MINUTES OF SEPTEMBER 14, 2026

The regular meeting of the Sussex County Board of Adjustment was held on Monday, September 14, 2026, 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 Mr. John Williamson presiding. The Board members present were Dr. Lauren Hitchens, Mr. Shawn Lovenguth, Mr. Nate Kingree, Mr. Chuck McClure, and Mr. John Williamson. Also, in attendance were Mr. Jamie Sharp, Esquire – Assistant County Attorney, and staff members Ms. Jennifer Norwood – Planning and Zoning Manager, and Ms. Veronica Stout – Recording Secretary.

The Pledge of Allegiance was led by Mr. Williamson.

Motion by Mr. Lovenguth, seconded by Mr. Kingree and carried unanimously to approve the agenda. Motion carried 5 – 0.

The vote by roll call: Mr. McClure – yea, Dr. Hitchens – yea, Mr. Kingree – yea, Mr. Lovenguth – yea and Mr. Williamson – yea

Motion by Dr. Hitchens, seconded by Mr. Lovenguth and carried unanimously to approve the Minutes for the July 13, 2026, meeting. Motion carried 5 – 0.

The vote by roll call: Mr. McClure – yea, Mr. Kingree – yea, Mr. Lovenguth – yea, Dr. Hitchens – yea and Mr. Williamson – yea

Motion by Mr. McClure, seconded by Mr. Kingree and carried to approve the Findings of Facts for the July 13, 2026, meeting. Motion carried 5 – 0.

The vote by roll call: Dr. Hitchens – yea, Mr. Lovenguth – yea, Mr. Kingree – yea, Mr. McClure – yea and Mr. Williamson – yea

PUBLIC HEARINGS

Case No. 13225 – Pamela & Scott Rotsky seeks a variance from the rear yard setback requirement for a proposed structure (Section 115-42 and 115-183 of the Sussex County Zoning Code). The property is located to the south side of Deep Pond Lane within the Milos Haven community. 911 Address: 31528 Deep Pond Lane, Frankford. Zoning District: GR. Tax Map: 134-18.00-204.00.

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received zero letters in support or opposition to the Application and zero mail returns.

The Applicants are requesting the following variance:

- 4.2 feet variance from the 10 feet rear yard setback requirement for a proposed screen

porch on an existing deck.

Scott Rotsky & Pamela Rotsky were sworn in to give testimony for this application.

Mr. Rotsky made statements to the Board but the microphone was off and the testimony was unrecorded. Staff realized the issue.

Mr. Sharp noted that for the record he would go over the earlier testimony as the Applicant's microphone was off during his presentation, and he wanted to be sure it was clearly recorded into the record.

Mr. Sharp stated that the plan is to extend the roof over the existing 25' x 12' deck and screen it in; that the deck will use the same footers that are already there and there will be no windows; that the reason that the Applicants need to close in the deck is due to the Applicant's severe bee and wasp sting allergy; that the Applicants need to carry an EpiPen with them while on the deck because the bugs are very bad due to the common area pond behind the home; that the Applicant also has a medical condition that makes it difficult to be in the sun; that, due to the placement of the deck, the deck receives a lot of sun which makes it hard for the Applicants to enjoy the deck during the summer months; that the steps will be placed on the side of the deck that runs along the back of the house and will not protrude into the rear yard setback; that the neighbors support this project and the homeowners association has already given its approval; that neighbors have covered porches and decks as well; that the deck was constructed with the house; that there is open space to the rear of the property; and that the Applicants do not see neighbors until the leaves fall.

Mr. Rotsky confirmed the statements made by Mr. Sharp as true and correct.

Mr. Rotsky testified that they were hoping not to shrink the deck size down; that it is not a large deck as it is and the Applicants were planning on using the existing deck with the existing footings, not taking up any more land than they already have; that there is no issue with neighbors as none of them brought anything up and multiple neighbors have covered decks or patios.

Mr. Sharp stated that it is not so much that the neighbors have covered decks or patios but rather those covered decks and patios extend into the rear yard setback; that the Applicants' proposed porch will encroach significantly into the rear yard setback; that the Board has to look that standards are being met before granting a variance; and that the Board has to consider whether approving this will cause a domino effect.

Mr. Lovenguth asked about the picture of the Applicant's house, according to the road and to the curvature of the pond, it looks like the Applicants' property is right in the curve of the road to where the house is compared to the neighboring homes; that the Applicants' neighbors' homes look like they are more straight away; that the road curves in the front of the house and then the pond curves in the rear of the home, which causes the home to be setback further from the front due to the

curve in road; and that, by that placement, the home is closer to the rear property line than the other homes in the neighborhood, giving them less buildable space.

Mr. Rotsky testified that the lot is wider in the rear and narrower in the front; that he did not look at a shallower porch; that the road curves at the property line which resulted in the house being set back farther than others; and that pond is closer to his property.

Ms. Norwood noted that the property is zoned GR-RPC so there is no reduced setback under the small lot ordinance.

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

Mr. Williamson closed the public hearing.

Dr. Hitchens moved to approve the application for Case No. 13225 for the requested variance, pending final written decision, for the following reasons:

1. The property has unique physical conditions because the property is situated on a slight curve and the way the pond is kind of pushed inward on the backyard;
2. The property cannot otherwise be developed;
3. That, due to such physical circumstances and conditions, there is no possibility that the property can be developed in strict conformity with the Sussex County Zoning Code;
4. The variance is necessary to enable reasonable use of the property;
5. The exceptional practical difficulty has not been created by the Applicant;
6. The variance will not alter the essential character of the neighborhood;
7. The variance will not substantially or permanently impair the appropriate use or development of adjacent property;
8. The variance will not be detrimental to public welfare;
9. The variance represents the least modification of the regulation at issue; and
10. The variance represents the minimum variance necessary to afford relief.

Motion by Dr. Hitchens, seconded by Mr. Lovenguth, carried that the **variance be approved** for the reasons stated. Motion carried 5-0.

The vote by roll call: Mr. McClure – yea, Mr. Kingree – yea, Mr. Lovenguth – yea, Dr. Hitchens – yea and Mr. Williamson – yea.

Case No. 13226 – Secure Management seeks a special use exception for a temporary tent sale (Sections 115-80 and 115-210 of the Sussex County Zoning Code). The property is located to the northeast side of Coastal Highway (Rt. 1) at the intersection of Munchy Branch Road. 911 Address: 19287 Coastal Highway, Rehoboth Beach. Zoning District: C-1. Tax Parcel: 334-13.00-325.04.

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received zero letters in support or in opposition to the Application and one mail return.

The Applicant is requesting a special use exception for a temporary tent sale.

David Gavigan was sworn in to give testimony for this application.

Mr. Gavigan testified that the Applicant is trying to renew the permit for the temporary tent sale at a furniture store; that the Applicant holds this event twice a year and looks to continue to hold the event with no new changes; that the previous applications were approved for five years consecutively in 2016 and 2021; that the proposal was for the Furniture & More store in Rehoboth Beach and the tent would occupy 6 parking spaces; that the tent measures 30' x 60'; that the two events are proposed for Memorial Day weekend and Labr Day weekend with each event being held for two weeks; that this request is for a five year approval; that the location consists of an approximately a 20,000 square foot building for a furniture store located off Coastal Highway; that the tent will be on the right side of the building away from the other businesses in the area; that the tent will not affect any other businesses in the area; that there is a U-Haul business in the rear of the property; that there will be ample parking even after the tent takes up 6 parking spaces; that there were no complaints about the prior tents; that there will be cameras from the business on the tent; that there will be no lighting associated with the tent as it is only open during daytime hours; that there will be no loudspeakers associated with the tent; that the tent will have no real impact on traffic; that the tent will be used during normal business hours and will be closed at night; that the tent will be weighed down using barrels instead of using tie downs into the concrete; and that the Applicant rents the tent through a rental company.

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

Mr. Williamson closed the public hearing.

Mr. McClure moved to approve the application for Case No. 13226 for the requested special use exception, pending final written decision, because the proposed use will not substantially or permanently impair the appropriate use or development of adjacent property. As part of the motion, Mr. McClure moved that the approval was good for 5 years and for 2 weeks during the Memorial Day and Labor Day holidays.

Motion by Mr. McClure, seconded by Mr. Kingree, carried that the **special use exception be approved for 5 years with conditions** for the reasons stated. Motion carried 5-0.

The vote by roll call: Mr. McClure – yea, Mr. Kingree – yea, Dr. Hitchens – yea, Mr. Lovenguth – yea, and Mr. Williamson – yea

Case No. 13227 – Jennifer Noel seeks a variance from the maximum fence height requirement

within the corner front yard setback for a proposed structure (Section 115-42 and 115-185 of the Sussex County Zoning Code). The property is located to the northeast side of Burton Avenue and to the southeast side of Duffy Street. 911 Address: 37165 Burton Avenue, Rehoboth Beach. Zoning District: GR. Tax Parcel: 334-13.19-33.00.

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received zero letters in support and three letters in opposition to the Application and two mail returns.

The Applicant is requesting the following variance:

- 0.5 feet variance from the 3.5 feet maximum allowable height for a fence in the corner front yard setback requirement.

Jennifer Noel was sworn in to give testimony for this application.

Ms. Noel testified that she is the owner of 37165 Burton Avenue, Rehoboth Beach; that she is asking for a limited variance to allow a 48 inch tall fence around the yard along Burton Avenue to enable the installation of a residential swimming pool; that the County's fence height restriction would otherwise limit the fence to 42 inches along Burton Avenue because her property is a corner lot and the front property line is along Duffy Street and the side property line is along Burton Avenue; that the pool will be located entirely in the rear yard; that the fence enclosing the rear yard extends along Burton Avenue and is subject to the 42 inch height limitation; that the County ordinance requires that the pool enclosure be 48 inches high to satisfy the applicable pool safety requirement; that she is caught between the two requirements - the 42 inch fence height limitation and the 48 inch tall pool barrier requirement; that she is not asking for any larger than 48 inches, which is the minimum required to satisfy the pool safety requirements for privacy, aesthetics, or convenience; that the need for the variance results from the unique configuration of the corner lot and nothing that she has done to create the hardship; that an owner of an interior lot can install a pool and a pool compliant safety fence without having this particular conflict come into play; that the exceptional practical difficulty is due to the uniqueness of the lot; that, if the lot was not a corner lot, no variance would be needed; that the proposed fence would be residential in nature and the six inch increase will not change the character of the neighborhood or create an adverse impact on neighboring properties or traffic visibility; that she installed a 42 inch tall fence that is elevated 6 inches off the ground; that, visually, the fence will appear the same as she will simply add panels to the bottom 6 inches of the fence; that she also has a 7 foot tall fence in the area where a taller fence is permitted; and that the pool is located to the rear of the home.

Mr. Kingree asked about the previous Board of Adjustment application for an ADU on this property and whether that proposal is no longer moving forward.

Ms. Noel testified that she decided not to put a separate accessory dwelling unit in; that she may or may not make a modification to the main house in a way that would allow her to have an

accessory dwelling unit but she has not made that decision yet; and that she has no intention of building a separate structure to house an accessory dwelling unit on this property at this time.

Mr. McClure asked whether the Applicant will seek to have an ADU later as part of the existing building.

Ms. Noel testified that it is her understanding that she has approval for an accessory dwelling unit and that approval is good for two years and that she would have to provide final drawings if she were to do that; that her intention is not to let that approval lapse; and that there is no intention of building anything in the yard with respect to which this fence or the pool would have any impact.

Mr. Kingree stated that the ADU had specific plans in a location that was approved, which is where this pool is going and if the Applicant were to install the pool then there is no possibility of doing that ADU.

Mr. Williamson asked whether the Applicant had spoken with her neighbors and whether they had given their opinions on this variance request.

Ms. Noel testified that she has spoken with several of the neighbors and explained that this is a request for a six-inch variance for the fence height; that she does not know who the objections were from and she knows that the public notice had said that she was asking for a variance and not that it was only for six inches on the fence height.

Mr. Lovenguth asked whether there were other neighbors who had a fence near the property.

Ms. Noel testified that the neighbor directly behind her has a 7 foot fence along their property that encloses their swimming pool but that is an interior fence and does not have the same limitations that an exterior fence does; that, across the street and two doors down there is a house that also has a 7 foot fence around its entire yard except for in the front section where it is lower; that there are fences in the neighborhood; and that the fence is a vinyl fence.

Mr. Williamson asked Mr. Sharp, if there was a lot on the opposite side of this property, whether the Applicant even need a variance to do this.

Mr. Sharp stated that no, but one of the things the Board has to consider is that the reason the Code has the requirements with the corner and front yards is it is in the Code for a reason; that the prevailing thought at the time was not to have a wall of seven-foot tall fences along roads; that there has been a historical bit of a disconnect with that height limitation in pools; that the Board may recall that the Board saw that a lot more before changes to the Code regarding through lots so the Board has not seen that issue come up nearly as regularly; and that Council did not address the issue when it came to corner front yard setbacks and the fence height requirements there which is what the Applicant is seeking.

Ms. Noel testified that she has a fence that is 42 inches tall and is asking for this because she would like to put a pool in but was not going to get a permit and move forward with the pool unless she had permission to put a fence in that would allow her to comply with the law.

Mr. Sharp asked whether the fence is located right on the property line and whether there any consideration in moving it off the property line slightly so as to minimize the impact of that fence height request.

Ms. Noel testified that the pool will be set back approximately 15 feet from the corner front yard property line; that she considered moving the fence but there is additional grass on the outside of the fence as it is already set back from the road even though it is not part of the property; that she had not thought about moving it farther back because the yard itself is actually not that large; that the lot is 50 feet wide; and that she was trying to preserve the interior space to the greatest extent possible.

Mr. Sharp stated that there was an ADU application that the Applicant applied for earlier this year and it was approved; that, based on the Applicant's testimony, the accessory dwelling unit will not be constructed but the Applicant wants to ensure that the Application approval for the ADU does not lapse because she may incorporate an ADU within the current dwelling on the property in the future. Mr. Sharp asked Ms. Noel to confirm that was her intent.

Ms. Noel testified that the ADU is not intended to be rented out and currently there are no plans in the work to complete that but she wants to have the option since it was already approved.

Mr. Sharp stated that one of the things the Board has to be mindful of is, if the Board approved this plan, the pool would occupy the area of the original plan approved for the ADU application; that the Board may want to put a condition on this approval stating there will not be a separate ADU building in this or a nearby location as a separate stand-alone building; and asked the Applicant whether she would have an issue with that condition.

Ms. Noel testified that she had had a shed delivered that is next to the house so it would be impossible to build a stand-alone ADU.

Mr. Sharp asked where the parking will be since the placement of the proposed pool is in the area that was designated as parking spaces for the ADU application.

Ms. Noel testified that there are six parking spaces for the main dwelling currently so she will not be limiting parking with the pool being built.

Mr. Sharp asked when the fence that is currently on the property was built and if there have been any complaints about that fence.

Ms. Noel testified that the fence that is up currently was installed last fall and there have been no complaints about that fence; and that she has no issue with the Board imposing a condition prohibiting a stand-alone accessory dwelling unit.

Mr. Kingree asked about the two letters in opposition.

Ms. Norwood stated that those letters were received just before the meeting and that she will summarize them for the benefit of the record; that the opposition mentioned outlawing pools in the front yard setbacks, especially with a fence; that the opposition questioned if there is room as the property is already taken up with buildings and equipment; that the Applicant's guests are parking on the street as it is; and that the pool was going to be compliant according to the Applicant's defense.

Ms. Noel testified that, during the last hearing the neighbors were concerned about the parking on the street, however, at this time there are only two vehicles on the property as her daughter and boyfriend moved out of her house; that she lives at the property with her girlfriend; that she has had issues with the neighbor immediately north who rents out that house; that the neighbor's guests have parked along the side of the Applicant's lot and they are not the Applicant's guests; that she makes sure that nobody is parking on her lot or blocking the street as a result of her house; and that she is not having any of her guests parking in the street at her house.

Ms. Norwood stated that the other letter in opposition stated that the property owners and residents of West Rehoboth oppose the granting of a variance to build a fence on this property located in West Rehoboth; that the reasons being the following concerns; that nobody puts a pool in their front yard; that the owner parks vehicles on right of way on Burton Avenue, which is illegal; that the sight line makes it a hazard for school buses to see traffic as buses would have to pull out onto Burton Avenue; that this would be dangerous not only for vehicles and to make matters worse, children must walk on the street due to no sidewalks; that this variance would set an example for other property owners to follow in all of Sussex County and that it is unsightly; and that there are 16 names listed in the e-mail that was received at 5:30 pm tonight.

Ms. Noel testified that she believes the neighbors are mistaken on the location of the fence; that the fence is similar to a neighbor's fence; and that the fence will not impede the vision of traffic at the corner.

Mr. Lovenguth asked if the current L-shaped wrought iron fence was going to be replaced with a newer taller fence.

Ms. Noel testified that the plan is to replace the current fence with a newer one that is code compliant for a pool enclosure; that she will replace the fence after the pool is installed.

Mr. Sharp stated that the Code states that every swimming pool shall be protected by a safety fence or barrier at least 4 feet in height and constructive chain link, concrete, stockade, wood or equal; and that the Applicant could do a chain link fence or wrought iron like what was already there.

Mr. Lovenguth asked Mr. Sharp if there could be a stipulation that states that upon approval of the fence that a pool must be in place.

Mr. Sharp stated that the Board can put a condition of approval that the pool is a requirement to receive the fence height increase; that the Board can also ask for a condition of approval for the possibility of an ADU which would require that the Applicant is either going to do a stand-alone ADU or the pool but there will not be both.

Ms. Noel testified that she does not want to foreclose the idea of having an accessory dwelling unit within the main dwelling but she does not object to a condition being placed that no standalone accessory dwelling unit could be installed on the property; and that her daughter moved out of the property so the plans changed.

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

Mr. Lovenguth moved to table this application for further discussion at the end of the meeting.

Motion by Mr. Lovenguth, seconded by Mr. McClure, to table this application until the end of the meeting. Motion carried 5-0.

The vote by roll call: Mr. Kingree – yea, Dr. Hitchens – yea, Mr. McClure – yea, Mr. Lovenguth – yea and Mr. Williamson – yea.

At the end of the agenda, the Board resumed its discussion of this application. Mr. Williamson announced Case No. 13227 as the record is closed but the Board will entertain a motion.

Mr. Lovenguth moved to approve the application for Case No. 13227 for the requested variance, pending final written decision, for the following reasons:

1. The property has unique physical conditions which require the pool to be placed in the front yard and the pool requirements for fencing height vary from the County's fencing height allowable in the front and corner front yards;
2. The property cannot otherwise be developed;
3. That, due to such physical circumstances and conditions, there is no possibility that the property can be developed in strict conformity with the Sussex County Zoning Code;
4. The variance is necessary to enable reasonable use of the property;
5. The exceptional practical difficulty has not been created by the Applicant;
6. The variance will not alter the essential character of the neighborhood;

7. The variance will not substantially or permanently impair the appropriate use or development of adjacent property;
8. The variance will not be detrimental to public welfare;
9. The variance represents the least modification of the regulation at issue; and
10. The variance represents the minimum variance necessary to afford relief.

As part of his motion, Mr. Lovenguth included two conditions to approval to the Application:

1. That no stand-alone ADU be constructed on the property; and
2. That the fence only be installed if a swimming pool is also installed on the property.

Motion by Mr. Lovenguth, seconded by Mr. Kingree, carried that the **variance be approved with conditions** for the reasons stated. Motion carried 5-0.

The vote by roll call: Mr. McClure – yea, Dr. Hitchens – yea, Mr. Kingree – yea, Mr. Lovenguth – yea, and Mr. Williamson – yea.

Case No. 13228 – Craig Friedrich & Nadiene Ringler-Friedrich seeks variances from the front, side and rear yard setback requirements for existing and proposed structures (Section 115-25, 115-182 and 115-183 of the Sussex County Zoning Code). The property is located to the south side of Basin Street within the Bay Vista community. 911 Address: 37456 Basin Street, Rehoboth Beach. Zoning District: AR-1. Tax Map: 334-19.16-39.00.

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received zero letters in support or opposition to the Application and six mail returns.

The Applicants are requesting the following variances:

- 1.6 feet variance from the 5 feet side yard setback requirement on the southeast side for existing and proposed structures;
- 10.2 feet variance from the 15 feet rear yard setback requirement for existing buildings and stairs;
- 5.5 feet variance from the 30 feet front yard setback requirement for an existing dwelling; and
- 0.5 feet variance from the 30 feet front yard setback requirement for an existing stoop and proposed covered entry.

Craig Friedrich was sworn in to give testimony for this application.

Mr. Friedrich testified that he is seeking variances that were actually approved three years ago; that, due to some family medical hardship, he could not take advantage of the prior approval and the approval lapsed; that he is seeking almost the exact same variances to do the project now; that he

was not aware of the 2-year expiration date on variances but the Applicants would have needed a renewal regardless due to his father-in-law being ill and not being able to complete the project over the last three years.

Mr. Sharp asked if the Application has been changed any from the previous approved application.

Mr. Friedrich testified that there is no changes to the exterior of the structures.

Ms. Ringler-Friedrich testified that there were changes to the internal plans for the house but nothing externally having to do with the variances that were previously granted.

Ms. Norwood noted that the variances sought are based on the new drawings proffered by the Applicants.

Mr. Friedrich testified that the builder changed architects so there were new drawings made; that, when he was before the Board previously, he believed that the existing structures were then granted variances and he was unaware that he would have to apply for those again since they were buildings that have existed since the 1970s and 1980s in the current state.

Mr. Sharp stated that his recollection was that the plan with the prior approval was to go up with the current structures and that doing so creates a need for variance; that, even if there is something that is previously permitted or was a non-conforming use, once an applicant goes up with it, then that triggers a new review and new compliance requirements; that, after reviewing the Findings of Fact from the hearing on September 18, 2023, and based on the figures that Ms. Norwood presented, it is slightly different in that the Board previously approved a 1.25 foot variance from the 5 feet side, which was proposed now for 1.6 feet; that, in the prior application, the rear yard variance requested was 9.9 feet and the Applicant now proposes a variance of 10.2 feet; that the Applicants previously sought a variance of 5.4 feet from the 30 foot front and now seek a variance of 5.5 feet; that the Applicants previously sought a variance of 0.2 feet from the front 30 foot front for the stoop and covered entry and now seek a variance of 0.5 feet; and that those numbers are slightly different.

Mr. Friedrich testified that their builder has a new architect and that the numbers are more precise on this survey so that accounts for the differences in the requested variances.

Mr. Sharp stated that, since there are previous Findings of Fact that were approved, he asked the Applicants to verify that some of that information is still true and correct.

Mr. Friedrich testified that the variances are needed to build straight up from the existing one-story building; that there will be an addition of a story and a half onto the existing building with a portico in the front that will cover the stairs; that there will be an enclosure to a portion of the existing guest house to make it a garage and add proposed covered parking in line with the guest house; that,

when the Applicants purchased the home in 2020, they were informed that the guest house is not an apartment and cannot be rented and that there will be no cooking facilities within it; that all utilities are together under one name; that the new screen porch proposed off the rear of the house has been eliminated; that the proposed deck will be in line with the deck of the current guest house and there will be parking under the two-story guest house; that the plan is to enclose the one car parking under the deck and make it a garage and then extend the carport structure out in front of the new garage; that neighboring homes are all approximately 42 feet tall and make this home look small so increasing the size will actually make this home more in conformity with the rest of the neighborhood; that there is no front porch on the current home and that the Applicants want to cover that section of the entry; that there is plenty of parking, with two spaces in the front and six spaces to the side of the home; that the guest house will be two stories tall with a deck coming off the front that makes covered parking for one vehicle; that the Applicants currently do not have a garage but park under the deck; that the Applicants are building up but not out of the one-story home; that there is no off-street parking available because the street is too narrow; that it was not cost effective to tear down the current home but rather do the addition instead; and that the property offers more relief from the setbacks than most others in the Bay Vista development.

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

Mr. Williamson closed the public hearing.

Mr. Lovenguth moved to approve the application for Case No. 13228 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions that this has already been brought before the Board from a previous Board decision where it was granted and all things were made the same and no changes to this previous Board decision;
2. The property cannot otherwise be developed;
3. That, due to such physical circumstances and conditions, there is no possibility that the property can be developed in strict conformity with the Sussex County Zoning Code;
4. The variances are necessary to enable reasonable use of the property;
5. The exceptional practical difficulty has not been created by the Applicants;
6. The variances will not alter the essential character of the neighborhood;
7. The variances will not substantially or permanently impair the appropriate use or development of adjacent property;
8. The variances will not be detrimental to public welfare;
9. The variances represent the least modifications of the regulations at issue; and
10. The variances represent the minimum variances necessary to afford relief.

Motion by Mr. Lovenguth, seconded by Dr. Hitchens, carried that the **variances be approved** for the reasons stated. Motion carried 5-0.

The vote by roll call: Mr. McClure – yea, Mr. Kingree – yea, Dr. Hitchens – yea, Mr. Lovenguth – yea, and Mr. Williamson – yea.

Case No. 13229 – Tim & Penny Jester seeks a variance from the side yard setback requirement for an existing structure (Section 115-34, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located to the south side of Morgan Drive. 911 Address: 18050 Morgan Dr., Lincoln. Zoning District: MR. Tax Map: 230-5.00-44.00.

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received two letters in support and zero letters in opposition to the Application and zero mail returns.

The Applicants are requesting the following variance:

- 6.1 feet variance from the 10 feet side yard setback requirement on the east side for an existing above ground pool.

Tim Jester & Penny Jester were sworn in to give testimony for this application. Ms. Jester submitted photographs to the Board.

Ms. Jester testified that the Applicants retained a contractor to install the pool and the center point of the pool was noted; that the inspector came out and said that the pool was too close to the property line; that the Applicants spoke to the pool company and the contractor said that it would not move the pool; that, if the Applicants wanted to move it, they would have to pay for the cost which was 30,000 gallons of water another liner, the installers, which come out to probably about $3,000 or more after they spent $11,000 to put it in; that the Applicants had the surveyor come and check it and now they are seeking a variance; that the pool is behind their garage so it does not obstruct their neighbors and the neighbors are not opposed to the request; and that the lot is a dog leg shaped lot so it is a funny shape.

Mr. Lovenguth asked about the placement of the septic system and the drainage field and if that was a factor in the placement of the pool.

Ms. Jester testified that the septic and drainage field run along the other side of the property in the rear yard; and that the pool cannot go closer to the center of the lot due to the septic system.

Mr. Williamson asked if the Applicants believed that the contractor knew that the drainage field and septic were there and that is why they moved the actual placement of the pool.

Ms. Jester testified that the Applicants assumed that the contractors did not want to cause damage to the septic and drainage field so the contractor may have moved the location of the pool.

Mr. Jester testified that the Applicants marked the pool to be 10 feet from the side property

line; that the Applicants cannot prove that the contractor shifted the pool over from the placement of the marker; that the Applicants contacted the pool company and the contractor said they cannot prove that the pool was shifted over from the marker that he placed for them.

Mr. Kingree asked if the neighbors are ok with the pool placement.

Ms. Jester testified that there are no issues from the community about the placement of the pool.

Mr. Williamson stated that the point of that pool is where the property comes into the dog leg and, if the property was as wide all the way straight down, who knows what everything could have been shifted and the pool could have been there with no variance.

Mr. Williamson asked how wide the pool was and that it appeared only a portion of the pool is outside of the building envelope and as it moves down the property more of the pool comes within the actual building envelope.

Mr. Jester testified that the pool is 30 feet wide.

Ms. Jester testified that most of the pool is within the building envelope and that there is no homeowners association for the community.

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

Mr. Williamson closed the public hearing.

Dr. Hitchens moved to approve the application for Case No. 13229 for the requested variance, pending final written decision, for the following reasons:

1. The property has unique physical conditions because of where the septic system is and that the Applicants entrusted a contractor to place the pool in but it was not properly placed;
2. The property cannot otherwise be developed;
3. That, due to such physical circumstances and conditions, there is no possibility that the property can be developed in strict conformity with the Sussex County Zoning Code;
4. The variance is necessary to enable reasonable use of the property;
5. The exceptional practical difficulty has not been created by the Applicant;
6. The variance will not alter the essential character of the neighborhood;
7. The variance will not substantially or permanently impair the appropriate use or development of adjacent property;
8. The variance will not be detrimental to public welfare;
9. The variance represents the least modification of the regulation at issue; and

10. The variance represents the minimum variance necessary to afford relief.

Motion by Dr. Hitchens, seconded by Mr. McClure, carried that the **variance be approved** for the reasons stated. Motion carried 5-0.

The vote by roll call: Mr. Kingree – yea, Mr. Lovenguth – yea, Mr. McClure – yea, Dr. Hitchens – yea and Mr. Williamson – yea.

The Board also directed Mr. Sharp to send a letter to the contractor.

ADDITIONAL BUSINESS

Meeting adjourned at 7:45 p.m.