

MINUTES OF SEPTEMBER 9, 2019

The regular meeting of the Sussex County Board of Adjustment was held on Monday, September 9, 2019, at 7:00 p.m. in the County Council Chambers, 2 The Circle, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chair Ellen Magee presiding. The Board members present were: Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Ms. Janelle Cornwell – Planning and Zoning Director, Ms. Lauren DeVore – Planner, and Ms. Ann Lepore – Recording Secretary.

The Pledge of Allegiance was led by Ms. Magee.

Motion by Mr. Workman, seconded by Mr. Williamson, and carried unanimously to revise the agenda to move Case No. 12357 as the first public hearing item and to approve the revised agenda. Motion carried 3 – 0.

Motion by Mr. Workman, seconded by Mr. Williamson, and carried unanimously to approve the Minutes for the July 15, 2019, meeting. Motion carried 3 – 0.

Motion by Mr. Workman, seconded by Mr. Williamson, and carried unanimously to approve the Findings of Facts for the July 15, 2019, meeting. Motion carried 3 – 0.

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

PUBLIC HEARINGS

Case No. 12357 – Shirley A. Perry seeks variances from the front yard setback and side yard setback requirements for existing structures (Sections 115-42 and 115-185 of the Sussex County Zoning Code). The property is a through lot fronting on the north side of W. Springside Dr. and the south side of Fisher Rd. approximately 0.37 miles west of Martin Farm Rd. 911 Address: 28403 West Springside Dr., Milton. Zoning District: GR. Tax Parcel: 334-10.00-91.00

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. The Applicant is requesting a 25.2 ft variance for the pole building from the required 40 ft. front yard setback from Fisher Road and an 8.3 ft. variance from the required 10 ft. side yard setback requirement on the east side for the shed. Ms. Cornwell stated that there is a Certificate of Occupancy for the dwelling.

Shirley Perry and David Byler were sworn in to give testimony about the Application.

Mr. Byler testified that he represents Delmarva Pole Buildings; that the Applicant wanted additional storage space; that the lot is small and is a through lot with two front setbacks; that the

building shell is complete and no further development is possible; that the builder – Delmarva Pole Buildings was not aware that there was no rear setback; that there is nowhere else to place the shed; that the owners contracted with Delmarva Pole Buildings; that the pole building was built too close to Fisher Road; that they were issued a building permit; that a code official was present for the building placement; that it was not created by the Applicants as they were not aware that the property was a through lot; that moving the pole building will create a major expense and hardship for the property owner; that it will not affect visibility on the road; that there are pole buildings in the area with similar setbacks; that it is the minimum variance to keep the building in its current location; that Delmarva Pole Buildings obtained the permit for this building; and that code official advised them that the pole building was too close to the fence.

Ms. Cornwell stated that building inspectors have begun to check setbacks at the time of footer inspections; that, on June 6, 2019, the building inspector noted that the pole building was too close to the side yard setback; that the Applicants moved the building; that, on June 19, 2019, a complaint was lodged regarding the front yard setback; that a zoning inspector went to the property and verified that the building was in violation of the front yard setback on Fisher Road; that a notice of violation was sent to the property owner; that the Applicant was advised to stop work on June 25, 2019, and the notice of violation was posted on the property; that, on July 2, 2019, the inspector noted that a shed was being constructed on the property without a permit; that a notice of violation for lack of permit was issued on July 3, 2019; that a permit for the shed was applied for on July 25, 2019; and that the inspector looked at the footing requirements but did not verify the setback compliance.

Mr. Byler testified that the detached shed was not built by Delmarva Pole Buildings; that Delmarva Pole Buildings has been in business for 17 years; that the permit said the pole building had to be 40 feet from Fisher Road; and that, once they were aware of the problem, work stopped.

Ms. Perry testified that the lot is accessed from both sides of the lot; that lot is serviced by well and septic; that the septic is on the northeast side of the property; and that the well is on W. Springside side of the property.

Ms. Cornwell stated that there is no DelDOT permit for access from Fisher Road.

Jeff Shockley, Kelly Passwaters, Anderson Wright, Mike Costello, and Clay Willey were sworn in to give testimony about the Application.

Mr. Willey testified that he is the building inspector who checks the footings; that building inspectors are now beginning to check setbacks also; that he noted the building would not meet side setbacks; that he told the builder and they moved the placement of the building; that there is a drainage field which limited where the pole building could be placed; that he did not think the building could be turned without encroaching on the drain field; that he suggested a smaller pole building could be a option; and that he thought Fisher Road was the access point.

Ms. Passwaters testified that she inspected the property following a complaint to the Planning and Zoning office; that she issued a violation for the garage not meeting the setback requirements; that the violation was issued on June 20, 2019, and the notice was posted on the property on June 25, 2019; that the garage was already built but did not have doors installed; that she returned to the property on July 2, 2019, to check the status of the garage; that she noticed there was a unpermitted shed on the property; that the shed also did not meet the required 5 ft. side yard setback; that she spoke with Ms. Perry's grandson; that she explained that a permit could not be obtained because of the violation on the property; that she explained that an application should be submitted for a variance for the shed and the garage; that she had a discussion with representatives from Delmarva Pole Buildings; that the representative stated they were not responsible as the property owner signed a waiver about the placement of the pole building; that Mr. Long stated that Delmarva Pole Buildings is responsible for the errors; that, when she visited the site again, she spoke with Ms. Perry who stated that Delmarva Pole Buildings is responsible for the placement of the pole building; that neither party accepted responsibility for the violation; that Ms. Perry lives next door to the property and her grandson lives on the property; and that the dwelling received a certificate of compliance in 2005 but does not meet the setback requirements.

Ms. Cornwell advised the Board that the only issue before the Board is the shed and the pole building; and that the dwelling can be handled administratively.

Ms. Passwaters testified that the pole building could not meet the setback requirements unless it was right up against the house; and that Delmarva Pole Buildings was aware of the setback requirement from Fisher Road.

Mr. Costello testified that when the plans for this building were originally submitted there were some issues with it; that the County requested a new site plan as the structure was on the wrong side of the house; and that the permit technician went over the setbacks with the builder and had the representative initial the permit showing they were aware of the 40 ft. setback from Fisher Road.

Ms. Perry testified that the shed can be moved.

Andrew Long, Jr., was sworn in to give testimony about the Application.

Mr. Long testified that he is the grandson of Ms. Perry and he lives at this property; that he put the shed on the property; that he was unaware that he needed a permit for an unattached shed; that he thought no permit was needed for a portable shed; that Ms. Perry purchased the property approximately a year ago; that, if Delmarva Pole Buildings placed the building where he requested, it would have been a small variance requested because it would have been closer to the house; that, when he came home, he discovered that Delmarva Pole Buildings placed the pole building in the wrong spot; that Delmarva Pole Buildings measured from the middle of the road and not the property line; that he and his grandmother hired Delmarva Pole Buildings to construct this building and he relied on them to follow the County Zoning setbacks; that there is a similar sized pole building along

Fisher Road; that the mailbox is from Fisher Road; and that there is some distance from the property line to the edge of paving of Fisher Road.

Mr. Costello testified that the County is currently cross-training the building code inspectors to check for setbacks on the preliminary footing inspection to identify errors prior to building; that the permit technicians are taking time to explain to applicants when special circumstances exist and to have the applicants sign or initial the permit to show that it is understood that special circumstances exist; that the County is working on training all staff who deal with inspections or permits on identifying and following up on special circumstances before these errors occur; and that the County expects builders to follow the parameters.

Mr. Byler testified that Delmarva Pole buildings is responsible for the error; that the representative who signed for the permit did not relay the setbacks to the construction team; that he is the project manager but never saw the permit; and that he was told that it was a 25 ft. setback and he was unaware that there are two front yard setbacks.

Ms. Cornwell advised the Board that, if the pole building was turned, a variance would still be needed – albeit a lesser variance; and that she is not sure where the drainage field is located.

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

Mr. Workman moved to approve variance Case No. 12357 for the pole building and deny the variance for the shed, as the Applicant did not cause the practical difficulty but relied on the builder and that the shed can be moved into compliance. The motion failed for lack of a second.

Mr. Williamson moved to table Case No. 12357 until the October 7, 2019, meeting.

Motion by Mr. Williamson, seconded by Mr. Workman, carried unanimously to **table this case until the October 7, 2019, meeting**. Motion carried 3 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Williamson – yea, and Ms. Magee – yea.

Mr. Sharp stated the absent Board members will listen to the audio from tonight's meeting and will be prepared to discuss and vote on this case on October 7, 2019 meeting.

Case No. 12353 – Robin & Michele Salisbury request a Special Use Exception to operate a Bed and Breakfast (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located on the south side of Double Bridges Rd. approximately 627 ft. east of Parker House Rd. Address: 36700 Double Bridges Rd, Frankford. Zoning District: AR-1. Tax Parcel: 134-19.00-69.00

Ms. DeVore presented the case and stated that the Office of Planning and Zoning received no

correspondence in support of or in opposition to the Application and zero mail returns. The Applicants are requesting a Special Use Exception to operate a Bed and Breakfast.

Robin Salisbury was sworn in to give testimony about the Application. Mr. Salisbury submitted exhibits to the Board members.

Mr. Salisbury testified that he and his wife have always wanted to operate a bed and breakfast; that the home was built to accommodate a bed and breakfast; that the house consists of 4,500 square feet with 4 bedrooms and 4.5 bathrooms; that the site will emphasize health and wellness; that vegan / vegetarian breakfast will be served; that there will be no cooking facilities in guestrooms; that there will only be 3 bedrooms available for guests; that the property is a large lot with adequate parking; that the nearest neighbor is approximately 180 ft. from their house; that the house is 300 feet from the road and 80 feet from state-owned lands; that there is a pool on the property; and that the use will not substantially affect adversely the uses of adjacent and neighboring properties.

The Board found that two people appeared in support of and none in opposition to the Application.

Mr. Williamson moved to approve Application No. 12353 for a Special Use Exception for a period of five years as it will not substantially affect adversely the uses of adjacent and neighboring properties.

Motion by Mr. Williamson, seconded by Mr. Workman, and carried that the **special use exception be granted for a period of five (5) years the reasons stated**. Motion carried 3 - 0.

The vote by roll call; Mr. Workman – yea, Mr. Williamson – yea, and Ms. Magee – yea.

The Board took a nine (9) minute recess.

Mr. Chorman was not present at the beginning of the meeting but joined the meeting following the recess.

Case No. 12354 – Wilmington Savings Fund Society, FSB dba Christiana Trust seeks variances from the front yard setback and rear yard requirements for an existing dwelling (Sections 115-25, 115-182, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located on the south side of Shepherds Hollow Rd. approximately 503 ft. east of Horsey Church Rd. Address: 34389 Shepherds Hollow Rd., Laurel. Zoning District: AR-1. Tax Parcel: 432-13.00-14.02

Ms. DeVore 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. Ms. DeVore noted that a certificate of compliance was issued previously for the garage. The Applicant is seeking the following variances from the required 30 ft front yard setback:

- 14.1 ft. for the existing dwelling;
- 16.4 ft. for the stairs;
- 16 ft. for the existing dwelling;
- 17.2 ft for the covered porch and stairs;
- 10 ft. for the existing dwelling; and
- 0.8 ft from the required 20 ft. rear yard for the existing dwelling.

Richard Bennett, broker with Coldwell Banker was sworn in to give testimony about the Application. Shannon Carmean Burton, Esquire presented the Application on behalf of the Applicant. Mrs. Burton referred to exhibit booklets which were submitted to the Board members prior to this meeting.

Mrs. Burton stated that the property is unique as it was a part of a larger parcel which was improved with the dwelling in 1988; that it was subdivided from the larger parcel in 2007 without review of the location of the existing improvements; that it cannot otherwise be developed without removing a portion of the dwelling, garage, porch and stairs which have been in the current location for over 30 years; that the Applicant did not construct the improvements but obtained title to the property at a Sheriff's sale of the property; that the property is unique and it cannot be developed in strict conformity with the Code due to its uniqueness; that the variances are necessary to enable reasonable use of the property; that it will not alter the character of the neighborhood as the dwelling has been in its current location for over 30 years and there have been no complaints; that the Applicant only learned of the encroachments when it obtained a survey as part of its process to sell the lot; that there have been no known complaints about the structures; that the original owner owns neighboring lands and variances were obtained on those lands; and that the Applicant seeks only the minimum variances necessary to bring the property into compliance with the Zoning Code.

Mr. Bennett affirmed the statements made by Ms. Carmean Burton as true and correct.

Mr. Bennett testified that the house was built on the septic drain field; that a new well and septic system will be installed; and that there are problems with the lot.

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

Mr. Williamson moved to approve Application No. 12354 as the Applicant has met all the criteria for granting a variance.

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

The vote by roll call; Mr. Workman – yea, Mr. Chorman – yea, Mr. Williamson – yea, and Ms. Magee – yea.

Case No. 12355 – Charles F. & Sharon M. Schultz seeks variances from the side yard setback requirements for proposed structures (Sections 115-42 and 115-183 of the Sussex County Zoning Code). The property is located on the east side of Canvasback Rd. approximately 0.40 miles north of Swann Dr. within the Swann Keys subdivision. 911 Address: 37082 Canvasback Rd., Selbyville. Zoning District: GR. Tax Parcel: 533-12.16-369.00

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received two letters in support of and none in opposition to the Application and zero mail returns. The Applicant is requesting 2.6 ft. variances from the required 5 ft. side yard setback on the south side for the HVAC units.

Charles Schultz and Sharon Schultz were sworn in to give testimony about the Application.

Ms. Schultz testified that the property is unique because of its uneven shape; that the property is located adjacent to a cul-de-sac; that it is 70 ft. deep on one side and 100 ft. on the other; that it is only 46 ft. wide and smaller than most other lots in the development; that the variance is necessary to enable reasonable use of the property; that, due to her husband's disability, the home is designed to give as much first floor living as possible; that the propane tank cannot be buried; that the house will be a 2 story home but her husband can only use the first floor; that it was not created by the Applicants as they did not create the size of the lot and they have owned the property for approximately 2 years; that others in the neighborhood have encroachments; that the community was a manufactured home park which is converting to single-family homes; that removing the 1988 manufactured home and replacing it with a custom built home will enhance the neighborhood; that it is the minimum variance request to allow for a HVAC system; that the property is served by public water and sewer; and that the neighbors most impacted by the variance request support the request.

Ms. Cornwell stated that there have been many variances granted in this community.

Ms. Schultz testified that the dwelling will consist of approximately 2,400 square feet; that they have not experienced flooding in the rear yard; and that the contractor said that it would be more costly and inefficient to place the HVAC units to the rear of the house.

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

Mr. Chorman moved to approve Case No. 12355 as the Applicant has met the criteria for granting a variance. The motion failed for lack of a second.

Mr. Workman moved to table Case No. 12355 until the October 7, 2019, meeting.

Motion by Mr. Workman, seconded by Mr. Williamson, carried unanimously to **table this case until the October 7, 2019, meeting**. Motion carried 4 – 0.

The vote by roll call; Mr. Chorman – Yea, Mr. Workman – yea, Mr. Williamson – yea, and Ms. Magee – yea.

Case No. 12356 – Carole E. Rickert seeks variances from the side yard setback, rear yard setback and separation distance requirements for proposed structures (Sections 115-25, 115-82, 115-172, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located on the northwest side of Center Ave. approximately 702 ft. south of Skyview St. within Sea Air Village. 911 Address: 19976 Center Ave., Rehoboth Beach. Zoning District: AR-1 and C-1. Tax Parcel: 334-13.00-310.00-3128

Ms. Cornwell 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 ten mail returns. The Applicant is requesting a variance of 3.5 feet from the required 20 ft. separation distance for both sides and a 2 ft. variance from the required 5 ft. rear yard setback for a shed. There are two previous variances on this property from the separation distance requirements.

Carole Rickert and Gil Fleming were sworn in to give testimony about the Application.

Mr. Fleming testified that the Applicant is replacing a manufactured home located in Sea Air Village; that the existing home is a 1970 model and is not energy efficient; that this property is unique because it is a shallow and narrow lot; that the proposed dwelling will not encroach into the rear to the extent that the current dwelling encroaches; that the lot is less than 40 feet wide; that the survey shows the proposed home with the dotted lines; that the shed will be removed; that the practical difficulty was not caused by the Applicant but by the size of the lot and the fact that the neighboring dwellings have encroachments into setbacks; that it will not alter the essential character of the neighborhood but improve it as the current dwelling will be replaced with a newer, more energy efficient home; and that it is a minimum variance to allow a new home on the property and there will be a variance required for the steps also.

During discussion there were changes made to the request based on Mr. Fleming's testimony. Ms. Cornwell stated that based on the Applicant's testimony the following variances were needed:

- 7.1 ft. from the ten (10) feet rear yard setback for the proposed dwelling;
- 6.5 ft. from the twenty (20) feet separation distance requirement from Lot 86 for proposed deck, steps, and ramp;
- 3.5 ft. from the twenty (20) feet separation distance requirement from Lot 82 for the proposed dwelling;
- 3.5 ft. from the twenty (20) feet separation distance requirement from Lot 86 for the proposed dwelling.

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

Mr. Williamson moved to approve Application No. 12356 as the Applicant has met all the criteria for granting a variance.

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

The vote by roll call; Mr. Workman – yea, Mr. Chorman – yea, Mr. Williamson – yea, and Ms. Magee – yea.

Case No. 12358 – Harold Witmer seeks variances from the front yard setback, side yard setback and rear yard setback requirements for existing structures (Sections 115-42, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located on the west side of West Lagoon Rd. approximately 114 ft. north of S. Dogwood Dr. in the Dogwood Acres subdivision. Address: 30747 West Lagoon Rd., Dagsboro. Zoning District: GR. Tax Parcel: 134-6.00-58.00

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and one mail return. The Applicant is requesting the following variances:

- 2.3 ft. from required 5 ft. side yard setback on the north side for an HVAC;
- 3.2 ft. from required 5 ft. side yard setback on the north side for steps;
- 1.5 ft. from required 5 ft. side yard setback on the south side for a shed; and
- 3.9 ft. from required 5 ft. rear yard setback for a shed.

Harold Witmer was sworn in to give testimony about the Application. Gil Fleming who is presenting the Application on behalf of the Applicant was previously sworn in to give testimony. Mr. Fleming submitted an exhibit to Board members.

Mr. Fleming testified that the builder made an error; that the property is unique because it is a small lot; that the property is located in Dogwood Acres; that there are many non-conformities in the neighborhood; that the Applicant replaced a previous home; that it could not otherwise be developed because of the placement of the septic system and because the Applicant would like to improve the home with a porch at a future date; that the exceptional practical difficulty was not caused by the Applicant but by the builder; that the prior manufactured home on the lot measured 12 feet wide and was 26 feet from the front property line; that the newer manufactured home is wider and has to meet the front yard setback requirements; that the septic system has created the problem; that the builder assumed that steps and HVAC could encroach into setbacks; that, after the dwelling was built, the builder discovered that steps and HVAC cannot encroach further in a small lot with 5 ft. setbacks; that it will not alter the essential character of the neighborhood but improve it as the lot has

been developed with a new manufactured home; that there is a pole barn on the neighbor's property near the steps so it will not be a visual nuisance in the area; that the steps can be moved but would result in the home only having one access; that the HVAC can be moved to the rear of the house; and that this is a minimum variance request to allow relief.

Ms. Cornwell advised the Board that the pumphouse does not need a variance.

Mr. Fleming testified that the shed has been on the property for 17 years.

Mr. Witmer testified that the shed was built by a prior owner and is located on cement blocks; and that he is not sure the shed could handle a move.

Harry Backus was sworn in to give testimony in opposition to the Application. Fred Townsend, Esquire, appeared on behalf of Harry and Joyce Backus and he submitted photographs to Board members.

Mr. Townsend stated that the Applicant has not met the criteria for granting a variance; that the lot although is small, it is not unique; that Sussex County Council reduced the side yard setback requirements to afford relief to smaller lots; that side yard setbacks reduce fire risks, improve aesthetics, and reduce the appearance of density; that, if the Applicant fails on one criteria, the Application must be denied; that the lot is rectangular and is not unique; that the house could have been located on the property without a variance; that the property could have been otherwise developed because the dwelling could have been moved nearer to the center of the lot; that the neighborhood is a mature development and homes are being replaced therein; that the variances are not in keeping with the neighborhood; that the practical difficulty was caused by the Applicant's builder; that it is not the minimum variance; that the landing is 53 inches and could be smaller; and that a door could be added to the rear.

Mr. Backus affirmed the statements by Mr. Townsend as true and correct. Mr. Backus testified that he is opposed to the variance request; that his only issue is with the side yard variances adjacent to his lot line; and that he dislikes fences but will put up a fence.

Mr. Witmer testified that the drain field was installed in 2006; that compliance with the front yard setback requirement created a problem because he could not meet the front yard setback requirement and not hit the septic system or drain field; that he contracted with Oakwood Homes to place the home on the lot; and that he did not tell Oakwood Homes where to locate the house.

Mr. Fleming testified that the property is unique; that the exceptional practical difficulty was not created by the Applicant; and that the variances will not alter the essential character of the neighborhood; that the Applicant reviewed the proposed survey and approved it but the siting of the home was changed in the field due to the discovery of the septic system; and that, if the house was moved to the center of the lot, the house would have been located on top of the septic system.

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

Mr. Workman moved to approve Application No. 12358 to grant approval for the variances for the shed and to deny the variances for the HVAC and steps as they can be moved to another location

Mr. Workman moved, seconded by Mr. Williamson and carried that the **variances be granted in part and denied in part**. Motion carried 4 - 0.

The vote by roll call; Mr. Workman – yea, Mr. Chorman – yea, Mr. Williamson – yea, and Ms. Magee – yea.

Case No. 12359 – Frank A. Miranda seeks a special use exception to operate a commercial dog kennel (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located on the north of Lighthouse Rd. (Rt. 54) approximately 0.21 miles west of Dickerson Rd. 911 Address: 33053 Lighthouse Rd., Selbyville. Zoning District: AR-1. Tax Parcel: 533-18.00-12.0

Ms. DeVore presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. The Applicant is seeking a renewal of a special use exception to operate a commercial dog kennel which was previously granted on September 9, 2014 for a five-year period.

Frank Miranda was sworn in to give testimony about the Application.

Mr. Miranda testified that he is the owner of Heavenly Hound Dog Kennel; that it has been in business for over thirty years and he bought the business in 2015; that this is the 7th special use exception request; that there have been no changes to the area; that Sussex County owns neighboring property consisting of 140 acres; that they are surrounded by agricultural land; that there is a conditional use on the property to use the house as a veterinary clinic; that the dogs are inside by 6:00 pm and are just taken outdoors once before bedding down each night; that employees leave at 6:00 pm; that the facility is open from 7 am to 9 pm and visitation hours are from 10 am to 4 pm; that there are 18 dog runs; that the facility averages 6-8 cars per day for the kennel; that there have been no complaints; and that the special use exception does not substantially affect adversely the uses of adjacent and neighboring property.

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

Mr. Williamson moved to approve Application No. 12359 for a Special Use Exception for a period of five years as it will not substantially affect adversely the uses of adjacent and neighboring properties.

Motion by Mr. Williamson, seconded by Mr. Chorman, and carried that the **special use exception be granted for a period of five (5) years the reasons stated.** Motion carried 4 - 0.

The vote by roll call; Mr. Workman – yea, Mr. Chorman – yea, Mr. Williamson – yea, and Ms. Magee – yea.

Case No. 12360 – Ashburn Homes seeks variances from the front yard setback requirements for existing and proposed structures and from the CHCOZ (Sections 115-82, 115-182 and 115-194.1 of the Sussex County Zoning Code). The property is located on the west side of Coastal Hwy. (Rt. 1) approximately 413 ft. north of Phillips St. 911 Address: 20238 Coastal Hwy., Rehoboth Beach. Zoning District: C-1. Tax Parcel: 334-19.00-156.00

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received no correspondence in support of and one letter in opposition to the Application and two mail returns. Ms. Cornwell stated that the Applicant no longer requires a variance on the front yard setback as the building will comply with setbacks, that the Applicant only requires a variance from the Combined Highway Corridor Overlay Zone which requires a 20 ft. forested landscape buffer; and that the Applicant is seeks a variance of 18 feet from the 20 feet wide forested landscape buffer on the south side of the property and a variance of 11 feet from the 20 feet wide forested landscape buffer on the north side of the property.

Ken Christenbury and Jordan Ashburn were sworn in to give testimony about the Application.

Mr. Christenbury testified that the Applicant has withdrawn the request for the front yard variance; that there is currently a seafood takeout on the property with pavement around the building; that the Applicant wants to develop the lot with a sales and design center for its business; that the lot is unique because it is only 125 ft. deep by 100 ft. wide; that the parking spaces currently do not meet County Zoning Code; that updating the building to comply with the Zoning code for the required parking would not allow room for the 20 ft. landscaped buffer; that the existing building is old; that this practical difficulty was not created by the Applicant as the lot was created in the 1940s; that the Applicant will provide some mature trees on either side of the lot but cannot develop without the relief from the required buffer; that it will not alter the essential character of the neighborhood as most of the neighboring properties do not have any significant landscaping on the front; that only 2 properties nearby have the buffer; that one of those lots is a residential lot and the other lot is twice as deep as the other properties along Route 1 in the neighborhood; that neighboring properties have parking in the front yard; that the lot is shallow; that the building cannot be moved back farther on the property as the space in the rear will allow for a loading zone and dumpsters; that the curved area at the center of the front of property could be planted with low shrubs measuring 3 feet tall or less; and that the area measures approximately 7 feet by 18 feet.

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

Ms. Cornwell advised the Board that the Applicant needs a variance of 20 feet from the CHOCOZ buffer requirement except in the following areas where the buffer requirement will be met:

- The northeastern corner of the property measuring 11 feet deep by 18.5 feet wide
- The curved area in the center of the front of the property as shown on the site plan measuring approximately 7 feet wide by 18 feet deep
- The southeastern corner of the property measuring 18 feet deep by 5.5 feet wide

Mr. Workman moved to approve Application No. 12360 for a variance from the CHCOZ required 20 ft. buffer with the exception of the following landscaped buffers;

- 11 ft. X 18ft. on the north side;
- 18 ft. X 5.5 ft. on the south; and
- 18 ft. X 7 ft. in the center of the lot near the entrance.

Mr. Workman moved, seconded by Mr. Williamson, and carried that the **variance, except as noted in the motion, be granted for the reasons stated.** Motion carried 4 - 0.

The vote by roll call; Mr. Workman – yea, Mr. Chorman – yea, Mr. Williamson – yea, and Ms. Magee – yea.

ADDITIONAL BUSINESS

Request for one-year time extension for Case 12066 Lands of J.G. Townsend Jr. & Co.

Mr. Workman moved, seconded by Mr. Chorman, and carried that the **request for time extension be moved to the September 16, 2019 meeting.** Motion carried 4 - 0.

Request for one-year time extension for Case 11971 Lands of Patricia A. Barthelmiss.

Mr. Chorman moved, seconded by Mr. Workman, and carried that the **request for time extension be moved to the September 16, 2019 meeting.** Motion carried 4 - 0.

Meeting was adjourned at 10:02 p.m.