

MINUTES OF OCTOBER 7, 2024

The regular meeting of the Sussex County Board of Adjustment was held on Monday, October 7, 2024, at 6:00 p.m. in the County Council Chamber, Sussex County Administration Office Building, Georgetown, Delaware.

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

The Pledge of Allegiance was led by Mr. Chorman.

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

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

Motion by Mr. Williamson, seconded by Mr. Hastings and carried to approve the Minutes for the August 5, 2024, meeting. Motion carried 3 – 0. Dr. Carson abstained.

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

Motion by Mr. Hastings, seconded by Mr. Williamson and carried to approve the Findings of Facts for the August 5, 2024, meeting. Motion carried 3 – 0. Dr. Carson abstained.

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

ADDITIONAL BUSINESS

2025 Board Meeting Schedule:

Ms. Norwood presented the draft of meeting dates for 2025.

Motion by Dr. Carson, seconded by Mr. Hastings and carried unanimously to approve the schedule for 2025 as amended. Motion carried 4 – 0.

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

Accessory Dwelling Units:

Mr. Sharp stated that County Council recently adopted an Accessory Dwelling Unit (“ADU”) Ordinance; that, based on certain criteria, an ADU could be considered a “by right” use

on a property; that, if the applicant does not meet the criteria for an ADU “by right”, then the applicant would need to apply for a special use exception from the Board of Adjustment; and that no action is needed as this memorandum is for information purposes only.

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

PUBLIC HEARINGS

Case No. 12985 – William McKeon seeks variances from the side yard setback, separation distance and lot coverage requirements for existing structures (Section 115-25 and 115-187 of the Sussex County Zoning Code). The property is located South of North Drive and East of Camp Arrowhead Road within the West Bay Mobile Home Park. 911 Address: 34922 North Drive, Lewes. Zoning District: AR-1. Tax Parcel: 234-18.00-40.00 Lot B3

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received zero letters in support of the Application, one letter in opposition of the Application, and zero mail returns. The Applicant is requesting the following variances:

- 3.0 ft. and 3.1 ft. variances from the 5 ft. side yard requirement on the west side for existing landing with steps.
- 2% variance from the 35% maximum lot coverage for the existing manufactured home and shed.

Mr. William McKeon, Ms. Kelly McKeon, and Mr. Gil Fleming were sworn in to give testimony for this application.

Ms. McKeon testified that, prior to demolishing the original home and placing a new home, park approval was required; that they applied for park approval and were informed by the park management that the park management would place the stakes for the placement of the proposed home; that, when installing the home, they adhered to all the requirements of the park management; that the park management was made aware of the proposed landing and steps as part of the entire project; that the house was staked on the minimum setback requirements in turn making the steps out of compliance; that a tree was removed; that the contractor let them know that he could not place the steps where they wanted them as the steps would have extended into the neighbor’s property; that he made a suggestion for a different placement which they agreed to without realizing that the steps would not comply with County Code; that the steps are necessary for a secondary exit to the home in case of an emergency; that they have a special needs child and an elderly parent who also reside at the home; that they depended on the park management and the contractor to place the home correctly; that there have been no complaints from neighbors regarding the placement of the new home and they received positive comments regarding the improvements that they have made; that the shed remained because it was in good condition; that this was the smallest model house available; that the house was

placed in April 2024; that the house is 1,750 square feet; and that the house could have complied had the park management staked the property correctly.

Mr. McKeon testified that the property is unique as it was staked incorrectly by the park management and referred to pictures that he had submitted into the record; that the neighbors on the same side of the steps have no complaints and are present at this meeting for support; that the opposition letter is from the park management who was responsible for staking the home; that there are two trees between the properties; that the steps are behind the trees and there is no negative impact to the neighboring property; that the HVAC unit is to the rear of the dwelling and is in compliance; that there are utilities located behind the dwelling; that there is a grinder on the property also; and that the shed is used to store outdoor equipment and toys.

Mr. Fleming testified that the property cannot otherwise be developed; that the property has been improved with the new home and steps and the variances are necessary to allow the improvements to remain in their current location; that the variances will not alter the essential character of the neighborhood but improve the aesthetics of the neighborhood; that the variances will not be detrimental to the neighborhood; that the exceptional practical difficulty was not created by the Applicant because the West Bay management marked the location for the home; that the park management knew that there were steps on both sides of the home and they staked the home too far to the right side; that the requested variances are the minimum variances for the steps and shed to remain on the property; that the shed had a permit and has been on the property for approximately 20 years; that the shed is beautiful; and that they reconstructed the project as close to County Code as possible.

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

Mr. Chorman closed the public hearing.

Mr. Williamson moved to approve the application for Case No. 12985 for the requested variances, pending final written decision, for the following reasons:

1. The exceptional practical difficulty was not created by the Applicant;
2. The variances will not alter the essential character of the neighborhood; and
3. The variances represent the minimum variances necessary to afford relief.

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

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

Case No. 12996 – Cellco Partnership (Verizon Wireless) seeks a special use exception to place a telecommunications tower (Section 115-25, 115-194.2, and 115-210 of the Sussex County Zoning Code). The property is located on the west side of Old Landing Road and south of Betsy Ross Boulevard. 911 Address: 20338 Old Landing Road, Rehoboth Beach. Zoning District: AR-1. Tax Parcel: 334-18.00-76.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received zero letters in support of the Application, two letters in opposition of the Application, and zero mail returns. The Applicant is requesting a special use exception for a telecommunications tower.

Mr. John Tracey, Esq., was present on behalf of the Applicant, Cellco Partnership.

Ms. Sue Manchel, Site Acquisition Manager for Verizon, Mr. Andrew Petersohn P.E., with DBM Engineering, P.C., and Mr. Matthew Graubart, P.E., with Colliers Engineering & Design were sworn in to give testimony for this application.

Mr. Tracey stated that this application is for a telecommunications tower and associated equipment; that this tower is 130 ft. to the top of the lightning rod which is approximately 5 ft. in length; that the property sits to the west of Old Landing Road and to the west of Rehoboth Beach and Route 1; that the parcel is 5.15 acres and is zoned AR-1; that the property contains a single home that is occupied by the property owners and is heavily wooded; that the area is densely populated and large undeveloped properties such as this are hard to find in this area; that the area which has been chosen will allow the Applicant to maintain the appropriate setbacks and will be located within the existing tree stand; that no variances are needed; that the Applicant will adhere to all fencing and lighting required by Code; that Verizon Wireless is licensed with the F.C.C. which requires them to provide reliable cell phone service to subscribers; that more people now rely on cell phones instead of land lines and many families have multiple devices; that 76% of people live in a wireless only house; that, with work and study from home, reliable wireless coverage is essential; that a radio frequency design engineer's report has been submitted showing the data regarding cell phone use among different demographics; that 70% of 911 calls are made via cellular phone; that they are aware that there is a problem with coverage in this area and there is not a tower available for collocation in this area; that, as part of this application, Verizon Wireless has to rule out sites within a two-mile radius; that this report was prepared in early 2024; that the water tower is not shown on the exhibits as it is proposed and not online yet; that the Applicant also looked at the Beebe Medical Center but, at 90 ft. tall, it would not meet provide coverage to the area where coverage is needed; that the tower will be in compliance with all F.C.C. requirements; that there is no proposed decoration for the tower but it could be conditioned if the Board so choose; that trees will screen the tower from neighboring properties; that decommissioned towers are to be removed per the Code; and that this special use exception will not substantially affect adversely the uses of adjacent and neighboring properties.

Mr. Petersohn referred to the reports that he submitted as he showed where the gaps in service and where the areas the new tower would cover. Mr. Petersohn testified that he is a radio frequency

engineer; that the wireless signal is weak south of Route 1 and east of Route 24; that this weak signal creates service issues and that there is a lack of service in this area to the south and east of Route 1; that they looked for existing tall structures within a two-mile radius and there was nothing of sufficient height; that the Applicant needs adequate capacity and signal strength; that there were no structures of sufficient height within 2 miles which Verizon was not already on; that, when preparing for this hearing it was discovered that Verizon intends to use a newly constructed water tower at Beacon Middle School to host infrastructure and that tower is within one mile of this location; that the tower to be located on the water tower is to address a separate area specifically the Route 24 corridor; that the system on the Beacon Middle School water tower is not yet online; that there are two small cells along Route 1 that are not named in the report as they are not first tier neighbors; that Beebe Healthcare is only 90 feet tall and is significantly shorter than the height needed for the Applicant's technology; that Beebe is also too close to an existing site used by Verizon and result in redundant service; that, if the Application is approved, the new tower will help with coverage in the area; that his reports do not show the impact after the system on the Beacon water tower is online; that the traffic demand during the summer months is overburdening the system; that the Beacon water tower will help with the Route 24 corridor and is a different geographical area than this site; that the area Beacon will serve is southeast of the site; that, using a worst case scenario, the emissions will be only 4.9% of the maximum FCC limit; that a worst case scenario assumes 24/7 usage at maximum output with ground reflections and minimal factors that weaken the signal; that the F.A.A. does not require lighting on the tower but Sussex County Code requires it at 50 ft. intervals; that there is no study which would show a propagation model of how coverage would be increased with just the new infrastructure on the Beacon water tower; that, if there were any existing towers, Verizon would collocate their antennas as it would be a less expensive process than building a new tower; that the summer demand in this area is crippling the system; that this is the minimum height necessary to provide the necessary coverage; that the Applicant is trying not to have redundant coverage; and that the FCC holds auctions but the Applicant cannot keep up with demand simply with auctions and technological upgrades.

Mr. Tracey stated that gaps in coverage lead to complaints which lead to solutions; that Ms. Manchel checks for other sites and has to find a willing landlord for the best available sites; that there is not much open area nearby; that there is a nearby shopping center; that mature trees will help shield but not totally obscure the tower; and that the trends suggest a growing coverage problem.

Mr. Petersohn testified that they engineer to meet peak demand; that internet service providers are now going through cell connections rather than fiber and coax connections; that water and trees impact signals; and that water is a reflector of signals and trees block signals.

Mr. Graubart referred to the site plan that he submitted into the record. Mr. Graubart testified that he is a civil engineer; that the proposed facility will be constructed close to the northern property line; that the facility will comply with all setback requirements of the Sussex County Code; that the design criteria dictates that the tower withstand 121 mph winds; that the tower will allow for an additional three collocators; that lights will be set at 50 ft. intervals; that the facility will be accessed

through the existing driveway on the property; and that there will be very little traffic as a result of this tower with only a monthly trip for maintenance.

Mr. Tracey submitted a report to the Board which showed that the tower will have no adverse impact on real estate values in the area.

Mr. Tracey stated that each piece of real estate is different but that towers have been shown to have no substantial negative impact on property values; that towers are viewed as a way of life; that the adverse effect must be substantial; that there are no tall structures within 2 miles of the site where collocation is possible; that there are no adverse impacts from the tower; that there are no noise or odors from the tower; that the tower will be designed to handle a 121 mph windspeed; that the tower meets at setback and County Code requirements; that the landlord lives on the site; and that good locations for cell towers are disappearing.

Ms. Manchel, Mr. Petersohn, & Mr. Graubart all testified that the statements made by Mr. Tracey were true and correct.

Mr. John Zuna was sworn in to give testimony in opposition to the Application.

Mr. Zuna referred to his exhibit and testified that he is a retired engineer; that the Applicant stated in their application that there are no other tall structures in the area; that there is a 160 ft. water tower on Mulberry Knoll Road, a 95 ft. Beebe Surgical Center, and several hotel roofs in the area; that coverage from the Beacon tower would be farther than the proposed tower; and that he wanted to see maps of coverage showing the Beacon water tower online.

Mr. William Hunt was sworn in to give testimony in opposition to the Application.

Mr. Hunt testified that his home is across the road from the subject property; that there are three different neighborhoods surrounding this site; that the proposed site will impact home prices in the area; that the public needs time to submit data about the negative impact of real estate prices; that there is no long-term study about the impact of these towers; and that it will impact the wet areas and wildlife in the area.

Ms. Donna Voigt was sworn in to give testimony in opposition to the Application.

Ms. Voigt testified that the subject property has wetlands on it; that the area gets sprayed by DNREC for mosquitoes; that she there are other undeveloped areas in the vicinity that would be more suitable such as farmland or Kings Creek; that she is concerned that no environmental study has been completed; that there are migratory birds in the area; that she look at small cells in the neighborhood but it fell through; that she uses a different carrier; that the area needs improved service; that there is no coverage in the rear part of her neighborhood; that she has issues with the siting of the tower; and that the tower is incompatible with the neighborhood.

Mr. Kirk Blackburn was sworn in to give testimony in opposition to the Application.

Mr. Blackburn testified that he owns adjacent property; that he knows the impact of resort traffic; that an upgraded network is needed; that there are other places such as Beebe, Route 24 shopping center, and the library which could be options; and that he had questions regarding 24-hour lighting on the tower and if there is an emergency generator.

Mr. Sharp stated that they would get the answers to Mr. Blackburn's questions from the engineer.

Ms. Eleanor Hunt was sworn in to give testimony in opposition to the Application.

Ms. Hunt testified that she is a stargazer and nature-lover and she does not want to look at a cell phone tower outside her home; that she spent \$43,000 on her patio; that the real estate study that refers to New Castle County cannot be compared to this area and is obsolete; that wildlife will be affected by cutting into the woods; and she asked the Board to defer a decision for further studies.

Mr. Tracey stated that the DNREC mosquito spraying will not be affected by this; that lighting is required by Sussex County and should help with the spraying; that the US Fish and Wildlife Service has issued guidelines to minimize risks to migratory birds with one of the key factors being a height of 230 ft. with guy wires and the proposed tower is significantly less than that requirement and has no guy wires.

Mr. Graubart testified that wetlands will not be affected by this proposed tower; that the tower will meet the 30 ft. buffer and that there is a back-up generator for emergencies and is run on a maintenance schedule during daytime hours.

Mr. Petersohn testified that he would be happy to provide a study which would show what could be obtained from just putting antenna on the water tower; that there is a capacity demand in two distinct areas that Verizon through their studies had determined that they need two sites for; that the water tower might help with half of the problem area with coverage; that there is existing and incoming demand; that there is a golf course and marina nearby; and that the coverage problems along Route 24 are to be handled by the Beacon water tower.

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

Mr. Chorman closed the public hearing.

Mr. Williamson moved to leave the record open for a limited purpose as further outlined below.

1. The Applicant shall provide reports showing the coverage impact from 1) the proposed tower only, 2) the proposed tower and the proposed Beacon water tower, and 3) the Beacon water tower only.
2. Written comments may be submitted to the Board related only to the reports by the second Friday in November at which time the record will be closed.
3. The Board will entertain the matter as an old business item at its second meeting in November.

Motion by Mr. Williamson, seconded by Mr. Hastings, carried unanimously that the **record be left open for a limited purpose for the reasons stated.** Motion carried 4 – 0.

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

Case No. 12998 – Cellco Partnership (Verizon Wireless) seeks a special use exception to place a telecommunications tower (Section 115-25, 115-194.2, and 115-210 of the Sussex County Zoning Code). The property is located on the north and south side of Falling Point Road southwest of Ballast Point Road. 911 Address: 32292 Falling Point Road, Dagsboro. Zoning District: AR-1. Tax Parcel: 134-6.00-172.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received eight letters in support of the Application, two letters in opposition of the Application, and one mail return. The Applicant is requesting a special use exception for a telecommunications tower.

Mr. John Tracey, Esq., was present on behalf of the Applicant Cellco Partnership.

Ms. Sue Manchel, Site Acquisition for Verizon, Mr. Andrew Petersohn P.E. with DBM Engineering, P.C. and Mr. Matthew Graubart, P.E. with Colliers Engineering & Design who were previously sworn in will also give testimony for this application. Mr. Tracey submitted property value studies into the record.

Mr. Tracey stated that this application is for a telecommunications tower and associated equipment; that the proposed tower will be 150 ft. to the top of the lightning rod which is approximately 5 ft. tall; that the property is split by Falling Point Road; that the parcel is engaged in active agricultural uses; that a number of support letters that were submitted came from the immediate left of the site; that this site will maintain the appropriate setbacks; that no variances will be needed; that the tower will adhere to all fencing and lighting required by Code; and this special use exception will not substantially affect adversely the uses of adjacent and neighboring properties.

Mr. Petersohn referred to the reports that he submitted as he showed where the gaps in service and where the areas the new tower would cover. Mr. Petersohn testified that this is a coverage site as opposed to a capacity site as there is a lack of coverage in this area; that there is a large stretch in the area where the service is unreliable; that there are no structures within the two-mile radius of this site where collocation would be possible; that there is a tower approximately 2 miles south of the site just beyond the two-mile radius but that tower would not meet the coverage need of this area; that the gap in coverage is both in-building and in-vehicles; that this is not a situation where facilities are overloaded but is strictly a coverage issue; that the radio frequency report uses a worst case scenario and the tower will still be below the FCC regulations; that the tower will not require FAA lighting or marking but will meet the Sussex County Zoning Code requirements for lighting; that, if there is no tower, this area will be a dead spot; that clutter such as trees, roads, and buildings affect propagation models; and that there is another tower in the area which has been approved but not yet built.

Mr. Graubart referred to the site plan that he submitted into the record. Mr. Graubart testified that the parcel is heavily wooded and will be accessed from Falling Point Road by an existing driveway which will be improved; that trees will be cleared where the compound will be; that wetlands located east of the site will not be affected by this proposed tower and the tower will meet the 30 ft. wetland buffer requirement; that the tower will comply with all setback requirements of the Sussex County Zoning Code; and that the design criteria dictates that the tower withstand 122 mph winds.

Mr. Tracey stated that there is a need in the area; that there is no substantial adverse affect on neighboring and adjacent properties; that the area is remote and far from residential properties; and that neighbors to the west support the tower.

Ms. Jeanne Tunnell was sworn in to give testimony in support of the Application.

Ms. Tunnell testified that she lives in the development to the west of the subject property; that there is terrible service in the area; that living with her she has three grandchildren and a husband with medical issues; that she has concerns that, if she has an emergency, she will be unable to make a phone call; that she is unable to send text messages from inside her home; that property values will not be hurt by the tower because, without the tower, there will be no reliable cellular service; and that there has been positive feedback from neighbors towards the Application.

Mr. Stephen Kordek was sworn in to give testimony in support of the Application.

Mr. Kordek testified that he lives in Dogwood Acres nearby; that the cell service is horrendous; that they must exit the home to make a call; that they have dropped calls and are in a dead zone; and that internet service is poor in the area also.

Mr. David Mitchell was sworn in to give testimony in support of the Application.

Mr. Mitchell testified that the cellphone service is not available in this area; that the proposed tower is a good idea; that he experiences dropped calls frequently; and that it is hard to operate his business without reliable cellular coverage.

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

Mr. Chorman closed the public hearing.

Mr. Williamson moved to approve the application Case No. 12998 for the requested special use exception, pending final written decision, because the special use exception will not substantially affect adversely the uses of neighboring and adjacent properties.

Motion by Mr. Williamson, seconded by Dr. Carson, carried unanimously that the **special use exception be granted for the reasons stated**. Motion carried 4 – 0.

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

Recess
8:39 pm – 8:45 pm

Case No. 12997 – Sandra and George Searle seek variances for an existing structure from the setback requirement for stable structures for personal enjoyment (Sections 115-20 and 115-25 of the Sussex County Zoning Code). The property is located on the west side of Cedar Neck Road at the corner of Bucks Road. 911 Address: 6336 Cedar Neck Road, Milford. Zoning District: AR-1. Tax Parcel: 330-11.00-343.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received two letters in support of the Application, zero letters in opposition of the Application, and zero mail returns. The Applicants are requesting a 25.2 ft. variance from the 50 ft. setback requirement for an existing stable.

Mrs. Shannon Carmean-Burton, Esq., was present on behalf of the Applicants, Sandra and George Searle.

Mrs. Carmean-Burton stated that the Applicants are not present this evening; that submitted into the record are affidavits from Sandra Searle, the current property owner, and Megan Nicole Moore, the previous property owner; that, in addition, an exhibit booklet was also submitted which includes a letter of support from the adjoining property owner who would be most affected by the approval of this variance; that the Applicants purchased this property on August 12, 2024; that, at the time of purchase, the property was improved with the stables; that, when the Applicants had the

property surveyed and realized that the property was not in compliance with the Zoning Code, they applied for a variance; that the property is unique as it is an irregularly shaped lot that fronts on both Bucks Road and Cedar Neck Road; that the lot consists of 2.3 acres; that the exceptional practical difficulty is due to such uniqueness and not due to circumstances or conditions created by the provisions of the Code in the neighborhood or district in which the property is located; that there is no possibility that the property can be developed in strict conformity with the Code; that the stable has been in its current location for approximately 20 years and cannot be relocated due to the location of the corral and the dwelling on the adjoining property; that a variance is therefore necessary to enable the reasonable use of the property; that the exceptional practical difficulty has not been created by the Applicants nor their predecessor in title, Megan Nicole Moore; that neither the Applicants nor Ms. Moore had any control over the location of the stable or the shape of the lot; that Ms. Moore purchased the property with the existing improvements, including the stable, and did not become aware of the encroachment until the property was surveyed by the Applicants; that the variance will not alter the essential character of the neighborhood or permanently impair the use or development of the adjacent property; that there is a natural, mature forested buffer between the stable and the neighboring property; that there have been no complaints about the location of the stable; that Ms. Moore purchased the property in 2022 and believed that the previous owner, Mr. William Haggerty, built the stable; that the variance represents the minimum variance that will afford relief; that the Applicants simply seek to bring the existing improvements on the property into compliance with the Zoning Code; that there are no homeowner association restrictions; and that there is well and septic on the lot which would affect the location of the structure.

Mr. Sharp advised the Board that Mrs. Carmean-Burton's statements are unsworn but that the Board could rely on the affidavits submitted into the record.

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

Mr. Chorman closed the public hearing.

Dr. Carson moved to approve the application for Case No. 12997 for the requested variance, pending final written decision, for the following reasons:

1. The property has unique physical conditions;
2. The exceptional practical difficulty was not created by the Applicants;
3. The variance will not alter the essential character of the neighborhood; and
4. The variance represents the minimum variance necessary to afford relief.

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

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

Case No. 12999 – Michael and Dawne Kelly seek variances from the corner front yard setback requirement for an existing structure (Sections 115-25, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located on the southwest side of Old Lighthouse Road and east of Wilson Avenue within the Cape Windsor Subdivision. 911 Address: 38765 Wilson Avenue, Selbyville. Zoning District: AR-1. Tax Map: 533-20.14-70.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received a petition in support of the Application with five signatures, zero letters in opposition of the application, and zero mail returns. The Applicants are requesting a 10 ft. variance from the 15 ft. corner front yard setback requirement for an existing shed.

Ms. Mackenzie Peet, Esq., was present on behalf of the Applicants Mr. Michael and Mrs. Dawne Kelly.

Ms. Peet stated the Applicants are requesting a variance from the required 15 ft. corner front yard setback to allow an existing building to remain in its current location; that the building consists of approximately 427 square feet; that the building measures 19.5 feet by 21.9 feet; that the variances requested are 9.8 ft. from the back corner of the building and 9.9 ft. for the front corner of the building and the roof corner; that the requests arise from a misunderstanding of the setback requirements by the contractor and the surveyor specifically with the segment of the property that runs parallel with Old Lighthouse Road; and that the Applicants relied on professional guidance that led to the current encroachment of the accessory building into the corner front setback.

Mr. Sharp stated that there is a *res judicata* issue with this Application because the Board previously denied a request for a variance for an accessory structure where the request in that case was 12.1 ft. from the 15 ft. corner front yard setback; that the Board must consider that issue before they can decide on the new variance request; and that the Board must determine if the current request is substantially different or there has been a substantial change in the proposed use or conditions of the property before considering the merits of the Application.

Ms. Peet submitted hard copies of an exhibit which was also displayed on the screens throughout the room.

Ms. Peet stated that the property is zoned AR-1 and is within the growth area with the “Coastal Area” designation on the Future Land Use Map; that Old Lighthouse Road is now a dead end road and only benefits the residents that live off it; that the property is located at the intersection of three streets: Old Lighthouse Road, Wilson Avenue (where the property fronts), and Lincoln Avenue; that there have been 44 variances requested and 43 variance approvals within Cape Windsor; that she is unsure how many of those approvals were granted prior to the enactment of the Small Lot Ordinance; that this development was created prior to the Zoning Code being enacted in Sussex County; that Lincoln Avenue operates as a paper street and has common area and the community entrance which separates the property by approximately 50 ft. to this intersection; that the property is unique as it is

a corner property with two corner front yard setbacks; that the contractor, surveyor, and property owner all understood that the corner front setback only applied to the one area and not along Old Lighthouse Road which they thought was a side yard setback; that the accessory structure was constructed with the belief that a 5 ft. setback applied there; that there is no line of sight visibility issue; that, from the previous case in 2021 the Applicants understood that they were seeking a side yard variance and did not know that the corner front applied to this area of the property; that the variance for the deck was granted but the variance for the garage was denied for various reasons including that it was not the minimum variance to afford relief and the request was for a want and not a need; that the Applicants hired Craig Long, contractor who was supposed to be present tonight but is not here, and surveyor Don Miller; that Mr. Long and Mr. Miller were to design, seek permits, and construct a code compliant accessory structure on the property; that, in 2021, the Applicants were part-time residents in Sussex County; that, since 2023, they are now full-time residents and they also have the Applicants' mother living with them; that the accessory building is for much needed storage; that there has been a substantial change since their previous application; that the house is a two-story house and most houses in the neighborhood are three-story homes; that the previous requested use was for a garage to store a car; that an additional entrance from Old Lighthouse Road was denied by DelDOT so the change in use is for personal storage only; that additional work was required to move electrical lines at a significant cost to the Applicants; that a third-party company inspected the footers and did not flag any setback issues; that, when the building was constructed another inspection was carried out by a Sussex County inspector and the setback issues were understood and the Applicants were informed of the encroachment into the setbacks; that the structure cost \$85,000.00; that the property is located within a flood plain; that the 2021 verification request showed different setbacks; that the Applicants detrimentally relied on their contractor and surveyor; that the Applicants never saw the 2023 building permit obtained by their contractor; and that the permits were confusing to understand the setbacks.

Ms. Peet then referred to a setback sheet provided by Sussex County and several surveys by Miller Lewis, Inc., that all show varying setbacks number which contradict each other which led to the confusion by the Applicants; that the Applicants have met the five criteria for granting a variance as follows:

1. The property presents unique physical circumstances that limit the buildable area as it has an irregular 8-sided shape and has a requirement for two corner front setbacks.
2. There is no possibility that the property can be developed in strict conformity with the Sussex County Code because of the unique circumstances and the accessory building which is nearly completed and is within the setbacks. Without this variance, the building would have to be removed with considerable cost to the Applicants. She estimated the cost would be \$100,000.00 after removal.
3. This exceptional practical difficulty was not created by the Applicants as they relied on their contractor and surveyor to build according to County Code. There was

considerable confusion regarding setbacks for this property as shown in the variance permits, surveys, and setback information sheet.

4. This variance will not alter the essential character of the neighborhood. There have been 43 variances granted for this community and that this property is unique within this community. The nearby neighbors support the building as it does not affect them as it sits between the lagoon and Old Lighthouse Road. The Applicants have also received HOA approval. The building was built above flood plain elevation and incorporates flood vents. The building sits back 20 ft. from the edge of paving on Old Lighthouse Road. There is no visibility issues or line of sight issues.
5. This is the minimum variance to afford relief to allow the existing building to remain in its current location.

Ms. Peet then referenced the *res judicata* issue which is once a person has received a decision from this Board they cannot then file a similar application to receive a different outcome; that, while a Board cannot change its decision once made, it can consider a new application for relief if there is a substantial change in the circumstances or conditions affecting the property or in the use or plans for use.

Ms. Peet stated that there are several substantial differences between the conditions affecting the property and also in the plans for use some of which have already been explained; that understanding that the 5 ft. setback applied to this segment of the property and relying on the surveyor and contractor; that the setbacks were marked by the surveyor which is different from the 2021 application which the Applicants relied on when contracting the work; that, in terms of plans and what was intended to be a garage and, due to a change in circumstances, as this is now the Applicants' full-time residence the use will be for personal storage with no entrance from Old Lighthouse Road; that, in addition the Applicants' mother will now reside with them, creating additional need for storage; that the proposed building is also smaller than the previous variance sought; that the building is closer to the bulkhead by 2 feet; and that the Applicants have invested over \$100,000 which is a substantial difference from the previous case.

Mr. Sharp asked how many of the variances were approved since the Small Lot Ordinance was adopted as the Cape Windsor community was one that benefited greatly from the Small Lot Ordinance.

Ms. Peet did not have that information.

Ms. Dawne Kelly was sworn in to give testimony for the Application.

Ms. Kelly testified that the statements made by Ms. Peet were true and correct.

Ms. Kelly testified that, after they were denied in 2021, they did not decide until three years later just to do this; that they understood that the setbacks changed in Cape Windsor; that they retained the surveyor to come out and relook at the property; that the surveyor informed them that the corner front related to where the deck is; that the contractor concurred with the surveyor; that they signed a contract to move forward; that the surveyor staked the building; that they passed the footer inspection; and that, when the building was almost complete, a new inspection flagged the corner front issue; and then all construction stopped.

Ms. Sue Scrapper was sworn in as a witness to testify in support of the Application.

Ms. Scrapper testified that the deed restrictions have different setbacks from the County; that the HOA allows for 5 ft. on the side providing that the property owner can still maintain the easement; that, though the previous variance request was denied, she understood that, if the property owner made the building smaller and there was no entrance from the road, it would be approved; that there are 11 irregular lots in Cape Windsor; that she has a three-story home; that the shed has not negatively affected the community; and that she was Planning & Zoning to work with Cape Windsor.

Mr. Gregory Lusby was sworn in to give testimony in support of the Application.

Mr. Lusby testified that he has lived in Cape Windsor for 53 years; that the Kellys have improved their property 100%; that it is the first home you see when you enter Cape Windsor; that the shed has no negative effect on anyone with the development; that Old Lighthouse Road is a dead end street; that there are 10 houses on either side of Old Lighthouse Road that use it; that the Applicants have enhanced the property; and that the shed is not used for a car.

Ms. Kelly testified that there is 20 feet from the building to the actual road and that the shed does not block any sight lines.

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

Mr. Chorman closed the public hearing.

Mr. Hastings moved, pending final written decision, to allow the Application to move forward because there has been a substantial change in the use of the property for Mr. & Mrs. Michael Kelly. He noted that the Applicants relied on their surveyor and contractor to their detriment and that the shed is not being used as a garage; as was originally presented to the Board with the prior application.

Motion by Mr. Hastings, seconded by Mr. Williamson, carried to allow the Application to move forward as there has been a substantial change in the circumstances affecting the property. Motion carried 3 – 1.

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

Mr. Hastings moved to approve the application for Case No. 12999 for the requested variances, pending final written decision, for the following reasons:

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

Motion by Mr. Hastings, seconded by Mr. Williamson, carried that the **variances be granted for the reasons stated.** Motion carried 3 – 1.

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

Case No. 13000 – Cheryl Shahadi seeks a variance from the front yard setback requirement for a proposed structure (Sections 115-42, 115-182, and 115-185 of the Sussex County Zoning Code). The property is located on the northeast side of Cypress Drive at the corner of Walnut Lane within the Angola Neck Park Subdivision. 911 Address: 22969 Cypress Drive, Lewes. Zoning District: GR. Tax Map: 234-12.18-118.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received zero letters in support of the Application, zero letters in opposition of the Application, and one mail return. The Applicant is requesting a 25 ft. variance from the 30 ft. front yard setback requirement for a proposed detached garage.

Ms. Cheryl Shahadi was sworn in to give testimony for the Application.

Ms. Shahadi testified that the property was originally purchased in 2006 as a vacation home; that she became a widow in 2022 bringing a change in circumstances; that this property will now be her only home; that the existing trailer is a 1965 Starlet in very poor condition and will be replaced with a new model; that the property is the shape of an obtuse triangle and consists of approximately 10,000 square feet; that, because of the unique shape of the lot, a smaller home had to be placed than what was originally proposed; that the home will occupy the center of the property; that the garage will have to be placed to the side which is narrow; that due to the shape of the property there is no possible way to replace the old manufactured home and shed with a new home and garage to conform to the Zoning Code; that the shape of the lot was not created by the Applicant but was created when the subdivision was created many years ago; that the new home and garage will make the neighborhood more aesthetically pleasing; that the new garage will provide storage and the property will be cleaned up; that the garage will be somewhat near the neighbor to the left and the neighbor

has an existing structure with a six foot fence; that the 24 ft. x 24 ft. garage is the minimum size to store the cars, lawn and yard equipment; that the unenclosed steps will project into the setback up to the allowable 5 ft.; that the property is improved by a well and sewer; and that neighbors are ecstatic with the proposal.

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

Mr. Chorman closed the public hearing.

Mr. Hastings moved to approve the application for Case No. 13000 for the requested variance, pending final written decision, for the following reasons:

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

Motion by Mr. Hastings, seconded by Dr. Carson, carried unanimously that the **variance be granted for the reasons stated.** Motion carried 4 – 0.

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

Case No. 13001 – Finley Jones seeks a special use exception for an accessory dwelling unit on a lot with an area of less than 10,000 square feet (Sections 115-40 of the Sussex County Zoning Code). The property is located on the southeast side of Duffy Street and northeast of Burton Avenue. 911 Address: Lot 31 Duffy Street, Rehoboth Beach. Zoning District: GR. Tax Map: 334-13.19-32.01

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received two letters in support of the Application, eight letters in opposition of the application, and two mail returns. The Applicant is requesting a special use exception for an accessory dwelling unit on a lot less than 10,000 sq. ft.

Mr. Kevin Burdette, Mr. Finley Jones, III, and Mr. Dennis Russum were sworn in to give testimony for the Application.

Mr. Burdette testified that the Applicant Mr. Finley Jones, Jr., contacted the Planning and Zoning office prior to purchasing the property to ask if an accessory dwelling unit (“ADU”) would

be a permitted use; that he was informed that it could be with the application for a garage / studio apartment; that, on June 25, 2024, the County Council adopted Ordinance No. 3027 regarding ADUs which states that the minimum lot size is 10,000 square feet; that the proposed ADU will be located behind the main house and will be enclosed by a 7 ft. tall vinyl privacy fence; that there will be a gated entrance with a designated parking area and a bicycle parking area; that there will be 3 parking spaces on the property; that there will be a walkway to the ADU; that the main house will be 26'8" and the ADU will be 16'7" and will not be visible from Duffy Street; that there is an easement dedicated to Sussex County Engineering Department for waste water in the front of the property; that the Applicant will meet County Codes regarding the management of stormwater; that there are several ADUs within the immediate neighborhood on lots smaller than 10,000 square feet; that steps and HVAC for the ADU will be interior to the lot; that there is no homeowners association in the neighborhood; that the ADU will not substantially affect adversely towards the use of adjacent and neighboring properties; that the pavers around the pool will likely be permeable; that the property has sandy soil; that the ADU will have 2 bedrooms; that there are no issues with flooding on the property; and that the parking will be similar to parking within the subdivision.

Mr. Finley Jones, III, referred to the Site Plan and testified to the location of the parking spaces on the Plan. Mr. Jones testified that there will be 1 parking space for the ADU and 3 parking spaces for the dwelling.

Ms. Laura Matthew was sworn in to give testimony in opposition to the Application.

Ms. Matthew submitted a petition in opposition signed by thirty-one (31) neighbors.

Ms. Matthew testified that she has lived on Norwood Street for seven years; that there are drainage issues in this area, there are no storm grates or drainage ponds; that the addresses on the two support letters are from person who do not live in this community; that parking is an issue; that these two houses are rentals and the existing rental properties in the area can accommodate 12 – 18 people which in turn have up to nine cars parking on the narrow streets; that there are other multi-family homes in the area: that one, in particular, is rented out to J-1 students who use bicycles and not cars; that there are two land trust homes on one lot for two full-time residents; that there are two other lots but both are over 10,000 square feet; and that this will set a dangerous precedent in this area.

Ms. Jennifer Noel was sworn in to give testimony in opposition to the Application.

Ms. Noel testified that she owns the property immediately adjacent to this property; that it was a club in West Rehoboth from the 1940s and it will be renovated to become her home; that the building is at grade level and there is only 4 ft. from the edge of the building to the property line; that she is concerned with runoff from the Jones property onto her property; that she anticipates that, because Mr. Finley will only reside here a few months out of the year, these houses will become rentals which will increase the traffic and cause parking issues; that the County Administrator indicated in the press release that the purpose of the ADU Ordinance was to help provide flexibility

and affordable housing; and that this will not help with affordable housing.

Ms. Brenda Milbourne was sworn in to give testimony in opposition to the Application.

Ms. Milbourne testified that she lives on Duffy Street, one lot down from the subject property; that, when it floods, she cannot get out of her street; that she has concerns about children's safety; that there is no drainage; and that adding these two houses would create more problems with flooding.

Mr. Burdette testified that there is a seven foot setback on the south side of the property next to Ms. Noel's property with only four feet on Ms. Noel's side gives a total of 11 ft.; that the parking spots are 30 ft. deep which is enough to accommodate 2 cars in each space so the property could actually accommodate a total of six cars; that Sussex County Conservation District has rules in place so that you cannot allow runoff from this property onto neighboring properties; and that the Applicant will design the stormwater to handling it on the lot.

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

Mr. Chorman closed the public hearing.

Mr. Williamson moved to approve the application Case No. 13001 for the requested special use exception, pending final written decision, because the special use exception will not substantially affect adversely the uses of neighboring and adjacent properties.

Motion by Mr. Williamson, seconded by Mr. Hastings, carried unanimously that the **special use exception be granted for the reasons stated.** Motion carried 4 – 0.

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

ADDITIONAL BUSINESS

Meeting adjourned at 11:05 p.m.