

MINUTES OF NOVEMBER 21, 2022

The regular meeting of the Sussex County Board of Adjustment was held on Monday, November 21, 2022, at 6:00 p.m. in the County Council Chamber, Sussex County Administration Office Building, Georgetown, Delaware. The teleconference system was tested during the meeting by staff to confirm connectivity.

The meeting was called to order at 6:00 p.m. with Chairman Jeffrey Chorman presiding. The Board members present were: Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. John T. Hastings - absent, Mr. Jordan Warfel, and Mr. John Williamson - absent. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Ms. Jennifer Norwood– Planning and Zoning Manager, and Ms. Amy Hollis – Recording Secretary.

The Pledge of Allegiance was led by Mr. Chorman.

Motion by Mr. Warfel, seconded by Dr. Carson; and carried unanimously to approve the agenda with modification to move Case No. 12755 to the end of the agenda. Motion carried 3 – 0.

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

Motion by Mr. Warfel, seconded by Dr. Carson and carried unanimously to approve the Minutes for the September 19, 2022, meeting. Motion carried 3 – 0.

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

Motion by Mr. Warfel, seconded by Dr. Carson and carried to approve the Findings of Facts for the September 19, 2022, meeting. Motion carried 3 – 0.

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

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

PUBLIC HEARINGS

Case No. 12759– Howard Paul Landgraf III seeks variances from the maximum fence height requirement for a proposed fence, front yard, and side yard setback requirements for existing structures (Sections 115-42, 115-182, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located on the east side of Pintail Drive within the Swann Keys Subdivision. 911 Address: 37036 Pintail Drive, Selbyville. Zoning District: GR. Tax Parcel: 533-12.16-39.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received three (3) letters in support of, zero in opposition to the Application, and one mail return. The Applicant is requesting variances of 5.5 ft. from the required 10 ft. front yard setback for an existing carport and 2.5 ft. from the maximum fence height requirement for an existing fence.

Mr. Howard Paul Landgraf, III, and Mr. Mark Landgraf were sworn in to give testimony about the Application.

Mr. Landgraf, III, testified that he and his brother are here as representatives of their late father's estate; that their father was a long-term resident of Swann Keys; that, upon cleaning up the estate, they happened upon a printed email from Mr. Jeff Whaley, an inspector with Sussex County, from March of 2022; that the email indicated that these issues needed to be resolved; that they reached out to the inspector to help them understand their course of action; that they were advised to reach out to the two (2) licensed contractors that their father paid to do the work; that the carport has been up since 2019 and the fence was installed late last year; that they attempted to reach both companies and have received no response; that they called Mr. Whaley back to let him know that this was the case and he recommended that they try their luck before the Board; that everyone has been helpful through the process; that they inherited the home and are trying to get it ready for sale; that they want to address the issues before the Board; that the first section of the taller fence panel on the right side of the property is 6 ft. high; that this portion of fence can be no taller than 3.5 ft. because it is in the setback; that there is a small 2 ft. panel on the left side of the carport that would have to come out, according to Mr. Whaley, and the carport is into the setbacks also; that he has reviewed some of cases that involved Swann Keys; that it is a small lot; that it has some of its own nuances; that there have been no issues with the community; that they have been cleaning up the property and spoken with neighbors to the right, left, and across the street; that there has been no opposition; that the neighborhood has been sympathetic to the loss of their father; that the paved road is only about 20 ft. wide; that their community bylaws state that the community has 30 ft., so there is another 5 ft. that they learned on each property line toward the houses; that it is like a common right-of-way for the purpose of electric, utilities, water, and sewer to run through there; that this does not encroach upon the accessibility of neighboring properties nor do they do not encumber anyone's right to their property, their view, or block their enjoyment of the property; that they have no intentions to do anything with the property other than to keep it in the condition that it was left to them in by their father in order to sell it; that there are some other homes down there that look like they have some sheds that might be closer than the fence and the carport; that the instructions they received was to remove a panel to get through without a variance; that the carport is attached to the house; that, if you are facing the house, the carport is bolted underneath the roof overhang on the right side; that there are also four (4) posts holding each corner of the carport; that the footings to the carport are bolted in; that the roof of the carport is even with the fence; that the carport is solely on their father's property and does not extend over to either neighbors; that the carport was run to the edge of the concrete pad; that they have not received HOA approval yet but have made them aware of their plans and that they are seeking a variance from the County; that the contractors that they reached out to were Calloway Roofing and Backyard Works; that the permit to place the home in 1989 was not closed out until a survey was submitted this year; that part of the rear property is in the lagoon based on the survey from 1992; that you can stand underneath the carport and wash it while remaining on the property;

that to do anything on the top it would have to be accessed by a ladder at the front or rear; and that the carport has a gutter which runs to a drain and does not run to neighboring properties.

Ms. Norwood noted that a variance of 5 feet from the 5 feet side yard setback on the south side is needed for the carport as well.

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

Mr. Chorman closed the public hearing.

Dr. Carson moved to approve Case No. 12759 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions;
2. The exceptional practical difficulty was not created by the Applicant;
3. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare; and
4. The variances represent the minimum variances necessary to afford relief.

Motion by Dr. Carson, seconded by Mr. Warfel, carried that the **variances be granted for the reasons stated**. Motion carried 3 – 0.

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

Case No. 12760–Kristen Evans seeks a variance from the front yard setback requirement for an existing dwelling (Sections 115-42, and 115-182 of the Sussex County Zoning Code). The property is located on the southeast side of Lagoon Drive within the George Moore Subdivision. 911 Address: 34687 Lagoon Drive, Frankford. Zoning District: GR. Tax Parcel: 134-19.00-37.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and one (1) mail return. The Applicant is requesting a variance of 6.3 ft. from the required 30 ft. front yard setback for an existing manufactured home. Ms. Norwood noted that the manufactured home was placed in 1989 and that there is no record of a CO being issued for the home.

Mr. Amjad Madanat was sworn in to give testimony about the Application.

Mr. Madanat testified that he was asked to attend on behalf of Ms. Evans; that he is the current buyer of the property; that, while going through the checklist of items to do before the completion of the sale, they ordered a survey; that his attorney contacted him to notify that there

were some setback requirements that were never handled; that they are seeking a variance from the front yard setback requirement for an existing manufactured home; that the home was placed in 1989 and, in 1996, the home was made a Class C; that it would be very difficult to move the placement of the home in order to get it into compliance; that this left them with seeking a variance; that Ms. Evans inherited the property; that Ms. Evans was unaware of the issues; that the issues include not having a CO for the shed placements and the placement of the gazebo and the dwelling; that they will be getting a permit for the shed and it is movable; that the shed can be moved into compliance with the Code; that the gazebo is going to be removed from the property; that the property will not cause a hardship for anyone at this point as it has been there since 1996; that there is only one (1) home beyond this property and the placement does not affect their ability to come and go; that the property already has a paved driveway which accommodates the parking of cars without intruding into the roadway; that there are similarly situated structures in the neighborhood; that they hope all of this can be considered so they can continue with the process of purchasing the property; that their closing date was supposed to be September 2nd but, once the variance issue was brought up, they had to put closing on hold; that, as soon as they are done with this hearing and process, the seller is ready to settle anytime; that they have been made aware of the written findings and appeal period which follows the hearing; that they will be moving the shed to be within compliance of the 5 ft. setback; that the gazebo will be removed all together; that there is not much room in the rear yard; that they are not sure if the placement was dictated by the septic system; that Ms. Evans was not aware of any of those issues but it could be the reason the placement of the house was moved forward; that there have been no issues with flooding; that they are required to have flood insurance; that, in all the years that this property has been there, they have not had issues with flooding or water going over the bulkhead, even including Hurricane Sandy; that they have owned the property across the street since 2006; that they are unsure of the gap between the edge of paving and the front property line; that the only things made aware to them are the issues with the gazebo, shed, and the dwelling; and that everything else on the property is like a brick paver or sidewalk.

Ms. Jodee Diaco was sworn in to give testimony in support of the Application.

Ms. Diaco testified that she owns the property next door; that she has no problem with anything that they are doing; that they are glad they are moving the gazebo because it does sit right on their property line; that they are going to be working on their property; and that she questions the variance and whether it would apply should they remove the dwelling and want to rebuild and have the variance at their disposal to use on a future structure.

Mr. Sharp stated that the variances apply only to the existing structures.

Ms. Kristen Evans was sworn in to give testimony on the Application via telephone.

Ms. Evans testified that her representative has said everything that needs to be said; that the structure is on a permanent foundation and cannot be moved; that the plumbing, heating system, and

electrical would have to be adjusted for the structure to be moved; that she inherited the property and she is unaware of the process at the time of placement for the structure; and that the buyer will be removing the gazebo.

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

Mr. Chorman closed the public hearing.

Mr. Warfel moved to approve Case No. 12760 for the requested variance, pending final written decision, subject to the condition that the gazebo be removed and that the shed be moved into compliance with the Code, for the following reasons:

1. The property has unique conditions due to the exceptionally small buildable area;
2. That, due to the physical conditions, the property cannot be developed in strict conformity with Sussex County Zoning Code and the variance is necessary to enable the reasonable use of the property;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare; and
5. The variance represents the minimum variance necessary to afford relief.

Motion by Mr. Warfel, seconded by Dr. Carson, carried that the **variance be granted with conditions for the reasons stated**. Motion carried 3 – 0.

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

Case No. 12761–Donnie Bare and BJ Liebno-Bare seek variances from the front yard setback requirements for proposed structures and the maximum fence height requirement for existing and proposed fence (Section 115-34, and 115-182 of the Sussex County Zoning Code). The property is a through lot located on the north side of Breakwater Run within the Keenwick Sound Phase II Subdivision. 911 Address: 36725 Breakwater Run, Selbyville. Zoning District: MR. Tax Parcel: 533-19.00-472.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. The Applicants are requesting variances of 10 ft. from the required 40 ft. front yard setback for a proposed deck on a through lot, and variances of 0.5 ft. and 2.5 ft. from the maximum fence height requirement for the existing and proposed fence.

Ms. BJ Liebno-Bare and Mr. Donnie Bare were sworn in to give testimony about the

Application.

Ms. Liebno-Bare testified that the address in question is their second home; that they purchased it in 2013; that, when applying for the variance for their deck, they found that the fence was also at issue; that they are looking to clear everything up at once; that the variance is for 10 ft. into the 40 ft. setback from Route 54 to construct a 10' x 10' deck to be even with their sliding backdoor; that they would like to replace the existing fence with a 6 ft. privacy fence on the Route 54 side of the property; that they would like to replace the other fence with a 4 ft. chain link fence; that they have spoken with their neighbors; that they are requesting the 6 ft. privacy fence due to Route 54 being more developed with the Royal Farms and a bank; that there has also been an increase in break-ins in their neighborhood; that some of their neighbors have had their sheds broken into; that they have put up a motion detector; that they have not been broken into yet but are thinking that, with the fence in place, they will be out of sight and out of mind; that the deck is so they can sit in their back yard when their dogs are out; that they have two (2) small dogs; that they would like to sit comfortably and let their dogs run; that they would like to enjoy their home when they are down here; that their neighbors have no issue with the deck or the fence; that the chain link fence was there when they purchased the property; that they want to update the fence so it looks nicer than what is existing; that two (2) of their neighbors have had their sheds broken into; that the neighbors on both sides of them have taller trees; that their trees are smaller trees about the same height as them; that they consider the front of their property as Breakwater Run; that, from their property line to the edge of paving on Route 54, is about 10 to 12 ft. but she did not measure; that, on the other side of their property line, there is a drain, a sidewalk, and then Route 54; that they have no vehicular access to Route 54; that the deck will be 18 inches off of the ground; that the deck will come out even with the sliding door on their house, which presently has two (2) or three (3) steps down; that the patio and concrete pad have been there but are no longer sufficient; that they would like the deck and for it to be raised to meet the egress from their house because she will be having her knee replaced and her husband has been having issues with his knee and foot; that this will allow them a safer and more reasonable access in and out of their house; that they have issues with both noise and lights from Route 54; that their main reason for the fence is privacy; that there are a lot of people walking along Route 54; that this is a secondary house for now; that they are looking at retiring in maybe five (5) years and possibly moving down here full-time; and that they do not rent out the house.

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

Mr. Chorman closed the public hearing.

Dr. Carson moved to approve Case No. 12761 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions as it is a through lot;

2. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare; and
3. The variances represent the minimum variances necessary to afford relief.

Motion by Dr. Carson, seconded by Mr. Warfel, carried unanimously that the **variances be granted for the reasons stated.** Motion carried 3-0.

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

Case No. 12738–Gwendolyn and Jeffrey Smith seek variances from the side yard setback requirement for existing structures (Sections 115-42 and 115-183 of the Sussex County Zoning Code). The property is located on the northwest side of Russell Street within the Delaware Oyster Farms Subdivision, Lot 54. 911 Address: 28272 Russell Street, Millsboro. Zoning District: GR. Tax Parcel: 234-35.05-70.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and one (1) mail return. The Applicants are requesting variances of 7.8 ft. and 7.7 ft. from the required 10 ft. side yard setback on the southwest side for an existing pool and 4.3 ft. and 4.4 ft. from the required 5 ft. side yard setback on the southwest side for an existing deck.

Mr. Jeffrey Smith and Ms. Gwendolyn Smith were sworn in to give testimony about the Application.

Mr. Smith testified that they built the deck on the side of their house; that it was not permitted originally; that the deck goes up to the side property line; that the deck comes down from an upper deck; that the upper deck does not infringe upon the setbacks; that this was constructed during Covid, when he was out of work and looking for something to do; that they replaced the structure that was there because it was becoming dilapidated and dangerous; that they are seeking variances for the lower deck; that the pool is temporary, as it comes up and goes down; that the pool is a small Intex pool; that they have a shed which has a variance already and comes to the same property line in question; that they recently purchased the property next door; that they are still seeking the variances because, in order to consolidate the properties, they would need to refinance them and now is not an opportune time to do that; that they purchased Lot 53 and closed on August 28th; that they have two (2) separate loans on the properties; that they recently refinanced their home to be able to purchase the neighboring property; that the fence between the properties is no longer there; that there have been no complaints from the neighbors; that the deck is already there and the only thing they could do is cut half the deck away which would defeat the purpose of what they were trying to do; that the porch labeled on the survey is in compliance; that the deck is 10'6" he believes; that, to get it into compliance, you would have to take it back to 5'6"; that the reason that they were built so far out is to put a set of steps going towards the front of the property; that the pool is sitting behind the deck so

they can access the pool from the deck; that the steps were built a little bit wider so that they could get furniture in and out of the house easier; that the entrance to the front of the house is only 3 ft. wide; that, with the narrowness of the entryway, it is difficult getting refrigerators and furniture into the house; that the biggest issue for them is the narrowness of the property does not allow them to expand and make it more usable space; that their neighbors would have the same problems; that the deck was built before they purchased Lot 53; that, at the time they built the deck, they did not realize they were going to own the lot next door; that the opportunity to purchase the lot did not present itself until they refinanced; that there is nowhere else on the property to place the pool; that, if you moved the pool to the other side of the house, you would have the same problem; that the entire front of the house is a driveway; and that the back yard does not have enough room and has a larger setback than the side yard.

Ms. Smith testified that the previous structure was unsafe; that the variance for the shed was applied for by her and a prior relationship; that a discussion was had about building the deck and the requirement of a variance; that the decision to build the deck was made during Covid when everything was shut down; that they had the extra money from the stimulus; that they took the opportunity; that she knows it was wrong; that the fence between the properties is owned by them; that they do not have any steps towards the property; that, when they get deliveries, they do not know which side of the house to enter; that Jeff Smith was not involved in the variance in 2008; that she bought this modular home on her own; that she was young and did what her mother told her; that their lot is not different from their neighbors' lots; that the majority of the neighbors have a 50' x 90' lot; that, on some occasions, people had the money and bought their lots long ago when they were combined; that, in order to put a home on the property that would be sufficient for her family, she maximized the amount of room which is right around a 1200 square foot home; that, for a family of four (4) people, this is already a small home; that they really do not have a lot of room outside for family space; that it is really not different from the rest of the houses on the properties; that some of the houses are longways and have encroached on the sides; that the neighbor has opposition and was denied a variance for his steps encroaching which, in turn, made him unable to sell his property; that the idea was for them to have this property with the small house that they are trying to work around without having to sell in this current market; that they purchased the property next door to have more space for her children; that her youngest son plays football; that they have dogs; that she has always wanted to buy this property from the very beginning so it would not be built upon; that she does not want to look next door and see into her neighbor's kitchen; that she was finally in a position with their credit to refinance their home to acquire the property next door; that this was her goal since buying the first property; that this gave her room to expand; that she knows they did something they were not supposed to by placing the lower deck; that the plan is to place steps down into the larger property they bought; that, at some point, the idea is to come out front so that when people come up the steps to a gathering place that they plan on putting up; that this is going to improve their family life; that it is not going to negatively impact anyone in the neighborhood due to them purchasing the property adjacent; that this is a rundown neighborhood which is starting to improve; that they are finally getting the gang and drugs out of the neighborhood; that the neighborhood is coming together to make it more beautiful; that, for the first time since she purchased the property in 2008, they all get along and are a

cohesive neighborhood; that the clientele on their road has prevented normal behavior such as dog walking and waving hello in the past; that there was a motorcycle gang, known as the Pagans, who completely destroyed a house which has since been renovated by new owners; that this would not negatively impact the neighborhood; that they had considered putting their pool on the newly purchased Lot 53; that purchasing the lot next door was a pipe dream; that the idea is to get something more permanent because she has wanted a pool since she was little; that, at some point, they may want to put a structure to place cars in on the recently purchased lot; that the air conditioning unit is off the rear of the house; that the plan in the next couple years is to combine the lots together; and that they would like to get out of their current loan first.

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

Mr. Chorman closed the public hearing.

Mr. Warfel moved to close the record and table Case No. 12738 until December 12, 2022, to allow the Board members who are not present to review the record and vote.

Motion by Mr. Warfel, seconded by Dr. Carson, carried unanimously that the Application **be tabled for the reasons stated**. Motion carried 3-0.

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

Case No. 12763–Lydia Dickerson seeks variances from the separation distance and front yard setback requirements for proposed structures (Sections 115-25, 115-172, and 115-182 of the Sussex County Zoning Code). The property is located on the southwest side of Capes Cove Lane within the Capes Cove Manufactured Home Park. 911 Address: 16306 Capes Cove Lane, Lewes. Zoning District: AR-1. Tax Parcel: 335-8.00-22.00-2388

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received nine (9) letters in support of and no correspondence in opposition to the Application and zero mail returns. The Applicant is requesting variances of 1.6 ft. from the required 20 ft. separation distance requirement to a structure on Lot 3A, 1.2 ft. from the required 20 ft. separation distance requirement to a deck on Lot 1A, 5.6 ft. from the required 20 ft. separation distance from the structure on Lot 3A to the steps on the proposed home, 4.2 ft. variance from the required 20 ft. separation distance from the shed on Lot 1A to the side of the proposed home, 6.7 ft. variance from the required 20 ft. separation distance from the corner of a shed on Lot 1A to the A/C unit on the side of the proposed home, and a 5 ft. variance from the required 5 ft. setback on the northeast side for steps.

Ms. Lydia Dickerson and Mr. Kenneth Alexander were sworn in to give testimony about the Application.

Ms. Dickerson testified that they are requesting a variance approval for several setback

distances due to the fact there is just not enough room on their property; that the neighbors have expanded their trailer footprint with upgrades; that the lots are small due to the age of the trailer park; that they are wanting to modernize and upgrade to a doublewide but it creates the need for variances; that they are the tiny white trailer; that they want to expand to a doublewide; that there are several doublewides in the park already; that the variances are needed due to the size of the lot and the placement of the neighbor's deck and shed in relation to the proposed placement of their trailer with steps; that, for these reasons, they will need approval for separation distances from the neighbors and the driveway; that they have proposed a distance that would be fair to both neighbors; that they have had a survey done; that they have approval letters from all residents of the park except for two (2); that the two (2) did not return an answer prior to this hearing; that they also have approval from the Board of Directors for Capes Cove; that they have a tenants association; that they were going to place a larger unit on the property but realized that it was encroaching too much; that they would like a doublewide; that the model they are looking at is considered a 24 ft. doublewide but the inner gutter is only 23.4 ft.; that they had a hard time finding a doublewide that small; that they are 1/13th owners of three (3) acres; that her understanding of the property is that it was a trailer park when purchased and there were lots; that they were 40' x 60' lots; that the old lines are not there from the existing trailer park; that the unpermitted structures were existing prior to the purchase of their new trailer; that the existing home was a singlewide and the new request is a doublewide; that the existing singlewide with a porch was so narrow that she and her husband could not fit down the hallway; that the section with the porch is about the width of the proposed dwelling; that there are trees covering part of their trailer but it was 52 ft. long; that there are three (3) of them that share the trailer, all of whom have families including children and grandchildren; that they want to have enough room for their families to come vacation and enjoy the property; that the trailer park has a central septic system; that they are 18 ft. 4 inches from the one trailer and, with the addition of the steps, the separation distance is 14 ft.; that they are 18 ft. 8 inches but with their deck it makes it 16 ft.; that they are supposed to have 20 ft. setbacks; that they are still pretty far except for the deck area and steps; that the ramp is a handicap ramp that will remain; that the deck and shed were on the property before the neighbors purchased their home; that the steps listed are not covered and grant them access into their mud room; that they did not want to put it on the other side; and that what is proposed is what they plan to construct.

Mr. Alexander testified that the one issue is that they are going last; that the neighbors on each side have made improvements already; that the smaller lot sizes of 40' x 60' established in the beginning it has created an issue for them; that the other neighbors crept in on their lot and now they have to get variances to upgrade their property; that this doublewide will be consistent with the other doublewides in the neighborhood right now; that their improvements will help bring up the value of the whole area as everyone is making improvements to their trailers or mobile homes; that this model is consistent with the widths of the other trailers in there; that, when you measure the footprints of the neighboring properties, the one to the north with the deck is a 37 ft. wide footprint and the one to the south looked like it was 24 or 26 ft. wide; that the trailers in the rest of the neighborhood are at least 24 footers; that going last they are trying to keep within the character of the neighborhood but require variances to do so; that the original plan showed 40' x 60' lots with singlewide trailers on them; that

they had a designated area; that, when the print got done, it shows a three (3) acre parcel with no lot lines; that they are trying to maintain all of the setbacks; that, when they were first trying to find out what they are to maintain the setback from, they discovered that it is a deck with no certificate of compliance issued and a shed that was never permitted; that they are not asking for these structures to be moved but are seeking to comply as much as possible given they already exist; that they would like to enjoy their trailer like the rest of the families who live there get to enjoy theirs; that he does not feel they should be punished for being the last one to develop on their property; that they are located between two (2) properties that have finished developing their property; that the existing trailer is like a submarine with how narrow it is; that the steps are prefab; and that Mr. Peterson was one (1) of the two (2) unsigned letters.

Mr. Corey Peterson was sworn in to testify in support of the Application.

Mr. Peterson testified that they are the neighbors at 208; that they are okay with the variances; that the site plan shows an air conditioning unit on the side that abuts them but no door; that they want to confirm the plan submitted will not be changed; and that they are fine with the variances on their side.

Mr. Richard Irvine was sworn in to give testimony in support of the Application.

Mr. Irvine testified that he is the secretary of the tenant board for Capes Cove; that, unfortunately, the other neighbor of the proposed home is with her grandchildren this evening or she would have been in attendance; that the other neighbor is the treasurer for the Capes Cove tenant board; that she signed a letter in agreement and support of the project; that, now, both neighbors who were missing have input their approval of this proposal; that the park, in general, is happy to have an upgraded home; that the family has been good neighbors for many years; that you can see there have been homes replaced; that it is his understanding that some have had variances approved in the past prior to his time as a board member; that he just wants to reiterate that the board appreciates the work that the family has done to try to bring in something that will fit better than their original plan; that he does know that there was some hardship involved with the process; and that the Tenants Association is in support of the project and hope it is approved for the family.

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

Mr. Chorman closed the public hearing.

Mr. Warfel moved to approve Case No. 12763 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to the exceptionally small buildable area;

2. That, due to the physical conditions, the property cannot be developed in strict conformity with Sussex County Zoning Code and the variances are necessary to enable the reasonable use of the property;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare; and
5. The variances represent the minimum variances necessary to afford relief.

Motion by Mr. Warfel, seconded by Dr. Carson, carried unanimously that the **variances be granted for the reasons stated**. Motion carries 3-0.

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

Case No. 12764–Dennis and Amy Morris seek variances from the side yard and rear yard setback requirements for a proposed detached garage (Sections 115-25, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located on the southeast side of Hollyville Road approximately 0.26 miles from Hurdle Ditch Road. 911 Address: 23417 Hollyville Road, Harbeson. Zoning District: AR-1. Tax Parcel: 234-16.00-1.05

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received three (3) letters in support of and zero in opposition to the Application and zero mail returns. The Applicants are requesting variances of 12 ft. from the required 20 ft. rear yard setback and 10 ft. from the required 15 ft. side yard setback on the north side for a proposed detached garage.

Mr. Dennis Morris and Ms. Amy Morris were sworn in to give testimony about the Application.

Mr. Morris testified that they are here to get a variance to build a garage; that their house is on a 0.75-acre lot; that their driveway is positioned to the left of their house; that they have a section that separates their property from the neighbors by 50 ft.; that 50 ft. is part of the property behind them which is called Turnberry; that the problem is that the offset of 15 ft. from that open area would offset the driveway and the proposed garage location; that you would have to almost go around to get into the garage as opposed to pulling straight into one of the bays; that this is going to be a three (3) car garage; that one of the bays is going to be for their lawnmower and storage; that they will be getting rid of the shed that is there; that it helps with the garage being straight in rather than being offset; that they stopped before the footer was done; that the product has been ordered which is of concern now because the trusses are sitting and waiting; that the builder is Coastal Builders out of Seaford; that the builder is a very good friend of theirs but he did not help them out in this case; that the proposed garage measures 24 feet by 36 feet; that moving the garage over would require them to go around the garage; that two (2) of the bays would be designed for cars and the other for storage; that they have a septic system in their back yard on the south side of the property; that they only have

0.75 acres to work with; that the way the driveway is designed it comes in on the left hand side which is projected to the right to give them as much grass as possible; that they have a two (2) car garage attached to the house; that there is a tree that does block them from physically going in; that, with all that being where it is, has kind of restricted them; that they would be able to get by with less of a variance if they were to remove the tree; that the tree has a sentimental value to their family as it was planted for their daughter's birthday; that it makes more sense for it to be placed there so it is straight in and not catawampus; that there are some obstacles that have created this; that the 50 ft. area next to them will not be a buildable area nor will it be used as a right of way or entrance to the proposed development; that the garage will be used to park their daughter's cars and their lawnmower and storage; that he would have to reduce the proposed garage down to a two (2) car or less as opposed to a shed; that his shed right now is not big enough; that this is something that they desire; that this is both a want and a need; that it is more of a necessity because they need the additional space; that the space they have now is filled; that he would like to have a location for his daughters to park their vehicles and have the additional storage space; that there are only three (3) houses around them; that there is nothing behind them; that there is not going to be anything in the 50 ft. space between them and their neighbors; that they did not explore other options because they were kind of thrown into this; that when it was proposed to the builder it was given the go ahead and not until they were staking it out was it realized that there would be an issue; that, with the 15 ft. and 20 ft. setback, it brings it so close to the house that it makes it difficult to get into the garage; that he believes that we have a right to want and need as we wish but, in the same sense, knows that there are requirements that they have to abide by; that the builder put them in this position; that had the builder told them that the garage would not fit without the variance they could have looked at something else; that they already have the materials ordered for both the garage and windows and doors; that they have shelled out money to the point they are at a standstill; that he could work with the idea of granting the side yard variance but not the rear yard variance, however, he would like to have that additional space; that he could make it work with no rear yard variance and placing the garage 20 ft. off the rear property line; that ideally he would rather see more in front of his garage instead of behind it because that is dead space; that he did not mean to sound as if it is a negotiation; that they are just trying to find out what is acceptable as opposed to the 20 ft. rear yard setback; that the reasoning for pushing the garage back farther is because he will consider that area behind the garage to be dead space; that they were expecting their contractor to tell them what they could and could not do; and that the property behind them currently is farmland.

Ms. Morris testified that behind them is a large proposed development by Schell Brothers; that the development has not been approved yet; that the development runs adjacent behind their property; that there is a 50 ft. wide space between their house and their neighbors that is a part of the proposed development; that, in the proposed plan for the development, they will not touch but this will be considered open area; that, along their property line, there will be a 30 ft. buffer of trees to the back of them that will be installed before the development; that they had a builder planning to build this for them; that the builder obtained the permit in September; that they told him where they wanted it placed prior to the permit and he told them no problem; that, when the masons came to stake out the property, is when they realized that they would need a variance because the setbacks were 20 ft.

and 15 ft.; that they were not able to get a survey because there was not enough time; that they tried to give the original survey because they have been forced to handle this on their own; that they applied for the variances before continuing with any work; that they have the paved driveway that sits next to the existing garage; that they build this house and finished it in 2003; that it does have a blacktop driveway; that, in order to have the new garage continue straight with their existing driveway, they would need the variance otherwise half of it would be almost sitting in the back of their yard; that their current garage does not face the house to enter; that they sit back pretty far off Hollyville Road; that the builder got the permit in the window and was ready to go until they saw the masons staking it out in their backyard and realized there was an issue; that this occurred in September; that she discovered the issue when the masons were staking out the backyard; that she then contacted her husband who called the builder and told them about applying for the variances; that that was the only help they had received; that there will be trees behind them; that they were not aware that it was treated as two (2) separate variances; and that the side yard variance is the most important.

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

Mr. Chorman closed the public hearing.

Mr. Warfel moved to approve the side yard variance request and to deny the rear yard variance request in Case No. 12764, pending final written decision, for the following reasons:

1. The property has unique conditions due to the location of the tree and driveway;
2. That, due to the physical conditions, the property cannot be developed in strict conformity with Sussex County Zoning Code and the side yard variance is necessary to enable the reasonable use of the property;
3. The exceptional practical difficulty was not created by the Applicants;
4. The side yard variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare; and
5. The side yard variance represents the minimum variance necessary to afford relief.

Motion by Mr. Warfel, seconded by Dr. Carson, carried unanimously that the **side yard variance be granted and the rear yard variance be denied for the reasons stated.** Motion carried 3-0.

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

OLD BUSINESS

Case No. 12755–Megan Avalos and Rommel Avalos-Flores seek variances from the side yard and rear yard setback requirements for a proposed structure (Section 115-25, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located on the east side of Sand Hill

Road approximately 0.39 miles from Huff Road. 911 Address: 18265 Sand Hill Road, Georgetown. Zoning District: AR-1. Tax Parcel: 135-7.00-13.02

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received three (3) letters in support of and zero in opposition to the Application and zero mail returns. The Applicants are requesting variances of 15 ft. from the required 20 ft. rear yard setback and 10 ft. from the required 15 ft. side yard setback on the north side for a proposed detached garage. This matter was left open from the previous meeting the month to allow for Mr. Avalos-Flores to be present and participate.

Mr. Rommel Avalos-Flores and Ms. Megan Avalos were sworn in to give testimony about the Application.

Mr. Avalos-Flores testified that the proposed garage being requested measures 32' x 26' in size; that the Applicants built their house four (4) years ago; that the Applicants have four (4) children; that you cannot do everything at once, unfortunately; that the Applicants want to build a pool and volleyball court in the future; that the septic system is on the south side; that each one of their children is involved in sports; that the reason the garage is so large in size is to accommodate their four (4) children and the equipment associated with each sport; that the location of the garage is due to the plan the Applicants have for their backyard in the near future; that the Applicants plan on adding a pool and a full-size volleyball court; that the whole backyard is fenced in with a gate in the corner proposed for the garage; that the proposed building will not be to used to run his HVAC business; that the Applicants have a lot of stuff; that the size of 32' x 26' will work best for them; that the plan changed since the original submission; that the location of the garage will be 5 ft. from the side and rear property lines; that the proposal is to preserve space in the backyard; that they have four (4) kids who play soccer, volleyball, and baseball; that putting it in the proposed location will keep it out of the way; that the gate is located along the northeast corner of the property; that he may store some materials for his business in the garage to free up space from his basement and attached garage; and that they have a doghouse in their backyard.

Ms. Avalos testified that her mother and father own the property around their lot; that her mother was present at the last meeting; that the septic system runs north-to-south in the southeast corner of the property; that they will not need an additional entrance for the use of the garage; that the lane on the north side of the property belongs to her parents and have granted them access to use it; that the propane tank is located along the north side of the house outside of the fenced in area; that there is a doghouse, trampoline, and playground also in the backyard; that the well is located in the front yard in the north corner; that the septic runs towards the proposed garage; that her family has been in the area for a long time; that her grandfather and his brothers bought all of the property from Neptune to Huff Road; that her parents live behind them in the wooded area; that her parents have talked about dividing out property for her sisters also; that her parents own the greenhouses to the south of their property; and that to the north of them is her great aunt and uncle.

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

Mr. Chorman closed the public hearing.

Dr. Carson moved to approve Case No. 12764 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to the septic system and the nearby family lands;
2. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare; and
3. The variances represent the minimum variances necessary to afford relief.

Dr. Carson stated that his motion was for a garage measuring 32 feet by 26 feet.

Motion by Dr. Carson, seconded by Mr. Warfel, carried unanimously that the **variances be granted for the reasons stated**. Motion carried 3-0.

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

ADDITIONAL BUSINESS

Meeting adjourned at 8:00 p.m.