

## **MINUTES OF AUGUST 15, 2016**

The regular meeting of the Sussex County Board of Adjustment was held on Monday, August 15, 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 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. Mills, 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 20, 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. 11750 – Ron Abremski & Diane Abremski** – seek a variance from the rear yard setback requirement (Sections 115-25C and 115-183C of the Sussex County Zoning Code). The property is located on the east side of Herring View Drive approximately 0.6 mile east of Angola Beach Road. 911 Address: 33613 Herring View Drive, Lewes. Zoning District: AR-1. Tax Map No.: 2-34-18.00-746.00.

Ms. Cornwell presented the case and stated that this case was first heard on April 4, 2016 and held open to subpoena the builder. The Office of Planning and Zoning received three (3) letters of support to the Application and received no correspondence in opposition to the Application.

Ron Abremski and Diane Abremski were sworn in and testified requesting a variance of five (5) feet from the twenty (20) feet rear yard setback requirement for a proposed three season room.

Mr. Abremski testified that the Property is unique because the lot is shallow and the dwelling is large for the lot; that the screen porch cannot be built in compliance with the Sussex County Zoning Code; that the Property was developed by Ryan Homes; that their dwelling is set further back on the lot than the neighboring homes; that the difficulty was not created by the Applicants; that the Applicants decided to build the porch at a later date to save on cost at the time the dwelling was being constructed; that the salesperson said the porch could be added to the home

after construction; that approximately 40% to 50% of dwellings in the development have similar porches; that the Applicants purchased one of the last three (3) available lots in the development; that the Applicants purchased the dwelling with the understanding that a porch could be added later; that the Property is adjacent to wooded lands in the rear yard; that the proposed porch will not alter the character of the neighborhood; that the proposed porch will not be detrimental to the public welfare; that the proposed porch would only be visible to the adjacent neighbors; that the neighbors affected have no objection to the Application; that there have been four (4) other variances granted in the development; that the variance requested is the minimum to afford relief; that an existing fireplace at the rear of the dwelling impedes two (2) feet into the proposed porch; that without a variance the proposed porch would only be seven (7) feet wide and would not be functional; that the proposed porch will likely increase the Property's value; that the homeowners association has approved the plan for the proposed porch; that he feels a miscommunication during settlement created the difficulty; and that the contractor for the proposed porch made him aware of the need for a variance.

Mike Schaeffer of Ryan Homes was sworn in to testify in response to the subpoena issued by the Board. Tim Willard, Esquire, appeared on behalf of Ryan Homes.

Tim Willard stated that Mr. Schaeffer received the subpoena and he is in charge of sales operation for Ryan Homes; that Mr. Schaeffer has reviewed the file and spoke with the sales associates involved with the Applicants' settlement; that Ryan Homes has built 160 dwellings in this development; that only four (4) variances have been requested and granted in this development; that Ryan Homes has been building homes in Sussex County for fifteen (15) years; that, as part of the normal sales process, a copy of the site plan is given to the buyers; that the Applicants chose to enlarge the floor plan of the morning room rather than build a porch; that the final survey given at settlement showed the building restriction lines; that Ryan Homes disputes that there was a misrepresentation about whether a porch could be constructed without a variance; that Ryan Homes admits that there may have been a miscommunication during the process; that there are numerous porches in the development that have been built without the need for variances; and that Ryan Homes does not build outside the building envelope.

Mr. Schaeffer affirmed the statements of Mr. Willard as true and correct. Mr. Schaeffer testified that he disputes that the Applicants were told that they could construct a three-season room as proposed without a variance; that construction managers review the options and the proposed site plan with the homeowners prior to construction; that Ryan Homes offered the Applicants the choice of a screen porch or a morning room extension and the Applicants chose the morning room extension in lieu of the screen porch; that Ryan Homes has constructed approximately 50% of the screen porches in the development; that Ryan Homes would have constructed a screen porch measuring 8 feet by 19 feet had the Applicants chose that option and the porch would have fit within the building envelope; that he has no record that the Applicants were told they could build the screen porch after construction of the morning room extension without a variance; that he disputes that 10-15% of the properties in the neighborhood could need similar variances; and that the size of the lot is not shallower than other lots in the neighborhood.

In rebuttal, Ron Abremski testified that most of Mr. Schaeffer's testimony is accurate; that the Applicant's sales agent lives in the neighborhood; that the Applicants looked to her for direction; that the sales agent told the Applicants that the larger morning room would be easier to extend during construction of the dwelling; that the sales agent worked in a different community; that he believed that the screen porch could be added later; that there was no discussion that a variance would be needed to add the porch; that he admits he may be at fault in the matter; and that he feels that, had the Applicants realized the need for the variance to add a porch, he would have changed his mind.

In rebuttal, Tim Willard stated that Ryan Homes does agree that miscommunication played a part in this situation.

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 he believes that the exceptional practical difficulty was created by the Applicants.

Mr. Workman stated that there have been other variances granted in the development; that the miscommunication created the difficulty; and that the variance will not alter the essential character of the neighborhood.

Mr. Hudson stated that the exceptional practical difficulty was created by the Applicants when they extended the size of the morning room.

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

Mr. Callaway stated that the exceptional practical difficulty was created by the Applicants.

Mr. Rickard moved to deny Variance Application No. 11750 for the requested variance based on the record made at the public hearing because the exceptional practical difficulty has been created by the Applicants.

Motion by Mr. Rickard, seconded by Mr. Hudson, and carried that the variance be **denied for the reasons stated**. Motion carried 3 – 2.

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

**Case No. 11757 – Pat Lewis & Karen Lewis** – seek a variance from the rear yard setback requirement (Section 115-25C of the Sussex County Zoning Code). The property is located on the east side of Riverwalk Drive in the Beaver Creek subdivision. 911 Address: 18841 River Walk Drive, Milton. Zoning District: AR-1. Tax Map No.: 2-35-30.00-517.00.

Ms. Cornwell presented the case and stated that this case was first heard on April 18, 2016 and held open to subpoena the builder. The Office of Planning and Zoning received one (1) letter of support to the Application and received no correspondence in opposition to the Application.

Pat Lewis and Pam McDonald of Del-Coast Design & Build were sworn in and testified requesting a variance of seven (7) feet from the ten (10) feet rear yard setback requirement for a proposed three season room.

Mr. Lewis testified that the Property is adjacent to an existing easement; that the sales representative for Bryton Homes stated that a porch could be added later and that if a variance is needed he would need to apply; that the rear of the Property is adjacent to farm land; that he was not aware a variance would be needed until Del-Coast Design & Build made him aware of the need for the variance; that the great room and the nook were expanded six (6) feet; that the Applicants chose to have a morning room rather than the three season room; that he admits he made the mistake by not realizing he did not have 19 feet to the rear of the dwelling to build; that he should have been aware of the setback requirements; that the great room and nook have been expanded and he does not have enough space in the building envelope for the three season room; that the variance will not alter the character of the neighborhood; that the model home the Applicants chose is the largest model offered by the builder which would fit on the lot; that he could have placed a home on the Property with a screen porch; that, if no variance was granted, he would not suffer a hardship; that he wants the variance but does not need it; that the Property is a similar size to other lots in the neighborhood; and that he could build a porch that measures nine (9) feet deep without a variance.

Ms. McDonald testified that the Applicants could have placed a home on the lot with a screen porch; and that the Applicants' request is a want rather than a need.

David Carter and Sheila Setzer were sworn in and testified to represent Bryton Homes after being subpoenaed by the Board.

Ms. Setzer testified that the dwelling is 18.9 feet from the rear yard property line and the Applicants would have 8.9 feet to build a porch in the building envelope; that the four (4) feet extension the Applicants directed to be built affected the building envelope in the rear yard; that, during the pre-construction meeting, the Applicants were shown a survey of the Property and the building restriction lines; that the survey shows where the dwelling will be located on the Property; and that Bryton Homes also explains to buyers what is left available to build on the Property after the home is built.

In rebuttal, Mr. Lewis testified that he does not dispute Ms. Setzer's testimony, and that he misunderstood and thought he had 18.9 feet to build and did not consider the setback requirements.

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

Mr. Rickard moved to deny Variance Application No. 11757 for the requested variance based on the record made at the public hearing because the exceptional practical difficulty was created by the Applicants.

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

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

**Case No. 11819 – Richard C. Smith, III, & Tammy L. Eisensmith** – seek variances from the rear yard and side yard setback requirements (Section 115-42B of the Sussex County Zoning Code). The property is located on the northeast side of Ramblewood Drive South approximately 924 feet northeast of Munchy Branch Road. 911 Address: 2060 Ramblewood Drive South, Rehoboth Beach. Zoning District: GR. Tax Map No.: 3-34-13.00-679.00.

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.

Robert McVey was sworn in to testify about the Application. Chad Meredith, Esquire, presented the case on behalf of the Applicants.

Mr. Meredith stated that the Applicants are requesting a variance of 4.4 feet from the ten (10) feet rear yard setback requirement and a variance of 3.8 feet from the ten (10) feet side yard setback requirement on the east side for an existing detached garage; that the detached garage was built in 1985; that the Certificate of Compliance was issued in 1985; that the detached garage is only 93 square feet over the 600 square feet requirement that would allow the garage to be five (5) feet from the side and rear yard property lines; that the situation is unique due to the age of the detached garage and because the Certificate of Compliance was issued; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code without great cost to the Applicants or removing a portion of the building; that the variances will enable reasonable use of the Property; that the exceptional practical difficulty was not created by the Applicants; that the garage was placed on the Property by a prior owner; that the Property has been bought and sold multiple times since the garage was constructed; that the variances do not alter the essential character of the neighborhood; that there have been no complaints from the neighbors; that the use is not detrimental to the public welfare; that the variances sought are the minimum variances necessary to afford relief; and that the garage cannot be reduced in size to comply with the setback requirements.

Robert McVey, under oath, affirmed the statements made by Mr. Meredith and testified that he is the real estate broker for the current owners; that he has worked in Sussex County since 1994; that he is familiar with the Property; that the garage does not negatively impact the neighboring property values; and that the well is in the front yard.

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

Mr. Rickard moved to approve Variance Application No. 11819 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The garage was built in 1985 and a Certificate of Compliance was issued 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 Applicants;
4. A Certificate of Compliance was issued;
5. The variances will not alter the essential character of the neighborhood; and
6. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. 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. 11820 – Michael Chanoux & Margaret K. Chanoux** – seek variances from the minimum lot width requirement for a parcel and the minimum lot size requirement for a parcel (Section 115-194B(1) of the Sussex County Zoning Code). The property is located on the west side of Lockerman Road, east side of Coastal Highway approximately 0.57 miles north of Steamboat Landing Road. 911 Address: 28708 Lockerman Road, Milton. Zoning District: AR-1. Tax Map No.: 2-35-16.00-8.00.

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.

Michael Chanoux, Margaret Chanoux, Leif Erickson, and Ken Christenbury were sworn in to testify about the Application. John Sergovic, Esquire, presented the case to the Board. Mr. Sergovic submitted exhibits to the Board.

Mr. Sergovic stated that the Applicants are requesting a variance of 60.52 feet from the 150 feet lot-width requirement for a parcel, a variance of 20.67 feet from the 150 feet lot-width requirement for a parcel, a variance of 31.19 feet from the 150 feet lot-width requirement for a parcel, a variance of 0.25 acre from the minimum 43,560 square feet lot size requirement for a parcel, and a variance of 0.246 acre from the minimum 43,560 square feet lot size requirement for a parcel; that this Property is within the Conservation Zone portion of the Sussex County Zoning Code; that the subdivision of lots must meet different criteria due to the Conservation Zone requirements; that Mr. Chanoux inherited the Property from his grandparents; that the Property is located off of the northbound lane for Route 1 along the Broadkill River; that, in 1966, the Delaware Department of Transportation (“DelDOT”) built Route One and abandoned Old Route 14; that the new highway ran through the middle of the Applicants’ property leaving an odd shaped parcel on the east side of Route One; that the Applicants seek to subdivide the Property into three

(3) lots; that the configuration of the lands was caused by DelDOT's taking; that Lot 1 will be slightly more than one (1) acre; that Lot 1 previously had a manufactured home for a medical hardship but the home has since been removed; and that Lot 2 is where the original farmhouse is located.

Mr. Chanoux, under oath, affirmed the statements made by Mr. Sergovic.

Ken Christenbury, of Axiom Engineering, LLC, testified that Lot 1 would be the only lot that must meet the new impervious cover requirement through the Delaware Department of Natural Resources and Environmental Control ("DNREC"); that the Property will meet the new stormwater management requirements; that the variances are necessary to enable reasonable use of the properties; that the adjacent property is owned by the State and cannot be otherwise developed; that there is farmland and a cemetery in the area; that the use will not substantially adversely affect the uses of the neighboring and adjacent properties; that DelDOT took a portion of the Property to create Route One; and that the Sussex County Zoning Code did not exist at the time the highway was constructed.

Leif Erickson testified that he is licensed by DNREC as a site evaluator; that the proposed lots will meet all DNREC regulations; that the two existing residences are on conforming septic systems; that the deep groundwater will not be affected; that the proposed subdivision will not lead to degradation of the surface or ground water; and that the proposed lots will not adversely affect the Broadkill River.

Michael Chanoux testified that the original homestead is located on the proposed Lot 2; that a shed and pump house are located on the Proposed Lot 3; and that the original farm was approximately thirty (30) acres.

Mr. Sergovic stated that the State left the Applicants with only three (3) acres; that the Applicants did not create the difficulty; that the State has taken additional lands which cannot be used for residential use in the area; and that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code; and that the difficulty was created by DelDOT.

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

Mr. Mills moved to approve Variance Application No. 11820 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Applicants have proven that the conservation zone regulations have been met;
2. The odd shape of the Property was created by DelDOT;
3. The Property cannot otherwise be developed in strict conformity to the Sussex County Zoning Code;
4. The exceptional practical difficulty was not created by the Applicants;
5. The variances will not alter the essential character of the neighborhood as there is farmland and a cemetery nearby; 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 and that the Applicants may need to apply for any additional variances needed for a through lot.** 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.

The Board took a ten (10) minute recess.

**Case No. 11821 – Luke Aaron Neiswander** – seeks a variance from the side yard setback requirements (Section 115-42B of the Sussex County Zoning Code). The property is located on the north side of Forest Road approximately 0.51 miles northeast of Stockley Road. 911 Address: 20492 Forest Road, Milton. Zoning District: GR. Tax Map No.: 2-34-5.00-8.00.

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.

Luke Neiswander was sworn in and testified requesting a variance of four (4) feet from the ten (10) feet side yard setback requirement on the east side for an existing dwelling; that the Property is unique as it is exceptionally narrow; that the Property is only forty (40) feet wide and is only 125 feet deep; that the lot was created in 1965, which was prior to the enactment of the Sussex County Zoning Code; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code; that the dwelling has been on the Property since at least November 1973; that the dwelling cannot be relocated elsewhere on the Property; that there is an existing drive on the west side of the dwelling and there are numerous large trees on the Property; that some of these trees are within one foot of the dwelling; that the previous owner inherited the Property from his parents and they purchased the Property from a sheriff's sale in 1977; that the exceptional practical difficulty was not created by the Applicant; that the variance will not alter the essential character of the neighborhood; that the use is not detrimental to the public welfare; that adjacent lots are also exceptionally narrow and shallow; that the requested variance is the minimum variance to afford relief; that he purchased the Property three (3) months ago; that the existing dwelling measures 20 feet by 20 feet; that there is no septic system on the Property; that he plans to use the structure for storage of surfboards; that, due to the dwelling being on cinder blocks and large trees, the structure cannot be moved into compliance; and that currently the dwelling is uninhabitable.

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

Mr. Rickard moved to approve Variance Application No. 11821 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The size of the 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 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 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. 11822 – Walter Lathbury & Nancy Lathbury** – seek a variance from the side yard setback requirement (Sections 115-50D and 115-182B of the Sussex County Zoning Code). The property is located on the northeast corner of Bethany Drive and Clover Lane in the Bethany Meadows Subdivision. 911 Address: 33785 Bethany Drive, Frankford. Zoning District: HR-2. Tax Map No.: 1-34-17.00-381.00.

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

Walter Lathbury and Nancy Lathbury were sworn in and testified requesting a variance of 3.2 feet from the fifteen (15) feet corner side yard setback requirement on the west side for a proposed porch. The Applicants submitted pictures to the Board to review.

Mr. Lathbury testified that the Applicants purchased the Property in 1998; that, due to health reasons, the porch is needed to enjoy the outdoors and to provide easier access in and out of the dwelling; that the lot is irregularly shaped and narrow; that the Property is also a corner lot; that the setback requirement for a side yard is ten (10) feet in this development but the corner side setback requirement is fifteen (15) feet; that the Property is a small lot; that the porch cannot be placed elsewhere on the lot; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code; that the porch will not impact traffic or visibility on Bethany Drive or Clover Lane; that the variance is the least modification of the regulation at issue; that he uses a wheelchair at times; that the Property line is even with the edge of the road; and that the Applicants did not create the exceptional practical difficulty.

Ms. Lathbury testified that the proposed porch will not impede with the views of the neighbors; that neighbors and the homeowners association support the Application; and that the proposed size of the porch will allow for wheelchair accessibility.

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

Mr. Rickard moved to approve Variance Application No. 11822 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The irregular shaped corner lot makes this Property unique;

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 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. 11823 – Vonny Byrd / Good Beginnings Pre-School** – seeks a special use exception to operate a daycare facility (Sections 115-23C(5) and 115-210(3)(e) of the Sussex County Zoning Code). The property is located on the southwest corner of Penn Street and Woodland Ferry Road. 911 Address: 10024 Woodland Ferry Road, Laurel. Zoning District: AR-1. Tax Map No.: 2-32-12.14-55.00.

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.

Vonny Byrd was sworn in and testified requesting a special use exception to operate a daycare facility; that she has operated a daycare at this location for eleven (11) years; that new State of Delaware regulations for evacuation cribs require her to expand her daycare; that the additional four-hundred (400) square feet will accommodate the required evacuation cribs; that she owns the adjacent property; that there is a baseball complex nearby; that the area is rural; that the cribs are large and take up a significant amount of space; that the proposed addition will extend into an existing playground area; that there are two (2) playground areas available; that there will be no change to the available parking; that she will be able to care for up to fifty (50) children, ages birth to school age; that she has seven (7) employees; and that the use does not substantially adversely affect the uses of the neighboring and adjacent properties.

Ms. Byrd submitted pictures for the Board to review.

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. 11822 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. Mills, 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. Rickard – yea, Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11824 – Estate of Joanne C. Emkey** – seeks variances from the front yard and side yard setback requirements (Sections 115-34B, 115-182D and 115-185F of the Sussex County Zoning Code). The property is located on the southeast corner of Apache Pass and Pocahontas Road in the Blackwater Subdivision. 911 Address: 34129 Pocahontas Road, Dagsboro. Zoning District: MR. Tax Map No.: 1-34-11.00-385.00.

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

Timothy Meadowcraft and Joseph Emkey were sworn in and testified requesting a variance of 13.6 feet from the thirty (30) feet front yard setback requirement for an existing deck, a variance of 2.4 feet from the thirty (30) feet front yard setback requirement for an existing dwelling, and a variance of 5 feet from the five (5) feet side yard setback requirement on the east side for an existing shed.

Mr. Emkey testified that the Property is unique because it is a corner lot; that the Property is narrow; that the septic system is in the rear yard; that the dwelling and deck were built in 1993 by his parents; that the Property must be sold per his mother's will; that the variances are necessary to enable reasonable use of the Property; that the deck cannot be maintained on the Property without a variance; that the difficulty was not created by the Applicant; that the variances will not alter the character of the neighborhood; that the variances will not impair the uses of neighboring properties; that the variances are the minimum variances necessary to afford relief; that there have been other variances granted in the development; that the Property needs to be sold in order to settle the estate; that there have been no complaints about the Property; that the neighboring property is a vacant lot; and that the edge of the road is even with the property line.

Mr. Meadowcraft testified that he is a local real estate agent; that the homeowners association supports the Application; that there was no previous survey of the Property; that a survey completed for the planned settlement showed the encroachments; that they believe the shed can be moved into compliance with the Sussex County Zoning Code; and that a new septic system had to be installed on the Property.

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

Mr. Rickard moved to approve in part and to deny in part Variance Application No. 11824. Mr. Rickard moved that the requested front yard variances be approved based on the record made at the public hearing and for the following reasons:

1. The corner lot is narrow making 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.

As part of his motion, Mr. Rickard moved that the variance from the side yard setback requirement be denied based on the record made at the public hearing because it is not necessary since the Applicant testified that the shed will be moved into compliance.

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

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

**Case No. 11825 – Cheri Corr-Millman** – seeks a special use exception to use a manufactured home type structure as storage (Sections 115-23A and 115-210A(1) of the Sussex County Zoning Code). The property is located on the west side of Staytonville Road approximately 0.55 miles south of Webb Farm Road. 911 Address: 14904 Staytonville Road, Lincoln. Zoning District: AR-1. Tax Map No.: 2-30-18.00-14.04.

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.

No one appeared on behalf of the Application.

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

The Board found that parties appeared in opposition to the Application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case **denied due to lack of representation**. 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. 11826 – Stuart Ortel** – seeks a variance from the side yard setback requirement (Sections 115-185F and 115-182A of the Sussex County Zoning Code). The property is located on the northeast corner of Dodd Avenue and Elizabeth Avenue in the Ann Acres Subdivision. 911 Address: 21108 Elizabeth Avenue, Rehoboth Beach. Zoning District: MR. Tax Map No.: 3-34-20.13-103.00.

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

Stuart Ortel was sworn in and testified requesting a variance of 11.7 feet from the fifteen (15) feet corner side yard setback requirement on the west side for an existing shed; that he purchased the Property in 2015; that, when he acquired the Property, a larger shed was located one

(1) foot from the rear yard property line and two (2) feet from the side yard property line; that he planned to relocate the previous shed from the northeast side of the Property to the northwest side of the Property; that, when he contacted the Planning & Zoning office for setback requirements, he was told the shed needed to be three (3) feet from the side and rear property lines; that the previous shed was too large and he purchased a smaller shed; that the setback requirements given to him for the new shed were five (5) feet from the side and rear property lines; that the Property has a unique shape and is a corner lot; that the Property line angles in; that the Applicants constructed the dwelling on the Property and the survey completed for the dwelling showed the encroachment of the shed; that he contacted the Planning & Zoning department and was told that the lot is a corner lot and the shed needed to be fifteen (15) feet from the corner side yard; that he was previously unaware of the fifteen (15) feet side yard setback requirement; that the fence and landscaping of the lot have been completed; that to move the shed into compliance would be costly; that there are mature trees on the lot along Dodd Avenue and the shed cannot be seen from Dodd Avenue; that the shed does not obstruct any views; that the neighbors have no objection to the Application; that the landscaping, irrigation, and fence would have to be moved in order to move the shed; that the shape and design of the Property make it unique; that the variance is necessary to enable reasonable use of the Property; that the exceptional practical difficulty was not created by the Applicant; that he relied on Sussex County Planning & Zoning and his contractor to place the shed correctly; that the use is not detrimental to the public welfare; that the variance does not alter the character of the neighborhood; and that the variance sought is the minimum variance 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. 11826 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The irregular shaped lot and design of 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.

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. 11827 – Paula Weir** – seeks a variance from the front yard setback requirement and a special use exception for a garage / studio apartment (Sections 115-40C, 115-42B and 115-182D of the Sussex County Zoning Code). The property is located on the east side of Arrowhead Lane approximately 135 feet south of Camp Arrowhead Road. 911 Address: 34126 Arrowhead Lane, Lewes. Zoning District: GR. Tax Map No.: 2-34-12.18-22.00 & 23.00.

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.

Paula Weir was sworn in and testified requesting a variance of 4.3 feet from the thirty (30) feet front yard setback requirement for an existing dwelling, a variance of 14.3 feet from the thirty (30) feet front yard setback requirement for an existing deck, and a special use exception for a garage / studio apartment. Ms. Weir testified that the narrow lot combined two (2) parcels into one (1) lot; that the dwelling and open deck were built in the 1970s; that the deck provides access to the dwelling; that the Applicant believed the property line went to the edge of the adjacent road; that the difficulty was not created by the Applicant; that the Applicant believed the Property was in compliance with the Sussex County Zoning Code until a recent survey showed the encroachment; that the variances do not alter the essential character of the neighborhood; that there are other houses nearby which appear to be the same distance from the road as her house; that the variances requested are the minimum variances necessary to afford relief; that the proposed detached garage with the studio apartment will be located to the left of the existing dwelling; that the proposed structure will comply with setback requirements; that the apartment will not exceed the maximum 800 square feet requirement; that the Property is unique in shape; that the variances are necessary to enable reasonable use of the Property; that the builder believed the house was built in compliance with the Sussex County Zoning Code; that the property line does not extend to the road; that the garage / studio apartment will not substantially adversely affect the uses of the adjacent and neighboring properties; that the garage / studio apartment is a new structure; and that there will be adequate parking available for the apartment.

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

Mr. Mills moved to approve Variance / Special Use Exception Application No. 11827 for the requested variances and the special use exception for a garage studio apartment based on the record made at the public hearing because the use will not substantially adversely affect the uses of the neighboring and adjacent properties and the variances for the following reasons:

1. The size and shape of the Property make it 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. Mills, seconded by Mr. Hudson, and carried unanimously that the variances and the special use exception 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.

### **OLD BUSINESS**

**Case No. 11800 – Willard J. Hayes** – seek a variance from the front yard requirement (Section 115-77A of the Sussex County Zoning Code). The property is located on the east side of Sussex Highway approximately 0.7 miles south of Iron Hill Road. 911 Address: 36959 Sussex Highway, Delmar. Zoning District: C-1. Tax Map No.: 5-32-20.00-97.01.

The Board discussed the case, which has been tabled since July 11, 2016. Ms. Cornwell advised the Board that the video provided by the opposition is lengthy but has no audio. Mr. Sharp suggested that the video be provided to the Board members to review prior to the next public meeting. Ms. Cornwell advised the Board that the video will be provided via the internet for the Board to review.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the case be **tabled until September 12, 2016, to allow the Board the opportunity to review the video provided by the opposition and the response from the Applicant.** 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. 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.

The Board discussed the case, which has been tabled since August 1, 2016.

Mr. Sharp reminded the Board that this case is an appeal of a decision of the Planning Director and the Board’s function in this case is as an appellate body.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until September 12, 2016.** Motion carried 5 – 0.

**Meeting Adjourned 10:28 p.m.**