

MINUTES OF NOVEMBER 2, 2020

The regular meeting of the Sussex County Board of Adjustment was held on Monday, November 2, 2020, at 6:00 p.m. in the County Council Chamber, Sussex County Administration Office Building, Georgetown, Delaware.

The meeting was called to order at 6:15 p.m. with Chair Ellen Magee presiding. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, Mr. Vince Robertson – Assistant County Attorney and staff members Mr. Jamie Whitehouse – Director of Planning and Zoning, Ms. Nick Torrance – Planner I, and Mr. Ann Lepore – Recording Secretary.

The Pledge of Allegiance was led by Ms. Magee.

Mr. Sharp stated that there was an issue with the technology and apologized for the late start of the meeting; that the meeting is live on the internet but citizens may not be able to call in at this time; that the IT Director is on the way to correct the issue; that the public hearings will proceed; that the record will remain open for public comment; and that, should the IT Director be able to get the phone lines working to allow for public comments, the hearings will be closed tonight.

Motion by Mr. Chorman, seconded by Mr. Williams, and carried unanimously to approve the agenda with the revision that Case No. 12487 be moved to the end of the public hearings. Motion carried 5 – 0.

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

Chair Magee read the mask policy.

Motion by Mr. Williamson, seconded by Dr. Carson, and carried unanimously to approve the Minutes for the September 14, 2020, meeting. Motion carried 5 – 0.

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

Motion by Dr. Carson, seconded by Mr. Chorman, and carried to approve the Findings of Facts for the September 14, 2020, meeting. Motion carried 5 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Williamson – yea, Dr. Carson – yea, Ms. Magee – 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 case.

OLD BUSINESS

There was no old business.

PUBLIC HEARINGS

Case No. 12488 – Sandhill Real Estate Investments, LLC seeks variances from the front yard setback requirements for proposed structures (Sections 115-25 and 115-182 of the Sussex County Zoning Code). These properties are the Estates of Sandhill Valley which is located at the intersection of Huff Road and Vines Avenue. 911 Address: The Estates of Sandhill Valley (Lots 7-83, 93-177, 190-243, 254-301, 309-350, and 360-393). Zoning District: AR-1. Tax Parcels: District - 135, Map - 10.00, Parcels - 212.00-288.00, 298.00-382.00, 395.00-448.00, 459.00-506.00, 514.00-555.00, and 565.00-598.00

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 blanket variance of 5 ft. from the required 25 ft. front yard setback requirement for 240 lots. The Applicant has noted that the side yard setback is proposed to increase from 10 ft. to 12.5 ft.

Mr. Sharp noted that the IT Director had not yet arrived and therefore the hearing will be held open to allow for public comment. Mr. Sharp then recused himself and left Chambers. Mr. Robertson then served as the Board's attorney for this application.

The Board found that Mr. Tim Willard, Esq. was present on behalf of the Applicant NVR, Inc.; and that also present are Tony Sposato, Todd Hickman, Zac Crouch, Ted Roberti and Pete Melinek.

Mr. Willard stated that this is a blanket variance for the listed lots; that this property was developed in the early 2000 boom; that the lots are unusual as they are almost square being 100 ft. in depth and 95 ft. width; that in 2008 this project was stalled because of the drop in the housing market; that the Applicant had a specific design that was intended for these lots; that Ryan Homes have purchased the property; that the designs that Ryan has will not fit on the lots without a variance; that the market has changed and the current trend is to allow for more outdoor living space; and that the Applicant is offering additional footage to the side yard setback to offset the request for the variance in the front yard setback.

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

Mr. Sposato testified that the property has been in his family for over 40 years and that the limited liability company was set up in 2011.

Mr. Zac Crouch was sworn in to give testimony about the Application.

Mr. Crouch testified that the exhibit shows the two house designs including screened porch would extend over the rear property line; that with the 5 ft. variance it would fit within the rear setback line; that the Applicant is offering an additional 2.5 ft. on each side; that in a residential planned community (RPC) the setback would be 20 ft.; that in a cluster subdivision as this is the front yard is 25 ft.; that the pervious area and driveway will not be affected; that the buildable area will remain the same because of the additional setbacks on each side; that the variance will allow for additional drainage area between the dwellings; and that there are some homes already developed in the subdivision by DH Horton.

Mr. Willard stated that the property is unique as it was designed for a special product when originally designed; that the lots are wide but the depths are shallow; that the Applicant is taking over the project but their product does not fit on the wide lots so the reduction in the front yard setback will allow them to offer more products; that the width of these lots is unique for cluster development and inhibit outdoor living space; that the product offered by the Applicant is between 65 – 68 ft. deep; that the current buildable dept is 65 ft. maximum; that reducing the front yard setback allow them to offer different products; that the Applicant was not involved in the original layout which was based on a different product; that without this variance it will limit the product and selections that the Applicant can offer; that this will not alter any part of the subdivision since this request just deals with buildable area; that all parking, lot-lines, roads, utilities, etc. will remain as the original design; that the reduction of 5 ft. from 25 ft. to 20 ft. within the front yard setback will allow the builder to offer more products and selections to eliminate the similarity of product and help provide more options for the customer and the adjustment is minimum.

Mr. Todd Hickman was sworn in to give testimony about the Application.

Mr. Hickman affirmed statements made by Mr. Willard as true and correct. Mr. Hickman testified that outdoor living is in demand; that the request is to allow for screened porches to be added to each dwelling; and that the new dwellings will be like the existing dwellings in the subdivision.

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

Ms. Magee left the record open for members of the public to call in when the phone lines open.

Mr. Robertson advised viewers with an interest in this case to continue to watch the proceedings until this case is revisited later during the hearing.

Following the conclusion of Case No. 12489, Mr. Robertson stated that Case No. 12488 remained open to allow for public comment by teleconference. Ms. Magee called for public comment by teleconference.

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

Following the conclusion of Case No. 12488 Ms. Magee closed the public hearing.

Mr. Chorman moved to approve Case No. 12488 for the variances as the density will remain the same and it will not alter the essential character of the neighborhood, and that they are the minimum variances to afford relief; and that the side yard setbacks be increased to 12.5 ft.

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

Mr. Sharp returned to Council Chambers.

Case No. 12489 – Rehoboth Inn JK, LLC seeks variances from the front yard and rear yard setback requirements for existing and proposed structures (Sections 115-82, 115-182 and 115-183 of the Sussex County Zoning Code). The property is located on the southwest side of Coastal Highway (Rt. 1) approximately 153 ft. southeast of Washington Street. 911 Address: 20494 Coastal Highway, Rehoboth Beach. Zoning District: C-1. Tax Parcel: 334-19.08-176.00

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 four mail returns. The Applicant is requesting the following variances:

- Building A Steps and Landing – 32.15 ft. from the 60 ft. front yard setback
- Building A Steps and Landing – 37.73 ft. from the 60 ft. front yard setback
- Building A – 33.36 ft. from the 60 ft. front yard setback
- Building A – 34.02 ft. from the 60 ft. front yard setback
- Building B – 28.23 ft. from the 60 ft. front yard setback
- Building B – 31.06 ft. from the 60 ft. front yard setback
- Building C – 11.53 ft. from the 30 ft. rear yard setback
- Building C – 10.48 ft. from the 30 ft. rear yard setback
- Building C – 9.57 ft. from the 30 ft. rear yard setback

Mr. Sharp noted that the IT Director had not yet arrived and therefore the hearing will be held open to allow for public comment.

The Board found that Mr. Zac Crouch was present on behalf of the Applicant, Rehoboth Inn JK,

LLC, and that also present is Mr. Greg Tobias.

Mr. Greg Tobias was sworn in to give testimony about the Application. Mr. Crouch was previously sworn in.

Mr. Crouch testified that the property was developed with three buildings in the 1970s; that the Property is used as the Rehoboth Inn; that the Application is for variances for existing and proposed buildings; that Building A is being renovated; that Building B has to be removed and replaced with a new building; that Building B is not structurally sound; that Building C will be renovated with an addition measuring 20 feet by 20 feet; that the addition to Building C will be no closer to the rear property line than the existing building; that other buildings on nearby properties are closer to Route 1; that the Building B is not fit for renovation; that the property cannot otherwise be developed based on Fire Marshall and ADA requirements; that the setbacks for Buildings A and B will not be greater than what exists today and the setbacks for Building C will be slightly more than what is existing today; that Building B does not meet Fire Marshal or ADA requirements; that the requested variances will not alter the essential character of the neighborhood as the majority of buildings in the vicinity of this property encroach into the front yards setbacks; that the total number of units will be reduced from 31 to 21 to meet today's standards; that the units will be larger; that there is a right-of-way for DelDOT and that the entrance has to be widened to meet DelDOT requirements; that the variances are the minimum variances to afford relief; that the property is unique as the existing buildings onsite in addition to the adjacent lots do not meet the current setbacks; that there has been a motel on this property since at least 1992; that the developer is reducing the number of units to comply with parking requirements; that the proposed encroachments are no greater than those that already exist and have existed for a number of years; and that the Applicant is enhancing the area.

Mr. Tobias testified that he purchased the property in April 2020; that there is an error on the purchase date listed on the application; that he is cleaning up the area; that the motel was built in the 1970s; that Building B is structurally unsafe and has to be demolished; that he is decreasing the number of units but increasing the size of each unit to meet today's standards; that the current rooms in Building B are small; and that there have been no complaints regarding the existing structures.

Mr. Crouch testified that the Property is narrow and the Applicant is constrained by Fire Marshal regulations; that granting the variances will not cause any visibility issues; that the purchase date listed on the Application was an error; that Building B cannot be moved to the rear of the property due to the location of the stormwater management pond; that there are 32 parking spaces proposed; that the Applicant had to reduce the number of units to meet parking requirements; and that the Applicant wanted to renovate Building B but determined that it could not be refurbished; that the Applicant encountered difficulty in designing due to structural problems with Building B and the Fire Marshal regulations.

Mr. Tobias testified that there were previously 32 parking spaces on the site; that he

encountered design challenges; that Building A has a basement and steel columns; that Building B was constructed on wood with crawl spaces and is the oldest building; that Building B has been empty for some time; and that there is a construction office located to the south of the site which was renovated 4 years ago.

Mr. Crouch testified that there is 25 feet from the travel lane of Route 1; that the buildings have to be improved with sprinklers per Fire Marshal regulations; that one employee will live on site; that there is a 15 ft. perimeter access per Fire Marshall's requirements; and that there is a green space requirement.

The Board took a five-minute recess to allow the IT Director to connect the telephone line for public comment.

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

Mr. Sharp stated that the teleconference is now operating so members of the public may call in on the public hearings this evening and the Board members will be able to vote on the cases being heard this evening.

Mr. David O'Berry was sworn in on teleconference to give testimony in support of the Application.

Mr. O'Berry testified that he lives in a single-family home to the rear of the subject property; that he likes that the Applicant is reducing the density; that the building is really run down and he is pleased that it is being improved; and that he is in favor of the variances being granted.

Mr. Sharp stated that the Board can vote for all the variances jointly or vote for each one individually.

Mr. Williamson moved to table Case No. 12489 until the meeting on November 16, 2020.

Motion by Mr. Williamson, seconded by Mr. Chorman, carried unanimously that the **application be tabled to the November 16, 2020, meeting.** Motion carried 5 – 0.

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

The Board took a five-minute recess

Mr. Sharp stated that a gentleman called during Case No. 12488 and that the teleconference portion of Case No. 12488 came after the vote on Case No. 12489; that the caller was calling in

reference to Case No. 12489 and that record had been closed and tabled; that those comments cannot be heard at this time; and that there was working IT ability at the time when public comments were being heard for Case No. 12489.

Case No. 12490– Tynetta Mullen seeks a special use exception to operate a day care center (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located on the north side of Cabbage Pond Road approximately 446 ft. east of Cedar Creek Road. 911 Address: 21613 Cabbage Pond Road, Lincoln. Zoning District: AR-1. Tax Parcel: 230-14.00-75.05

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 special use exception to operate a daycare center for more than six children.

Ms. Tynetta Mullen was sworn in to give testimony about the Application.

Ms. Mullen testified that she has operated a daycare center since 2013 and would like to increase the number of children served from six to nine; that her daycare is licensed; that she has discussed the application with her neighbors and one neighbor is present and supports the application; that the hours of operation are from 5:30 am – 5:30 pm and will not change as a result of this application; that there is an outdoor play area that is under construction with upgrades; that she has no other full-time employees but one part-time person who works as needed; and that there have been no complaints from neighbors.

Ms. Mullen submitted a letter of support to the Board.

Mr. Gregory Fuller, Sr. was sworn in to give testimony in support of the Application.

Mr. Fuller testified that he has known the Applicant for 19 years; that there was an excellent fenced play area that is being upgraded currently; that they are excellent neighbors and he supports this Application.

The Board found that one person appeared in support of and none in opposition to the Application.

Ms. Magee closed the public hearing.

Dr. Williamson moved to approve Case No. 12490 for the special use exception as the use will not substantially affect adversely the uses of neighboring or adjacent properties.

Motion by Mr. Williamson, seconded by Dr. Carson, 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, Ms. Magee – yea and Mr. Chorman - yea.

Case No. 12491 – Michael & Kathryn Stazzone seek variances from the side yard setback and rear yard setback requirements for existing structures (Sections 115-25, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located on the northeast side of Kings Drive within the Swanendael Subdivision. 911 Address: 2513 Kings Drive, Lewes. Zoning District: AR-1. Tax Parcel: 335-8.10-3.00

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received one letter in support of and no letters in opposition to the Application and zero mail returns. The Applicant is requesting a 7.2 ft. variance from the required 15 ft. side yard setback on the southeast side for an existing carport.

Kathryn and Michael Stazzone were sworn in to give testimony about the Application.

Mr. Stazzone testified that there was no garage or covered space for cars on the property when they purchased the lot; that, at the time of construction, the Applicants thought there was a 5 ft. setback and did not discover that the setback was 15 ft. until construction was completed; that the property is unique because there was no garage; that the carport was constructed in 2010; that a licensed contractor constructed the carport; that the property cannot otherwise be developed; that the exceptional practical difficulty was not created by the Applicants; that there is a septic system located in the rear of the lot; that there are mature trees on the property and there is a need to have a cover for a vehicle to protect it from damage from those trees; that they experienced a cracked windshield from debris at one point prior to the carport; that the carport has been in place for ten years and there have been no complaints from neighbors; that the neighborhood is close-knit; that it is a minimum variance to allow the carport to remain in its current location; that reducing the width of the structure would make it difficult to place a car in the carport; that a rear yard variance of 1.4 ft. from the required 5 ft. setback is requested for an existing shed; that the shed was on the property at the time of purchase and could not be moved without demolishing it; that it has been in its current location for over 30 years and will not alter the essential character of the neighborhood; that the shed cannot be moved; that there are other sheds in the neighborhood; that it is a minimum variance to allow the shed to remain in its current location; that the Applicants relied on their contractor, New Wave, LLC, to install the carport; that there was confusion as to the setback requirements; that they were close to the sale of their home and learned of the setback issues; that they received a letter after the carport was constructed; that he spoke with Lawrence Lank about the carport and there was confusion as to how to classify the matter; that the fee was waived at that time; and that he would be called if they needed a variance and never received a call.

Ms. Stazzone testified that the garage was converted into living space prior to their purchase of the property; that, when they purchased the property, there was no garage; that the carport was

constructed to protect vehicles from falling branches; and that they have cleared a number of trees but still have lots of limbs falling.

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

Ms. Magee closed the public hearing.

Dr. Carson moved to approve Case No. 12491 for the requested variances as they will not alter the essential character of the neighborhood and that they are the minimum variances to afford relief.

Motion by Dr. Carson, seconded by Mr. Williamson, 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, Ms. Magee – yea and Mr. Chorman - yea.

Case No. 12487 – John & Colleen Girouard seek an appeal of a determination by the Planning Director (Sections 115-208 and 115-209 of the Sussex County Zoning Code) and seek variances 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 case and stated that the Office of Planning and Zoning received no letters in support of and three letters in opposition to the variance request and one mail return. The Applicants are requesting a variance of 15 ft. from the required 30 ft. front yard setback for a proposed deck and stairs.

Mr. Sharp stated that this is a unique Application with four different parts to this case, that the first part is an appeal of the Director's decision made by Mr. Whitehouse; that Mr. Robertson is present on behalf of Mr. Whitehouse; that the second part is a variance application which is an alternative remedy presented by the Applicants of 15 ft. from the required 30 ft. front yard setback; that there was a 10 ft. variance granted in 2019; that the third part is that, if the Board were to consider the variance application today, then the Board would need to determine whether that there has been a substantial change in the conditions or circumstances surrounding the property or the plans before the Board; that the fourth item before the Board is under Additional Business and it is a request for a 12-month extension of the original approved variance of 10 ft. from the 30 ft. front yard setback requirement; that Mr. Fuqua is representing the Applicants and he has requested to proceed with the variance request first and, should that variance request be granted, the Appeal will be moot and be withdrawn by the Applicant; and that, if the Board were to deny or table the variance request, then the Applicant will proceed with the Appeal.

Mr. Robertson stated that Mr. Whitehouse has no objection to proceeding with the variance request first.

The Board found that Mr. James Fuqua, Esquire was present on behalf of the Applicants, Colleen and John Girouard.

Colleen Girouard, John Girouard, Eric Bedford, Jonathon Selway, and Scott Edmondson were sworn in to give testimony about the Application.

Mr. Fuqua stated that that he will address the variance first; that, should the variance request be approved, the appeal will be withdrawn; that two Board members were not part of the original hearing; that, in 2019, the Girouards contracted to buy a lot in Bayview Park located south of Bethany Beach; that the lot is located on the east side of Hassell Avenue Extended; that it is a dead-end street located in the back of the development; that there are only three lots in this area of Hassell Avenue Extended and none on the west side of the street as there are wetlands on the other side; that the property is adjacent to Cedar Pond to the east, a vacant lot to the north (the Schultz lot), and an improved lot to the south (the Wigley lot); that the Applicants sought a variance of 18 feet for a dwelling and the Board considered and approved that request with a modification that reduced the variance to 10 feet; that the previous application was identified as Case No. 12291 and was heard by the Board on April 15, 2019 with a written decision issued on June 18, 2019; that the Board found that the physical characteristics of the lot meet the legal requirements for a variance but reduced the variance from 18 ft. to 10 ft.; that, by virtue of that variance, the subject property has a 20-foot front yard setback; that, in August 2019, the Applicants purchased the lot; that the Applicants retained an architectural firm to design a house to be built on the lot; that the new house complies with the 20-foot setback as per the variance approval; that most of the structures of the new house met the 20-foot setback except for the deck that extends into the front setback approximately nine feet; that the deck was within the footprint of the existing non-conforming house and is permitted under section 115-203 of the Zoning Code; that the plans were submitted to the County for permits so that construction could commence; that, when the plans were reviewed, the Planning & Zoning Director determined that, because the non-conforming section of the property was being used, the matter would need Board of Adjustment approval for a new variance; that this decision was appealed to the Board and will be addressed later in the presentation if necessary; that, because the property most impacted by this request is the home of Mr. and Mrs. Wigley, the Applicants discussed their plans with the Wigleys and sought their input; that, at the previous hearing, the Wigleys stated that they recognized that the physical size and condition of the Girouards' lot justified a variance and they would support a 10-foot variance rather than the 18-foot variance originally requested; that the Wigleys' main concern was regarding the narrowness of the road, the ability for emergency vehicles to access their lot, and potential street parking that could block access to their property; that the Wigleys and Girouards reached a consensus that both could agree on and that is the request before the Board this evening; that the variance is to permit two open uncovered stairways and a wedge shaped portion of an open deck which would extend no more than five feet into the 20-foot front yard setback; that the stairs and the deck will not exceed the first elevated floor level of the new house and the deck will not exceed

33 ft. in width; that the stairs and deck will have an actual setback of 15 ft. and the variance is limited to the stairs and deck; that all the rest of the house will be in conformity of the permitted 20-foot front yard setback; that the Board has already determined that this lot meets the legal standards for granting a front yard variance and detailed in the findings of fact for Case No. 12291; that this Application is to allow for a very minor adjustment to permit the stairway and deck; that the variance will also be consistent with the character of the community and the past history of variances within the development; that the adjacent property to the north which is owned by the Schultzes and has a 15-foot setback on the corner front and a 12.1-foot setback on the front portion of the property adjacent to the subject property; that the Schultz front yard setback was likely created by averaging the front yard setbacks along the street and was approved by the Planning & Zoning Director; that, if a dwelling were constructed on the Schultz property, they would have a lesser setback from the road than the Applicants are requesting; that this information was not known by the Board at the previous hearing and is a substantial factual change; that the Applicants intend to install plantings between Hassell Avenue Ext. and the house; that, when the Board granted the original 10-foot variance for the Applicants' lot, concerns included the road width, parking and access for emergency vehicles; that under the Zoning Code, a single-family home is only required to have two off-street parking spaces; that the Applicants will provide two garage parking spaces and five additional off-street parking spots on the lot for a total of 7 parking spaces; and that the Wigleys consent to the approval if the conditions are approved.

Mr. Fuqua's witnesses affirmed his statements to be true and correct.

Mr. Sharp stated that he heard the witnesses acknowledge that Mr. Fuqua's statements as true and correct.

Mr. Fuqua submitted proposed conditions of approval to the Board members.

Mr. Fuqua stated that the Wigleys are the most affected neighbor; that the variance resolves outstanding issues; that the variances are supported by the Applicants and the Wigleys; that he has presented proposed conditions which he recited; and that the original house is still on the lot.

Mr. Whitehouse stated that he is not sure the circumstances of the reduced setback on the Schultz lot but it is likely the result of averaging the front yard setbacks.

Mr. Fuqua stated that he did not raise the Schultz issue at the prior hearing; that he originally thought that, if the Girouards remove their home, it could affect the neighbor's setback; that he later changed his mind after the Planning & Zoning department advised him that the Schultz setback was permanent and not subject to challenge.

Mr. Robertson stated that the County cannot take the position that the Schultz setback is invalid at this time; and that there was no comment from Mr. Lank implementing a condition on the Schultz setback.

Mr. Fuqua stated that he had some concern about the effect of the Girouard request on the neighbor's setback but his later research and the Planning & Zoning confirmation changed his mind.

Mr. Robertson stated that is very likely that Mr. Lank averaged the front yard setback.

Mr. Fuqua stated that the proposed dwelling will meet the 20 foot setback but the deck and steps will meet the 15 foot setback.

Mr. Edmondson testified that he is the Applicants' architect; that the boat slip will be removed; that, at the original hearing it was represented that the Applicants' property extended into Cedar Pond; that the property actually ends at the bulkhead and the lot is smaller than originally thought; that the 10-foot variance was granted with the understanding that the property was larger; that the proposed house cannot be moved farther back on the lot; that the steps and deck are parallel with the house but at an angle from the road so they will require lesser variances on the north side of each structure; and that the Applicants are requesting for 15 ft. for the entire structure to allow for flexibility in building.

Mr. Michael and Ms. Susan Wigley were sworn in to give testimony in support of the Application.

Mr. Wigley testified that he and Ms. Wigley are both architects; that they are aware of variances in the Bayview Park area; that, when they purchased their property in 2009, there was an encroachment; that they applied for and received an 18 ft. variance for the existing dwelling; that, when they removed the original dwelling and built the current dwelling, they built it within the building setback requirements; that, in 2019, they illustrated that a house could be built with only a 10 ft variance and not the 18 ft as was being requested; that Hassell Avenue Ext. is the narrowest road in Bay View Park; that Bay View Park requires variances; that there is no doubt that variances are necessary for the reasonable use of these small properties; that they were surprised when a new variance request was submitted; that the architect for the Girouard project discussed the house plans with them; that they are impressed with the design and credits the Applicants and their architect for the new design; that the Applicants also worked on improving parking on the lot; and that they are in support for the requested variances for the proposed dwelling.

Mr. Bayard Allmond was sworn in to give testimony in opposition to the Application.

Mr. Allmond testified that he represents the Homeowners Association; that a 10-foot variance was previously granted; that it is the Association's position that all structures should be built within the previously granted setbacks; that life safety issues are important in Bayview Park; and that no additional variances be granted.

Mr. Sharp explained that, because the Board is a quasi-judicial body and previously rendered a legal decision, the Board must determine whether there has been a substantial change; and that the

Board cannot entertain the variance requests until it make such determination. Mr. Sharp read the following case law “a board cannot change its decision once made but it can consider a new application for similar relief if there has been a substantial change in the circumstances or conditions affecting the property or in the proposed use or plans for the use”.

Mr. Fuqua stated that there are two substantial changes; that one is the fact that the Schultz lot is only required to have a 12.1 ft. front yard setback and a 15 ft. corner front on the same street as the subject property; and that the second issue is one on appeal as whether the Applicants could utilize the 10-foot variance and also utilize the existing rights under the zoning ordinance to do an alteration to the non-conforming footprint.

Mr. Edmondson testified that the Applicants have lost about 398 sf of buildable area since their property does not extend beyond the bulkhead and that is a substantial change; that the proposal is far less than the buildable area lost; and that the Applicants must also meet a DNREC setback.

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

Ms. Magee closed the public hearing for the variance application.

Dr. Carson moved that there has been a substantial change in the circumstances or conditions affecting the property or in the proposed use or plans for the use and that the Board should consider the variance application.

Motion by Dr. Carson, seconded by Mr. Workman, carried unanimously. Motion carried 5 – 0.

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

Mr. Workman moved to approve Case No. 12487 for the requested variances as proposed with the conditions of approval that have been submitted by the Applicant’s attorney.

Motion by Mr. Workman, seconded by Mr. Williamson, carried that the **variances be granted with conditions for the reasons stated.** Motion carried 4 – 1.

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

Mr. Sharp stated that based on the Board’s decision to approve the variance, the appeal is now moot.

Mr. Fuqua also confirmed that the appeal is withdrawn and moot.

ADDITIONAL BUSINESS

The Board discussed the request for a 12-month extension for Case 12291 Lands of John and Colleen Girouard.

Motion by Dr. Carson, seconded by Mr. Chorman, to approve the extension for a period of one year. Motion carried 5 – 0.

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

Meeting adjourned at 9:28 p.m.