

## MINUTES OF MAY 20, 2024

The regular meeting of the Sussex County Board of Adjustment was held on Monday, May 20, 2024, at 6:00 p.m. in the County Council Chamber, Sussex County Administration Office Building, Georgetown, Delaware.

The meeting was called to order at 6:02 p.m. with Chairman Jeffrey Chorman presiding. The Board members present were Dr. Kevin Carson, Mr. John T. Hastings, Mr. Jordan Warfel, Mr. John Williamson, and Mr. Jeffrey Chorman. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Ms. Jennifer Norwood – Planning and Zoning Manager, and Ms. Marina Truitt – Recording Secretary.

The Pledge of Allegiance was led by Mr. Chorman.

Motion by Dr. Carson, seconded by Mr. Warfel and carried unanimously to approve the agenda. Motion carried 5 – 0.

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

Motion by Mr. Williamson, seconded by Mr. Warfel and carried unanimously to approve the Minutes for the March 18, 2024, meeting. Motion carried 5 – 0.

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

Motion by Mr. Hastings, seconded by Dr. Carson and carried to approve the Findings of Facts for the March 18, 2024, meeting. Motion carried 5 – 0.

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

### OLD BUSINESS

**Case No. 12932 – Scott and Sue Henry** seek variances from the front and rear yard setback requirement for existing structures (Section 115-34 of the Sussex County Zoning Code). The property is located North of Chippiwa Drive and South of Creek Road within the Blackwater Village Subdivision. 911 Address: 34011 Chippiwa Drive, Dagsboro. Zoning District: MR. Tax Parcel: 134-11.00-396.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support or opposition of the Application and zero mail returns. The Applicants are requesting a 2.8 foot variance from the 30 foot front yard setback requirement for an existing porch and a 5.3 foot variance from the 30 foot front yard setback requirement for existing stairs. Ms. Norwood noted that the rear yard variance is not needed as the shed complies with the setback requirements.

Mr. Williamson recused himself and left the Council Chambers.

Mr. Scott Henry and Ms. Sue Henry were sworn in to give testimony for this application.

Mr. Henry testified that, when receiving the building permit for the structure, he thought that was approving the proposed porch; that there were multiple inspections that he passed before the final inspection; that he initially passed the final inspection but a different inspector came back an hour later and failed them; that the porch was built by a contractor; that the porch is eight (8) feet by eight (8) feet and extends roughly three (3) feet into the setback; that the steps are 31 inches deep; that there is roughly 8 feet of grass area between the property line and edge of pavement of the road; that HOA approval was granted; that the neighbors are in favor of the upgrade; that the structure provides the homeowners and the front door protection from the rain and elements; that they used Gonzalez Construction to build the stairs and porch; that they acquired the building permit with the proper setbacks on it; and that they were not aware of what setbacks were and that, if a permit was issued, then they were able to build.

Ms. Henry testified that the tread of the steps are 31 inches deep; and that the homeowners are now able to walk straight out onto the platform instead of down long, steep steps.

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

Mr. Chorman closed the public hearing.

Dr. Carson moved to approve the application for Case No. 12932 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 sought are the minimum variances necessary to afford relief.

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

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

Mr. Williamson returned to the Council Chambers.

### **NEW BUSINESS**

**Case No. 12936 – Sea Air Village** seeks variances from the side yard setback and separation distance requirements for proposed structures (Section 115-25 and 115-172 of the Sussex County

Zoning Code). The property is located Northwest of Atlantic Avenue and Northeast of Skyview Street within the Sea Air Village Manufactured Home Park, Lot 48. 911 Address: 19980 Atlantic Avenue, Rehoboth Beach. Zoning District: AR-1. Tax Parcel: 334-13.00-310.00-3144 Lot E-48

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support or opposition of the Application and 13 mail returns. The Applicant is requesting the following variances:

1. A 4.8 foot variance from the 20 foot separation requirement from a proposed HVAC to the landing on Lot E46;
2. A 1.7 foot variance from the 20 foot separation requirement from the proposed manufactured home to the landing on Lot E46;
3. A 7.1 foot variance from the 20 foot separation requirement from the proposed manufactured home to the shed on Lot E46;
4. A 10.2 foot variance from the 20 foot separation requirement from the proposed manufactured home to the shed on Lot D47;
5. An 8.1 foot variance from the 20 foot separation requirement from the proposed manufactured home to the existing mobile home on Lot D47;
6. A 5.5 foot variance from the 20 foot separation requirement from the proposed shed to the existing mobile home on Lot D47;
7. A 1.2 foot variance from the 10 foot separation requirement from the proposed shed to the shed on Lot E50;
8. A 6.1 foot variance from the 20 foot separation requirement from the proposed shed to the manufactured home on Lot E50;
9. A 1.8 foot variance from the 20 foot separation requirement from the proposed manufactured home to the HVAC on Lot E50; and
10. A 5.8 foot variance from the 20 foot separation requirement from the proposed landing and steps to the HVAC on Lot E50.

Ms. Aimee Bennett was sworn in to give testimony for this application.

Ms. Bennett testified that the property is unique due to the narrow dimensions; that the community was created in the 1950s and 1960s, prior to the current zoning requirements; that the lot size, in comparison to the size of a modern manufactured home, is small; that the proposed mobile home is narrower than the prior combined total footprint of the previous home and addition; that the narrowness of the lot and previous build out of the surrounding lots make it difficult to comply with the separation requirements; that the proposed mobile home will comply with the 5 foot setback requirement, which the previous home did not; that the property cannot otherwise be developed without the variances; that the need has not been created by the Applicant; that the previous home on the lot was surrendered as uninhabitable and the home was demolished; that the variances will not alter the essential character of the neighborhood, nor substantially or permanently impair the appropriate use or development of the adjacent property, nor will the variances be detrimental to the

public or the public welfare thereof; that the variances requested will bring conformity to the community, subsequently adding value and improving the community; that the variances requested are the minimum variances necessary to afford relief; that the placement of the other homes create the issue by squeezing the building envelope and creating difficulty; that it appears that the shed on Lot D47 is touching the property line; and that the proposed mobile home is the narrowest and smallest type model they were able to find.

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

Mr. Chorman closed the public hearing.

Mr. Williamson moved to approve the application for Case No. 12936 for the requested variances, pending final written decision, for the following reasons:

1. The Property is unique due to its size;
2. The variances will not alter the essential character of the neighborhood; and
3. The variances sought are the minimum variances necessary to afford relief.

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

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

**Case No. 12938 – Sea Air Village** seeks variances from the separation distance requirements for proposed structures (Section 115-172 of the Sussex County Zoning Code). The property is located South of Golden Avenue and Southwest of Skyview Street within the Sea Air Village Manufactured Home Park, Lot L-61. 911 Address: 20011 Golden Avenue, Rehoboth Beach. Zoning District: AR-1. Tax Parcel: 334-13.00-310.00-13072 Lot L-61

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support or opposition of the Application and 13 mail returns. The Applicant is seeking the following variances:

1. A 1.2 foot variance from the 20 foot separation requirement from the proposed manufactured home to the existing screen porch on Lot L63;
2. A 4 foot variance from the 20 foot separation requirement from the proposed HVAC to the existing screen porch on Lot L63;
3. A 7.4 foot variance from the 20 foot separation requirement from the proposed manufactured home to the existing shed on Lot L63;
4. An 11.7 foot variance from the 20 foot separation requirement from the proposed manufactured home to the existing shed on Lot L63;

5. A 4.2 foot variance from the 20 foot separation requirement from the proposed manufactured home to the existing shed on Lot K62;
6. A 4.3 foot variance from the 20 foot separation requirement from the proposed manufactured home to the existing mobile home on Lot K62;
7. A 1.8 foot variance from the 20 foot separation requirement from the proposed shed to the existing manufactured home on Lot K62;
8. A 4.2 foot variance from the 20 foot separation requirement from the proposed shed to the existing manufactured home on Lot K62;
9. A 9.3 foot variance from the 20 foot separation requirement from the proposed shed to the existing manufactured home on Lot L59;
10. A 0.3 foot variance from the 20 foot separation requirement from the proposed manufactured home to the existing manufactured home on Lot L59;
11. A 0.3 foot variance from the 20 foot separation requirement from the proposed porch to the existing manufactured home on Lot L59; and
12. A 4.1 foot variance from the 20 foot separation requirement from the proposed landing and steps to the manufactured home on Lot L59.

Ms. Aimee Bennett, who was previously sworn in, appeared to give testimony for this application.

Ms. Bennett testified that the community was created in the 1950s and 1960s, prior to the current zoning requirements; that the lot size, in comparison to the size of a modern manufactured home, is small; that the new home is approximately the same size as the prior home's combined footprint; that the narrowness of the lot and previous build out surrounding the property makes it difficult to comply; that placing a new mobile home on the property would be consistent with the neighboring homes in the community; that the proposed mobile home will be correcting the previous 5 foot setback encroachment; that the need or exceptional practical difficulty was not created by the Applicant; that the property is narrow, resulting in a smaller building area; that the neighboring lots are also narrow, causing development of nearby lots to be nearer to the lot lines and neighboring homes; that it is almost impossible to place a home on the lot without violating the separation requirement; that the variances will not alter the essential characteristics of the neighborhood; that the proposed mobile home will add to the conformity and value of the community; that the previous 1978 home was surrendered to the community after it began to structurally fail; that these are the minimum variances needed; that the proposed mobile home was the narrowest model they could find; that the neighbors are welcoming to the improvements; and that the neighboring shed on Lot L63 has some type of build out onto the shed itself.

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

Mr. Chorman closed the public hearing.

Mr. Hastings moved to approve the application for Case No. 12938 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique physical conditions due to the narrowness of the lot;
2. The exceptional practical difficulty was not created by the Applicant;
3. The variances will not alter the essential character of the neighborhood; and
4. The variances represent the minimum variances necessary to afford relief.

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

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

**Case No. 12937 – David Smith and Kenneth Williams, Jr.** seek variances from the separation distance requirements for a proposed structure (Section 115-172 of the Sussex County Zoning Code). The property is located Northwest of Atlantic Avenue and Northeast of Parkerview Road within the Sea Air Village Manufactured Home Park, Lot 13. 911 Address: 19905 Atlantic Avenue, Rehoboth Beach. Zoning District: AR-1. Tax Parcel: 334-13.00-310.00-3156 Lot F-13

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support or opposition to the Application and 13 mail returns. The Applicant is seeking the following variances:

1. A 5 foot variance from the 20 foot separation requirement from the proposed three seasons room to the existing manufactured home on Lot F13; and
2. A 7.9 foot variance from the 20 foot separation requirement from the proposed three seasons room to the existing HVAC on Lot F13.

Ms. Aimee Bennett, who was previously sworn in, was present to give testimony for this application. Mr. Robert Lashua was also sworn in to give testimony for this application.

Ms. Bennett testified that the property is unique due to the narrowness of the lot; that the community was created in the 1950s, prior to the zoning requirements; that the three seasons room is consistent with other additions in the community; that the Board previously approved the separation distance of 18.1 feet from the neighboring HVAC and 21.2 feet from the neighboring dwelling; that the proposed structure will leave a 15 foot clearance from the neighboring dwelling, which is considerably larger than many other structures in the community; that the property cannot otherwise be developed; that the variances would grant reasonable use of the property; that the need and exceptional practical difficulty was not created by the Applicant themselves but, rather, by the unique narrowness of the lots small dimensions and previous build out by neighboring lots; that there are multiple other homes in the community with similar additions; that the current mobile home was

installed in 2024; that the proposed structure would be built within the lot's building setback requirements, it just would not meet the separation distance requirements due to the neighboring dwellings and their positioning; that the addition will be 10 feet wide; that the neighbors are in favor of the addition, as it will aid in enhancing the community; that the lot has a larger useable space than others nearby; that the addition is needed for the gathering of their family so they can all fit under one roof; that newer homes are generally larger than older manufactured homes; and that there are approximately 7-8 additions in the neighborhood.

Mr. Lashua testified that the three seasons room would be a finished room with insulation and drywall; that the addition needed to be large enough to put a table and chairs for the family to use together; and that the current single-wide mobile home does not provide quite enough room.

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

Mr. Chorman closed the public hearing.

Mr. Hastings moved to deny the application for Case No. 12937 for the requested variances, pending final written decision, because the grant of the variances would cause a domino effect for the addition of sunrooms and the additional variances needed in the neighborhood.

The motion failed for lack of a second.

Mr. Warfel moved to approve the application for Case No. 12937 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique physical conditions due to the shape, size and history of the property;
2. That, due to such physical circumstances or conditions, there is no possibility that property can be developed in strict conformity with Sussex County Zoning Code, and the variances are necessary to enable the reasonable use of the property;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances represent the minimum variances necessary to afford relief.

Motion by Mr. Warfel, seconded by Mr. Williamson, carried that the **variances be approved for the reasons stated**. Motion carried 3 – 2.

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

In seconding the Motion, Mr. Williamson stated that the structure will be located within the building envelope but the variances are needed due to the development of other lots.

**Case No. 12939 – Heather Osborne and Kevin Clear** seek a special use exception for a commercial dog kennel (Section 115-23 of the Sussex County Zoning Code). The property is located Southwest of Daisey Road. 911 Address: 34582 Daisey Road, Frankford. Zoning District: AR-1. Tax Parcel: 533-6.00-125.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received five letters in support of and no correspondence in opposition to the Application and zero mail returns. The Applicants are requesting a special use exception for a commercial dog kennel.

Ms. Heather Osborne was sworn in to give testimony for this application.

Ms. Osborne testified that she would like to renew the previously granted special use exception for a commercial dog kennel; that an application has been processed to rezone the property; that there is nothing new about the kennel; that the services and hours will be the same; that there have been no complaints from any neighbors; that she and her husband are the only ones working the kennel; that the lot is about 1.58 acres with the operational hours of roughly 7:30 am to 6:00 pm with occasional overnight boarding; that typically there are eight dogs, including the three she owns; that there are never more than 15 dogs; that there is adequate parking for people picking up and dropping of dogs; and that most dogs come a few days a week, with a few that come five days a week.

Ms. Norwood stated that a previous special use exception was approved in 2019 for 5 years; that the previous approval expires June 18, 2024; that a service level evaluation letter has been submitted for the change of zone request; and that the change of zone request takes longer than what the special use exception time frame allowed.

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

Mr. Chorman closed the public hearing.

Mr. Williamson moved to approve the application for Case No. 12939 for a period of five (5) years for the requested special use exception, pending final written decision, because the proposed use will not substantially affect the uses of neighboring and adjacent properties.

Motion by Mr. Williamson, seconded by Mr. Hastings, carried that the **special use exception be approved for a period of five (5) years for the reasons stated.** Motion carried 5 – 0.

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

**Case No. 12940 – William and Vicki Abel** seek a variance from the side yard setback requirements for a proposed structure (Section 115-25 of the Sussex County Zoning Code). The property is



located Southeast of White Oak Road within the Dogwood Acres Subdivision. 911 Address: 30852 White Oak Road, Dagsboro. Zoning District: AR-1. Tax Parcel: 134-6.00-43.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received seven (7) letters in support of the Application, zero letters in opposition to the Application, and zero mail returns. The Applicants are requesting a 5 foot variance from the 15 foot side yard setback requirement on the south side for a proposed dwelling.

Ms. Mackenzie Peet, Esquire, presented the application on behalf of the Applicants.

Ms. Peet stated that the request of a 5 foot variance from the 15 foot side yard setback requirement would allow for the proposed manufactured home to be located 10 feet from the side yard property line; that the property is situated within the GR (General Residential) zoning district, as well as the Coastal Area; that the property is within the Dogwood Acres subdivision, which was plotted in 1968; that the building envelope for the property is restricted due to the existing garage, shed, septic area, and well; that other variances have previously been requested and approved within the subdivision (Case Numbers 12808, 12358, 12397, 11675 and 12880); that the Code includes a provision for small lots under 10,000 square feet, to provide reduced setbacks; that the contractor believed that the lot was less than 10,000 square feet, since many other lots in the subdivision qualify for the small lot provision; that it was later discovered that the setback requirements were 15 feet, not 5 feet; that the proposed uncovered, stairs are approximately 6 feet from the property line and can encroach up to 5 feet; that the existing shed is also in compliance with the setback requirements; that the buildable area of the property is limited due to the existing structures; that, due to the unique physical circumstances and conditions, conformity with the Code is not possible; that the prior home was longer and skinner measuring 12 feet by 60 feet whereas the proposed home measures 27 feet by 40 feet; that the exceptional practical difficulty has not been created by the Applicants; that the unique conditions that limit development was created by the prior owners; that the placement of the home is approximately in the same location as the previous home, which will not alter the essential character of the neighborhood; that the proposed home is consistent with previous placement, design, and style with new homes in the community; that the Applicants have obtained 9 letters of support; that the requested variance is the minimum needed to afford relief with the existing property conditions; that the requested location for the proposed home is the only location that will allow functionality, reasonable use, and maintenance of the property; that, once they figured out there was a mix up with the building setback requirements, all work stopped; that the Applicants tried to cancel the order for the manufactured home but were not successful; that the Applicants did a great job talking to the neighbors and they are all in support of the upgrade; that there is an informal, voluntary homeowners association with no formal approval process; and that the proposed home could not be moved closer to the garage due to the septic area, in the rear of the property, needing access for maintenance.

Ms. Peet submitted 2 additional letters of support into the record.

Ms. Vicki Abel was sworn in to give testimony for this application.

Ms. Abel affirmed the statements made by Ms. Peet as true and correct and testified that the setback issue was noticed after the permit was issued; and that the Application was filed showing the proposed 5 foot setback, the building permit was issued stating there was a 15 foot setback requirement, but it was not discovered until after the mobile home was purchased that their setback information was incorrect.

Ms. Janice Tunell was sworn in to give testimony in support of this application.

Ms. Tunell testified that she lives two streets over, on West Lagoon; that she is the president of the voluntary homeowners association; that the community is excited to see development and new houses being installed; that the variance requested is minimal; that she checked with the next door neighbor to ensure that there was no conflict and he did not have an issue with the proposal; and that, due to the lots being so small, variances are very common when replacing with modern homes.

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

Mr. Chorman closed the public hearing.

Mr. Warfel moved to approve the application for Case No. 12940 for the requested variance, pending final written decision, for the following reasons:

1. The Property is unique due to the existing garage and driveway;
2. That, due to such physical circumstances or conditions, there is no possibility that property can be developed in strict conformity with Sussex County Zoning Code;
3. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Warfel, seconded by Mr. Dr. Carson, carried that the **variances be approved for the reasons stated**. Motion carried 5 – 0.

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

**Case No. 12944 – Coastline Properties, LLC** seeks a special use exception for parking and loading requirements and variances from the off-street parking requirements, the front, side and rear setback requirements, and the landscape buffer requirements in the Combined Highway Overlay Zone (CHCOZ) for proposed structures (Section 115-80, 115-162, 115-82 and 115-194.1 of the Sussex County Zoning Code). The property is located East of Tulip Drive, North of Coastal

Highway and West of Savannah Road. 911 Address: 97 Tulip Drive, Lewes. Zoning District: C-1. Tax Parcel No.: 335-11.00-93.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support or opposition to the Application and zero mail returns. The Applicant is requesting a special use exception to remove 37 parking spaces from the 113 parking spaces required, a 20 foot variance from the required 20 foot Combined Highway Overlay Zone (CHOCZ) landscape buffer requirement, a 20 foot variance from the 30 foot rear yard setback requirement from a residential district for a proposed building, a 10 foot variance from the 20 foot side yard setback requirement on the south side from a residential district for a proposed building, an 8 foot variance from the 60 foot front yard setback requirement for a proposed building, and a 20.6 foot variance from the 60 foot front yard setback requirement for the existing building.

Mr. Williamson and Dr. Carson recused themselves and left the Council Chambers.

Mr. Scott Lednum and Mr. Ralph Plitko were sworn in to give testimony for this application.

Mr. Plitko testified that the proposed, commercial development is in addition to an existing, family owned business known as Creative Concepts; that the current business has been active for roughly 50 years; that the property currently houses a 12,000 square foot furniture building and a granite facility; that the property is unique due to it being a corner lot and that DelDOT has taken property for road development multiple times; that the property borders to residential properties which increase the setbacks on those sides of the property; that, with the increased setbacks from the corner front yard requirements, rear yard adjacent to residential districts setback requirements, side yard adjacent to residential districts setback requirements and property lost, the buildable area has been decreased; that the conditions were not created by the Applicant; that the Applicant has complied with DelDOT; that the current buildings comply with zoning regulations; that the proposed structures would double the square footage available; that the increase in square footage will increase the profitability of the site; that the Applicant seeks a reduction on the parking space requirements; that the existing furniture store increases the number of parking spaces needed; that the current furniture building requires 30 parking spaces but, on average, only 5 parking spaces are used; that there is an existing stormwater pond and walking path on the neighboring residential property which creates a good buffer; that the rear yard setback requirement for being adjacent to a residential district neighbors a home but there is already an existing fence and vegetation that aids in shielding the neighbor; that the uses are in line with the character of the neighborhood; that the area in general is highly commercial with a lot of traffic flow; that the proposed building east of the existing furniture store has a slight encroachment due to following fire marshal requirements; that a small triangle of the proposed building will encroach into the front yard setback area; that the best use of the property is to have as many retail buildings on the property as possible; that the front of the property is developed with parking; that there have been several instances of takings by DelDOT; that there is currently an existing parking lot that goes up to the property line; that there is roughly 10 feet of grass between the property line and the edge of pavement that runs parallel to the highway; that, since the parking lot is

already developed, they are not able to add in the CHOCZ; that they have met with Sussex County Planning and Zoning Department to go over the site plan but have not had an official site plan review before the Planning & Zoning Commission; that the Applicant wanted to start with the variance process before going to site plan review; that most of the buildings will fit within the setback but parking relief is needed; that, when referring to the rear building, a 10 foot setback line is proposed instead of the required 30 foot setback; that, if the adjacent property to the rear was commercial, there would automatically be a 10 foot setback requirement instead of the 30 foot setback requirement; that there is a fence to the rear of the property; that the house on the property to the rear of the property is approximately 80 feet away; that they met with the Sussex Conservation District; that they have approval to discharge stormwater to the Village at Five Points (the neighboring development); that the remaining stormwater will flow to Route 1; that the Applicant has to build a shell and then seek tenants for the building; that the building could be used for a warehouse which require limited parking; that he believes the Code requires more parking than is needed for the furniture store; that the traffic flow on the site is to meet Fire Marshal requirements; that the setback of 10 feet from the Village of Five Points makes sense since the area adjacent to the site cannot be developed for housing; that there is a picket fence; that the positioning of the proposed building in the rear was partially due to the angle at which the current granite shop sits so that trucks could still have access to the building; and that compliance with the 30 foot setback for the proposed rear building would make it difficult for trucks to access the granite shop building; that the Applicant would plant at the corners but not along Route 1 so as not to affect visibility of the site and Route 1.

Mr. Lednum testified that, over the years, DelDOT has taken property from this parcel for road expansion purposes; that other properties owned by the Applicant were subject to takings; that DelDOT has taken part of this property at least 2-3 times to expand the property; that the property has a billboard; that the business has been in operation over 50 years; that his parents have since passed away; that the removal of property has impacted the proposed expansion of his business; that there is no definite answer as to who will be renting the proposed buildings; that there are lucky if there are 5 cars in the parking lot at any given time; that the store does not have much traffic; that the existing rear building used to be storage for the furniture store but is now used for retail and fabrication for a granite business; that only 700 square feet of the rear building is used for retail; that there is 16,000 square feet on the property but the uses do not warrant many vehicle trips; that he has spoken with the granite business and they are interested in expanding their business such that a new building would be used for a showroom and the existing building would be used for fabrication; that the granite shop may expand to the proposed building in the rear of the property; that the granite shop has been on the property for 12 years; that the current granite slabs on display outside would be relocated or consolidated to the granite shop; that he is no longer involved in the furniture store business but he owns the property; that the furniture store is a family-owned business that he was bought out of and the granite shop is owned by a mother and her daughter; that he needs retail more than parking; that the proposed building in the rear that the granite shop may take over is needed to expand their warehouse in the existing building and create a show room in the proposed building; that part of the motivation to maximize retail space is to create income to pay for the expansion; that the DelDOT takings have occurred over many years and he does not recall how much has been taken; that the

Applicant purchased the property approximately 25 years ago; that, at the time the existing furniture store was built, roughly 25 years ago, the building was in compliance with the zoning code requirements; that the existing parking lot is stone and the proposed parking lot would also be stone; that blacktopping the parking lot would be too large of a cost; that he met with the developer of the Village of Five Points and installed a stormwater pipe to house the stormwater from the site; that the pipe for the stormwater has been installed; that there are not any stormwater requirements needed; that, if the Board were to grant the variances, the buildings and parking would have to be constructed within two years of approval, otherwise the approvals lapse; that his parents' vision was to have a one-stop place to compliment the furniture store; that his brothers own the furniture store and rent from him; that there is a buffer between the property and Savannah Road; that, in regards to effecting traffic coming off Savannah Road, the line of sight will not be impacted by the proposed development; that there are several utilities at the intersection; that they could plant trees to separate the fire access lane from Savannah Road; that the traffic flow design for the proposed parking lot is mainly for fire access; that, if they had not lost the portion of the property from DeDOT, it is possible that no variances would be needed; that they have lost land at least 2-3 times; that the Village of Five Points has a large pond and walking path between the site and the nearest houses; that the nearest house to the side is 100-150 feet away; that there is a split-rail fence along the border of the Village of Five Points; that the existing granite shop was built in approximately 1987; that the location of the granite shop limits how the rest of the property can be developed; that he is not sure whether the granite shop will take the additional space but the tenant has expressed interest; and that, if one of the proposed buildings needed to be removed from the plan, it would be the rear building, in order to keep front / highway visibility.

Ms. Norwood noted that the portion of the property along Route 1 is considered the front yard.

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

Mr. Chorman closed the public hearing.

Mr. Warfel moved to table the application for Case No. 12944 for the requested special use exception and variances until the Board's meeting on June 3, 2024. As part of the motion, the record for this application is closed.

Motion by Mr. Warfel, seconded by Mr. Hastings, carried that the **special use exception and variances be tabled until the June 3, 2024, meeting for the reasons stated.** Motion carried 3 – 0.

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

### **ADDITIONAL BUSINESS**

There was no additional business.

**Meeting adjourned at 8:03 p.m.**