

MINUTES OF MAY 7, 2018

The regular meeting of the Sussex County Board of Adjustment was held on Monday, May 7, 2018, 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 Dale Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. Bruce Mears, Ms. Ellen Magee, Mr. John Mills, and Mr. Brent Workman. Also in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, Mr. Vince Robertson, Esquire – Assistant County Attorney, and staff members Ms. Janelle Cornwell – Director of Planning and Zoning, Mrs. Jennifer Walls – Planning Manager, and Ms. Christin Headley – Recording Secretary.

The Pledge of Allegiance was led by Mr. Callaway.

Mr. Sharp advised the Board of a request by David Hutt, attorney for the Applicants in Case No. 12132 to remove that case from the agenda and reschedule it for a later date as the Applicants are reworking their architectural plans.

Motion by Mr. Mills, seconded by Ms. Magee, and carried unanimously to remove Case No. 12132 from the agenda and approve the revised agenda as circulated. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Mears, and carried unanimously to approve the Minutes and Findings of Facts for March 5, 2018. 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.

OLD BUSINESS

Case No. 12118 – Donald & Margaret Dzedzy seek variances from the front and side yard setbacks (Sections 115-25 of the Sussex County Zoning Code). The property is located on the north side of Seagrass Ct., approximately 641 ft. west of Seagrass Plantation Ln. 911 Address: 29766 Seagrass Ct., Dagsboro. Zoning District: AR-1. Tax Map: 134-7.00-101.00

Mrs. Walls presented the case which has been tabled since April 9, 2018 and stated that the Applicants are requesting a variance of 2.0 feet from the five (5) feet side yard setback requirement on the east side, a variance of 2.0 feet from the five (5) feet side yard setback requirement on the west side, and a variance of 10.0 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling.

Mr. Sharp reminded the Board that there was opposition to the Application.

Ms. Magee stated that the dwelling can be built without a variance.

Mr. Mills stated that he believes that a variance is needed.

Mr. Mears stated that he would support a variance on one side of the Property but not the other side.

Ms. Magee stated that the neighbor respects the side yard setback requirements.

Mr. Sharp reminded the Board that a front yard variance was also requested.

Mr. Mears stated that there are different types of homes in the neighborhood.

Mr. Mills stated that a variance was previously granted on a neighboring lot.

Mr. Sharp stated that the Applicant owns Lot 97; that the opposition owns Lot 102; that a variance application was approved for the Property in 2016 and that approval was extended; that the previously approved application was for a lesser variance than is proposed in this application; that the Applicant proposes to place the home closer to the front yard than the rear yard; and that the Zoning Code recently changed with regard to the size of the side yard setback requirements for the Property.

Ms. Magee stated that she thinks the Applicants should have to stay within the setbacks.

Mr. Mears stated that he would support a variance on the west side of the Property.

Mr. Workman stated that he agrees with Mr. Mears.

Mr. Mears moved to approve Variance Application No. 12118 for the requested variances on the west side and front yard only based on the record made at the public hearing and for the following reasons:

1. The exceptional practical difficulty was not created by the Applicants;
2. The variances will not alter the essential character of the neighborhood; and
3. The variances requested are the minimum variances necessary to afford relief.

As part of his motion, Mr. Mears denied the variance request for the variance on the east side for the following reasons:

1. The variance is not necessary to afford relief.
2. There was opposition to the variance and the opposition lived to the east of the Property.

Motion by Mr. Mears, seconded by Ms. Magee, and carried that the **west side and front yard variances be granted for the reasons stated and that the east side variance be denied for the reasons stated.** Motion carried 4 – 1.

The vote by roll call; Mr. Workman – yea, Mr. Mears – yea, Ms. Magee – yea, Mr. Mills –

nay, and Mr. Callaway – yea.

Case No. 12113 – Allen Harim Foods LLC seeks a special use exception for a potentially hazardous use (facility for further processing; deboning, packaging, and shipping of poultry products) (Sections 115-111 and 115-210 of the Sussex County Zoning Code). The property is located on the northwest corner of Pinnacle Way and Iron Branch Rd. (Rt. 331). 911 Address: 29984 Pinnacle Way, Millsboro. Zoning District: HI-1. Tax Map: 233-5.00-14.00, 233-5.00-15.00, & 233-5.00-16.00

Mrs. Walls presented the case which has been tabled since March 19, 2018 and stated that the Applicant is requesting a special use exception for a potentially hazardous use of a facility for further processing, deboning, packaging, and shipping of poultry products.

Mr. Sharp stated that Ms. Magee recused herself from the public hearing and exited the Chambers.

The Board discussed the case.

Mr. Mills stated that the Property is zoned Heavy Industrial; and that the Board previously approved a more intensive use of the Property.

Mr. Mears stated that he agrees with Mr. Mills; that the state agencies have been involved with the site and have monitored the site; and that he supports the Application.

Mr. Workman stated that he believes that there will be less noise, dust, odor, and traffic; that he has a concern about the wastewater; that he wants to see the spray irrigation system operational when the plant opens; and that he does not support the hauling away of wastewater from the site.

Mr. Mills stated that he agrees with Mr. Workman regarding the wastewater; that the Board should rely on DNREC regarding environmental issues; and that he shares the concerns about the hauling of wastewater.

Mr. Workman stated that the hauling of wastewater would create more traffic.

Mr. Mears questioned whether the Applicant would need to haul the wastewater in the winter.

Mr. Mills stated that wastewater treatment is regulated by state agencies; that the question before the Board is whether the proposed use will be a substantial adverse effect on neighboring and adjacent properties; and that the proposed use is a lesser use than earlier uses of the Property.

Mr. Workman stated that DNREC is in charge of regulating much of the proposed use.

Mr. Mills recited the standard of review for the Application.

Mr. Mills moved to approve Special Use Exception Application Number 12113 for the requested special use exception based on the record made at the public hearing and for the following reasons:

- The proposed use is for a poultry processing facility in a heavy industrial area.
- The facility will be used only for deboning and packing poultry. There will be no slaughtering of poultry or rendering on site.
- The facility will only use approximately 50,000 square feet or roughly 11% of the existing building on site.
- The Applicant has demonstrated that it will implement and / or follow necessary safeguards to protect the public health, safety, morals, and general welfare.
- Fire:
 - The existing building will be protected throughout by a state-of-the-art fire detection and suppression sprinkler system which will be maintained to meet current standards
 - Opposition expressed concerns about the potential for fire in the facility and provided articles regarding fires at other facilities. These concerns appeared speculative in nature. One report was from 1991 and focused on a lack of enforcement of existing codes. With regard to the facility, the Delaware State Fire Marshal has jurisdiction over the Fire Prevention Regulations and shall ensure compliance. The other cases cited by the opposition appeared to be isolated incidents and the Board was not convinced that the proposed facility will lead to a substantial increase in the risk of fire which would rise to the level of creating a substantial adverse impact on neighboring and adjacent properties.
- Explosion:
 - The Applicant presented evidence that the proposed deboning operations do not present any normal explosion hazards or risks. Much like the concerns about fire, concerns raised to the contrary by the opposition appeared speculative.
- Noise, vibration and dust
 - There is no significant noise, vibration, or dust from a deboning operation and the deboning and packing process will take place within a building.
 - Poultry will be slaughtered at a different facility so there will be no feathers, renderings, or offal brought to or from the site. Bones removed as part of the deboning process will be packed in the facility and shipped out.
 - There may be noise, dust, and vibration from trucks going to and from the facility but will be limited since there will only be approximately 16 trucks per day. Notably, the facility will consist of well under half as many employees as when the site was used as a pickle plant.

- The Property is a large site and has a buffer of trees and ponds which also buffer noise, vibration, and dust from the facility.
- The Board was not convinced that the noise, dust, and vibration would rise to the level of a substantial adverse affect on neighboring and adjacent properties.
- Odor:
 - The deboning process produces minimal waste and any waste generated will be removed daily.
 - The natural odors associated with the wetlands and marshlands that surround the property will likely be more distinguishable than any possible odor from the facility.
 - There was no evidence that the facility or the spray irrigation system would produce appreciable odors to the area. Concerns raised by the opposition were speculative. It should be noted that concerns raised by the opposition about the Harbeson Plant were not relevant since the Harbeson Plant has a much more intensive use than what is proposed here.
- Emissions:
 - A deboning facility typically produces no airborne pollutants but the Applicant will be required to maintain air quality permits with DNREC.
 - To the extent air quality is a concern, the Applicant will employ hygienic design guidelines and sustainability guidelines. Applicant will also deploy a technologically advanced automated processing solution to allow advancements in automation and efficiency to be realized. All DNREC regulations must be followed and complied with.
- Wastewater:
 - The Applicant will employ guidelines to minimize the process of wastewater.
 - All wastewater will be treated in accordance with all regulations and all discharged effluent will be maintained in compliance with DNREC regulations.
 - Previously, the Applicant proposed to spread as much as 1.2 million gallons of wastewater per day and to discharge the wastewater into a nearby stream. The pickle plant discharged 600,000 gallons of wastewater per day into the stream and another 280,000 gallons per day through spray irrigation. The Applicant proposes a significant reduction in wastewater discharge as only 40,000 gallons of treated wastewater per day will be discharged through spray irrigation. Under the current proposal, there will be no discharge into the stream.
 - All wastewater will be treated according to a new DNREC permit.
 - The spray irrigation system will be upgraded with new technology.
 - The Applicant will provide a nutrient management plan to provide for the absorption of nitrates from the spray irrigation system.
 - The opposition presented concerns about the wastewater discharge but these concerns were speculative; especially given the heavy industrial uses in the area and the history of the neighborhood. The Board was not convinced that the proposed facility – which will be required to operate under DNREC guidelines – would somehow substantially affect adversely those properties. The site is already

heavily tested and monitored and that testing will continue. If the spray irrigation or handling of the wastewater violates DNREC regulations, DNREC has the authority to enforce those regulations – not the Board.

- Traffic:
 - The Applicant testified that the facility will lead to improvements along Iron Branch Road.
 - The facility will produce traffic from 165 employees and approximately 16 trucks per day but such traffic is significantly less than the Applicant’s original proposal and the pickle plant’s traffic.
 - Opposition to the Application did not present evidence from a traffic engineer as to any negative impact the application would have on traffic in the neighborhood.
 - DelDOT will ultimately have jurisdiction over the traffic impact of the plant.

- The Neighborhood:
 - The site was previously used for as a cucumber pickling plant
 - There are other industrial facilities in the neighborhood including a concrete plant, an animal vaccine facility, a power plant, a wastewater treatment facility, and a propane business.
 - The evidence is clear that numerous residential homes and developments were constructed after the existence of the pickle plant; though some homes pre-dated the previous pickle plant.
 - The evidence shows that this area is a heavily industrialized area and has been that way for many years.
 - Opposition cited a report from 2012 from an appraiser who reviewed studies in different parts of the country. Notably, the report came with the disclosure that the author’s opinions “do not constitute an appraisal” and that the “letter does not constitute an appraisal report.” The letter clearly did not focus on the area at hand and referenced impacts of much larger animal operations such as pig farms and poultry rendering plants. The Board was not convinced that this report was applicable to the Applicant’s property and the proposed deboning use. The report’s qualifier also greatly limits its value to the Board.
 - Opposition noted that some neighbors lost sales of their homes due to the previously approved poultry plant. These comments were extremely vague and provided little insight as to the alleged circumstances of those properties and transactions; especially since the opposition often focused comments on an entirely different and more intensive poultry plant in Harbeson. The Board found these comments to, thus, have limited probative value. Even if neighbors have experienced a decline in property values, the Applicant’s proposed deboning facility is a significant reduction in the use of the Property as compared to the prior application approved by the Board and there was no evidence provided into the record as to the effect of the proposed deboning facility on the values of neighboring and adjacent properties.

- The Board solicited comments on the Application from the Delaware Department of Natural Resources and Environmental Control, the Delaware Department of

Transportation, the Delaware Office of the Fire Marshal, the Chief Building Code Inspector for Sussex County, and the Sussex Conservation District. These agencies were created for the promotion of public health and safety.

- The Board received the following comments:
 - State Fire Marshal has no objection to the request and noted that “all renovations shall obtain proper permits prior to construction.”
 - DelDOT indicated that a traffic impact study is under review and may result in the realignment of Iron Branch Road. DelDOT also referenced other requirements the Applicant must meet in order to receive DelDOT approval. DelDOT’s comments contained no objection to the Application.
 - DNREC Groundwater Discharge Section confirmed that the Applicant is working with DNREC for spray irrigation permitting and wastewater transport permits. Public hearings are scheduled on the transport permits. DNREC indicated that the Applicant will need to receive these permits before proceeding with the proposed deboning facility.
 - DNREC Waste and Hazardous Substances commented that a Certificate of Completion of Remedy (COCR) was issued in 2014 for reuse and that an environmental covenant was recorded in 2016. The Applicant must continue following the approved Long Term Monitoring and Contaminated Materials Management Plan.
 - DNREC Site Investigation and Restoration Section commented that the Applicant continues to be in compliance with Final Plan of Remediation and the COCR. DNREC will continue to monitor the situation and will enforce violations of the COCR or other DNREC regulations.
- The Board has consulted with DNREC, which has jurisdiction over the air and water pollution emanating from the site and over the systems and permits the Applicant intends to use, and no objection from DNREC has been noted in the record.
- Applicant has noted to the Board that, in order to operate its facility, Applicant will need to obtain the following permits and approvals from DelDOT, DNREC, Sussex County Building Inspector, and the State Fire Marshal. Those agencies were created for the promotion of public health and safety. DNREC, through its rules and regulations, will have jurisdiction to protect the county and its waterways from the harmful effects of air and water pollution of any type. DNREC’s extensive involvement in the permitting process indicates that it will make sure that the public health, safety, morals and general welfare will be properly protected and that necessary safeguards will be provided for the protection of water areas or surrounding property and persons.
- The opposition expressed frustrations with DNREC but DNREC is the appropriate agency to enforce environmental regulations. It is possible that public hearings will be necessary as part of the DNREC permitting process which should give the opposition a chance to express concerns.
- Based on the record, the Applicant has demonstrated that the proposed use set forth in the application will not substantially affect adversely the uses of neighboring and adjacent properties. Furthermore, the Applicant has demonstrated that the public health, safety,

morals, and general welfare will be properly protected and that necessary safeguards will be provided for the protection of water areas or surrounding property and persons.

- This approval is subject to the following conditions:
 - This approval is limited to a poultry deboning and packing facility of a size and scope proposed by the Applicant.
 - The spray irrigation system updated with new technology must be up and running prior to operation.

Motion by Mr. Mills, seconded by Mr. Mears, and carried unanimously that the **special use exception with conditions be granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Mears – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Ms. Magee returned to the Chambers.

Mr. Sharp left and Mr. Robertson served as counsel for the Board.

PUBLIC HEARINGS

Case No. 12131 – Donald May Sr. & Susan May seek a variance from the front yard setback for an existing structure (Section 115-42 of the Sussex County Zoning Code). The property is located at the southwest side of 3rd St., approximately 200 feet west of Midway Dr. 911 Address: 503 3rd St., Rehoboth Beach. Zoning District: GR. Tax Map: 334-13.00-70.04

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. The Applicants seek a variance of 8.5 feet from the thirty (30) feet front yard setback requirement for an existing dwelling.

Marcin Szwajnoch and Agata Piccoli were sworn in to testify about the Application.

Mr. Szwajnoch testified that they are the new owners of the home; that the issue came out on the survey when they were purchasing the house; that the difficulty was not created by them; that the difficulty has existed for the past 30 years; that the previous owners bought it the way it is; that the previous owners are the ones who applied for the variance; that the property is unique in that is already developed; that the variance is necessary to enable reasonable use of the property; that all houses in the neighborhood look exactly the same; that the dwelling does not stand out; that the variance will not impact other properties; that the non-complying shed has been moved; and that the previous owners owned the property since 1989.

Mrs. Walls stated that the previous owners purchased the lot and trailer in 1989; that within 2 months a trailer fire occurred and they replaced the same size trailer in the same position due to the septic placement; that after public sewer was available, the previous owners built an addition;

that the builder stated it was okay to occupy; and that the builder never obtained a permit to occupy the addition.

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

Mr. Mears moved to approve Variance Application No. 12131 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to its size and the original design of the house;
2. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
3. The exceptional practical difficulty has not been created by the Applicants;
4. The variance will not alter the essential character of the neighborhood; and
5. The requested variance is the minimum variance necessary to afford relief.

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

Case No. 12133 – Sun Homes seeks a variance from the separation distance between units for a proposed structure (Section 115-172 of the Sussex County Zoning Code). The property is located on the north side of Center Ave., approximately 209 feet northeast of Tanglewood Ave. 911 Address: 19986 Center Ave., Rehoboth Beach. Zoning District: AR-1. Tax Map: 334-13.00-310.00-3080

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. The Applicant seeks a variance of 3.4 feet from the twenty (20) feet separation requirement from existing structures on Lot #86 for a proposed manufactured home on Lot #88.

Rich Shipley was sworn in to testify about the Application.

Mr. Shipley testified that the previous home was removed; that the original home was a 1967 manufactured home; that there are no longer 12 feet wide manufactured homes available; that a 14 feet wide manufactured home is the smallest available; that Sun Homes does not do additions; that the buyer is made aware of the standards needed to be met through the county; that there are stairs on the front and rear of the manufactured home; that the stairs have a 2 feet wide landing with three steps down; that a 3.5 feet variance is needed for the steps; and that a 4 feet variance is needed for the HVAC.

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

Mr. Mears moved to approve Variance Application No. 12133 for the requested variances, as amended, based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to its size and it being in a manufactured home park;
2. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
3. The exceptional practical difficulty has not been created by the Applicant because a twelve (12) feet wide manufactured home is no longer made, only a fourteen (14) wide;
4. The variances will not alter the essential character of the neighborhood;
5. The improvements will enhance the character of the neighborhood; and
6. The requested variances are the minimum variance necessary to afford relief.

Motion by Mr. Mears, seconded by Mr. Mills, and carried unanimously to add a variance of 4.0 feet for proposed steps, a variance of 4.0 feet for the proposed HVAC to the request, and that the **variances be granted for the reasons stated**. Motion carried 5 – 0.

Mr. Workman – yea, Mr. Mears – yea, Ms. Magee – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 12134 –Sun Homes seeks a variance from the separation distance between units for a proposed structure (Section 115-172 of the Sussex County Zoning Code). The property is located on the south side of Delaware Ave., approximately 164 feet southwest of Skyview St. 911 Address: 20021 Delaware Ave., Rehoboth Beach. Zoning District: AR-1. Tax Map: 334-13.00-310.00-3425

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. The Applicant seeks a variance of 4.9 feet from the twenty (20) feet separation requirement from the existing manufactured home on Lot #47 for a proposed manufactured home on Lot #45.

Rich Shipley was sworn in to testify about the Application.

Mr. Shipley testified that the previous home was a 1966 manufactured home; that the previous home has been removed; that the previous home could not be saved; that a 12 feet wide manufactured home is no longer available; that the proposed home is 14 feet wide; that the proposed manufactured home is shorter than the previously proposed manufactured home in case number 12133; that the plan is to improve the community; that the proposed home has not been placed; that there is a movable vinyl storage in the rear; that it is a removable container and will be moved; that an 8.9 feet variance is needed for the stairs; and that a 4.0' feet variance is needed for the HVAC

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

Mr. Mills moved to approve Variance Application No. 12134 for the requested variances

based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to its size and it being in a manufactured home park;
2. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
3. The exceptional practical difficulty has not been created by the Applicant because a twelve (12) feet wide manufactured home is no longer made, only a fourteen (14) wide;
4. The variances will not alter the essential character of the neighborhood;
5. The improvements will enhance the character of the neighborhood; and
6. The requested variances are the minimum variances necessary to afford relief.

Motion by Mr. Mills seconded by Mr. Mears, and carried unanimously to add a variance of 8.9 feet for proposed steps and a variance of 4.0 feet for the proposed HVAC to the proposed request, and that the **variances be granted for the reasons stated**. Motion carried 5 – 0.

Mr. Workman – yea, Mr. Mears – yea, Ms. Magee – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 12135 – David Popovich seeks a variance from the side yard setback for an existing structure (Sections 115-25 and 115-185 of the Sussex County Zoning Code). The property is located on the south side of Gainsborough Dr., approximately 750 feet southeast of Dartmouth Dr. in the Rolling Meadows Subdivision. 911 Address: 37 Gainsborough Dr., Lewes. Zoning District: AR-1. Tax Map: 334-6.00-855.00

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. The Applicant seeks a variance of 3.9 feet from the fifteen (15) feet side yard setback requirement on the northwest side for an existing garage.

David Popovich and Cynthia Popovich were sworn in to testify about the Application and submitted a letter of support from their neighbor into the record.

Mr. Popovich testified that the existing building replaced an older shed; that he contracted a builder to build the building; that the shed is too close to the neighbor; that he had the property surveyed; that the Builder contracted was LT Builders; and that the building is larger than 600 square feet.

Mr. Mills stated that the applicant relied on the Builder to act in their interest.

Mr. Popovich testified that the building was built in September 2016; that, in October of 2017, they received a violation; that a survey was done due to the violation; that the property is a unique shape; that the building has concrete floors and electric; that the contractor set the stakes

for the building; that it matches their home and enhances their property's appearance; that other properties have pole buildings; and that it is the minimum variance to afford relief.

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

Mr. Mears moved to approve Variance Application No. 12135 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Applicant addressed all the criteria for granting a variance;
2. The Property is unique due to the building already existing;
3. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
4. The exceptional practical difficulty has not been created by the Applicants but by the builder;
5. The variance will not alter the essential character of the neighborhood; and
6. The requested variance is the minimum variance necessary to afford relief.

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

Mr. Workman – yea, Mr. Mears – yea, Ms. Magee – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 12136 – Pat Nickols seeks a variance from the maximum fence height (Section 115-185 of the Sussex County Zoning Code). The property is located on the south side of Reynold's Pond Rd. (Rd. 231), approximately 450 feet east of Cedar Creek Rd. (Rd. 212). 911 Address: 24294 Reynold's Pond Rd., Milton. Zoning District: GR. Tax Map: 235-7.00-10.01

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. The Applicant seeks a variance of 1.0 feet from the 3.5 feet maximum fence height requirement for a proposed fence. The property is considered a through lot.

Pat Nickols was sworn in to testify about the Application.

Ms. Nickols testified that she is requesting a variance from the 3.5 feet fence height requirement along the road; that the variance requested is along Cedar Creek Road; that the higher fence will keep her dog contained in the yard; that Cedar Creek Road is a back road; that the property is long and the building envelope is within the forty (40) feet setback requirement; that there is not enough room to build on the property; that there is no access from Cedar Creek Road; that the fence will match the neighbors fence with height and type; that it is a unique shaped lot; that placing her house was a challenge; that the lot is an elongated triangle; that the forty (40) feet set back takes up majority of the property; that there is a tree line on one side; that the property was sold to her as is; that the fence will not alter the essential character of the neighborhood; that

it will not obstruct neighbors or driver views; that it is the minimum variance to afford relief; and that it will match the neighbor's fence and contain her dog.

Mr. Mears stated that you can see through a 3-rail fence.

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

Mr. Mears moved to approve Variance Application No. 12136 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to its shape;
2. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
3. The property has two front yards;
4. The exceptional practical difficulty has not been created by the Applicant;
5. The variance will not alter the essential character of the neighborhood; and
6. The requested variance is the minimum variance necessary to afford relief.

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

Mr. Workman – yea, Mr. Mears – yea, Ms. Magee – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 12137 – Minos Market LLC seeks a variance from the front yard setback for an existing structure and a special use exception for a garage/studio apartment (Sections 115-23, 115-25, 115-182, and 115-210 of the Sussex County Zoning Code). The property is located on the southeast side of Minos Conway Rd. (Rd. 265), approximately 340 feet southwest of Point Rd. 911 Address: 17127 Minos Conway Rd., Lewes. Zoning District: AR-1. Tax Map: 334-5.00-69.00

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. The Applicant seeks a variance of 9.0 feet from the forty (40) feet front yard setback requirement for an existing deck and a special use exception for a garage/studio apartment.

Wayne Warren was sworn in to testify about the Application.

Mr. Warren testified that he purchased the property in May 2017; that a survey was done at closing; that he purchased the property the way it is; that he has only owned the property for a year; that he is requesting a special use exception for a garage studio apartment; that the existing dwelling is less than 800 square feet; that the existing dwelling is 780 square feet; that the property has an existing smaller house that was built in the 1950s; that he intends to build living space in a proposed pole building for his daughter; that the existing dwelling has issues with heating; that the

proposed pole building will have the main living space; that the existing house will be the garage studio apartment; that the garage is currently on the property but just a shell; that he is asking for permission, not forgiveness; that the property is on County sewer; that the property has a private well; that the property is a unique in shape; and that the house and the garage are already existing.

Raymond Rammermon Sr. was sworn in to testify in support of the Application. Mr. Rammermon testified that he would like to see the pole building there and that it does not bother him.

Raymond Rammermon Jr. was sworn in to testify in support of the Application. Mr. Rammermon testified that he shares a driveway with the property and that he believes the new pole building looks nice.

Jackie Warren was sworn in and testified in support of the Application. Ms. Warren testified that she will be residing in the pole building and would like to have a place that she can live in year-round, not just when it is warm.

Uwe Shulz, Frank Wilk, and Allan Levin were sworn in to testify in opposition to the Application. Mr. Shulz, Mr. Wilk, and Mr. Levin testified that they have no objection to the front yard setback, that the pole barn affects the values of their homes; that they were told he was just building a garage; that the pole building is on top of their property; that the Applicant could have placed the pole building further away from their homes; and that they are only objecting to the placement of the pole building.

The Board found that four (4) parties appeared in support of the Application.

The Board found that three (3) parties appeared in opposition to the Application.

Mr. Mills moved to approve Special Use Exception Application No. 12137 for the requested special use exception for a garage / studio apartment based on the record made at the public hearing and because the uses will not substantially adversely affect the uses of the neighboring and adjacent properties. Mr. Mills also moved to approve Variance Application No. 12137 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to the existing dwelling being in the 1950s;
2. The requested variance is necessary to enable reasonable use of the property;
3. The exceptional practical difficulty has not been created by the Applicant;
4. The variance will not alter the essential character of the neighborhood; and
5. The requested variance is the minimum variance necessary to afford relief.

Motion by Mr. Mears, seconded by Mr. Workman, and carried unanimously that the **special use exception and variance be granted for the reasons stated**. Motion carried 5 – 0.

Mr. Workman – yea, Mr. Mears – yea, Ms. Magee – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 12138 – April Black & Cydnee Martin seek a special use exception to operate a tourist home (also referred to as a bed and breakfast inn) (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located on the east side of Gravel Hill Rd. (Rt. 30), approximately 988 feet south of Bennum Switch Rd. (Rd. 294). 911 Address: 20221 Gravel Hill Rd., Georgetown. Zoning District: AR-1. Tax Map: 135-16.00-65.00

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. The Applicants seek a special use exception to operate a Bed and Breakfast Inn, also known as a Tourist Home.

April Black and Cydnee Martin were sworn in to testify about the Application.

Ms. Black testified that they purchased the property in December; that they are requesting a tourist home for seasonal rental; that they have done many improvements to the home; and that they intend on attracting families.

Ms. Martin testified that the home is unique in that it is an A-frame; that they are investing in improvements to the property and the existing home; that they currently live in Jersey City; that they are looking for a home with lots of space; that they plan to retire in Sussex County; that they have approached their neighbors with no contact back; that the dwelling has 2 bedrooms; that they intend on having one family rent at a time; and that the entire home would be rented through a rental agency.

Ms. Magee questioned whether a special use exception was even needed for this use.

Ms. Cornwell stated that a special use exception for a bed and breakfast inn would be needed someone was living in the home and rooms in the home were being rented.

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

Mr. Mears moved to deny Special Use Exception Application No. 12138 for the requested special use based on the record made at the public hearing and because the special use exception is not needed for the Applicants' intended purpose and that the filing fee be refunded to the Applicants.

Motion by Mr. Mears, seconded by Ms. Magee, and carried unanimously that **the special use exception be denied for the reasons stated and that the Applicants be refunded their filing fees.** Motion carried 5 – 0.

Mr. Workman – yea, Mr. Mears – yea, Ms. Magee – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Meeting was adjourned at 9:45 p.m.