

MINUTES OF MAY 3, 2021

The regular meeting of the Sussex County Board of Adjustment was held on Monday, May 3, 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, Mr. John Williamson, and Mr. Brent Workman. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Ms. Jennifer Norwood – Planning and Zoning Manager, Mr. Chase Phillips – 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 5 – 0.

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

Motion by Mr. Chorman, seconded by Mr. Hastings, and carried unanimously to approve the Minutes for the March 1, 2021, meeting. Motion carried 5 – 0.

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

Motion by Mr. Hastings, seconded by Dr. Carson and, carried to approve the Findings of Facts for the March 1, 2021, meeting. Motion carried 5 – 0.

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

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

OLD BUSINESS

Mr. Chorman recused himself and left Chambers.

Case No. 12532 – John H. Legg seeks a special use exception to operate a rifle or pistol range (Sections 115-23 and 115-210 of the Sussex County Code). The property is located on the northeast corner of Gravel Hill Road (Rt. 30) at the intersection of Bennum Switch Road and Gravel Hill Road. 911 Address: 20093 Gravel Hill Road, Georgetown. Zoning District: AR-1. Tax Parcel 135-11.00-82.00.

Ms. Norwood presented the Application, which had been left open at the Board's meeting on April 19, 2019, for the limited purpose of allowing the Applicants to submit a video and to be available to answer questions regarding the video.

The video was played for Board Members and the public.

Mr. Ronald Hagan was sworn in to give testimony regarding the video. Mr. Hagan testified that the video showing the pond was conducted at the side closer to the gun range and that the guns used were 9mm and 40 mm calibers.

Mr. Williamson closed the public hearing.

Dr. Carson moved to deny Case No. 12532 for the special use exception because the Applicant has failed to demonstrate that the special use exception will not substantially affect adversely the uses of adjacent and neighboring properties.

Motion by Dr. Carson, seconded by Mr. Workman, carried unanimously that the **special use exception be denied for the reasons stated**. Motion carried 4 – 0.

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

Mr. Chorman returned to Chambers.

Recess
6:48 p.m. – 6:53 p.m.

PUBLIC HEARINGS

Case No. 12548 – Kurt Family Limited Partnership seeks variances from the front yard setback requirement) for proposed and existing structures. (Sections 115-25 and 115-182 of the Sussex County Zoning Code). The property is located on the west side of Garfield Avenue within the Edgewater Acres Subdivision. 911 Address: 39179 Garfield Avenue, Selbyville. Zoning District: AR-1. Tax Parcel: 533-20.18-185.00

Mr. Phillips 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 Applicant is requesting a 4 ft. variance from the 30 ft. front yard setback requirement for proposed steps and an 8.5 ft. variance from the 30 ft. front yard setback requirement for an existing dwelling.

Mr. James Webster was sworn in to give testimony about the Application.

Mr. Webster testified that the house is existing but the proposal is to lift the house up on pilings; that the existing house will be moved farther back on the lot to make it more in compliance with the Code; that the house could not be moved back 30 feet as it is a small lot and would block the neighbor's view of the water; that the neighbors support the request; that the new setback would be 21.5 ft.; that there are currently parking problems on the lot and this proposal will alleviate those problems; that there will be parking for 4 cars underneath the house and there will be no need to park on the street; that the house was built in 1965 and was only 15 ft. from the road; that the house meets the side yard setback requirements; that the rear of the dwelling will line up to the rear of the dwelling on the neighboring lot; that the house will be raised above the floodplain; that there are other dwellings in the neighborhood which are also on pilings; that there will be no addition to the house except for a deck which will be in the rear; that there are no side yard encroachments; that, if the house was moved back 4 feet, it would block his neighbor's view; that the home will be moved approximately 6 feet farther from Garfield Avenue; that the property line is at the edge of paving; that this will not create any visibility issues on Garfield Avenue; that the property flooded during Hurricane Sandy; that no HOA approval is required; and that the property is on public sewer.

Ms. Mary Kurt-Mason was sworn in by teleconference to give testimony about the Application.

Ms. Kurt-Mason testified that this is a family home owned by her father, herself and, four sisters; that they have owned this small house since 1965; that it is a place for the family to get together; that the house was grandfathered in with a setback of 15 ft. but because of the flooding the house has to be elevated; that the house will be placed farther back on the lot; and that the proposed placement, if the variance is approved, will not block the neighbor's view.

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

Mr. Williamson closed the public hearing.

Mr. Chorman moved to approve Case No. 12548 for the requested variances, pending final written decision, 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. Hastings, carried unanimously that the **variances be granted for the reasons stated.** Motion carried 5 – 0.

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

Case No. 12549 – Shannon Neal/Sussex Family YMCA seeks a special use exception to operate a daycare center (Sections 115-80 and 115-210 of the Sussex County Zoning Code). The property is located on the southwest side of Church Street approximately 156 feet northeast of Coastal Highway (Rt. 1). 911 Address: 20080 Church Street, Rehoboth Beach. Zoning District: C-1. Tax Parcel: 334-13.20-53.00

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 five mail returns.

Ms. Shannon Downing was sworn in to give testimony about the Application.

Ms. Downing testified that she is requesting a special use exception to run a licensed child care program at the Sussex Y.M.C.A.; that there are current childcare programs at the Sussex Y; that those programs are not licensed and a special use exception is needed to proceed with licensing; that the Applicant noticed a need for services after the pandemic hit; that the hours of operation will be 7:00 am – 6:00 pm, Monday through Friday; that there are 2 – 3 employees; that there will be a maximum of 26 children; that the children served will be from 5 years old through 12 years old; and that the property is owned by the Cape Henlopen School District.

Ms. Tanesha Hopkins was sworn in to give testimony about the Application.

Ms. Hopkins testified that she is a Y.M.C.A. director; that the property is owned by the Cape Henlopen School District; that they work in conjunction with the Y.M.C.A.; that the Sussex Y.M.C.A. has 16 years left on the lease with the school district.; that this program is to serve families during times of emergency such as the pandemic and to offer summer programs; that the childcare center will not create any traffic issues; and that she anticipates the center will be used by summer 2022 and for school in-service days.

The Board found that 11 people appeared in support of and no one appeared in opposition to the Application.

Mr. Williamson closed the public hearing.

Dr. Carson moved to approve Case No. 12549, 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. Workman, carried unanimously that the **special use exception be granted for the reasons stated**. Motion carried 5 – 0.

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

Case No. 12551 – Rodney Kennedy seeks a variance from the side yard setback requirement for an addition to an existing structure (Sections 115-25, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located on the north side of Sycamore Road approximately 431 ft. southwest of Dukes Lumber Road. 911 Address: 14181 Sycamore Road, Laurel. Zoning District: AR-1. Tax Parcel: 232-8.00-2.00

Mr. Phillips presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. The Applicant is requesting a variance of 5 ft. from the 15 ft. side yard setback requirement on the west side for an addition to an existing structure.

Mr. Rodney Kennedy was sworn in to give testimony about his Application.

Mr. Kennedy testified that there is an existing 24' x 24' garage on the property which complies with the setbacks for the property; that the proposal is to add a 12' x 24' lean-to on the garage which will make the structure larger than the 600 sf. required for a 5 ft. setback; that the lean-to will be used for a workshop; that the property is a pie-shaped property; that the existing garage could not be moved over because of the location of three mature trees; that the lean-to cannot be built anywhere else on the property because of the uniqueness of the lot and the lean-to has to be connected to the garage; that the exceptional practical difficulty was not created by the Applicant but by the narrowness of the lot and the location of the mature trees; that the addition will not alter the essential character of the neighborhood as it will be in keeping with the neighborhood; that the lean-to will have the same siding as the existing garage; that it is a minimum of 5 ft. and the existing garage is currently 10 ft. from the property line; that the septic is on the east side of the property; that the garage was built in February 2021; that the lean-to could not be placed in the rear of the garage as there are trees in that area; that, because of the shape of the property, the variance is only necessary for the rear corner of the garage as the front corner will comply with the 15 ft. side yard setback; and that there have been no complaints from neighbors.

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

Mr. Williamson closed the public hearing.

Mr. Hastings moved to approve Case No. 12551 for the requested variance, pending final written decision for the following reasons:

1. The property has unique physical conditions; and

2. The variance represents the minimum variance necessary to afford relief and represents the least modification of the regulation at issue.

Motion by Mr. Hastings, seconded by Mr. Workman, carried unanimously that the **variance be granted for the reasons stated**. Motion carried 5 – 0.

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

Case No. 12552 – Clint & Blair Lutz seeks a variance from the side yard setback requirement for a proposed structure (Sections 115-25, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located on the west side of East Trap Pond Road approximately 0.31 mile southwest of Parker Road. 911 Address: 22842 East Trap Pond Road, Georgetown. Zoning District: AR-1. Tax Parcel: 135-19.00-51.04

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 Applicants are requesting a 7 ft. variance from the 15 ft. side yard setback requirement on the southwest side for a proposed structure.

Mr. Clint Lutz was sworn in to give testimony about his Application.

Mr. Lutz testified that the property has a unique shape with an odd angle on the southwest side; that there is a shared driveway; that the proposed pole building will be on the southwest side to line up with the driveway; that, if the pole building is placed 15 ft. from the property line, it would be in the middle of the yard; that the placement of the septic system also hinders the ability to meet setbacks; that it will not alter the essential character of the neighborhood as the driveway is shared with family members; that his brother and sister-in-law live next door; that neighbors do not object to the request; that the 7 foot variance is the minimum to afford relief without losing some of the driveway or having to add additional impervious surface; that the building will be used for storage and indoor softball practice area for his children; that the septic system is located in the rear yard; that a smaller building would not suit its intended purpose; that the structure will be parallel to the side property line; that the walls will be 9 feet from the property line and the eaves of the building will be 8 feet from the property line.

Mr. Sharp noted that the requested variance would be 6 ft. from the 15 ft. side yard setback requirement and not 7 ft. as originally requested.

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

Mr. Chorman asked if we could get a letter of support from the neighbor.

Mr. Sharp said that the Board cannot compel the neighbor to provide that letter.

Mr. Williamson closed the public hearing.

Mr. Hastings moved to approve Case No. 12552 for the requested variance for the following reasons:

1. The property has unique physical conditions; and
2. The variance represents the minimum variance necessary to afford relief and represents the least modification of the regulation at issue.

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

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

Case No. 12553 – Coastal Properties, LLC seek variances from the rear yard setback requirements for a proposed structure (Sections 115-25, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located at the intersection of Stingey Lane and Beaver Dam Road approximately 589 ft. southeast of Lewes-Georgetown Highway (Rt. 9). 911 Address: 17677 Stingey Lane, Lewes. Zoning District: AR-1. Tax Parcel: 334-5.00-196.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. The Applicant is requesting a 13 ft. variance from the 20 ft. rear yard setback requirement for a proposed structure.

Mr. Kristopher Grozier was sworn in to give testimony about the Application.

Mr. Grozier testified that the property is unique as it is a small lot with a non-conforming house; that the house was dilapidated and he has improved it; that the driveway for the property is being used as a thoroughfare between Beaver Dam Road and the Lewes-Georgetown Highway; that, when he purchased the property, he intended to improve the property with a 3-car garage; that he needed storage space; that there is a cess pool that was not properly filled in and the ground is not stable enough to move the garage farther onto the lot; that there is heavy traffic on Stingey Lane as vehicles use this lane for access to Delaware Electric Cooperative and Stockley Materials; that the applicant did not own this property when the cess pool was there and did not fill it in and learned about this situation after the purchase; that improvements have been made to the house which was in a state of disrepair; that the improvement to the house and the new garage will improve the neighborhood; that this would be a minimum variance to safely place the garage on the property to

serve both structural integrity and not interfere with the public traffic using Stingey Lane; that the building is under construction with a stop work order from the County; that a permit was not obtained as it was begun during the Covid-19 pandemic and the Applicant wanted to keep his employees working; that he did not know about the setback requirements; that the cesspool measures 8 feet by 8 feet or 10 feet by 10 feet; that he works in construction; that the building will be used to store building construction materials; that the property is served by public water and sewer; that the house is vacant; that the framing has been completed on the garage but the roof has not been attached; that he did not look at a smaller building; and that the garage will be used for both personal items and for his business.

Ms. Patricia Harmon Edwards was sworn in to testify in opposition to the Application.

Ms. Edwards testified that her property backs up to this lot; that the structure is there except for the roof; that the Applicant did work on the garage after the stop work order was issued; that the Applicant's trucks are parked there and block her driveway; that the building is huge and blocks her view; that granting this variance would alter the essential character of the neighborhood as it is a residential area and the garage which has been built is too large for the area; that the Applicant has stated the building would be used for a commercial purpose but the property is not zoned for commercial uses.

Ms. Ernestine Brittingham was sworn in by teleconference to testify in opposition to the Application.

Ms. Brittingham testified that granting this variance will alter the character of the neighborhood; that she opposes commercial activity on this site; and that this is a residential area.

Mr. Matthew Walls was sworn in by teleconference to testify in support of the Application.

Mr. Walls testified that the property has been greatly improved and that granting the variance will add value to the area.

Ms. Colleen Grozier was sworn in by teleconference to testify in support of the Application.

Ms. Grozier testified that they own Coastal Custom Painting in Lewes and are repaving the property where the painting business is located; that a lot of the trucks have been temporarily parked at the subject property; that this property was severely dilapidated when they purchased it; that they have made improvements not only to the subject property but also to Stingey Lane; and that the area is no longer residential as the property is close to Stockley Materials and other commercial ventures.

Mr. Jeff Warren was sworn in by teleconference to testify in support of the Application.

Mr. Warren testified that he has lived in this area for a while; that the property was in very bad shape; that the Applicant has improved the property; that the Applicant cares about his property

and it will look good when completed.

Ms. Lauren Elizabeth Griffin-Walls was sworn in by teleconference to testify in support of the Application.

Ms. Griffin-Walls testified that she has lived in the Lewes area for most of her life; that she passes this property daily; that the property was in need of repair; that the Applicant has improved the property and that she has no concerns about this project being completed.

Mr. Vincent Manulli was sworn in by teleconference to testify in support of the Application.

Mr. Manulli testified that he has lived across the street from the subject property for approximately 13 years; that the Applicant has improved the property; that there is a lot of commercial traffic to and from Stockley Materials; and that he supports the request for a variance.

Mr. John Buhay was sworn in by teleconference to testify in support of the Application.

Mr. Buhay testified that he works in Lewes and drives past this property multiple times a month; that the Applicant has done an exceptional job to improve the community; and that he should be able to complete this project.

Mr. Grozier testified that the property was dilapidated when he purchased it and he has cleaned it up; that the entrance comes onto Stingey Lane; that he plans to seek a conditional use or a change of zone; that he admits to parking vehicles on the site for his business; that he stores both personal and business materials on the site; that Stingey Lane is used publicly; that the garage will measure 20 feet tall; that he should have obtained a building permit but 2020 was stressful due to Covid-19.

The Board found that six people appeared in support of and three people appeared in opposition to the Application.

Mr. Williamson closed the public hearing.

Mr. Chorman moved to deny Case No. 12553 for the requested variances for the following reasons:

1. The property does not have unique conditions which created an exceptional practical difficulty for the Applicant;
2. The Applicant has failed to demonstrate that the property cannot be developed in strict conformity with Sussex County Zoning Code;
3. The exceptional practical difficulty was created by the Applicant; and
4. The variance does not represent the minimum variance necessary to afford relief.

Motion by Mr. Chorman, seconded by Dr. Carson and, carried unanimously that the **variance be denied for the reasons stated**. Motion carried 5 – 0.

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

Case No. 12554 – Shane Eskridge seeks variances from the front yard setback requirements for existing structures (Sections 115-25 and 115-182 of the Sussex County Zoning Code). The property is located on the west side of Zoar Road approximately 700 ft. north of Graves Lane. 911 Address: 24815 Zoar Road, Georgetown. Zoning District: AR-1. Tax Parcel: 234-20.00-2.04

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. The Applicant is requesting a 15.6 ft variance from the 40 ft. front yard setback requirement for an existing addition and a 19.3 ft variance from the 40 ft. front yard setback requirement for existing steps. Ms. Norwood noted that the existing building is non-conforming and was built in the 1940's.

Mr. Shane Eskridge was sworn in to give testimony about his Application.

Mr. Eskridge testified that the variance request is to allow him to keep the addition that was built onto his non-conforming dwelling; that he did have a permit and, when the final inspection was completed, he was told that he did not comply; that, because the addition was in line with the existing dwelling, he did not know that he was out of compliance; that the property is unique because the existing house is non-conforming and the property line and the house are not running parallel; that the structure was completed according to County regulations and cannot be moved; that the septic system is located 10 feet behind the house; that water and propane are also located on the site; that there was no other place where the addition could be located; that the original home and steps have been in existence in this location since the 1940s; that the house is in character with the neighborhood; that the property cannot be otherwise developed; that the exceptional practical difficulty was not created by the Applicant; that the existing front overhang and steps are farther than the corner of the home; that the request is a minimum to allow the addition and steps to remain; that there will be no further changes to the front of the house; that there have been no complaints from neighbors; that the addition was built by family members and not a contractor; that a contractor completed the foundation; that the addition is 24 ft. by 24 ft.; that the property line is at the edge of paving; that the addition was completed in 2019; that the addition does not create visibility issues; and that the driveway is in the center of the lot so it restricted where the addition could be placed.

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

Mr. Williamson closed the public hearing.

Dr. Carson moved to approve Case No. 12554 for the requested variances for the following reasons:

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.

Motion by Dr. Carson, seconded by Mr. Hastings, carried that the **variances be granted for the reasons stated**. Motion carried 4 – 1.

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

Case No. 12555 – Marie Burkman seeks variances from the rear yard setback requirements for a proposed structure (Sections 115-25 and 115-183 of the Sussex County Zoning Code). The property is located on the south side of Old Pier Lane within The Estuary Subdivision. 911 Address: 33366 Old Pier Lane, Frankford. Zoning District: AR-1. Tax Parcel: 134-19.00-610.00

Mr. Phillips presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. The Applicant is requesting the 10 ft. variance from the 10 ft. rear yard setback requirement for a proposed deck, a 7.5 ft. variance from the 10 ft. rear yard setback requirement for a proposed deck, and a 4 ft. variance from the 10 ft. rear yard setback requirement for proposed steps.

Ms. Kelsey Harding was sworn in to give testimony about his Application.

Ms. Harding testified that the request for the 10 ft. variance is because the property to the rear of the house is unusable because of the grade; that the property is unique because it is completely cut off at the porch due to the grade; that, due to the grade and setback, zoning allows for no use of the back of the property; that a deck is the least invasive construction; that the Applicant did not cause the grading on this property; that many of the lots in the area have patios and backyard structures; that appropriate measures will be taken not to disrupt other lots during construction; that there are no neighbors to the left of the lot; that the requested size is the minimum compared to standard deck sizes; that the grade drops down about 5 ft.; that the deck will measure 10 feet by 18 feet and provides enough space to be used; that it will comply with HOA standards and approval will be sought from the HOA; that it will be level with the house and, because of the height to the rear, the deck will have a railing; that the deck will help with drainage; and that the deck will be greater than 30 inches tall at points but differs in height due to the grade.

Ms. Norwood noted that there have been no variances granted in this neighborhood.

Mr. James Burkman was sworn in to give testimony about his Application.

Mr. Burkman testified that the lot was flat when purchased; that, when the house was built, the grade has approximately 5 ft. incline; that he cannot walk in his rear yard due to the incline; that the area is useless due to the incline; that there are no complaints from neighbors regarding the proposed deck; that there will be no maintenance required when the deck is complete; that the property to the rear is all in conservation and will not be improved; that it will be level with the house and because of the height to the rear the deck will have a railing; and that he has fallen as the grade is so steep and the property is unusable as it is; that he cannot build in the side yard due to restrictive covenants in the neighborhood; that there are bug problems in the area; that the only access to the rear yard is from the porch; that the grass edge shown in the picture is the property line; and that the sliders from the porch are approximately 3 feet off the ground.

Mr. Sharp questioned the grade of the rear yard.

Mr. Burkman testified that he wants to use the area for his family; that he doubts the deck will require much maintenance; that his property is the only one with this slope; and that his lot has the most severe grade.

Dr. Carson expressed concern about taking the deck so far in the rear yard.

The Board found that three people appeared in support of and none in opposition to the Application.

Mr. Williamson closed the public hearing.

Mr. Hastings moved to approve Case No. 12555 for the requested variances for the following reasons:

1. The property has unique physical conditions; and
2. The exceptional practical difficulty was not created by the Applicant.

Motion by Mr. Hastings, seconded by Mr. Workman, carried that the **variances be granted for the reasons stated**. Motion carried 3 – 2.

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

Case No. 12556 – Lisa Nicoletti & John Smilyk seek a variance from the maximum fence height requirement for a proposed fence. (Sections 115-25, 115-182, and 115-185 of the Sussex County Zoning Code). The property is located on the north side of Willow Creek Road within the Willow Creek Subdivision. 911 Address: 16086 Willow Creek Road, Lewes Zoning District: AR-1. Tax

Parcel: 235-23.00-4.12

Mr. Phillips presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. The Applicant is requesting a 0.5 ft. variance from the 3.5 ft. maximum fence height requirement for a proposed fence in the front yard setback.

Ms. Lisa Nicoletti and Mr. John Smilyk were sworn in to give testimony about their Application.

Ms. Nicoletti testified that they have applied for and received a permit for a swimming pool; that, to comply with the zoning requirements for the pool, they must install a 4 ft. tall fence, but the code only allows a 3.5 ft. fence in the front yard setback; that the property is unique as it has a very unusual topography, shape, and length; that the parcel is extremely long, almost 2/10 of a mile and very shallow; that the lot undulates with very steep grade changes and starts at approximately 22 ft. elevation and ends at a 2 ft. elevation where it terminates into a farm pond; that, because of the unique conditions of the lot, it limits the areas that can be developed; that the home is sited perpendicular to the long, winding road frontage and there is no rear yard and a limited side yard; that the limited side yard occupies the usable area behind the home where the pool is proposed; that, in order to build the pool, the fence will run along the front portion of the lot; that the exceptional practical difficulty was not created by the Applicants but by the contradictory terms of the code requiring a 4 ft. fence for the pool but only allowing a 3.5 ft. fence in the front yard setback; that the placement of the home was largely predetermined by the existing structures and use the property prior to the Applicants' acquisition of the property in 2018; that, due to the drastic changes in elevation, their engineer advised the Applicants to limit the areas of disturbance to preserve existing drainage patterns; that they left the existing accessory building, garage, walkway, septic system, and driveway in place; that the septic system takes up much of the area in front of the home; that the rear of the property slopes greatly; that the variance will not alter the essential character of the neighborhood as it was home to a nursery for 35 years; that the front property border is already lined with mature trees and established evergreen hedges; that these will be supplemented with additional plantings to camouflage the fence; that the fence would be across the street from a high, densely wooded berm; that there are no homes facing the fence line; that a neighbor has a fence exceeding the height limit by approximately 1 foot; that the fence will not impact the view or aesthetics or impair the development of neighboring properties; that the request for 6' is the minimum to allow the Applicants to enclose the pool and yard for safety; that this portion of the fence is largely hidden due to the long bend in the road; that the area where the fence will be located could easily be perceived to be the rear of the yard; that a submitted letter outlines the medical necessity for a family member to have this pool; that most of the lots in the neighborhood measure 5-7 acres; that she has spoken with neighbors and they support the request; that they are constructing the pool for their daughter; that there is approximately 15 ft. from the property line to the edge of paving; that the fence will not create any visibility issues; and that the property is elevated approximately 5 to 10 feet above the road.

Mr. Smilyk testified that, if you are driving by the property, you would be looking at the berm and the fence will not be visible from the road.

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. 12556 for the requested variance, pending final written decision, for the following reasons:

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

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

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

ADDITIONAL BUSINESS

Dr. Carson stated that he will be arriving late to the meeting on June 7.

Mr. Hastings stated that he will not be able to attend the meeting on May 17.

Mr. Workman announced that he is resigning from the Board of Adjustment after 20 years of service and that this will be his final meeting.

Mr. Chorman thanked Mr. Workman for his service and that one of the reasons he wanted to serve on the Board of Adjustment was because of his admiration for Mr. Workman's service over the years.

Dr. Carson echoed Mr. Chorman's comments.

Mr. Sharp stated that Mr. Workman is an exemplary civil servant who has served on the Board of Adjustment and the community with the fire department.

Ms. Norwood thanked Mr. Workman on behalf of herself, Mr. Whitehouse, and the Staff of Planning and Zoning for his service to the Board.

Meeting adjourned at 9:41 p.m.