

MINUTES OF DECEMBER 19, 2016

The regular meeting of the Sussex County Board of Adjustment was held on Monday, December 19, 2016, at 7:00 p.m. in the County Council Chambers, 2 The Circle, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Dale Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Brent Workman, and Mr. Norman Rickard, with James Sharp – Assistant County Attorney, and staff members Mr. Lawrence Lank – Director of Planning and Zoning, Ms. Janelle Cornwell – Director Appointee, and Mrs. Jennifer Norwood – Recording Secretary.

The Pledge of Allegiance was led by Mr. Rickard.

Motion by Mr. Rickard, seconded by Mr. Workman, 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 October 17, 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. 11892 – Douglas Enzler – seeks variances from the front yard and side yard setback requirements (Section 115-34B and 115-182D of the Sussex County Zoning Code). The property is located on the west side of Bayard Avenue approximately 414 feet south of Coastal Highway (Route 1). 911 Address: 1603 Bayard Avenue, Rehoboth Beach. Zoning District: MR. Tax Map No.: 3-34-20.14-2.00.

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

Doug Enzler was sworn in to testify about the Application. Chad Meredith, Esquire, presented the case on behalf of the Applicant and submitted a revised survey for the Board to review.

Mr. Meredith stated that the Applicant is requesting a variance of 16.1 feet from the thirty (30) feet front yard setback requirement for existing steps, a variance of 12.9 feet from the thirty (30) feet front yard setback requirement for an existing dwelling, a variance of 0.1 feet from the ten (10) feet side yard setback requirement on the north side for an existing dwelling, and a variance of 3.2 feet from the ten (10) feet side yard setback requirement on the south side for an existing dwelling; that the Applicant proposes to square off the front of his dwelling and construct a screen-in porch; that the proposed screened-in porch will not extend farther than the existing

dwelling; that the dwelling was built in 1967 and is considered a legal, non-conforming structure; that the steps to the porch already exist and the existing steps will be used to access the proposed porch; that the Property is unique because it borders the limits of the Town of Dewey Beach; that Bayard Avenue is approximately eighty (80) feet wide and the town has parking available along the front of the right-of-way; that Dewey Beach has smaller setback requirements than Sussex County; that the proposed porch will square up the design of the existing dwelling; that the porch cannot otherwise be developed in strict conformity with the Sussex County Zoning Code; that the difficulty has not been created by the Applicant; that the dwelling was placed on the Property by a prior owner; that the variances will not alter the essential character of the neighborhood; that other homes in the area have similar covered porches; that the addition will enhance the Property and will bring the home more in conformity with other homes nearby; that the variances requested are the minimum variances necessary to afford relief; that the existing dwelling is an older beach cottage; that there is a large area between the edge of paving for Bayard Avenue and the property line; and that there is approximately 15 feet of parking, 15 feet of drainage ditch, and 10 feet of grass between the edge of paving and the property line.

Mr. Enzler, under oath, affirmed the statements made by Mr. Meredith and testified that the porch will be screened-in; and that there is adequate parking available.

Mr. Lank advised the Board that a previous Sussex County attorney interpreted the Code as allowing a dwelling which encroaches into a setback area as being allowed to expand in this fashion provided that the expansion did not extend beyond the encroachment of the existing dwelling; and that a subsequent Sussex County attorney held a different opinion and the County has held to that interpretation for many years.

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

Mr. Mills moved to approve Variance Application No. 11892 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique because it borders the town limits of Dewey Beach and has parking in front;
2. The Applicant did not place the dwelling on the Property;
3. The variances are necessary to enable reasonable use of the Property;
4. The variances will not alter the essential character of the neighborhood;
5. The use will not be detrimental to the public welfare; and
6. The variances sought are the minimum variances necessary to afford relief.

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

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

Case No. 11893 – Josephine Brett – seeks variances from the side and rear yard setback requirements (Sections 115-34B, 115-183C, and 115-185F of the Sussex County Zoning Code). The property is located on the east side of Crazy Lane end of 3rd Street in Bay Vista. 911 Address: 21021 Crazy Lane, Rehoboth Beach. Zoning District: MR. Tax Map No.: 3-34-19.16-142.00.

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

Sandy Leigh and Josephine Brett were sworn in to testify about the Application. Chad Meredith, Esquire, presented the case on behalf of the Applicant and submitted pictures for the Board to review.

Mr. Meredith stated that the Applicant is requesting a variance of 3.4 feet from the ten (10) feet rear yard setback requirement for a second floor screen porch, a variance of 2.6 feet from the ten (10) feet rear yard setback requirement for an existing shed, a variance of three (3) feet from the ten (10) feet side yard setback requirement on the north side for an existing shed, a variance of five (5) feet from the ten (10) feet side yard setback requirement on the south side for an existing deck, and a variance of 2.7 feet from the five (5) feet side yard setback requirement on the west side for an existing shed; that Ms. Brett is the owner of the Property and Ms. Leigh is her realtor; that Ms. Brett is selling the Property and a survey completed for settlement showed the encroachments; that the shape of the Property is unique; that the front yard property line is only forty (40) feet wide; that the property line is not a straight line; that the neighboring property to the south is a yacht basin water canal used by the residents of Bay Vista to access the Rehoboth Bay; that the sheds are labeled on the survey as movable but the sheds cannot be moved into compliance; that the sheds are on a concrete block foundation; that the shed in the rear yard is surrounded by landscaping which poses a challenge in moving the structure; that the shed located on the southwest side of the Property has a landing to access the shed and limits where the shed can be placed; that the existing deck is less than twenty-four (24) inches above grade; that the ground slopes towards the bulkhead and rip rap and deck is elevated due to this change in elevation; that the Property is located in the flood zone which is another reason why the deck is slightly elevated; that the deck boards have recently been replaced; that the Applicant relied on a contractor to replace the deck boards and believed that the work was completed in compliance with the Sussex County Zoning Code; that the variances requested are simply to allow these structures to remain in their current locations; that the shed in the rear yard has a cupola; that the slope of the Property is unique; that the Property cannot otherwise be developed; that the Property has been improved for some time and the use does not adversely affect the uses of neighboring and adjacent properties; that the variances will enable reasonable use of the Property; that the exceptional practical difficulty was not created by the Applicant; that the Applicant relied on contractors when improvements were made to the Property; that the variances do not alter the essential character of the neighborhood; that there are several sheds in the development which appear to be similarly situated; that the structures have been on the Property since the late 1990s or early 2000s and there have been no complaints from the neighbors; that the letter of support received by the Board was from the owner of Lot D which is the Property adjacent to the north of the Property; and that the variances are the minimum variances necessary to afford relief.

Ms. Leigh testified that she has been a realtor in the area for over sixteen (16) years; and that the variances will not adversely affect the values of neighboring properties.

Mr. Meredith stated that a permit was issued for the recent repair to the deck; that he is unsure if permits were issued for all improvements; that the landing providing access to the shed in the southwest corner of the Property is a concrete landing; that the porch in the rear yard is a second story porch; and that the Property is wooded.

Ms. Brett under oath, affirmed the statements made by Mr. Meredith and testified that she is the owner of the Property; that the second floor screened-in porch existed when she purchased the Property; that she hired a contractor to extend the existing porch; that the addition to the porch did not extend any closer to the property line than what existed; that she replaced the deck boards but did not change any of the structure; that she only replaced the boards that were on the deck when she acquired the Property; that the deck was on the Property in its current location when she purchased the Property; and that, when she purchased the sheds, she relied on the contractor to obtain any required permits and place the sheds in compliance with the Sussex County Zoning Code.

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

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

Mr. Rickard moved to approve Variance Application No. 11893 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to its shape;
2. The exceptional practical difficulty was not created by the Applicant;
3. The Applicant relied on her contractor to comply with the Sussex County Zoning Code;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances sought are the minimum variances necessary to afford relief.

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

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

Case No. 11894 – Joseph F. Donohoe and Cynthia C. Donohoe – seeks variances from the front yard setback requirement (Section 115-50D of the Sussex County Zoning Code). The property is located on the south side of Bayside Drive approximately 590 feet south of Oceanside Drive. 911 Address: 36899 Bayside Drive, Fenwick Island. Zoning District: HR-2. Tax Map No.: 1-34-22.00-50.00.

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

Clay Jester was sworn in to testify about the Application. Kashif Chowdhry, Esquire, presented the case on behalf of the Applicants and submitted pictures for the Board to review.

Mr. Chowdhry stated that the Applicants are requesting a variance of two (2) feet from the thirty (30) feet front yard setback requirement on the west side and a variance of 1.6 feet from the thirty (30) feet front yard setback requirement on the north side for an existing second floor deck; that the deck was rebuilt in 2006; that there were no changes to the foundation of the deck made at that time but the deck did expand to some extent; that Mr. Jester, who previously owned the Property, relied on his contractor and was unaware of the encroachment at that time; that Mr. Jester is unsure if the deck encroached prior to being rebuilt in 2006; that a survey completed for settlement related to the recent sale of the Property showed the encroachments; that the Property is unique in shape as the Property is irregularly shaped and is bordered by a cul-de-sac and a side road; that the Property is the only lot in the community which has this unique shape and road frontage; that the Property has two (2) front yard setback requirements; that only the corners of the existing second floor deck encroach into the setback areas; that other portions of the deck can be expanded without encroaching into the setback areas; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code; that the encroachments have gone unnoticed until recently; that the deck has a similar appearance from other decks in the neighborhood; that the unique curvature of the lot has created the difficulty; that the deck faces the bay and does not affect any views of the bay; that the deck has no adverse affect on neighboring properties; that the variances will not alter the essential character of the neighborhood; that there have been no previous complaints from the neighbors or Seatowne Homeowners Association; and that the variances are the minimum variances necessary to afford relief.

Mr. Jester, under oath, affirmed the statements made by Mr. Chowdhry and testified that he was one of the owners of the Property until it was recently sold to the Applicants; that he and his family were unaware of the encroachments until the day before settlement; that his father previously owned the Property and purchased the Property in 1984; that the Property is located in the Seatowne development; that the Property is located along a cul-de-sac near the Little Assawoman Bay; that the deck was made of salt-treated lumber and needed to be replaced; that the decks were also not properly fastened to the dwelling so the deck was in need of a major overhaul; that there was no intent to increase the size of the decks; that railings were made safer and the decks and joists were replaced; that the Seatowne Homeowners Association was notified of the deck improvements in 2006; that the encroachments have gone unnoticed and were only discovered by a recent survey of the Property; that the deck does not adversely affect other properties in the development; that his contractor obtained the building permits for the deck; that the Property was surveyed in the 1980s and was not surveyed again until recently; that there is approximately 14 feet from the edge of paving to the front property line; and that the difference between the edge of paving and the property line gives the impression that the Property is larger than it actually is.

Mr. Jester submitted photographs of the Property for the Board to review.

Mr. Chowdhry stated that the difficulty was not created by the Applicants; that the deck does not alter the character of the neighborhood; and that the variances requested are the minimum variances necessary to afford relief.

Ms. Cornwell advised the Board that a Certificate of Compliance was not required in 2006 since the decking was only replacing what previously existed.

Fred Wetzelberger was sworn in and testified in opposition to the Application and testified that he is on the Board of Directors for the Seatowne Homeowners Association; that the contractor did not comply with the setback requirements; that the community has 42 homes and has its own building requirements; that the community is concerned about the bad precedent of exceeding the property lines; that the Association's architectural review board approved the plan in 2006 provided that the deck was built in compliance with the Sussex County Zoning Code; that Seatowne has been involved in previous litigation when the setback requirements have not been met; that it is unfortunate the deck was not built into compliance but approval of a variance in the development could set a precedent; that there is room on the Property where the deck can be built and the deck can be built in compliance with the Code; that it is easier to square off a deck and this deck appears to have been squared off; that the contractor works for the property owner; that the property owner and builder should have made sure the setback requirements were met; that the Association wants the deck brought into compliance with the Code; and that the Property is not unique for the development.

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. Rickard, seconded by Mr. Workman, and carried unanimously that the case be **tabled until January 9, 2017**. 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. 11895 – Michael J. Baier and Hope C. Baier – seek a variance from the rear yard setback requirement (Sections 115-25C of the Sussex County Zoning Code). The property is located on the west side of Cleveland Avenue approximately 160 feet south of Lincoln Drive. 911 Address: 38768 Cleveland Avenue, Selbyville. Zoning District: AR-1. Tax Map No.: 5-33-20.14-50.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. Ms. Cornwell advised the Board that the Applicants previously received variances for this property at the November 7, 2016, Board meeting but this variance was not initially advertised with that application.

Michael Baier was sworn in to testify about the Application. Raymond Tomasetti, Jr., Esquire, presented the case on behalf of the Applicants and submitted an exhibit booklet for the Board to review.

Mr. Tomasetti stated that the Applicants are requesting a variance of five (5) feet from the twenty (20) feet rear yard setback requirement for an existing four season room; that the Board granted variances for the Property on November 7, 2016; that the rear yard variance was not part of that application; that the existing dwelling was built in 1973; that the Property measures 50 feet by 90 feet which makes it unique in size; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code; that the exceptional practical difficulty was not created by the Applicants; that the Applicants are the third owners of the Property; that most of the houses along this street are similarly situated in regard to the lagoon; that the variance does not alter the character of the neighborhood; that the variance requested is the minimum variance necessary to afford relief; and that all structures existed when the Applicants purchased the Property.

Mr. Baier, under oath, affirmed the statements made by Mr. Tomasetti. Mr. Baier testified that the four season room was built in 1985.

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

Mr. Rickard moved to approve Variance Application No. 11895 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property measures 50 feet by 90 feet which is unique in size;
2. The exceptional practical difficulty was not created by the Applicants;
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. 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.

The Board took a ten (10) minute recess.

Case No. 11896 – James Truitt Farms, LLC – seeks a special use exception for an assisted living facility (Sections 115-32C and 115-210A(3)(d) of the Sussex County Zoning Code). The property is located on the north side of Shuttle Road, Rehoboth Beach. Zoning District: MR. Tax Map No.: 3-34-19.00-3.00.

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.

Roger Truitt, Preston Schell, Greg Stevens, and Zac Crouch were sworn in to testify about the Application. James Fuqua, Jr., Esquire, presented the case on behalf of the Applicant and submitted additional exhibits for the Board to review.

Mr. Fuqua stated that the Applicant is requesting a special use exception for an assisted living facility; that the proposed assisted living facility will be located on a portion of a 23 acre parcel off of Shuttle Road across the road from a park-and-ride transit depot site; that the assisted living facility will occupy approximately 2.5 acres of the site; that the Property is zoned MR (Medium Residential) and a special use exception for assisted living facility is a permitted use; that the facility will be located near the middle of the Property; that the Property was previously used as a Par 3 golf course and driving range; that the surrounding area is a fully developed area with a mix of commercial and residential uses; that there is an Exxon gas station, County Bank, Holiday Inn, Applied Bank, Jungle Jim's Amusement Park, shopping and outlet centers nearby; that there are residential developments nearby as well including Kings Creek, Keys at Marsh Harbor, Stable Farm, and Kinsale Glen; that the Truitt family has owned the Property for over a century and the Property was previously used for agricultural purposes; that 52 acres of the land were sold in 2000 and that sale led to the development of the Kinsale Glen subdivision; that the Truitt family has entered into an agreement with Ocean Atlantic and Schell Brothers to develop the Property; that the development will be an age-restricted community for residents aged 55 years and older; that the development will include an assisted living facility; that the assisted living facility will allow residents to age in place; that the proposed age restricted development will consist of ninety (90) units; that the Property has previously been approved by the Planning & Zoning Commission and Sussex County Council for an age restricted subdivision; that a portion of the development was reserved for future development and the site plan presented at that time represented the future site for the assisted living facility; that, if the special use exception is approved, the final site plan is subject to review by the Planning & Zoning Commission; that the facility will consist of three (3) stories and will comply with all setback and height requirements; that the facility will have a maximum of 88 residential units with a maximum of 120 bedrooms; that the proposed building will also provide a rehabilitation area, community area, beauty salon, theater, swimming pool, café, and office space; that the facility will be surrounded by the homes being built in the community; that that the facility will border the stormwater management area and face the entrance of the community; that the perimeter of the Property will have a twenty (20) feet landscape buffer; that there will be eighty-eight (88) parking spaces available for the facility which is greater than the number of spaces required for this use; that attractive landscaping will be planted near the facility; that the units will be rented and not sold; that the facility will be managed by a senior living corporation which operates similar facility in the region; and that facility is designed to target seniors eighty (80) years of age and older.

Mr. Stevens testified that he works for Vantage Point, which is the company that will run the proposed assisted living facility; that a market study showed the need for this type of facility in the area; that the average age of the residents will be eighty (80) years old; that the facility will provide a wellness center which is also available to local residents not living in the facility; that the facility will offer shuttle and car services for the residents; that this service will lessen the impact on traffic; and that the use will not substantially adversely affect the uses of the neighboring and adjacent properties.

Mr. Fuqua stated that the site plan for the proposed facility is subject to site plan review under Planning & Zoning; that the development for the 90 homes has already been approved; that public water will be provided by Tidewater Utilities; that sewer will be provided through the Sussex County; that sewer capacity is available for the facility; that the stormwater management system will comply with Sussex Conservation District and the Delaware Department of Natural Resources and Environmental Control (“DNREC”) regulations; that the entrance will comply with the Delaware Department of Transportation (“DelDOT”) requirements and is being designed with the facility in mind; that DelDOT estimates the facility will account for approximately 329 vehicle trips per day, which is approximately 165 round trips per day from the site; that, during the afternoon rush hour, the DelDOT study indicates that vehicles will use the entrance an average of one vehicle per every 1 minute 42 seconds; that the traffic impact from the facility will be minimal; that the facility will use on-site transportation services for the residents; that the Rehoboth Fire Department will service this location and the facility does not have a negative impact to their services; that the facility will have no impact on the wetlands; that the wetlands are protected by some of the conditions set forth in the conditional use approval; that there will be buffers from the development to the wetland areas; that there are no nuisances associated with the proposed facility such as noise, loud truck traffic, or odors; that other similar facilities in Sussex County do not substantially adversely affect the uses of neighboring and adjacent properties; that eastern Sussex County has seen an influx of retirees and the facility is needed in this area; and that the facility conforms with the Land Use and Comprehensive Plan for Sussex County.

Mr. Crouch, under oath, affirmed the statements made by Mr. Fuqua.

Mr. Schell, under oath, affirmed the statements made by Mr. Fuqua.

Mr. Truitt testified that he is an owner of the Property and will remain an owner of the Property; that he plans to see that the facility will be an asset to the community; and that his mother lived in a similar facility and it was a great way of life for her;

Mr. Fuqua also submitted proposed findings and conditions that were part of the Conditional Use Application. Mr. Fuqua stated that the use will not substantially affect adversely the uses of neighboring and adjacent properties; and that “substantial” means “by a large amount or degree”.

Nick Iannuccilli was sworn in and testified in opposition to the Application and testified that he lives in a neighboring development; that he is concerned for the wetlands in the area; that the runoff from this project goes in the nearby creek and is not being maintained; that he wants to make sure that the creek is maintained; and that he is not against the special use exception for the assisted living facility but he is concerned about the creek. Mr. Iannuccilli submitted a drawing to the Board for review.

In rebuttal, Mr. Fuqua stated that all runoff will be collected on the site; that the Applicant must comply with stormwater management regulations; that sediments are removed before the water is discharged; and that the Applicant voluntarily created a buffer from the wetland line.

Theodora Brauer was sworn in and testified in opposition to the Application and testified that DNREC recommended buffer of one-hundred (100) feet from the wetlands; that the businesses mentioned by Mr. Fuqua are located on Route One and not on Shuttle Road; that Shuttle Road is a residential area except for the park-and-ride depot; that she is not opposed to the ninety (90) units being constructed; that she does not want to see a three (3) story facility from her property; that there will be delivery trucks and ambulances entering and exiting the Property; that the use is not residential; that there will be employees, shuttles, and deliveries throughout the day and night; that she is concerned for lighting and how it will impact her quality of life; that she believes a traffic impact study should be performed; that a significant portion of the Property falls within a wellhead area; that the use will substantially adversely affect the uses of the neighboring and adjacent properties; that hours of operation should be limited during construction; and that she would like the facility to be screened so it cannot be seen from her property.

Ms. Cornwell advised the Board that DelDOT does not require a traffic impact study for this site.

Tony Latino was sworn in and testified in opposition to the Application and testified that while he welcomes the development of the site and feels the Applicant is a first class act; that traffic is his main concern; that the use will substantially adversely affect the uses of the neighboring and adjacent properties; that the new shopping center has already led to more accidents in the area; that the traffic is already backed up as far as the park and ride with vehicles waiting to access Route One; that he expected the golf course to eventually be redeveloped; that he believes an assisted living is needed but he does not feel the proposed assisted living facility should be built in a resort area; that traffic estimates should not dictate how the facility will impact the area; that the facility could affect his property value; that the proposed development of the Property increases residents living in that area to approximately three-hundred (300) people; that he does not object to the 90 unit development; and that the addition of the facility is too much for this location.

In rebuttal, Mr. Fuqua stated that the DelDOT comments received during the PLUS process were based on the proposed ninety (90) units and the proposed assisted living facility; that one minute forty-two second intervals are a worse-case scenario used by DelDOT to determine the impact of the entire development on traffic; that the Applicant proposes restrictions on the hours of operation during the construction of the facility; and that all lighting will likely be directed downward.

In rebuttal, Zac Crouch testified that a wetlands delineation was conducted on the Property by a soil scientist; that the delineation also shows the centerline of the creek; that Exhibit "C" shows that the wetlands delineation; that only about 20% of the creek mentioned by the opposition is on the Applicant's property; that Sussex Conservation District has a drainage ditch program to assist concerns raised by the opposition; and that the stormwater management proposal has been approved by the Sussex Conservation District.

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

The Board found that five (5) parties appeared in opposition to the Application.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the case be **tabled until January 9, 2017**. 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. 11897 – REHL, LLC – seeks a variance from the front yard setback requirement (Section 115-82B of the Sussex County Zoning Code). The property is located on the south side of Savannah Road approximately 564 feet west of Old Orchard Road. 911 Address: None Available. Zoning District: C-1. Tax Map No.: 3-34-6.00-17.00.

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.

Bob MacLeish, Jr., and Nick Caggiano were sworn in and testified requesting a variance of 1.85 feet from the sixty (60) feet front yard setback requirement for a canopy on an existing building. They submitted drawings and plans of the building to the Board to review.

Mr. MacLeish testified that the building is part of a development which has frontage along Savannah Road; that a portion of the building encroaches into the setback area; that the plans were engineered by the D.C. Group, which is no longer in business; that the Applicant also retained the services of an architect to design the building; that the encroaching portion of the building is an architectural element with a canopy; that this parcel was subject to a cross access easement imposed by DelDOT; that this created a unique shape to the Property; that the Property has two (2) front yard setback requirements which also makes the Property unique; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code; that the Applicant relied on his architect and engineer to design plans in conformity with the Code; that the canopy will provide signage for the building; that the difficulty was not created by the Applicant; that the cross access easement limited the building envelope of the Property and the areas where the building could be placed; that construction of the building began in 2016 and the Applicant was notified of the potential encroachment after the building was largely completed; that the encroachment was not discovered until October 2016 when the Office of Planning and Zoning notified the Applicant of the encroachment; that the variance will not alter the character of the neighborhood; that the encroaching portion of the building is simply a covered walkway; that the encroachment does not impede development of neighboring and adjacent properties; that the canopy is similar to other canopies and signs in the area; that the variance requested is the minimum variance necessary to afford relief; that the Applicant plans no further addition to the canopy; that the variance will allow the structure to remain as constructed; that the building must also be 60 feet from the other side of the Property; and that, if the sign was a stand-alone sign, it could be placed closer to the front yard property line.

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

Mr. Mills moved to approve Variance Application No. 11897 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 its shape, the DeIDOT easement, and setback requirements;
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. Hudson, 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.

ADDITIONAL BUSINESS

The Board members congratulated Lawrence Lank on his retirement and wished him well.

Meeting Adjourned 10:39 p.m.