

## MINUTES OF APRIL 20, 2015

The regular meeting of the Sussex County Board of Adjustment was held on Monday, April 20, 2015, 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 Dale Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Brent Workman, and Mr. Norman Rickard. Mr. Jeffrey Hudson was absent. Also in attendance was James Sharp – Assistant County Attorney, and staff members, Mr. Lawrence Lank – Director of Planning and Zoning, Ms. Janelle Cornwell – Planning and Zoning Manager, and Mrs. Jennifer Norwood – Recording Secretary.

The Pledge of Allegiance was led by Mr. Rickard.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously to approve the Revised Agenda as circulated. Motion carried 4 – 0.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously to approve the Minutes and Findings of Fact for March 2, 2015 as circulated. 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.

### PUBLIC HEARINGS

**Case No. 11551 – Michael Perogine & Maria Perogine** – south of Route 54 (Lighthouse Road) and being west of Grant Avenue, approximately 1,500 feet south of Lincoln Drive and also being Lot 36 Block 6 within Cape Windsor Subdivision (911 Address: 38858 Grant Avenue, Selbyville, DE) (Tax Map I.D. 5-33-20.18-42.00).

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

Mr. Lank presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Michael Perogine and Maria Perogine were sworn in to testify about the Application. James Fuqua, Esquire, presented the case to the Board on behalf of the Applicants and submitted an exhibit for the Board to review.

Mr. Fuqua stated that the Applicants are requesting a variance of 3.83 feet from the ten (10) feet north side yard setback requirement for a proposed HVAC and dwelling and a variance of 1.64 feet from the twenty (20) feet rear yard setback requirement for a proposed dwelling; that the Property is located within Cape Windsor; that the lot size is 50 feet wide by 90 feet deep; that a lagoon borders the rear of the lot; that Cape Windsor was originally developed as a manufactured home community and has unique setback requirements; that there has been a history in Cape

Windsor of replacing older manufactured homes with larger single family dwellings; that the Applicants want to replace the existing double-wide manufactured home with a dwelling measuring 33 feet wide by 61 feet deep; that the Applicants need the requested variances in order to place the dwelling on the lot; that the dwelling will meet the south side yard setback requirement and the front yard setback requirement; that the dwelling will be located ten (10) feet from the front property line rather than five (5) feet, which is allowable, so that they can park a vehicle in the front yard; that the homeowners association approved the proposed dwelling; that the variances are needed due to the uniqueness of Cape Windsor and its transition from an older mobile home community and due to the small lot size; that the variances will enable reasonable use of the Property in a manner similar to other new homes in Cape Windsor; that the difficulty was not created by the Applicants but results from the lot size; that the variances will not alter the essential character of the neighborhood; that the dwelling will be similar to other homes in the neighborhood; that the variances represent the least modifications of the regulations at issue; that the variances are the minimum variances to afford relief; that there have been numerous variances granted on the same street and in the community; that the dwelling will not have a negative impact on property values in Cape Windsor; and that the use will not impair the uses of neighboring and adjacent properties.

Mr. Perogine, under oath, confirmed the statements made by Mr. Fuqua.

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. 11551 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The small size of the lot and the setback requirements make this Property unique;
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 as there are other similar dwellings in the neighborhood; and
5. The variances sought are the minimum variances necessary to afford relief.

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

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

**Case No. 11552 – Tucker Farm, LLC** – south of Road 227 (Hummingbird Road) approximately 620 feet west of Road 229B (Carpenter Road) (911 Address: 20780 Hummingbird Road, Ellendale, DE) (Tax Map I.D. 2-30-28.00-8.00).

An application for a special use exception to place a telecommunication tower.

Mr. Lank presented the case and stated that the Office of Planning Zoning received one (1) letter in support of the Application and had not received any correspondence in opposition to the Application.

Kenneth Farrell and Brian Grevas were sworn in to testify about the Application. John Tracey, Esquire, presented the case on behalf of the Applicant and submitted an aerial photo for the Board to review.

Mr. Tracey stated that the Applicant is requesting a special use exception to place a telecommunications tower; that Mr. Farrell is a civil engineer and Mr. Grevas is a radio frequency engineer; that the proposed tower will be 120 feet tall with a five (5) feet tall lightning rod; that the proposed tower site is approximately 1,100 feet from the nearest structure; that there is not a clear view of the site from the road due to existing trees in the area; that the proposed tower site will meet zoning requirements; that no variances are needed; that the site will be fenced and lighted per the Sussex County Code; that the tower will be designed to allow for two (2) other carriers to collocate thereon; that the proposed tower is needed due to a large gap in coverage; that the tower will fill this gap in coverage; that the radio frequency waves from the proposed tower, under a worst case scenario, will be 190 times below the minimum radio frequency requirement; that the proposed site meets Federal Aviation Administration ("FAA") requirements; that a lattice structure is located 1.7 miles away from the Property but placing antennae on this structure would not fill the gap in coverage and would provide redundant, inefficient coverage; that there were no available sites to collocate; that the proposed tower is approximately 900 feet from the road; that an existing driveway will be used to access the tower site; that the use will not substantially adversely affect the uses of the surrounding and neighboring properties; that the site emits no noise or smell and does not increase traffic in the area; and that it would be cheaper for the Applicant to collocate on an existing structure but there was no structure which would meet its needs.

Mr. Farrell, under oath, confirmed the statements made by Mr. Tracey regarding the site plan.

Mr. Grevas, under oath, confirmed the statements made by Mr. Tracey regarding the radio frequency engineering.

Ralph Brumbley was sworn in to ask a question about the Application. He wanted to know if a telecommunications tower is permitted on agricultural land.

Ryan Ducco was sworn in and testified in opposition to the Application and testified that he is concerned how the tower site will affect his property values; that his research online showed an average decrease in property value 15% to 20%; that his property is approximately 1,100 feet from the tower site; that he is concerned about seeing the blinking lights from the tower; and that,

after seeing the aerial photograph, he thinks the tower will be largely out of his sight because it is screened by the surrounding woods.

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

The Board found that one (1) party appeared in opposition to the Application.

Mr. Mills, stated that he would move that the Board recommend approval of Special Use Exception Application No. 11552 for the requested special use exception based on the record made at the public hearing because the use does not substantially adversely affect the uses of the neighboring and adjacent properties and because the Applicant meets all other standards for a telecommunications tower.

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

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

**Case No. 11553 – Jeffrey N. Hager & Susan L. Hager** – south of Route 54 (Lighthouse Road) and being west of Keen-wik Road, approximately 979 feet south of Hickory Land and being more specifically Lot 4 Subdivision No. 1 within Keen-wik Subdivision (911 Address: None Available) (Tax Map I.D. 5-33-20.13-38.01).

An application for variances from the side yard setback requirement.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Timothy Tribbitt and Jeffrey Hager were sworn in to testify about the Application. Raymond Tomasetti, Esquire, presented the case to the Board on behalf of the Applicant and submitted exhibits for the Board to review.

Mr. Tomasetti stated that the Applicants are requesting variances of 4.8 feet from the ten (10) feet side yard setback requirement for both sides of the Property for a proposed dwelling; that the lot measures 50 feet wide which is one of the smaller lots in the Keen-wik development; that the exceptional practical difficulty was not created by the Applicants; that the Property was created by a prior owner when it was subdivided out of a larger parcel as shown on the 2001 survey; that the Applicants need the variances to place the dwelling on the Property; that the proposed dwelling had to be designed to accommodate an elevator which is needed to due to health issues; that the community's setback requirements are different than the Sussex County setback requirements; that the variances will not alter the essential character of the neighborhood; that the Applicants could

not place the house on the Property with an elevator without a variance; that the Homeowners Association approved the proposed dwelling; and that the variances requested are the minimum variances necessary to afford relief.

Timothy Tribbitt testified that the Applicants have redesigned the plans for the home; that the proposed elevator will be larger than most elevators to accommodate a wheelchair; that the elevator will be accessed from the proposed garage; that the elevator will be used to access the two levels of living space of the proposed dwelling above the ground level; that the elevator will be level with the garage floor; that the Property is in a flood zone; and that the elevator mechanics will meet the required flood zone requirements.

Jeffrey Hager testified that the interior design of the dwelling is wider rather than longer to accommodate wheelchair accessibility and maneuverability within the dwelling; and that he affirms the statements made by Mr. Tomasetti.

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. 11553 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique because it is small and only 50 feet wide;
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. Rickard, seconded by Mr. Workman, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 4 – 0.

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

**Case No. 11555 – Karen J. Kershaw** – east of Route 30 (Gravel Hill Road) across from and east of Road 251 (Neptune Road) (911 Address: 16743 Gravel Hill Road, Milton, DE) (Tax Map 2-35-25.00-11.03).

An application for a variance from the height requirement for a fence in the front yard.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Mr. Sharp advised the Board that his firm has represented the Applicant in the past and that if the Board had any questions, they should direct them to Vince Robertson, Esquire.

Karen Kershaw was sworn in and she submitted an exhibit book for the record. Ms. Kershaw testified requesting a variance of 2.5 feet from the 3.5 feet height requirement for a fence in the front yard; that she owned an equestrian center at another location until 2013; that due to her illness she had to sell the equestrian center property; that she is permitted by zoning to keep horses on the Property; that she owns two (2) horses; that the Property is small; that she needs the entire lot for grazing for her horses; that she purchased the Property in August 2013 and moved there in January 2015; that the Property is a low lying area; that the dwelling is close to the nearby road and that traffic on Gravel Hill Road is loud; that she proposes to construct a privacy fence in the front yard and along the side yards; that the fence will be wooden and will be aesthetically pleasing; that the fence will not be detrimental to the public welfare; that she would not have purchased the Property if she knew that she could not place this type of fence on her lot; that her property line is 14.5 feet from the side of the road and the proposed fence will not block any views from the road; that corn is grown on an adjacent property closer to the road than the location of the proposed fence; that the Property is lower than the road and the fence will not appear six (6) feet tall from the road; that there is a unique circumstance; that the fenced in area will be used for grazing; that the variance will enable reasonable use of the Property; that the difficulty was not created by the Applicant; that she has spoken with some neighbors and they do not oppose the Application; that the adjacent properties are farm fields; that the fence will not permanently impair the uses of neighboring properties; that the fence will not be detrimental to the public welfare; that the proposed wooden stockade fence will cut down on the road noise; that the Property is directly across from the intersection with Neptune Road; that the fence will provide her with some additional privacy from traffic; that the proposed fence will block lights from traffic from shining into her dwelling; that the proposed stockade fence will run along the front and side property lines; that the rear yard will have a wire fence; that there will be an internal wire fence; and that the proposed fence will give her two (2) horses privacy and protection from the nearby road.

Joe Marino was sworn in and testified in opposition to the Application and testified that he lives across the road from the Applicant; that he is concerned the proposed fence will negatively affect his property value; that he has no documentation to support his claim that the fence will negatively affect his property value; that the neighbor to the rear of his property keeps junk on the property and he has planted trees to hide the junk; that he owns the property on the corner of Neptune Road and Gravel Hill Road; that he would not object to a shorter fence or if Leland Cypress trees were planted in the front yard; that there is a lot of traffic at this intersection and that the heavy volume of traffic at the intersection could spook the horses; that the traffic is loud; and that he does not want to look out from his property and see a fence. Mr. Marino submitted pictures of fencing on other nearby properties.

Dr. Christie Bromowitz was sworn in and testified in support of the Application and testified that she has known the Applicant for many years; that the Applicant has always kept an

aesthetically pleasing property; and that the Applicant has high standards for property management and the care of her animals.

In rebuttal, Ms. Kershaw, testified that she would rather not plant Leland Cypress trees due to their poor root structure; that she has no objection to plantings in front of the fence; and that she would rather plant a hedge type plant to camouflage the fence.

Mr. Marino testified that his property is on higher ground than the Applicant's property; and that he would have no problem with a hedge type plants over Leland Cypress.

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

The Board found that one (1) party appeared in opposition to the Application.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the case be taken under advisement. Motion carried 4 – 0

At the conclusion of the public hearings, the Chairman referred back to this case. Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11555 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The low ground elevation, headlights from traffic and the keeping of horses on the Property make it unique;
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.

This approval was conditioned on the stipulation that the Applicant provide significant plantings in the front yard as a buffer between the road and fence to obstruct the view of the fence.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously to **approve the variance for the reasons stated and with the stipulation the Applicant will provide significant plantings in the front yard as a buffer between the road and the fence that will obstruct the view of the fence.** Motion carried 4 – 0.

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

**Case No. 11556 – Cedar Creek Landing Campground** – at the intersection of Route One (Coastal Highway) and southwest of Route 14 (Argo’s Corner Road) (911 Address: 23228 Argo’s Corner Road, Milton, DE) (Tax Map I.D. 2-30-8.00-19.00).

An application for a special use exception to replace an existing non-conforming off-premise sign by applying for a determination of existence for a non-conforming sign.

Mr. Lank presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of the Application and one (1) letter in opposition of the Application.

Michael Fannin and Richard Haxton were sworn in and testified requesting a special use exception to replace a non-conforming off-premise sign by applying for a determination of existence for a non-conforming sign. They submitted exhibits for the Board to review

Mr. Rickard expressed concern that no plan was submitted with the Application which included a schematic of the proposed sign.

Mr. Fannin testified that the Applicant plans to replace the existing sign with an LED sign; that the existing sign is not visible to passing traffic; that the Applicant rents the Property for the sign and that the owner supports the Application; that the original sign will be removed and a new sign will be erected; that the existing sign is wooden; that the sign will be placed in the same location but will be larger than the existing sign; and that customers are not seeing their current sign.

Mr. Haxton testified that the sign will have a masonry pad at its base; that the middle portion of the sign will be an LED sign; and that the sign would comply with the LED requirements in the Sussex County Zoning Code.

Mr. Fannin testified that there is a similar sign located across from the proposed site at Taylor Marine.

Mr. Lank stated that the Taylor Marine is an on-premise sign which is different from what is proposed by the Applicant.

Mr. Haxton testified that two signs are being proposed by the Applicant (one sign for this case and one sign for Case No. 11557).

Mr. Fannin testified that the signs are single-sided signs; that there is an occupied, single family dwelling on the Property; that the sign is along Route 1 near marshland; that the LED sign will allow the campground to advertise upcoming events; that the sign will not advertise other businesses; that it would be expensive to change the sign weekly to advertise their events; that the LED sign will better allow them advertise the business; and that the sign for this property reads “Second Left.”



Mr. Lank stated that the Sussex County Code was amended after the existing sign was originally approved.

Mr. Sharp stated that the new sign ordinance does not permit off-premise signs in a GR district.

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 denial of Special Use Exception Application No. 11556 for the requested special use exception based on the record made at the public hearing because the Applicant is seeking place a new, larger, LED sign on the Property rather than repair or reface the existing, permitted sign.

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

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

**Case No. 11557 – Cedar Creek Landing Campground** – south of Route One (Coastal Highway) approximately 3,700 feet southeast of Road 207 (Johnson Road) (911 Address: None Available) (Tax Map I.D. 3-30-16.00-17.03).

An application for a special use exception to replace an existing non-conforming off-premise sign by applying for a determination of existence for a non-conforming sign.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had received one (1) letter in support of the Application and one (1) letter in opposition to the Application.

Michael Fannin and Richard Haxton were previously sworn in. The Applicants are requesting a special use exception to replace an existing non-conforming off-premise sign by applying for a determination of existence for a non-conforming sign.

Mr. Fannin testified that the campground is in a GR district; that modern technology would be an asset to the business; that the current sign is outdated and in need of repair; that, under the current zoning requirements, they will never be able to upgrade the existing sign; that there are no commercial zoned properties in the area to place an off-premise sign; that the existing sign does not attract potential campers to the campground; that the campground does not have frontage along Route One (Coastal Highway) and cannot be seen from Route One; and that the Applicant needs an LED sign so that they can be seen by traffic prior to reaching the campground.

Mr. Fannin submitted exhibits for the Board to review.

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 denial of Special Use Exception Application No. 11557 based on the record made at the public hearing because the Applicant is seeking place a new, larger, LED sign on the Property rather than repair or reface the existing, permitted sign.

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

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

**Case No. 11558 – W. Ralph Brumbley** – northeast of Route One (Coastal Highway) across from Route 5 (Union Street Extended) (911 Address: 12209 Coastal Highway, Milton, DE) (Tax Map I.D. 2-35-7.00-44.00).

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

Mr. Lank presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Mr. Lank stated that the Applicant received approval for Conditional Use Application No. 1992 on January 13, 2015 for a food vendor truck from the Planning and Zoning Commission and Sussex County Council.

W. Ralph Brumbley was previously sworn in and testified requesting a variance of nineteen (19) feet from the forty (40) feet front yard setback requirement for a food vendor truck; that he believes that the truck will be a benefit to his park; that the variance is needed so the truck is visible from the highway. Mr. Brumbley submitted pictures of the Property.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously to take a brief recess to allow the Applicant time to review the standards for granting a variance.

Mr. Brumbley requested additional time to prepare upon return from the brief recess.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously to **leave the hearing open and move it to the end of the public hearings**. Motion carried 4 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case.

W. Ralph Brumbley testified that the Property is unique due to the natural curve of the Property; that the Property slopes and the truck must be placed on level ground; that the difficulty was not created by the Applicant; that the natural curve of the Property has created the difficulty; that the variance will not alter the essential character of the neighborhood; that the variance will allow the truck to be placed on level ground; that the variance will not affect any neighboring property; that the use will not be detrimental to the public welfare; that the variance requested is the minimum variance necessary to afford relief; that, without the variance, the truck would sit on uneven ground; that the variance represents the least modification possible of the regulation at issue; that the truck is proposed to be located only a few feet closer to the road and it is still a safe distance from the road; that the variance will enable reasonable use of the Property by allowing the truck to sit level on the Property; that he owns the adjacent property; that the truck will be accessible to the neighboring campground he owns; that the truck will provide a service to the campground visitors; and that the existing building on the Property is currently vacant but was previously a day care.

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. Rickard stated that he would move that Board recommend approval of Variance Application No. 11558 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The existing slope and curve of the Property make it unique;
2. The variance is necessary to enable reasonable use of the Property because the food truck needs to be located on level ground;
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. Rickard, seconded by Mr. Workman, and carried that the variance be **granted for the reasons stated**. Motion carried 3 – 1.

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

**Case No. 11559 – Laura Ritter** – northwest of Road 285 (Beaver Dam Road) approximately 0.25 mile south of Road 280B Conley’s Chapel Road) (911 Address: 22114 Ritter Lane, Harbeson, DE) (Tax Map I.D. 2-34-10.00-103.04).

An application for a special use exception for a garage / studio apartment and a variance from the maximum square footage for a garage / studio apartment.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had received one (1) letter in support of the Application and had not received any correspondence in opposition to the Application.

Laura Ritter and Brad Ritter were sworn in and testified requesting a special use exception for a garage / studio apartment and a variance of 400 square-feet from the 800 square-foot maximum allowable square feet for a garage / studio apartment. Mr. & Mrs. Ritter submitted pictures for the Board to review.

Ms. Ritter testified that they built a three (3) car garage with an apartment; that the apartment is needed for her mother who is in declining health; that, due to her mother's declining health, she needed to be closer to family; that the apartment has been made handicap accessible; that the detached three (3) car garage and apartment match the existing dwelling's exterior; that the Property is over seven (7) acres in size; that they own the adjacent fifty-seven (57) acre parcel; that the Applicants' family members and a church own adjacent properties; that the Property is surrounded by woodlands; that a graveyard is located nearby; that the structure is approximately 654 feet from Beaver Dam Road; that the size of the apartment needed to be larger to accommodate a wheelchair; that the living space is located at ground level; that the apartment has been designed with wider hallways, doors, and a bathroom to give her mother room to maneuver the wheelchair; that she will have a parking space for her mother; that the use does not substantially adversely affect the surrounding and neighboring properties; that they do not intend to add additional space to the apartment; that her mother's health creates a unique situation; that the exceptional practical difficulty was not created by the Applicant; that the variance is necessary to enable reasonable use of the Property; that the use is not detrimental to the public welfare; that the variance will not alter the essential character of the neighborhood; and that the variance requested is the minimum variance to afford relief.

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

Motion by Mr. Workman, seconded by Mr. Rickard, and carried unanimously to take the case under advisement. Motion carried 4 – 0.

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

At the conclusion of the public hearings, the Chairman referred back to this case. Mr. Rickard stated that he would move that the Board recommend approval of Special Use Exception/Variance Application No. 11559 for the requested special use exception based on the record made at the public hearing because the use does not substantially adversely affect the uses of the neighboring and adjacent properties and for the requested variance based on the record made at the public hearing and for the following reasons:

1. The medical needs of the Applicant's mother creates a unique circumstance;
2. The variance is necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicants;
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. Rickard, seconded by Mr. Workman, and carried unanimously that the special use exception and variance be **granted for the reasons stated**. Motion carried 4 – 0.

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

**Case No. 11560 – Atlantic East LTD** – (1) southwest of intersection of Savannah Road (Road 18) and Wescoats Road (Road 12) approximately 450 feet north of Marsh Road (Road 276) (2) northwest of Marsh Road (Road 276) approximately 450 feet northeast of Coastal Highway (Route One); (3) northwest of Marsh Road (Road 276) approximately 260 feet southwest of Wescoats Road (Road 12) (911 Address: None Available) (Tax Map I.D. 3-34-6.00-26.01, 26.02, and 26.05).

An application for special use exceptions to place three (3) off-premise signs on different parcels.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Steven Lobo and Dale McCalister were sworn in to testify about the Application. John Paradee, Esquire, presented the case to the Board on behalf of the Applicant and submitted an exhibit booklet for the Board to review.

Mr. Paradee stated that the Applicant is requesting a special use exception to place three (3) off-premise signs on different parcels; that Mr. Lobo is a principal with Atlantic East, Ltd., and Mr. McCalister is a representative from First State Signs; that the proposed billboards will measure 10 feet by 30 feet and will be two-sided; that the billboards will be 25 feet tall; that two (2) billboards will be located along Marsh Road; that one billboard will be located near the intersection of Savannah Road and Wescoats Road and will replace an existing billboard; that the two (2) billboards along Marsh Road are new structures; that the billboards comply with the requirements of Section 115-159.5(B) in the Sussex County Zoning Code; that the signs will meet all setback, height, and square footage requirements; that the Applicant has filed applications with the Delaware Department of Transportation (“DelDOT”) for the proposed billboards; that the adjacent property owners do not object to the Application as evidenced by letters of support in the exhibit booklet; that the proposed billboards will not substantially adversely affect the uses of the adjacent and neighboring properties; that the billboards will not alter the character of the neighborhood; that there are numerous billboards in the area; that a larger billboard on a nearby property was

recently approved by the Board; that the proposed billboards are not visible from any nearby residential neighborhoods; and that the area is a primarily commercial area located near Route 1.

Mr. McCalister testified that the existing billboard will be removed; that there are two existing billboards on the site but one of the billboards does not have a sign on it; and that the wooden structures will be removed and replaced with steel monopole structures.

Mr. Lobo, under oath, confirmed the statements made by Mr. Paradee.

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 Special Use Exception Application No. 11560 for the requested special use exception based on the record made at the public hearing because the use does not substantially adversely affect the uses of the neighboring and adjacent properties.

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

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

### **OLD BUSINESS**

**Case No. 11539 – Mike Luciani** – south of Route 54 (Lighthouse Road) and being northeast of Cleveland Avenue approximately 400 feet southeast of Lincoln Drive and being more specifically Lot 8 Block 4 within Cape Windsor Subdivision (911 Address: 38791 Cleveland Avenue Ext., Selbyville, DE) (Tax Map I.D. 5-33-20.18-133.00)

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

Mr. Lank stated the case had been left open at the March 2, 2015 hearing for the submittal of a revised site plan. The Applicant submitted the revised site plan to the Office of Planning and Zoning on April 2, 2015. Mr. Lank handed out copies of the revised site plan for the Board to review.

The Board discussed the case and reviewed the revised site plan.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11539 based on the variances sought on the revised site plan for the requested variances based on the record made at the public hearing and for the following reasons:

1. The 50 feet wide lot is unique in size;
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. Rickard, seconded by Mr. Workman, and carried unanimously that the requested variance of 3.5 feet on the north side of the Property, the variance of six (6) feet on the south side of the Property, and the variance of 4.7 feet from the rear yard setback requirement of the property be **granted for the reasons stated**. Motion carried 4 – 0.

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

**Case No. 11543 – First State Signs** – southwest of Route One (Coastal Highway) approximately 250 feet southeast of Sea Air Avenue (911 Address: 19724 Coastal Highway, Rehoboth Beach, DE) (Tax Map I.D. 3-34-13.00-319.02)

An application for a special use exception to place an off-premise sign and variances from the front yard and side yard setback requirements.

Mr. Lank stated that the case had been left open at the March 2, 2015 hearing for the submittal of a revised plan for the proposed sign.

The Board discussed the case and reviewed the revised plan for the proposed sign.

Mr. Rickard stated that he would move that the Board recommend approval of Special Use Exception/Variance Application No. 11543 for the requested special use exception based on the record made at the public hearing because the use does not substantially adversely affect the uses of the neighboring and adjacent properties and for the requested variances based on the record made at the public hearing and for the following reasons:

1. The location of the restaurant and the location of the sign make the Property unique;
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. Rickard, seconded by Mr. Mills, and carried unanimously that the requested variance of fifteen (15) feet from the required front yard setback and a variance of 8.13 feet from the side yard setback requirement be **granted for the reasons stated**. Motion carried 4 – 0.

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

### **OTHER BUSINESS**

**Case No. 11349 – L.C. Homes** – northeast corner of Grove Estates Road and north of Cedar Grove Road and being 1,900 feet southwest of Plantation Road (Road 275) (911 Address: None Available) (Tax Map I.D. 3-34-12.00-872.00)

An application for a special use exception to place a manufactured home type structure for a business (sales office).

Request for a time extension.

Mr. Lank read a letter from the Applicant requesting a time extension for the special use exception that expires on May 6, 2015, the Applicant would like to extend that approval to August 15, 2015.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the request for a time extension be **granted until August 15, 2015**. Motion carried 4 – 0.

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

**Case No. 11373 – Sandcap, LLC** – south of Route One (Coastal Highway) 2,000 feet southwest of the top of Route One over pass bridge and across from Road 266B (Nassau Road) and being located in Sandbar Village Development (911 Address: None Available) (Tax Map I.D. 3-34-5.00-137.00)

An application for a special use exception to place a temporary manufactured home type structure for a temporary sales office.

Request for a time extension.

Mr. Lank read a letter from the Applicant requesting a time extension for the special use exception that expires on May 6, 2015, the Applicant would like to extend that approval to August 31, 2015.

Motion by Mr. Rickard, seconded by Mr. Mills, and carried unanimously that the request for a time extension be granted until August 31, 2015. Motion carried 4 – 0.



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

**Meeting Adjourned 11:00 p.m.**