

## MINUTES OF JANUARY 6, 2014

The regular meeting of the Sussex County Board of Adjustment was held on Monday, January 6, 2014, at 7:00 p.m. in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, and Mr. Norman Rickard, with James Sharp – Assistant County Attorney, and staff members, Ms. Melissa Thibodeau – Zoning Inspector II, and Mrs. Jennifer Norwood – Recording Secretary.

Motion by Mr. Rickard, seconded by Mr. Hudson, and carried unanimously to approve the Revised Agenda, with Case No. 11296 – AT&T, under Old Business, being moved to the beginning of the Agenda. Motion carried 4 – 0.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously to move the approval of the Minutes and Finding of Facts for November 18, 2013 and December 9, 2013 hearings to the Agenda for the January 27, 2014 to allow more time for review. Motion carried 4 – 0.

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

### **OLD BUSINESS**

**Case No. 11296 – AT&T** – east of Route 1 (Coastal Highway) 100 feet north of Jefferson Bridge Road (Road 361-A). (Tax Map I.D. 1-34-17.07-191.00)

A special use exception for a telecommunications tower.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously to table this case until January 27, 2014 due to the absence of Mr. Workman. Motion carried 4 – 0.

The vote by roll call; Mr. Rickard – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

### **PUBLIC HEARINGS**

**Case No. 11309 – Ralph Kissinger and Joyce Kissinger** – north of Route 54 (Lighthouse Road) and being east of Laws Point Road 2,250 feet north of Swann Drive, and being Lot 56 Block E, Swann Keys Subdivision. (Tax Map I.D. 5-33-12.16-275.00)

An application for variances from the front yard and side yard setback requirements.

Ms. Thibodeau presented the case. Ralph Kissinger and Joyce Kissinger were sworn in to testify about the Application. Tim Willard, Esquire, presented the case to the Board on behalf of the Applicants and submitted exhibits for the Board to review.

Mr. Willard stated that the Applicants are requesting a variance of 4.5 feet from the ten (10) feet front yard setback requirement for a proposed attached garage, a variance of five (5) feet from the ten (10) feet side yard setback requirement for a proposed dwelling and attached garage, and a variance of 7.10 feet from the ten (10) feet side yard setback requirement for a proposed HVAC unit; that the Applicants have owned the Property since 1972; that the Applicants intend to build a stick-built house on the lot; that the proposed dwelling will measure twenty-four (24) feet by eighty (80) feet; that the lot measures forty (40) feet by ninety-six (96) feet; that the lot is narrow and has a lagoon bordering the rear of the lot; that the size of the lot makes it unique; that the community was set up for singlewide mobile homes; that the Property cannot otherwise be developed; that the variances are necessary to enable the reasonable use of the Property; that the proposed dwelling will not alter the character of the neighborhood; that there have been numerous variances approved in the community; that the Applicants plan to have an elevator installed in the attached garage; that the difficulty was not created by the Applicants because the original developer created the lot sizes; that the community has evolved from a singlewide manufactured home community; that most of the manufactured homes in the community have been replaced with similar dwellings; that the variances sought are the minimum variances necessary to afford relief; and that the Applicants plan to live on the Property permanently after retirement. Mr. and Mrs. Kissinger, under oath, confirmed the statements made by Mr. Willard.

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

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11309 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is forty (40) feet wide making it unique;
2. The variances are necessary to enable reasonable use of the Property;
3. The difficulty was not created by the Applicants;
4. The variances will not alter the essential character of the neighborhood;
5. The variances sought are the minimum variances necessary to afford relief; and
6. The variances requested represent the least modification of the regulations at issue.

Motion by Mr. Rickard, seconded by Mr. Mills, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Rickard – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11310 – Zea, LLC** – northeast corner of Bunting Avenue and West Virginia Avenue and 450 feet east of Route One (Coastal Highway) and being Lot 1 E in the unincorporated section of Fenwick Island. (Tax Map I.D. 1-34-23.16-329.00)

An application for variances from the side yard, rear yard and corner side yard setback requirements.

Ms. Thibodeau presented the case.

Richard Berl, Esquire, presented the case to the Board on behalf of the Applicant and submitted exhibits for the Board to review. Mr. Berl stated that the Applicant is requesting a variance of 2.5 feet from the ten (10) feet north side yard setback requirement, a variance of 7.6 feet from the ten (10) feet rear yard setback requirement, and a variance of 5.8 feet from the ten (10) feet corner side yard setback requirement for a proposed dwelling; that the Applicant is a family limited liability company owned by the Adamopoulos family; that the existing non-conforming dwelling is a very small cottage which is in need of modernization and enlargement; that the existing dwelling has been on the site since 1970; that the dwelling is barely visible over the dune line; that the neighboring structures are much larger than the existing dwelling; that the Property is a very small lot as it is only 5,000 square-feet in size; that the Property is zoned C-1 Commercial, which allows for duplexes and condominiums; that the Property is in the unincorporated area near Fenwick Island; that the proposed dwelling will be in keeping with character of the neighborhood; that the proposed dwelling will not encroach any further into the required setbacks than the existing dwelling; that the Property only has a neighbor to the north as it is bordered by the Atlantic Ocean, Bunting Avenue, and West Virginia Avenue on the other sides; that West Virginia Avenue is a pedestrian access and not an actual road; that the Property is unique due to its size; that the proposed dwelling will be a single family dwelling; that the building envelope is much smaller than even the existing structure; that the dwelling cannot be modernized without variances being granted; that the difficulty was not created by the Applicant; that the variances will not alter the character of the neighborhood as there are larger structures in the area; that it is unlikely that the proposed dwelling will have any effect on West Virginia Avenue; that the modern, larger dwellings are worth more and the proposed dwelling will have no negative effect on property values; that there will be no negative impact on the public welfare; that the variances will enable reasonable use of the Property; and that the variances requested are the minimum variances necessary to afford relief.

Chris Adamopoulos was sworn in to testify about the Application and confirmed the statements made by Mr. Berl.

Mr. Adamopoulos testified that the existing dwelling is approximately 1,200 square-feet; that the proposed dwelling will be approximately 3,000 to 4,000 square-feet in size; that the proposed dwelling is comparable to other structures in the area; and that the proposed dwelling will be expanding up from the footprint of the existing building rather than further into the setback

areas though the proposed dwelling will be expanding towards Bunting Avenue within the front yard setback area.

Rob Witsil, Esquire, stated that he is representing Janice White and Raymond White who own Unit B of the neighboring property to the north of the Property and Robert DeMajistre and Patricia DeMajistre who own Unit A of the neighboring property to the north of the Property. Mr. Witsil stated that his clients oppose the Application. Mr. Witsil submitted exhibits for the Board to review.

Raymond White was sworn in to testify in opposition to the Application.

Mr. Witsil stated that West Virginia Avenue is unimproved and that the Director of Planning & Zoning has determined that it is a pedestrian access and not a roadway thereby providing the Applicant with additional space to build its dwelling; that the neighbors have no objection to the Applicant rebuilding the dwelling and being enlarged but the Applicant could construct a dwelling in compliance with the Sussex County Code; that the Applicant has a thirty (30) feet by sixty (60) feet buildable area and there is no reason an approximate 5,400 square-foot, three (3) story dwelling could not be built in conformity, which is a significantly larger house; that the neighboring structures are three (3) story tall structures; that there are no unique circumstances affecting the Property; that the Property is a fifty (50) feet by one-hundred (100) feet square lot similar to other lots in the area; that the DNREC dune line is outside the building area; that the existing dwelling is a pre-existing, non-conforming dwelling and may remain; that the variance requirements do not allow for the expansion of a non-conforming dwelling or demolition and reconstruction of a dwelling which is non-conforming to setback requirements; that the Applicant has created the hardship; that there have not been any other variances granted in the area on the ocean side; that the opposition feels the thirty (30) feet front yard setback requirement and the ten (10) feet side yard setback requirements give the Applicant more than enough room to build without variances; that the proposed dwelling will impact the uniformity of the neighborhood; that the proposed dwelling will obstruct the neighbors' views and adversely affect the property values and enjoyment the neighboring property; that the Property is in a flood zone and it is important to allow space between dwellings for flood waters to pass and for emergency vehicles to operate; that the difficulty is being created by the Applicant; and that there are several surrounding property owners in opposition of the Application.

Mr. White testified that most of the dwellings on the ocean side of the neighborhood are largely built to similar sizes; that there are no variances needed for his Property; that the southeast views from his house would be totally obstructed by the proposed dwelling; and that the proposed dwelling will affect his property values.

Mr. Witsil stated that the Supreme Court in *Verleysen* decided that an applicant cannot create his own hardship and be afforded the right to a variance; that the Sussex County Code allows for reasonable setbacks; that the Applicant has created its own hardship and that the house is too

large for the lot; that three (3) other neighbors have contacted him about their objections to the proposed variances; and that the neighbors were not notified of the hearing in a timely manner.

Melissa Thibodeau stated that there have been other variances granted in the area.

Mr. White, under oath, confirmed the statements made by Mr. Witsil.

In rebuttal, Mr. Berl, submitted pictures showing encroachments to the Applicant's property from the neighboring property. Mr. Berl stated that the evidence supports the granting of the variances.

In rebuttal, Mr. Witsil, stated that the encroachment from Mr. White's property is from a hot tub which is moveable.

Mr. White testified that he relied on the hot tub installer to make sure that it was installed with all proper permits and that he can and will have it moved into compliance.

The Board found that no parties appeared in support of the Application.

The Board found that two (2) parties appeared in opposition to the Application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until January 27, 2014**. Motion carried 4 – 0.

The vote by roll call; Mr. Rickard – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11311 – Donald Cohee & Sharon Cohee** – southerly corner of Road 312 (River Road) and Point View Road near Oak Orchard and north of Indian River Bay. (Tax Map I.D. 2-34-34.10-77.00)

An application for a variance from the side yard setback requirement.

Mr. Sharp advised the Board that his firm has represented the Applicants in the past and that if the Board had any questions, those questions should be directed to Vince Robertson, Esquire.

Ms.Thibodeau presented the case. Pam McDonald was sworn in and testified requesting a variance of five (5) feet from the ten (10) feet side yard setback requirement for a proposed detached garage; that the Applicants intend to demolish their current garage, which is over thirty (30) years old; that the Applicants seek to replace the garage with a new detached garage; the existing garage impedes on the side and rear yard setback requirements; that the lot is very unique

as it is a combined lot of 2.5 lots; that the existing boat ramp and semi-circular driveway do not allow the proposed garage to be built elsewhere on the Property; that the proposed detached garage will measure twenty-four (24) feet by thirty (30) feet, will be constructed like a pole building, and will match the existing dwelling; that there is an existing sewer cleanout line that exists on the Property as well and would be very costly to relocate the cleanout line; that the location of the cleanout line limits the placement options of the garage; that the neighbors support the Application; that the requested front yard variances are not needed because the front yard of the Property is along the shoreline and the rear yard of the Property is along River Road; that the proposed garage will meet the rear yard setback requirements; that the front yard and rear yard setback requirements were determined by the Planning and Zoning Commission; that the proposed garage will meet the rear and side yard setback requirements; that the variance will enable reasonable use of the Property; that the Applicants require more storage which is the reason they seek a larger garage; that the Applicants cannot place the garage on the other side of the Property as it would affect access to the house; that the existing garage encroaches into the setback areas and was placed there prior to the Applicants assuming ownership of the Property; that the garage will not alter the character of the neighborhood; that the neighboring property has a garage which impedes the setback requirements as well; that the difficulty has not been created by the Applicants; that the garage will not impair the uses of neighboring properties; that the variance is the least modification of the regulation at issue; and that the variance requested is the minimum variance to afford relief.

Ms. Thibodeaux advised the Board that the waterside of the Property is the front of the Property and the side of the Property along River Road is the rear of the Property.

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

Ms. Thibodeau stated that the Office of Planning and Zoning received one (1) letter in support of the Application.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11311 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique;
2. The variance is necessary to enable reasonable use of the Property;
3. The existing garage is small and the Applicants need more space;
4. The difficulty was not created by the Applicants;
5. The Applicants did not create the lot or locate the sewer cleanout line;
6. The variance will not alter the essential character of the neighborhood; and
7. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Rickard – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11312 – Darlene Gounaris & Richard Gounaris** – east of Road 275 (Plantation Road) and being northwest of Dot Sparrow Drive and southeast of Mute Swann Lane 325 feet southwest of Peacock Place and being Lot 6 in Summercrest Subdivision. (Tax Map I.D. 3-34-12.00-776.00)

An application for a variance from the front yard setback requirement.

Ms. Thibodeau presented the case. Pam McDonald was sworn in and testified requesting a variance of nine (9) feet from the thirty (30) feet front yard setback requirement for a proposed screen porch and deck. Ms. McDonald testified that the Applicants live in Arizona and could not be present for the hearing; that she is a contractor representing the Applicants; that the Property was developed by Anderson Homes; that the Property is a through lot with two (2) front yards; that the Applicants were not aware of the setback requirements when they purchased the Property; that the Applicants were informed that they could construct a deck or porch on the rear of their dwelling; that the proposed screen porch will measure twelve (12) feet by twenty-two (22) feet with an adjacent deck measuring six (6) feet by twelve (12) feet; that there have been similar variances granted on the same street; that the Property is unique since it is a through lot; that the Property could only be developed in strict conformity with the Sussex County Zoning Code if the sunroom was only three (3) feet deep; that the variance will enable reasonable use of the Property; that the difficulty was not created by the Applicants; that the Property was not listed with the County as being a through lot for approximately two (2) years; that the variance will not alter the character of the neighborhood; that the variance requested is the minimum variance to afford relief; that neighboring lots will not be impaired by the proposed variance; that the variance will not interfere with any common areas or traffic; that the rear of the Property is lined with trees between the dwelling and the street; that a previous application for the same variance was denied due to miscommunication between the Applicants and builder; that due to a death in the Applicants' family the builder was not aware they were unable to attend the hearing. Ms. McDonald submitted fourteen (14) letters in support of the Application.

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

Ms. Thibodeau stated that the Office of Planning and Zoning received fourteen (14) letters in support of the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11312 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique since it is a narrow lot;
2. The variance is necessary to enable reasonable use of the Property;

3. The difficulty was not created by the Applicants;
4. The variance will not alter the essential character of the neighborhood;
5. The variance sought is the minimum variance necessary to afford relief; and
6. The variance is the least modification of the regulation at issue.

Motion by Mr. Rickard, seconded by Mr. Hudson, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, and Mr. Callaway – yea.

**Case No. 11313 – Vincent James Genco III** – north of Route 54 (Lighthouse Road) and being west of Canvasback Road 880 feet north of Swann Drive and also being Lot 90 Block D of Swann Keys Subdivision. (Tax Map I.D. 5-33-12.16-333.00)

An application for a variance from the side yard setback requirement.

Ms. Thibodeau presented the case. Vincent Genco and Donald Esch were sworn in and testified requesting a variance of five (5) feet from the ten (10) feet side yard setback requirement for a proposed dwelling.

Mr. Esch testified that the existing unit is a travel trailer in Swann Keys which is over thirty (30) years old; that the Applicant seeks to place a new structure on the Property; that the Property is unique because it is narrow and only allows for a twenty (20) feet wide structure; that the proposed dwelling will measure twenty-four (24) feet by forty-five (45) feet; that the Applicant plans to live here after retirement; that having first floor living space is important; that the variance will enable reasonable use of the Property; that the difficulty was not created by the Applicant; that the variance will not alter the character of the neighborhood; that the existing dwelling is less attractive and the proposed dwelling is consistent with other dwellings in the neighborhood; that similar variances have been granted in the development; that the variance will not be detrimental to public welfare; that the variance requested is the minimum variance to afford relief; that the HVAC unit will be placed on the north side of the Property and within the setback requirements; and that there will be no other structures encroaching on the Property.

The Board found that one (1) party appeared in support of the Application.

The Board found that no parties appeared in opposition to the Application.

Mr. Hudson stated that he would move that the Board recommend approval of Variance Application No. 11313 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique;
2. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
3. The difficulty was not created by the Applicant;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Rickard –yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11314 – Neareen Weston** – north of Road 544 (Hearn’s Pond Road) approximately 210 feet east of Road 546 (Conrail Road). (Tax Map I.D. 3-31-3.00-127.04)

An application for a special use exception to operate a daycare facility.

Ms. Thibodeau presented the case. Neareen Weston was sworn in and testified requesting a special use exception to operate a daycare facility; that she plans to expand her existing daycare from six (6) children to nine (9) children; that her hours of operation are 6:30 a.m. to 9:30 p.m., Monday through Friday; that the ages of the children are eight (8) weeks old to seven (7) years old; that there has not been, nor will there be, any adverse effect to the surrounding or adjacent properties; that there is a vacant dwelling and transfer station in the neighborhood; that there is adequate parking on the Property for the daycare; that the backyard will be enclosed by a fence; and that she will obtain all required State agency approvals.

The Board found that one (1) party appeared in support of the Application.

The Board found that no parties appeared in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Special Use Exception Application No. 11314 for the requested special use exception based on the record made at the public hearing because the use does not substantially affect adversely the uses of adjacent and neighboring properties.

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

The vote by roll call; Mr. Rickard – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11315 – Bryton Homes** – east of Route 5 (Harbeson Road) and being located at the northwest corner of Meadow Creek Drive and Riverwalk Drive, being Lot 1 Phase 3 of Beaver Creek Subdivision. (Tax Map I.D. 2-35-30.00-498.00)

An application for a special use exception for temporary offsite parking.

Ms. Thibodeau presented the case. Dan Smith was sworn in and testified requesting a special use exception for temporary offsite parking; that the temporary parking lot will consist of approximately seven (7) parking spaces; that the parking will service the customers visiting the model home; that the parking lot will keep parked cars off the street in the development; that the Applicant has approximately 115 lots left to sell in the development; that the parking lot will not be needed once the lots and model home are sold; that the use will not substantially adversely affect the surrounding and adjacent properties; that he hopes to sell all of the lots within five (5) years; and that the Applicant is aware that it will need to apply for an extension if the Applicant still needs the parking lot after the five (5) year period expires.

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

Mr. Mills stated that he would move that the Board recommend approval of Special Use Exception No. 11315 for the requested special use exception based on the record made at the public hearing because the use does not substantially affect adversely the uses of adjacent and neighboring properties.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the special use exception be **granted for a period of five (5) years and for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Rickard – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11316 – Arlan R. Christ & Patricia Christ** – south of Road 312 (River Road) 524 feet west of Road 297 (Oak Orchard Road). (Tax Map I.D. 2-34-34.12-65.00)

An application for variances from the side yard and front yard setback requirements.

Ms. Thibodeau presented the case. Doug Annand was sworn in and testified requesting a variance of 5.9 feet from the ten (10) feet side yard setback requirement and a variance of 0.7 feet from the forty (40) feet front yard setback requirement for an existing dwelling, and a variance of forty (40) feet from the forty (40) feet front yard setback requirement, and a variance of five (5) feet from the five (5) feet side yard setback requirement for an existing shed.

Mr. Annand testified that he is a land surveyor and represents the Applicants; that the dwelling was constructed in the 1960s; that the Applicants purchased the Property in 1992; that the dwelling sits low to the ground with a first floor elevation; that the Applicants must raise the dwelling to bring the existing dwelling into compliance with the flood zone requirements; that the Property is prone to flooding; that additional landings and steps must be constructed since the house is being elevated; that there will be no changes to the existing dwelling or deck; that the Applicants do not plan to make any changes to the shed; and that he thinks a rear yard variance may be necessary as well.

Ms. Thibodeau stated that an open deck may encroach into the rear yard setback so a rear yard variance is not necessary.

Mr. Annand testified that the shed has also existed on the Property since the 1960s. Mr. Annand submitted a picture of the shed. Mr. Annand testified that all structures on the Property likely pre-date 1960.

Ms. Thibodeau stated that the shed appears to pre-date the Sussex County Zoning Code.

Mr. Christ was sworn in and testified that the area is prone to flooding and neighbors have raised their homes; and that the proposal will help with flood insurances and property values.

Mr. Annand testified that the flooding to the Property makes the Property unique; that the variances will enable reasonable use of the Property; that the difficulty has not been created by the Applicants; that the variances will not alter the character of the neighborhood; that other dwellings in the area have had to be raised; and that the variances requested are the minimum variances to afford relief.

The Board found that one (1) party appeared in support of the Application.

The Board found that no parties appeared in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11316 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to the flooding problems in the neighborhood;
2. The Property cannot be developed in strict conformity with the Sussex County Zoning Code;
3. The variances are necessary to enable reasonable use of the Property;
4. The difficulty was not created by the Applicants;
5. The variances will not alter the essential character of the neighborhood; and
6. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Rickard – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11317 – Melvin R. Henninger & Dilys Henninger** – south of Road 312 (River Road) 573 feet west of Road 297 (Oak Orchard Road). (Tax Map I.D. 2-34-34.12-64.00)

An application for variances from the side yard, rear yard, and front yard setback requirements.

Ms. Thibodeau presented the case. Melvin Henninger and Doug Annand were sworn in and testified requesting a variance of 17 feet from the forty (40) feet front yard setback requirement for a proposed deck and steps, a variance of 8.7 feet from the ten (10) feet side yard setback requirement for the existing dwelling, a variance of 8.4 feet from the ten (10) feet side yard setback requirement for an existing dwelling, and a variance of 0.8 feet from the ten (10) feet rear yard setback requirement for a proposed deck and steps.

Mr. Annand testified that the Applicants are his clients; that the Applicants need to raise their dwelling; that flooding is a problem in the neighborhood; that the dwelling must be raised five (5) feet to meet flood zone requirements; that the dwelling is a one-story dwelling and it sits low to the ground; that the proposed decks and steps are needed to access the dwelling after it is raised; that the existing dwelling is an older, non-conforming structure; that the dwelling was built prior to the enactment of the Sussex County Zoning Code; that there will be no further additions to the existing dwelling other than the proposed steps and decks; that the flooding and size of the lot make the Property unique; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Ordinance; that the difficulty was not created by the Applicants; that the variances will not alter the essential character of the neighborhood; that other homes in the neighborhood have also been elevated; and that the variances requested are the minimum variances to necessary afford relief.

Mr. Henninger testified that the fence shown on the survey is not owned by the Applicants.

The Board found that two (2) parties appeared in support of the Application.

The Board found that no parties appeared in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11317 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The flooding to the Property makes it unique;
2. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
3. The variances are necessary to enable reasonable use of the Property
4. The difficulty was not created by the Applicants;
5. The variances will not alter the essential character of the neighborhood; and
6. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Rickard – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Meeting Adjourned 9:15 p.m.**