

MINUTES OF NOVEMBER 7, 2022

The regular meeting of the Sussex County Board of Adjustment was held on Monday, November 7, 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. John T. Hastings, Mr. Jordan Warfel, Mr. John Williamson, and Mr. Jeffrey Chorman. 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. Motion carried 5 – 0.

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

Motion by Mr. Williamson, seconded by Mr. Hastings and carried unanimously to approve the Minutes for the September 12, 2022, meeting. Motion carried 5 – 0.

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

Motion by Mr. Hastings, seconded by Dr. Carson and carried to approve the Findings of Facts for the September 12, 2022, meeting. Motion carried 5 – 0.

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

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

PUBLIC HEARINGS

Case No. 12753– William and Kathleen Mussel seek a variance from the maximum fence height requirement for a proposed fence (Sections 115-25, 115-184, and 115-185 of the Sussex County Zoning Code). The property is a corner through lot located on the south side of John Deere Drive within the Deere Country Subdivision. 911 Address: 29476 John Deere Drive, Millsboro. Zoning District: AR-1. Tax Parcel: 133-15.00-34.00

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 a variance of 2.5 ft. from the 3.5 ft. maximum height requirement for a proposed fence.

Mr. William Mussel was sworn in to give testimony about the Application

Mr. Mussel testified that he purchased the property at 29476 John Deere Drive from the developer; that the house was built; that it is a corner property; that he was unaware of the two (2) front yards to the property; that he was unaware that the rear of the house which faces Lake View Drive had a front setback; that he has a wife and a dog; that they had plans to place a 6 ft. privacy fence to allow their dog to run free and for them to use their backyard; that the proposed location is just inside a line of trees planted by the developer on his property to act as a buffer; that there is a 15 ft. easement; that the fence is within the 40 ft. setback area but not within the 15 ft. easement; that the house was already existing; that, should he comply with the 40 ft. setback, it would leave him with approximately 9 ft. between the fence and the edge of the house; that he is planning on putting up a deck which would also eliminate a portion of his yard; that he is requesting the variance to be able to reasonably use his property; that he is also a professional engineer; that he knows that a major concern is sight triangles; that he went through the ordinances and sketched out the sight triangle for the property; that the fence will not obstruct any view of the sight triangle; that as you are leaving the development the property on the left of John Deere Drive has a stone entry marker which is comparable to the size and location of his proposed fence; that the only variance requested is for the 6 ft. height along the rear property line setback; that they have no access to Lake View Drive; that they enter and exit their property from John Deere Drive; that the row of trees is 15 ft. from the edge of the property and there is an additional 20 ft. to the edge of the road; that the fence will be 30 to 35 ft. from the edge of the road; that neighbors have similar fences which are 6 ft. tall vinyl fences; that he receives his mail at the John Deere Road property; that he considers John Deere Drive to be his front property line; that he has a garage that is on the side of the house and it is accessed by the driveway on John Deere Drive; that the garage is a three car garage; that he needs HOA approval and received it verbally from the previous HOA; that they are in the process of transitioning to a new Board; that he is now the president of the HOA and represented his proposal to the new Board also; that there is a covenant to their community that certain material be used for fences; that there has been no negative feedback from anyone else in the community about the fence; that he has a neighbor that will likely be seeking the same relief; that the fence is for family privacy and the safety of their dog; that he is concerned the dog could jump a 3.5 ft. tall fence; that it is also for personal security and he would prefer the additional height of the fence; that the lot next to him is part of lot 2; that it is an extended sized lot; that he is not sure of the distance from his side property line to their house; that he plans on putting the fence within a couple of inches from their property line; that he has heard no complaints from any neighbors; that he has a 60 ft. setback covenant from the neighborhood restrictions; that he cannot speak to the reason the house was placed in its location as it was existing when he purchased it; that he has no shed or plans to put any shed on the property; that his only future plans are to build a deck in the backyard; that there is no vehicular access from Lake View Drive; and that he would say his property is lower than the road but he is unsure of the measurement.

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

Mr. Chorman closed the public hearing.

Mr. Williamson moved to approve the application for Case No. 12753 for the requested variance, pending final written decision, for the following reasons:

1. The property has unique conditions due to the property being a through lot;
2. The exceptional practical difficulty was not created by the Applicants;
3. 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
4. The variance represents the minimum variance necessary to afford relief.

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

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

Case No. 12754–Pot-Nets Bayside, LLC seeks a special use exception for an off-premise parking lot (Sections 115-23B of the Sussex County Zoning Code). The property is located on the southeast side of Pot Nets Road approximately 600 ft. from Long Neck Road. 911 Address: 26463 Burton Road, Millsboro. Zoning District: AR-1. Tax Parcel: 234-24.00-51.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support or in opposition to the Application and fifty-two (52) mail returns. The Applicant is requesting a special use exception for an off-premise parking lot.

Mr. Tim Willard, Esquire, was present on behalf of the Applicant.

Mr. Sharp noted that, in addition to the special use exception standard, the Board must also consider the factors under §115-23(b)(1) of the County Code regarding off-street parking.

Mr. Willard stated that he is here on behalf of Pot-Nets Bayside, LLC; that Robert Tunnell is here also as a representative of Pot-Nets Bayside; that the general law for a special use exception is to provide adjustments to relative location of uses to promote the usefulness to supply necessary elasticity to their efficient operation; that the standard of review is that this proposed use will not substantially affect adversely the uses of adjacent and neighboring properties; that they believe this application does the opposite; that before you is the application and site plan which has been approved by the Soil Conservation District; that this does the opposite to the extent there are a lot of overflow parking on Pot Nets Road, which is now a private road because of the Paradise Grill; that this takes

those parking close to residential neighborhoods and puts them in a very isolated area that is also owned by the same applicant but it is not happened to be adjacent; that this substantially will improve the situation; that they are here because Mr. Tunnell received a letter from Sussex County because they began operating this last summer and unbeknownst to him, because it was their property also, he thought he was doing the right thing; that they are here today to obtain the necessary permissions to keep operating in this fashion; that the law mentioned earlier has very specific parameters for this; that, in the AR district, it is located in the off-street parking section of the Sussex County Code, specifically §115-210(a)2(a) and as a special use exception; that, simply put, cross street parking areas adjacent to where reasonable distance from premises on which parking areas are required by parking regulations of the Article 22 where practical difficulties, including undue hardship, are encountered in locating such parking; that the purpose of this proposal is to relieve congestion in the streets that would best be served by permitting such parking off-premises; that the rest of that section of Code calls for waivers, which they are not seeking; that they are seeking an off-premise parking lot; that the parking lot in the area of Paradise Grill is located within Pot-Nets Bayside off Pot Nets Road; that it is a very popular place visited by large amounts of people; that people also access Paradise Grill by boat and some even have slips there; that the property is leased by Tortila Enterprises, LLC; that the Tunnel Company owns the land but is not involved in the operation of the restaurant; that, in the area around there, are 241 parking spaces and 150 golf cart spaces; that, since the zoning is GR, golf carts are allowed and considered to be an amenity to the residents of Pot-Nets Bayside; that they use their golf carts and park at the restaurant; that the good news is that the spaces already exist and take up less room; that there are 241 parking spaces in the vicinity of the restaurant; that they do still get some overflow which comes into Pot Nets Road where the residences are lined up; that it is actually a parkway area; that golf carts are common within Pot Nets; that there are approximately 350 parking spaces around Bay Road and the Main Road which have been used for restaurant parking; that there was concern regarding the street parking resulting in traffic and pedestrian safety issues, as well as inconvenience and nuisance to the residents; that, as a result in Summer 2022, land owned by Pot Nets Bayside, LLC, and the Tunnell Company was converted to an overflow parking lot for the restaurant and non-residents; that guest parking was prohibited on the development streets; that this parking lot was created for 336 spots; that the site plan approved shows a gravel lot with spaces marked and lighting; that the lot is located on Pot Nets Road, just off Long Neck Road and is surrounded by lands owned by the Tunnell Company; that the Tunnell Company has greenhouses located adjacent to the parking area; that they also store landscaping materials, such as mulch and stone, on the property; that the property is lined with mature woods; that the parking area is gravel, lighted, and has 24 hour surveillance; that the parking area is 1.5 miles distance from the restaurant; that shuttles are used to transport customers to and from the restaurant; that parking and shuttles are provided at no charge to customers; that the type of shuttle used depends on estimated demand and parking area; that shuttles are only used on Friday, Saturday, Sunday, and holidays; that holidays would include Memorial Day and Labor Day; that the hours of operation would be from about noon until shortly after closing; that the use of the parking area was a great improvement during the summer; that it was convenient and established safety for customers and residents; that the only problem encountered was the failure to obtain a special use exception which is why we are present tonight; that, to the legal standard, there are practical difficulties in that there is no other place to locate

a parking area near the restaurant and this parcel is the closest available land; that the location is also ideal due to being isolated and surrounded by trees; that the purpose of these regulations are to relieve congestion in the streets that would be best served by permitting such off-premise parking; that the Applicant proposes conditions to apply to the special use exception; that these conditions would include that the parking area be lighted, monitored by security, have 24 hour security cameras, have signage to indicate the area when in operation, the area be available Friday, Saturday, Sunday, and holidays from May 1st to October 1st, and free shuttle service be available to meet demand when the parking lot is in use; that he will provide the list of conditions he previously stated to the Board; that, at a minimum, the parking lot will be open Friday, Saturday, Sunday, and holidays; that he believes this is an amenity to the restaurant and it is beneficial for them to operate is correctly; and that, if they do not abide by all of the conditions, sanctions could be imposed by the Board.

Mr. Willard submitted a list of proposed conditions to the record.

Mr. Robert Tunnell, III, was sworn in to give testimony about this Application.

Mr. Tunnell testified that Mr. Willard's statements are true and correct; that, historically, any overflow parking for Paradise Grill was down the main boulevard in a grassy area with trees where the cars lined the inbound and outbound lanes; that this year they decided to not allow individuals to park in this location but directed them to the overflow parking lot and had them shuttled to Paradise Grill; that they made this decision after receiving a large amount of complaints from residents about safety concerns due to individuals hanging out and partying after leaving the restaurant; that, with the parking lot, they are better able to control individuals with one way in and one way out; that they are able to enforce safety and move people along better in this controlled area; that the purpose was to alleviate issues that they were having; that they went through a process with DelDOT before the pandemic began, so sometime in 2019 and had two (2) public hearings; that, at these hearings, they had their Pot Nets Road Easement vacated because their long term plans were to build a parking lot and move the main entrance to Bayside closer to the parking lot and change some interconnections through the community; that Phase One was the parking lot and, once it was created, they had the easement extinguished by DelDOT in late 2020 he believes; that there has been a lot of thought put into this; that they have gone through public hearings and spent a great deal of time explaining to the residents what the long term plans are; that, during the pandemic, they lost track of the next steps in the process and failed to reach out to either their attorney or the County; that they had a handful of complaints during their operation this summer; that the main complaint was lack of signage; that they had a DelDOT type road sign that would flash parking; that they put up better signage; that they also received complaints about people hanging out to which they increased patrols of the parking lot prior to installing lighting; that there were a few complaints but far less than before the parking lot; that it has been a large improvement and has been received very well; that they have adjusted as feedback is received; that this has been a learning process through the summer; that the parking lot is about a mile and a half from the restaurant; that there has been more positive than negative feedback; that the schedule of the shuttles would be determined by the demand; that Paradise Grill operates the shuttles and would determine the need based on events; that, when you know Amish Outlaws are coming,

they would provide more shuttles; that he believes they try to cycle in every 15-20 minutes and maintain regular shuttle service; that the person who runs Paradise Grill lives closest to the parking lot so he has a huge incentive to maintain everything correctly and not receive complaints; that all of the directing of traffic and operation of the parking lot is on Paradise Grill; that he is okay with the conditions set forth by Mr. Willard; that they have not thought ahead to winter and how they would secure the parking lot but they may secure it when closed; that patrons of the restaurant can still go to park closer to the restaurant and will be directed to the overflow parking should the need arise; that they have parking attendants that will also direct people to the overflow lot if they know the parking at the restaurant is full; that there is a secondary entrance to Pot Nets Bayside but it is not a straight drive as the other is and you would really need to know where you were going to access it from there; and that the parking lot is to fill the need for overflow parking at the busiest times of the season.

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 the application for Case No. 12754 for the requested special use exception, pending final written decision, for the following reasons:

1. The proposed use will not substantially adversely affect the uses of neighboring and adjacent properties;
2. The Applicant has demonstrated that it meets the standards set forth in §115-23(b)(1) of the County Code; and
3. The proposed use will relieve congestion in the streets and it would best be served by permitting such parking off the premises.

As part of his motion, Dr. Carson moved to condition this approval as follows:

1. The remote parking area shall be lighted and monitored by security when in use;
2. Signage shall identify remote parking area when available;
3. Remote parking area shall be available Friday, Saturday, Sunday, and holidays from May 1st to October 1st; and
4. When the remote parking area is in use, free shuttle service will be available to meet the demand.

Motion by Dr. Carson, seconded by Mr. Hastings, carried that the **special use exception is granted for the reasons stated with conditions**. Motion carried 5 – 0.

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

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 no correspondence in support of or in opposition to the Application and zero mail returns. The Applicants are requesting variances of 15 ft. from the 20 ft. rear yard setback requirement and 10 ft. from the 15 ft. side yard setback requirement on the north side for a proposed garage.

Ms. Megan Avalos was sworn in to give testimony about the Application

Ms. Avalos testified that her husband is not present tonight due to a family emergency, though he really wanted to be here; that they are seeking variances to build a detached garage on their property; that they have four (4) children, two (2) who are teenagers and two (2) who are younger; that they currently have a 6 ft. fence around their property; that she is submitting into the record photos from Google that more accurately show their property and the existing fence; that the purpose of the garage is for her husband to store his HVAC materials; that his materials are currently taking up space in the garage attached to their home; that they are requesting the variances to place the garage 5 ft. from the property line on the north and east side; that she has always told her husband that she wants the house to be where her children want to be at and have their friends come over; that their plans for the future in their backyard are to install a pool, firepit, and a volleyball court; that they want their children and their friends to be able to have a safe place to hang out; that they are looking to place the detached garage in the corner of their property; that, based on the proposed location, they need variances; that the need for variances is because the County says it is a corner lot; that the roads are actually her parents' driveway and a farm road; that her mother owns the property surrounding her; that the structure behind her house is the dog house; that the reason the garage cannot go in the other corner of the backyard is because of the location of the septic system; that their septic system runs north to south on the property; that the plan is for the volleyball court to be standard size; that she does not know what the dimensions are; that they are undecided on the size of the pool; that, if they do not get the approval tonight and the detached garage ends up in the middle of their backyard, they may have to adjust their future plans; that they just built this house in 2018; that they are just getting around to the plans that she and her husband have been discussing for years; that there is a double door in the fence along their property that will grant them access to the proposed detached garage; that they would not be accessing the detached garage daily and her husband's truck would not be parked in it; that her husband's truck is parked in front of the house in the driveway; that the building is more for storage for her husband; that they have not thought about a smaller garage; that, in the future, they would like to make an office or apartment above the garage; that her husband always has a lot of units and flex materials which are taking up her basement and garage right now; that the size of the building was determined by her husband and the need to store materials for his business; and that, during the pandemic, it was hard for him to acquire materials so when he gets an opportunity now he takes it and has a bit of materials on hand to store.

Mr. Sharp asked the Applicant why a garage measuring 20 feet by 30 feet would not work and he noted that a commercial use for the garage may require a conditional use.

Ms. Maria Folke was sworn in to give testimony in support of the Application.

Ms. Folke testified that the roads along the property are their driveway and a farm lane; that there are no concerns for visibility; that all around the property in question is hers or other family; and that they live, operate their business, and have greenhouses on their property.

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

Mr. Chorman closed the public hearing.

Mr. Hastings moved to leave the record open for Case No. 12755 for the requested variances to allow the Applicant's husband to be present and speak on the Application and that the Application be placed first on the agenda for the Board's next meeting on November 21, 2022.

Motion by Mr. Hastings, seconded by Mr. Warfel, carried that the **record be left open and a second hearing be scheduled for November 21, 2022.** Motion carried 5 – 0.

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

Case No. 12756– Laura L. Turner Cox and Howard Cox seek variances from the front yard and side yard setback requirements for existing structures (Sections 115-25, 115-182, and 115-183 of the Sussex County Zoning Code). The property is located on the northwest side of New Castle Road within the Indian River Acres Subdivision. 911 Address: 30207 New Castle Road, Dagsboro. Zoning District: AR-1. Tax Parcel: 134-7.00-41.00

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 17 ft. from the 30 ft. front yard setback requirement for the existing dwelling, 26.5 ft. from the 30 ft. front yard setback requirement for existing steps, and 2.5 ft. from the 5 ft. side yard setback requirement on the south side for the existing carport. These variances apply to a proposed Lot 1 as shown on a site plan submitted by the Applicants.

Ms. Mackenzie Peet, Esquire, appeared on behalf of the Applicants.

Ms. Peet stated that she is here on behalf of Laura Turner Cox and Howard Cox, who are the Applicants and co-owners of the property; that the property consists of Lots 1 & 2 in Indian River

Acres; that importantly, this subdivision was created before the enactment of the Zoning Ordinance; that the Applicants are seeking variances for the purpose of re-subdividing this double lot to its original condition as two separate lots for the purpose of developing a single-family home on Lot 2; that the Applicants presently share this home with their sister who lives there full-time; that this property is where the entire family comes to when they visit the beach; that they are looking to build a home on Lot 2 within the requirements of the Code; that the property cannot be subdivided without the variances; that the variances are for the existing dwelling which has been in place since 1966; that the first variance is 17 ft. from the required 30 ft. front yard setback for the existing dwelling that is located 13 ft. from the property line; that the second variance is for 26.5 ft. from the required 30 ft. front yard setback for the existing steps that are 3.5 ft. from the front property line; that there is a cul-de-sac along the front property line which created a shift and resulted in the placement of these structures closer to the front property line; that the third variance is for 2.5 ft. from the required 5 ft. side yard setback on the south side for an existing carport; that the 5 ft. side yard setback is due to the small lot ordinance reducing the setback from 10 ft.; that the existing property consists of a single-family dwelling that was constructed in 1966; that the home is primarily located on Lot 1; that there is a shed that is located on Lot 2 that would need to be moved; that the Applicants understand that they have to time, subject to approval of the variances, the removal of the shed due to the restriction of accessory structures on lots without primary dwellings for more than six (6) months; that submitted with the Application are Exhibits A through D; that Exhibit A includes a property information sheet and deed of record; that the subdivision plan for Indian River Acres shows the lots as two (2) separate lots when created and documented in Plot Book 3, Page 27; that they believe the lots were combined and then the house was constructed; that Exhibit B contains a boundary survey and location survey, prepared by Delaware Surveying Services that shows the existing one story dwelling located on Lot 1 is an addition to the proposed subdivision line and building envelope; that Exhibit C contains aerial maps of the property, images of the existing home, Sussex County aerial maps, and relevant sections of code; that Section 115-209 of the Code authorizes the Board to decide variances; that Section 115 provides specific criteria for those variances that shall only be authorized if the Board finds that all of those criteria are met; that the property is unique because it was originally two (2) separate lots that were combined at some point prior to purchase by their family; that this subdivision was approved in 1960 predating the enactment of the Zoning Ordinance; that another unique factor is that, as a result of the subdivision predating the Zoning Ordinance, each lot is considered to be legally non-conforming; that the lot was developed in the front yard and side yard setback; that the lot is located on a cul-de-sac which further limits the buildable area and increases the encroachments into what would be the front yard setback; that the existing condition has created an exceptional practical difficulty for the Applicants to re-subdivide their double lot for the purpose of constructing a single family dwelling that would be in kind with other homes in the community; that the property cannot be developed in strict conformity within the provisions of the Code for the reasons stated; that the variances from the front yard and side yard setbacks are necessary to re-subdivide the property and to enable the reasonable use of Lots 1 and 2; that the Applicants purchased the combined lots with the existing dwelling; that the property is located in the Agricultural Residential District in a community with existing dwellings located in the setbacks and lots that do not meet the minimum requirements; that the variances requested are the minimum variances to afford relief; that this is an existing structure

for which we are seeking compliance and to develop a new dwelling in conformity with the Code on Lot 2; that, to her knowledge, there is no flooding on the lot; that the Small Lot Ordinance applies to the two (2) lots that make this parcel; that the setbacks were confirmed by Planning and Zoning staff which is why the Applicants proceeded with the Application; that the carport blends with the house very well but it is a separate structure technically; and that all of the structures are listed and labeled on the survey.

Ms. Norwood stated that Planning & Zoning staff has applied the Small Lot Ordinance to re-subdivided lots.

Ms. Laura L. Turner Cox and Howard Cox were sworn in to give testimony about the Application.

Ms. Turner Cox testified that she affirms the statements made by Ms. Peet to be true and correct; that there is well and septic on the property but County sewer has been approved; that the septic is located behind the house, towards the lagoon, which is likely a reason the dwelling is closer to the front property line; that, when they bought the property, the road was straight; that, when the road was paved, they made the cul-de-sac; that the cul-de-sac made the front yard smaller; that, if there is a Nor'easter or something similar, there may be flooding in some areas; that the cul-de-sac was installed at least 15 years ago because they purchased the home in 1998 and, at that time, it was a gravel road; that, when the road was paved, the stairs were closer than previously due to the cul-de-sac; that they are able to build on the lot as proposed; that there have been houses built recently on similar lots that comply with the building restrictions; that a house was recently built on the corner that is huge and does not look like it belongs there; that they have been looking at a smaller dwelling that is skinny to give more outside space; that, with the water to the back, they are looking to maintain a larger yard with a smaller house; and that there is a homeowners association and they have obtained approval.

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 application for Case No. 12756 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to its history and the existence of the cul-de-sac;
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 Applicants;

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 Mr. Williamson, carried that the **variances be granted for the reasons stated**. Motion carried 5 – 0.

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

Case No. 12757– Gary Kelbaugh seeks a variance from the front yard setback requirement for an existing structure (Sections 115-25 and 115-182 of the Sussex County Zoning Code). The property is located on the south side of Staytonville Road approximately 0.27 miles from Memory Road. 911 Address: 12718 Staytonville Road, Harrington. Zoning District: AR-1. Tax Parcel: 430-1.00-9.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. The Applicant is requesting a variance of 9.4 ft. from the 40 ft. front yard setback requirement for an existing detached garage.

Mr. Gary Kelbaugh was sworn in to give testimony about the Application.

Mr. Kelbaugh testified that he is seeking a variance for a pavilion structure that was built on his property; that structure was contracted to be built by a local contractor on May 21st, 2022; that the company applied for the permits; that the company was on site several times and never questioned where he wanted to place the structure; that the contractor constructed the building on May 21st; that, about three and a half weeks later, he talked to a customer representative for the company while waiting for a final inspection; that, at that time, he was told they had some good news and bad news; that the good news was that the footer inspection passed; that the bad news was that he needed to obtain a survey; that he got the plot that was originally provided to company; that he went to the house and measured to the rear property line; that the property goes half way into the ditch behind his house; that the survey was accepted by both the company and the permit office; that he submitted pictures; that it is on the left side of house if you are looking at it from the road; that they placed it on that side because the doors to the house and the garage are on that side of the house; that it is closer and easier to access on that side; that Exhibit 1 consists of photos of the garage; that the electric panel is on that side also and will make it easier to run electric in the future; that, if it was located farther back, he would have had to clear out adult trees; that he had it placed it closer to the road to house his RVs and make it easier to get them in and out; that it was not cost efficient to move it farther back because of the cost to extend his driveway; that, on the other side of the house, is a septic hill which eliminates his use of that side of the property; that he feels that the contractor signed for the permit and built the

structure and should have constructed it in line with the County Code; that he is requesting a variance for where it has already been constructed; that the pavilion is located 45 ft. back from the pavement; that he submitted pictures of the neighbor's house and it appears to be in line with that; that he tried to do it correctly; that there are also existing utility poles that limited his buildable locations; that this for him to park his RVs underneath; that there is a 15 ft. right of way between his property and the road; that he staked out the location and had millings in place; that the contractor never requested a site plan or survey; that they had a site evaluator come and he just made sure that the location was level; that he built it the way he did due to the cost; that he has received no complaints; that the RVs will not create a visual block of the road when placed in the pavilion; that the driveway was installed by him; that, at the time, they constructed the pavilion he was not home; that he knew nothing for about three (3) weeks about the footer passing inspection but him needing a survey; that this was all after the building was complete; that he does not understand why he was not called by the inspector at the time an issue was found; and that he is not saying the name of the company.

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

Mr. Chorman closed the public hearing.

Mr. Hastings moved to approve the application for Case No. 12757 for the requested variance, pending final written decision, for the following reasons:

1. The property has unique conditions due to the contractor error;
2. 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
3. The variance represents the minimum variance necessary to afford relief.

As part of his motion, Mr. Hastings directed that a letter be sent to the builder.

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

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

Case No. 12758– Elizabeth and Patrick McGuiness seek a variance from the building height restriction for a proposed protective screen (Sections 115-25 and 115-185c of the Sussex County Zoning Code). The property is located on the west side of Ellender Court within the Kings Creek Country Club Subdivision. 911 Address: 5 Ellender Court, Rehoboth Beach. Zoning District: AR-1. Tax Parcel: 334-13.00-1065.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received

five (5) letters in support of, zero correspondence in opposition to the Application, and zero mail returns. The Applicants are requesting a variance of 31 ft. from the 42 ft. maximum height requirement in the AR-1 zoning district for a proposed protective screen.

Ms. Mackenzie Peet, Esquire, and Mr. Stephen Spence appeared on behalf of the Applicants.

Ms. Peet stated that she is present on behalf of the Applicants Elizabeth and Patrick McGuinness; that Mr. Spence is present as co-counsel; that Ms. McGuinness is the property owner of 5 Ellender Court in Rehoboth Beach; that the Applicants' property is located adjacent to the 9th hole at the Kings Creek Country Club golf course; that Ms. McGuinness is seeking a variance from sections 115-25 and 115-185C to allow for a 73 ft. high golf net to extend across the rear length of her property to serve as a protective screen from golf balls that enter the property; that the application contained Exhibits A through H; that Exhibit A contained the property information sheet and the deed of record confirming that Ms. McGuinness is the owner of record; that Exhibit B contained a survey and proposed site plan that identifies the location of the proposed net, which does not located into the setback but is located outside the properties buildable envelope; that a lot of the property is lined with mature trees but not directly behind her property; that the lack of trees behind the property is why she is getting golf balls that fly into her yard; that Mr. Spence is going to point out where the men's tee box is specifically; that Exhibit E includes two aerial maps from Google Earth; that there are two (2) maps, one (1) from June 2021 and the other from August 2022; that the maps show that the hole changed; that the bunkers were relocated and created a bigger issue; that Exhibit F is a copy of the variance approving the 100 ft. for the golf netting at the driving range; that Exhibit G includes five (5) letters of support from the neighbors; that Exhibit H contains the approval from the Kings Creek RPC architectural committee dated March 9, 2022; that Section 115-209 of the Code authorizes the Board to hear and decide applications for variances and goes on to provide the criteria; that the property is unique because it is located adjacent to the 9th hole of the Kings Creek Golf Course; that the property's location on the golf course has led to increased safety issues presented by recent alterations to that hole; that constructing this protective barrier at 42 ft. would not be high enough as stated by the installer; that, without the requested height variance, there would be a significant safety issue and golf balls would continue to enter the backyard; that the Applicants are only intending to install this to improve safety to the rear yard; that this was not created by the Applicants as the redesign of the 9th hole was done by Kings Creek; that the installation of the net is to prevent stray golf balls from entering the property; that this is a golf community; that the Applicants have support of the neighbors and approval from the architectural review committee; that, according to the installer, a 73 ft. high fence is the minimum height required to prevent golf balls from entering into her yard; that, for all of these reasons, they request the Board grant the request for a variance; that they are not aware of any other fences within the community like this; and that this is unique to her clients' parcel.

Mr. Spence stated that the 9th hole is a dog leg right hole; that the pro tee box is located farther back; that the typical tee box used is slightly closer; that, if you are trying to cut off the distance to the hole, you want to land in an area adjacent to the McGuinness' back yard; that, if you are off, you land in the McGuinness' property; that anyone trying to shorten the hole cuts to the right which increases

the volume of golf balls in their yard; that the Applicants' house is relatively close to the rear property line which is part of the problem; that, some years ago, the Board approved a higher fence of about 100 ft. to be placed at the driving range to protect the Country Club's clubhouse; that the variance requested in this case is for a 73 ft. tall net which should be adequate; that balls coming off the tee are coming down; that the ladies' tee box is closer and does not pose as much of an issue; that, on the before picture, there were four (4) bunkers; that, on the newer picture, there are only two (2) bunkers but they made it more challenging with their placement; that the adjustment of the bunkers has made it more challenging and increased the number of golf balls in the McGuiness' yard; that there are protective fences in other locations but none this high; that there are protective fences at the 3rd hole which is about 25 ft. high, at the par five (5) behind it, and at least one (1) other fence within the community; that it is the shooter pattern at this hole specifically that creates the issue; that there are too many balls that are still in the air 30, 40, or 50 ft. from a driver that it is dangerous; that the trees are loblollies, hickories, and other large species of tree; that the net will not be taller than the trees; that there is a dense area with a significant amount of trees at the rear of the property; that they changed the fairway and not the hole; that he is only involved because he was involved previously and has lived in Kings Creek since 2002; that the bunkers surrounded what was supposed to be the landing area off the tee; that they reduced the number of bunkers throughout the entire course, which they started by removing them all and then rebuilding; that they updated the bunkers to what is referred to as a "Billy bunker" which is designed to not have water pumped out of them but rather to drain; that this particular hole they removed two (2) bunkers but replaced them with a more aggressive bunker setup; that, to shorten up on this hole, the only place to aim for is the closest spot to Ms. McGuiness' backyard; that you have a lot of people coming off the tee box and aiming in that direction because on the other side is a pond and creek; that he does not believe the Country Club considered the impact on this property when making the modifications to the course; that they created an incentive for golfers to shoot in that direction rather than away from Ms. McGuiness' property; that bunkers were formerly referred to as sand traps; that the advice from the engineer was that 42 ft. would not be high enough; and that the installation of this safety netting will also shield the Applicants' neighbors.

Ms. Elizabeth McGuiness was sworn in to give testimony about the Application.

Ms. McGuiness testified that on a typical summer weekend day that she has at least ten (10) golf balls enter her property; that they are trying to minimize the golf balls in not only their yard but in the woods and their landscaping; that she watches people try to retrieve their balls; that typically they do not venture far into her property but she has had people in her bushes up by her porch; that her dog tends to greet the people on her property; that two (2) days ago she had a golf ball land inches from her backdoor and it is still there because they didn't want to come close enough to get it; that she does not use her backyard but rather sits on her porch because of the safety issue; that her grandchildren do not go in the backyard either; that they have put in a fire pit; that they have things that they would like to enjoy as a family but have not been able to because of this issue; that she understands they live on a golf course; that she would like to make those playing have a bit of ease to know that there is some protection there also; that the left side of the lot is wooded; that the trees are higher than 100 ft., some of them; that there is going to be four (4) posts, three (3) of which will be in

the woods and the fourth to the right of the biggest tree; that the problem was made worse by the changes to the course; that she is not a golfer and is not familiar with what a bunker is; that she is not a golfer and does not know if anyone is having this same issue; that her neighbors adjacent also receive golf balls on their property; and that the statements made by her attorneys are true and correct.

Mr. Jack Young was sworn in to give testimony in support of the Application.

Mr. Young testified that he resides next door to Ms. McGuiness; that there are two (2) aspects of this request that are unique to the property; that the first being the course has changed; that it has made it vulnerable to this property specifically; that the safety issue alone warrants a variance; that this property is unique because it is subject to a great deal of golfer mistake; that the real problem is twofold; that one is due to those coming off of the senior tees as well as the crowns and the threes; that it is not those coming off the tee box itself but also those individuals was are mid-fairway; that, if you look at the area just short of the right-hand bunker, there will be a number of golfers that will end up in that space; that, if you shank the ball, which is possible, and you are trying to go not over the pond but down a fairly narrow alley that is some grass, the cart path itself; that it is as likely as not that you will end up in the yard of Ms. McGuiness or possibly his yard; that they are set back enough that it is difficult to get to their back yard but not impossible; that the only benefit he see is that it reduces the number of golf balls he needs to buy a year; that, as Ms. McGuiness' counsel stated, she has received approval from the architectural review committee and he has heard of no contention from any neighbors; that this will not alter the character of the neighborhood; that this is the minimum variance for the safety of the property; that this will also benefit other homes adjacent; that the dark green area on the map is a pond; that there are a number of golfers that, even if they are before the pond, will try to avoid going over the pond just for the fear that they will not make it; that he thinks it is an easy five (5) wood if your back and maybe a five (5) iron but if you miss it you are going in to Ms. McGuiness' back yard; that she is clearly within the setbacks; that they have tried everything to avoid seeking a variance; that they have tried some netting of their own and it has not been successful; that the netting they are proposing is consistent with variances granted prior within the community; and that the netting will not be intrusive to the neighborhood and is fully supported by the neighborhood.

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

Mr. Chorman closed the public hearing.

Mr. Williamson moved to approve the application for Case No. 12758 for the requested variance, pending final written decision, for the following reasons:

1. The exceptional practical difficulty was not created by the Applicants as there has been a change in the design of the adjacent golf course that results in golf balls flying into their yard;

2. 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;
3. There is a similar net located near the driving range; and
4. The variance represents the minimum variance necessary to afford relief.

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

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

ADDITIONAL BUSINESS

Meeting adjourned at 7:56 p.m.