

BOARD OF ADJUSTMENT

ELLEN MAGEE, CHAIR
KEVIN E. CARSON
JEFF CHORMAN
JOHN WILLIAMSON
E. BRENT WORKMAN



Sussex County

DELAWARE
sussexcountyde.gov

(302) 855-7878 T
(302) 845-5079 F

TELECONFERENCE MEETING
AGENDA

May 4, 2020

6:00 P.M.

PLEASE NOTE – AS PERMITTED BY GUBERNATORIAL AUTHORITY, IN ORDER TO LIMIT THE RISK OF POTENTIAL COVID-19 EXPOSURE, THE PUBLIC SHALL BE DENIED ENTRY TO THE BOARD OF ADJUSTMENT MEETING. THE PUBLIC IS ENCOURAGED TO PARTICIPATE IN THE BOARD MEETING ELECTRONICALLY. FURTHER INSTRUCTIONS ARE LISTED AT THE BOTTOM OF THIS AGENDA.

Call to Order

Pledge of Allegiance

Approval of Agenda

Approval of Minutes for February 3, 2020

Approval of Findings of Fact for February 3, 2020

Approval of Minutes for February 17, 2020

Approval of Findings of Fact for February 17, 2020

Approval of Minutes for March 2, 2020

Approval of Findings of Fact for March 2, 2020

Approval of Minutes for March 16, 2020

Approval of Findings of Fact for March 16, 2020

Additional Business

Request for 12-month time extension for Case 11988 Lands of Keller



**Board of Adjustment meetings can be monitored on the internet at
www.sussexcountyde.gov.**

In accordance with 29 Del. C. §10004(e)(2), this Agenda was posted on April 27, 2020 at 2:30 p.m., and at least seven (7) days in advance of the meeting.

This Agenda is subject to change to include the addition or deletion of items, including Executive Sessions, which arise at the time of the Meeting. Agenda items listed may be considered out of sequence.

-MEETING INSTRUCTIONS-

** The Sussex County Board of Adjustment is holding this meeting under the authority issued by Governor John C. Carney through Proclamation No. 17-3292. The meeting will be conducted using teleconference technology.

To listen to the meeting via phone, please dial:

Conference Number: 800-988-0494

Passcode: 1695792

The County will stream this meeting using the same technology it uses for its Chamber Broadcast that can be viewed at <https://sussexcountyde.gov/council-chamber-broadcast>. This stream will broadcast the meeting materials and audio only, the public will not be able to comment or speak using this broadcast. This stream will experience a 30-second delay.

The Board of Adjustment meeting materials, including the “packet”, are electronically accessible on the County’s website at: <https://sussexcountyde.gov/>

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ⁱ These restrictions are being implemented to limit the exposure and risk related to “COVID-19” for County personnel and members of the public who seek to attend the Planning & Zoning Commission Meeting. These decisions are being made under the authority issued by Governor John C. Carney through Proclamation No. 17-3292.

See: <https://governor.delaware.gov/proclamation-173292-03132020/>.



April 3, 2020

TO:

Planning and Zoning
2 The Circle
P.O. Box 417
Georgetown, DE 19947

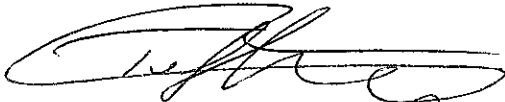
In reference to Variance # 11988

We, Victor Glazov and Marianna Glazov, new owners of property 1 W Virginia Ave, are asking to extend the Variance # 11988 in view of the following conditions:

- We have recently purchased the property in October 2019. We have been working on alternative building plans that were submitted to DNREC on March 20th, 2020. Our alternative plans were rejected on March 31st, 2020.
- In view of the changed situation we are working to modify and proceed with the existing approved building plans Permit # 201704671. These building plans require valid variance for construction.
- Unfortunately, due to the recent State of Emergency order we are not able to proceed with the construction immediately.

Therefore, we are asking to extend the Variance for at least a year. We plan to start construction in the Fall of 2020.

Thank you,



Victor Glazov



Marianna Glazov

RECEIVED

APR 13 2020

SUSSEX COUNTY
PLANNING & ZONING

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DOUGLAS A. KELLER & PATRICIA S. KELLER

(Case No. 11988)

A hearing was held after due notice on July 10, 2017. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front yard setback requirement.

Findings of Fact

The Board found that the Applicants are seeking a variance of 19.5 feet from the thirty (30) feet front yard setback requirement for proposed steps and a variance of 16.5 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling. This application pertains to certain real property located at the southeast side of West Virginia Avenue approximately 242 feet northeast of North Bayshore Drive (Route 16B) (911 Address: 1 West Virginia Avenue, Broadkill Beach); said property being identified as Sussex County Tax Map Parcel Number 2-35-4.13-41.00.

1. The Board was given copies of the Application, a survey dated June 17, 2016, a portion of the tax map of the area, an aerial photograph of the Property, a septic plan of the Property dated July 18, 2016, a site plan of the Property, drawings of the proposed dwelling, and a permit from the Delaware Department of Natural Resources & Environmental Control ("DNREC").
2. The Board found that the Office of Planning & Zoning received one (1) letter in support of the application and no correspondence in opposition to the Application.
3. The Board found that Douglas Keller and Patricia Keller were sworn in to testify about the Application. Shannon Carmean Burton, Esquire, presented the case on behalf of the Applicants and submitted exhibits for the Board to review.
4. The Board found that Mrs. Burton stated that the Applicants propose to replace the existing dwelling with a new dwelling. The Property is currently improved with a non-conforming dwelling, which was constructed around 1960, and a shed.
5. The Board found that Mrs. Burton stated that the existing dwelling has a setback of 9 feet and the stairs to the home have a setback of 3.7 feet.
6. The Board found that Mrs. Burton stated that the Applicants plan to remove the shed once the septic system is installed.
7. The Board found that Mrs. Burton stated that the Property is zoned MR.
8. The Board found that Mrs. Burton stated that the Property is unique due to its "L" shape. The Property also abuts the Delaware Bay.
9. The Board found that Mrs. Burton stated that the existing dwelling has ground level living space and a basement.
10. The Board found that Mrs. Burton stated that the uniqueness of the Property has created the exceptional practical difficulty.
11. The Board found that Mrs. Burton stated that the proposed dwelling will be constructed to minimize potential damage from storms and flooding. The home will be placed on pilings.
12. The Board found that Mrs. Burton stated that the building envelope is reduced due DNREC building restrictions. The existing home is considered to be grandfathered by DNREC.
13. The Board found that Mrs. Burton stated that the proposed dwelling will comply with side yard and rear yard setback requirements and the proposed dwelling will encroach less into the front yard setback than the existing dwelling.

14. The Board found that Mrs. Burton stated that the Applicants have received a septic permit.
15. The Board found that Mrs. Burton stated that there is no possibility the Property can be developed in strict conformity with the Sussex County Zoning Code and the variances are necessary to enable reasonable use of the Property.
16. The Board found that Mrs. Burton stated that the Applicants purchased the Property in 1996.
17. The Board found that Mrs. Burton stated that the new dunes completely block the Applicants' view of the Delaware Bay.
18. The Board found that Mrs. Burton stated that the exceptional practical difficulty has not been created by the Applicants. The Applicants did not create the size of the lot or place the existing home on the lot.
19. The Board found that Mrs. Burton stated that the variances, if approved, will not alter the essential character of the neighborhood or impair the use of neighboring properties. Nearby properties have also received variances.
20. The Board found that Mrs. Burton stated that the variances will not be detrimental to the public welfare.
21. The Board found that Mrs. Burton stated that the variances requested represent the minimum variances to afford relief and the least modifications of the regulation at issue.
22. The Board found that Mr. and Mrs. Keller, under oath, affirmed the statements made by Mrs. Burton.
23. The Board found that Mrs. Keller testified that the proposed dwelling is to be located in a position that will not block their neighbor's view of the Delaware Bay.
24. The Board found that Mrs. Keller testified that the proposed location of the dwelling was the only place where the home could be placed which met the DNREC requirements. The unique shape of the Property also limited the placement options for the home. The Applicants also wanted to place the home as far away from the Delaware Bay as possible.
25. The Board found that Mr. Keller testified that DNREC required that the septic system be placed in the rear portion of the Property.
26. The Board found that no parties appeared in support of or in opposition to the Application.
27. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board found credible, persuasive, and unrebutted, the Board determined that the application met the standards for granting a variance. The findings below further support the Board's decision to approve the Application.
 - a. The Property is exceptionally unique due to its shape and the building restrictions set forth by DNREC. The DNREC restrictions greatly limit where the septic system can be placed as well as the location of a dwelling. These restrictions also greatly limit the buildable area of the lot and this building envelope is further limited by the unique shape of the Property. The Property is shaped like an "L" and significant portions of the Property are unbuildable. Ultimately, the unique characteristics of this Property limit the buildable area available to the Applicants and have created an exceptional practical difficulty for the Applicants who seeks to construct a reasonably sized home on the lot.
 - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique shape and the buildable area thereof is limited due to its shape as well as the DNREC requirements. The Applicants seek to construct a dwelling of a reasonable size but are unable to do so without violating the Sussex County Zoning Code. The home will be constructed on pilings to

minimize damage from floods and storms – which is important since the Property is adjacent to the Delaware Bay. Since the home will be elevated, stairs are needed to access the living areas of the home and the stairs cannot be located within the setback area. The Board is convinced that the variances for the dwelling and stairs are necessary to enable the reasonable use of the Property as the variances will allow a reasonably sized dwelling with stairs to be constructed. The Board is convinced that the shape and location of this dwelling are also reasonable, which is confirmed when reviewing the survey and drawings provided by the Applicants. It appears impossible to the Board that a home of a reasonable size could be constructed on the lot in strict conformity with the Sussex County Zoning Code while not infringing on the DNREC regulated areas.

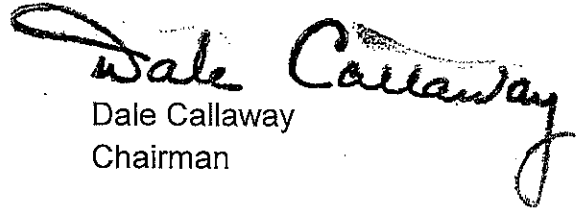
- c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unusual shape of the Property or the DNREC regulations; all of which have resulted in a limited building envelope on the Property. The oddly shaped building envelope has created the exceptional practical difficulty. Furthermore, the existing dwelling was placed on the Property by a prior owner many years ago and needs to be removed. Notably, the existing dwelling encroaches farther into the setback area than the proposed dwelling. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created the lot's unique characteristics.
- d. 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. The Board is convinced that the dwelling will have no effect on the character of the neighborhood. The dwelling will be in a similar location as the existing dwelling on the Property and will be constructed in a manner similar to other homes in the neighborhood. The dwelling will be less encroaching into the setback area than the existing dwelling and the Applicants have designed the home to not block a neighbor's views of the Delaware Bay. It is difficult to see how the replacement of the existing dwelling with a modest sized home of new construction consistent with other homes in the neighborhood would somehow be detrimental to the character of the neighborhood. No evidence was presented that demonstrated that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicants have demonstrated that the proposed location of the dwelling is the only place where the home can be located. The Applicants are significantly constrained in the placement of the home by the DNREC building requirements and the odd shape of the Property. The Applicants also seek to place the home away from the Delaware Bay to avoid flood and storm damage. The Board notes that the proposed dwelling significantly reduces the front yard encroachment of the existing home.
- f. The existing shed will be removed from the Property when the septic system is installed.

The Board granted the variance application finding that it met the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was approved. The Board Members in favor were Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Mr. Norman Rickard did not participate in the discussion or vote on this application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


Dale Callaway
Chairman

If the use is not established within one (1) year from the date below the application becomes void.

Date August 22, 2017

SERGOVIC CARMEAN WEIDMAN
McCARTNEY & OWENS, P.A.



John A. Sergovic, Jr.
David J. Weidman
Shannon R. Owens
Harold W.T. Purnell, II
Daniel J. DeMott

Website: www.sussexattorney.com

Shannon Carmean Burton
Deirdre A. McCartney
Elizabeth L. Soucek
Rachel Bleshman
George B. Smith, of Counsel

June 17, 2019

VIA EMAIL (ann.lepore@sussexcountyde.gov)

Sussex County Board of Adjustment
Sussex County Administration Building
2 The Circle
Georgetown, DE 19947

RE: Request for Extension of Variance Approval, Case No. 11988, Lands of Keller
Tax Map No. 2-35 4.13 41.00

Dear Members of the Board:

We represent Douglas A. Keller and Patricia S. Keller, the owners of the above-referenced property, with respect to the variances presented and approved on July 10, 2017. Although the Kellers intended to commence construction of their proposed home following the approval of the variances, their circumstances changed. Mr. Keller was diagnosed with terminal cancer and they were no longer able to move forward with their construction plans.

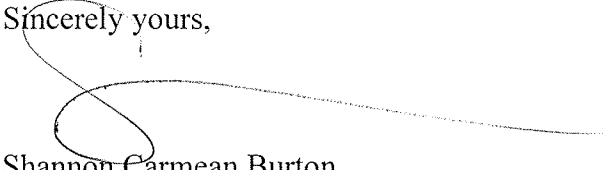
The Kellers instead decided to market the property in August, 2017 and finally entered into a contract with Paul and Susan Weber (the "Webers") on March 22, 2019 for the purchase and sale of the property. The Webers subsequently entered into a construction contract with Warfel Construction Company, Inc. for a single-family residence to be constructed on the property. Weston Yutzy, Vice President of Warfel Construction Company, Inc., submitted a letter to the Board dated May 28, 2019 requesting a three (3) month extension of the variance approval. A copy of the written submission is attached hereto as Exhibit "1". Although the Webers designed their home to fit within the variances that were approved, they were unable to obtain approval from the Department of Natural Resources and Environmental Control for their proposed construction plans and have requested that the contract with the Kellers be terminated.

Once a mutual release from the contract is signed by the Kellers and the Webers, the Kellers intend to re-list the property for sale. Since there are no longer pending plans for

construction at this time, the Kellers respectfully request a twelve (12) month extension of the variance approval to market the property for sale and for a purchaser to commence construction.

Thank you in advance for your consideration of this request.

Sincerely yours,



Shannon Carmean Burton

Enclosure

cc: Douglas and Patricia Keller
Julie Gritton

Exhibit "1"

May 28, 2019

Sussex County
Board of Adjustment
2 The Circle
Georgetown, DE 19947

Dear Board of Adjustment,

This letter is to request an extension for Case No. 11988, the application of Douglas A. Keller and Patricia S. Keller, as filed on July 10, 2017.

Following approval of the variance in Case No. 11988, Mr. and Mrs. Keller made the decision to list the subject property for sale. As attached, on March 22, 2019, Paul Weber and Susan Weber signed a contract to purchase the subject property. Settlement on that contract is to be 90 days from ratification date (June 22, 2019). Subsequently, on May 17, 2019, Mr. and Mrs. Weber signed the attached construction contract with Warfel Construction Company for a single-family residence to be built on the subject property. Mr. and Mrs. Weber have designed their new home to fit within the variance that has been approved. Mr. and Mrs. Weber would like to start construction as soon as all of the necessary approvals have been secured. However, with the expectation that the required approvals will take 60 days, construction of Mr. and Mrs. Weber's house will likely not commence until after Labor Day 2019.

Therefore, we are requesting an extension to allow for construction of Mr. and Mrs. Weber's house starting in September 2019 with completion in April 2020. If there are any questions or additional information needed, please contact me at my office at (302)422-8927.

Respectfully Submitted,

Weston Yutzy
Vice President
Warfel Construction Company, Inc.

MINUTES OF JUNE 17, 2019

The regular meeting of the Sussex County Board of Adjustment was held on Monday, June 17, 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 Chairman John Mills presiding. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. John Williamson, and Mr. Brent Workman. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Mr. Jamie Whitehouse – Planning Manager, Ms. Lauren DeVore, Planner, and Ms. Ann Lepore – Recording Secretary.

The Pledge of Allegiance was led by Mr. Mills.

Motion by Mr. Workman, seconded by Mr. Callaway, and carried unanimously to approve the revised agenda. Motion carried 5 – 0.

Motion by Mr. Callaway, seconded by Mr. Williamson, and carried unanimously to approve the Minutes and Findings of Facts for the May 6, 2019, meeting. Motion carried 5 – 0.

Motion by Ms. Magee, seconded by Mr. Callaway, and carried unanimously to approve the Minutes and Findings of Facts for the May 20, 2019, meeting. Motion carried 5 – 0.

Motion by Ms. Magee, seconded by Mr. Callaway, and carried unanimously to approve the Minutes and Findings of Facts for the June 3, 2019, meeting. Motion carried 5 – 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. 12285 – Margaret Ayers seeks 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 a through lot fronting on W. Springside Dr. and Fisher Rd. approximately 0.21 miles west of Martin Farm Rd. 911 Address: 28354 W. Springside Dr. Milton. Zoning District: GR. Tax Parcel: 334-10.00-102.00

Mr. Whitehouse 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 the 3.4 ft. variance from the required 40 ft. front yard setback for a proposed manufactured home on Fisher Rd.

Amber Ayers was sworn in to give testimony about the Application.

Ms. Ayers testified the lot is unique as it is considered to be a through lot with two front yard setbacks; that the Applicant intended to place the manufactured home in the same footprint as the

previous manufactured home, however, the home they purchased is longer and encroaches into the setbacks; that the property cannot otherwise be developed for a three-bedroom, one bathroom home without this variance; that the exceptional practical difficulty was not created by the Applicant as she purchased the property “as is” and is unable to place the home back on the lot as it is a through lot and would still have an encroachment into setbacks and the septic is in the rear of the home; that the manufactured home is a singlewide home in good shape and will be improved after being installed on the lot; that the existing manufactured home has been removed from the property; that the home will be of the same quality and cosmetic appeal as other homes in the area; that the Applicant was not able to verify the age of the manufactured home purchased by her; that the new single-wide manufactured home will not alter the essential character of the neighborhood as it is similar to current homes in the area; that it is the minimum variance request due to the driveway and septic placement on the property; that a variance would be necessary even if the home was turned; that the septic system is to the other side of the lot; that the new manufactured home is 66 feet long and the only manufactured home was 60 feet long; that the well is located in the front; that the home measures 14 feet wide and it is rare to find a manufactured home of that width; that there is a gap between the edge of paving of Fisher Road and the front property line; and that she has not discussed the application with her neighbors.

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

Ms. Magee moved to approve Variance Application No. 12285 as the Applicant has met all five criteria for granting a variance.

Motion by Ms. Magee, seconded by Mr. Callaway, and carried that the **variance be granted for the reasons stated.** Motion carried 5 - 0.

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

Case No. 12317 – William Searle seeks variances from the front yard setback, side yard setback, and maximum fence height requirement for proposed and existing structures (Sections 115-25, 115-182, and 115-185 of the Sussex County Zoning Code). The property is a through lot fronting on Fenwick Cir. and Zion Church Rd. approximately 416 ft. west of the entrance to the Fenwick West subdivision. 911 Address: 37568 Fenwick Cir., Selbyville. Zoning District: AR-1. Tax Parcel: 533-12.00-217.00

Mr. Whitehouse 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 3.5 ft. variance from the required 3.5 ft. fence height for a fence in the front yard setback of a through lot and a 23.7 ft. variance from the required 40 ft. front yard setback for an existing shed on a through lot.

William Searle was sworn in to give testimony about the Application.

Mr. Searle testified that he proposes to construct a 7 foot tall vinyl fence; that the fence is similar to fences on neighboring properties; that his property is unique because it is a through lot with two front yards; that the house faces Fenwick Circle and the property is accessed from Fenwick Circle; that the fence will help with privacy and noise related to Zion Church Road, which is a noisy road; that he has no access to Zion Church Road; that the fence will be the same height as neighboring fences; that the property cannot otherwise be developed for a 7 ft. fence without the variance; that the 7 ft. fence will help protect grandchildren from Zion Church Rd.; that the exceptional practical difficulty was not created by the applicant but by the property being a through lot; that the variances will not alter the essential character of the neighborhood but will be in keeping with existing fences in the area; that the fence will connect to neighboring fences; that it will not cause any visibility issues on Zion Church Rd.; that it is the minimum variance request for the applicant to be consistent and match the neighbors' fences; and that there is approximately 34 feet from the edge of paving of Zion Church Road to the fence.

Mr. Whitehouse advised the Board that the shed was permitted but its location has moved.

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

Mr. Callaway moved to approve Variance Application No. 12317 as the Applicant has met all five criteria for granting a variance.

Motion by Mr. Callaway, seconded by Mr. Williamson, and carried that the **variances be granted for the reasons stated**. Motion carried 5 - 0.

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

Case No. 12318 – Janine E. Davidson & Joan M. Moses seeks variances from the side yard setback requirements for an existing structure (Sections 115-25 and 115-185 of the Sussex County Zoning Code). The property is located on the west side of Long Meadow Ln. approximately 399 ft. north of Park Pavillion Way in the Ridings at Rehoboth subdivision. 911 Address: 20143 Long Meadow Ln., Lewes. Zoning District: AR-1. Tax Parcel: 234-5.00-572.00

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received one letter in support of and three letters in opposition to the Application and zero mail returns. The Applicant is requesting a 4 ft. variance from the 5 ft. side yard setback requirement on the south side for an existing shed.

Janine Davidson & Joan Moses were sworn in to give testimony about the Application.

Ms. Moses testified that the property is unique as the backyard is not level and floods; that the

Applicants wanted to place the shed in the rear yard but the slopes made that difficult; that the rear of the lot sometimes has 2-3 feet of water; that the shed cannot be placed in the rear of the lot due to the flooding and slope; that the Applicants went to their homeowners association regarding the problem and the association approved the shed; that the shed was constructed and the Applicants then received a violation notice from Sussex County and the association then opposed the shed; and that their neighbor does not have an issue with the shed.

Ms. Davidson testified that they received approval from the HOA Architectural Committee first to place the shed in the rear of the property; that the backyard floods with heavy rain causing water issues due to unlevelled property; that the shed would be underwater when it rains; that drains were installed but the flooding continues; that the shed was placed in this location because there are no flooding problems in that area of the lot; that it cannot otherwise be developed as the property slopes to the rear of the dwelling; that the exceptional practical difficulty was not caused by the Applicants but by the flooding on the property; that it will not alter the essential character of the neighborhood as it was built and painted to match the existing house; that the HOA of Ridings at Rehoboth approved the location of the shed; that it is the minimum variance to afford relief to allow a shed to be placed on the side of the home; and that they have owned the property since 2015 and moved to the property full-time in 2018.

Ms. Moses testified that the shed is on a gravel pad and they would not have built the shed without approval from the architectural review committee.

Ms. Davidson testified that they are the second owners of the house; that they obtained a building permit; that there were no complaints about the shed until recently; that the permit was given to the builder and he did not indicate that he was placing the shed encroaching into setbacks; that the Architectural Committee sent revised approval for the location of the shed in an email dated September 26, 2018, after Mr. Hackett had visited the home.

Ms. Moses testified that their neighbor to the south does not object to the variance request; that Capitol Builders installed the shed; that the entire rear yard floods; that the rear yard slopes and is too steep for a ramp, which poses a safety concern; that there is a well on the property on the other side; and that they relied on their builder to place the shed in compliance with the Code and the builder did not bring up this issue during construction.

Mr. Sharp stated that the Board can grant or deny a variance request but the Board has no jurisdiction over restrictive covenants and disputes regarding restrictive covenants are a civil matter between the property owners and the homeowners association.

Charles R. Baker was sworn in to give testimony in opposition to the Application.

Mr. Baker testified that he is the vice-president of the Ridings of Rehoboth Association; that the Association is opposing the request for variance by the Applicants; that the shed violates the

architectural standards of the Association in addition to the Sussex County setback rules; that the Association allowed for a revised location of the shed provided the shed met the Association and Sussex County requirements; that the Applicants were aware of the setback requirements; that the Applicants should comply with the setback requirements; that the Applicants have failed to meet the standards for granting a variance; that the shed measures 10 feet by 14 feet; that the shed could be turned 90 degrees to meet the setback requirements; that a smaller shed could have been constructed; that there are no unique features to this property; that the exceptional practical difficulty was created by the Applicants as they chose to violate the five-foot setback rules by locating the shed within one foot of the property line; that the request is the product of a want and not a need; that this variance will alter the essential character of the neighborhood and could lead to additional requests within the neighborhood; that the variance is not necessary to enable reasonable use of the property; that most sheds in the neighborhood are on cinder blocks to help with flooding concerns; that it is not a minimum variance as the shed could be moved to be in compliance with setback rules; that Sea Scape is the property manager for the Association; that he was made aware of the location issue after the violation notice was issued; that Sussex Conservation has been to the development many times; and that the Association does not object to the ramp if a variance was needed for that structure.

Ms. Moses testified that the shed location was staked out and shown to the Architectural Review Committee; that the ramp is 3 inches tall; that the shed matches the house; that, if the shed was turned, it would not look like the house and would be aesthetically pleasing; and that the shed was purchased because she believed she had approval from The Ridings of Rehoboth HOA.

The Board found that two people appeared in support of and four parties appeared in opposition to the Application.

Ms. Magee moved to approve Variance Application No. 12318 as the Applicants have met all five criteria for granting a variance; that the property is subject to flooding; that there was no other location where the shed could be placed; that the Applicants received approval from the Association; and that the Applicants would not have purchased the shed without the Association's approval.

Motion by Ms. Magee, seconded by Mr. Workman, and carried that the **variance be granted for the reasons stated.** Motion carried 5 - 0.

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

Case No. 12319 – Down by the Bay Daycare, LLC/Jubri, LLC seeks a special use exception to operate a day care center (Sections 115-23 & 115-210 of the Sussex County Zoning Code). The property is located on the west side of Gravel Hill Rd. approximately 0.29 miles south of Shingle Point Rd. 911 Address: 18418 Gravel Hill Rd., Georgetown. Zoning District: AR-1. Tax Parcel: 235-29.00-10.01

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 requesting a special use exception to operate a day care center.

Ms. Magee recused herself from hearing Application 12319 and left Council Chambers.

Justin Fehrenbach and Briana Rovinskie were sworn in to give testimony about the Application. David Hutt, Esquire, presented the Application on behalf of the Applicant. Mr. Hutt presented exhibit booklets to Board members.

Mr. Hutt stated that the proposed daycare facility will not substantially affect adversely the use of adjacent and neighboring properties as it is located in a rural residential area with farms and homes nearby; that the Property is zoned AR-1; that there is MR zoning in part of the neighborhood; that the proposed day care will serve 7-12 pre-K children and 1-2 school aged children; that there is adequate parking; that another daycare facility is located in close proximity to this location; that the hours of operation will be from 7:00 am – 6:30 pm; that a staff member will live on the premises; that the property will otherwise serve as a residence; and the Applicant will comply with all regulations set forth by the State of Delaware for operating a Daycare Facility.

Mr. Fehrenbach and Ms. Royinskie affirmed the statements made by Mr. Hutt as true and correct.

Ms. Rovinskie testified that there is a fenced off play area for children; that there is ample parking; and that there are no complaints from neighbors about the proposed use.

Mr. Callaway moved to approve Application No. 12319 as the Applicant has met the criteria for granting a special use exception.

Motion by Mr. Callaway, seconded by Mr. Williamson, and carried that the **special use exception be granted for the reasons stated**. Motion carried 4 - 0.

The vote by roll call; Mr. Workman – yea, Mr. Mills – yea, Mr. Williamson – yea, and Mr. Callaway – yea.

The Board took a ten (10) minute recess.

Ms. Magee recused herself from hearing Application 12320.

Case No. 12320 – Country Rest Home, Inc. requests a special use exception to operate a convalescent home, nursing home, and/or home for the aged (Sections 115-23 & 115-210 of the Sussex County Zoning Code). The property is located on the north side of Johnson Rd. approximately

0.48 miles east of Wilkins Rd. 911 Address: 18971 Johnson Rd., Lincoln. Zoning District: AR-1.
Tax Parcels: 330-15.00-33.01

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received nine letters in support of and none in opposition to the Application and two mail returns. The Applicant is requesting a special use exception to operate a senior housing facility consisting of 30 single family cottage units and a building of approximately 50,000 sf. containing 15 single bedroom apartments and 25 two-bedroom apartments.

Mark Yoder, Jr. and David Heatwole were sworn in to give testimony about the Application. David Hutt, Esquire, presented the Application on behalf of the Applicant. Mr. Hutt referred Board members to the exhibit booklets sent to members prior to the meeting.

Mr. Hutt stated that this Special Use Exception application for a convalescent home, nursing home, and/or home for the aged is the last one before the Board of Adjustment; that Sussex County Council recently passed an ordinance that future applications will be heard by the Planning and Zoning Commission; that future applications will be conditional use applications; that Mr. Yoder is the principal of Country Rest Homes, Inc.; that Mr. Heatwole is the site engineer; that the site is zoned AR-1; that the proposed facilities will not substantially affect adversely the use of adjacent properties as the immediate uses are agricultural and residential; that the project will still be subject to agency approvals and site plan reviews following the approval of the Special Use Exception; that agencies such as DelDOT, the Fire Marshal, and the Sussex Conservation District will all have input; that the Applicant proposes, as a condition of approval, that preliminary and final site plan approval be obtained by the Planning & Zoning Commission; that the site consists of 32.6 acres; that Christian Tabernacle Church is located directly opposite to the entrance of the Applicant's property; that the facility will be located near the new Bayhealth hospital; that the site was previously approved for a 25 lot subdivision which was not developed because the approval expired; that Applicant operates Country Rest Home near Greenwood; that the location is a logical place for a second facility; that residents of the current Country Rest Home support the request; that neighbors also support the Application; that this is a growth area; that the soils are appropriate for this facility; that the facility will have a maximum of 50,000 square feet with 40 apartment style units; that 15 units will be single-bedroom units and 25 units will be 2-bedroom units; that the facility will be a single-story facility; that the 30 cottage units will consist of 1,500 – 2,000 square feet each; that the facility will use well water and on-site septic but will need approval from DNREC; that the facility estimates 330 trips per day which is below the threshold required for a traffic impact study; that the facility does not have a large traffic impact; that the property will have its own stormwater management facility to be approved by the Sussex Conservation District and the Applicant will use best management practices and best available technology; that there will be ample parking for visitors and residents; that there has been a great population increase in Sussex County and that trend is expected to continue; that many new residents are older than 65 years old and this type of facility is needed; that the facility will provide a continuum of care and aging in place; that the property will have walking paths; that the facility is a residential-style use and will not dominate the landscape of the area; that a local realtor

submitted a letter that the impact on property values would be neutral; that the facility is similar to other uses in the area; that the Applicant proposes a forested buffer of 30 feet along boundaries which is a similar boundary as if the property was a subdivision; that the Applicant would implement an agricultural use notice in all leases; that the noises are similar to noises from residential uses; that noises from agricultural uses are likely louder; and that the Applicant offers the following conditions:

1. The assisted living facility shall contain no more than 30 single-family detached units and a building consisting of no more than 50,000 square feet containing no more than 40 units to allow for aging in place along with ancillary uses.
2. The 40-unit facility shall be set back a minimum of seventy-five feet (75') from the rear property lines of the homes between the facility and Johnson Road.
3. All entrances, intersections, inter-connection, roadway and multi-modal improvements required by DelDOT shall be completed by the Applicant in accordance with DelDOT's requirements.
4. The facility (including the single-family detached homes and the multi-unit building) shall be served by a privately operated, on-site sanitary sewer treatment plant and disposal system subject to the Department of Natural Resource and Environmental Control's regulations governing the design, installation and operation of on-site wastewater treatment and disposal systems.
5. The facility (including the single-family detached homes and the multi-unit building) shall be served by private on-site well(s) subject to the approval of the Delaware State Department of Natural Resources and Environmental Control and the Delaware Division of Public Health. The system shall be designed and installed to provide adequate drinking water and fire protection as required by applicable regulations.
6. Stormwater management and erosion and sediment control facilities shall be constructed in accordance with applicable State and County requirements. These facilities shall be operated in a manner that is consistent with Best Management Practices. The Final Site Plan shall contain the approval of the Sussex Conservation District.
7. The Applicant shall provide agricultural buffers, as necessary, in accordance with the applicable regulations. The Agricultural Use Notice (3 *Del. C.* § 910) shall be included in all leases for units on the property.
8. The Applicant shall submit as part of the Site Plan Review a landscape plan showing the proposed tree and shrub landscape design. The Applicant shall provide a thirty foot (30') forested buffer along all boundaries of the property except for the boundary adjacent to the power lines which shall remain open for sanitary sewer and maintenance of the power lines.
9. All fire safety and protection requirements, including, but not limited to fire lanes, fire hydrants and fire department connections, shall be reviewed, approved and installed according to the State of Delaware Fire Prevention Regulations.

10. Preliminary and Final Site Plans shall be subject to the review and approval of the Planning & Zoning Commission.

Mr. Yoder affirmed the statements made by Mr. Hutt as true and correct.

Mr. Heatwole affirmed the statements made by Mr. Hutt as true and correct and would adopt the testimony as his own regarding the engineering review.

Mr. Hutt stated that there would be no forested buffer along the powerline easement due to maintenance needs; that there is a 150 foot easement for the powerline; and that downward screened lighting will be used.

Robert Layton was sworn in to give testimony in support of the Application.

Mr. Layton testified that he lives at Country Rest Home; that he loves the community; that he knows there is a need for this type of housing; that units do not stay empty for long; and that he is in favor of the Application.

Paul Reiger was sworn in to give testimony in opposition to the Application.

Mr. Reiger testified that he is in opposition to this Application as it has a commercial component and a residential component and should come before the Planning and Zoning Commission and Council as it is a land use issue.

The Board found that two people appeared in support of and one person appeared in opposition to the Application.

Mr. Callaway moved to approve Special Use Exception Application No. 12320 subject to include the conditions proposed by the Applicant and the use will not substantially affect adversely the uses of neighboring and adjacent properties.

Motion by Mr. Callaway, seconded by Mr. Workman, and carried that the **special use exception be granted with conditions for the reasons stated**. Motion carried 4 - 0.

The vote by roll call; Mr. Workman – yea, Mr. Mills – yea, Mr. Williamson – yea, and Mr. Callaway – yea.

Ms. Magee returned to Council Chambers.

Case No. 12321 – Mark Harbold seeks variances from the separation distance requirements for existing structures (Sections 115-25 and 115-172 of the Sussex County Zoning Code). The property

is located on the southwest side of King St. approximately 175 ft. west of E. State Dr. within the Camelot Manufactured Home Park. 911 Address: 36260 King Street, Lot #179, Rehoboth Beach. Zoning District: AR-1. Tax Parcel: 334-13.00-308.00 Unit 50947

Mr. Whitehouse 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 a variance of 2.6 feet from the twenty (20) feet separation distance requirement from existing manufactured home located on the property adjacent to the east for an existing deck and a variance of 2 feet from the twenty (20) feet separation distance requirement from a manufactured home located on the property adjacent to the west for an existing shed.

Mark Harbold and Mark Hartman were sworn in to give testimony about the Application.

Mr. Harbold testified that the lot is unique as it is undersized and narrow; that the house on this lot is centered on the lot but the house on the adjacent lot is not centered and is only 8.6 ft. from the property line; that the neighboring house was placed on the lot after the Applicant's house was placed on the lot; that the houses are not parallel either; that the property cannot otherwise be developed as the Applicant wishes to use the existing sidewalk to access the deck; that the sidewalk provides the only access to the house; that the house was placed by a prior owner; that it was not created by the Applicant the home predates his purchase and the 3 ft. sidewalk was already in place; that the prior deck was rotted and needed to be replaced; that the prior deck went to the width of the house; that the deck and screen porch are consistent with the neighborhood; that it will not affect the essential character of the neighborhood as it is in keeping with the other homes in the area; that, due to the large holly trees on the property, the deck cannot be seen from the road; that there have been no complaints from neighbors; and the new deck and screened porch are in the same footprint as the original deck and it is the minimal amount to allow functional access to the deck from the side yard.

Mr. Hartman testified that the shed was in place prior to the Applicant purchasing the property; that the shed was compliant with the 20 ft. separation setback; that the neighbor made improvements to their dwelling and these improvements made the shed non-compliant; that the neighbors support this application; that the shed is located on a concrete pad; and that a screened porch is necessary to enjoy the outdoors due to bugs.

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

Mr. Callaway moved to approve Variance Application No. 12321 as the Applicant has met the standards for granting a variance.

Motion by Mr. Callaway, seconded by Mr. Williamson, and carried that the **variances be granted for the reasons stated.** Motion carried 5 - 0.

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

Case No. 12322 – Jason and Shanda Babbitt seek a variance from the rear yard requirements for a proposed screened porch (Sections 115-25 and 115-183 of the Sussex County Zoning Code). The property is located on the west side of Lone Palm Way approximately 409 ft. south of Barefoot Cir. in the Spring Breeze subdivision. 911 Address: 30365 Lone Palm Way, Harbeson. Zoning District: AR-1. Tax Parcel: 234-11.00-707.00

Mr. Whitehouse presented the case and stated that the Office of Planning and Zoning received zero letters in support of and one letter in opposition to the Application and zero mail returns. The Applicant is requesting a 3 ft. variance from the required 10 ft. rear yard setback for a proposed screened porch.

Jason and Shanda Babbitt were sworn in to give testimony about the Application. Ms. Babbitt submitted three (3) letters of support to Board members.

Ms. Babbitt testified that the property is unique as there is only 19.2 ft. between the home and the property line; that the property is on the curve of the street and the house is placed on an angle allowing only 9.2 ft. building envelope for a screened porch; that the property cannot be developed for a screened porch without the variance; that a screened porch is necessary as the Applicants have a child who is allergic to mosquito bites; that their elderly father and mother-in-law use a walker and cane and the porch will offer them usable outdoor space; that it was not created by the Applicants as the developer placed the home at an angle on this lot and did not make the Applicants aware of how far back the home would be; that it will not alter the essential character of the neighborhood as the porch will be in the rear of the home and will not be visible from the street; that it will match the current dwelling; that it is a minimum variance to allow for a screened porch to allow elderly parents to move comfortably and safely; that neighbors do not oppose the request; that they came to the Board first before going to the homeowners association; that the steps will be located to the side of the porch and will not encroach into the setback area; and that the homeowners association will not allow construction of the screened porch into the side yard.

Mr. Babbitt testified that there is an existing deck in the rear of the home which meets setbacks but, by enclosing the deck, it now requires the variance.

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

Mr. Callaway moved to approve Variance Application No. 12322 as the Applicants have met all five criteria for granting a variance.

Motion by Mr. Callaway, seconded by Ms. Magee, and carried that the **variance be granted for the reasons stated**. Motion carried 5 - 0.

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

OLD BUSINESS

Case No. 12295 – Whiskey Ridge Shooting Preserve seeks a special use exception to operate a rifle or pistol range (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located on the east side of Parker Rd. approximately 0.75 miles northwest of E. Line Rd. 911 Address: 38149 Parker Rd., Millsboro. Zoning District: AR-1 Tax Parcel: 333-15.00-37.00 (portion of).

Mr. Whitehouse presented the case which was left open at the previous hearing on April 15, 2019, for the Applicants to provide a lead remediation plan. The plan was submitted to the Board prior to this hearing.

Joseph and Janet Kansak were sworn in to give testimony about the Application and answer questions from the Board.

The Board found that the Applicants had submitted a reasonable plan for lead remediation at the shooting preserve and no further testimony was required.

Ms. Magee moved to approve Application No. 12295 for a period of five (5) years as the Applicant has met the criteria for granting a Special Use Exception

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

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

ADDITIONAL BUSINESS

Request for 3-month time extension for Case 11988 Lands of Keller

Mr. Whitehouse stated that the Applicant initially requested a 3-month time extension for Case Number 11988 but a letter received on June 17, 2019, revised the request to a 12-month extension.

Ms. Magee moved to approve the extension request for Case 11988 for a period of 12 months.

Motion by Ms. Magee, seconded by Mr. Callaway, and carried that the **extension of twelve (12) months be granted for the reasons stated.** Motion carried 5 - 0.

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

Ms. Magee referred to Case No. 12318 and requested that letters be sent to the following:

1. The builder to caution about building within the Sussex County setback rules.
2. Schell Brothers regarding the flooding reported by the Applicants.

Meeting was adjourned at 9:53 p.m.