

## MINUTES OF SEPTEMBER 11, 2023

The regular meeting of the Sussex County Board of Adjustment was held on Monday, September 11, 2023, at 6:00 p.m. in the County Council Chamber, Sussex County Administration Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 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. Hastings, seconded by Mr. Warfel and carried unanimously to approve the Minutes for the July 10, 2023, meeting. Motion carried 4 – 0.

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

Motion by Mr. Warfel, seconded by Mr. Hastings and carried to approve the Findings of Facts for the July 10, 2023, meeting. Motion carried 4 – 0.

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

## PUBLIC HEARINGS

**Case No. 12853 – Coastal Properties, LLC c/o George Elliott** seeks variances from the maximum building height, front yard, and corner front yard setback requirements for existing and proposed structures (Sections 115-34, 115-179, and 115-182 of the Sussex County Zoning Code). The property is located on the corner of Mercer Avenue and River View Avenue within the Orchard Manor Subdivision. 911 Address: 33322 Mercer Avenue, Units 1 and 2, Millsboro. Zoning District: MR. Tax Map: 234-35.05-150.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of, two (2) letters in opposition to the Application, and one (1) mail return. The Applicant is requesting variances of 11.5 ft. from the 30 ft. front yard setback requirement for the existing porch, 18.3 ft. from the 30 ft. front yard setback requirement for the existing porch,

17 ft. from the 30 ft. front yard setback requirement for the existing porch, 9.6 ft. from the 30 ft. front yard setback requirement for the existing dwelling, 9.9 ft and 10 ft. from the 15 ft. corner front yard setback requirement for the existing dwelling, 9.9 ft. from the 15 ft. corner front yard setback requirement for the proposed deck, 4.1 ft. from the 15 ft. corner front yard setback requirement for the existing porch, and 8.2 ft. from the 15 ft. corner front yard setback requirement for proposed steps.

Ms. Mackenzie Peet, Esquire, was present on behalf of the Applicant.

Ms. Peet stated that she is present on behalf of the Applicant; that they are requesting 9 variances in total; that the Applicant purchased this property on May 3, 2023, with the intent of renovating the existing duplex to rent out each unit; that this property is located within the Medium Residential Zoning District and in the area commonly known as Oak Orchard; that the setbacks for the property are 30 ft. front yard, 5 ft. side and rear yard, 15 ft. corner front yard, and a 42 ft. maximum building height; that the title research suggests that the duplex was constructed in the 1980s and has remained in its current location since then; that the community itself was plotted in the 1970s on a plot called Pernel's Addition to Oak Orchard, which is more fully shown in Plot Book 344, Page 59, and is being submitted into the record; that this parcel consists of Lot 27 and a portion of Lot 26; that the existing duplex was constructed within the setback as confirmed by aerial images and surveys submitted; that the property is located within the AE flood zone; that, on July 5, 2023, the Applicant submitted its initial application seeking variances in connection with the proposed renovation requiring the existing dwelling to be raised 9 ft. about the base flood elevation of 8 ft.; that, prior to any renovation of the existing structure, the Code and, specifically Article 18 on flood prone districts, requires the structure to be raised to a height above base flood elevation; that Section 115-203 of the Code governing alterations to non-conforming buildings provides that a building non-conforming only as to height area or bulk requirements may be altered or extended provided that such alteration or extension does not increase the degree of non-conformity in any respect; that the Planning and Zoning office confirmed its interpretation of this section of code to mean that any change to bulk area requirements of a non-conforming structure necessitates variances of any encroachments of the existing structure into the setbacks and any change in height to the existing structure; that it was later determined that the variance is only as to the setbacks were required, not to the height of the structure which will be otherwise compliant with the Code when raised; that there a total of 7 variances associated with the existing structure proposed to be raised above the base flood elevation; that those variances include a 11.5 ft. from the 30 ft. front yard setback for the existing and to be raised dwelling located 18.5 ft. from the front property line, 18.3 ft. from the 30 ft. front yard setback for the existing and to be raised dwelling and porch to be located 11.7 ft. from the front property line, 17 ft. from the 30 ft. front yard setback for the existing and to be raised porch to be located 13 ft. from the front property line, 4.1 ft. from the 15 ft. corner front yard setback for the existing and to be raised porch to be located 10.9 ft. from the property line running parallel with Mercer Avenue, 9.6 ft. from the 30 ft. front yard setback for the existing and to be raised dwelling to be located 20.4 ft. from the front property line, and 10 ft. from the 15 ft. corner front yard setback for the existing and to be raised dwelling; that these variances are proposed to locate the existing structure in the same footprint as it currently exists but at a height increased above the base flood elevation; that, on July 20<sup>th</sup>, the

Applicant amended its application as it was discovered that the access stairs to each unit would be located within the corner front yard setback; that the Applicant submitted a final amendment to the Application on August 10, 2023, seeking a modification to the requested stair setback and a third variance to accommodate the outdoor deck; that the Applicant seeks variances for the proposed stairs and an unenclosed open deck to be located 5.1 ft. from the corner front property line and the stairs to be 6.8 ft. from the corner front property line running parallel to Mercer Avenue; that the stairs are proposed for access to each unit and the decks proposed to accommodate an outdoor space for future occupants; that there have been 2 letters submitted into the record in opposition to the Application; that the first letter in opposition concerned objections to site visibility and corner visibility with respect to the deck and stairs; that they would note that the deck and stairs are going to be constructed in a manner that they are open and unenclosed; that they do not believe that there will be any further obstruction or any increased degree in obstruction of visibility than what currently exists; that the second letter of opposition had concerns with stormwater management as well as parking; that, to address the parking requirements, there will be 4 spaces at least on site which is code compliant and would equal 2 spaces per dwelling as existing and there are additional areas on the property that could accommodate additional parking; that they could probably fit 1 or 2 spaces underneath the raised area where the deck is being proposed, as well as additional parking in the rear of the site if needed; that, with respect to the stormwater management questions, this application does not trigger any stormwater management regulations but the Applicant may consider adding a French drain as they did acknowledge there is some pooling in the front of the property which will need to be addressed; that all improvements are shown on the architectural plans designed by Dave Burkholder of Signature Drafting and were attached to the August 10, 2023, letter; that the best visual conception of the improvements are shown on the cross sections labeled A102 and A103; that this Board, pursuant to Sections 115-209 and 115-211 of the Sussex County Zoning Code, is authorized to grant variances that are the request before the Board; that no such variance shall be authorized by this Board unless it finds that the Applicant has complied with the criteria that are more fully set forth in Section 115-211B of the Code; that the Applicant complied with this criteria because the property is very unique as an existing substandard corner lot within the AE Flood Zone and with a non-conforming duplex located thereon; that the renovation to this older home cannot be accomplished within the strict conformity of the Code as the Code requires the home to be built above base flood elevation but at the same time does not permit and degree of change to the non-conforming structure without the variances even though the structure will remain more or less in the same footprint; that the addition of the stairs and unenclosed deck which permit access to the unit and proposed an outdoor space which they believe is a reasonable use for future occupant enjoyment; that the exceptional practical difficulty has not been created by the Applicant because the Applicant did not locate the existing non-conforming structure in its current location below base flood elevation or within the setbacks and only seeks to make reasonable improvements to the structure by raising it above base flood elevation; that the additional proposed improvements are proposed in their current location and designed to be centered on the back portion of the existing dwelling and only seek to add stairs for access to each unit and a deck area for reasonable enjoyment of the property; that the variances, if authorized, will not alter the essential character of the neighborhood for several reasons; that the first being this property and proposed improvements are consistent with other single, multifamily, and residential

homes near the site; that this entire area has been growing, especially residentially, with both single and multifamily dwelling units; that the Applicant intends to improve the current condition of the dwelling by raising it above base flood elevation, improving it aesthetically, and by resolving other violations on the property such as the existing shed and fence encroachments that are intended to be removed as stated; that the visual obstruction concerns raised by the neighbor will be a non-issue with respect to the deck and stairs that would be constructed in an open and unenclosed manner; that the footprint of the existing structure will otherwise remain unchanged so any existing degree of obstruction will not be increased; that the variances are the minimum variances that will afford relief with respect to the variances sought in connection with the requirements to raise the lowest floor level above base flood elevation; that the stairs and deck represent the least modifications to accommodate safe access and reasonable enjoyment of the property; that it does appear that the road encroaches on to the subject property at the corner; that she does not believe that there is anything, other than the original subdivision plan, regarding any sort of easement or anything similar; that the deck accommodates reasonable use of the property; that the size of the deck was recommended by the architect; that there will be 2 parking spaces per unit in the garage under the house; that they also believe there is additional space under the proposed elevated deck and, in theory, to the rear of the property also; that they have not laid out the parking but do believe that there is enough space to accommodate at least 4 spaces, which the Code requires; that the dwelling will not exceed the 42 ft. maximum height for a dwelling; that the proposed deck will not be additional impervious coverage; that, from speaking with Mr. Burkholder, it was discussed that the existing structure was centered on the site having been there for quite some time and that it would be cost prohibitive in terms of relocating the house farther towards the adjacent property owner and rear on the site with respect to removing utility connections and more; that the proposed deck is going to be equal sides of the deck on each unit that it is benefiting; that the proposed deck is a design consideration to allow for reasonable outside space for each unit due to the separation of the deck between the 2 units; that the total area looks large but to be utilized by 2 units it is half the space; that there will be no access from the front of the house, just the proposed steps to the rear of the home; that the HVAC unit is shown in cross section A-102, on a platform within the building envelope; and that the Code requires 2 parking spaces per dwelling unit and this garage under the dwelling will accommodate 2 spaces for each unit.

Mr. George Elliott was sworn in to give testimony on this application.

Mr. Elliott testified that he is not sure of the distance from the property line to the edge of Mercer Avenue but would say that 5 ft. is a fair estimate; that he does not believe that the neighbors are driving over the corner of this property; that the existing porch will be elevated which will make a difference for visibility; that the duplex was already there when the property was purchased; that they believe that the deck on the rear will enhance the property by allowing a great view; that it will not obstruct anyone else's view as it will be open and unenclosed; that they also believe it is a safer option to have the large deck rather than a small landing and the stairs; that they will be placing new footings as the existing are compromised; that it is not feasible to move the structure into compliance due to the location of the existing utilities and close proximity to the neighbors; that there is nothing

else on the property that he is aware of; that the shed and fence have already been demolished; that the site has public water and sewer; that he believes that they could park next to as well as under the proposed deck; that a lot of the neighbors have told him that they are happy that he is renovating this property as it has been an eyesore for years and it surprised him to see the opposition letters; that the proposed deck matches the dwelling in width; that the size of the deck was recommended; that the issue with standing water is in the front yard and not where the proposed deck would be located; that the rainwater will go through the deck to the ground below; that there is nothing on the deck that will block the intersection; that the shed in the rear has been removed and all that remains is a partial slab which will be removed also; that the partial slab is more like a sidewalk and was only for under the overhang off the shed; that he believes the garage can easily accommodate 2 cars and that there will be parking available on the side; that he was going off the word of the draftsman and expert movers on moving and raising the house; and that they discussed their options and ultimately decided to go straight up based on the cost as it would be cost prohibitive to move the home to the southeast corner of the lot.

Mr. Elliott affirmed the statements made by Ms. Peet as true and correct.

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. 12853 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions;
2. That, due to the physical conditions, the property cannot be developed in strict conformity with Sussex County Zoning Code;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances represent the minimum variances necessary to afford relief.

Motion by Mr. Hastings. Motion failed for lack of a second.

Mr. Warfel moved to approve the variances for the existing dwelling and porch and the proposed steps and to deny the variances for the proposed additions for the application for Case No. 12853, pending final written decision, for the following reasons:

1. The property has unique conditions due to it being a small corner lot and the flooding;
2. That, due to the physical conditions, the property cannot be developed in strict conformity with Sussex County Zoning Code, and the variances for the dwelling, porch, and steps are necessary to enable the reasonable use of the property;
3. The exceptional practical difficulty was not created by the Applicant;

4. The variances for the dwelling, porch, and steps will not alter the essential character of the neighborhood;
5. The variances for the dwelling, porch, and steps represent the minimum variances necessary to afford relief; and
6. The variances for the deck are not necessary to enable reasonable use of the property.

As part of his motion, Mr. Warfel conditioned the approval of the steps on the steps being located adjacent to the dwelling and not to the proposed deck.

Motion by Mr. Warfel, seconded by Mr. Williamson, carried that the **variances be granted in part and denied in part with conditions for the reasons stated**. Motion carried 3 - 2.

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

**Case No. 12856 – John and Darlene Masella** seek a variance from the side yard setback requirement for existing and proposed structures (Sections 115-25, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located on the northwest side of Woodlake Circle within the Longwood Lakes Subdivision. 911 Address: 20753 Woodlake Circle, Millsboro. Zoning District: AR-1. Tax Map: 133-15.00-116.00

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 5 ft. from the 15 ft. side yard setback requirement on the north side for the proposed attached garage and 1.8 ft. from the 5 ft. side yard setback requirement on the north side for an existing shed.

Ms. Darlene Masella was sworn in to give testimony about their application.

Ms. Masella testified that they moved here 5 years ago; that they bought in a community; that they have an attached 2 car garage; that they are seeking a variance to add an extension to their existing garage; that she bought her husband 2 classic cars that they restored together; that these 2 cars and her holiday decorations are taking up all of the space in their existing garage; that she bought the cars for her husband after they no longer were paying for her son's medical school expenses; that, after speaking with the contractor, he indicated that he could only do a 13 ft. wide garage because of the 15 ft. side yard setback; that they need an 18 ft. wide garage because of the shape; that they are adding on to the existing garage and it will end up being an L shape; that they are asking to reduce the side yard setback from 15 ft. to 10 ft. to allow them the room they need to be able to maneuver in and out of the proposed addition to the garage; that they have spoken with the neighbor most directly affected and they were not opposed; that the contractor is Collins Construction; that she is not familiar with the process for variances; that the contractor told her that they would need to go before the Board for a variance; that they were told to go to court and

then pay the fee to have the setback reduced; that maybe she interpreted his explanation incorrectly; that they looked at the 13 ft. wide design option also; that the smaller addition would make it difficult to manage the amount of cars they have; that her son is also coming back to Delaware to do his residency increasing the cars at their house; that the home was in this location when they purchased it through Capstone Homes; that they have looked at other properties as an alternative but had some family things that stopped that from happening; that they tried to locate a garage in the rear of the house but the septic drain fields are in the middle of their backyard; that she is confused about what is shown on their survey regarding the 10 ft. fence easement and 30 ft. buffer but they do have fence on both sides of their lot and the back is open; that they have HOA approval; that they would have the same issue on the other side of the house and their driveway is not on that side; that their shed also needs a variance of 1.8 ft. from the side property line; that they were told they could move the shed into compliance or add it to their variance application; that there is electric ran to the shed and it would be a huge process to move it so they opted to add it to their variance request; that there have been no complaints about the shed; and that the shed was approved by the HOA.

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 deny the application for Case No. 12856 for the requested variances, pending final written decision, because the exceptional practical difficulty was being created by the Applicants.

Motion by Dr. Carson, seconded by Mr. Williamson, carried that the **variances be denied for the reasons stated.** Motion carried 4 - 1.

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

**Case No. 12857 – The Darwin Draper Revocable Trust** seeks a variance from the side yard setback requirement for an existing structure (Sections 115-34, and 115-183 of the Sussex County Zoning Code). The property is located on the southwest side of Vines Creek Road approximately 70 ft. north of Stephen Drive. 911 Address: 34206 Vines Creek Road, Dagsboro. Zoning District: MR. Tax Map: 134-11.00-137.00

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 two (2) mail returns. The Applicant is requesting a variance of 2.7 ft. from the 10 ft. side yard setback requirement on the southeast side for an existing dwelling.

Mr. Manean S. Robinson, IV, Esquire was present on behalf of the Applicants.

Mr. Robinson stated that he is present on behalf of William David Hodges; that the property is located at 34206 Vines Creek Road, Dagsboro, which is in the Edgewood Manor Subdivision; that it is currently owned by the Darwin Draper Revocable Trust of which Mr. Hodges is the current trustee and son of the late Darwin Draper; that the property is being sold by the Trust and is currently under contract; that the purchaser had a survey completed and the survey showed that the southern side of the residence encroaches into the side yard setback by 2.7 ft.; that, in light of this information, they are requesting a variance of 2.7 ft. from the side yard setback requirement to allow the house to remain in its existing location; that the property is unique because the lot is relatively narrow and the home has been in this location since approximately 1972 when it was built; that, if the variance is not granted, the Applicant would be required to remove a portion of the home that encroaches or relocate the home which would be an undue burden and expense upon him and cause the property value or home value to decrease; that the property cannot otherwise be developed to be in strict conformity with the Sussex County Zoning Code because the structure is already on the property; that the variance requested is necessary to enable reasonable use of the property and maintain the existing structure; that the Applicant did not construct the home or create the encroachment; that the home was built by a contractor hired by Mr. Draper in 1970; that the granting of the variance will not alter the essential character of the neighborhood as the house has been in this location for 50 years; that the variance will not alter the character of the community nor will the variance impair the use or development of neighboring or adjacent properties, or be detrimental to the public welfare; that, given the amount of time that the home has been in its current location, they feel that relocating or removing the encroaching portion of the house would alter the essential character of the community; and that the requested variance is the minimum variance that will afford relief and allow him to maintain the current home in its current location.

Mr. William David Hodges was sworn in to give testimony for this application.

Mr. Hodges testified that he affirms the statements made by Mr. Robinson to be true and correct; that there have been no complaints about the placement of the home that he is aware of; that the size of the home has not changed since 1972; that they have well and septic; and that the easement on the back of the lot is a drainage swale because there were water issues when the development was built.

Ms. Norwood stated that there was no record of a permit or certificate of compliance for the dwelling.

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. 12857 for the requested variance, pending final written decision, for the following reasons:



1. The exceptional practical difficulty was not created by the Applicant;
2. The variance will not alter the essential character of the neighborhood as the home has been in its present location for over 50 years; and
3. The variance represents the minimum variance necessary to afford relief.

Motion by Mr. Williamson, seconded by Mr. Warfel, carried that the **variance be approved for the reasons stated**. Motion carried 5 - 0.

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

**Case No. 12858 – Parkada Investments, LLC** seeks a special use exception for promotional activities as accessory uses to a speedway (Sections 115-23, and 115-210 of the Sussex County Zoning Code). The property is located on the south side of Speedway Road between Dupont Boulevard (Rt. 113) and Bethesda Road (Rd. 326). 911 Address: 22206 Speedway Road, Georgetown. Zoning District: AR-1. Tax Map: 133-2.00-22.00, 23.00, and 24.01

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received six (6) letters in support of, zero letters in opposition to the Application, and two (2) mail returns. The Applicant is requesting a special use exception for promotional activities as accessory uses to a speedway.

Mr. Hastings recused himself and left the Council Chambers.

Mr. Timothy Willard was present on behalf of the Applicants.

Mr. Willard stated that he is present on behalf of the Applicant; that they are requesting a renewal of a special use exception; that the property is located outside of Georgetown along DuPont Boulevard; that the large property consists of 4 parcels with a total of 85 acres; that this special use exception is for promotional activities; that, on this property, the racetracks have been there since 1949 and evidence shows it began around that time; that they raced from March to October; that the property has plenty of parking; that, over the years, they have hosted promotional events, to include car shows, tractor pulls, rodeos, and a carnival, where they fundraise for different organizations, to include breast cancer, Camp Barnes, and the FFA (Future Farmers of America); that they host about 6 events a year outside of racing; that they also host some events in combination with the racing; that recently they raised over \$100,000.00 for Camp Barnes which took place during one of their racing events; that this special use exception has been approved in 1989, 2003, 2013, and 2018; that Mr. Adams and his partner just took over the race track after the most recent special use exception was approved; that they have performed many improvements to the property, which included the fences along Route 113; that they have plans to improve parking as well; that there has never been an issue with parking as far as he is aware; that letters of support have been submitted; that the letters submitted

show that this use does not substantially adversely affect the uses of neighboring or adjacent properties; and that, in the findings he has prepared as a draft, he left out the restriction on limiting the number of people because it is an unrealistic limitation.

Mr. Kenneth Adams was sworn in to give testimony for this application.

Mr. Adams testified that he affirms the statements made by Mr. Willard to be true and correct to the best of his knowledge; that the racetrack can hold approximately 3,000 people at full capacity; that he does not feel that a 2,000 person cap for promotional events should be in place; that they have parking for probably 4,000 people with seating for 3,000; that, at a lot of their promotional events, people are not seated; that they intend to hold 2-3 events per year with a maximum of 6; that, for some of their larger events, the Delaware State Police have provided parking assistance with ingress and egress with the traffic and traffic signal to make everything flow smoothly; and that there are no additional loud noises associated with their events.

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. 12858 for a period of five (5) years for the requested special use exception, pending final written decision, because the use will not substantially affect adversely the uses of neighboring or adjacent properties.

Motion by Dr. Carson, seconded by Mr. Warfel, carried that the **special use exception be granted for the reasons stated**. Motion carried 4 - 0.

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

Mr. Hastings returned to the Council Chambers.

**Case No. 12859 – Robert L. Cranfield** seeks variances from the 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 northeast side of Pine Street within the Rehoboth Manor Subdivision. 911 Address: 20641 Pine Street, Rehoboth Beach. Zoning District: GR. Tax Map: 334-19.12-54.01

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of, one (1) letter in opposition to the Application, and one (1) mail return. The Applicant is requesting variances of 2.8 ft. from the 5 ft. side yard setback requirement on the north side for an existing shed, 4.8 ft. and 2 ft. from the 5 ft. side yard setback requirement on the south side for an existing shed, 4.1 ft. from the 30 ft. front yard setback requirement for an existing

shed, 4.2 ft. and 2 ft. from the 5 ft. side yard setback requirement on the south side for an existing shed, and 23.1 ft. from the 30 ft. front yard setback requirement for an existing shed.

Mr. Robert L. Cranfield and Ms. Kathy Wright Cranfield were sworn in to give testimony for this application.

Ms. Cranfield testified that they are requesting front and side yard variances for their existing sheds; that there is a 12' x 20' studio shed which is used for her jewelry crafting; that there is a 10' x 12' shed used for seasonal storage or furniture and yard maintenance tools; that there is a pre-existing shed in the back left corner of the property which is used for storage which was caught by staff at the submission of the Application; that, since they have no basement or attic, they need external storage for their family of 4 adults; that the 12' x 20' studio shed is actively used as her workshop and is filled with tools, equipment, raw materials, finished products, and display props; that she works in there for 4 to 8 hours a day; that she needs easy access to her car in the driveway for loading and unloading materials; that she is disabled and the proximity to the front of the house and driveway enables her to have safe entry; that this shed has been her dream for quite some time as she needs to have her own space to work in and create her art; that the 10' x 12' shed in the front of the property is used for lawn equipment, tools, and seasonal furniture; that her husband needs access to this shed to easily move his equipment while doing lawn work; that within the next 1 to 2 years they anticipate her mother in law to move from Connecticut and reside with them full time and will need the extra storage capacity to accommodate their belongings; that their backyard is currently not a feasible option for the placement of the sheds because, on the right side of the house, they have an existing ground level deck, patio, and garden beds; that the access to the backyard on the left side of the house is blocked due to the placement of a pre-existing storage shed and the back corner of the house; that there is 10.5 ft. between the house and the back of the shed; that their backyard is 18.8 ft. from the 5 ft. fence setback; that there is also utility access to the propane tank and AC unit; that there are also large trees, back door steps, and crawl space access; that their backyard also has flooding problems due to new construction of the left or northside of their property; that 2 new homes were constructed with elevated solid poured foundations and where the rain water used to flow to the county ditches has been filled in forcing water into the back of their property; that they are the lowest property on their side of the street; that the front of their house is set back from Pine Street by 35 ft. which seriously limits the ability for them to use their backyard; that, with the limited size of their backyard, they use their front yard more for entertainment since there is more space to do so; that their neighborhood has no HOA; that each property is developed uniquely and nothing is cookie cutter and they like it that way; that this is their primary residence and the only home that they own, unlike their neighbors; that this came about after they received a notice of violation in person from the Constable's Department; that the 2 new sheds have been in place for several months now; that they bought the sheds from Portable Buildings in Milford who raised no issue of the placement; that they also received a notice of violation because they did not obtain a building permit; that they were told by a contractor and some other residents that they did not need a building permit; that, before the sheds in the front yard were placed in their current location, there were trees, bushes, and ground level flower beds; that, last November, a storm destroyed some of the trees which prompted their removal; that, during the tree removal, their

flower beds and fence we destroyed; that, before the shed, her work was done in pretty much every room in their house; that the shed in the rear has been there for 30 plus years, and was there when the house was purchased; that there was a house already on the property when they purchased it and in 2013 they had a new house built; that, to address some of the opposition who have indicated that in the absence of a HOA, they are relying on the County to enforce the setbacks, to which they reply that their house is actually 35 ft. from the road; that it was also mentioned that their lot was enlarged 20 years ago through the acquisition of approximately 10 ft. on the south side of this lot and from the adjacent neighbor and that their sheds are placed in this additional land which is incorrect and actually the opposite; that, prior to their purchase of the property, 10 ft. was given or sold to the owner of the property on the south side of their property; that they are doing things in steps and as they have the money to do it; that another comment in opposition regarding this being created by them mentioned that their claim to not be able to remove the shed due to its age was referred to as dubious because they recently demolished a separate structure on the property; that they recently did some clean up in their backyard by removing some old decking and a lean-to structure that became unappealing and degraded; that the drainage issue was not created by them; that they did not think much on consulting the neighbors because they set the precedence with the placement of their shed first; that this was phase one of the things they are doing to improve their property; that they have intentions and quotes to get a fence around their property to which the neighbors shed would be in the way of; that they also have plans for a handicap ramp and decking on the front of their house; that she would propose that, if they could leave the larger shed in its location, they would remove or move the shed that is closer to the road to be in compliance; that she is aware now of why the building permit is required before placement; that, on the survey, the open space looks larger but it would still require a variance because they really could not fit the shed there; and that they had a contractor look at the existing shed in the rear and they determined that it would fall apart if moved.

Mr. Cranfield testified that the point is that the property to the south of them has a larger backyard; that their house is not setback as far as theirs; that their backyard has only 18 ft. from the house to the fence and, if he put the shed there, he would be walking out of the house and into the shed; that he wants to replace the shed in the rear of the property; that they cannot replace the 10' x 12' shed in the rear with the 10' x 16' because it would be too close to the house; that the area in the back of the shed is where they have the drainage issue due to the hill sloping to their property; that they have a drainage pipe to the street from the back corner but it has become overwhelmed because of all of the other properties that are draining to theirs; that the leaning fence on the survey was taken out by the falling tree; that the 12' x 20' shed has a low peak to the roof; that their whole driveway is stone for drainage and that he installed French drains to alleviate the water; that their shed's roof is angled toward the neighbors but there is stone and gravel there; that their lot is always flooded because they have never done anything about the drainage on their property; that he has done everything he can on his property to slope the water towards the front as much as he can; that the shed does not have any guttering; that he can walk behind the shed to maintain it; that it is only one corner of the shed that is close to the property line; that the shed was placed the way it was to look square with the property rather than at a larger angle; that he feels that he could maintain the shed while still remaining on their property; that they have not had any conversations with their neighbor about the shed

placement; that their neighbors were not around when they placed the sheds because it was the off season; that they have looked at other options; that the open space to the front of the house has garden beds; that it is a double lot and instead of splitting it and putting 2 houses on which he cannot afford to do; that they are not rich and were trying to work with what they had but the problem is the amount of space from the house and the existing equipment of the gas tank, air conditioner, and steps that reduce their area even more; that he agrees that they have a larger building envelope and wishes that the neighboring lots were similar in size to theirs; and that he does not believe the location of their sheds would stop them from installing a fence; that they placed the current home.

Ms. Dana Monzo was sworn in to give testimony in opposition to the Application.

Ms. Monzo testified that she submitted a letter on behalf of herself and her husband; that, to their knowledge, there are only 3 adults residing in that home at this time and not 4 as stated by the Applicant; that the sheds appeared sometime in the spring but they are not sure of the date because they are not full-time at their property next door to the Cranfields; that, when she arrived in April, there were 2 sheds located in the front yard of the Cranfields' property which was causing some consternation amongst other neighbors on the street; that they object to the current placement of the sheds; that they do not object to and are open to discussions of needed variances for placement of the sheds in different locations; that they want to be reasonable but do not want to set a precedent in the neighborhood for a front yard shed; that the sheds also obstruct the view of the street and believe that this creates a safety issue; that they also have a shed placed right on the property line and are scheduled before the Board next week; that they were told the same thing about not needing a building permit due to it being a movable shed which they now know to be misinformation; that she did note in her opposition letter that there are a significant amount of sheds in the neighborhood that do not comply with setbacks and seems to be the character and standard of the neighborhood that they are within 5 ft.; that many of the sheds in the neighborhood are in the rear of the properties with the exception of one other on Canal Street that she believes has an active complaint that she is unsure of the outcome; that she does not have a position on the shed in the rear of the Cranfields' property; that she is not aware of any drainage issues in the rear yard but their entire street has issues with flooding in the front yards; that she has not measured but she believes that there would be room in the rear of the Cranfields' yard to place the sheds depending on how you reconfigure them; and that she believes the Cranfields' backyard is slightly higher than theirs but, in general, it is a pretty flat part of the town.

The Board found that no one appeared in support of and one (1) person appeared in opposition to the Application.

Mr. Chorman closed the public hearing.

Mr. Warfel moved to deny the application for Case No. 12859 for the requested variances, pending final written decision, for the following reasons:

1. The exceptional practical difficulty was created by the Applicant;

2. The lot is already benefitting from the small lot ordinance; and
3. That he believes the sheds can be moved into compliance making the variances not necessary.

Motion by Mr. Warfel, seconded by Mr. Hastings, carried that the **variances be denied for the reasons stated.** Motion carried 5 - 0.

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

**ADDITIONAL BUSINESS**

**Meeting adjourned at 7:55 p.m.**