

**MINUTES OF THE MEETING OF THE
CITY OF SEAFORD BOARD OF ADJUSTMENT AND APPEALS**

December 4, 2019

12:00 p.m.

Mayor David Genshaw called the meeting to order with Charles Anderson, City Manager and City Solicitor, Daniel Griffith in attendance. Mike Bailey, Building Official was also present.

Mayor Genshaw called for a motion to approve the minutes of the Board of Adjustment meeting held on September 4, 2019. City Manager, Charles Anderson, made a motion to approve the minutes. City Solicitor, Daniel Griffith, seconded the motion; motion so passed with all present voting in favor.

Mayor Genshaw then turned the meeting over to Mike Bailey, Building Official.

Mr. Bailey presented **Case No. V-08-19: Harim Millsboro**, located on Shipley Street, Tax Map and Parcel 531-13.10-19.00, seeking a variance for Showtime Power sports, producer of refurbished motorcycle and ATV parts to operate out of the existing building.

Mr. Bailey called Travis Stuck, representing Showtime Powersports, forward to present the information on the company.

Mr. Stuck stated that Showtime Powersports was established in 2007 and is located in the small town of Yoe, which is located in southern York County Pennsylvania. At Showtime Powersports they provide quality used motorcycle and ATV parts to people all over the world via the internet and also customers have the ability to pick up parts in person, however that is not as common. Showtime Powersports currently employs eleven individuals at the Pennsylvania location. In addition to a competitive hourly wage, employees enjoy weekly performance bonuses that have been averaging in the \$150-\$200 range per week. The company has found that there is a direct correlation between the numbers of employees to the volume of sales. Mr. Stuck stated that they are excited to continue to grow and be able to create a new business and job opportunities within Seaford.

Mr. Stuck also stated that the uniqueness of the business is that it draws customers to the warehouse from hundreds of miles away and also customers who travel from neighboring states such as NY, NJ, DE, OH, MD, and VA. While these customers are in town, they also spend money with local businesses on lodging, food, fuel and more which is great in supporting other local businesses in the community. As the business has grown, Showtime Powersports is in need of more space; they currently operate out of a 36,000 sq. ft. warehouse. Unlike a typical “junk yard” they house all of the inventory indoors which help keeps the used parts in good condition, and gives a presentable appearance to the business.

Mr. Stuck touched on the fact that some concerns from the public may be in correlation to the noise that they believe may occur. However, the majority of work is indoors, including the disassembling of bikes and or ATV’s. The tools that are used are general tools that can be found in someone’s garage, including, drills, wrenches, impact guns, etc. They also do not drive any motorcycles down the streets, as the bikes come in wrecked or with a blown engine. The only large equipment that is used is a forklift and that is to remove the bikes from the trailers when they are shipped in. He also presented pictures of the current facility to the Board members and public of the current warehouse that is in use.

Mayor Genshaw solicited any questions from the Board members;

City Solicitor, Dan Griffith, asked what the hours of operation intend to be.

Mr. Stuck stated Monday through Friday, 9 a.m. to 5 p.m.

Mr. Griffith also asked what kind of vehicle and or truck traffic is to be expected.

Mr. Stuck stated that engines are picked up by freight and that usually occurs once a day and possibly a return, however that does not occur very often. A pickup truck with trailer delivers the bikes 2-3 times a week.

Mr. Griffith asked if Mr. Stuck understood how the property had been used in the past.

Mr. Stuck stated yes; as a chicken hatchery.

Mr. Griffith then asked if Mr. Stuck was able to compare how the intended use of the property would be compared to how it has been used historically, in terms of noise, traffic, etc.

Mr. Stuck stated he was not fully aware of how the chicken hatchery business operates. However, he could imagine that trucks were in and out multiple times throughout the day for chickens, waste, etc., which could cause noise. However, at their current location, they have never had a noise complaint and wouldn't say that it would be more noise than the hatchery had. The building has block walls which would conceal a lot of the noise that would be made inside the building and once again, the tools used are common tools that residents would have in their garage.

Mr. Griffith asked if the operations would be any different than the current ones in York County.

Mr. Stuck stated no. Slight changes may be made to the process of operations, but the overall work will be the same.

Mr. Griffith asked if they had received any complaints for the current location.

Mr. Stuck stated no. They have not had any complaints related to noise, etc. However, they do have people that appreciate that they can come to the warehouse pick up the part they need at a discounted price and get their bike back on the road.

Mayor Genshaw asked when receiving the bikes, if the fluids are already removed from them or removed once they arrive.

Mr. Stuck stated that majority of the bikes come from salvage auctions so they are wrecked and not all of them have been drained. However, the bikes are drained and prepped when they arrive. All fluids, gas, oil, antifreeze; are all drained appropriately and put in sealed containers and then picked up by another company.

City Manager, Charles Anderson, asked what the number of employees, when in max operation, will this site accommodate.

Mr. Stuck stated that at the current location, max would be approximately 15. Mr. Stuck stated he believes 11-15 employees is a good amount of people to have staffed at the location once up and running.

Mr. Anderson stated that Mr. Stuck mentioned previously that there is no outdoor storage or operations other than the forklift and delivery of the bikes; is this correct.

Mr. Stuck stated that, that was correct and the only vehicles outside would be a company vehicle and employee vehicles.

Mr. Anderson confirmed that the location would be open to the public.

Mr. Stuck stated yes, although it is not ideal to have customers come into the shop. It slows down production and work, however it's not customer friendly to not be open to the public. Also, because of freight shipping costs being so high it allows the opportunity for customers to pick up the orders; primarily by appointment.

Mayor Genshaw asked to see a picture from the location; he asked if there was any signage at the current location.

Mr. Stuck stated there is not technically a sign. There is a 6'x4' Showtime Powersports decal in the window, but that is the only form of signage.

Mr. Anderson asked if they will rely on any roads or areas adjacent to the property for parking.

Mr. Stuck stated no. All of the parking will be on site and he does not foresee there ever being an issue with parking.

Mayor Genshaw asked if Mr. Stuck had any concerns with the daycare center being in front of that property and how this may impact the business.

Mr. Stuck stated no. They have discussed the daycare center and do not see it impacting their business; everything is conducted inside and the doors stay shut. There is not a fence at the property, however, if the daycare center was concerned about that that may be something that would later be put in to appease them. They want to be good neighbors to surrounding areas.

Mr. Anderson stated that the property has a few other buildings on site, including a house along Rust Street. He asked if they will take possession of the additional buildings and what will become of them.

Mr. Stuck stated that he believes the existing structures will remain. The one may be fixed up and used for storage, possibly a spot to rent out as storage to someone if needed. Another building on the property is in rough shape, uncertain what will become of that, but may be torn down and there is also what looks like a maintenance building, which may be used to store the company vehicle.

Mayor Genshaw solicited any questions or comments from the public;

Mr. James King, City Councilman and resident of Seaford, Willey St., came forward. Mr. King stated that he received several different questions and or concerns from residents within the community; one being environmental concerns. Mr. King stated that Mr. Stuck had touched on containing different fluids, however there are concerns with leakage coming from oil pans, gas, draining the bikes, etc.; what is preventing it and or capturing the waste product.

Mr. Stuck stated that while draining fluids they use an oil pan. They also use a secondary method underneath, as he explained similar to a “cookie tray”; a 5’x5’ pan of sorts that sits underneath the bike and the oil pan. From that, any liquid that may have leaked is properly disposed of.

Mr. Anderson confirmed for his understanding, that a primary and secondary source is used for containment of any hazardous material whenever the work is being done.

Mr. Stuck stated yes.

Mr. Dan Solow, property owner and resident of 522 Pennsylvania Ave., asked if the whole operation is moving from the current location to Seaford.

Mr. Stuck stated no. The business will continue to be open in Pennsylvania and this will be a secondary location.

Mr. Solow also asked about the maintenance of the property that will be purchased, ex: grass, stone, etc. and who would be responsible for maintaining these things. He also touched on his concerns with the increase of traffic on Rust Street that may occur.

Mr. Stuck stated that the traffic would include a postal truck and pickup truck with trailer once daily and a possible freight truck to pick up engines up to three times a week based on the current location and its operations. He also stated that they are responsible for maintenance of the property; the current location is a little over one acre and is maintained by them for grass cutting, snow removal, etc. and they have hired an outside company to handle the landscaping.

Mrs. Susan Allen, property owner and resident of 227 Nylon Blvd., asked what happens with the debris and/or parts that are not sold.

Mr. Stuck stated that everything is recycled; plastics get recycled, metals get taken to a local scrap yard.

Mrs. Allen questioned if this would include additional trucks coming in to haul the recyclables away.

Mr. Stuck stated yes, however, on average a truck will come to pick up the scraps once a year, twice a year at max because almost everything is used from the bikes.

Mrs. Allen confirmed that there would be at least one large dumpster on the property for these recyclables.

Mr. Stuck stated yes. The one at the current location is inside, to keep the scrap items from being stolen, so the same idea would take place here.

Mr. Bill Pfaff, Director of Economic and Development for Sussex County, stated that he had been working with the organization for quite some time and visited the location in York, Pa. He stated that everything at that facility is maintained inside, they have a recycling program and they capture the fluids, gas, oil, etc. appropriately as Mr. Stuck explained. He also mentioned that they allow the employees to use the gas as part of a reward basis and incentive for them and this helps with it being reused. He believes that Showtime Powersports is a great opportunity for Seaford and thinks that they will do well.

Mr. Robert Allen, property owner and soon to be resident of 111 Nylon Blvd., stated that he recently started building a home on Nylon Blvd. He is concerned that the customers who are buying the motorcycle parts are motorcycle drivers and will be causing a lot of noise, etc. when picking up parts and/or coming to and from the business. He is opposed to anything that will deprive him from living peacefully and quietly and stated that if Mr. Stuck can promise him this won't be the case, he is not opposed to them operating out of that property.

Mr. Stuck stated that as previously mentioned, they do not drive the bikes. The bikes that come in are either wrecked and don't run or have a blown engine and won't run. Mr. Stuck gave an example; If 20 motorcycles came in that week, 5 may be able to be started, but that would be it. They would then be disassembled

and used for parts. They have also never received a noise complaint from any neighbors, businesses or residents at their current location.

Mr. Dan Cannon, property owner and resident of 411 Nylon Blvd., asked what the zoning of the current location in Pa. is, ex: residential neighborhood or industrial park.

Mr. Stuck stated that Yoe is a small town inside of York. To the right of the property is a scrap company, a glass company behind the property, a granite company is across from the property and houses surround the boundaries of the mentioned properties. Mr. Stuck stated that the property is zoned commercial, however there are more residential dwellings than commercial.

Mr. Cannon asked if Mr. Stuck knows that the property in Seaford, is zoned R-1 residential low density.

Mr. Stuck stated yes.

Mr. Cannon confirmed that is why they are seeking a variance; because they are not a single-family dwelling, low density, residential operation.

Mr. Stuck stated yes, he's aware that it is a residential location, however he is just here representing the company as the manager, but does not handle the back end of things, but the hatchery also had trucks in and out and that this business is solely run from indoors.

Mr. Cannon asked if Mr. Stuck felt that this location would be the best fit for the business and not the Industrial Park.

Mr. Stuck stated the owner of Showtime Powersports has a house locally and loves the area and wanted to bring the operations and job opportunities to the area. Again, he mentioned he is just representing the company.

Mr. Cannon asked if a Phase 1 Environmental assessment was done on the property.

Mr. Stuck stated he is aware there are procedures that need to be followed for the purchase of the property and to occupy the location, different requirements will need to be met prior to this happening.

Mr. Cannon asked again if a Phase 1 Environmental assessment will take place on the property. He questioned this because the hatchery business had been in place for 7-8 decades, including paint, carcinogenic pesticides, etc.

Mr. Bill Pfaff, came forward to answer Mr. Cannon's question. Mr. Pfaff stated that he has been working on the project with the intended buyer and that a Phase 1 Environmental assessment will be done. However, it will be completed once the variance for the zoning is approved, because of the cost association with the assessment being done. If the Phase 1 is completed and it comes back that they must enter a Phase 2, they will need to do so, if the potential buyers (Showtime Powersports) chooses to move forward. He included that the Phase 1 Environment assessment is being completed by the purchaser.

Mr. Cannon asked if the assessment should happen prior to the variance request.

Mr. Pfaff stated that the assessment is very expensive and the purchaser did not want to spend the money on that if the zoning did not get approved.

Mr. Cannon then confirmed that if the zoning variance was approved, that the Phase 1 Environmental assessment will be done.

Mr. Pfaff stated yes.

Mr. James King stated, that as everyone is aware, the property is currently zoned residential; which occurred before any zoning ordinances were put in place. Mr. King stated that an important question to ask, is if this business accommodates the City's residents. Some examples of businesses that have been through the process of getting a variance for their businesses include the daycare center, doctor offices, and a school, all of which fit great into a residential community. He commented that he is in full support of economic growth, new job opportunities within the community and the prevention of another building sitting empty. However, he is uncertain that this location is the best fit for this type of business. Mr. King stated that the Industrial Park seemed better fitting for the type of operation that this business would be doing and also feels that the City should continue to work with the buyer of the property in finding a property that would better fit their needs and the needs of the residents that have concerns of this type of business coming to a residential area.

Mrs. Toni Dickerson, representing Little Sprouts child care, stated that her concerns with the business moving into that location is the close proximity to the

child care center. She stated from the back door and playground of the child care center to the referenced property is 34 feet. She also mentioned that Little Sprouts, being a child care facility, does extremely strict background checks and that is the main concern with any business that may come there. She also stated that while the hatchery was in business, there was no noise concerns with them, however there would be an occasional truck that would turn down the “no truck access” road; so possibly looking into replacing the signage with a larger one, etc. to help resolve that issue may be something to keep on the radar.

Mr. Stuck stated that he understood Mrs. Dickerson’s concerns with the background check. He is the manager of the current location and runs background checks on every employee that works there and assured her there would be no issues with having background checks on employees done. He also stated that the work will be handled on the opposite side of the building that Mrs. Dickerson was referring to.

Mr. Brian Hildreth, CFO of Allen Harim & Harim Millsboro, owners of the property, came forward to speak. Mr. Hildreth stated that he is very excited about Showtime Powersports coming to this location. Mr. Hildreth met with CJ, potential buyer and the owner of the business and Travis, at the location to get a better understanding of the business, as he too was concerned about a motorcycle parts business coming to the location. Mr. Hildreth touched on the traffic that the hatchery had, as well as the parking being sufficient for 30-40 employees and the waste causing an odor; all of which Showtime Powersports will not have. He stated after meeting with CJ and Travis and learning the operations of the business, he feels that they will be a great addition to Seaford and this location.

Mr. King asked if the variance that is being requested does not get approved; would the purchase of this property by Showtime Powersports fall through.

Mr. Hildreth stated yes, that is correct. The variance would have to be approved to have the commercial operation in a residential zone. Mr. Hildreth also noted that it would not be good for the building to continue to sit; as they have already had reports of vandalism possibly occurring.

Mr. Anderson stated that for clarification the building falls under a non-conforming use. Once the operation of a non-conforming use ceases to exist for a period of more than one year, than the code says it technically reverts back to the zone in which it is in. Showtime Powersports needs a variance for this specific use because it is different than a hatchery. He stated that had they sold to another

business that would run a hatchery from this location, they would not need a variance or to come through a BOA hearing.

Mr. Anderson also asked that in prior use of the building, the hatchery, what the hours of operation were.

Mr. Hildreth stated they operated 24 hours a day, 365 days a year.

Mr. Anderson also wanted to confirm that Mr. Hildreth stated previously, that traffic included several trips per day from trucks, etc.

Mr. Hildreth stated yes.

Mr. Anderson asked about the trailer that was parked in the back of the property that caught waste; if that was taken to recycling daily. He also noted that, that is considered outside storage of sorts.

Mr. Hildreth stated yes.

Mr. Anderson questioned if they were open to the public for retail sales for a period of time.

Mr. Hildreth stated that there was a company store in one of the buildings, however that was before his time with the company.

Mr. Anderson also asked if the hatchery had any excessive noise.

Mr. Hildreth stated that inside, the noise was contained, and any outside noise would come from the tractor trailers, traffic, and the onsite generator that would run weekly.

Mr. Cannon asked what the last date of operation for the hatchery was.

Mr. Anderson stated that the City received a letter in April 2019 in regards to the hatchery closing. Mr. Hildreth noted that the operations were phased out during the move to the new hatchery.

Mrs. Janice Conaway, property owner and resident of 513 Rust St., stated that her main concerns are with the additional truck traffic. Since the daycare has opened the traffic on Rust St. has increased. She stated that in her opinion truck deliveries

should come from Shipley Street, to Pennsylvania and then to Phillips or Willey Street because Rust Street is not accommodating for the tractor trailers.

Mr. Anderson stated to confirm what Mrs. Conaway is speaking of, her suggestion would be for trucks to come to Shipley Street and then turn on Pennsylvania Avenue and then enter via Phillips or Willey Street.

Mrs. Conaway stated yes, that was correct.

Mr. Anderson stated, that in the past, they have encouraged drivers to use Shipley Street as it is on the truck route; our ordinance states that Shipley Street is one of the primary truck routes. But because Allen's was a local delivery, they could use any street that provided direct access to the facility, as we worked with them over the past on several occasions.

Mr. Cannon asked Mr. Hildreth if they would consider having the Environmental Assessment done for the potential buyers.

Mr. Hildreth stated that it is normally the buyer's responsibility to have that done and that is the route that they are taking for it to be completed.

Mr. Cannon also asked, if Allen Harim were to move their business, hypothetically, to Seaford, would they seek the referenced property to put a hatchery in.

Mr. Hildreth stated that if it was an operational hatchery, he supposes that they would.

Mr. Cannon asked Mr. Hildreth if the company's actual name is Allen Harim.

Mr. Hildreth stated the owner of the property is Harim Millsboro LLC. Allen Harim is the operational name.

Mr. Cannon stated he was unsure what Mr. Hildreth meant by operational name.

Mr. Hildreth stated that the name Allen Harim is the operational name, meaning the name for operations of the hatchery, feed mills, etc. is Allen Harim and Harim Millsboro is the owner of the property.

Mrs. Allen asked why Harim Millsboro cannot be found on Google.

Mr. Hildreth stated he is unsure, however, Harim Millsboro LLC, is the name on all of the tax records.

Mr. Cannon came forward to present a speech including a memorandum email; he read the following:

As the BOA members are aware, this situation is an extremely unique set of circumstances regarding the property. The hatchery was in operation longer than before there was any zoning; the initial zoning, non-conforming use, but was grandfathered into an R-1 low density residential area. Essentially this grossly non-conforming use was a large commercial operation. This case should not be treated as a typical/ normal variance request. The request is not asking to use the location as a church, operate a charter school, a seasonal garden center, or asking to encroach on setbacks on a property; very different. For these reasons and others, there is great concern of not notifying the public about this hearing by the Board of Adjustment properly.

I sent an email to the Mayor on 11/26 requesting a place on the City Council agenda to voice this concern and propose remedies. Unfortunately, the request was rejected by the Mayor and City Solicitor by email on 11/26; claiming there would be insufficient public notice under the FOIA. However, Mr. Griffith's email did cause him to take a closer look at the public notice and found that Mr. Griffith was correct in stating that the 11/14 public notice does meet the minimum FOIA legal requirements by specifying location, date and time for this meeting. The notice had been posted in a timely fashion and no problem in meeting the seven-day minimum as required. In an 11/27 memorandum to the Mayor, ethical considerations for this public notice to clearly ensure an informed public about this exceptional case should have been made. As members of the BOA, as for the FOIA statute, 29 Del. C. 10002(a), an agenda is not limited to general statements; in other words, additional information beyond the minimum could have been included on the agenda, and it was needed. So, in my 11/27 response to the Mayor, I made several suggestions to improve the clarity of this meeting's agenda. Among those, I believe it would have been helpful to be shown that this property was currently zoned R-1 and previously known as Allen's hatchery, to clear up problems with the identification. You already know that Allen's hatchery was operating as a non-conforming commercial business in a residential zone. Showtime Powersports needs a non-conforming variance to operate a motorcycle/ATV salvage operation on this site. The requested variance applied for is for a business much different than the hatchery operation grandfathered on this site so many years ago. Another

business, Little Sprouts, was established in a similar site by a BOA action on 9/5/18. As this business and similar business are permitted in an R-1 zone by special use exception by City code. Business like, Showtime Powersports does not have a special exception in the Code. Lastly, holding a Board of Adjustment meeting at a time when more people are likely to attend would have been helpful. The public, including myself, needs BOA, Mayor and City Council and non-elected City leaders to do more than just furnish the legally required minimum information about a salvage company trying to set up a business in a residential neighborhood. But while all the public notice did meet some of the FOIA requirements, examining the whole thing, I believe there are serious insufficiencies in the notice and therefore problems in making any decisions at this meeting. I call them deficiencies to meet FOIA requirements. In the 11/26 email from Mr. Griffith, he reacted to my request concerning lack of public notice about this meeting as an FOIA complaint. While I initially did not raise questions about the compliance, I do now. First, there are several FOIA compliance deficiencies. The agenda has a serious deficiency. The FOIA requires an agenda to clearly state major issues expected to be discussed. The agenda reads; The BOA will make a determination for a “variance to operate out of an existing building”. There is no detail concerning the non-conforming nature of the request in an R-1 low density residential zone. I consider that to be crucial information. Second, the notice failed to properly identify the property under consideration, there was no street address, no public notice displayed at the property location, as Mr. Griffith stated there would be. Considering what has happened here in the last 3-4 months regarding this property, including, the 9/5 BOA hearing for a non-conforming use, Little Sprouts, one of the three existing parcels and then the 9/6 Planning and Zoning approval of a subdivision of the three (3) parcels into eleven (11) parcels without identification. It’s virtually impossible to determine what parcel is being referenced. As far as I’m concerned, I was unaware that there was a non-public Harim Millsboro; without the identifier Allen Harim that this public notice was insufficient in identifying the petitioner. I went around the property and identified at least a dozen signs that say Allen Harim, but not Harim Millsboro. That is what should have been on the agenda and public notice. Of course, it can be argued that the deficient information is not required, but it is a contrast of past practices of this board; a street address is given in all other actions that were taken this year. If there was question about who the petitioner was, which there should be, on 9/4 the Board clarified who the petitioner was. Ex: BC Investments aka Walmart. I would ask why the same wasn’t done for this notice. Additional beyond the minimal information has been supplied in many of the board’s public notices and agendas. I would suggest that you look very closely at the 3/13/19 hearing in which a variance was approved for Walmart and went into some detail; ex: variance for off-

street parking, property located at East side of Sussex Hwy., physical address, listed current zoning, purpose to accommodate the seasonal garden center to be located in the parking lot, etc. There was a lot of additional information given that wasn't required under the FOIA but helped people understand what was going on. Why wasn't that done here is my question. Mr. Anderson signed the 11/14 public notice, containing not only deficiencies of ethically needed information but also legal deficiencies under the FOIA. Clearly this meeting of the Board has not been properly advertised, therefore any action taken by the Board on this request for a non-conforming variance would not only be unethical but illegal in my opinion. In conclusion, based on the evidence I have presented, the public has been systematically deprived of information about this pending request for a variance from the BOA. The public has the right to know and then react to a proposal of a grossly non-conforming salvage business to operate in a residential neighborhood, next door to a child care facility; how is this helpful. The public also has the right to know that the grandfathered non-conforming use of the hatchery property expires one year after the conclusion of the hatchery operations, which occurred sometime in April. What happens? It would revert back to an R-1 low density residential as it should. Finally, the public has the right to know that buried in the City code, Article 6, division 1, section 15. 100, should the Board of Adjustment approve of a non-conforming variance, it will be permanent and cannot be changed to a less restrictive classification, ex: R-1 low density residential. Such a move would cement a commercial operation in an inappropriate and undesirable part in our residential neighborhood. We have an Industrial Park, let's use it. I highly object to this flawed process as I tried to address this manner. Thank you for your attention and I'm glad to answer any questions.

Mr. Griffith thanked Mr. Cannon for his time preparing and voicing the remarks made. He stated that the BOA will make a decision on the variance application, and that Mr. Cannon's concerns about freedom of information, compliance and other concerns are in the record. The emails will be in the record, but the intention is not to respond to them today on the record, but told Mr. Cannon that if he had a complaint, he can contact the Department of Justice.

Mr. Cannon stated that he hopes Mr. Griffith understands that when the Board asks to do things outside of the scope of the FOIA; ex: extra information, for other decisions but not this one, which is a major one, it is a problem.

Mr. Griffith stated that he understood and thanked Mr. Cannon.

Mrs. Susan Allen, property owner of 227 Nylon Blvd., came forward to present a speech she prepared; she read the following:

My family owned the Allen hatchery property before Harim. As the last Allen family member to live within City limits and after much thought and soul searching, I made a decision to extend this appeal to the City of Seaford. Approximately 100 years ago, my grandparents Nellie and Clarence Allen purchased the farm land; on a hand shake. On this purchased land Allen's hatchery found a home. As the town of Seaford grew, the community grew up around the farm operation. This occurred long before any formal zoning regulation existed and later the hatchery was permitted to exist through a grand-fathered process. It was only because of this process that the hatchery was able to operate in an R-1 low density residential area. For decades, family members built and lived in homes adjacent to the hatchery. As a family, we were very much aware how monumental it was to remain in operation in a residential area. We proved this by living very close by, myself included, and handling any issue that needed attention. In the early years of the last decade, our family went through a series of catastrophic events; when four of the six family members who ran the business suddenly died. Sadly, this and other factors forced us to relinquish the business. The property was purchased by Harim, and legally negotiating using Allen as part of the name during the transaction; and is now known as Allen Harim. Allen Harim has continued to do business ethically and in a community minded way that the Allen family adhered to. They have continually given back to the community of Delmarva in programs such as Bless our Children. Through the years my family would occasionally discuss the grandfathering of the business. More than a few times I heard that the grandfathering was the reason the hatchery was able to exist in exception of the R-1 zoning and only because no zoning existed when the hatchery was established. Never the less, if the hatchery was ever sold it could only exist as a hatchery and never anything else commercial as it would automatically revert to its default zoning, R-1 use; this was my understanding of the deal that the City of Seaford and my grandparents had in place many decades ago. This variance seems to be a work around of the decade old contract, which in my opinion directly goes against the intent and the agreed upon meaning of the grandfathered arrangement. My family always honored; a deal is a deal. If I could take this opportunity to step back for a moment, it is now common knowledge that when the Allen Harim executive office was sold the same variance process was applied to allow a daycare operation move into that building. I heard about these proceedings and did not object because a preschool is exactly what is residentially friendly. It serves a community and is an asset to the neighborhood, seems like an appropriate use of the variance procedure. The hatchery building use is very different. The variance

request is typically used for setbacks, extending a carport and occasionally has been used to place a residentially friendly business such as, an office and the referenced preschool, in an existing or previous residential property. However, this current use of the variance procedure, in my opinion, is a misuse of the intended purpose. The scope and impact of this decision is huge in comparison to asking for a carport enlargement or converting a house to an office or school. I would hope any reasonable person would agree that there is nothing residentially friendly about a salvage operation and certainly not one that would unlikely be a draw for new families and residentially friendly businesses to flock to Seaford. Plus, the hatchery building was never a residence, hence in my opinion a misuse in this procedure. I am certain that we can all agree that this issue is atypical and out of the ordinary. Furthermore, to allow commercial operations in a residential area is not a small decision with limited impact, but rather one of monumental effect. No matter what is decided this decision will set a precedent that could potentially affect our entire City at some point in time. Therefore, in my opinion, it is unconscionable that no more than a handful of people were contacted regarding this hearing; only notifying people within 300 ft. of the property and posting a sign or two might be in compliance with an ordinary procedure but in this case I believe it is unethical and short sided. I would be willing to make a bet that if people knew about what was being discussed today that the consensus would be that this operation has no place in a residential area, much less next to a preschool. Showtime Powersports, by their own description on their website, a salvage yard. They are, in the City's words, a producer of refurbished motorcycle and ATV parts; a salvage yard, being indoor or outdoor is a hard commercial business appropriately located in a commercial area. I hear that the City of Seaford Industrial Park is available and would be more than suitable for this type of business and would certainly welcome them in this type of venue. We now have Little Sprouts preschool on Shipley Street in the executive office, which greatly benefits the neighborhood and brand new housing construction on Nylon Blvd. which will also enhance the neighborhood as well as many well maintained homes in the area, another credit to the community. We need a residentially friendly entity to enhance rather than detract to our area. Arguing the salvage operation would be better than the hatchery is a moot point, for three reasons; one the hatchery operation was grandfathered, it is a special exception. Special exceptions are not a standard and should therefore never be used as standard for comparison. The hatchery was not typically residentially friendly business and the salvage yard is not a residentially friendly business; more or less friendly is not the point. Both are/ were not good, the only difference was the hatchery was grandfathered, the salvage yard was not; two wrongs don't make a right. If you'd like to make a fair comparison, compare it to the preschool that does have the right to exist. More importantly if allowed, Showtime Powersports, could

be located next to this positive entity exposing any number of hazards, noise, traffic, etc. to a very young clientele. Two, the new business does not automatically have the grandfather right, the zoning is and has always been R-1, and again in my opinion, a simple variance procedure is inappropriate to use in this particular decision. Three, and most importantly, if you allow a commercial operation in an R-1 zone, why have any zoning laws in effect; if one can essentially change the zoning or at least its effect at will, by using the variance process. Indeed, it gives one great cause, but not in a good way. We, as a community have the opportunity not to squander this opportunity to improve Seaford. This less than ideal paragon now only existing because of an anomaly, should not be used as a standard for future growth. I believe first and for most, we need more time to discuss options. I firmly believe, Allen Harim would very much want to exit Seaford in a positive way. In my experience they are good people. My thoughts are that Allen Harim management might not have been totally informed of the minute details of the grandfather arrangement made by my grandparents and the City of Seaford. Much less, how we long term residents feel about this essentially iron clad deal. My family always conducted business with integrity and deal was always a deal. The City management should accept that an initial deal is binding and the property must revert to R-1 in the purest sense with the possible exception of a soft commercial entity, such as a school or an office. May I take a moment to plant a seed for serious thought; through the years, all of the Allen families have made significant contributions to the community and beyond; including major contributions to Nanticoke Hospital, both in building the new wing and the one-million-dollar gift to create the cancer treatment center. The Allen's financed and constructed the Cheer Center for Meals on Wheels, also underwrote the creation of the Nellie G. Allen curiosity shop, where second hand articles are sold and go to charity on a continuous basis. There was a one-million-dollar gift to University of Delaware for agriculture, sizeable donations to the Seaford Public Library; just to name a few. I would like to suggest that Allen Harim in leaving a legacy of good will to our community, entertain gifting the property to a charity, non-profit or school of their choosing. Possibly and quite logically to the new school next door for community use. A building of this size could be transformed into a space our community could benefit from and many in town could utilize. Such use as indoor play yard, before and after school care, or a work space similar to KSI to provide jobs for the handicapped, perhaps a space to Easter Seals to offer services to the disabled or elderly. Our community naturally wants people to come to Seaford to live and contribute positively. Therefore, it is imperative for us as a community to make judicious and thoughtful choices for our existing assets. We have a lovely golf course across the street from this property, in addition there is still a number of building lots for sale in the immediate area, many of which have not sold yet;

why is this, if the area is so desirable, my guess is people are waiting to see what will happen with the hatchery building before making any move with the lots. If this commercial salvage operation was allowed, do you think the lots would remain desirable, would people want to build in the area, would we have possibly more R-1 variance requests, and more extreme commercial business requests; I sincerely hope not. At the beginning, I said, I was reluctant to make this appeal. I love this town, even though I did not grow up here, I have grown to love it and it is a nice place to live. But things are changing and we now have to try harder to stay visible and desirable. We as a community and especially our leaders and City government, as well as business owners, need to have a strong, clear vision about where we want to go and constantly update the long-range plan and not take a quick way out. I implore you as a committee to step back, take a moment and at the very least postpone any decision. Ask the owners of Allen Harim how they feel about preserving and creating a positive legacy and good will for this community as they exit Seaford. Solicit plans and suggestions for this non-conforming property, not just a few. Ask for suggestions that would support our long-term goals of improving Seaford and encouraging growth of beneficial businesses within our City limits. I'd like to stress that I sincerely hope that any response to my plea will be respectful and understand that I am not challenging any particular legal protocol that may or may not have been adhered to; I am not a lawyer. But rather, this message is intended for the thoughtful, intelligent, residents and business people of our town who want what is best for our community. It is a message that includes a reminder that to be truly innovative and possible to entertain philanthropy, creativity and employ out of the box thinking, while being forever mindful that our paths to growth must be ethical, honest and community minded. Finally, sometimes living for a while has its benefits. One thing I have learned along the way is that if we stay open minded, keep our ears open and really listen, we can always learn something new; even from the most humble. Often, it may take more time to do what is right and ethical but it's always worth it in the end. Incorporating integrity, inclusion and charity while shutting manipulation and possible exclusion out, is always the right thing to do. I hope that we all can remember that; especially when making impactful and far reaching decisions for our community's future, such as the one we are dealing with right now. Hopefully, we can hold off any final decision, take some time and use the time for serious good faith discussion of this issue, that this issue desperately needs and deserves. I believe the integrity and the ultimate direction of our community growth depends on it. Thank you for your time.

Mayor Genshaw asked if anyone had any further questions or comments.

Mrs. Conaway asked if the referenced property could be subdivided into smaller lots and build multiple houses on the property at that point.

Mr. Anderson stated yes as long as minimal zoning size was met, houses could be built on the lots.

Mrs. Conaway stated that if that were to take place, no one has any control over who could build and/or move onto that property. Whereas Showtime Powersports is purchasing the property and operating out of the property. They will be making use of a structure that already exists. If complaints do occur, ex: noise, the City could work with them to address that.

Mr. Anderson, stated yes, that is correct.

Mr. Stuck stated that he would like to state that this is a unique business, and he believes 100 % that this business is a safer, quieter business than the previous hatchery. When he went to the property, there was an odor, and that will not occur. There will also be no motorcycles or ATV's going up and down the roads. The building would need a significant amount of work for anything like a daycare, etc. to make use of it. Whereas our business can use what is existing and turn it into a functional space for what we need. It will bring jobs to area and allow Seaford economic growth. You will not know a motorcycle shop is in the location because everything is secluded indoors.

Mrs. Allen asked why they would not be interested in moving to the Industrial Park.

Mr. Stuck stated they did look at the Industrial Park. However, it would not be cost effective to move to the Industrial Park; if that was the only option, the business would not be expanded to Seaford. The hatchery building will need work and money put into it to make it operational, however it is still more cost effective than a location in the Industrial Park.

Mr. Cannon asked if the building needed \$100,000 worth of repair, environmental work, etc., would that still be cost effective for the business.

Mr. Stuck stated, they are aware the building is old and needs work. Any business that moves into it, will have to invest money into the building to make it operational.

Mayor Genshaw solicited any further questions or comments; there were none.

Mr. Griffith stated that for the deliberations, he thought it may be helpful for the public and a refresher for the Board to go over what the factors we consider are legally required for this type of application. There are two types of variance applications, including, area variance, where the applicant requests greater area or different type of area than what it is zoned for. This is a use variance; the two legal standards are different. On a use variance, the standard we apply is whether or not it would be an “unnecessary hardship” (term used by court) for the applicant to comply with the terms of the zoning ordinance. So, the ultimate determination, from deliberation, will be whether or not it would in fact be an unnecessary hardship for the applicant to comply with the current zoning. If that is determined, we are required, the applicant has rights, to grant the variance application. If we do not believe it would be an unnecessary hardship, we would vote against the variance application. There are factors that a BOA considers in determining whether or not an application presents an unnecessary hardship. In considering whether or not this is a hardship, we consider the land can yield a reasonable return, if it is used only for the permitted use (currently zoned use). We consider whether or not a need for a variance is due to a unique circumstance, the proposed use will alter the essential character of surrounding area and also whether the benefit to the applicant is greater than the harm to the surrounding neighbor. So, these factors are the ones considered for an application of a use variance and ultimately determine whether or not if there would be unnecessary hardship. These are provided by the law for deliberations.

Mr. Griffith stated that having heard the applicant and having heard the public comments, he has given thought to the record that has been presented before the Board and public. In applying the mentioned legal factors, understanding that an applicant for a variance and the applicant satisfies these factors we consider under the law, that applicant is entitled to a use variance. He stated that he has balanced the factors that were presented and believes there is an economic benefit to the locality and persuaded by the applicants testimony as well as the testimony of others that the impact to the surrounding community will not be greater than the harm that would be to the applicant if we denied the request. As mentioned before, the applicant is entitled to a use variance if he satisfies that factors that we have discussed. So, I believe for those reasons that the applicant has satisfied those factors, my vote will be in favor of granting the use variance that he has outlined in applying those factors.

Mr. Cannon asked if Mr. Griffith had the factors that were discussed from precedent.

Mr. Griffith stated yes. He would give Mr. Cannon a copy of a case from 2018 that includes the opinion of the Superior Court of Sussex County, upon the conclusion of the hearing.

Mr. Cannon asked if the court established the factors.

Mr. Griffith stated it was established before then, but it outlines what the factors are.

Mr. Griffith stated that he votes in favor of granting the use variance request.

Mr. Anderson stated that in granting the request, he would suggest that the hours of operation be limited to Monday through Friday 9a.m. to 5 p.m. as presented. He asked Mr. Stuck if these created any hardship to be confined to those hours of operation.

Mr. Stuck stated no.

Mr. Anderson also wanted to confirm that there will be no outdoor storage associated with the operation.

Mr. Stuck stated no.

Mr. Anderson stated that given those stipulations to the variance, he will also vote in favor of granting the use variance request.

Mayor Genshaw stated that for the record, concerns of traffic flow from the public, was brought to the Boards attention and that they should do their due diligence in following up that the truck traffic is adhering to and coming from the correct place. He also stated that he believes this business will be good neighbors with the daycare and provide any buffer that would be necessary to being good neighbors. With that being said, he also stated he is in favor of the request.

Mayor Genshaw called for a motion. City Solicitor Griffith made a motion to approve the variance request. Manager Charles Anderson, seconded the motion. Motion so passed with all present voting in favor.

Decision

City Solicitor Daniel Griffith stated that the application has been granted subject to the conditions that Mr. Anderson mentioned.

City Manager Anderson seconded the motion and the motion was unanimously approved dated January _____, 2020.

With no further business to discuss; Mayor Genshaw called for a motion to adjourn the regular meeting of the Board of Adjustment and Appeals. City Solicitor, Daniel Griffith made a motion to adjourn. City Manager Charles Anderson seconded the motion; the regular meeting of Board of Adjustment and Appeals was adjourned at 1:45 p.m.

Daniel A. Griffith, City Solicitor

David Genshaw, Mayor

Charles D. Anderson, City Manager