

MINUTES OF SEPTEMBER 18, 2023

The regular meeting of the Sussex County Board of Adjustment was held on Monday, September 18, 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 Vice Chairman Travis Hastings presiding. The Board members present were Dr. Kevin Carson, Mr. John T. Hastings, Mr. Jordan Warfel, Mr. John Williamson, and Mr. Jeffrey Chorman - absent. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, Mr. Vince Robertson, 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. Hastings.

Motion by Mr. Warfel, seconded by Dr. Carson and carried unanimously to approve the agenda. Motion carried 4 – 0.

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

PUBLIC HEARINGS

Case No. 12865 – Ryan Clough and Kimberly Gerardi seek special use exceptions for a proposed private garage for more than four automobiles and with floor area of more than 900 square feet in a residential district and a proposed garage studio apartment (Sections 115-23 of the Sussex County Zoning Code). The property is located on the northwest side of New Road approximately 175 ft. from Peach Tree Lane. 911 Address: 16516 New Road, Lewes. Zoning District: AR-1. Tax Map: 335-7.00-6.18

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 Applicants are requesting special use exceptions for a proposed private garage for more than four automobiles and with a floor area greater than 900 sq. ft. in a residential district and for a proposed garage / studio apartment.

Mr. Sharp recused himself and left the Council Chambers.

Mr. Robertson stepped in as acting counsel.

Dr. Carson recused himself and left the Council Chambers.

Mr. Brennan Bickel was sworn in to give testimony on this application.

Mr. Bickel testified that he is an architect at Element Design Group located in Lewes, Delaware; that they represent Ryan Clough and Kimberly Gerardi; that the parcel is located at 16516

New Road, Lewes at tax map parcel 335-7.00-6.18; that the parcel is zoned AR-1; that they are seeking a special use exception, in accordance with Section 115-23 of the Sussex County Zoning Code, for a private garage and garage apartment that will house more than 4 vehicles and is larger than 900 sq. ft.; that the proposed garage is intended to house 8 cars; that the proposed garage is strictly for the owners' personal cars; that the owners have a collection of cars that they would like to protect from the weather and also not have numerous vehicles parked in the driveway; that the garage will not be used for commercial purposes or as a repair garage; that the special use exception is just for the garage and not for the studio apartment; that he does not foresee that this could adversely affect any of the neighboring properties; that this garage is to house cars in an attractive storage area; that their request complies with setbacks and they seek no variances for its placement; that they are also well below the height limit; that the garage is going to be placed in the rear of the property so it will be located behind the house; that there will still be finished space in the second floor of the garage and it will be less than 800 sq. ft.; and that he does not believe the owners have anything planned at the moment in terms of landscaping.

Mr. Ryan Clough and Ms. Kimberly Gerardi were sworn in to give testimony on this application.

Mr. Clough testified that the upstairs area in the garage would be for his own recreation if he used it while watching car auctions or had a couple of friends over; and that it would not be an apartment or for any overnight spending.

Ms. Gerardi testified that it is her understanding that there is going to be a 135-home development going in directly behind them and that the developer is responsible for putting several feet of a treed buffer behind their properties; that they had Schell Brothers position their house over several feet so they have more room on the side where the proposed garage will be; that the garage will be an "L" shape; that the garage will house 4 cars in each section to form the "L" shape; that Parcel 6.17 is their neighbor; that she has not spoken to her neighbors about their proposed garage as she knew that a notice would be sent and a sign placed at the property; that Mr. Clough met with the neighbor the other day and he did not seem to mind; that she has also not met the neighbor for Parcel 6.19; that their neighbor on the side where the garage is proposed has already put a buffer up; and that they have a fence and some trees.

Ms. Dorothy Draper was sworn in to give testimony in opposition to this application.

Ms. Draper testified that she is present to speak in opposition to the application as it currently is presented; that she lives on Parcel 6.19, immediately on the other side; that currently she has a wonderful view of landscaping and trees; that she knows that a lot of that will likely disappear when the new community is built behind them; that she is hoping that at least part of that clump of trees that is currently behind Lot 17 remains to provide some greenery; that the reality is that spending more than \$1,000,000 on a home to look at a garage is not what she is choosing to do; and that she is aware that the owners of the subject property have no control of the tree removal on the adjacent parcel.

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

Mr. Hastings closed the public hearing.

Mr. Warfel moved to approve the application for Case No. 12865 for the requested special use exception for the garage only, pending final written decision, because the proposed use will not substantially affect adversely the use of neighboring and adjacent properties.

Motion by Mr. Warfel, seconded by Mr. Williamson, carried that the **special use exception be granted for the reasons stated**. Motion carried 3 - 0.

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

Mr. Sharp returned as counsel for the Board.

Dr. Carson returned to the Council Chambers.

Case No. 12861 – Michael Rhoads seeks variances from the separation distance requirements for existing and proposed structures (Sections 115-25 and 115-172 of the Sussex County Zoning Code). The property is located on the southeast side of West Harbor Drive within the White House Beach Manufactured Home Park. 911 Address: 34730 West Harbor Drive, Millsboro. Zoning District: AR-1. Tax Map: 234-30.00-6.00-55528

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received 1 letter in support of, no correspondence in opposition to the Application, and 2 mail returns. The Applicant is requesting a variance of 2.4 ft. from the 20 ft. separation distance requirement between units for a proposed addition from the existing deck on Lot 71.

Mr. Michael Rhoads was sworn in to give testimony about the application.

Mr. Rhoads testified that he is a third-generation property owner in the White House Beach mobile home community and he is seeking relief on the side yard setback requirement; that the request is to accommodate a small addition to his porch; that White House Beach is an older mobile home community; that, originally, most of the park was designed and laid out for singlewide trailers but things have grown and matured since then; that his house is sandwiched between two other properties and that, on the side where he wants to add to his porch, his neighbor has a structure within 6.5 feet of the property line; that the location of the neighbor's structure requires him to seek a variance for the separation distance requirement between the structures; that his current porch is a notch in the front of his house and is currently 5 ft. wide and it is not functional; that he is seeking to add 4 ft. onto the porch through a shed roof addition; that he considers this to be the minimum relief as he would be replacing the current landing and staircase on that side of

the house with a foundation to add the porch structure; that he is asking to have the separation distance reduced to 17.5 ft. from the required 20 ft.; that this would allow him to have a 9 ft. wide porch on the inside which is not an excessive size for a room; that he has included a letter of support from the most adjacent neighbor; that he has also included a letter of approval from the landlord; that this small addition would not alter the essential character of the neighborhood as he found 6 addresses today that do not currently meet that 20 ft. separation between units; that they live in an older community where people are trying to add, and need to add, larger homes to the original travel trailers that it was originally designed to handle; that there will be no steps off the porch which will also reduce foot traffic on that side of the property between the neighbor and himself; that he has 2 other points of egress to his deck so a third point is not necessary; that the request also creates no egress issue as he fronts to the Bay; that there is sand to one side and a bulk head to the other; that the location of the porch will also not be the narrowest point of his property because the utility line is 5 ft. from his foundation and the landing is only 4 ft.; that he believes he can safely maintain his property because he power washes the landing now and he will not be encroaching any farther than the existing landing; that it will be longer but not any wider; that there is a gutter on his property now and he would mirror that gutter to make the runoff flow onto his property; that, if needed, he would run a corrugated line or something if he needed to get around something; that the existing porch is 5 ft. on the inside; that he needs the variance because he has a space that is essentially useless and the only way to correct that is to add on a bit; that there are no flooding issues on the property; and that this addition would maintain the same floor elevation as the rest of the house.

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

Mr. Hastings closed the public hearing.

Mr. Williamson moved to approve the application for Case No. 12861 for the requested variance, pending final written decision, for the following reasons:

1. The property has unique conditions due to the narrowness of the lot;
2. The variance will not alter the essential character of the neighborhood nor will the variance impair the uses of neighboring properties; and
3. 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 4 - 0.

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

RECESS – 6:27 PM – 6:32 PM

Case No. 12862 – Craig Friedrich seeks variances from the front, rear, and side yard setback requirements for existing and proposed structures (Sections 115-25, 115-182, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located on the southeast side of Basin Street within the Bay Vista Subdivision. 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 5 letters in support of, 1 letter in opposition to the Application, and 5 mail returns. The Applicant is requesting variances of 1.25 ft. from the 5 ft. side yard setback requirement on the southeast side for existing and proposed structures, 9.9 ft. from the 15 ft. rear yard setback requirement for existing building and stairs, 5.4 ft. from the 30 ft. front yard setback requirement for the existing dwelling, and 0.2 ft. from the 30 ft. front yard setback requirement for the existing stoop and proposed covered entry.

Mr. Craig Friedrich and Ms. Nadiene Friedrich were sworn in to give testimony for this application.

Ms. Friedrich testified that they are requesting variances to build straight up on their existing one-story home; that they are proposing to add a story and a half on the existing building with a portico on the front which will be covering the existing stairs as they are now; that they are also asking to enclose part of the existing guesthouse which would then become a garage and add a proposed covered parking in line with the existing guest house on the property; that they were told when they purchased the property that the guest house is not an apartment, that it cannot have cooking facilities and cannot be rented; that all of the utilities are together and the electric is under one name; that the new screen porch proposed off the rear of the house is in question but it is not something that would require approval as it is in the building envelope; that they are unsure if they are proceeding with the proposed frame deck and screen porch but the builder advised they add them on in case they chose to proceed with either option; that the deck is at ground level; that there is one parking space underneath of the guest house; that they have a guest house that is two stories; that the neighbors on both side of them are at 42 ft. in height making their house look miniature; that they are trying to be more in conformity with the neighboring houses; that they are potentially going to make this their full-time residence and will need the additional space; that the covered entry is also proposed and not currently existing; that they are proposing to go up one and a half stories; that they do not have a front porch as it is just stairs that they are proposing to cover with a section of roof; that they are not within a flood zone; that they have more parking than 90% of their neighborhood; that they have a driveway that accommodates two cars in the front, 6 cars on the side, and the Jeep that is parked under the existing deck; and that the proposed carport will not affect their existing parking.

Mr. Friedrich testified that the primary variances they are seeking are to in the front build straight up with the existing front of the house to add the additional one and a half stories and then to close in the covered parking on the side of the house that will actually make a garage, being that the covered parking is already in line with the guest house; that they purchased the property in February

of 2020; that the guest house is a two story building with a deck coming off the front that makes covered parking for one vehicle which is the part that they want to enclose to make a garage; that the variance for that structure is for the wall that encloses it so it can stay in line with the existing structure rather than move in 21 inches; that they currently do not have a garage but park under the deck off the guest house; that their current house is only one story; that the proposed covered parking is going to be more of a carport to park his Jeep underneath; that he is not sure why the site plan shows shading the way it does; that they are building up and not out; that the solid line around the outside represents the existing dwelling; that they have public water and sewer; that they have no drainage issues on the property; that nearby they have a marina, about 4-5 houses down, and occasionally with a huge storm the marina is impacted but never their property or street; that there is no street parking available because it is too narrow; that the typical property on their street is 50 feet by 100 feet, meaning that they have a larger lot; that the variance for enclosing under the guest house and the carport are for aesthetic reasons; that it was not cost effective to tear down the existing house which is why they opted to place the addition; that, looking through Bay Vista, their property offers more relief on the required setbacks than a lot of garages or extra buildings in the neighborhood, like that garage directly behind them which sits right on their property line; that, traditionally, in the past years, because it is an old neighborhood, people just did whatever they wanted to do so they are not asking for anything out of the norm; that the need for the carport is for ease of use; that, while they are adding the one car garage, they are trying to make the property look visually appealing with the additions; that the existing home needs some work and these improvements would be just that; that they are trying to do the best of both worlds by giving it the look of old Bay Vista but in a bigger and better version; and that they are trying to get the space they need but also not conforming to the new cookie cutter style of homes being built.

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

Mr. Hastings closed the public hearing.

Dr. Carson moved to approve the application for Case No. 12862 for the requested variances, pending final written decision, for the following reasons:

1. The variances will not alter the essential character of the neighborhood; and
2. The variances represent the minimum variances necessary to afford relief.

Motion by Dr. Carson, seconded by Mr. Williamson, carried that the **variances be approved for the reasons stated.** Motion carried 3 - 1.

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

Mr. Warfel stated that he voted against the Application because he did not think the carport met the standards for granting a variance.

Case No. 12863 – Eric and Dana Monzo seek a variance from the side yard setback requirement for an existing structure (Sections 115-42, 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: 20651 Pine Street, Rehoboth Beach. Zoning District: GR. Tax Map: 334-19.12-55.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received 1 letter in support of, 1 letter in opposition to the Application, and 1 mail return. The Applicants are requesting a variance of 4.1 ft. from the 5 ft. side yard setback requirement on the north side for an existing shed.

Mr. Eric Monzo and Ms. Dana Monzo were sworn in to testify for this application.

Ms. Monzo testified that she and her husband are here to seek relief from the side yard setback requirement for their existing shed; that their property has unique physical characteristics including irregularity and narrowness, which make complying with the setbacks unusual; that their property is quite small and has a very narrow clearance on the south side of the property; that they have a 5 ft. clearance from the home to the edge of their property line and are surrounded by a wooded lot on the south side; that, on the north side of the house, there is a 13 ft. clearance from the edge of their house to the neighbor's property at the narrowest point; that the back of their house is slightly wider than the front; that their air conditioning unit also sits along that side of the house; that their neighbor on that side also has 2 sheds in their front yard and some rebar in the ground from the previous structures; that they have a very narrow delivery point to get the shed into its current location; that they are one of the smaller lots on their street; that they do not believe that the property can be otherwise developed for many reasons, including the narrowness of the access point, and the physical limitations on either adjacent property in order to gain access to their property; that the narrowness of the lot was not created by them; that they purchased this home in 2020 and were told it was a tear down; that they really loved it; that they did not want to make the home any larger so they are just maintaining the Sears kit house that was already there and restoring the property; that the essential character of the neighborhood throughout Truitt's Park is that there are numerous homes with sheds and none of them, or she did not find any that, complied with the setbacks immediately adjacent to them; that their rear yard neighbors have a shed that is less than 2 ft. from their rear fence; that their immediate neighbor to the north was before the Board last week for their sheds that are along the property line; that she submitted other photos of homes and properties throughout the neighborhood that have sheds along the property line and homes within 6 inches from what appears to be the property line; that the shed placed within the setback is in the characteristic of the neighborhood; that it is an old neighborhood with some homes becoming gentrified but there are still some existing Sears kit type homes, bungalows, and summer trailers; that they are part of the homes that were not updated; that they believe this is the minimum variance; that she understands that they did this the wrong way and have learned their lesson; that they reasonably relied on 2 expert opinions, the builder of the shed and a contractor in the area, who both told them that they did not need a building permit; that she was present when the shed was delivered and the way that it was unloaded onto their property she does

not see how it could have been placed anywhere else; that there was no room for the truck to pivot to deliver the shed elsewhere on their property; that they have 3 children who use the backyard which is already very small; that the placement of the shed allows them reasonable use on the backyard; that the shed was delivered in the spring of 2022; that it has been several years since the conversation with the shed company about placement but they were not told about any setbacks or restrictions; that they were told that, because they are not in the City of Rehoboth, there was no requirements needed; that they had subsequent conversations with friends who were working with a contractor and were told that, because the shed was not affixed to the ground, otherwise called portable, and did not require a permit; that they used Portable Buildings; that the outdoor shower was added by them and plumbed; that the shed sits on a bed of stone and some heavy duty runners because they wanted to option of parking a truck or vespa inside and needed it to be able to bear that weight; that their next door neighbors placed 2 sheds in their front yard which led to them reporting it; that, when their neighbors received the citation, it resulted in them pointing out their shed which had been in place for over a year; that they have received no other complaints about their shed; that their neighbors to the rear recently replaced their fence which runs all along their rear property line as well as the rear of the Cranfields' property; that, when their shed was delivered, there was a fence along that property line which they were told belonged to the Cranfields and was in varying states of disrepair; that the fence has since been removed due a tree falling and they have not replaced it; that the tree that fell damaged their shed as it fell onto their property; that they paid for their own repairs and the neighbors put up a tarp along the fence posts as a solution; that she submitted some photos of what is going on in the rear property to provide context of what is happening in their community; that, to her best estimate based on the location of her neighbor's fence, the shed is 9 inches at the closest point and 13.5 inches at the farthest from the property line; that their property line appears to have a bit of an angle to it; that she believes that they can maintain the shed without being on their neighbors' property; that the neighbors' property is not accessible to them because it is full of stuff; that, at no point in the delivery process, did the shed company mention anything about a permit; that her brother who works for an architecture company overlaid her measurements on their existing survey; that she determined the placement of the fence to be the property line based on where rebar was placed; that she did not go all the way to the fence and took a more conservative measurement just in case; that, when they purchased the home, they were not told of any encroachment issues; that there is not a significant overhang off the roof of the shed; that the overhang may be 3 inches; that there is not a gutter on the roof of the shed but they would add one if that presents a concern; that they are on public sewer and water; that there is an abandoned septic tank in the back yard and their neighbors tree hangs over into a significant portion of the backyard preventing them from placing the shed in another location; that the abandoned tank is behind the house; that the outdoor shower is not attached to the shed and does not have a roof but rather a permeable piece of lattice that is used for privacy; that the trailer had forks on it to shimmy the shed into place but not physically move it; that they have not contacted any other companies about moving the shed because of the shower; that they decided to apply for the variance first; that they also did not seek to move the shed because they are happy with its placement; that, upon receiving the violation, they were told they needed a permit; that, when they applied for a permit, they were told that they needed the variance; that, in the interest of accruing fines, they moved quickly and were hoping for the best; that the front of their house is slightly off center; that they do not have

any flooding in their backyard; that their neighbors' yard is slightly elevated except for at the back of their property; that she is unsure how the neighbors could know what is happening in the backyard because there is a lot of construction debris and miscellaneous stuff; that they have never had a problem with water coming to their property from the neighbors; that, on occasion when it rains heavily, they get water in their front yard; that there is no electric to the shed just the water line for the outdoor shower; that their property is slightly wider in the front; that they used a fencing company for the outdoor shower and were under the impression that the permitting and such was handled by them; that the water from the shower drains to the stone bed underneath; that the outdoor shower is primarily for their 3 kids to rinse the sand off for 2 months out of the year; that the house only has 1 working bathroom and she does not want the kids tracking dirt and sand into it; that the outdoor shower was not included because the constables spoke with someone who stated that it did not need a variance; and that they could remove the lattice from the top of the outdoor shower.

Mr. Monzo testified that, when they were approached by the Constable's Office for the notice of violation, was the first that they learned that they were in fact in violation; that they had the shed repaired once already and were able to have that done without issue; that the shed is beautiful; that it is a custom color and the company did a great job with it; that he does not recall the shed company having any equipment to move the shed after it was placed on the ground; that the house immediately across the street is a new construction which is more plumb than the Cranfield lot to the north of them; that the new construction homes are the only ones in their area that are a little bit more square to the street; that their property is very much unique because of the angle of the house; and that the house is small so they try to keep the kids outdoors as much as possible.

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

Mr. Hastings closed the public hearing.

Mr. Warfel moved to approve the application for Case No. 12863 for the requested variance with the condition that gutters be installed to direct the water away from the neighbors, pending final written decision, for the following reasons:

1. The property has unique conditions due to its size and shape;
2. That, due to the physical conditions, the property cannot be developed in strict conformity with Sussex County Zoning Code, and the variance is necessary to enable the reasonable use of the property;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance represents the minimum variance necessary to afford relief.

Motion by Mr. Warfel, seconded by Mr. Williamson, carried that the **variance be granted with conditions for the reasons stated**. Motion carried 3 - 1.

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

Case No. 12864 – Christie Orton seeks a special use exception to operate a daycare (Sections 115-23 and 115 -210 of the Sussex County Zoning Code). The property is located on the northeast side of Bakerfield Road approximately 986 ft. north of Draper Road. 911 Address: 24745 Bakerfield Road, Milford. Zoning District: GR. Tax Map: 230-8.00-25.03

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received 17 letters in support of, no letters in opposition to the Application, and zero mail returns. The Applicant is requesting a special use exception to operate a daycare.

Ms. Christine Orton was sworn in to give testimony for this application.

Ms. Orton testified that she is submitting 17 letters of support, letters of reference for the daycare, her credentials as a teacher, business license, and childcare license into the record; that she is currently operating a daycare with approval for 6 children; that she is approved as a Level 2 daycare meaning that she can have up to 9 children but, because of zoning, she is restricted to 6 children; that she has 4 children, the youngest being 2 years old and he is included in her allowance of children to provide care to; that she is currently expecting her final child this winter, which would take 2 personal spots of hers only allowing her to care for 4 additional children without increasing her allowable care number; that her oldest daughter is 19 and assists her full-time; that she is only required to have herself for up to 9 children; that her daughter just graduated from Sussex Tech and is taking classes toward her teaching certificate; that they are requesting to have the opportunity to care for 9 children and, potentially in the future, up to 12 children once her daughter has completed her certifications; that there is a large need in the area for before and after school care; that she has her teaching certificate and 19 years' experience; that she also has 19 years' experience in business as she has done dog boarding and training; that their property consists of 6 acres; that parents have said that their close proximity to Route 1 is convenient for drop off and pick up; that they also enjoy that they are not located in town and have animals there for the children to interact with; that their closest neighbor also operates a business, which is a greenhouse and has similar hours of operation; that her hours are Monday through Friday 7:00 am to 5:00 pm; that when parents drop off they are usually on site for about 5-10 minutes; that drops off occur between the hours of 7:00 am and 9:00 am; that pick up occurs usually between 3:30 pm and 5:00 pm; that, with the exception of the neighbor directly behind them, none of their other neighbors are in close proximity to the property; that, on one side of the property, there is a tax ditch and tree line and, on the other side, they have goats, a pond, and a hay field from which they purchase feed for their animals; that the next nearest house would be around the bend in Bakerfield Road; that they do not have a lot of neighbors; that there are two ways usually used to come into their property from Route 1, which would be Bakerfield Road or Draper Road by way of Sugar Hill Road; that the property is zoned AR-1 and they are primarily in a rural area; that she is requesting the special use exception to provide care for up to 12 children instead of the currently approved 6 children; that the property behind her is residential with a greenhouse business known as

eastern ornamentals; that her property used to be a part of theirs but, when they downsized, they purchased this lot; that they have a fenced in play area and it has been constructed to the requirements for 12 children; that the fence comes off the side of the house to the property line, down the neighbor's drive, and back towards the house; that their house was newly built and they have only been in it 3-4 months; that the fence is set 6 ft. off the property line and is made of solid material; and that they have a no climb type fence that runs the property line back to the enclosed area constructed of solid fence on 2 sides and wire fence on the back side.

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

Mr. Hastings closed the public hearing.

Mr. Williamson moved to approve the application for Case No. 12864 for the requested special use exception, pending final written decision, because the proposed use will not substantially affect adversely the uses of the neighboring and adjacent properties.

Motion by Mr. Williamson, 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. Hastings – yea, Dr. Carson – yea, Mr. Warfel – yea, Mr. Williamson - yea.

Case No. 12866 – Mary Kuchinsky seeks variances from the separation distance between units requirement for proposed structures (Sections 115-188 of the Sussex County Zoning Code). The property is located on the southwest side of South Gloucester Circle within the Fairfield at Long Neck Community. 911 Address: 35776 S. Gloucester Circle, Millsboro. Zoning District: C-1. Tax Map: 234-30.00-8.00-B8-5

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received 1 letter in support of, no letters in opposition to the Application, and 1 mail return. The Applicant is requesting variances of 1.8 ft. from the 40 ft. separation distance requirement for the proposed deck and 1.3 ft. from the 40 ft. separation distance requirement for the proposed screen porch from Building #7.

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

Ms. Mary Kuchinsky was sworn in to give testimony for this application.

Ms. Peet stated that she is representing Laurie McDonald and Mary Kuchinsky, the Applicants, who seek variances from the 40 ft. separation distance between units requirement as provided in Section 115-188(e)(2) of the Code for a proposed screen porch and deck; that the condominium unit is located at 35776 South Gloucester Circle, Unit 5, Building 8, in Millsboro,

Delaware, and is further identified as Tax Map Parcel 234-30.00-8.00-B8-5; that Mary Kuchinsky has owned the property since 2005; that the property is located in the Fairfield of Long Neck which was developed by Anderson Homes in the early 2000s; that the Applicants received preliminary approval of their proposed porch and deck, with final approval subject to be granted upon approval of the requested variances by the BOA; that a copy of that preliminary approval letter was submitted upon receipt; that the Applicants are specifically seeking to develop a small 10 ft. by 10 ft. deck and a 10 ft. by 10 ft. screen porch; that the screen porch and deck are consistent with other porches and decks in the community; that the deck is proposed to be uncovered and the screened in area is proposed to be covered so that the Applicants can enjoy and reasonably use the outdoor area specifically for their unit, which can be challenging in a condominium type setting; that currently their community has one small patio area that can only be accessed from their unit by going down the stairs and through the back door of their garage when otherwise all living accommodations are on what would be the first floor above the garage; that they have included a proposed conditions plan showing the distance from the opposite building for a portion of the proposed screen porch at 38.7 ft., requiring a 1.3 ft. variance, and for the proposed deck at 38.2 ft., requiring a 1.8 ft. variance; that, notably, the buildings are oriented in a way that creates varying distances from one another; that, as such, a portion of the proposed structure will actually comply with the 40 ft. separation requirement but, because of the slant and stagger, the distance is less than 40 ft. in some locations; that they also submitted property and deed information, as well as the record plat for Fairfield at Long Neck; that research showed that not all of the buildings in the community were the same distance from each other creating this issue where some units can develop a deck and porch without seeking a variance but other units require a variance and HOA approval; that they also submitted a variance previously issued into the record; that there were mentions of at least two other variances but they could find no records to submit; that this Board pursuant to Sections 115-209 and 115-211 has the authority to grant a variance in the yard requirements in any district so as to relieve practical difficulties or particular hardships in cases when and were by reason of exceptional narrowness, shallowness, or other unusual characteristics of shape or size of a piece of property at the time of the enactment of such regulation or restriction, or by reason of access, optional topographical conditions or other extraordinary situation or condition of such piece of property or by reason of the use or development of property immediately adjacent thereto; that the strict application of each regulation or restriction would result in peculiar and exceptional practical difficulties to or exceptional hardship upon the owner of such property; that no such variances shall be authorized by this Board unless it finds that the applicant has complied with the 5 criteria that are more fully set forth in Section 115-211(b) of the Code and the Board of Adjustment Application; that the Applicant complies with the criteria because the condominium unit as stated is uniquely separated from the opposite building at varying distances because of the developers layout of each building and the community; that the proposed structure cannot be developed in strict conformity with the Code due to such physical circumstances; that the practical difficulty has not been created by the Applicant but rather the layout of the development as the separation distance between units is not uniform and at varying distances; that the variances will not alter the essential character of the neighborhood but, rather to the contrary, the proposed use is consistent with and similar to other screen porches and decks in the community, as confirmed by the condominium association's letter; that the variances requested are the minimum variances to afford relief and represent the least modifications possible to

allow this small 10 ft. by 10 ft. deck and 10 ft. by 10 ft. screen porch; that they believe, from a visual count, that there were 10 similar decks and porches on site but they did not survey the entire community; that the record plan for the community suggests that the buildings are somewhere between 42 ft. up to about 52 ft. in separation, which is where some units can be developed with just HOA approval and others require a variance; that the structure is unique within the community because at certain points the proposed additions do comply but, at others, they require a small variance; that their next door neighbor has a patio and deck structure that backs up to the other set of units; that, in this particular community, according to her client, there are at least 40 and maybe they did not all have to seek variances but they are aware of at least 3 that did; that she does not see this as a derogation of the zoning code because the issuance of this variance would not necessitate the need for all other units to seek a variance; that what they are requesting is consistent with the rest of the community; that, from her clients' unit, there is one similar to their request in the same section and at least 3 others throughout the community; that they did not survey all of the other units and do not know the distances; that she can only speak to her clients need for a variance and not the potential need for variances in the future by other units; that the proposed deck and porch will be at their first floor of living; and that she utilized the County's map showing variances to find the information about the case that she submitted with this application.

Ms. Kuchinsky testified that she affirms the statements made by Ms. Peet to be true and correct; that there have to be about 40 houses that have decks in the entire community; that, if the unit posing the problem for their addition wanted to do similar, she would imagine that they would also seek relief through the variance process; that she is retired and plans on making this their permanent home; that they would like to enjoy a certain quality of life and making the deck and porch smaller would make it very difficult to put a table and chairs in the screen porch or maybe two lounge chairs on the deck; that their unit is a townhouse; that there is a cement pad on the ground level already and their proposed addition would be just above that; and that some of the adjacent decks and porches were built in the beginning of the development.

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

Mr. Hastings closed the public hearing.

Mr. Williamson moved to approve the application for Case No. 12866 for the requested variances, pending final written decision, for the following reasons:

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

Motion by Mr. Williamson, seconded by Dr. Carson, carried that the **variances be granted for the reasons stated**. Motion carried 4 - 0.

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

Meeting adjourned at 8:07 p.m.