

MINUTES OF MAY 6, 2019

The regular meeting of the Sussex County Board of Adjustment was held on Monday, May 6, 2019, at 7:00 p.m. in the County Council Chambers, 2 The Circle, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman John Mills presiding. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. John Williamson, and Mr. Brent Workman. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Mr. Jamie Whitehouse – Planning Manager, Ms. Jennifer Norwood, Planner, and Ms. Ann Lepore – Recording Secretary.

The Pledge of Allegiance was led by Mr. Mills.

Motion by Ms. Magee, seconded by Mr. Callaway, and carried unanimously to approve the revised agenda. Motion carried 5 – 0.

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

PUBLIC HEARINGS

Case No. 12296 – Joseph C. & Kathleen T. Famulare seek variances from separation distance for proposed structures (Section 115-188 of the Sussex County Zoning Code). The property is located on the northwest side of Fairway Dr. approximately 330 ft. south of W. Pebble Beach Dr. in the Forest Landing subdivision. 911 Address: 37065 Fairway Dr., Frankford. Zoning District: MR-RPC. Tax Parcel: 134-16.00-40.00 Unit 71

Mr. Whitehouse 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 ten mail returns. The Applicant is requesting 4 ft. variances from the required 40 ft. separation distance on the southwest side for a proposed trash enclosure and an outdoor shower.

Joseph & Kathleen Famulare were sworn in to give testimony about the Application.

Mr. Famulare testified that the property is uniquely situated in the Forest Landing subdivision and is located 40 ft. from the next villa; that it was necessary to apply for a variance to place the trash enclosure and outdoor shower on the side of the home as a proposed screened porch will be placed at the rear of the home thereby leaving no other place for the trash enclosure and shower; that the trash enclosure is required per homeowner association regulations; that the structures will be placed near existing bushes which should hide their presence; that the rear of the property is located adjacent to a forest preserve; that the trash enclosure was previously located in the rear yard; that the plumbing for the outdoor shower would be easily accessed by placing the shower on this side of the home; that the trash enclosure could not be placed next to the screened porch as it would be visible to the neighbor whose home is attached; that this was not created by the Applicants because, when they purchased the property, the dwelling was already in place; that it will not alter the character of the neighborhood

as there are other homes with similar trash enclosures; that it will be built to match the home; that it has been approved by the HOA and neighbors; and it is the minimum variance request to afford relief.

Mrs. Famulare testified that there are many trash enclosures in the neighborhood which are also placed on the side of the dwellings; that the developer placed the enclosures in the rear yard; that neighbors have moved their enclosures to the side yard; and that their builder obtained the permit for these structures and saw the need for the variances.

Mr. Famulare testified that trash is placed in the rear yard but is not enclosed; that homeowners association regulations require the trash to be placed in the rear yard or in an enclosure; and that he cannot place the trash in his garage due to the odor.

Mr. Famulare submitted a picture of a trash enclosure which is similar to the proposed trash enclosure at his home.

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

Mr. Workman moved to approve Variance Application No. 12296 as the Applicants have met all the criteria for granting a variance.

Motion by Mr. Workman, seconded by Mr. Callaway, and carried unanimously that the **Application for the variances be approved.** Motion carried 5 – 0.

The vote by roll call; Mr. Williamson – yea, Ms. Magee – yea, Mr. Callaway – yea. Mr. Workman – yea, and Mr. Mills – yea,

Case No. 12297 – Jason Lambros seek a special use exception for a garage/studio apartment and a variance from the maximum square footage for a garage/studio apartment for a proposed structure (Sections 115-4, 115-23 & 115-210 of the Sussex County Zoning Code). The property is located on the west side of Central Ave. approximately 945 ft. north of Substation Rd. 911 Address: 33476 Central Ave., Frankford. Zoning District: AR-1. Tax Parcel: 134-16.00-35.02

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and nine mail returns. The Applicant is requesting a special use exception for a garage studio apartment and is no longer requesting a variance.

Jason Lambros was sworn in to give testimony about the Application.

Mr. Lambros testified that his lot is wooded; that the buildings are a good distance from the road; that the nearest neighbors are hundreds of feet away from his property; that the unit will consist of 800 square feet and will be used for a rental; that the first floor of the building is 800 square feet

and the second floor of the building is 400 square feet; that the home is on County sewer; that there is adequate parking; that, currently, there are two separate units; that the request today is for the ground floor unit which will be 800 sf. and the second floor unit will not have kitchen facilities and will not be available for rent and will be used for family members to stay when they visit; that the structure exists on the site; that he purchased the Property 3 years ago and the apartment existed at that time; that granting the special use exception will not substantially affect adversely the uses of adjoining and neighboring properties; that the building previously had a downstairs area used for storage and an upstairs unit used for family; that the upstairs unit had cooking facilities but he did not install them; that he plans to use the upstairs unit for temporary occupants as a guest house; that the downstairs unit will have cooking facilities; and that there is no additional traffic, noise, or emissions from the unit.

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

Mr. Callaway moved to approve Application No. 12297 because the garage / studio apartment will not substantially affect adversely the uses of neighboring and adjacent properties.

Motion by Mr. Callaway, seconded by Mr. Workman, and carried that the **special use exception be granted for the reasons stated.** Motion carried 4 - 1.

The vote by roll call; Ms. Magee – nay, Mr. Williamson – yes, Mr. Workman – yea, Mr. Callaway – yea and Mr. Mills - yea.

Case No. 12298 – Helen R. Grant seeks variances from the rear yard setback requirements in a multi-family dwelling for proposed structures and from the minimum aggregate yard requirement for a townhome. (Sections 115-34 and 115-188 of the Sussex County Zoning Code). The property is located on the north side of Cormorant Way approximately 216 ft. northwest of Grebe Ln. in the Bay Forest Club subdivision. 911 Address: 20992 Cormorant Way, Ocean View. Zoning District: MR-RPC. Tax Parcel: 134-8.00-1206.00

Mr. Whitehouse 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 4 ft. variance from the required 20 ft. rear yard setback for a proposed screened porch and a variance of 2.1 ft. from the minimum aggregate yard size requirements.

Helen Grant was sworn in to give testimony about the Application. Ms. Grant submitted architectural drawings of the proposed porch.

Ms. Grant testified that her Application is for variances to enable her to build a screened porch at the rear of her home; that the property is unique because it is a shallow lot; that she cannot build the porch to the wall of the adjoining unit; that her unit is an end unit; that she will retain a 5 foot gap between the porch and the next unit; that it cannot otherwise be developed to add a screened porch

without a variance as there is only 8 ft. of buildable space; that the variance is needed to allow for usable space on the porch; that it was not created by the applicant but by the misrepresentation from the sales agent for NV Homes who led the Applicant to believe that her lot was larger than it is; that she was told she could build 18 feet out from the porch; that neighbors have larger porches; that she has informed the builder about the misrepresentations from the salesperson; that it will not alter the essential character of the neighborhood as it will be built to match the home and other screened porches in the area; that the HOA requests that the porch be at least 5 feet from the attached dwelling for maintenance issues; that there is 100 feet of woods to the rear of the unit; that it is a minimum variance requested to allow the Applicant to place a table and chairs comfortably on the porch; that it is recommended that the porch be 12 feet minimum for tables and chairs; that the porch will be 5 feet narrower than the home; and that the steps will project into the rear yard as well.

Gerald Schaffer, who is the Applicant's builder, was sworn in to give testimony about the Application.

Mr. Schaffer testified that a 10 in. step would be needed for the porch.

Ms. Grant testified that she is fairly confident that 1 step is all that is needed but, at most, the porch would need 2 steps.

Mr. Whitehouse stated that the actual variances needed would be 4 ft. for the screened porch and 6 ft. for the steps from the required 20 ft. rear yard setback and 4.1 ft. from the minimum aggregate yard size of 40 ft.

Ms. Grant testified that she cannot sit outside due to bug problems.

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

Ms. Magee moved to approve Variance Application No. 12298, as amended, because the Applicant has met all the criteria for granting a variance.

Motion by Ms. Magee, seconded by Mr. Callaway, and 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, Mr. Callaway – yea Ms. Magee – yea, and Mr. Mills – yea.

Case No. 12299 – Robert Murray, Jr. seeks a variance from the front yard setback requirements for an existing structure (Sections 115-25 and 115-185 of the Sussex County Zoning Code). The property is located on the northwest side of Catmans Rd. approximately 0.45 miles southwest of DuPont Blvd. (Rt. 113). 911 Address: 28900 Catmans Rd., Frankford. Zoning District: AR-1 Tax Parcel: 433-11.00-4.11

Mr. Whitehouse 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 7.2 ft. from the required 40 ft. front yard setback for an existing garage.

Robert Murray was sworn in to give testimony about the Application.

Mr. Murray testified that the pole barn was built last summer; that the property is unique due to its shape and the curved property line; that the side property line is angled; that the building envelope is limited; that his parents live next door; that it cannot be otherwise developed with a pole barn as there is no other location on the property to place the barn; that the septic and peat moss system is to the rear of the dwelling; that the house was built in 2007; that the builder had a greater concern about compliance with the side yard setback than the front yard setback; that there are 12 houses on the road; that the variance will not alter the essential character of the neighborhood as there are many pole barns in the area; that the pole barn does not present a visibility issue; that the front corner of the pole barn is near the driveway and complies with the setback requirements; that the builder is Gary Sensenig, Pole Barns, Ltd., who thought he was in compliance as one corner of the barn does meet setbacks but because of the curve of the property line the east corner of the barn needs a variance; that the practical difficulty was not caused by the Applicant, although the permit was obtained by the Applicant, it was caused by the unique shaped property; that he provided the permit to his builder; that it is the minimum request to bring the property into compliance; that there is 10 -12 ft. from the property line to the edge of pavement; and that there is approximately 46 feet from the building to the edge of paving.

Gary Sensenig from Pole Barns, Ltd., was sworn in to give testimony about the Application. Mr. Sensenig testified that he measured from the building front to the road and thought he was within the setbacks.

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

Ms. Magee moved to approve Variance Application No. 12299 to allow a variance of 7.2 ft. from the required 40 ft. front yard setback as the Applicant has met all the criteria for granted a variance. She noted that the curvature of the lot creates a unique situation.

Motion by Ms. Magee, seconded by Mr. Williamson, and carried unanimously that the **variance be approved**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Williamson – yea, Mr. Callaway – yea
Ms. Magee – yea, and Mr. Mills – yea.

Case No. 12300 – Ryan W. Maddox seeks a special use exception for a garage/studio apartment and

a variance from the maximum square footage for a garage/studio apartment for a proposed structure (Sections 115-4, 115-23 & 115-210 of the Sussex County Zoning Code). The property is located on the north side of Gum Rd. approximately 577 ft. west of Roxana Rd. 911 Address: 36215 Little Creek Ln., Frankford. Zoning District: AR-1. Tax Parcel: 533-10.00-46.02

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. There was a variance granted for the structure in 2017. The Applicant is requesting a special use exception for a garage / studio apartment and a variance of 932 square feet from the maximum square footage requirement for a garage / studio apartment of 800 square feet.

Ryan Maddox sworn in to give testimony about the Application.

Mr. Maddox testified that the Property was developed in 1974 and the existing pool house was built in 1974; that he purchased the Property 2 years ago; that there is a soccer field in the rear and woods to east; that he has made no additions to the structure; that it cannot otherwise be developed without the variance as the structure has been in place since 1974; that it was not created by the Applicant as no modifications have been made since he purchased the home in 2018; that it will not alter the character of the neighborhood as it has been there for 45 years; that he plans to use the apartment for his parents in the future and possibly as a rental in the meantime; that the apartment will consist of 2 floors but the second floor will be smaller; that the building is currently vacant; that the building is wired for a kitchen but has no cooking facilities; that it is the minimum variance to afford relief and allow reasonable use of the building; that a rear yard variance was granted in 2017; that parking is available on the property; that it will not substantially adversely affect the uses of neighboring and adjacent properties; and that the garage will remain for the car.

Mr. Whitehouse stated that the first floor of the unit will measure 1,144 square feet and the second floor of the unit will measure 588 square feet.

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

Ms. Magee moved to approve Application No. 12300 for the special use exception for a garage / studio apartment because it will not substantially affect adversely the uses of neighboring and adjacent properties, the building is existing, and has been there for 45 plus years. As part of her motion, Ms. Magee moved to approve the variance request as well because the Applicant has met the standards for granting a variance, the building is existing, and the Applicant did not create the problem.

Motion by Ms. Magee, seconded by Mr. Callaway, and carried unanimously that the **variance and special use exception application be approved**. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Williamson – yea, Mr. Callaway – yea Ms. Magee – yea, and Mr. Mills – yea.

Case No. 12301 – John F. Bender & Colin P. Hood seek variances from the front yard, corner front and side yard setback requirements for proposed structures. (Sections 115-42, 115-182, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located on the west side of Bay Rd. at the southwest corner of Bay Rd. and Canal Rd. 911 Address: 20600 Bay Rd., Rehoboth Beach. Zoning District: GR. Tax Parcel: 334-19.12-52.00

Mr. Whitehouse 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 6 ft. variance and a 0.9 ft. variance from the required 30 ft. front yard setback for a proposed covered porch; a 2.4 ft. variance from the required 5 ft. side yard setback for a shed; and a 2 ft. variance from the required 5 ft. side yard setback for an addition to the shed. There were previous variances granted for this property in 2004 but the variances expired prior to the work beginning. A discussion followed to include the following variances: 0.8 ft, 0.9 ft, and a 1.1 ft. from the required 5 ft. side yard setback for the existing dwelling and a 3.6 ft and a 3.5 ft from the required 15 ft. corner front setback of the existing dwelling and proposed porch.

John Bender and Colin Hood were sworn in to give testimony about the Application.

Mr. Hood testified that the Application is to put two porches on the dwelling; that the house is already non-compliant having been placed on the lot in 1981; that the Applicants purchased the property in 2003; that the property is unique because the property line runs diagonal to the house; that the property cannot be developed with a front porch without the variance; that a variance was approved under Case No. 8503 in 2004 to complete the front porch but the work was not completed and the variance expired; that it was not created by the Applicants as they house was in its current position when purchased by the Applicants; that the proposed front porch will be open; that the front yard has an odd angle; that the variances will not alter the character of the neighborhood; that it is possible that the shed could be moved but it would be impossible to develop otherwise because there is mature vegetation in the yard and the Applicants would like the rear porch to mirror the side of the house; that the property is served by central water; that the structures present no visibility issues; that the porch has been designed to incorporate the stairs into the porch to avoid further encroachment into the setbacks; that it is the minimum variance request; that there is about 1 ft. between the property line and the edge of paving; and that the HVAC system is to the front of the property to the left of the proposed porch but is not shown on the survey.

Mr. Bender testified that there are many other non-conforming dwellings in the neighborhood; that the lots are randomly placed and there are odd lots in the neighborhood; that the lot is narrow; that the lot is rectangle in shape; that the Applicants intend to keep the structures in line with the house; that there is mature vegetation along Canal Road; and that there have been no complaints from neighbors.

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

Walter Brittingham was sworn in to give testimony about the Application. Mr. Brittingham testified he is a long-time friend of the Applicants and supports their Application as it a reasonable request.

Ms. Magee moved to leave the record open for Application No. 12301 for the limited purpose of allowing the Applicants to submit the measurements and placement of the HVAC system prior to the next meeting. Any submissions from the Applicants must be submitted to the Board by close of business on May 17, 2019, at which time the record will be closed.

Motion by Ms. Magee, seconded by Mr. Callaway, and carried unanimously that the **Application be left open until close of business on May 17, 2019, for the limited purpose of allowing the Applicants to submit documentation regarding the location of the HVAC system and that the Application be placed on the agenda for the May 20, 2019, meeting.** Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Williamson – yea, Mr. Callaway – yea Ms. Magee – yea, and Mr. Mills – yea.

Case No. 12302 – Geoffrey S. & Lynn M. Piotroski seek variances from the corner front, rear yard, front yard, side yard, and fence height setback requirements for existing and proposed structures. (Sections 115-25, 115-183, 115-184, and 115-185 of the Sussex County Zoning Code). The property is located on the southwest corner of Monroe Ave. and Lighthouse Rd. in the Edgewater Acres subdivision. 911 Address: 38940 & 38934 Monroe Ave., Selbyville. Zoning District: AR-1. Tax Parcels: 533-20.19-15.00 & 533-20.19-16.00

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and two mail returns. The Applicant is requesting the following ten (10) variances:

- 8.2 ft. variance from the required 15 ft. corner front setback from Lighthouse Rd. for a proposed pool.
- 6.0 ft. variance from the required 15 ft. corner front setback from Lighthouse Rd. for proposed steps.
- 9 ft. and 7.6 ft variances from the required 15 ft. corner front setback from Lighthouse Rd. for a proposed pool house.
- 0.5 ft. variance from the required 3.5 ft. maximum fence height for a proposed fence.
- 15 ft. variance from the required 30 ft. front yard setback for existing landing and steps.
- 3.9 ft. variance from the required 30 ft. front yard setback for the front deck.

- 5 ft. variance from the required 15 ft. side yard setback for existing dwelling.
- 8 ft. variance from the required 15 ft. side yard setback for HVAC platform.
- 13.2 ft. variance from the required 20 ft. rear yard setback for existing covered porch.

Geoffrey Scott Piotroski was sworn in to give testimony about the Application. Blake Carey, Esq., presented the Application on behalf of the Applicants.

Mr. Carey stated that this request pertains to Lots 12 and 13 in the Edgewater Acres subdivision; that the property is located off Route 54; that the Applicants purchased Lot 12 with the existing dwelling in 2007 and the unimproved Lot 13 in 2012; that the lots separately are small lots and are non-conforming lots; that the dwelling on Lot 12 did not need a variance but the Applicants combined both lots to one parcel and, in doing so, the dwelling became non-compliant and needs the above listed variances; that the Applicants plan to construct a pool and pool house on Lot 13; that the property is unique due to the combining of the lots; that there have been no improvements to the dwelling by the Applicants and the request is only for variances to bring the existing dwelling into compliance; that this was not created by the Applicants as the dwelling was existing when they purchased the property; that there is a lagoon to the rear yard; that the lots are small, narrow, and shallow; that the property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code; that the dwelling is on pilings and cannot be moved; that the variances will not alter the essential character of the neighborhood and the proposed improvements will increase the home values in the area; that the house was built in 2005-2006; that the lots have an odd configuration; that there is a useless peninsula to the rear of the lot; that there is a jersey wall to the road side of the lot; that the lot has a limited footprint; that there is nowhere else to place the pool; that the pool will be fenced in; that the variances will not be detrimental to the public welfare; that the fence will not be on the property line; that it is the minimum request to bring the house into compliance; that the portion of the property where the proposed pool will be located is unique due to its shape; that the property cannot be improved with a pool and pool house without the variances as this is the only area on the property to make such improvements; that the distance from the pool to the existing dwelling is to allow for safety and to allow for a walkway; that the exceptional practical difficulty was not created by the Applicants but by the size of the lots; that the variances will not alter the essential character of the neighborhood but will be an improvement; that the variances are the minimum variances requested to afford relief with a standard size pool; that the Applicants are trying to keep a safe distance from the pool and house; that the pool house will be setback from Monroe Avenue the same distance as the dwelling; that the Applicants relied on their pool designer; that the pool has not yet been built; that they would have to remove part of the driveway if the pool house was moved; and that the Applicants sought to have a uniform look in the neighborhood.

Mr. Whitehouse stated that a certificate of compliance was issued for the house and that Lot 12 received a variance for the house.

Mr. Piotroski affirmed the statements made by Mr. Carey as true and correct. Mr. Piotroski testified that there is a DelDOT right of way along the property with a guard rail; that there will be no

visibility issues on the adjacent roads from these structures; that the pool is a standard sized pool and to build a smaller pool would not be cost effective; that the pool house will look like a house and will have the same siding as the dwelling; that there will be no living quarters in the pool house; that DelDOT took a portion of Lot 13 from a prior owner; and that there is a gap between the edge of paving of the adjacent roads and the property line.

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

Ms. Magee moved to table Application No. 12302 to the next meeting.

Motion by Ms. Magee, seconded by Mr. Williamson, and carried unanimously that the **Application be tabled until the May 20, 2019, meeting.** Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Williamson – yea, Mr. Callaway – yea
Ms. Magee – yea, and Mr. Mills – yea.

Case No. 12303 – Joanne Zetusky seeks variances from the front yard setback requirements for proposed structures. (Sections 115-42 and 115-182 of the Sussex County Zoning Code). The property is located on the northeast side of Oak St. approximately 240 ft. north of Club House Rd. in the Banks Acres subdivision. 911 address: 31435 Oak St., Ocean View. Zoning District: GR. Tax Parcel: 134-12.00-111.00

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and one mail return. The Applicant is requesting a 6.6 ft. variance for proposed steps and a 3.6 ft. variance for a proposed porch from the required 30 ft. front yard setback.

Joanne Zetusky, Richard Orsini and Tim Parker were sworn in to give testimony about the Application.

Mr. Orsini testified that the home was purchased in 1980 and the home was there since the 1970s; that they wish to place a new home in almost the same footprint but would like to add a front porch which will require the requested variances; that the property is unique because the well is in the front of the home but will have to be moved to the rear and also an in-ground propane tank will have to be installed, therefore, the home cannot be set farther back on the property; that the property was previously improved with a septic system; that other houses in the neighborhood are closer to the front yard; that it cannot be developed with a front porch without the variance; that it will not alter the character of the neighborhood but will be an improvement by replacing the old dwelling; that it was not caused by the Applicant as they did not have control over the placement of the well and sewer; and that it is a minimum request to afford relief.

Ms. Zetusky testified that the current dwelling is already non-conforming and the new

dwelling will have the same footprint but the variances are necessary for the porch and steps; and that there are no complaints from neighbors.

Mr. Parker testified that the dwelling is non-conforming.

Mr. Orsini testified that the dwelling has been on the lot for 50 years and the current house consists of a dwelling and porch.

Mr. Parker testified that the new porch will be raised on a permanent foundation which is why the variance is requested for the steps; that the HVAC system will have to be put in the rear of the home; and that there are many homes in the neighborhood with similar setbacks.

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

Ms. Magee moved to approve Variance Application No. 12303 as the Applicant has met all the criteria for granting a variance and it will be an improvement to the neighborhood.

Motion by Ms. Magee, seconded by Mr. Callaway, and 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, Mr. Callaway – yea
Ms. Magee – yea, and Mr. Mills – yea.

OLD BUSINESS

Case No. 12291 – John & Colleen Girouard seek a variance from the front yard setback requirements for proposed structures. (Sections 115-34, 115-182 and 115-185 of the Sussex County Zoning Code). The property is located on the east side of Hassell Ave. Ext., approximately 346 ft. south of Hassell Ave. in the Bay View Park Subdivision. 911 Address: 34978 Hassell Ave., Ext., South Bethany. Zoning District: MR. Tax Parcel: 134-20.11-25.00

Mr. Whitehouse presented the Application which had been tabled at the Board's previous meeting on April 15, 2019.

Ms. Magee stated that the Applicants sought a variance of 18 feet; that the Applicants could obtain relief with a variance of 10 feet; and that the variance of 18 feet is not the minimum variance necessary to afford relief.

Mr. Magee moved to approve Variance Application No. 12291 for John and Colleen Girouard for a variance of 10 ft. from the front yard setback and noted that this approval is for less than the 18 ft. variance request by the Applicants. The motion to approve the 10 ft. variance is for the following

reasons:

1. The Property is unique in size, shape, and conditions. The lot is undersized, shallow, and a portion of the rear the lot is underwater.
2. The variance of 10 ft. is necessary to enable reasonable use of the Property. Since a portion of the rear yard is underwater, the house needs to be moved closer to the front yard in order to fit a reasonably sized home.
3. The exceptional practical difficulty has been created by the lot's unique conditions and not by the Applicants.
4. The variance of 10 ft. will not alter the essential character of the neighborhood. The variance of 10 ft. will significantly reduce the existing non-conformity on the property and was not objected to by neighbors who opposed the 18 ft. variance.
5. The variance of 10 ft. is the minimum variance necessary to afford relief. While it is clear that a variance from the front yard setback is necessary to enable the Applicants to construct a reasonably sized home, the Applicants must demonstrate that the variance is the minimum variance necessary for them to afford relief. The opposition has proved, in this case, that a lesser variance is appropriate. The Applicants admitted that they are still designing the home and it is clear from their proposal that they did not utilize the side yard setback of 5 ft. to maximize their building envelope. The opposition presented clear evidence that a reasonable sized home with the same square footage as the Applicant's home could fit within a building envelope with a 10 ft. variance rather than an 18 ft. variance. The 10 ft. variance is, thus, the minimum variance necessary to afford relief and is the least modification of the regulation at issue.

Motion by Ms. Magee, seconded by Mr. Workman, and carried unanimously that the **variance application be approved with modification.** Motion carried 5 – 0.

The vote by roll call; Mr. Williamson – yea, Ms. Magee – yea, Mr. Callaway – yea. Mr. Workman – yea, and Mr. Mills – yea,

Case No. 12294 – CleanBay Renewables, LLC seeks a variance from the maximum height requirement for a proposed structure (Sections 115-25 and 115-179 of the Sussex County Zoning Code). The property is located on the southwest corner of Dupont Blvd. (Rt. 113) and Breasure Rd. 911 Address: N/A. Zoning District: AR-1. Tax Parcel: 133-6.00-123.00 (portion of)

Mr. Whitehouse presented the Application which had been tabled at the Board's previous meeting on April 15, 2019.

The Board discussed the Application. Mr. Mills stated that he had no problems with the Application and Ms. Magee stated the variance was needed.

Mr. Callaway moved to approve Variance Application No. 12294 as the Applicant has met all the criteria for granting a variance.

Motion by Mr. Callaway, seconded by Mr. Workman, and 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, Mr. Callaway – yea Ms. Magee – yea, and Mr. Mills – yea.

Additional Business - None.

Meeting was adjourned at 9:07 p.m.