

## **REVISED MINUTES OF APRIL 3, 2017**

The regular meeting of the Sussex County Board of Adjustment was held on Monday, April 3, 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 Ms. Janelle Cornwell – Director of Planning and Zoning, Mrs. Jennifer Walls – Planning Manager, and Ms. Christin Headley – Recording Secretary.

The Pledge of Allegiance was led by Mr. Callaway.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously to approve the Revised Agenda as amended. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes and Finding of Facts for February 20, 2017. 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 6, 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. 11932 – Kelly Bivins** - seeks a variance from the separation between units requirement and a variance from the rear yard setback requirement (Section 115-172G(7) of the Sussex County Zoning Code). The property is located approximately 1,074 feet west of Coastal Highway (Route 1) on the north side of Route 54. 911 Address: 39024 Reilly Place, Fenwick Island. Zoning District: C-1. Tax Map No.: 1-34-23.20-68.00-55509.

Ms. Cornwell presented the case which has been left open since March 20, 2017.

Mr. Hudson was absent for the March 20, 2017, hearing, and, therefore, he abstained from voting.

Thomas Reilly and Kelly Bivins were sworn in and submitted exhibits for the Board to review.

Mr. Reilly testified that his grandfather founded the Mason-Dixon Mobile Home Park; that his mother, Nancy Spicer, is the current owner of the Park; that he is the Park's Manager and is here on behalf of his mother who is 85 years old; that the Mason-Dixon Mobile Home Park consists of 4 parcels; that his mother's trust owns 3 of the parcels and his cousin owns the fourth parcel; that the parcel in question is the portion of the Park known as the Mason-Dixon Annex which was created in the late 1960s with eleven lots; that the Mason-Dixon Annex was expanded in 1980, adding an

additional five units; that the expansion was conforming to Sussex County Zoning Code at the time; that the Park is open seasonally from April to November and is zoned Commercial; that the Board previously approved a variance request from the separation distance between units requirement from his mother in 2008 (Case No. 10155); that the previous variance was for Lot 5 in the Annex; that building permits have been granted for three manufactured homes on nonconforming lots in the community since 2009; that the Applicant seeks a variance in this case for Lot 3; that, in 2013, the Justice of the Peace Court granted ownership of the abandoned manufactured home on Lot 3 to Nancy Reilly; that a demolition permit was issued in 2014 to remove the previous vandalized manufactured home; that Lot 3 has been vacant since that time; that Kelly Bivins rents Lot 3 now; that his mother has no intent to change the character of the neighborhood; that his mother has not received rent for Lot 3 since 2012; and that the Applicant seeks approval to use the lot as it has been used for the past 50 years.

Mr. Mills confirmed that the case was left open to subpoena the owner of the manufactured home park to speak about the future plans and development of the Park.

Mr. Reilly testified that the Property is unique because it is narrow; that the mobile home proposed to be placed on the lot by the Applicant is the smallest mobile home that they could find to fit on the lot; that the variances will not alter the essential character of the neighborhood; and that the variances requested represent the minimum variances necessary to afford relief.

Ms. Bivins testified that the proposed manufactured home measures 14 feet by 60 feet; and that the previous manufactured home on the lot was smaller.

Mr. Reilly testified that the Annex was created in 1968 and expanded in 1980 on a separate parcel; that everything was conforming at the time of expansion on that separate parcel; there is no possible way to relocate the existing manufactured homes that are at least fifty years old; that the parcel in question was developed prior to the enactment of the Sussex County Zoning Code; that they intend to keep the Park “as is”; that the Annex has eleven lots on slightly more than 2 acres; and that 4 other units have been replaced in the past 7 years in the entire Park.

Ms. Cornwell advised the Board that the home replaced in 2015 met the separation distance and setback requirements.

Mr. Reilly testified that the previous manufactured home on the lot was vandalized and rendered unusable; that the same size fourteen feet manufactured home was installed in 2008 with two variance requests approved; that Nancy Reilly owns the land but not the units; that the neighboring property has encroaching structures; that the requested manufactured home is the same size as the manufactured home placed in 2008 in the Park; that the only manufactured homes that are 10 or 12 feet wide were built in the 1960s or 1970s; that the variance granted in 2008 was for a lot located in the Park and not the Annex; that the Annex is located across the street from the Park; and that the lot in question (Lot 3) is located in the Annex.

Mr. Mills offered the Applicant a chance to review and readdress the standards.

Motion by Mr. Mills, seconded by Mr. Rickard to leave the case open until the end of the hearing to allow the Applicant additional time to prepare responses.

At the end of the Public Hearings, Ms. Bivins testified that the boundaries of Lot 3 have been in place since 1968 and she had no control over the creation of the lot; that a shed is placed on the rear neighboring property and encroaches onto Lot 3; that the shed on Lot 2 is the water pump for the Park and cannot be moved; that the porch on the neighboring property was pre-existing and is encroaching; that the variances requested are the minimum variances necessary to afford relief; and that the front variance is not needed because she wants to move the proposed manufactured home closer to the rear.

Mr. Mills moved to approve Variance Application No. 11932 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The situation is unique because of the vandalization of the previous manufactured home on the Property;
2. The variances are necessary to enable reasonable use of the Property;
3. The lot is irregular in shape and size;
4. The exceptional practical difficulty was not created by the Applicant;
5. The variances will not alter the essential character of the neighborhood;
6. The variances will not be detrimental to the public welfare; and
7. The variances requested are the minimum variances necessary to afford relief.

Mr. Mills' motion failed for lack of a second.

Mr. Rickard stated that he is not convinced the variance request meets the standards and he moved to deny Variance Application No. 11932 and for the following reasons:

1. The exceptional practical difficulty is being created by the Applicant; and
2. The home does not fit on the lot.

Motion by Mr. Rickard, seconded by Mr. Workman that the variance be **denied 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.

### **PUBLIC HEARINGS**

**Case No. 11934 – Allen Place & Karen Place** - seek variances from the side yard setback requirements (Sections 115-42B, 115-181B, and 115-183C of the Sussex County Zoning Code). The property is located on the east side of Canvasback Road approximately 2,070 feet north of Swann Drive. 911 Address: 37078 Canvasback Road Selbyville. Zoning District: GR. Tax Map No.: 5-33-12.16-371.00.

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

Allen Place and Karen Place were sworn in to testify about the Application. James Fuqua, Esquire, presented the case on behalf of the Applicants and submitted exhibits for the Board to review.

Mr. Fuqua stated that the Applicants are requesting a variance of 5 feet from the ten (10) feet side yard setback requirement on the north side for a proposed dwelling, a variance of 8.2 feet from the ten (10) feet side yard setback requirement on the north side for a proposed HVAC unit, a variance of 2.8 feet from the ten (10) feet side yard setback requirement on the north side for a proposed covered porch, and a variance of 3.4 feet from the ten (10) feet side yard setback requirement on the south side for proposed two-story steps; that the Property is Lot 52 in Swann Keys; that the Property is bordered by a lagoon in the rear yard; that the Property measures 40 feet wide by 99 feet long and consists of 3,971 square feet; that the Property is zoned General Residential; that the Applicants propose to construct a new dwelling measuring 24 feet wide by 58 feet long; that the new dwelling will have an enclosed porch on the rear; that a reasonably sized home cannot be constructed on the lot while complying with the Sussex County Zoning Code; that the Property is unique in size as it is small and narrow; that a modern home cannot be constructed; that the variances are necessary to enable reasonable use of the Property; that the exceptional practical difficulty was not created by the Applicants; that the difficulty results from the original Swann Keys layout; that Swann Keys was originally developed as a manufactured home park for single-wide manufactured homes and has evolved to a community of new, modern homes; that the variances will not alter the essential character of the neighborhood; that the improvements will be similar to improvements on other properties; that the requested variances are consistent with similar variances granted within Swann Keys; and that the proposed dwelling will improve the appearance of the neighborhood and increase the property value.

Mr. and Mrs. Pierce, under oath, affirmed that statements made by Mr. Fuqua.

Mr. Pierce testified that a portion of the front yard will be for parking; that the home will be a two-story home; that other homes along Canvasback Road are built closer to the north property line as well.

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

Mr. Rickard moved to approve Variance Application No. 11934 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 neighboring properties; and
2. The proposed dwelling and structures are reasonable.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variances 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. 11935 – Lisa A. Ruggeri & Stephen R. Culbert** - seek variances from the side yard setback requirements (Sections 115-182D and 115-185F of the Sussex County Zoning Code). The property is located on the north side of Clay Road (Route 269) approximately 1,700 feet east of Marsh Road (Route 276). 911 Address: 34067 Clay Road, Lewes. Zoning District: AR-1. Tax Map No.: 3-35-12.06-64.00.

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

Lisa Ruggeri was sworn in to testify about the Application. Bill Schab, Esquire, presented the case on behalf of the Applicants.

Mr. Schab stated that the Applicants are requesting a variance of 1.7 feet from the five (5) feet side yard setback requirement on the west side for an existing carport, a variance of 3.5 feet from the five (5) feet side yard setback requirement on the west side for an existing shed, a variance of 3.2 feet from the five (5) feet side yard setback requirement on the west side for an existing oil drum platform, and a variance of 3.4 feet from the five (5) feet side yard setback requirement on the west side for an existing oil drum platform; that the Property is unique as it slopes to the east; that the existing dwelling and other structures are built on the west side of the lot; that the Applicants purchased the Property from previous owners who bought the lot in 1992; that the dwelling and shed have existed on the lot since at least 1992; that the previous owners believed that the shed complied with the Sussex County Zoning Code; that the previous owners added the carport; that the cantilevered joists off the shed have since been removed; that the structures were constructed by the previous owners; that the Property is wooded and the structures have no effect on neighboring properties; that the variances do not alter the character of the neighborhood; that the Property has looked this way for 25 plus years with no issues from the neighbors; that the variances requested are the minimum variances necessary to afford relief; and that the Property is attractive.

Ms. Ruggeri, under oath, affirmed the statements made by Mr. Schab. Ms. Ruggeri testified that she is an owner of the Property and that the oil and propane along with the platform will be removed so no variances for those structures are needed.

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

Mr. Rickard moved to approve Variance Application No. 11935 for the requested variances based on the record made at the public hearing and finding that the Applicants met the standards for granting a variance.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variances 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. 11936 – David Wayne Sellers & Monica Sellers** - seek variances from the front yard and side yard setback requirements (Sections 115-42B and 115-185F of the Sussex County Zoning Code). The property is located on the west side of North Drive approximately 782 feet west of Munchy Branch Road. 911 Address: 403 North Drive, Rehoboth Beach. Zoning District: GR. Tax Map No.: 3-34-13.00-60.00.

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

David Sellers was sworn in to testify about the Application. Bill Schab, Esquire, presented the case on behalf of the Applicants. Mr. Schab submitted a letter of support into the record.

Mr. Schab stated that the Applicants are requesting a variance of 15 feet from the thirty (30) feet front yard setback requirement for an existing porch, a variance of 3.6 feet from the thirty (30) feet front yard setback requirement for an existing manufactured home, a variance of 0.5 feet from the five (5) feet side yard setback requirement on the south side for an existing shed, and a variance of 0.3 feet from the five (5) feet side yard setback requirement on the south side for an existing shed; that the Applicants recently purchased the Property; that the sellers inherited the Property from their mother; that the previous owners had owned the Property since 1973 and placed a manufactured home on the lot; that the manufactured home was located in the front yard setback; that, in 1987, the existing porch was added to the front of the home; that, in 1992, Sussex County informed the previous owner that the porch encroached into the front yard setback area; that the previous owner then applied for and obtained a variance from the Board for the porch; that the previous owner assumed that her home was 30 feet from the front property line so the variance requested for the porch was not correct; that the home is only 26.4 feet from the front property line; that the variances will not alter the essential character of the neighborhood; that the home has been on the Property more than 40 years; that the porch has been on the Property for 30 years; and that a neighbor has submitted a letter supporting the Application.

Mr. Sellers, under oath, affirmed the statements made by Mr. Schab.

Mr. Schab stated that the edge of pavement does not match the front property line.

Mr. Sellers testified that the shed will be moved into compliance and the variances for the shed are not needed.

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

Mr. Mills moved to approve Variance Application No. 11936 for the requested front yard variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to its age;

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 structures were placed on the Property by a prior owner;
5. The variances will not alter the essential character of the neighborhood;
6. The variances will not be detrimental to the public welfare; and
7. 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 for the existing porch and manufactured home 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. 11937 – John C. Shimrock and Martha K. Martin** - seeks a variance from the front yard setback requirement (Section 115-25C of the Sussex County Zoning Code). The property is located at the end of Back Bay Lane, north and east of Waterview Road (Road 279A). 911 Address: 21891 Back Bay Lane, Lewes. Zoning District: AR-1. Tax Map No.: 2-34-12.00-78.00.

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

John Shimrock was sworn in to testify about the Application. Bill Schab, Esquire, presented the case on behalf of the Applicants.

Mr. Schab stated that the Applicants are requesting a variance of 10 feet from the thirty (30) feet front yard setback requirement for an existing dwelling; that the lot is located in a small subdivision created in 1980; that the dwelling was built in 1980; that the subdivision is required to have a cul-de-sac; that the front of the Property abuts the cul-de-sac; that the cul-de-sac is viewable only on paper as it was never physically created; that the dwelling has been on the Property for 35 years; that the Applicants did not place the home on the Property; that the Property is located at the end of a private road; that the variance requested is the minimum variance necessary to afford relief; and that the shed has been removed.

Mr. Shimrock, under oath, affirmed the statements made by Mr. Schab.

Mr. Schab stated that a large part of the rear yard is not buildable due to the marsh and a lagoon; that there are easements on the Property related to access to the lagoon; and that he doubts the home could have been placed any closer to the rear yard due to the marsh and lagoon.

John Burton was sworn in to testify in support of the Application. Mr. Burton testified that he is the next-door neighbor; that he has no objection to the Application; that he believes Mr. Shimrock is a very honest individual; and that he has spoken with other neighbors and they all support this Application.

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. Rickard moved to approve Variance Application No. 11937 for the requested variances based on the record made at the public hearing because the Applicants met the standards for granting a variance.

Motion by Mr. Rickard, 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. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

The Board took a five (5) minute recess.

**Case No. 11938 – Henry Benaquista & Margaret Benaquista** - seek variances from the side yard and rear yard setback requirements (Sections 115-25C and 183C of the Sussex County Zoning Code). The property is located on the northeast corner of North Squirrel Run and Mane Boulevard approximately 872 feet west of Wil King Road (Route 288). 911 Address: 32432 North Squirrel Run, Lewes. Zoning District: AR-1. Tax Map No.: 2-34-6.00-725.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received six (6) letters in support of the Application and read the letters into the record and no correspondence in opposition to the Application.

Henry Benaquista and Margaret Benaquista were sworn in to testify about the Application. Bill Schab, Esquire, presented the case on behalf of the Applicants. Mr. Schab submitted an additional letter of support.

Mr. Schab stated that the Applicants are requesting a variance of 9.7 feet from the ten (10) feet rear yard setback requirement for an existing deck, a variance of 4.0 feet from the ten (10) feet side yard requirement on the north side for an existing attached shed, and a variance of 0.4 feet from the eight (8) feet rear yard setback requirement for an existing chimney; that the Property is unique because it is a corner lot; that the dwelling meets the setback requirements but leaves no room for additions thereto; that the Applicants purchased the existing dwelling with a small deck in the rear yard; that the deck was so small that it was unusable and dangerous; that the Applicants retained a contractor to expand the deck; that the chimney was constructed with the original home and a Certificate of Occupancy was issued for it; that the chimney slightly encroaches into the setback area; that the Applicants retained a contractor to place a stand-alone shed but the contractor attached the shed to the house; that a stand-alone shed only has to be 5 feet from the side yard property line; that Sussex County would not issue a Certificate of Occupancy for the shed due to the encroachment into the setback areas; that the additions have improved the Property; that the rear yard is adjacent to open space owned by the homeowners association; that no one has been adversely affected by the encroachments; that, in order to comply with the setback requirements without a variance, both the



shed and deck would have to be removed; that the Applicants relied on their contractor to make these improvements while complying with the Sussex County Zoning Code; that the attached shed is attractive and matches the dwelling; that the deck was improved because of safety issues; that the variances will not alter the essential character of the neighborhood; and that the variances requested are the minimum variances necessary to afford reasonable use of the Property.

Mr. Benaquista, under oath, affirmed the statements made by Mr. Schab. Mr. Benaquista testified that the deck was extended to reduce the chance of falling off the previous steps; that he hired contractors to build the deck addition and the contractors obtained the permits; that the deck has railings and is much safer than the previous deck; that the chimney was on the house when he purchased the house; that the shed is beautiful; that he relied on the contractors; that the area to the rear of the Property is common area for the community; that the deck is similar in location to other decks in the neighborhood; and that there is no interior access to the shed from the home.

Ms. Cornwell advised the Board that no front yard variance is needed because the Property is in a cluster subdivision and the front yard setback in that community is 25 feet.

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

Mr. Mills moved to approve Variance Application No. 11938 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Applicants relied on contractors to build the structures in compliance with the Sussex County Zoning Code;
2. The Property is located adjacent to common area in the rear yard;
3. The Property is unique due to it being a corner lot;
4. The variances are necessary to enable reasonable use of the Property;
5. The exceptional practical difficulty was not created by the Applicants;
6. Neighbors support the Application;
7. The variances will not be detrimental to the public welfare;
8. The variances will not alter the essential character of the neighborhood; and
9. The variances sought are the minimum variances necessary to afford relief.

As part of his motion, Mr. Mills asked the Applicants to supply the names and addresses of his contractors so that Mr. Sharp can send letters to them.

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. Mills – yea, Mr. Hudson – yea, and Mr. Callaway – yea.

**Case No. 11939 – Carol L. Thomas** - seek variances from the front yard, side yard, and rear yard setback requirements (Sections 115-25C, 115-181, and 115-185F of the Sussex County Zoning Code). The property is located on the north side of 4<sup>th</sup> Street approximately 349 feet east of Bald

Eagle Way (Route 273A). 911 Address: 37417 Fourth Street, Rehoboth Beach. Zoning District: AR-1. Tax Map No.: 3-34-19.16-53.02.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received one (1) letter of support to the Application and read the letter into the record and one (1) letter of opposition to the Application and read the letter into the record.

Carol Thomas was sworn in to testify about the Application. Bill Schab, Esquire, presented the case on behalf of the Applicant.

Mr. Schab stated that the Applicant is requesting a variance of 0.3 feet from the thirty (30) feet front yard setback requirement for an existing dwelling, a variance of 7.8 feet from the twenty (20) feet rear yard setback requirement for an existing porch, a variance of 2.2 feet from the five (5) feet rear yard setback requirement for an existing shed, and a variance of 2.4 feet from the five (5) feet side yard setback requirement on the west side for an existing shed; that the Applicant is selling the Property and obtained a survey which showed several encroachments; that the Property measures 50 feet by 100 feet; that the manufactured home was placed on the lot in 1990 but was too close to the front yard property line; that the home encroaches only 4 inches into the front yard setback area; that the Applicant purchased the Property in 2000; that the porch was added by the Applicant but the Applicant retained a contractor to build the porch; that the Applicant did not learn of the encroachments until recently; that the existing shed was moved to the Property in its present location; that the shed cannot be placed elsewhere on the lot while still providing access thereto; that the structures do not adversely affect the neighboring properties; that the shed is used for storage; that the variances do not alter the essential character of the neighborhood; that the variances are need in order to sell the Property; that the variances requested are the minimum variances necessary to afford relief; and that the neighbor most affected by the encroachments supports the Application.

Mrs. Thomas, under oath, affirmed the statements made by Mr. Schab. Mrs. Thomas testified that she purchased the Property in 2000; that the dwelling has been on the Property since 1990; that the porch was constructed by a contractor hired by her husband; that the existing shed was placed around 2002-2003 by a dealer hired by her husband; that her husband has since passed away; that she has moved the shed as far into compliance as it can be placed; and that no neighbors that she has spoken with have any issues with the Application.

Michael Pizzola was sworn in to testify and testified that he helped Mrs. Thomas move the existing shed; that he is a retired contractor; that a lot of manual labor was put into moving the shed; that the shed originally encroached onto neighboring property; that the shed is large; and that the shed is as close to the house as safely possible.

Mrs. Thomas testified that the shed is needed for storage; that a Certificate of Occupancy was issued for the existing dwelling and porch; and that the shed was placed by the dealer.

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

Mr. Rickard moved to approve Variance Application No. 11939 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;
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 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. 11940 – Katherine K. Pergola & Dennis Pergola** - 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 Gills Neck Road 1.8 miles east of Kings Highway (Route 9). 911 Address: 16118 Gills Neck Road, Lewes. Zoning District: AR-1. Tax Map No.: 3-35-9.00-3.02.

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

Dennis Pergola and Abby Steele were sworn in to testify about the Application. Bill Schab, Esquire, presented the case on behalf of the Applicants.

Mr. Schab stated that the Applicants are requesting a variance of 6.57 feet from the forty (40) feet front yard setback requirement for an existing dwelling and a variance of 3.09 feet from the fifteen (15) feet side yard setback requirement on the south side for a detached garage; that the Property was acquired by the Applicants in 1997; that the Property has an odd triangle shape; that the boundary line changed over the years; that the existing dwelling was built by Herring Creek Builders in 1998; that, in 2010, the detached garage was built in the rear of the Property; that the side property line turns near the garage; that a fence was located along the property line but did not match the property line near the garage; that, in 2010, a Certificate of Compliance was issued for the existing garage; that the Applicants later learned that the rear corner of the garage encroached into the setback area; that, in 2016, a bedroom and a front porch addition were constructed and inspections showed the new additions did not comply with the Sussex County Zoning Code; that the Applicants relied on the builder to construct the house, addition, and garage in compliance with the Code; that the builders admitted to their mistakes; that a Certificate of Occupancy for the addition cannot be granted unless a variance is approved; that the garage and addition are attractive; that the variances will not alter the essential character of the neighborhood; that the home is a similar distance from Gills Neck Road as homes on neighboring properties; and that the shed in the rear has been removed.

Ms. Steele testified that she is a representative of Herring Creek Builders; that her father has been the owner of Herring Creek Builders since 2004; that Herring Creek Builders was under the

assumption that the fence was located on the property line; that Herring Creek Builders assumed the front setback for the addition was thirty (30) feet; that a neighboring house is 34 feet from the property line; that a survey was not completed on this project; that the Applicants were not at fault; and that these mistakes cannot be easily fixed.

Mr. Pergola, under oath, affirmed the statements made by Mr. Schab. Mr. Pergola testified that he was under the impression that all the building projects were being completed in compliance with the Code; that the mistake with the side yard setback may have been due to the location of an old fence near the property line; that the Property has been in his wife's family since the 1970s; that the addition was for a porch and an additional room; that none of his neighbors have indicated an objection to the variance requests; and that there is a new development nearby with larger homes.

Ms. Steele testified that the building permit stated the front yard setback requirement was forty (40) feet and that a Certificate of Compliance was issued for the garage.

Mr. Pergola testified that there is fifteen (15) feet from the edge of paving to the property line.

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

Mr. Rickard moved to approve Variance Application No. 11940 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 shape;
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 5 – 0.

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

The Board took a five (5) minute recess.

**Case No. 11941 – Delaware Electric Cooperative, Inc.** - seeks a variance from the front yard setback requirement (Section 115-182A of the Sussex County Zoning Code). The property is located on the west side of Sussex Highway (Route 13) on the east side of Cart Branch Road, and both sides of Adams Road. 911 Address: 14198 Sussex Highway, Greenwood. Zoning District: C-1. Tax Map No.: 5-30-14.00-16.00 and 18.01.

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.

Jack Jester, Manager of Substation and System Protection, was sworn in to testify about the Application. Terry Jaywork, Esquire, presented the case on behalf of the Applicant. Mr. Jaywork submitted a Power Point presentation for the record.

Mr. Jaywork stated that the Applicant is requesting a variance of 22 feet from the sixty (60) feet front yard setback requirement for an existing generator to be replaced on a through lot; that the Applicant wants to install a gas fire generator to replace the diesel fire generator; that the generator is an emergency backup generator; that the Applicant provides electricity to over 93,000 customers; that the Applicant maintains a 455 kilowatt emergency generator at its headquarters to provide power in the event of a power failure; that the generator has been on the Property since 1998; that the testimony from the previous hearing earlier this year be incorporated into the record within this hearing by request; that new air quality emissions standards have been enacted and the generator failed inspections related to those regulations; that the Applicant was served with an environmental violation by the Department of Natural Resources & Environmental Control (“DNREC”); that the Applicant tried to remediate the problem to no avail; that the Applicant opted to replace the generator with a new generator; that the proposed generator meets the new DNREC requirement; that the generator has to be placed in the proposed location for three critical reasons: 1) voltage sensors on the site are located in this area and are needed to detect a loss in power and to trigger the operation of the generator, 2) the transformer will be located close to the proposed generator, and 3) the existing generator cannot be removed until the new generator is place and running; that the angle of the property line creates a closer setback on one corner of the generator; that the west neighboring lot is also owned by the Applicant; that the generator will only run during testing and power outages; and that the new generator will be cleaner and quieter than the existing generator.

Mr. Jester, under oath, affirmed the statements made by Mr. Jaywork. Mr. Jester testified that he has been with the Applicant for eleven years, first as an electrical engineer and then moving up to department manager; that an ammonia issue triggered the request for a new generator; and that there is no other place to locate the generator without redesigning or redeveloping the current systems.

Mr. Jaywork stated that the Property is unique; that the Property cannot otherwise be developed; that the Applicant is required by law to provide reliable electrical service to its customers; that the generator will help the Applicant meet those duties in times of power outages; that the exceptional practical difficulty was not created by the Applicant; that Sussex County amended its ordinance after the Applicant acquired the Property and installed its facilities and the amendments to the ordinance increased the setback requirement; that the Applicant has attempted to use the existing generator but continued use is not feasible; that the variance will not alter the essential character of the neighborhood; that the Applicant has received no complaints about its activities; that the generator is a small structure in relation to the other structures on the Property; that the existing generator and fuel tanks will be removed; and that the variance requested is the minimum variance necessary to afford relief.

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

Mr. Mills moved to approve Variance Application No. 11941 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 it being a through lot;
2. The variance is necessary to enable reasonable use of the Property;
3. The setback requirements have changed since the Applicant developed the Property;
4. The exceptional practical difficulty was not created by the Applicant;
5. The variance will not alter the essential character of the neighborhood;
6. The variance will not be detrimental to the public welfare; and
7. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Workman, 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. 11942 – Harry S. Rylee** - seek variances from the front yard and side yard setback requirements (Sections 115-34B, 115-185F, and 115-182(B) of the Sussex County Zoning Code). The property is located at the northeast corner of North Bayshore Drive and Virginia Avenue approximately 745 feet north of Broadkill Road (Route 16). 911 Address: 302 North Bayshore Drive, Milton. Zoning District: MR. Tax Map No.: 2-35-4.13-47.00.

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.

Douglas Annand and Harry Rylee were sworn in and testified requesting a variance of 10 feet from the fifteen (15) feet side yard setback requirement on the west side for a shed, a variance of 21 feet from the thirty (30) feet front yard setback requirement for a deck, a variance of 2.9 ~~2.1~~ feet from the five (5) feet side yard setback requirement on the east side for a shed, a variance of 4.2 feet from the five (5) feet side yard setback requirement on the east side for a shed, a variance of 1 foot from the fifteen (15) feet corner front setback requirement on the west side for a dwelling, a variance of 2.5 feet from the fifteen (15) feet corner front setback requirement on the west side for a dwelling, and a variance of 2.8 feet from the fifteen (15) feet corner front setback requirement on the west side for a porch.

Mr. Annand testified that he is the Applicant's surveyor; that the shed and deck were placed on the Property in 2012; that the shed was placed in the front corner of the lot; that the shed was actually located partially in the right-of-way of North Bay Shore Drive; that the Applicant proposes to move the shed and deck 5 feet from North Bay Shore Drive and 9 feet from Virginia Avenue; that the existing shed has been moved but the Applicant is willing to move it more; and that the shed is in good condition.

Mr. Rylee testified that he uses the shed for storage; that the house was built in 1955; and that neighbors have no complaints.

Mr. Annand testified that the Property is small as it measures 50 feet by 100 feet.

Mr. Rylee testified that he would need at least 4-5 feet between the screen porch and the shed.

Mr. Mills stated that the shed could be moved to the other side so the North Bay Shore Drive variances for the shed are not needed.

Mr. Rylee testified that the other shed on the northeast side of the Property was constructed in 1958-1960; that the shed on southwest side of the Property will be moved to the southeast side of the Property and will be 5 feet from the southeast side property line; and that the shed will be 4 feet from the screen porch.

Mr. Annand testified that the Property is unique in size; that structures will not alter the essential character of the neighborhood; that there are similar sheds in the neighborhood; that property lines do not match the edge of paving for North Bay Shore Drive and Virginia Avenue; and that there is approximately 7 feet between the property line and the edge of paving from Virginia Avenue.

Ms. Cornwell advised the Board that a shed which is within 5 feet of the porch would require additional building code regulations so it is best to keep the shed at least 5 feet from the porch.

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

Mr. Mills moved to approve Variance Application No. 11942 for the requested variances as amended with the existing shed and deck being moved to the southeast corner of the property located 5 feet from the side yard property line and 9 feet from Virginia Avenue ~~new shed and deck being placed 5 feet from the northeast side of the property and 5 feet from the porch~~ 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 neighboring properties;
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;
5. The variances will not be detrimental to the public welfare; 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 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 10:38 p.m.**