

MINUTES OF SEPTEMBER 12, 2022

The regular meeting of the Sussex County Board of Adjustment was held on Monday, September 12, 2022, at 6:00 p.m. in the County Council Chamber, Sussex County Administration Office Building, Georgetown, Delaware. The teleconference system was tested during the meeting by staff to confirm connectivity.

The meeting was called to order at 6:00 p.m. with Chairman Jeffrey Chorman presiding. The Board members present were: Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Ms. Jennifer Norwood – Planning and Zoning Manager, and Ms. Amy Hollis – Recording Secretary.

The Pledge of Allegiance was led by Mr. Chorman.

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

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

Motion by Mr. Hastings, seconded by Mr. Warfel and carried unanimously to approve the Minutes for the July 11, 2022, meeting. Motion carried 5 – 0.

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

Motion by Mr. Williamson, seconded by Dr. Carson and carried unanimously to approve the Findings of Facts for the July 11, 2022, meeting. Motion carried 5 – 0.

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

Motion by Dr. Carson, seconded by Mr. Hastings and carried unanimously to approve the Minutes for the July 18, 2022, meeting. Motion carried 5 – 0.

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

Motion by Mr. Warfel, seconded by Dr. Carson and carried unanimously to approve the Findings of Facts for the July 18, 2022, meeting. Motion carried 5 – 0.

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

Motion by Mr. Williamson, seconded by Mr. Warfel and carried unanimously to approve the Minutes for the August 1, 2022, meeting. Motion carried 4 – 0.

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

Motion by Mr. Hastings, seconded by Mr. Warfel and carried unanimously to approve the Findings of Facts for the August 1, 2022, meeting. Motion carried 4 – 0.

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

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

OLD BUSINESS

Case No. 12718– Bradford & Kristi Sutliffe seek a special use exception and a variance from the maximum square footage requirement for a proposed garage / studio apartment (Sections 115-23, 115-25, and 115-210 of the Sussex County Zoning Code). The property is located on the northwest side of New Road across from Peach Tree Lane. 911 Address: 16500 New Road, Lewes. Zoning District: AR-1. Tax Parcel: 335-7.00-6.20

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 one (1) mail return. The record was previously left open at the July 18, 2022, Board of Adjustment meeting for the limited purpose of allowing the Applicants to submit an updated site plan and proposed floor plan and to allow for questions and concerns specifically relating to the two (2) submittals. The Applicants are requesting a special use exception for a garage / studio apartment and a variance for the additional square footage of 134 feet, which is less than previously sought.

Ms. Kristi Sutliffe and Mr. Bradford Sutliffe were sworn in to give testimony about the application.

Ms. Sutliffe testified that she submitted the updated site plan as instructed at the meeting on July 18; that, when she was here last, they were seeking the special use exception for the garage / studio apartment and a variance for an additional 400 sf.; that, since the last time they were here, they have identified a smaller footprint that they will be using; that the cottage style garage / studio apartment is not located on the site plan but it is with Davis, Bowen, and Friedel as sent by Schell Brothers; that they have not received the updated footprint on their site plan as of yet; that they will be making adjustments to the submitted floor plan in order to meet ADA compliance due to her father's declining health and the need for a wheel chair sooner than expected; that they are

requesting an apartment consisting of 934 sq. ft.; that the floor plan accommodates two (2) bedrooms and two (2) bathrooms because they are still accommodating for a potential caregiver in the future; that the additional square footage is a necessity as a caregiver requires its own space; that the property is located directly across from Peach Tree Lane; that, to the rear of the property, there will be a new subdivision; that surrounding their property there are other homes with detached garage structures that are similar in size to what they are proposing; that their property is surrounded by two (2) subdivisions; that they have considered placing them inside of the home with an addition but they have three (3) children and are trying to keep their lives as normal as possible with her parents living on property; that they believe it is the healthiest option for their family is to have a detached structure on property for her parents; that their proposed structure would be one (1) floor of living space and will not be above a garage; that her father has fallen a lot recently and they are concerned with placing in any manner that would require stairs; and that Schell Brothers will be constructing their home and a separate contractor will be constructing the garage / studio apartment.

Mr. Sutcliffe testified that, at the last meeting, they had no site plan to show other than a basic idea; that, at the previous meeting, there were questions about using a basement; that, due to his father-in-law's health and current use of a cane, the most feasible option is a single-floor living situation with the option to add wheelchair access when needed; that their children are aged twelve (12), ten (10), and seven (7); that his father in law is eighty-two (82) years old and, with his current state, the children and associated noise would be too much; that they believe that this is the best option for their families; that his father-in-law has not been in close quarters with small children for an extended time in almost forty (40) years; that this structure would be fully ADA compliant; that, once approved, they would be seeking for wider doorways and ramps rather than stairs; that they could have a basement on this site; that he believes that they will be tied in to public sewer; that the well is a new addition to the property as they were formerly going to be on public water; that they have spoken with the construction manager for Schell and he will be assisting them with the construction on his own time so the structure will be making the home with siding and the like; that they had a meeting with him last week; that they know that none of this can happen until they close with Schell Brothers and receive approval from the Board; that they anticipate to settle in February or March 2023; that Schell Brothers does not need to approve this structure; that they offered an option for a detached garage but it did not meet their needs as the proposed cottage does; and that Schell Brothers will not allow them to begin construction until after the closing on this property.

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 approve Case No. 12718 for the requested special use exception, pending final written decision, and based on the record made at the public hearing, for the following reasons:

1. The proposed use will not substantially or adversely affect the use or development of the neighboring properties.

Motion by Mr. Warfel, seconded by Mr. Hastings, carried unanimously that the **special use exception be granted for the reasons stated**. Motion carried 5 – 0.

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

Mr. Hastings moved to approve Case No. 12718 for the requested variance of 134 square feet, pending final written decision, for the following reasons:

1. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare; and
2. The variance represents the minimum variance necessary to afford relief.

Motion by Mr. Hastings, seconded by Dr. Carson, carried that the **variance be granted for the reasons stated**. Motion carried 4 – 1.

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

Case No. 12724– Glenn, Brandon, and Jamie Fleming seek a special use exception to operate a commercial dog kennel on a property of less than 5 acres and variances from the 200 ft. required distance from any lot line (Sections 115-20, 115-23 and 115-210 of the Sussex County Zoning Code). The property is located on Woodpecker Road approximately 479 feet from Old Carriage Road. 911 Address: N/A. Zoning District: AR-1. Tax Parcel: 531-14.00-31.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and one (1) mail return. The record was previously left open at the August 1, 2022, Board of Adjustment Meeting to allow for the submission of a site plan and to allow for any comments specifically regarding the submitted site plan. A site plan was submitted to the Office as required. The Applicants are requesting a special use exception to operate a commercial dog kennel and variances of 40 ft. from the 200 ft. setback requirement from the north property line, 14.3 ft. from the 200 ft. setback requirement from the west property line, and 190.5 ft. from the 200 ft. setback requirement from the south property line for the kennel, runs, and cages.

Mr. Hastings recused himself and left the Chambers.

Dr. Carson stated that he listened to the audio of the previous hearing and reviewed the record and was prepared to participate in the meeting.

Ms. Jamie Fleming was sworn in to give testimony about their application.

Ms. Fleming testified that she had a surveyor come out to do a site plan and submitted the site plan to the Office of Planning and Zoning for the Board; that the site plan was required to figure out the exact variances due to not having the five (5) acre minimum for a commercial dog kennel; that the woodshed on the plan is actually a lean-to for covering firewood; that they could move it if necessary but the structure is just a roof; that the woodshed is not a part of the kennel; that the other shed is a storage shed; that the variance request is only for the dog kennel; that there is a driveway off Woodpecker Road that goes straight to the house and to the left past the garage and pole building behind the garage; and that the dumpster used for the fecal matter will be located on the left side of the pole building but not directly next to the kennel.

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 Case No. 12724 for the requested special use exception for five (5) years and the variances, pending final written decision, for the following reasons:

1. The Applicants have met the standards for granting a special use exception;
2. The property has unique conditions; and
3. The variances represent the minimum variances necessary to afford relief.

Motion by Dr. Carson, seconded by Mr. Williamson, carried that the **special use exception be granted for a period of five (5) years and that variances be granted for the reasons stated.** Motion carried 3 – 1.

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

Mr. Warfel stated that he believed the Applicants met the standards for granting a special use exception but did not meet the standards for granting a variance.

Mr. Hastings returned to chambers.

RECESS **6:35 – 6:40 P.M.**

PUBLIC HEARINGS

Case No. 12731– Kristi Smith seeks variances for front yard setback requirements for existing and proposed structures (Sections 115-25, and 115-182 of the Sussex County Zoning Code). The property is located on the corner of Greener Trail Lane and John J. Williams Highway. 911 Address: 34141 Greener Trail Lane, Lewes. Zoning District: AR-1. Tax Parcel: 334-18.00-39.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of and zero letters in opposition to the Application and four (4) mail returns. The Applicant is requesting a variance of 1 ft. from the 30 ft. front yard setback requirement for proposed bay windows, 0.2 ft. from the 30 ft. front yard setback requirement for the existing dwelling, and 3.4 ft. from the 30 ft. front yard setback requirement for the proposed landing and steps. Ms. Norwood also noted that the existing dwelling was built in 1986 but she did not see in the records that a CO was issued.

Ms. Kristi Smith and Mr. Freddy Bada were sworn in to give testimony about the Application.

Mr. Bada testified that he is here on behalf of Ms. Smith; that she has employed his company to complete some renovations on her property; that, like most people in this area, the property has been in the family for forty (40) years; that the family is aging and expanding; that they have utilized this property as a family and intend to keep it that way; that, as the families expand, the need for space becomes greater; that part of the variance requested is for a bump out in the living room area; that the existing fireplace is already projecting into the setback; that, as zoning regulations change, the property went into nonconforming status; that the other variance request is for a larger covered deck on the front of the dwelling to assist with aging family members and entering the dwelling; that there are issues with the property creating the uniqueness such as the orientation of the house, the layout of the dwelling, and the wetlands; that the wetlands and bedrooms to the rear of the dwelling limit their ability to construct anything off the rear; that most of the lot consists of wetlands and the wetlands line is close to the rear of the house; that the Applicant did not create this problem as the house has been there for quite some time; that the character of the neighborhood will not be impacted as there are three (3) properties accessed off Greener Trail Lane; that the house will remain in the aesthetic of what is existing; that they are requesting the minimum variances necessary; that the foundation will be extended to create a larger living room; that the stoop is currently uncovered but the proposal is to make it larger and cover it; that the request accounts for the steps from the entryway into the house; that Greener Trail Lane is a gravel, dead-end road; that the two (2) other properties are owned by the same individuals; that there is minimal traffic on Greener Trail Lane; that there is no access from the subdivision to the rear of the entryway; that the road does not come to the front property line; that the gravel drive is about 14 ft. wide; that there is a gap between the front property line and the edge of paving of Greener Trail Lane so the front yard appears larger; that the wetlands extend within feet of those; and that there have been no complaints about the location of the house.

Ms. Smith testified that her father passed away five (5) years ago and her mother owned the

house by herself; that it became too much for her mother to handle but she wanted to keep the property within the family; that she and her three (3) siblings all have children; that her mother is eighty-three (83) years old but still loves to come down and visit the beach; that this house holds many memories of their father; that the agreement of her siblings was that she would purchase the house and that everyone maintained their right to use it; that they are trying to make the home more conducive to everyone being in the home at the same time; that the entranceway has 4-5 steps and they would like to flatten that out for her mother to be able to enter the house and the rest of them as they age; that their sole purpose for the variance is to allow the family to expand; and that the neighbors to the rear of her property are supportive and wrote in favor of the Application.

Ms. Kathy Mitchell was sworn in to give testimony in support of the Application.

Ms. Mitchell testified that she is the Applicant's older sister; that this property has been in their family for forty (40) years; that their family is indeed expanding; that she herself has two (2) children and four (4) grandchildren; that the Applicant is going to be a grandmother very shortly; that this extra space is needed to allow their families the spend the holidays together; that there are 35-40 of them now; and that they enjoy being able to spend family time together.

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

Mr. Chorman closed the public hearing.

Mr. Williamson moved to approve Case No. 12731 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to the exceptionally small buildable area and the wetlands;
2. The exceptional practical difficulty was not created by the Applicant; and
3. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare.

Motion by Mr. Williamson, seconded by Mr. Warfel, carried unanimously that the **variances be granted 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. 12732– John Bobeck seeks a variance from the side yard and rear yard setback requirements for an existing garage (Sections 115-34 and 115-183 of the Sussex County Zoning Code). The property is located on the southeast side of Hidden Acre Drive within the Hidden Acres

Subdivision. 911 Address: 32113 Hidden Acre Drive, Frankford. Zoning District: MR. Tax Parcel: 134-11.00-76.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. The Applicant is requesting a variance of 0.7 ft. from the 10 ft. side yard setback requirement on the north side and 1.9 ft. from the 10 ft. rear yard setback requirement for an existing pole building.

Mr. John Bobeck was sworn in to give testimony about the Application.

Mr. Bobeck testified that he is seventy-three (73) and retired; that he purchased this home in 2020; that he got to know the neighbor very well; that the neighbor is Tommy Becker and was the previous owner of the property; that Mr. Becker told him, when the house was built, that he instructed the builder to center the home on the property; that they found a pin in two (2) of the corners of the property; that they were unable to locate one (1) pin because it was a tree and had since rotted; that, since they believed the house to be centered on the lot, they did the math to be based on the size of the property and the placement of the house to determine where the property line was located; that they used tape measures and string to mark out the property and location for the pole building; that they ran a line from the rear property corner to the other; that they measured and believe it to be accurate; that he hired Delmarva Pole Building to install his pole building; that the location of the pole building was formerly trees and shrubs but was cleared out to place his building; that the building is 20 ft. wide; that when the building was constructed no inspections were completed; that, after fighting with the contractor, he was able to get the County Inspector out to complete the required inspections and was failed for noncompliance with the setbacks; that he was instructed by Planning and Zoning staff to apply for the variance; that he spent an additional \$750 to have a survey of the property done; that he was shocked to find out that he only has 36 ft. from the back of his house rather than the 38 ft. that he thought; that he was also surprised to find that they did not complete any of the inspections for his building; that it has been a constant fight on his end; that he is here to ask for help with his building; that he has close to \$30,000 in this project at this time; that he just wanted a workshop and a place to store his car; that there have been no complaints on the pole barn; that he has received compliments on his improvements to the lot; that he has done a lot of landscaping to improve the overall look of the property; that he installed his own electric for the pole barn; that he obtained the necessary approvals for the driveway also; that there is a buffer of trees behind his property, which he thought was a tax ditch; that it is all farm land behind his property; the Delmarva Pole Buildings was the builder for the structure; that they indicated that he staked the property so they were not coming to this meeting; that Delmarva Pole Buildings did not obtain a permit for this structure; that an engineer was brought in and he met with the County who approved everything except for the final inspection of the headers and setbacks; that he believes that they put it where he staked it but they could have missed it or he could have been at fault; that he will get a surveyor to stake out the property in the future; that the property is serviced by well and septic which limits his ability to place the building in another location; that the garage measures 20 feet by 30 feet; that the area on the survey coming off of the structure is a concrete apron; that he is looking to have the CO issued; and that the bump outs

off the house on the survey are steps.

Ms. Norwood stated that Delmarva Pole Building pulled the building permit in September 2021; that the pole building failed the footer inspection in December 2021; that the pole building passed the footer inspection in February 2022; that the framing was completed in June 2022; and that the final inspection caught the encroachments.

Staff noted that, if the dimensions of the building are 20 feet x 30 feet, a variance is not needed due to the square footage and the reduced setback associated with accessory structures consisting of 600 sq. ft. or less based on Section 115-185 in the Sussex County Code.

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 deny and refund the application fee for Case No. 12732 for the requested variances, pending final written decision, because the variances are not necessary as the building has a square footage of 600 sq. ft. and complies with code.

Motion by Mr. Warfel, seconded by Dr. Carson, carried unanimously that the **variances be denied 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. 12733– American Storage of Delaware, LLC seeks a special use exception to place an off-premises sign (Sections 115-80, 115-81, and 115-159.5 of the Sussex County Zoning Code). The property is located on the southeast side of Rt. 1 approximately .35 miles south of Cave Neck Road. 911 Address: 16262 Coastal Highway, Lewes. Zoning District C-1. Tax Parcel: 235-23.00-51.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. The Applicant is requesting a special use exception to place an off-premises sign. The proposed sign will measure 576 sq. ft. per side and will comply with all height, size, separation distances, and setback requirements for a sign adjacent to roads with four or more travel lanes.

Mackenzie Peet, Esquire, stated that she is here on behalf of American Storage of Delaware, LLC, as applicant and owner; that they are seeking a special use exception to place an off-premises sign; that the Applicant is present; that the property consists of 2.61 acres more or less and located on the south side of Route 1 at 16262 Coastal Highway, Lewes; that the property is located near the Red Mill Inn, Harvard Business Services Inc., and Heritage Antique Store, all of which have on-premises

signs; that the Applicants has submitted Exhibits A through D; that Exhibit A contains the property information sheet and deed; that Exhibit B contains the off-premises sign plan prepared by Effective Engineering Solutions Limited out of Illinois and details the proposed materials and dimensions; that Exhibit C is a copy of the construction and site plans prepared by Scaled Engineering; that Exhibit D contains aerial maps and district maps confirming that the property is zoned C-1, and Google Earth aerial map detailing surrounding land uses; that two (2) supplemental exhibits were submitted to Planning and Zoning including DelDOT's letter of no objection and a sign exhibit prepared by Scaled Engineering; that off-premises signs are regulated by the State of Delaware; that the Applicant also filled out the necessary application for permit as required by the State; that Amber Godwin of DelDOT reviewed the Application and exhibits, specifically for the advertisement, and prepared the letter of no objection; that this letter indicates that the Application and exhibits were reviewed and that DelDOT has no objection for the proposed use of an off-premises sign; that the next step in the process is to provide a favorable decision from the Board of Adjustment to DelDOT in written form and all other necessary documentation before being able to proceed further; that, once this is complete, a notice to proceed letter will be issued by DelDOT; that the sign exhibit submitted shows all on-premises and off-premises signs in the vicinity of the property at issue; that the Code requires the Applicant show that there are no on-premises signs within 50 ft. and no off-premises signs within 600 ft. of the proposed off-premises sign; that the sign exhibit confirms that the nearest on-premises sign is 340 ft. away at the Red Mill Inn and the nearest off-premises sign is 1,000 ft. north of the property; that this property is zoned C-1 and is adjacent to properties zoned C-1, MR, and AR-1; that the purpose of the C-1 zoning is to provide for retail, shopping, personal service, and a wide variety of commercial and miscellaneous service activities generally serving a community-wide area; that, in the C-1 zoning district, an off-premises sign may be permitted as a special use exception; that the proposed off-premises sign will meet all Code requirements; that the Code allows this matter to go before the Board of Adjustment and make a determination based on that such exception will not substantially affect adversely the uses of adjacent and neighboring properties; that the proposed use is within the character of the neighborhood and adjacent properties; that the Code defines an off-premises sign as a sign directing attention to a business, commodity, service, or entertainment conducted, sold or offered elsewhere than upon the premises when the sign is maintained; that the proposed off-premises sign will meet that definition; that the sign will meet all height, size, and setback requirements of the Code; that the proposed sign measures 576 sq. ft. per side which is less than the 600 sq. ft. per side that the Code allows; that the sign will have a minimum front yard setback of 40 ft., a minimum side yard setback of 50 ft., and will comply with the minimum rear yard setback requirement for a C-1 property; that the sign will measure 35 ft. tall and the bottom of the sign will be 23 ft. from ground level, making it less than the Code's height limitation; that the sign will be back-to-back and will be wrapped in poster and / or painted; that the sign will be illuminated but will not be an electronic message center; that the sign will not adversely affect the use of neighboring properties because there are nearby commercial properties in the vicinity of the site and there are no dwellings, churches, schools, or public lands within 150 ft. of the proposed off-premises sign; that there is no adverse impact on fire, hazard, public health, or safety, and no variances are being requested; that, for all of the above reasons, the placement of this sign will not substantially adversely affect the use of neighboring properties and will comply with County Code; that she is not aware of

whether anyone has spoken with the neighbor on the AR-1 property as they are not within 150 ft.; that the neighboring property would have received notice of the Application and hearing and seen the posting on the property as well; that the sign is not an electronic message center which is not allowed at the State level; that the sign will be 48 ft. wide, which is made up of two (2) panels that are each 24 ft. wide; that all of the information in regards to the proposed sign has been reviewed and verified by the State in their outdoor sign permit also; that the site is not currently being used but there is a proposal for it to be used as a storage facility which is in the site plan review process currently; and that the proposed use for the property is a permitted use in the C-1 zoning.

Mr. Alex Pires was sworn in to give testimony about the Application.

Mr. Pires testified that Ms. Peet's statements are true and correct.

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

Mr. Chorman closed the public hearing.

Mr. Williamson moved to approve Case No. 12733 for the requested special use exception based on the record made at the public hearing and pending final written decision because the request will not substantially adversely affect the adjacent and neighboring properties.

Motion by Mr. Williamson, seconded by Dr. Carson, carried unanimously that the **special use exception be granted for the reasons stated**. Motion carries 5-0.

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

Case No. 12735– C. Price & Sharon G. Fanning seek variances from the front yard setback requirements for a proposed dwelling (Sections 115-42 and 115-182 of the Sussex County Zoning Code). The property is located on the northwest side of Cerise Lane within the Orchard Manor Subdivision. 911 Address: 28526 Cerise Lane, Millsboro. Zoning District: GR. Tax Parcel: 234-34.12-1.01

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. The Applicant is requesting variances of 11.8 ft., 15.7 ft., 20 ft., and 6 ft. from the 30 ft. front yard setback requirement along Cerise Lane.

Mr. C. Price Fanning and Ms. Sharon G. Fanning were sworn in to give testimony about their Application.

Mr. Fanning testified that their lot is unique in the respect that part of it is a lagoon; that they

are not looking for a garage, shed, or pool but are seeking to build their retirement home; that the variances will not alter the neighborhood; that the footprint of the proposed dwelling is the same footprint as what is existing; that they submitted photos with the stakes indicating the new proposed dwelling in comparison to the existing; that they purchased the home approximately fifteen (15) years ago; that the house has been there 30 or 40 years; that the house in front of them is his wife's parents' home; that the Applicants are not getting any younger and are looking to have minimal stairs in the new house; that they are looking for first-floor living; that he has issues with his knees; that there is no garage at the existing or proposed home; that they have attempted to place the dwelling at different angles on the property but it just does not fit in any other way than proposed; that adjusting the placement of the home would put the steps into the lagoon; and that they are planning for the safety of potential grandchildren and going directly into the lagoon from the dwelling.

Ms. Fanning testified that there are stick-built homes in front of them and manufactured homes behind them; that there will be no stairs facing toward the road; that the stairs will be facing the lagoon; that there will be no structures toward the road; that the side of the house facing the road will be their bedroom; that they have spoken with their neighbors and no one is opposing; that there have been flooding issues which is why they are building a new home; that they will park next to the front porch on the plans; that the proposed dwelling is a Cape Cod style home; that the home will consist of around 1200 sq. ft.; that this home is smaller than the existing home; that the home will be placed far enough from the bulkhead to maintain the integrity as the current dwelling does; that the bulkhead was installed in the 1970s; that the current dwelling is still standing; that the sheds on the survey are no longer there; that the original dwelling has been removed; that, to maximize the space of the property, there is no other way to place the dwelling; that the property narrows on the one (1) side; that the placement of the existing home gives the maximum space on the property which is why they are using the existing footprint; that the property is served by sewer and public water; that there is a strip of grass between the gravel road and the sidewalk; and that the distance between the property line and the edge of the road is enough that they park their cars there.

Ms. Jane Roth was sworn in to give testimony in support of the Application.

Ms. Roth testified that she is in support of the Application; that this proposal will be an improvement to the neighborhood; that they are finally beginning to clean up the trailer park behind their homes; that, hopefully, they will continue to make the neighborhood better by cleaning it up; that the property does have underground electric; and that she lived there for quite some time.

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

Mr. Chorman closed the public hearing.

Mr. Hastings moved to approve Case No. 12735 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions;
2. That, due to the physical conditions, the property cannot be developed in strict conformity with Sussex County Zoning Code and the variances are necessary to enable the reasonable use of the property;
3. The exceptional practical difficulty was not created by the Applicants; and
4. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare.

Motion by Mr. Hastings, seconded by Mr. Warfel, carried unanimously that the **variances be granted for the reasons stated**. 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.

Case No. 12736– Schell Brothers seek variances from the front yard setback requirement for existing structures (Sections 115-83.22 and 115-182 of the Sussex County Zoning Code). The properties are located on the northwest side of Tanger Boulevard approximately 0.10 miles from Coastal Highway. 911 Address: 36645 Tanger Boulevard, Rehoboth Beach. Zoning District: C-3. Tax Parcel: 334-13.00-325.52 & 325.53

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. The Applicant is requesting variances of 9.7 ft. from the 60 ft. front yard setback requirement for the Italiante building, 7.7 ft. from the 60 ft. front yard setback requirement for the grocery building, 10 ft. from the 60 ft. front yard setback requirement for the theater building, 7.7 ft. from the 60 ft. front yard setback requirement for the Schell Brothers workshop building, 10 ft. from the 60 ft. front yard setback requirement for the reindeer building, 9.9 ft. from the 60 ft. front yard setback requirement for the Grand Victorian building, 11 ft. from the 60 ft. front yard setback requirement for the town hall building, and 10.9 ft. from the 60 ft. front yard setback requirement for the playhouse building. Ms. Norwood noted that the project had a temporary site plan approval for the Christmas Village in 2021 and that the project is currently in the site plan process for year-round use, pending the variance approval before completion of the site plan process.

Ms. Alyssa Titus was sworn in to give testimony about the Application.

Ms. Titus testified that they are seeking a variance for their property; that they had a temporary variance issued last year for their Christmas Village; that the Christmas Village is free to residents; that they had over 100,000 persons in attendance last year; that they are neighbors to the Tanger Outlets, who are also the landlords for this property; that the landlords and other tenants are in support of this as they saw a large influx in business because of the Christmas Village; that they received

letters from a number of business surrounding them that indicated their thanks for the additional business that was generated by them; that they have no residential neighbors; that the land behind them is a Delaware State Park and currently have an agreement with them for overflow parking; that they are seeking permanent approval for the site; that they have renewed their lease and are looking to extend it even further; that this is a totally free event to the community; that their company has invested a lot of money in this project to bring happiness to Sussex County; that she does not believe this would adversely affect any of the neighbors; that these are all tiny structures that were created off site; that these structures are all actually playhouses for children; that they are hoping to make this a permanent structure; that they have signed a four (4) year lease with Tanger but are seeking to go even longer term; that, if this is permitted, they will likely do seasonal events when it is not Christmas; that these events would include Easter and Halloween; that these events would also be free as Schell Brothers is not looking to profit off this venture; that their goal would be to produce more community minded events; that the structures are on site now; that they formerly used to transport the structures off site when not in use; that they were unaware that they needed additional approvals prior when conducting these events at both the Lewes Ferry Terminal and Hudson Fields; that last year it was brought to their attention by the obtaining Fire Marshal approval and creating a stormwater management system with Sussex Conservation District that they needed to obtain approvals from Sussex County as well; that use Clean Delaware to handle wastewater on site; that there are trees, shrubbery and fence at the entrance to the Christmas Village; that they bring in live Christmas trees in order to create the maze, last year it was over 1,000, but they were not permanent; that they are planting trees there currently; that there is a permanent fence around the entire village; that there have been no complaints about the Christmas Village; that the structures are movable; that they would prefer to leave the structures in place as there are pavers around them, it is super expensive to have them moved, and the damage to the structures when they are moved; that they are playhouses; that they do not believe it to be adversely affecting anyone for them to not be moved; that Tanger loves having them as it has increased traffic to their stores drastically; that Tanger is seeking to have one at their Nashville location; that the layout of the buildings are placed in such a manner to allow for flow of traffic; that it can become crowded and they rearranged some dead ends to make it more functionable for traffic reasons; that they are building an access way to reach the rear of the village which was only accessible by a U-turn; that they are placing the line for the roller rink inside of the rink this year which will help alleviate foot traffic concerns, which might not affect the variance but is overall to help with the flow of the Site; that Tanger Boulevard is a wrap around road to give access to the rear stores of the Tanger Outlets; that their volunteers are the only ones parked in the area of Tanger Boulevard while the Village is in operation; that there is a parking lot and stormwater management between Tanger Boulevard and their property; that they also have a new stormwater management system that drains from the entire property; that the structures are at least 50 ft. off the property line; that Tanger Boulevard is a private street and maintained by Tanger Outlet Properties; that Tanger Boulevard is not regularly traveled but it used as an easement to the properties; that people will park and be shuttled in by one (1) of their eight (8) trolleys; that they have an agreement with the church for additional parking; that they have two (2) lots which each have four (4) buildings located on them; that the buildings are small in size; that there is no entrance to the Village from Holland Glade Road, though you can access the Outlets; that, during the festival, they block off Holland Glade

access; that the only access to the Village is over a footbridge by use of the trolleys; and that a hotel is being built to the left of Lot 2 and the parking lot will be completely separate from their parking.

Ms. Joni Von Vorys was sworn in to give testimony about the Application.

Ms. Von Vorys testified that Schellville is a great family venue; that it is created for children but adults love it too; that it is to enjoy the Christmas holiday and spirit; that there are a variety of small playhouses for children to enjoy; that they have a shopping center, market, and airport where they can go and play with toys; and that it is a free event to take children to see Santa and enjoy the holidays.

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

Mr. Chorman closed the public hearing.

Mr. Warfel moved to approve Case No. 12736 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique conditions due to the exceptionally small buildable area;
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 nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare; and
5. The variances represent the minimum variances necessary to afford relief.

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

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

ADDITIONAL BUSINESS

There was no additional business.

Meeting adjourned at 8:00 p.m.