



# BOARD OF ADJUSTMENT

## AGENDAS & MINUTES

### MINUTES OF AUGUST 6, 2012

The regular meeting of the Sussex County Board of Adjustment was held on Monday, August 6, 2012, at 7:00 p.m. in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Brent Workman, Mr. Jeff Hudson, and Mr. Norman Rickard, with James Sharp – Assistant County Attorney, and staff members, Mrs. Susan Isaacs – Chief Zoning Inspector, and Mrs. Jennifer Norwood – Recording Secretary.

Motion by Mr. Mills, seconded by Mr. Hudson, 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 of July 2, 2012 and July 16, 2012 as circulated. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously to approve the Finding of Facts for July 2, 2012 and July 16, 2012. 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. 11015 – Steve Loeffler** – north of Route 54 (Lighthouse Road) east of Blue Teal Road, being Lot 28 within Swann Keys development. (Tax Map I.D. 5-33-12.16-488.00)

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Darrell Grier was sworn in and testified on behalf of the Applicant requesting a 5-foot variance from the required 10-foot side yard setback requirement for a proposed manufactured home, an 8-foot variance from the required 10-foot side yard setback requirement for a proposed AC unit, and a 7-foot variance from the required 10-foot side yard setback requirement for a proposed fireplace. Mr. Grier testified that the proposed manufacture home will serve as the Applicant's residence after retirement; that the lot is only 40-feet wide; that the variance will enable reasonable use of the property; that the lot was not created by the Applicant; that the variance will not alter the character of the neighborhood; that

the existing unit measured 22-feet wide; that the proposed unit measures 24-feet wide; that there are similar uses in the neighborhood; that the proposed unit is the smallest unit possible which affords the Applicant a good floor plan; and that he is now aware that the shed cannot be attached to the proposed unit, or the Applicant must apply for another variance to keep the shed.

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

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11015 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The property is narrow in size, which makes it unique;
2. The variance will enable reasonable use of the property;
3. The difficulty was not created by the Applicant;
4. The variance, if granted will not alter the character of the neighborhood; and
5. The variance is the minimum variance 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. 11016 – SLD Investments, II, L.L.C.** – (Tax Map I.D. 1-34-23.20-133.00) east of Route 1 (Coastal Highway) approximately 140 feet north of Delaware Avenue, being Lot 13 & (Tax Map I.D. 1-34-23.20-120.00) east of Route 1 (Coastal Highway) approximately 142 feet south of Maryland Avenue, being Lot 14.

Variances from the minimum square footage requirement for two duplexes.

Mrs. Isaacs presented the case. Charles Zonko was sworn in and testified about the Application. James Fuqua, Esquire, presented the case to the Board and stated that the Applicant is requesting a 2,249-square-foot variance from the required 7,260-square-foot requirement for a duplex on Lot 13 and a 2,277-square-foot variance from the required 7,260-square-foot requirement for a duplex on Lot 14. Mr. Fuqua stated that the properties are zoned C1; that the proposed duplexes will not alter the character of the neighborhood; that there is a mixed use of residential and commercial throughout the area; that the Applicant also owns the adjacent property; that there have been numerous variances granted in the area including thirteen density variances; that there will be adequate parking on the properties; that the difficulty was not created by the Applicant; that it will not alter the character of the neighborhood; that the trend in the neighborhood is for high density residential use; that it will meet all the required setback requirements; and that the variances requested are the minimum variances to afford relief. Mr. Zonko, under oath, confirmed the statements by Mr. Fuqua.

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

Mrs. Isaacs read one (1) letter of opposition into the record.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the case be taken under advisement. 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.

At the conclusion of the public hearings, the Chairman referred back to this case. Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11016 for the requested variance, based on the record made at the public hearing and for the following reasons:

1. The lot is unique in size;
2. The variance will enable reasonable use of the property;
3. The variance will not alter the character of the neighborhood;
4. The difficulty was not created by the Applicant; and
5. The variance is the minimum variance 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. Hudson – yea, Mr. Mills – yea, Mr. Rickard – yea, and Mr. Callaway – yea.

**Case No. 11017 – Robert de Andrade & Mary de Andrade** – south of Route 1 (Coastal Highway) southwest corner of Draper Drive & Venetian Drive, being Lot B-10 within Seabreeze development. (Tax Map I.D. 3-34-20.13-238.00)

A variance from the front yard setback requirement.

Mrs. Isaacs presented the case. Robert de Andrade and Mary de Andrade were sworn in with Ring Lardner, of Davis Bowen & Friedel, Inc., and testified requesting a 9.45-foot variance from the required 30-foot front yard setback requirement for a proposed addition. Mr. Lardner testified that the Property is located within the Seabreeze development; that the development was created in 1954; that the development had restrictions recorded in 1959 that required a 20-foot front yard setback; that the dwelling was constructed in 1997; that the Property is located on a corner lot with streets on two sides thereto; that the Applicants intend to construct an addition to their home; that the proposed addition cannot be built in strict conformity of the setback requirements because the Property abuts a canal and the restrictive covenants prevent construction within thirty (30) feet of the canal; that the plans have been approved by the Architectural Review Board; that the proposed addition will not adversely affect the surrounding or adjacent properties; that the proposed addition is in line with the other structures on the street and will not extend any closer to the street than other similar structures in the neighborhood; that it will not alter the character of the neighborhood; that there are no visibility issues from the intersection; and that it is the minimum variance to afford relief. Mr. Lardner submitted a letter

from the Seabreeze Architectural Review Board, a copy of a deed showing the restrictions; and a large aerial photo of the neighborhood.

Mr. de Andrade testified that the Applicants purchased the property in 2002; that the neighbors have structures which are twenty (20) feet from the road; and that the restrictive covenants prevent the Applicants from building the addition within their building envelope because they cannot build the addition close to the canal.

The Honorable Angelo Caputo was sworn in and testified in opposition to the application and stated that he is the President of the Seabreeze Property Owners Association; that he is a retired Maryland judge; that the houses in the development are 30-feet from the road; that there are no structures built at a 20-foot setback; that the Architectural Review Board approved the plan; and that the Seabreeze Property Owners Association will only approve the addition providing that is no closer to the road than any other houses in the development. Judge Caputo submitted a letter from the Seabreeze Property Owners Association.

Ring Lardner testified that the line on the aerial exhibit indicates the property line; and that the property line begins approximately 18-feet from the road.

Angelo Caputo testified that he thought the property lines started approximately 6-feet from the road.

Robert de Andrade testified that the proposed addition will be in the exact line as the other dwellings in the development; and that they will adhere to the covenants.

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

The Board found that 1-party appeared in opposition to the application.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the case be taken under advisement. Motion carried 5 – 0.

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

At the conclusion of the public hearings, the Chairman referred back to this case. Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the case be **tabled until August 20, 2012**. 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. 11018 – Margaret Taylor** – southeast of corner of Bi-State Boulevard (Route 13A) & Horsey Road. (Tax Map I.D. 3-32-3.00-62.00)

A determination of existence of use.

Mrs. Isaacs presented the case. John Sergovic, Attorney, presented on behalf of the Applicant requesting that the current use of property as five (5) apartments and one (1) residential trailer is a pre-existing non-conforming use. Mr. Sergovic stated that the property was once a gas station in 1947; that the property has historically been maintained a multi-family use; that the Applicant received a notice of violation in 2010; that the Applicant does not want to evict her current tenants; that the Planning & Zoning Commission and the County Council denied her Conditional Use Application for multi-family use and recommended she apply to the Board of Adjustment for determination as to whether the current use pre-dated the enactment of the Sussex County Zoning Code; and that previous tenants, current tenants, and the Applicant are present to provide testimony. Mr. Sergovic submitted a binder with exhibits on behalf of the Applicant.

Richard Shockley was sworn in and testified that he lived in the apartments in 1977 for approximately eight (8) months; that there were other tenants living there as well, including five (5) different families at one time; and that the Property has vastly improved since he lived there.

Danny Mills was sworn in and testified that he has lived in the apartments since 2001; that since that time the trailer, two (2) apartments and the house have been occupied; and that the conditions of the apartments has greatly improved since 2001.

John Sergovic, stated that the Tax Assessment records included in the binder show that in the 1970's one building had two (2) units, the old gas station had two (2) units on the first floor and one (1) unit on the second floor; and that the binder submitted has written affidavits from previous tenants, current tenants, and relatives of the previous owner attesting to the use of the Property as multi-family use prior to the enactment of the Sussex County Zoning Code.

Jennifer Bollinger was sworn in and testified that she is a current resident in Apartment C on the Property; that she has lived on her own since she was 16-years old; that since that time she has lived in 63 different places; that she is a single mother; that she lived in the apartments from 2006 to 2008, however was evicted when she could no longer pay the rent; that she contacted the Applicant early this year and was allowed to move back in the apartments; that the Applicant has set rules she must follow; that finally she feels she is providing a safe and stable life for her son; that there have been many improvements made to the property; that there are security cameras on the property; and that she fears where she will live if forced to move. Ms. Bollinger provided a written statement which is included in the binder.

Gary Hastings was sworn in and testified that is a current resident in Apartment E; that he has lived on the property for 2-years; that his apartment is approved for Section 8 housing and is regularly inspected to maintain Section 8 status; that he is handicapped and has a ground floor apartment for easy access; and that his nephew Ronnie Hastings lived in an apartment on this property approximately 12 to 15 years ago. Mr. Hastings provided a written statement which is include in the binder.

Lindsey Bounds was sworn in and testified that she is a current resident in Apartment D on the Property; that she moved in the apartment in May 2012; that she is 20-years old and has 2

small children; that she has struggled in the past to find housing for her family; that she is unsure where they would live if forced to move; and that she also is approved for Section 8 housing. Ms. Bounds provided a written statement which is included in the binder.

Mr. Sergovic introduced additional written statements of tenants into the record.

Margaret Taylor was sworn in and testified that she purchased the property in 2006; that she has been familiar with the property since she was 16-years old; that she worked in the small café in the 1950's; that the owners lived in the rear of the building; that the owners also rented apartments on the property at that time as well; that for as far back as she can remember the apartments have been rented out; that of the most previous tenants have passed away; that when she purchased the property she was advised the apartments existed; and that she purchased the property as a retirement investment.

Melvin Green was sworn in and testified that he has done all the maintenance on the property; that he upgraded all the apartments for the Applicant; and that it took approximately 4-months to complete.

John Sergovic stated that there is no evidence of abandonment for over a 2-year period.

Amy Gambrell was sworn in and testified in opposition to the application and stated that she owns the property directly across the street; that she has lived there since 1989 and until 2006 never saw anyone living in the apartments; that the apartments have been completely remodeled, and that the manufactured home has always been lived in.

Keith Messick was sworn in and testified in opposition to the application and stated that he has lived in the area since 1995; and that he has never seen anyone living in the apartments.

Janet Littleton was sworn in and testified in opposition to the application and stated that she purchased nearby property in 2000 and the property appeared vacant at that time.

In rebuttal, Margaret Taylor, stated that when she purchased the property in 2006 2-people lived in the wood building and 1 person lived in the brick building; and that the only time the apartments were vacant was during the 4-month period for renovations.

In rebuttal, Amy Gambrell, stated that from 1989 to 2006 she never saw anyone living in the structures; that the renovation did take approximately 4 to 6 months; and that when the Applicant started renting the apartments, the police were called to the property numerous times.

In rebuttal, Jennifer Bollinger, stated that she agreed the first year there were bad tenants and that the Applicant had them removed; and that since then she has installed security cameras and has had no further trouble.

Mr. Sergovic stated that the manufactured home on the Property was replaced in 1985.

Margaret Taylor, under oath, confirmed the statements by Mr. Sergovic and testified that three units were occupied in 2006.

The Board found that 7-parties appeared in support of the application.

The Board found that 3-parties appeared in opposition to the application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be taken under advisement. 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.

At the conclusion of the public hearings, the Chairman referred back to this case. Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until August 20, 2012**. 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. 11019 – Philip B. Dolan** – east of Route 1 (Coastal Highway) southeast corner of Gum Road & Surf Road, being Lot 16 Block 6 within Sussex Shores, development. (Tax Map I.D. 1-34-13.12-3.00)

A variance from the front yard setback requirement.

Mrs. Isaacs presented the case. Philip Dolan and Christopher Pattey were sworn in and were present with Mark Dunkle, Attorney. Mr. Dunkle presented the case to the Board and stated that the Applicant is requesting a 5-foot variance from the 30-foot front yard setback requirement for a proposed dwelling; that the property backs up to the Atlantic Ocean; that the dune line restricts the building envelope and has created the hardship; that the Delaware Department of Natural Resources and Environmental Control would allow the Applicant to build a new home on the footprint of the existing dwelling but the homeowners association will not approve that placement; that the Applicant wants to construct a more modern dwelling that is more in character with the neighborhood; that the existing dwelling encroaches into the dune restriction line; that the proposed dwelling will be in line with the neighboring dwelling; that the difficulty was not created by the Applicant; and that the variance is needed to allow proper space for parking and stairways.

Mr. Dolan affirmed the presentation of Mr. Dunkle as true and correct. Mr. Dolan testified that the existing dwelling was built in 1962; that all parking must be on the lot due to homeowner association rules; and that the neighbors do not object to the variance application.

Mr. Pattey testified that the Applicant is seeking to recapture lost space from the demolition of the existing dwelling by moving living space from the rear of the property to the front of the property.

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

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11019 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The property is unique due to the dune restriction line and shallowness of the Property;
2. The property cannot otherwise be developed;
3. The variance will enable reasonable use of the property;
4. The variance, if granted, will not alter the essential character of the neighborhood;
5. The need for the variance was not created by the Applicant;
6. The variance sought is the minimum variance to afford relief;
7. The variance represents the least modification possible of the regulation in issue; and
8. The variance won't impair the use of adjacent property.

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

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

**Case No. 11020 Bob Donnelly & Andrea Donnelly** – south of Route 26 (Atlantic Road) northwest corner of Perse Drive & Ogre Drive, being Lot 1, within Ocean Way Estates development. (Tax Map I.D. 1-34-13.00-759.00)

A variance from the front yard setback requirement.

Mrs. Isaacs presented the case. Bob Donnelly and Andrea Donnelly were sworn in and testified requesting a 10-foot variance from the required 30-foot front yard setback requirement for a proposed deck. Andrea Donnelly testified that they purchased the lot in February 2012; that the front door on the dwelling faces Perse Drive but that Ogre Drive is considered the front yard; that the proposed deck will have less impact on the neighbor in the proposed location; that the lot is narrow in size from Ogre Drive but is shallow when viewed from Perse Drive; that the proposed deck will not adversely affect the intersection; that the proposed deck will enable reasonable use of the property; that the difficulty was not created by the Applicant, since they did not build the dwelling; that it is the minimum variance to afford relief; that there is no detriment to the public welfare. The Applicants submitted pictures of the Property.

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

Mrs. Isaacs informed the Board that she received a letter of no objection from the homeowners association.



Mr. Workman stated that he would move that the Board recommend approval of Variance Application No. 11020 for the requested variance and based on the record made at the public hearing and for the following reasons:

1. The property is a corner lot which makes it unique;
2. The variance, if granted will not alter the character of the neighborhood; and
3. The variance sought is the minimum variance to afford relief.

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

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

**Case No. 11021 – Edna Trent** – east of Route 1 (Coastal Highway) east of Sea Del Drive, being Lot 12 within Sea Del Estates development. (Tax Map I.D. 1-34-9.00-396.00)

A variance from the front yard setback requirement.

Mrs. Isaacs presented the case. Jane Patchell, Attorney, presented on behalf of the Applicant requesting a 1.4-foot variance from the required 30-foot front yard setback requirement for existing storage under a dwelling on pilings. Ms. Patchell presented an affidavit of Darrell Trent. Ms. Patchell advised the Board that Mr. Trent is an Ambassador stationed in Europe and that Edna Trent is 99 years old and lives in Kansas. Mr. Trent testified through his affidavit that he is the President of Acton Development, Inc., which owns a 40% interest in the Property; that he has owned an interest in the Property since March 1999 either individually or through a company; that the Property was surveyed in 2004 and that the survey indicated that the dwelling was behind the front yard setback requirement by several feet; that he enclosed the open garage / storage area beneath the pilings approximately six (6) to seven (7) years ago; that the garage / storage area was not enlarged or altered in any way other than to close the open walls; that the enclosure of the area did not result in any change to the roof line that already existed over the front portion of the garage / storage area or to the footprint of the house; that the footprint of the house at the time of the 2004 survey was the same footprint that existed when he purchased the Property in 1999; that in 2012, he hired a contractor to construct new steps and a deck on the southwest side of the Property; that a new survey completed by a different surveyor indicated that the enclosed storage / garage encroaches into the front yard setback area by 1.4 feet; that the portion of the dwelling which encroaches into the setback area has not been changed other than the enclosure of the walls since 1999; that the variance requested is the minimum to afford relief; that the variance has no adverse effect on the surrounding properties or the community; that the variance is necessary to afford relief; and that the encroaching portion of the dwelling was not constructed by the Applicants.

Ms. Patchell submitted a copy of a deed evidencing ownership of the Property by Acton Development, Inc.

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

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11021 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The property is unique because it is located on a cul-de-sac and due to the conflicting surveys;
2. The variance will enable reasonable use of the property;
3. The difficulty was not created by the Applicant;
4. The variance, if granted, will not alter the character of the neighborhood;
5. The variance sought is the minimum variance to afford relief; and
6. The variance represents the least modification possible of the regulation at issue.

Motion by Mr. Rickard, seconded by Mr. Mills, and carried unanimously that the variance be **granted for the reasons stated**. 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. 11022 – John Ford** – southwest of Road 285 (Plantation Road) northwest of Sandcastle Cove, being Lot 261 within Henlopen Landing development. (Tax Map I.D. 3-34-5.00-1090.00)

A variance from the rear yard setback requirement.

Mrs. Isaacs presented the case. John Ford was sworn in and was present with Jim Fuqua, Attorney. Mr. Fuqua presented the case to the Board and stated that the Applicant was requesting a 3.1-foot variance from the required 10-foot rear yard setback requirement for an existing enclosed porch; that the Applicant purchased the property in March 2011; that the Applicant enclosed a portion of an existing ground level deck; that the enclosure is no closer to the rear setback line than the deck was to the rear setback line; that the enclosure is similar to an option the builder offered in the development; that the Homeowner's Association approved the enclosure; that a building permit was obtained; that the Applicant hired a contractor to build the room; that in May 2012 the Applicant received a notice of violation from Planning & Zoning that the structure did not meet the setback requirement; that the homeowners association and the contractor did not notice the problem prior to construction; that the property is adjacent to the open space; that the property is unique; that the property is located on a curve on Sandcastle Road; that, due to the curve in the road, the Property is only 91 feet deep whereas other lots on the road are 104 feet deep and other lots in the community are 133 feet deep; that this lot is the only lot in the development where the dwelling and the porch would not fit within the building envelope; that the Applicant will suffer a hardship if required to remove the porch; that the variance is necessary to enable reasonable use of the property; that it will not alter the character of the neighborhood; and that it is the minimum variance to afford relief. Mr. Ford, under oath, confirmed the statements by Mr. Fuqua. The Applicant submitted exhibits to support his Application.

The Board found that 1-party appeared in support of the application.

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

Mrs. Isaacs stated that the office received 15-letters in support of the application.

Mrs. Isaacs stated that the office received 1-letter in opposition to the application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11022 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The property is unique is size;
2. The variance will enable reasonable use of the property;
3. The variance, if granted, will not alter the character of the neighborhood; and
4. The variance sought is the minimum variance 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. 11023 – Michael DeFillippis & Betsy DeFillippis** – south of Road 277 (Angola Road) west of Dogwood Drive, being Lot 10 Block K Section 2 within Angola by the Bay development. (Tax Map I.D. 2-34-12.13-47.00)

A variance from the front yard and side yard setback requirements.

Mrs. Isaacs presented the case. Michael DeFillippis and Betsy DeFillippis were sworn in and testified requesting a 6-foot variance from the required 30-foot front yard setback requirement for an existing dwelling and a 0.6-foot variance from the required 10-foot side yard setback requirement for an existing screen porch. Betsy DeFillippis testified that the dwelling was built in 1970; that the Applicants purchased the property in 1990; that the property is irregular in shape; that there have been multiple variances granted in the development; that the dwelling and screen porch existed when they purchased the property; that the difficulty was not created by the Applicants; that they are selling the house and the encroachment has held up the sale of the Property; that the variance will enable reasonable use of the property; that a survey completed for settlement showed the encroachments; that it will not alter the character of the neighborhood; that the variance is the least modification of the regulation in issue; and it is the minimum variance to afford relief.

The Board found that 2-parties appeared in support of the application.

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

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11023 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The property unique as the house was not built parallel to the property lines;
2. The variance will enable reasonable use of the property;
3. The difficulty was not created by the Applicant;
4. The variance, if granted, will not alter the character of the neighborhood; and
5. The variance sought is the minimum variance to afford relief.

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

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

**Case No. 11024 – Diamond State Pole Building** – northeast of Road 620 (Abbotts Pond Road) approximately 1,485 feet west of Road 633 (Griffith Lake Drive), being Lot 2 (Tax Map I.D. 1-30-2.00-13.11)

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Nick Alasandro of Delaware State Pole Building was sworn in and testified requesting a 2.7-foot variance from the required 15-foot side yard setback requirement for an existing pole building. Mr. Alasandro testified that he built the pole building in April 2012 for property owner Richard Olson; that prior to construction his company staked out the location for the pole building; that the property owner asked the crew to slightly change the original location of the pole building; that the crew did not contact the office prior to making the change; that the building was constructed; that a final survey completed for the Certificate of Compliance showed the encroachment; that his company has never made a mistake like this before; that they have built four similar structures on this street; that the neighbor has no objection to the application; that the building has a concrete floor; that it would be a hardship to move the building into compliance; and that there has not been a Certificate of Compliance issued on the pole building so the structure is empty.

The Board found that 2-parties appeared in support of the application.

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until August 20, 2012**. 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.

### **OLD BUSINESS**

**Case No. 11006 – Billie R. & Elizabeth A. Leigh** – east of Route 54 (Lighthouse Road), southeast corner of Oyster Bay Lane and Salty Way Drive, being Lot 131 within Keenwick West development. (Tax Map I.D. 5-33-19.07-96.00)

A variance from the corner side yard setback requirement.

Mrs. Isaacs advised the Board that this application was left open on July 16, 2012 to allow the Applicant to appear and confirm testimony. Billie Leigh was sworn in to testify about the Application. Mr. Leigh was present with his attorney Megan Hudson. Mr. Leigh testified that he listened to the audio of Ms. Hudson's presentation before the Board on July 16, 2012, and affirmed the presentation as true and correct. Mr. Leigh testified that the survey completed for settlement showed the encroachment; that the difficulty was not created by the Applicant; that the variance will not alter the character of the neighborhood; and that it is the minimum variance to afford relief.

The Board found that 2-parties appeared in support of the application.

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

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11006 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The property is narrow in size making it unique;
2. There is no possibility the Property can be developed in strict conformity with the Sussex County zoning ordinance;
3. The difficulty was not created by the Applicant;
4. The variance will enable reasonable use of the property;
5. The variance, if granted will not alter the character of the neighborhood; and
6. The variance sought is the minimum variance to afford relief.

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

### **OTHER BUSINESS**

**Case No. 10680 – Donald Erickson** – northwest intersection of Road 270A and Parsonage Road.

A special use exception for off-site parking.

Request for time extension.

Mrs. Isaacs read a letter from the Applicant requesting a 1-year time extension.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the request for a time extension be **granted for a period of one (1) year**. 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.

**Meeting Adjourned 10:35 p.m.**