

MINUTES OF DECEMBER 17, 2012

The regular meeting of the Sussex County Board of Adjustment was held on Monday, December 17, 2012, at 7:00 p.m. in the County Council Chambers, County Administrative 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, Ms. Kelly Passwaters – Zoning Inspector II 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. Rickard, and carried unanimously to move the approval of the Minutes of December 10, 2012 meeting to the January 7, 2013 Agenda since the minutes are not complete. 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. 11117 – Promise Ministries, Pastor Andre Alexander – south of Road 545 (Rifle Range Road) approximately 3,500 feet west of Road 594 (Oak Road). (Tax Map I.D. 1-31-15.00-60.00)

An application for special use exceptions for Promise House I transitional housing for homeless individuals/unwed mothers, Promise House II transitional housing for homeless individuals/families in crisis and to operate a daycare center for Little Promise Children child care.

Ms. Passwaters presented the case. Pastor Andre Alexander was sworn in to testify about the Application. David Hutt, Attorney, presented the case to the Board requesting a special use exception for transitional housing for homeless individuals, unwed mothers and families in crisis in Promise House I and Promise House II which is classified as a convalescent home and a special use exception to operate a daycare facility. Mr. Hutt stated that the Property consists of 45 acres which is leased by the Applicant; that the Property is surrounded by a large wooded area and cannot be seen from the road; that the Property was once used for Cedars Academy as a boarding school for children; that in 2008 Cedars Academy consolidated with another facility and no longer uses this Property; that the conditional use for the school lapsed due to non-use; that the Applicant opened a daycare on the Property but was contacted by the State that the Applicant was not approved for this use and the Applicant immediately closed the daycare; that the existing buildings will be used for the daycare and transitional housing for homeless families and unwed mothers; that the Applicant went through the process with the state to obtain

approvals for a day care and transitional housing; that the Applicant is awaiting final approval from the Fire Marshal and water testing, which approvals the Applicant expects soon; that the Applicant receives approximately one hundred (100) requests a month for this type of housing; that the transitional housing occupants and employees undergo a background check prior to approval; that the occupants may stay on site for ninety (90) days or up to one (1) year; that local businesses donate furniture and other items needed to assist the families and unwed mothers; that Promise House 1 will provide housing for unwed mothers and can accommodate up to eight (8) unwed mothers at a time; that the surrounding woods largely hides the buildings on the Property from neighboring and adjacent properties; that Promise House 2 will provide housing for families and accommodate up to five (5) families at a time; that there is an increased need for this type of housing in the area; and that the uses will not substantially affect adversely the uses of the adjacent and neighboring properties. Mr. Hutt submitted to the Board exhibits including pictures and a petition of support from the Applicant's neighbors. Mr. Alexander, under oath, confirmed the statements by Mr. Hutt.

Mr. Alexander testified that the daycare will care for approximately thirty (30) children between the ages of infant to five (5) years old; that the hours of operation for the daycare will be Monday through Friday, from 6:00 a.m. to 6:00 p.m.; that the daycare can employ up to fifteen (15) adults; that there will be two (2) managers at each transitional house; that the families will share common areas and that older children will be offered their own room; that the Applicant expects approximately 50-75 people on site during the day and approximately 20-25 people on site in the evening; that there will be a nurse on staff at all times; that the Applicant holds church services on Saturday and Sunday on the Property; that there is adequate parking on the site for all activities as up to 100 cars can park on site; and that the Applicant hopes to use the church as an after school site for children as well.

The Board found that four (4) parties appeared in support of the Application.

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

Ms. Passwaters stated that the office received five (5) letters in support of the Application and a petition with twenty (20) signatures in support of the Application.

Ms. Passwaters read a letter of opposition into the record from Beth Dickerson.

Mr. Mills stated that he would move that the Board recommend approval of Special Use Exception No. 11117 for the requested special use exception based on the record made at the public hearing because the use does not substantially affect adversely the uses of the adjacent and neighboring properties.

Motion by Mr. Mills, seconded by Mr. Rickard, 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. 11118 – Janet A. Speak – northwest of Road 277 (Robinsonville Road) northwest of Conch Court, being Lot 23 within Sea-Wood development. (Tax Map I.D. 3-34-5.00-793.00)

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

Ms. Passwaters presented the case. Janet Speak and Linda Bova were sworn in to testify about the Application. Dan Myers, Esquire, presented the case to the Board on behalf of the Applicant and stated that the Applicant was requesting a variance of 10.9 feet from the 15 feet side yard setback requirement for an existing pool house; that the pool house measures 610 square-feet in size; that the setback requirement for a 600 square-foot building is five (5) feet so if the building was ten (10) square feet less in size, the variance needed would be much smaller; that the Certificate of Compliance was issued in 2009; that the pool house is on a permanent foundation and has electricity; that the Property is unique in shape with angled property lines; that the variance will enable reasonable use of the Property; and that the variance will not alter the essential character of the neighborhood.

Ms. Speak testified that the dwelling was built in 2006; that she hired a contractor to construct the pool house; that due to problems with the plumbing and being able to hook it up to existing plumbing the pool house had to be built larger than originally planned; that the original size of the pool house was to be 462 square-feet in size; that the contractor stated he would take care of it all and has since left the state; that she relied on the representations of the contractor; that she believed that all necessary approvals had been obtained by the contractor from Sussex County; that she had to hire other contractors to finish the work; and that the pool house could not be moved into compliance. Ms. Speak, under oath, confirmed the statements by Mr. Myers.

Ms. Bova testified in support of the Application and testified that she has been a realtor for fifteen (15) years; that she is familiar with property values in the area; and that the variance will not adversely affect the neighboring property value.

The Board found that three (3) parties appeared in support of the Application.

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

Ms. Passwaters stated that the office received three (3) letters in support of the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11118 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique in size due to the angled property lines;
2. The variance is necessary to enable reasonable use of the Property;
3. The 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. Workman – yea, Mr. Rickard – yea, and Mr. Callaway – yea.

Case No. 11119 – Timothy Barrett, Paul McCormick & Rose McCormick – south of Road 288A (Dorman Road) southeast corner of Oakwood Court and Cedarwood Drive, being Lot 34 Block B Section 3 within Lochwood development. (Tax Map I.D. 2-34-11.00-177.00)

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

Ms. Passwaters presented the case. Rose McCormick was sworn in to testify about the application. Dan Myers, Esquire, presented the case to the Board on behalf of the Applicant and stated that the Applicant is requesting a variance of 0.4 feet from the 5 feet rear yard setback requirement for an existing shed; that the Property is a corner lot; that the septic system is near the shed; that the driveway is between the shed and the dwelling; that the shed was built in 1990; that the Certificate of Compliance was issued in 1991; that the shed is on a permanent foundation and has electricity; that there is no other place to place the shed on the Property; that the Applicant purchased the Property in 2012; that the previous owner purchased the Property in 2002; that the difficulty was not created by the Applicant; that the variance will enable reasonable use of the Property; that the Applicant is not seeking to increase the size of the shed so the variance sought is the minimum variance to afford relief; that the variance will not alter the essential character of the neighborhood as the shed has been in its present location for more than twenty (20) years; and that trees are along the property line. Mr. Myers submitted pictures to the Board. Ms. McCormick, under oath, confirmed the statements made by Mr. Myers.

Linda Bova was sworn in and testified in support of the Application and testified that the variance will not alter the essential character of the neighborhood.

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

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

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11119 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is an angled lot making it unique;
2. The variance is necessary to enable reasonable use of the Property;
3. The 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. Workman – yea, Mr. Rickard – yea, and Mr. Callaway – yea.

Case No. 11120 – Joseph Machovec – south of Route 54 (Lighthouse Road) north of Breakwater Run, being Lot 157 Phase II within Keenwick Sound development. (Tax Map I.D. 5-33-19.00-476.00)

A variance from the front yard setback requirement.

Ms. Passwaters presented the case. Joseph Machovec was sworn in to testify about the Application. James Fuqua, Esquire, presented the case to the Board on behalf of the Applicant and stated that the Applicant is requesting a variance of 4.7 feet from the 30 feet front yard setback requirement for a proposed covered porch; that the Property is located within Keenwick Sound development; that the lot is 116 feet deep; that the Property is a through lot and has two (2) front yard setback requirements as the rear of the lot abuts Route 54 but has no access thereto; that the existing dwelling was built within the building envelope; that there have been similar variances granted on twelve (12) other lots in the development; that the porch will enable reasonable use of the Property; that the Property is a through lot which makes it unique; that the variance will not alter the essential character of the neighborhood as there are similar porches in the neighborhood; that the difficulty was not created by the Applicant as the Applicant did not create the lot; and that the variance is the minimum variance to afford relief. Mr. Fuqua submitted exhibits in support of the Application. Mr. Machovec, under oath, confirmed the statements by Mr. Fuqua.

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

Mr. Workman stated that he would move that the Board recommend approval of Variance Application No. 11120 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is a through lot which makes it unique;
2. The variance is necessary to enable reasonable use of the Property;
3. The variance will not alter the essential character of the neighborhood;
4. The variance sought is the minimum variance to afford relief; and
5. The variance represents the least modification of the regulation in issue.

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

Case No. 11121 – Dawn Schutt – north of Road 312 (River Road) west of Road 311 (Chief Road). (Tax Map I.D. 2-34-34.11-23.00)

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

Ms. Passwaters presented the case. Gil Fleming and Dawn Schutt were sworn in and testified requesting a variance of 34.3 feet from the 40 feet front yard setback requirement for an existing manufactured home. Mr. Fleming testified that the Board previously approved a 34 feet front yard variance in 2011 for this Property; that when placing the unit an error was made and the unit was moved forward a few inches; that the variance sought is the minimum variance to afford relief; that the variance will not affect the character of the neighborhood; and that the lot is unique in shape.

Ms. Schutt testified that the unit was special ordered to fit on the lot and that she has not yet moved into the unit.

Mr. Fleming testified that there are not many manufactured home models that are as skinny as the Applicant's dwelling; that there are other manufactured homes in the neighborhood; that the variance will not affect adjacent properties; that the variance will not be detrimental to the public welfare; that the variance is necessary to enable reasonable use of the Property; and that the difficulty was not created by the Applicant. Mr. Fleming submitted pictures in support of the Application.

The Board found that two (2) parties appeared in support of the Application.

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

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11121 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique in shape;
2. There is no possibility the Property can be developed in strict conformity with the Sussex County Zoning Ordinance;
3. The variance is necessary to enable reasonable use of the Property;
4. The difficulty was not created by the Applicant;
5. The variance will not alter the essential character of the neighborhood; and
6. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance 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. 11122 – CMH Homes – north of Road 402 (Blueberry Lane) approximately 2,000 feet west of Route 113 (DuPont Boulevard). (Tax Map I.D. 4-33-6.00-23.00)

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

Ms. Passwaters read a letter to the Board from Susan Isaacs of the Office of Planning and Zoning explaining the request for a variance from the minimum square footage for a parcel was not advertised. The application for that request is scheduled for the Board's next regularly scheduled meeting on January 7, 2013.

Mr. Sharp stated that the requests are advertised separately and must be heard separately.

Ms. Passwaters presented the case. Gil Fleming was sworn in and testified requesting a variance of 4.5 feet from the 10 feet side yard setback requirement for a proposed manufactured home. Mr. Fleming testified that that the loan for his client is about to expire; that the error in advertising is creating great difficulty; that the proposed unit will not alter the character of the neighborhood; that the lot is narrow; that the existing septic system prevents the unit from being placed elsewhere on the Property or to turn it in a different direction on the lot; that the lot and conditions therein are unique; that the proposed unit will measure 28 feet by 60 feet which is the normal size of a doublewide manufactured home; that the unit cannot be placed on the lot and meet both the front yard and side yard setback requirements; that initially the property was subdivided and approved for a singlewide manufactured home that was used for a medical hardship at one point; that the variance is necessary to enable reasonable use of the Property; that the variance is the minimum variance to afford relief; that there are other manufactured homes in

the area and there are doublewide manufactured homes on the both adjacent lots; that the difficulty was not created by the Applicant; that the Property cannot be built in strict conformity with the Sussex County Zoning Code; that the variance requested is the least modification of the variance at issue; and that the proposed variance will not impair the uses of neighboring and adjacent properties. Mr. Fleming submitted pictures in support of the Application.

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. Mills stated that he would move that the Board recommend approval of Variance Application No. 11122 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The lot is undersized and unique in shape;
2. The Property cannot be otherwise developed in strict conformity with the Sussex County Zoning Ordinance;
3. The variance is necessary to enable reasonable use of the Property;
4. The difficulty was not created by the Applicant;
5. The variance will not alter the essential character of the neighborhood; and
6. The variance sought 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. Rickard – yea, Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 11123 – Carole R. Rommal – south of Route 54 (Lighthouse Road) east of Grant Avenue, being Lot 3 within Cape Windsor development. (Tax Map I.D. 5-33-20.14-29.00)

An application for a variance from the side yard and rear yard setback requirement.

Ms. Passwaters presented the case. Carole Rommal was sworn in and testified requesting a variance of 5 feet from the 10 feet side yard setback requirement for a proposed manufactured home and a variance of 5 feet from the 15 feet rear yard setback requirement for a proposed manufactured home and a proposed porch. Ms. Rommal testified that she owns a small lot in Cape Windsor that is only 50 feet wide by 89.6 feet deep; that she needs to replace the existing single-wide manufactured home located on the Property because the home has deteriorated; that she would like to replace the dwelling with a modular home; that the Homeowners Association has approved the proposed unit; that there are twelve (12) lots in the neighborhood that have had similar five (5) feet side yard variances approved; that she was approved in 1995 for a five (5)

feet side yard variance; that the lot is unique in size; that the porch will measure 12 feet by 27 feet; that her previous porch was only ten (10) feet wide and was difficult to use; that the proposed shed shown on the plan is actually a utility room attached to the dwelling; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Ordinance; that the proposed dwelling cannot be turned to otherwise fit on the lot; that the Property abuts a canal; that there is a utility line in the front yard and the unit must maintain a ten (10) feet front yard setback requirement; that the variance, if granted, will not alter the character of the neighborhood; and that she purchased the Property in 1995.

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

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

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

At the conclusion of the public hearings, the Chairman referred back to this case. Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11123 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique;
2. The variance is necessary to enable reasonable use of the Property;
3. The variance will not alter the essential character of the neighborhood; and
4. The variance sought is the minimum variance necessary to afford relief.

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

Case No. 11124 – Linda Crawford – northeast of Route 1 (Coastal Highway) southeast of Heron Circle, being Lot 15 within Willow Creek development. (Tax Map I.D. 2-35-23.00-73.00)

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

Ms. Passwaters presented the case. Linda Crawford, John Crawford and John Fellenhomer were sworn in and testified requesting a variance of 5.6 feet from the 15 feet side yard setback requirement for an existing dwelling. John Crawford testified that the existing dwelling was built in 1988; that the Applicants purchased the Property in 2004; that the Applicants submitted plans to Sussex County Building Code in 2010 to construct an addition;

that a survey shows that the existing dwelling encroaches into the side yard setback; that the Applicants were not aware of the encroachment until they applied for a Certificate of Compliance; that the new addition was built on the opposite side of the existing dwelling and does not encroach into the setback area; that the portion of the dwelling which encroaches into the setback area was constructed in 1988; that the variance is necessary to enable reasonable use of the Property; that the Applicant would have to remove five (5) feet off the side of the dwelling in order to comply with the setback requirements; that the difficulty was not created by the Applicant; and that the adjacent neighbor supports the Application.

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

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

Ms. Passwaters stated that the office received one (1) letter in support of the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11124 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The property is unique in shape;
2. The variance is necessary to enable reasonable use of the Property;
3. The 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. Mills, and carried unanimously that the variance 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. 11125 – Chester Townsend – north of Route 26 (Vines Creek Road) 0.2 miles northeast of Road 342 (Sandy Landing). (Tax Map I.D. 1-34-11.00-3.00)

An application for a special use exception to use a manufactured home type structure as a concession trailer and for a variance from the side yard setback requirement.

Ms. Passwaters presented the case. Shirley Townsend was sworn in and testified requesting a special use exception to use a manufactured home type structure as a concession trailer and a 1.2 feet variance from the 5 feet side yard setback requirement for a shed. Ms. Townsend testified that she operates a small carryout business in Dagsboro; that she has owned the concession trailer for four (4) years; that she purchased the Property and plans to operate her

carryout business on site; that the shed has been on the Property for thirty (30) years and it cannot be moved because it is concrete; that she did not place the shed on the Property; that the trailer on the Property was new in 2009; and that she plans to only have one ground sign on the Property.

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

Mr. Hudson stated that he would move that the Board recommend approval for Special Use Exception and Variance Application No. 11125 for the requested special use exception and the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique in size and shape;
2. The variance is necessary to enable reasonable use of the Property;
3. The variance will not alter the essential character of the neighborhood;
4. The difficulty was not created by the Applicant because the shed was present when the Applicant purchased the Property;
5. The variance sought is the minimum variance necessary to afford relief; and
6. The use does not substantially affect adversely the uses of the adjacent and neighboring properties.

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the special use exception and the variance 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. 11126 – David Costello – south of Route 54 (Lighthouse Road) west of Wilson Avenue, being Lot 31 Block 3 within Cape Windsor development. (Tax Map I.D. 5-33-20.14-63.00)

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

Ms. Passwaters presented the case. David Costello was sworn in and testified requesting a variance of 5 feet from the 10 feet side yard setback requirement and a variance of 5 feet from the 20 feet rear yard setback requirement for a proposed dwelling and a variance of 4 feet from the 10 feet side yard setback requirement for a proposed air conditioning unit. Mr. Costello testified that the lot is 50 feet by 85 feet and that he proposes to construct a dwelling thereon; that the proposed dwelling is compatible with the neighborhood; that the variances are necessary to enable reasonable use; that the Applicant did not create the lot, therefore the difficulty was not created by the Applicant; that the variances sought are the minimum variances necessary to

afford relief; that the variances will not alter the essential character of the neighborhood; that the Homeowners Association approves the proposed dwelling; that the dwelling, inclusive of all decks, will measure 35 feet by 60 feet; that the variance will allow for parking in the front of the Property; that the air conditioning unit can be moved into compliance; and that he recessed the proposed steps to prevent further encroachment into the rear yard setback area.

Phillip Fisher was sworn in and testified in opposition to the Application and testified that he is an adjacent neighbor, and that he is mainly concerned that the proposed dwelling will be too close to an existing transformer.

In rebuttal, Dave Cosetello, testified that proposed dwelling will be a 4,000 square-feet, three (3) story structure; that the parking is the main reason the variances are needed; that the garage is incorporated within the structure; and that the majority of the dwellings in the development are two (2) to three (3) story dwellings.

The Board found that two (2) parties appeared in support of the Application.

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

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

At the conclusion of the public hearings, the Chairman referred back to this case. Mr. Rickard stated that he would move that the Board recommend denial of Variance Application No. 11126 for the requested variances since the difficulty has been created by the Applicant.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variance be **denied since the difficulty has been created by the Applicant**. Motion carried 5 – 0.

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

Case No. 11127 – Steve Dayton – west of Road 225 (Marshall Road) approximately 475 feet north of Road 207 (Johnson Road). (Tax Map I.D. 3-30-15.13-20.00)

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

Ms. Passwaters presented the case. Steve Dayton was sworn in and testified requesting a variance of 7 feet from the 10 foot side yard setback requirement and a variance of 10 feet from the 20 foot rear yard setback requirement for a proposed pole building. Mr. Dayton testified that he proposes to building a pole barn on the Property; that the proposed pole building will

measure 24 feet by 36 feet; that the location of the septic system creates the need for the variances because it runs diagonally across the Property and limits the possibilities as to where the pole building can be placed; that he needs access to the pole building without running over the septic pipes which further limits its placement; that he will use the pole building to store antique cars; that the Property measures 75 feet by 200 feet and is very narrow; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Ordinance; that he cannot expand the existing garage due to the location of the septic system; that the difficulty was not created by the Applicant; that the variances are necessary to enable reasonable use of the Property; that the variances will not alter the character of the neighborhood; and that the variances sought are the minimum variances necessary to afford relief.

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

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

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11127 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to the location of the septic system;
2. The variances are necessary to enable reasonable use of the Property;
3. The difficulty was not created by the Applicant;
4. The variances will not alter the essential character of the neighborhood;
5. The variances sought are the minimum variances necessary to afford relief; and
6. The variances sought represent the least modification of the regulation in issue.

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. Workman – yea, Mr. Rickard – yea, and Mr. Callaway – yea.

Case No. 11128 – Carol E. Schultze / Penn Central LLC – east of Route 1 (Ocean Highway) southeast corner of Bennett Road and Pennsylvania Avenue, being Lot 3 Block 1 within Sussex Shores development. (Tax Map I.D. 1-34-13.15-159.00)

A variance from the front yard, corner side yard, rear yard and side yard setback requirements.

Ms. Passwaters presented the case. Carol Schultze and Thomas Crowley were sworn in to testify about the Application. Ms. Schultze testified requesting a variance of 5 feet from the 30 feet front yard setback requirement for a proposed second floor balcony for Unit #2, a variance

of 10 feet from the 15 feet corner side yard setback requirement for a proposed second floor balcony for Unit #1, a variance of 5 feet from the 10 feet rear yard setback requirement for a proposed second floor balcony for Unit #1, a variance of 5 feet from the 10 feet side yard setback requirement for a proposed second floor balcony for Unit #1, and a variance of 5 feet from the 10 feet side yard setback requirement for a proposed second floor balcony for Unit #2; that the variances are needed on the South, North, and West side of the property; that only the balconies of the proposed building will encroach into the setback areas; that the existing building is only 10 feet from the property line fronting Pennsylvania Avenue; that the proposed building will be 40 feet from the property line fronting Pennsylvania Avenue; that the lot is a small, non-conforming lot; that the adjacent property is zoned Commercial; that all setbacks of the Sussex Shores Homeowners Association will be met; that the Property cannot be built in strict conformity with the Sussex County Zoning Ordinance; that the difficulty was not created by the Applicant as the Applicant did not create the lot; that the variances, if granted, will not alter the essential character of the neighborhood; that the proposed buildings will be further from adjacent townhomes than the current structure on the Property; and that the proposed balconies will enable residents to have more egress in case of a fire.

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

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

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11128 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique;
2. The variances are necessary to enable reasonable use of the Property;
3. The 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 variance be **granted for the reasons stated**. Motion carried 5 – 0.

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

OLD BUSINESS

Case No. 11086 – Geoffrey Manns – north of Route 54 (Lighthouse Road) east of Canvasback Road, being Lot 32 within Swann Keys development. (Tax Map I.D. 5-33-12.16-391.00)

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

The Board discussed the case which has been tabled since December 10, 2012.

Mr. Rickard stated that he would move that the Board recommend approval in part and denial in part of Variance Application No. 11086. Mr. Rickard moved that the requested 4.4 feet side yard variance for the proposed attached shed and the 5 feet side yard variance for the proposed dwelling and porch be approved based upon the record made at the public hearing and for the following reasons:

1. The Property is unique in size;
2. The variances for the proposed dwelling, porch and attached shed are necessary to enable reasonable use of the Property;
3. The variances will not alter the essential character of the neighborhood; and
4. The variances sought are the minimum variances necessary to afford relief.

As part of his Motion, Mr. Rickard moved that the Board deny the requested 8 feet variance from the side yard setback requirement for a proposed air conditioning unit based on the record made at the public hearing and for the following reasons:

1. The difficulty is being created by the Applicant; and
2. The air conditioning unit can be placed within strict conformity of the Sussex County Zoning Ordinance.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the 4.4 feet side yard variance and the 5 feet side yard variance and denied for the 8 feet side yard variance**. Motion carried 5 – 0.

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

Case No. 11101 – Donald G. D’Aquila – east of Route 13 (Sussex Highway) approximately 684 feet south of Road 466 (Sycamore Road). (Tax Map I.D. 2-32-12.00-132.01)

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

The Board discussed the case which has been tabled since December 10, 2012. Mr. Sharp made a statement to the Board about extension of non-conforming uses. Mr. Mills expressed his concerns about the Applicant’s failure to meet the standards for granting a variance. Mr. Mills stated that he questioned the uniqueness of the Property; that he believed the variance was not necessary to enable reasonable use of the Property; that the Property can be

built in strict conformity with the Sussex County Zoning Ordinance; and that he believes the Applicant failed to meet the standards for granting a variance.

Mr. Rickard stated that he would move that the Board recommend denial of Variance Application No. 11101 for the requested variance based on the record made at the public hearing since the difficulty has been created by the Applicant.

Motion by Mr. Rickard, seconded by Mr. Mills, and carried that the variance be **denied since the difficulty is being created by the Applicant**. Motion carried 3 – 2.

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

Case No. 11107 – Robert Davis – west of Route 5 (Oak Orchard Road) south of West James Court, being Lot 76 within Captain's Grant development. (Tax Map I.D. 2-34-29.00-634.00)

A variance from the side yard setback requirement.

Mr. Callaway stated for the record that he listened to the audio for this case and is prepared to vote on this application.

The Board discussed the case which has been tabled since December 10, 2012.

Mr. Rickard stated that he would move that the Board recommend denial of Variance Application No. 11107 for the requested variance based on the record made at the public hearing since the difficulty has been created by the Applicant.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried that the variance be denied since the difficulty has been created by the Applicant. Motion carried 3 – 2.

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

Meeting Adjourned 10:55 p.m.