

MINUTES OF MAY 1, 2017

The regular meeting of the Sussex County Board of Adjustment was held on Monday, May 1, 2017, at 7:00 p.m. in the County Council Chambers, 2 The Circle, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Dale Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Norman Rickard, and Mr. Brent Workman. Also in attendance were Mr. James Sharp – Assistant County Attorney, and staff members Mrs. Jennifer Walls – Planning Manager, and Ms. Christin Headley – Recording Secretary.

The Pledge of Allegiance was led by Mr. Callaway.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to remove Case No. 11959 – Robert Paterniti from the public hearings and approve the Revised Agenda as circulated and amended. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously to approve the Minutes and Finding of Facts for March 20, 2017. Motion carried 5 – 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. 11943 – Hope Wilson Lavachia - seeks variances from the rear yard setback requirement, the minimum road frontage requirement, and the minimum lot size requirement (Sections 115-24A (1) and 115-185F of the Sussex County Zoning Code). The property is located on the northwest side of Country Club Road (Road 273) approximately 1,027 feet southwest of Windsor Road. 911 Address: 513 & 511 Country Club Road, Rehoboth Beach. Zoning District: AR-1. Tax Map No.: 3-34-19.00-8.00 & 8.01.

Mrs. Walls presented the case which has been tabled since April 17, 2017.

The Board discussed the case.

Mr. Mills stated that the only opposition to this Application also has less than the required road frontage therefore he does not agree with the opposition; that the variances requested are the minimum variances to afford relief; that there is a hardship present with the Applicant intending to divide the parcels to give to her daughters; and that the variances requested are consistent with the character of the neighborhood.

Mr. Hudson stated that he agrees with Mr. Mills and that granting the variances will improve the present situation.

Mr. Callaway, Mr. Rickard, and Mr. Workman all agree with the statements made by Mr.

Mills and Mr. Hudson.

After review of the record and testimony presented, Mr. Mills moved to approve Variance Application No. 11943 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 its size and the development of the Property containing two dwellings;
2. There is no possibility the Property can be developed in strict conformity with the Sussex County Zoning Ordinance;
3. The variances are necessary to enable reasonable use of the Property;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 5 – 0.

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

Case No. 11944 – Donovan – Smith MHP, LLC - seeks variances from the separation requirement between units (Section 115-172G (7) of the Sussex County Zoning Code). The property is located on the southeast side of Cooper Circle, approximately 309 feet southwest of Road 263. 911 Address: 34290 Cooper Circle, Lewes. Zoning District: AR-1. Tax Map No.: 3-35-8.14-43.00-55401.

Mrs. Walls presented the case which has been tabled since April 17, 2017.

The Board discussed the case.

Mr. Rickard stated that a manufactured home was placed that is not going to fit that lot; that there is no hardship as the problem was created by the Applicant; and that he believes the Park is trying to place too many manufactured homes in a small area.

Mr. Workman stated that the manufactured home placed was a smaller model.

Mr. Mills stated that, when the Applicant was asked how long the homes have been there, he explained they had been there some time due to the intentions of placing the manufactured home prior to filing all variance applications at once and that he is concerned about the entire development.

Mr. Hudson stated that he has concerns there will be continued issues moving forward.

Mr. Rickard stated that the Park needs to be redesigned and brought the Park up to date.

Mr. Callaway stated that he believes the Applicant did not exhaust all the options as there were larger vacant lots available.

Mr. Mills stated that, if the homes placed on lots G-8 and G-10 were not 20 feet wide, a variance would not be needed.

After review of the record and the testimony presented, Mr. Mills moved to deny Variance Application No. 11944 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The variances are not necessary to enable reasonable use of the Property;
2. The Applicant could have avoided the difficulty by not placing larger homes on neighboring lots in the Park;
3. The Property can be developed in strict conformity with the Sussex County Zoning Ordinance; and
4. The opposition believed the variances will alter the essential character of the neighborhood.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the variances be **denied for the reasons stated**. Motion carried 5 – 0.

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

Case No. 11945 – Donovan – Smith MHP, LLC - seeks variances from the separation requirement between units (Section 115-172G (7) and 115-172G (14) of the Sussex County Zoning Code). The property is located on the northwest side of Grandview Street, approximately 770 feet northwest of Central Avenue. 911 Address: 16307 Grandview Street, Lewes. Zoning District: AR-1. Tax Map No.: 3-35-8.14-43.00-55406.

Mrs. Walls presented the case which has been tabled since April 17, 2017.

The Board discussed the case.

Mr. Mills stated that, if the Applicant had not allowed the neighboring properties to add accessory structures, the variances could have been lessened or not needed.

Mr. Rickard stated that the problem has been created by the Applicant.

Mr. Hudson stated that he agrees with Mr. Mills.

Mr. Workman stated that he believes the Applicant is creating its own difficulty.

After review of the record and the testimony presented, Mr. Rickard moved to deny Variance Application No. 11945 for the requested variances based on the record made at the public hearing because the exceptional practical difficulty has been created by the Applicant.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variances be **denied for the reasons stated**. Motion carried 5 – 0.

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

Case No. 11946 – Donovan – Smith MHP, LLC - seeks variances from the separation requirement between units (Section 115-172G (7) and 115-172G (13) of the Sussex County Zoning Code). The property is located on the north side of Seneca Street, approximately 624 feet northwest of Central Avenue. 911 Address: 16335 Seneca Street, Lewes. Zoning District: AR-1. Tax Map No.: 3-35-8.14-43.00-55408.

Mrs. Walls presented the case which has been tabled since April 17, 2017.

The Board discussed the case.

Mr. Rickard stated that the manufactured homes are being placed without lot lines and that the Applicant is creating the problem.

Mr. Workman stated that he believes the Applicant is creating its own difficulty.

Mr. Hudson stated that the request is not as drastic as the previous requests and that more planning for the future will lessen the requests for variances.

Mr. Mills stated that, if the shed was moved, the Application could be approved because then the Applicant would be asking for the minimum to afford relief and that the opposition insists that, if the variances are granted, the home will alter the essential character of the neighborhood.

After review of the record and the testimony presented, Mr. Rickard moved to deny Variance Application No. 11946 for the requested variances based on the record made at the public hearing because the exceptional practical difficulty has been created by the Applicant.

Motion by Mr. Rickard, seconded by Mr. Mills, and carried unanimously that the variances be **denied for the reasons stated**. Motion carried 5 – 0.

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

PUBLIC HEARINGS

Case No. 11952 – JMH Investments LLC - seeks variances from the front yard setback requirement and the minimum square footage requirement (Sections 115-82A, 115-82B, 115-Attachment 2:1, and 115-188 of the Sussex County Zoning Code). The property is located approximately 232 feet east of State Route 1, on the south side of Lighthouse Road in Fenwick Island. 911 Address: None Available. Zoning District: C-1. Tax Map No.: 1-34-23.20-156.00 & 157.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application.

Jay Yoder was sworn in to testify about the Application. James Fuqua, Esquire, presented the case on behalf of the Applicant and submitted exhibits for the Board to review including photographs, site plans, floor layout and elevations, tax map showing lots in the area which have received variances, minutes from previous Board meetings, and an email from Alan Kent.

Mr. Fuqua stated that the Applicant is requesting a variance of 2,274 square feet from the 7,270 square feet minimum square footage requirement on Parcel 156, a variance of 2,274 square feet from the 7,270 square feet minimum square footage requirement on Parcel 157, a variance of 21.5 feet from the forty (40) feet front yard setback requirement for a proposed duplex on Parcel 156, a variance of 21.5 feet from the forty (40) feet front yard setback requirement for a proposed duplex on Parcel 157, a variance of 20.3 feet from the forty (40) feet front yard setback requirement for a proposed duplex on Parcel 156, and a variance of 20.3 feet from the forty (40) feet front yard setback requirement for a proposed duplex on Parcel 157.

Mr. Fuqua stated that Jay Yoder is the owner of Yoder & Sons, which is the company constructing the proposed duplexes; that the Property consists of two separate but adjacent lots (Parcels 156 and 157); that the lots are located along Lighthouse Road in unincorporated Fenwick Island; that the lots are vacant and the Applicant intends to construct a duplex on each of the lots; that Lighthouse Road is considered a numbered road because west of Route 1 Lighthouse Road is referred to as Route 54; that the portion of Lighthouse Road east of Route 1 is only a block long and ends near the Atlantic Ocean; that, since Lighthouse Road is a numbered road, the front yard setback requirement is forty (40) feet instead of thirty (30) feet; that the surrounding properties are commercial and residential properties including multi-family uses and condominiums; that the front yard setbacks of the neighboring properties are much less than forty (40) feet; that all other setback requirements will be met as well as all flood regulations; that there are several unique circumstances related to the Property; that the borders of the Town of Fenwick Island do not include the southernmost five (5) or six (6) blocks; that the Property is located outside the Town; that the entire surrounding area is zoned C-1 Commercial; that the area is treated as a mixed-use high density area with businesses and duplexes; that the Board has previously granted over twenty variances to surrounding properties; that the neighborhood consists of older homes and buildings with nonconforming setbacks; that the requested variances are similar to other density variances granted in the area; that a neighboring property has a newly constructed duplex which is similar to the proposed duplexes; that the parcel located directly across the street was granted a variance; that surveyor Alan Kent stated that the average front yard setback for buildings in the area is approximately 18 feet; that, if the setback of the vacant lots were included in this average, the average front yard setback is 24 feet; that the lots are unique due to their small size being less than 5,000 square feet each; that the zoning of the area has created a mixture of uses surrounding the lots; that there is a mix of old and new structures surrounding the area; that the proposed duplexes are a permitted use within the zoning district; that the exceptional practical difficulty was not created by the Applicant; that the Applicant recently acquired the Property; that the proposed duplexes will not alter the essential character of the neighborhood because the duplexes will be consistent with the surrounding mixed use nature; that the variances requested are the minimum variances needed for reasonable use of the Property; and that the duplexes are located closer to the front yard to preserve the available view and to be consistent with neighboring properties.

Mr. Yoder, under oath, affirmed the statements made by Mr. Fuqua.

Mr. Fuqua stated that parking will be available under the proposed duplex units; that no living space will be located under the buildings; that there will be separate utility connections for the duplexes; and that there have been no discussions with neighbors.

Mr. Yoder testified that the HVAC units will be located in the rear of the duplexes but will be within the building envelope; and that the lots were previously as a parking lot.

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

Mr. Mills moved to approve Variance Application No. 11952 for the requested variances based on the record made at the public hearing and for the following reasons:

1. There is no possibility the Property can be developed in strict conformity with the Sussex County Zoning Code;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 5 – 0.

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

Case No. 11953 – Celco Partnership d/b/a Verizon Wireless – Donna K. Harris & Richard H. Harris - seeks a special use exception to place a telecommunication tower (Sections 115-194.2 and 115-23C (17) of the Sussex County Zoning Code). The property is located on the east side of Hitch Pond Road (Road 463) approximately 1,400 feet north of Arvey Road (Route 451). 911 Address: 34401 Hitch Pond Road, Laurel. Zoning District: AR-1. Tax Map No.: 3-32-9.00-4.03.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application.

Sue Manchel, Shawn Sacks, and Andrew Petersohn were sworn in to testify about the Application. John Tracey, Esquire, presented the case on behalf of the Applicants and submitted exhibits for the Board to review.

Mr. Tracey stated that the Applicant is requesting a special use exception to place a telecommunication tower; that the proposed tower will be 145 feet tall with a five (5) feet lightning rod; that the tower will total 150 feet in height; that all setback and lot size requirements will be met according to the Sussex County Zoning Code; that a surrounding fence is proposed as required; that the Property is heavily wooded and the tower will be located within the woods; that neighboring properties are used for poultry farming as well as residential uses; that there are significant gaps in coverage in the area; that the proposed tower will fill gaps in coverage; that the number of cell phone use only households is increasing; that there are no structures within a two mile radius available for

collocation; that the tower complies with Federal Aviation Administration (“FAA”) requirements; that the proposed tower will not interfere with other signals; that the proposed tower meets RF emission requirements set forth by the federal government; that the tower will have no effect on neighboring properties; that the lot is heavily wooded and the tower will have effective screening; that the tower produces no noise or smells; that the tower does not tax resources that would negatively impact the property and surrounding neighbors; and that there are nearby chicken houses.

Mr. Sacks, under oath, affirmed the statements made by Mr. Tracey.

Mr. Petersohn, under oath, affirmed the statements made by Mr. Tracey. Mr. Peterson testified that the tower will serve a dual purpose by filling a gap in coverage while also providing an offload tower for service to a tower nearby; that the tower will provide the Applicant with greater capacity to serve its customers and will cover a larger area; and that the tower will improve cell phone reception in the area.

Mr. Tracey stated that all FAA requirements will be followed regarding lighting; that the FAA generally does not require lighting; and that there was no neighbor feedback.

Darryl Hastings was sworn in and testified with questions to be answered. Mr. Hastings lives nearby. He had questions about the height of the tower and where it will be located. After reviewing the plans, Mr. Hastings had no questions and took no position on the Application.

The Board found that three (3) parties appeared in support of the Application.

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

Mr. Rickard moved to approve Special Use Exception Application No. 11953 for the requested special use exception based on the record made at the public hearing and because the use will not substantially adversely affect the uses of the neighboring properties and the proposed telecommunications tower meets the requirements set forth in Sussex County Code § 115-194.2.

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

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

Case No. 11954 – Destiny LLC - seeks a variance from the height requirement for a structure (Section 115-82C of the Sussex County Zoning Code). The property is located on the northeast side of Parsonage Road (Road 270-A) approximately 31 feet southeast of Route 1. 911 Address: 35863 Parsonage Road, Rehoboth Beach. Zoning District: C-1. Tax Map No.: 3-34-13.00-5.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received three (3) letters in support of the Application and read the letters into the record and received no correspondence in opposition to the Application.

Mark Davidson, Bruce Moneta, Harry Keswani, and Dave Heatwole were sworn in to testify about the Application. David Hutt, Esquire, presented the case on behalf of the Applicant and submitted exhibits for the Board to review.

Mr. Hutt stated that the Applicant is requesting a variance of 4 feet and 10 1/8 inches from the forty-two (42) feet height setback requirement for a proposed hotel; that the Property is located on Parsonage Road near Route 1; that the Property is located near restaurants, multi-family dwellings, and businesses; that the lot consists of 1.3 acres and is zoned C-1 Commercial; that much of the nearby area is zoned commercial as well; that the proposed hotel will be close to retail, restaurants, grocery stores, and other businesses; that the lot is a unique “triangular” shape; that the widest point of the Property is along Parsonage Road and the road frontage is 173 feet; that the rear portion of the lot is not usable; that Mr. Keswani purchased the Property in 2011; that the Property is improved by the 15 room Airport Motel and a single-family dwelling; that, from 1937 to the 1990s, there was rapid development in commercial and multi-family uses within the surrounding area; that there are three story structures nearby; that a variance was requested on October 3, 2016, from the required number of parking spaces for the hotel; that the Applicant plans to demolish the Airport Motel and the dwelling and construct a 60 room Days Inn; that the number of rooms for the hotel has not changed since the 2016 hearing; that the industry standard is for an 80 room hotel and the minimum number of rooms needed to make the hotel economically viable is 60 rooms; that there will be no restaurant, conference room, or meeting centers with the hotel; and that, at the 2016 hearing, Mr. Davidson testified that all setbacks and height requirements would be met but, since that time, changes to the proposed hotel had to be made to accommodate stormwater management on the Property.

Mr. Davidson testified that he is a land use planner with Pennoni & Associates; that, when he previously testified before the Board about this project, the Applicant planned to recess the building into the ground to meet the height requirements; that the minimum requirement for a fire apparatus and loading areas is a 14 feet clearance; that, since the 2016 hearing, additional site engineering has been performed and it has been determined that the stormwater must be contained onsite in chambers under the parking lot; that there will be no off-site drainage of the stormwater; that the building needed to be raised to accommodate the stormwater management; that a significant amount of engineering work has been completed since the 2016 hearing in an effort to avoid the height variance; that the height of the individual floors is the minimum height allowable; that the ideal height of the floors would be taller but the Applicant has reduced the height of the individual floors to minimize the need for the variance; and that the proposed lot has an irregular shape thus the hotel had to be designed in a non-traditional fashion.

Mr. Heatwole testified that he is an engineer on the project; that, initially, the stormwater management included a discharge plan but, after further engineering work was performed, it was discovered that there would be a high probability of flooding without the placement of the stormwater management system in chambers under the parking lot; that the Applicant is required by Sussex Conservation District regulations to contain stormwater from a 100 year storm on site; that underground storage stormwater management is the most costly system; that the soils testing uncovered that there is no discharge point and underground storage of the stormwater was the only option where it will hold stormwater from a 100 year storm event; that the stormwater management chambers will be located underneath the proposed parking lot; that neighboring properties will benefit from the placement of the stormwater management system by reducing runoff from the Property to

those properties; that the stormwater management will not be visible but manholes will be used to access the chambers for maintenance purposes; that the first floor of the proposed building will be shorter than the first floor of the Airport Motel; and that the floors of the hotel were designed at the minimum allowable heights.

Mr. Heatwole affirmed the statements made by Mr. Hutt.

The Board found that four (4) parties appeared in support of the Application.

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

Mr. Rickard moved to approve Variance Application No. 11954 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to its irregular shape;
2. There is no possibility the property can be developed in strict conformity with the Sussex County Zoning Ordinance;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variance will not alter the essential character of the neighborhood;
5. There are other businesses in the area;
6. The stormwater, loading, and fire regulations have created a need to raise the height of the hotel; and
7. The variance sought is the minimum variance necessary to afford relief.

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

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

Case No. 11956 – Jeremy Booros & Stacy Booros - seek variances from the front yard and side yard setback requirements (Section 115-25C of the Sussex County Zoning Code). The property is located on the north side of Hayes Avenue approximately 118 feet west of Jefferson Avenue. 911 Address: 13024 Hayes Avenue, Selbyville. Zoning District: AR-1. Tax Map No.: 5-33-20.19-52.01.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application.

Jeremy Booros sworn in and testified requesting of 5.2 feet from the ten (10) feet side yard setback requirement on the west side for a proposed outside shower, a variance of 4.9 feet from the ten (10) feet side yard setback requirement on the west side for a proposed dwelling, a variance of 5.4 feet from the ten (10) feet side yard setback requirement on the east side for a proposed dwelling, a variance of 3.6 feet from the thirty (30) feet front yard setback requirement for an existing dwelling, a variance of 9.8 feet from the thirty (30) feet front yard setback requirement for a proposed covered porch. Mr. Booros submitted exhibits into the record for the Board to review.

Mr. Booros testified that his family is growing; that the dwelling is small and consists of 1,200 square feet; that the proposed addition will increase the square footage of the current dwelling to accommodate to his family; that the existing dwelling was built in 1978; that the proposed addition does not exceed the existing width of the home; that the home will be within the rear yard setback area; that the Property is 50 feet wide and the home is very narrow; that the proposed addition will include two bedrooms, two bathrooms, and a family room; that the addition will also include a screened porch and outdoor shower; that the Property is unique as it is a narrow lot; that the Property is not developable without having to tear down the existing dwelling and that option is not financially feasible; that the Delaware / Maryland line is Hayes Avenue; that the homes across the street on the Maryland side of Hayes Avenue are townhomes; that the dwelling with addition will not be located any farther back in the rear yard than neighboring homes; that no neighbor views will be hindered by the proposed addition; that two out of the four neighbors have been contacted and they have no complaints; that the home is much smaller than four story homes constructed nearby; that the proposed addition is the minimum to afford relief for their family; that the current dwelling is already a nonconforming structure; that the HVAC system will be housed above the outside shower; that the proposed addition will make the dwelling a total of 2,400 square feet; that the variances requested are the minimum variances necessary to afford relief; that the variances will not alter the essential character of the neighborhood; that the Applicants purchased the Property two years ago; that the neighboring homes encroach as equally or more with larger structures; that there is about eight feet from the edge of paving of Hayes Avenue to the front property line; and that there is flooding in the rear yard.

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

Mr. Mills moved to approve Variance Application No. 11956 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 its size and previous development;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variances will not alter the essential character of the neighborhood; and
5. 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 5 – 0.

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

Case No. 11957 – Samaida Sprogell - seeks a special use exception to operate a daycare facility (Sections 115-40C and 115-210A(3)(e) of the Sussex County Zoning Code). The property is located on the west side of Whispering Lane approximately 300 feet from Hidden Acre Drive within Hidden Acres subdivision. 911 Address: 34314 Whispering Lane, Frankford. Zoning District: GR. Tax Map No.: 1-34-11.00-729.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no

correspondence in support of or in opposition to the Application

Samaida Sprogell was sworn in and testified requesting a special use exception to operate a day care facility.

Ms. Sprogell testified that she has lived on the Property since 1984; that, in 2012, the Board approved a previous application for the daycare but the approval expired when she had to obtain a septic system; that the daycare has existed on the Property since 1994; that she wishes to add three children to her daycare; that the back yard is fenced in; that she may walk around the neighborhood with the children; that the daycare will not affect the neighborhood any different than it has in the past; that she has been living at the location since 1984 with no neighbor complaints; that the hours will be Monday through Friday from 7:30 a.m. to 5:30 p.m.; and that, at most, there will be ten children at the daycare.

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

Mr. Rickard moved to approve Special Use Exception Application No. 11957 for the requested special use exception based on the record made at the public hearing and because the use will not substantially adversely affect the uses of the neighboring properties.

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

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

Case No. 11958 – Anita Breslin - seek a variance from the buffer requirement (Section 115-194.1E(6) of the Sussex County Zoning Code). The property is located approximately 2,000 feet south of Nine Foot Road on the southbound side of U.S. Route 113. 911 Address: 32602 DuPont Boulevard, Dagsboro. Zoning District: C-1. Tax Map No.: 2-33-16.00-26.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application.

Thomas Rudloff and Robert Palmer were sworn in and testified requesting a variance from the buffer requirement to replace tall shrubs and trees with a turf buffer. Exhibits were submitted into the record for the Board to review.

Mr. Rudloff testified that he is the owner of the company; that the company sells and services boats; that the Property is located along Route 113; that boats will be sold, shown, and serviced on the Property; that, in 1986, he started his own business; that, in 1999, he established Rudy Marine; that the business will create jobs on the Property; that the Property is commercially zoned property; that the amount of trees required for a buffer will block the boat display and effect the creation of jobs; that he proposes to have a grass buffer between the business and Route 113; that the required buffer will block the view of the boats; that neighboring businesses on Route 113 have grass buffers; that the business is also 70 feet from the edge of paving of Route 113; and that

the Property is already difficult to see due to the 70 feet gap and the landscape buffer will limit the ability for customers to see the boats on the Property.

Mr. Palmer testified that that the Property is being reasonably used as a boat sales facility; that the Property is unique; that Route 113 is 200 feet wide but was constructed on the easterly side of the right-of-way; that there is 87 feet from the edge of the travel lanes of Route 113 to the front property line; that the boats cannot displayed within 25 feet of the front property line so the boat displays will actually be 112 feet from the highway; that the Preliminary Site Plan will be presented in front of the Planning and Zoning Commission on May 11, 2017; that the front portion of the Property is zoned C-1 and the rear of the Property is zoned AR-1; that the Applicant proposes to have turf in the landscape buffer; that other businesses along Route 113 use turf in their landscape buffer areas; that the buffer requirement would further limit the visibility of Mr. Rudloff's boats; that other boat and car dealerships in Sussex County use turf so that customers can see their inventory; that the character of the neighborhood is that there is no buffer; that, if the Property was located along the easterly side of Route 113, the business would have a much greater visibility; that the Applicant's likelihood of success would decrease due to a lack of visibility; that the variance is necessary for the reasonable use of the Property; that the exceptional practical difficulty was not created by the Applicant; and that the variance will not alter the character of the neighborhood.

Mr. Rudloff testified that his business located at the Boat Hole outgrew the leased property in two years and that convinced him to expand his business at a different property.

Mr. Palmer testified that there is a difference in the size of the right of way from the east side to the west side of Route 113; that properties located on the East side of Route 113 are easier to see from Route 113; that the buffer requirements would further block the views of the Property from Route 113; that the Applicant is proposing to have only grass in the landscape buffer; and that the site plan shows some landscaping in the buffer zone but the Applicant proposes having no landscaping in the buffer area.

Mr. Rudloff testified that landscaping along the north and south part of the buffer area would block the views of the boats.

The Board found that four (4) parties appeared in support of the Application.

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

Mr. Mills moved to approve Variance Application No. 11958 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to the distance from the edge of the highway from the Property;
2. The variance is necessary to enable 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 sought is the minimum variance necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the variance to allow the Applicant to plant turf in the landscape buffer area be **granted for the reasons stated**. Motion carried 5 – 0.

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

Meeting Adjourned 9:49 p.m.