. Stone affirmed statements made by Ms. Peet as true and correct.

Ms. Stone testified that the water is pumped out to the yard and flows back in the house again; that a French drain was installed to pump out to the front of the property; that there have been no complaints about the location of the existing structure; that is approximately 15 ft. from the existing fence to the edge of paving of Route 1; that there is gravel and curbing in that area; and that there are no additional plantings proposed for the property in the CHCOZ area.

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

Mr. Williamson closed the public hearing.

Dr. Carson moved to approve Case No. 12527 for the requested variances for the following reasons:

1. The property has unique physical characteristics;
2. There is no possibility to develop the property in strict conformity with County Code;
3. The exceptional practical difficulty was not created by the Applicants;
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 Dr. Carson, 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, Dr. Carson – yea, and Mr. Chorman - yea.

**Case No. 12542 – Jeff & Victoria Rushie** seek variances from the corner front yard setback requirements for proposed structures (Sections 115-34 and 115-182 of the Sussex County Zoning Code). The property is located at the intersection of North Bay Shore Drive and Maryland Avenue in Broadkill Beach. 911 Address: 10 Maryland Avenue, Broadkill Beach. Zoning District: MR. Tax Parcel: 235-4.13-63.00

Mr. Torrance presented the case and stated that the Office of Planning and Zoning received two letters in support of and none in opposition to the Application and one mail return. The Applicants are requesting a variance of 10 ft. from the 15 ft. corner front yard setback requirement for proposed structures.

Ms. Victoria Rushie was sworn in to give testimony about the Application.

Ms. Rushie testified that the request is for a variance of 10 ft. from the 15 ft. corner front setback; that the lot is a corner lot measuring 50 feet by 100 feet; that the variance request is due to the narrowness of the property; that there is no possibility that the property can be developed in strict conformity with the provisions of the zoning code; that the variance is necessary to enable reasonable use of the property; that the exceptional practical difficulty was not created by the Applicants; that the existing dwelling has been in place since the 1960s and is 43 ft. wide and 13 ft. over the setback and has not altered the character of the neighborhood; that the 10 ft. variance is the minimum variance to afford relief; that the proposed dwelling will encroach less than the existing manufactured home and will be on pilings; that the proposed dwelling will not impede visibility for vehicular traffic; that the property is served by septic and water is from a public water company; that there have been no complaints from neighbors about the proposed structure; that the Applicants discussed the proposal with the only full-time neighbor and there was no objection; and that other lots nearby are vacant.

Mr. Jeff Rushie was sworn in to give testimony about the Application.

Mr. Rushie testified that a new septic system will be installed; that the soil is being tested to find the best location on the property for the septic system; that the proposed dwelling will have three bedrooms; that the proposed dwelling will be two stories tall; that the house and deck will be located within the building box; that the steps will be under the house and will not encroach farther into the setback; that the house cannot be moved farther back as the septic may have to be placed in that area; and that a plan for a smaller dwelling was not entertained.

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

Dr. Carson asked about what happens if the septic comes back and they cannot build it as proposed.

Mr. Sharp stated that the Applicants would have to revisit the proposal and may have to come back for a different variance if necessary.

Mr. Williamson closed the public hearing.

Mr. Chorman moved to approve Case No. 12542 for the requested variances for the following reasons:

1. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property; and
2. The variances represent the minimum variances necessary to afford relief and represent the least modifications of the regulation at issue.

Motion by Mr. Chorman, seconded by Mr. Warfel, 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, Dr. Carson – yea, and Mr. Chorman - yea.

**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. Torrance presented the case and stated that the Office of Planning and Zoning received zero letters in support of and one letter in opposition to the Application and one mail return. Mr. Torrance noted that Case No. 11883 was approved on November 21, 2016, for a variance of 27.2 ft. from the required 60 ft. front yard setback and a variance of 10 ft. from the buffer requirement in the Combined Highway Corridor Overlay Zone (CHCOZ) but that approval has since lapsed. The Applicant is now seeking the following variances:

1. 27.3 ft. from the required 60 ft. front yard setback for the original building;
2. 31.28 ft. from the required 60 ft. front yard setback for a proposed front entry on a smaller existing building;
3. 27.28 ft. from the required 60 ft. front yard setback for an existing building;
4. 26.29 ft. from the required 60 ft. front yard setback for a proposed addition; and

5. 5 ft. from the required 20 ft. buffer in the CHCOZ.

Mr. Mark Davidson was sworn in to give testimony about the Application. Mr. Davidson submitted exhibits to the Board to review.

Mr. Davidson testified that he is a principal land planner with Pennoni Associates; that he is Representing the Applicant, Mr. Elmer Fannin who is the owner of Key Properties, LLC; that Merestone Consultants are the engineering firm and Design Delmarva are the architects who prepared the documents for this Application; that the properties are located on the northeast side of Coastal Highway just south of Kings Highway outside of Lewes; that the properties are zoned General Commercial (C-1); that the Applicant is proposing to renovate and use the existing buildings on both properties as restaurants; that the properties are broken up into three parcels; that Parcel 74 is approximately 0.33 acre in size with 125 ft. frontage onto Coastal Highway and 116.5 ft. in depth; that Parcel 75 is approximately 0.55 acre in size with 105 ft. frontage onto Coastal Highway and 160 ft. in depth and wraps around the rear of Parcel 74, and the total length of the back is approximately 230 ft.; that the third parcel is a portion of Parcel 70.01 which is owned by the Villas at Bay Crossing; that the Applicant has a lease with the option to purchase a portion of Parcel 70.01 (which consists of approximately 0.3 acres) to use as parking for the restaurants; that the Villas at Bay Crossing Condominium Association has an excess of parking spaces and have agreed to lease this portion of their property to the Applicant; that the Applicant intends to combine all three parcels into one property; that the Applicant is seeking relief from the front yard setback requirement and from the buffer requirement in the CHCOZ; that this property was the subject of a previous case which was heard in November 2016 for similar requests; that the request was for the larger building on Parcel 75 with the intention to demolish the smaller building on Parcel 74; that the demolition of the smaller building was to accommodate for parking for the larger building but the lease with Villas at Bay Crossing provides that additional parking; that the Applicant applied for and received permits for the improvements to both buildings; that the variance approval had expired; that construction has begun at the site and the request for the variances is to bring the property into compliance; that the Applicant is proposing to use the larger building for an Italian restaurant where the main restaurant will be used for dining in and the smaller building would be used for a happy hour style restaurant with outdoor seating; that food would be prepared in the larger building; that the buildings will have similar front yard setback variances needed; that the unique condition of this site is that the building is existing and was constructed in 1948 and predates Sussex County Zoning Code and the adoption of the CHCOZ; that the buildings were previously residences; that single-family dwellings have diminished along the Coastal Highway corridor given the nature of the area, uses, traffic and zoning of properties; that Parcel 75 was used as an office in the 1990s; that the parcels are small and have relatively shallow depths; that 28 feet of the buildings would have to be demolished to comply with the Code; that the lots will be subject to parking, loading, and stormwater management requirements; that the unique physical circumstances of the properties is the shallowness of the lots and the connection of portion of Parcel 70.01 for parking along with the dedication of 15 feet to DelDOT for a permanent easement creates limited space for handling additional drainage and utility placement for the reuse and redevelopment of the existing buildings; that, because of the physical circumstances or conditions,

there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Ordinance because approximately 28 feet of the building would have to be demolished in order to bring it into conformity; that, in order to provide sufficient parking, additional drainage and placement of utilities, the 5 ft. variance from the CHCOZ is necessary; that the Applicant meets DelDOT requirements regarding landscaping within the easement area; that the variances are necessary to enable the reasonable use of the property; that the buildings were on the lots when the Applicant purchased the property; that the building on Parcel 75 was previously a professional building; that the Applicant wants to use both buildings as restaurants, which are permitted uses in the C-1 zoning district; that the requested variances will not alter the essential character of the neighborhood as the subject properties were granted variances for the front yard setback and from the CHCOZ buffer on November 21, 2017 (Case No. 11883); that the building has received site plan approval by the Sussex County Planning & Zoning Commission for the proposed restaurant use; that there are houses that have been converted into commercial uses in the immediate area; that these are the minimum variances needed for the front yard setback for the existing buildings; that the improvements will not intrude farther into the setbacks; that a 5 ft. variance from the CHCOZ is the minimum variances necessary to provide the required landscaping that will preserve and enhance the aesthetic character of the proposed restaurants along Coastal Highway; that there are 107 parking spaces required by code and 79 parking spaces being provided; that the Applicant can request a reduction in parking from the Planning and Zoning Commission; that the concept is that patrons can use Uber and public transportation to get to the restaurant; that the 79 parking spaces include the spaces on Parcel 70.01; that there will be one kitchen to serve both buildings; that there will not be much food service in the smaller building; that the Applicant does not foresee wait staff traveling between the two buildings; that the smaller building will not have a large kitchen; and that, to the south, there is a professional office building and, to the north, there is Lazy Susan's restaurant and some offices; and that the smaller building is proposed to be retained since the Applicant has secured parking on an adjacent lot.

Mr. Davidson submitted a copy of the lease with the option to purchase land from the Villas at Bay Crossing.

Mr. Gary Janoske was sworn in to give testimony in opposition to the Application.

Mr. Janoske testified that he lives on adjacent property; that he and several other nearby property owners oppose the Application; that, if any owner in the Villas at Bay Crossing objects to the sale, then it cannot be sold; that a long-term lease could be developed; that, had he the opportunity in 2016, he would have opposed the original request for a variance; that he is opposed because setbacks are for the common good of the public, safety, and aesthetics; that this will take away from the neighborhood; that he is opposed to the outdoor dining; and that he has concerns that patrons for the restaurant would be driving through the development at Villas of Bay Crossing.

Mr. Davidson testified that the lease can continue yearly until the sale can be completed; that the parking spaces on Parcel 70.01 will be connected to Parcels 74 and 75; that patrons would not

have to drive through the Villas of Bay Crossing to access the parking: and that the outdoor seating will be seasonal.

Ms. Norwood noted that there has been no hearing scheduled with Planning & Zoning yet.

Dr. Carson moved to table Case No. 12557 for the requested variances to the next meeting on June 7, 2021.

Motion by Dr. Carson, seconded by Mr. Chorman, carried that Case No. 12557 be tabled. Motion carried 3 – 1.

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

**Recess 8:11 p.m. – 8:16 p.m.**

**Case No. 12558 – Sequence Properties, LLC** seeks variances from the side yard setback requirements for existing and proposed structures (Sections 115-82 and 115-183 of the Sussex County Zoning Code). The property is located on the southwest side of Coastal Highway (Rt. 1) approximately 397 ft. southeast of Sea Air Avenue. 911 Address: 19724 Coastal Highway, Rehoboth Beach. Zoning District: C-1. Tax Parcel: 334-13.00-319.01

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received zero letters in support of and one in opposition to the Application and zero mail returns. The Applicant is requesting a 4.7 ft. variance from the required 5 ft. side yard setback on the northwest side for an existing building and a 4.5 ft. variance from the required 5 ft. side yard setback on the northwest side for a proposed addition and an existing concrete pad.

Mr. Richard Lowrance was sworn in to give testimony about the Application.

Mr. Lowrance testified that he is representing the Applicant, Sequence Properties, LLC; that the Applicant owns the property and leases it to the Touch of Italy restaurant; that, due to changes in the business due to Covid-19, there is a need to expand the kitchen to accommodate the increase in the takeout portion of the business; that additional area is needed for preparation and packaging; that this is an older building adjacent to Outlet Liquors; that the Outlet Liquors building is approximately 3 inches from the side property line and the Touch of Italy building is approximately 6 inches from the side property line; that the existing building and concrete pad extend beyond the current side setbacks; that the concrete building has been on the property for approximately 50 years; that, due to the current configuration of the parking and loading area and County parking requirements, the project cannot expand in another area; that the Applicant did not create the exceptional practical difficulty as the property had the current configuration when purchased; that the Applicant purchased the property in July 2020; that the proposed expansion will be constructed in an area that is already a utilitarian

area for both businesses; that it is located towards the rear of the property, is not visible from the front of the property, and will not alter the essential character of the neighborhood; that the property is zoned general commercial; that it will not reduce parking; that this is the minimum to afford relief as the existing building is 0.5 ft and 0.3 ft. from the side property line; that the construction will be completed by the Touch of Italy Restaurant; that parking is a premium on the site and this will not take up any parking; that utilities and grease traps limit where the addition can be located as well; that other neighbors do not oppose the request; that the Nage restaurant, Hickman's Meat Market, and Outlet Liquors are nearby; that there is a manufactured home park to the rear and it is separated by a fence; that the addition will have no aesthetic change to the park; that the two storage units will be removed; that the cooler will be pushed to the edge of the shed; that he is aware of parking issues but the parking issues go both ways; that Nage and Touch of Italy have an agreement with the Outlet Liquors owner so that their employees can park there; that the restaurant has a capacity of 114 persons; that the expansion is just for the kitchen to allow for more take-out business; that the building was built in the 1960s; that the variances are needed due to the configuration of the building; that the smaller block building on the northwest side of the property has been removed; that there is no access to Ocean View Avenue; that the proposal will improve access to that side of the property; and that the Applicant is unaware of any opposition to the Application.

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

Mr. Williamson closed the public hearing.

Dr. Carson moved to approve Case No. 12558 for the requested variances for the following reasons subject to conditions:

1. The property has unique physical conditions;
2. The variances will not alter the essential character of the neighborhood; and
3. The variances represent the minimum variances necessary to afford relief.

The approval was subject to the following condition:

- The two storage units / sheds are to be removed from the property.

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

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

**Case No. 12559 – Steve T. Fitzgerald** seeks a variance from the corner 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 corner of Riverside Drive and Marjorie Drive within The Island

Subdivision. 911 Address: 9001 Riverside Drive, Seaford. Zoning District: AR-1. Tax Parcel: 331-7.00-51.00

Mr. Torrance presented the case and stated that the Office of Planning and Zoning received three letters in support of and none in opposition to the Application and zero mail returns. The Applicant is requesting a 6.5 ft. variance and a 3.6 ft. variance from the required 15 ft. corner front yard setback for a proposed structure.

Mr. Steve Fitzgerald was sworn in to give testimony about the Application.

Mr. Fitzgerald testified that the existing building is four attached sheds with skirting; that the sheds are dilapidated and he would like to replace them with a garage of similar size; that two of the sheds have been torn down and the other two are in poor condition; that he proposes to replace the sheds with a pole building; that there is an existing concrete pad on the site; that the pole building will line up with the rear of the concrete pad to keep it away from Marjorie Drive; that the pad measures 32 feet by 32 feet; that the sheds are approximately 28 feet by 28 feet; that the pole building will be no closer to the road than the existing sheds; that he purchased this property approximately five years ago; that the septic system is behind the concrete pad and the garage cannot be built in compliance with County Code; that the septic system is the reason the pole building cannot be otherwise located on the lot; that there is no opposition to the proposed garage from neighbors; that there is approximately 10 ft. – 12 ft. between the property line and the edge of paving of Marjorie Drive; that the pole building will not present visibility issues; that the proposed two-car garage will be used for storage; and that the proposed garage will be 10 ft. tall.

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

Mr. Williamson closed the public hearing.

Mr. Warfel moved to approve Case No. 12559, pending final written decision, for the requested variances for the following reasons:

1. The property has unique physical conditions due to the concrete pad and sheds;
2. 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; 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, Dr. Carson – yea, and Mr. Chorman - yea.

**Case No. 12560 – Yasin & Layla, LLC (Mahmut & Dawn Yilmaz)** seeks a special use exception to operate a daycare center (Sections 115-23, 115-72, and 115-210 of the Sussex County Zoning Code). The property is located on the southeast side of John J. Williams Highway (Rt. 24) at the intersection with Oak Orchard Road (Rt. 5). 911 Address: 31507 Oak Orchard Road, Millsboro. Zoning District: B-1 and AR-1. Tax Parcel: 234-29.00-263.12

Mr. Torrance 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.

Mr. Mahmut Yilmaz and Ms. Dawn Yilmaz were sworn in to give testimony about their Application.

Ms. Yilmaz testified that she and her husband are requesting the special use exception to run a childcare learning center at 31507 Oak Orchard Road; that they purchased the property which is known as The Trading Post Plaza in 2017; that the proposed childcare center will be on the same property adjacent to the shopping center; that they have owned two diners in the area since 2009, including the diner at the subject property; that they have many ties in the community and see the need for childcare; that their youngest child has been on a long waiting list for childcare in the immediate area; that they currently have to travel to Lewes for childcare; that, in a growing area, there is a need for licensed childcare; that the proposed childcare would be a huge asset to the area; that the proposed building would be 13,000 square foot childcare learning center; that the facility will have 16 rooms; that there will be 20 – 28 employees; that they are currently working with an individual who has the credentials as a director; that the hours of operation would be 6:00 am – 6:00 pm; that the children would range in age from newborn to middle-schoolers; that the childcare building would be fully fenced including the appropriate age-level play areas; that the building will have a sprinkler system in addition to exterior and interior cameras; that there are entrances to the property from John J. Williams Highway and Oak Orchard Road and they will be used for the daycare center as well; that the childcare center will be far away from the highway and be fully fenced so there will be no safety issues; that there will be security lighting which will be similar to the existing lighting in the shopping center; and that there is ample parking for drop off and pick up.

Mr. Yilmaz testified that they understand the standards that will be required by the State of Delaware to operate a licensed daycare center; that this will be a new building; that they expect to serve 100 – 120 children which will include children in afterschool programs; that neighbors are in support of having a daycare center; that the property is served by water and sewer; that there are 13 units in the shopping which include a gas station, restaurant, nail salon, hair salon, barbershop, tattoo shop, and uniform manufacturer; that the daycare center will have dedicated parking areas; that they will talk with DelDOT and other agencies; and that the use will not substantially adversely affect the neighboring or adjacent properties but will positively affect them by bringing more business to the

shopping center.

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

Mr. Williamson closed the public hearing.

Dr. Carson moved to approve Case No. 12560, pending final written decision, for the requested special use exception as the use will not substantially adversely affect the uses of adjacent or neighboring properties.

Motion by Dr. Carson, seconded by Mr. Warfel, carried that the **special use exception be granted for the reasons stated.** Motion carried 3 – 1.

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

**Case No. 12561 – Kevin Phelan** seeks variances from the front yard, side yard, and rear yard setback requirements for existing and proposed structures (Sections 115-25, 115-182, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located at the intersection of Cedar Creek Road (Rt. 30) and Cabbage Pond Road approximately 658 ft. south of Benson Road. 911 Address: 8952 Cedar Creek Road, Lincoln. Zoning District: AR-1. Tax Parcel: 230-14.00-68.00

Mr. Torrance presented the case and stated that the Office of Planning and Zoning received zero letters in support of or in opposition to the Application and zero mail returns. The Applicant is requesting the following variances:

1. 7.9 ft. from the required 40 ft. front yard setback for an existing dwelling;
2. 21.9 ft. from the required 40 ft. front yard setback for an existing dwelling;
3. 19 ft. from the required 40 ft. front yard setback for a proposed porch;
4. 24.5 ft. from the required 40 ft. front yard setback for a proposed porch;
5. 20.3 ft. from the required 40 ft. front yard setback for proposed steps;
6. 25.9 ft. from the required 40 ft. front yard setback for proposed steps;
7. 1.1 ft. from the required 15 ft. rear yard setback for an existing dwelling; and
8. 5.2 ft. from the required 15 ft. rear yard setback for proposed steps.

Mr. Kevin Phelan was sworn in to give testimony about the Application.

Mr. Phelan testified that he intends to make improvements to the existing house by adding a covered porch which will measure 6 feet by 10 feet; that he intends to change the orientation of the front entrance on the house; that the reason for changing this is in part due to the placement of the new septic system and also for safer access to the house because of the driveway placement; that the

septic drainfield takes up a portion of the rear yard; that the lot is non-conforming; that the setbacks only allow for an approximately 14 ft. x 14 ft. buildable area; that the existing dwelling was built in the 1950s or 1960s; that the property has been developed in this fashion prior to his ownership of the lot; that it will not alter the essential character of the neighborhood as it will be rebuilt in the same footprint as the existing dwelling; that the addition of a porch will improve the neighborhood; that it is a minimum variance to afford relief to add a porch and change to the entrance to the home for safety purposes; that the proposed porch will not have an adverse effect on visibility for vehicular traffic; and that he is unsure of the distance between the edge of paving and the property line.

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. 12561, pending final written decision, for the requested variances for the following reasons:

1. The property has unique physical conditions due to the shape of the property;
2. That, due to the physical conditions, the property cannot be developed in strict conformity with Sussex County Zoning Code.
3. 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
4. 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 Dr. Carson, 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, Dr. Carson – yea, and Mr. Chorman - yea.

**Case No. 12562 – David Bower** seeks variances from the side yard and 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 southwest side of Mulberry Knoll Road approximately 0.25 mile northwest of John J. Williams Highway (Rt. 24). 911 Address: 19490 Mulberry Knoll Road, Lewes. Zoning District: AR-1. Tax Parcel: 334-12.00-16.02

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received one letter in support of and zero in opposition to the Application and one mail return. The Applicant is requesting a 10 ft. variance from the required 15 ft. side yard setback and a 10 ft. variance from the required 20 ft. rear yard setback for a proposed structure

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

Mr. Bower testified he is the homeowner of the subject property; that he is requesting rear and side yard variances for the construction of a pole building measuring 30 ft. x 32 ft.; that the property is unique; that the property is a narrow lot of only 100 ft. in width; that County Code now requires lots in the AR-1 district to be at least 150 ft. wide; that the septic field is in the center of the rear yard; that the uniqueness of the property creates the building constraints on the lot; that the pole building will be located in the rear corner of the lot; that the location of existing lot improvements created the practical difficulty; that the variances will not alter the essential character of the neighborhood as the closest neighbors have existing sheds and he is adjacent to an elementary school, the State Police station, and crop fields; that he is trying to avoid having to turn the motorhome to park it in the pole building; that the proposed location of the pole building gives him a safe entrance from the road; that the house was built in 2000 by a prior owner; that neighbors do not object to the request; that he prefers to park the motorhome in a pole building rather than on the driveway; that the rear yard is fenced in; that this is the minimum variance request to align the driveway with the building for safe ingress and egress of a motorhome; that, if the pole building was built in compliance with the Code, he would have an extreme dogleg angle to turn the motorhome in order to park it in the pole building; that the building will be 14 ft. tall; and that the pole building was pushed towards the rear yard property line so that he would have room to maneuver the motorhome without hitting his sunroom.

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

Mr. Williamson closed the public hearing.

Mr. Warfel moved to approve Case No. 12562, pending final written decision, for the requested variances for the following reasons:

1. The property has unique physical conditions due to its narrowness.
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.
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, Dr. Carson – yea, and Mr. Chorman - yea.

### **ADDITIONAL BUSINESS**

The Board discussed changing the time of meetings. It will be added as an additional business

item to the next agenda.

Dr. Carson reminded the Board members that he will be arriving late to the meeting on June 7, 2021.

**Meeting adjourned at 9:41 p.m.**