

MINUTES OF AUGUST 1, 2016

The regular meeting of the Sussex County Board of Adjustment was held on Monday, August 1, 2016, 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. Brent Workman, and Mr. Norman Rickard, with 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. Mills, seconded by Mr. Rickard, and carried unanimously to approve the Revised Agenda as circulated. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes and Finding of Facts for June 6, 2016 as circulated. 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.

PUBLIC HEARINGS

Case No. 11810 – Special Needs Trust for John J. Phillips – seeks a variance from the side yard setback requirement (Section 115-25C of the Sussex County Zoning Code). The property is located on the north side of Linden Drive in Angola by the Bay. 911 Address: 22883 Linden Drive, Lewes. Zoning District: AR-1. Tax Map No.: 2-34-11.16-43.00.

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 Phillips was sworn in to testify about the Application. Aaron Baker, Esquire, presented the case on behalf of the Applicant and submitted exhibits for the Board to review.

Mr. Baker stated that the Applicant is requesting a variance of 3.5 feet from the ten (10) feet side yard setback requirement for an existing covered porch and handicap ramp; that the dwelling was constructed in 1997 by students from Sussex Technical High School; that Habitat for Humanity placed the dwelling on the Property in 1997; that the covered porch was built to provide shelter from inclement weather for Mr. Phillips as he enters and exits the dwelling; that Mr. Phillips is handicapped and uses a wheelchair; that a Certificate of Compliance was issued in 1997 certifying that the dwelling and additions complied with the Sussex County Zoning Code; that the encroachment was only recently discovered; that the Property has unique physical characteristics; that the front and rear yard property lines are curved; that the front yard is narrower than the rear yard; that the irregular shape limits the building envelope; that there is no room on

the Property for a weather-shielded access to the dwelling without a variance; that the porch is incorporated into the roof of the main dwelling; that the variance is necessary to enable reasonable use of the Property; that the difficulty was not created by the Applicant; that the dwelling and porch were constructed by well-intentioned volunteers; that the Applicant was unaware of any encroachments at that time; that the porch does not alter the essential character of the neighborhood; that the porch is consistent with the architecture of the main dwelling; that there have been no objections from neighbors about the porch; that the Applicant owns the parcel to the east of the Property and that parcel is undeveloped; that the porch will not impair the uses of the neighboring and adjacent properties; that the porch is not detrimental to the public welfare; and that the variance requested is the minimum variance necessary to afford relief.

Mr. Phillips, under oath, affirmed the statements made by Mr. Baker and testified that the porch and ramp were built in 1997 and there have been no changes made to the structures; that there have been no complaints from his neighbors; and that he owns the adjacent property since that time to the east.

Ms. Cornwell advised the Board that a previous variance was granted for the rear yard encroachment.

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

Mr. Rickard moved to approve Variance Application No. 11810 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The odd shaped lot makes this Property unique;
2. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variance does 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 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. 11811 – The Resort at Massey’s Landing, LLC – seeks an appeal of a determination by the Planning Director (Sections 115-280B and 115-209A of the Sussex County Zoning Code). The property is located on the north and south sides of Long Neck Road approximately 833 feet southeast of Walker Road. 911 Address: 36625 Long Neck Road, Millsboro. Zoning District: AR-1. Tax Map No.: 2-34-25.00-31.00, 31.04, & 31.02.

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 Appeal.

Thomas Burbage was sworn in to testify about the Appeal. James Fuqua, Esquire, presented the case on behalf of the Appellant and submitted exhibits for the Board to review.

Mr. Fuqua stated that the Appellant is appealing a determination by the Planning Director; that the Appellant proposes to open a package / liquor store to primarily serve the campground patrons; that the package / liquor store is a small business located on the campground site; that the Ordinance states that small retail businesses primarily for patrons of the campground “shall” be permitted; that his client is appealing the decision of the Planning & Zoning Director; that no variance or special use exception is being requested; that, in a letter from the Director of Planning & Zoning dated May 19, 2016, it was determined the package / liquor store is not a permitted use; that his client believes that the interpretation by the Director wrong and that the Ordinance says the use is permitted; that the campground was approved by Sussex County for 322 camping sites and a welcome center; that there is public access to the welcome center; that a gate restricts access to the campground area and the campground area is not open to the general public; that the welcome center consists of approximately 9,585 square feet; that the proposed package / liquor store will occupy approximately 8% of the total floor area of the welcome center; that the other uses in the welcome center are permitted by Sussex County; that the term “shall” is mandatory as stated in the Sussex County Zoning Code; that the Sussex County Zoning Code provides that small retail businesses intended primarily for occupants of the park area shall be permitted within the park area; that the issue is that the Appellant considers the liquor store a small retail business as mentioned in the Sussex County Zoning Code; that the store will primarily serve the occupants of the park but may serve others as well; that the campground is open from April 1 through the first Sunday in November; that the welcome center, including the liquor / package store will only be open during the months the campground is open; that the plain reading of the ordinance allows for the package / liquor store in the campground; that the Board is acting as an appellate court in this instance; that the Delaware Supreme Court has stated that, if a statute is unambiguous and there is no reasonable misunderstanding of the words used, then the Court’s role is limited to application of the literal meaning of the words; that this rule of statutory construction applies also to the Board; that courts have no authority to vary the terms of clear meaning or ignore mandatory provisions; that, if a statute is not reasonably susceptible to different conclusions or interpretations, courts must apply the words as written, unless the result of such a literal interpretation could not have been intended by the legislature; that, when a statute is clear and unambiguous, there is no need for statutory interpretation; that the language in the Ordinance is not ambiguous and the words must be given their clear meaning; that the package store is a small retail business to be used primarily by occupants of the park; that the reasons stated in Mr. Lank’s letter are irrelevant because the Ordinance is clear; that the other businesses in the welcome center are intended for the occupants of the park; that the package / liquor store can be a convenience to patrons of the park; that the Ordinance does not say that the retail businesses are to be exclusive to park patrons but primarily for park patrons; that the restaurant in the welcome center is also open to the public; that the store in the welcome center can sell any beverage except alcoholic beverages; that the ability to sell liquor is determined by the Alcoholic Beverage Control Commission (“ABCC”) not by Sussex County; that approval from the ABCC cannot be obtained until the Applicant has obtained a land use approval letter from Sussex County; that the park just opened and is successful; that there is a public access area near the entrance of the park so that the recreational vehicles do

not back up on the adjacent roadway; that the welcome center can be accessed by the public; that the convenience of the businesses in the welcome center offer the neighboring area another option; that the Ordinance does not require that those businesses be exclusive to the campground; that the public cannot access the campground and other amenities within the campground; that the Appellant believes that §115-15 of the Code does not apply; that the package / liquor store was not mentioned at the Planning and Zoning Commission and County Council hearings; that the Ordinance does not say the use must be exclusive to the campground; and that the entire welcome center is closed when the campground is closed.

Lawrence Lank was sworn in to testify on behalf of the determination made in reference to the package / liquor store use. Mr. Lank testified that it is his opinion that the package / liquor store is not permitted; that a liquor store is not a permitted use in the AR-1 (Agricultural Residential District) zoning district; that the campground is only permitted in the AR-1 district with a Conditional Use approval; that the package / liquor store cannot be limited to just the campground; that ABCC rules require that the package / liquor store be open to the public; that the package / liquor store was not identified as a proposed amenity and considered during the public hearings; that Conditional Use approval comes with limitations in place; that the Appellant's conditional use approval listed several other uses but did not list the package / liquor store; that the liquor store is a retail type use but most approvals are for specific retail and there was no mention of package / liquor store; that the Appellant was only given approval for alcohol sales within the campground; that the Appellant has the option to file for an amendment to the Conditional Use to allow the package / liquor store within the campground area, if the Board supports the Director's decision; and that, if the Board agreed with the Appellant's determination, no further zoning action would be needed.

In rebuttal, Mr. Fuqua stated that the Appellant has sought an appeal to the Director's decision because the Appellant feels it already has the approval for the use and an additional Conditional Use approval is not required; that the Ordinance states "shall be small retail"; that the term general store / retail covers a package/liquor store; that the Appellant had always planned to include a package / liquor store; that the amenities were not a controversial issue at the Conditional Use hearings; that the "general store" mentioned should cover the package / liquor store use; that the package / liquor store is no different than the restaurant, ice cream parlor, and other retail options at the welcome center; that there have been no complaints about the ice cream parlor in the welcome center; that the ice cream parlor was not an identified amenity in the Conditional Use; that the ABCC has exclusive jurisdiction on the location of the package / liquor store; and that the Ordinance is not ambiguous.

Mr. Burbage, under oath, affirmed the statements made by Mr. Fuqua, and testified that the package / liquor store is intended primarily for the campground guests; that he owns campgrounds in Maryland and Virginia and provides a package / liquor store at those locations; that the Delaware law is the only difference with this application; that the campground has been approved to sell alcohol within the campground; and that their primary market is the campers.

David Smith was sworn in and testified in opposition to the Appeal and testified that he opposes the appeal; and that the Board should uphold the Director's decision.

Mike Pitcavage was sworn in and testified in opposition to the Appeal and testified that there is a difference in a “general store” and a “package / liquor” store; and that the Board should uphold the Director’s decision.

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

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

Motion by Mr. Rickard, seconded by Mr. Mills, and carried unanimously that the case be **tabled until August 15, 2016**. Motion carried 5 – 0.

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

Case No. 11812 – Sheri Gebbia – seeks a special use exception to operate a daycare facility (Sections 115-83.6C and 115-210A(3)(e) of the Sussex County Zoning Code). The property is located on the south side of Lewes-Georgetown Highway (Route 9) approximately 0.75 miles east of Harbeson Road. 911 Address: 26850 Lewes-Georgetown Highway, Harbeson. Zoning District: CR-1. Tax Map No.: 2-35-30.00-58.05.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received twenty-one (21) letters of support to the Application and received no correspondence of support to the Application.

Sheri Gebbia was sworn in and testified requesting a special use exception to operate a daycare facility; that the proposed daycare facility will be located at the old Donut Connection in Harbeson; that there will be no adverse effect on neighboring properties; that the neighboring properties are the Harbeson Business Park and Peachtree Acres; that Peachtree Acres and many of the businesses in the Harbeson Business Park signed the petition supporting the Application; that a vacant field adjacent to a railroad track is located nearby as well; that hours of operation will be Monday through Friday, from 6:00 a.m. to 6:00 p.m.; that the age of the children served will be from birth to five (5) years old; that the Applicant cares for approximately sixty-five (65) children and has nineteen (19) employees; that there is adequate parking and a fenced-in playground on the Property; that the State of Delaware has no objection to this location; and that the use at this location is temporary until their new building is completed within in the next month.

The Board found that ten (10) 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. 11812 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 and adjacent properties.

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. 11813 – Stockley Materials, LLC – seeks a special use exception to place a manufactured home type structure for an office (Sections 115-23A and 115-210A(1) of the Sussex County Zoning Code). The property is located on the south side of Lewes-Georgetown Highway (Route 9) approximately 1,750 feet west of Coastal Highway (Route 1). 911 Address: 32416 Lewes Georgetown Highway, Lewes. Zoning District: AR-1. Tax Map No.: 3-34-5.00-192.00.

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.

Ken Adams and Mark Davidson were sworn in and testified requesting a special use exception to place a manufactured home type structure for an office. Mr. Davidson submitted exhibits for the Board to review.

Mr. Davidson testified that he is a principal land planner for Pennoni Associates, Inc.; that Mr. Adams is the President of Stockley Materials, LLC; that the Property consists of approximately 1.65 acres; that the business currently operates approximately at a location 1,900 feet west of the Property; that in September 2015 the Applicant received a Conditional Use approval for the operation of a commercial landscaping materials sales and storage facility; that the Applicant planned to preserve an existing building on the site for the office but the building was unable to be restored and has to be removed; that the Applicant sells landscaping materials such as mulch, landscaping stones, and pavers and stores the material on the Property; that the temporary office structure will measure 12 feet by 44 feet and has a neat appearance; that an adjacent property is used as by Delmarva Power for a substation; that there are other manufactured homes in the area; that the proposed unit is consistent with the character of the neighborhood; that the unit will not substantially affect adversely the uses of neighboring and adjacent properties; and that the use is requested for a period of five (5) years.

Mr. Adams testified that the unit is a model from the early 2000s; that the Property has been cleared except for one structure; that there will be parking on the Property for customers; that there will be 2 to 3 employees using the unit; that the hours of operation are Monday through Friday and Saturdays from 7:00 a.m. to 1:00 p.m.; that the Applicant is relocating its business from rented land to property it has purchased; and that the Applicant used a manufactured home type structure on the other site.

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. 11813 for the requested special use exception for a period of five (5) years based on the record made at the public

hearing and because the use will not substantially adversely affect the uses of the neighboring and adjacent properties.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted for a period of five (5) years 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 ten (10) minute recess.

Case No. 11814 – Mitch Schue & Jody Schue – seek a special use exception for a commercial dog kennel (Sections 115-80A and 115-210(A)(1) of the Sussex County Zoning Code). The property is located on the east side of Long Neck Road approximately 1,990 feet south of Banks Road. 911 Address: 32567 Long Neck Road, Millsboro. Zoning District: C-1. Tax Map No.: 2-34-23.00-307.03.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received one (1) letter of opposition to the Application and read it into the record and received no correspondence in support of the Application.

Mitch Schue and Jody Schue were sworn in and testified requesting a special use exception for a commercial dog kennel. Mr. and Mrs. Schue submitted five (5) letters of support to the Application.

Jody Schue testified that the Applicants operate a dog daycare; that the Applicants have received the appropriate licenses to operate the business; that the use will not substantially adversely affect the uses of the neighboring and adjacent properties; that the dogs are not left outside alone for long periods of time; that the dogs are grouped together by size and taken outside in shifts; that the outside area is fenced in and the yard is kept clean of waste; that the fenced in area consists of approximately one-half acre; that the dogs will primarily be kept inside; that the Property in the past was poorly maintained and the Applicants have cleaned the Property since purchase; that there will be no grooming or training of dogs done on the Property; that an adjacent property has a large field; that the persons in objecting to the Application are not as close to the site as those who support the Application; and that the Property was previously used as a car sales lot.

Mr. Schue testified that the Applicants do not live on the Property; that if dogs stay overnight at the facility he will stay with the dogs; that the fence in the backyard is six (6) feet tall and has barbed wire on top; that another adjacent property will be used for commercial office space and the owners do not object to the Application; that there is brush between the properties to help buffer noise of barking dogs from neighbors; that he tries to keep the dogs away from the neighboring properties and he tries to limit the barking; that the dogs being cared for will be taken inside if barking becomes persistent; that the Applicants care for approximately 25 to 30 dogs; that

there is adequate parking; that there is approximately 20 feet of overgrowth between the fence and the rear property line; that there are trees along the side yard; that the Applicants are seeking approval for a period of five (5) years; and that the Applicants entered into a lease for the Property for three (3) years.

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

Mr. Mills moved to approve Special Use Exception Application No. 11814 for the requested special use exception for a period of five (5) years based on the record made at the public hearing and because the use will not substantially adversely affect the uses of the neighboring and adjacent properties.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the special use exception be **granted for a period of five (5) years and for the reasons stated**. Motion carried 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. 11815 – Sally Laux & Sue Bardsley – seek a variance from the side yard setback requirement (Sections 115-34B and 115-182B of the Sussex County Zoning Code). The property is located on the northeast corner of North Bay Shore Drive and Georgia Avenue. 911 Address: 702 North Bay Shore Drive, Milton. Zoning District: MR. Tax Map No.: 2-35-3.16-62.00.

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.

Sally Laux and Sue Bardsley were sworn in and testified requesting a variance of five (5) feet from the fifteen (15) feet corner side yard setback requirement for a proposed second-story deck.

Ms. Laux testified that the Applicants are building a new dwelling on the Property; that the Property is unique due to its narrowness; that the Property cannot be otherwise developed in strict conformity since the required setbacks will only allow for a twenty-five (25) feet wide structure; that the proposed deck cannot be built without a variance; that difficulty was not created by the Applicants; that the variance will not alter the character of the neighborhood; that the use will not be detrimental to the public welfare; that the variance requested is the minimum variance to afford relief; that the deck cannot be built on the Bay Shore Drive side of the Property and still have a view of the water; that there is a small deck proposed to be constructed in the front yard; that that the Applicants did not consider placing the deck to the rear yard of the Property; that the dwelling has not yet been constructed; that the first level of the deck will serve a multi-purpose area on the first level of the dwelling; that the second level of the proposed deck will be accessed off the kitchen and living room area; that the first floor of the deck will be elevated; that the edge of paving of Georgia Avenue abuts to the property line of the Property; that the deck will not block any views on Georgia Avenue; that the Applicants did not explore moving the dwelling elsewhere on the lot;

that the septic system is located at the front of the Property; that the location of the proposed deck will not block any neighbor's views of the water; that, if other houses along Georgia Avenue built decks in a similar location, the Applicants' views of the water would be blocked.

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

Mr. Rickard moved to deny Variance Application No. 11815 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property can otherwise be developed in strict conformity to the Sussex County Zoning Code; and
2. The exceptional practical difficulty is being created by the Applicants.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried that the variance be **denied for the reasons stated**. Motion carried 4 – 1.

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

Case No. 11816 – Halton F. Johnson, Jr. – seeks variances from the side yard setback requirement and the minimum lot width requirement for a parcel (Sections 115-25A(1) and 115-25C of the Sussex County Zoning Code). The property is located on the west side of Honeysuckle Road approximately 605 feet north of Wilgus Cemetery Road. 911 Address: 35416 Honeysuckle Road, Frankford. Zoning District: AR-1. Tax Map No.: 5-33-6.00-70.00.

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. Ms. Cornwell also stated that the existing dwelling is non-conforming and pre-dates the enactment of the Sussex County Zoning Code.

Halton F. Johnson, Jr. was sworn in and testified requesting a variance of 2.3 feet from the fifteen (15) feet side yard setback requirement for an existing attached water pump shed and a variance of 28.31 feet from the 150 feet lot-width requirement for a parcel; that the existing dwelling was built in the 1940s; that the lot is narrower in the front than the back; that the dwelling was centered on the lot; that he seeks to subdivide the Property into 2 lots; that the Property cannot be subdivided without a variance; that he inherited the Property from his parents; that the lot was purchased by his parents as it currently exists; that the difficulty was not created by the Applicant; that the variances will not alter the essential character of the neighborhood; that the neighboring property only has 103 feet of road frontage; that the variances are the minimum variances to afford relief; that he plans to give the dwelling to his daughter; that he plans to sell the other proposed parcel to a friend; that the Property consists of approximately 3.6 acres; that the Property will be subdivided into two lots measuring 2.6 acres and 1.0 acre respectively; that the pump house has been on the Property for many years; and that the rear yard property is five-hundred (500) feet wide and the front yard is less than three-hundred (300) feet wide.

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 moved to approve Variance Application No. 11816 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The non-conforming dwelling and irregular shaped lot make this Property unique;
2. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
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 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. 11817 – Daniel A. Premo – seek variances from the front yard setback requirements for a through lot (Sections 115-82B and 115-182A of the Sussex County Zoning Code). The property is located on the west side of Sussex Highway east side of Bridgeville Highway approximately 690 feet south of Elks Road. 911 Address: 22128 Sussex Highway, Seaford. Zoning District: C-1. Tax Map No.: 3-31-4.00-6.01.

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.

Daniel Premo was sworn in and testified requesting a variance of 30.1 feet from the sixty (60) feet front yard setback requirement for a proposed handicapped ramp for a through lot, a variance of 25.7 feet from the sixty (60) feet front yard setback requirement for an existing building for a through lot, a variance of 34.3 feet from the sixty (60) feet front yard setback requirement for a proposed deck, and a variance of 27.7 feet from the sixty (60) feet front yard setback requirement for an existing building for a through lot; that the lot is small in size making it unique; that the Property cannot be developed in strict conformity with the Sussex County Zoning Code; that the building was placed on the lot in 1997 by the previous owner; that the existing building is not compliant with the Americans with Disabilities Act (“ADA”); that he proposes constructing a handicap ramp that will meet the ADA standards; that the variances will not alter the essential character of the neighborhood; that the variances requested are the minimum variance necessary to afford relief; that the building will be used for a mortgage business; that the proposed deck is for additional office space; that deck will be used for meetings; that the building only consists of approximately 1,400 square feet; that outdoor space will also be used by his employees; that size of the lot and setback requirements make this Property impossible to develop without a variance; and that the HVAC unit is in the south side of the building.

Ms. Cornwell noted that the survey shows a setback of 10 feet from Alternate U.S. Route 13 but the setback is actually 60 feet from Alternate U.S. Route 13.

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

Mr. Mills moved to approve Variance Application No. 11817 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The setback requirements and size of the lot make this Property unique;
2. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
3. The exceptional practical difficulty was not created by the Applicant
4. The variances will not alter the essential character of the neighborhood;
5. The variances are necessary to enable reasonable use of the Property; and
6. The variances sought are the minimum variances necessary to afford relief.

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

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

Case No. 11818 – Wayne Wickstrom & Mary Wickstrom – seeks variances from the side yard setback requirements (Section 115-42B, 115-181B and 115-182B of the Sussex County Zoning Code). The property is located on the southwest corner of South Bay Shore Drive and Jefferson Avenue. 911 Address: 301 South Bay Shore Drive, Milton. Zoning District: GR. Tax Map No.: 2-35-4.17-43.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of the Application and no correspondence in opposition to the Application.

Bryan Elliott, of Integrity Builders, was sworn in and testified requesting a variance of 0.6 feet from the ten (10) feet side yard setback requirement on the south side for an existing dwelling and a variance of 4.5 feet from the eight (8) feet side yard setback requirement on the south side for an existing HVAC unit; that the Property is unique as it is an undersized lot measuring 50 feet by 100 feet; that the Property is a corner lot in Broadkill Beach; that the variances will not alter the essential character of the neighborhood; that the variances will not impair the uses of the neighboring and adjacent properties; that the variances are the minimum variances necessary to afford relief; that the dwelling is located on pilings; that an error made by the builder in placing the home created the encroachment into the side yard setback area; that the septic system is in the front yard which is why the dwelling was constructed in the rear of the Property; that the septic system limited the building envelope for the house; that a previous variance was granted in 2014 for the dwelling from the corner side yard setback requirement; that the HVAC cannot be relocated

due to the size of the unit; that HVAC cannot be located on the opposite side of the dwelling due to the dust associated with the gravel driveway and the gravel Jefferson Avenue; that the dust could adversely affect the HVAC unit; that there is limited parking on the lot; that the adjacent lot on the south side is vacant; that the HVAC unit cannot be placed under the dwelling due to the flood zone requirements and limited parking area under the dwelling; and that there have been no complaints from the neighbors.

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 moved to approve Variance Application No. 11818 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The small 50 feet by 100 feet lot makes this Property unique;
2. The HVAC system cannot be placed elsewhere on the lot;
3. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
4. The exceptional practical difficulty was not created by the Applicants;
5. The variances will not alter the character of the neighborhood; and
6. 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.

OLD BUSINESS

Case No. 11799 – Home Team Realty – seek a variance from the front yard setback requirement (Section 115-82B of the Sussex County Zoning Code). The property is located on the east side of Sussex Highway approximately 811 feet south of Sycamore Road. 911 Address: 30661 Sussex Highway, Laurel. Zoning District: C-1. Tax Map No.: 2-32-12.00-132.02.

The Board discussed this case, which has been tabled since July 11, 2016.

Mr. Rickard moved to approve Variance Application No. 11799 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The non-conforming building makes this Property unique;
2. The Property cannot otherwise be developed in strict conformity with the Zoning Code;
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 4 – 1.

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

Case No. 11802 – James Freeman – seeks variances from the front yard and side yard setback requirements (Section 115-34B of the Sussex County Zoning Code). The property is located on the south side of Trout Terrace North approximately 0.34 miles east of Lighthouse Road. 911 Address: 36964 Trout Terrace North, Selbyville. Zoning District: MR-RPC. Tax Map No.: 5-33-12.00-771.00.

The Board discussed the case, which has been tabled since July 18, 2016.

Mr. Mills moved to approve Variance Application No. 11802 for a 5.1 feet variance from the front yard setback requirement and for the side yard setback variance based on the record made at the public hearing and for the following reasons:

1. The Applicant's medical condition has created an exceptional practical difficulty;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicant; and
4. The variances will not alter the essential character of the neighborhood.

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

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

Meeting Adjourned 10:22 p.m.