

MINUTES OF FEBRUARY 15, 2016

The regular meeting of the Sussex County Board of Adjustment was held on Monday, February 15, 2016, at 7:00 p.m. in the County Council Chambers, 2 The Circle, Georgetown, Delaware.

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

The Pledge of Allegiance was led by Mr. Callaway.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously to approve the Revised Agenda 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.

OLD BUSINESS

Case No. 11695 – Gerald W. Hocker, Trustee and Emily W. Hocker, Trustee – seek a special use exception to replace two (2) billboards and variances from the height, square footage, side yard setback on the north side, and separation distance from a residential dwelling requirements (Sections 115-159.5B, 115-159.5B(2), 115-159.5B(3), 115-159.5C, 115-210A(3)(p), and 115-80C of the Sussex County Zoning Ordinance). The property is located at the southeast corner of Atlantic Avenue and Roxana Road. 911 Address: 34960 Atlantic Avenue, Ocean View. Zoning District C-1. Tax Map No.: 1-34-12.00-330.01.

Ms. Cornwell presented the case, which has been tabled since February 1, 2016.

Mr. Mills stated that the height variance is necessary to accommodate the proposed billboard and the catwalk attached to the billboard and that a large vehicle would block visibility of the proposed billboard from Route 26.

Mr. Hudson stated that he agrees with Mr. Mills and the exhibits provided by the Applicant show it is a minimal variance to afford relief; that the nearby intersection is busy; and that there are multiple uses in the area.

Mr. Callaway stated that since there has been a billboard on the site at the maximum height he feels there is not a need for a height variance.

Mr. Rickard stated that the Applicant in 2000 received numerous variances for the existing billboard, and that the existing billboard's height has been sufficient and he sees no need for the height variance.

Mr. Workman stated that agricultural vehicles and large trucks cannot exceed a height of 13 feet 6 inches; that the twenty-five (25) feet height requirement is sufficient for clearance of those type of vehicles.

Mr. Mills stated that the Applicants' exhibit clearly shows why the height variance is necessary to enable reasonable use of the Property; and that the variances are the minimum variances to afford relief.

Mr. Rickard and Mr. Workman stated that after further discussion and review that they agree the height variance is necessary.

Mr. Rickard stated that he would move that the Board recommend approval of Special Use Exception and Variance Application No. 11695 be granted for the special use exception based on the record made at the public hearing because the use does not substantially adversely affect the uses of the neighboring and adjacent properties and be granted for the variances based on the record made at the public hearing for the following reasons:

1. The existing billboard approved in 2000 creates a unique circumstance to the Property;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variances will not alter the essential character of the neighborhood;
5. There are other similar billboards in the area; and
6. The variances sought are the minimum variances necessary to afford relief.

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

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

Case No. 11700 – James H Semerteen, III and Robin Massey – seek variances from the side yard and front yard setback requirements (Section 115-25C of the Sussex County Zoning Ordinance). The property is located on the northwest corner of River Bend Drive and Thorogoods Road. 911 Address: 101 River Bend Drive, Dagsboro. Zoning District: C-1. Tax Map No. 1-34-11.00-179.05.

Ms. Cornwell presented the case, which was left open from the January 25, 2016 meeting.

James Semerteen, III and Robin Massey were sworn in and testified requesting a variance of 24.8 feet from the thirty (30) feet front yard setback requirement for a through lot on the west side for a proposed detached garage and lean-to, and a variance of ten (10) feet from the fifteen (15) feet side yard setback requirement on the north side for a proposed detached garage.

Ms. Massey testified that the variances are needed due to the uniqueness of the Property; that the Property is unique because it fronts on three (3) roads; that the location of the septic system also makes the Property unique; that the variances will not adversely affect property values; that neighbors support the Application; that the Property is smaller than other lots in the in the development; that the road to the rear of the Property is a private drive; that the owner of that property is the only one with access to the private drive and has plans of putting a gate up on Koszy Lane to deter vandalism and burglary; that the gate will prevent the Applicants from accessing their property from the rear; that the only access will be from their driveway; that there needs to be enough room to access the backyard and existing septic system which prevents the garage from being placed closer to the dwelling; that a garage built in compliance with the Code would not meet the intended need of the Applicants; and that the proposed garage will provide shelter for their assets which are currently stored outside.

Mr. Semerteen testified that the utility lines run from the corner of the porch to the edge of where the garage is proposed to be located; that the lean-to could be removed but the garage still needs to be located five feet from Koszy Lane so as to provide enough space between the front of the garage and the rear of the house; that he is willing to remove the lean-to from the plan and, by removing the proposed lean-to, will not need the side yard variance; that the through lot setback requirements make the Property unique; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code; and that the front yard variance is necessary to enable reasonable use of the Property.

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

Mr. Mills stated that he would move that the Board recommend approval in part and denial in part for Variance Application No. 11700. Mr. Mills moved that the requested front yard variance for the garage be approved based on the record made at the public hearing and for the following reasons:

1. The Property is unique as it is a through lot;
2. The front yard variance for the garage is necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicants;
4. The front yard variance for the garage will not alter the essential character of the neighborhood; and
5. The front yard variance for the garage sought is the minimum variance necessary to afford relief.

As part of his motion, Mr. Mills moved that the variance for the side yard variance be denied based on the record made at the public hearing because the variance is not needed since the proposed detached garage will not exceed six-hundred (600) square-feet and the lean-to will not be constructed.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the **front yard variance for the garage only be granted for the reasons stated and the side yard variance be denied for the reasons stated**. Motion carried 5 – 0.

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

Case No. 11703 – 84 Outdoor, LLC – seeks a special use exception to place a billboard and variances from the height and the separation distance from residential dwellings requirements (Section 115-159.5B, 115-159.5B(2), 115-159.5C, 115-80C, and 115-210A(3)(p) of the Sussex County Zoning Ordinance). The property is located on the southwest side of Atlantic Avenue (Route 26) approximately 675 feet northwest of Roxana Road (Route 17). 911 Address: 34848 Atlantic Avenue Ext., Ocean View. Zoning District: C-1. Tax Map No.: 1-34-11.00-179.05.

Ms. Cornwell presented the case, which has been tabled since January 25, 2016.

The Board discussed the case and members stated that the exceptional practical difficulty is being created by the Applicant.

Mr. Rickard stated that he would move that the Board recommend denial of Special Use Exception and Variance Application No. 11703 for the requested special use exception and the requested variance based on the record made at the public hearing because the exceptional practical difficulty has been created by the Applicant.

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

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

PUBLIC HEARINGS

Case No. 11713 – Jungle Jim’s Amusement Park – seek variances from the height requirement (Section 115-82C of the Sussex County Zoning Code). The property is located on the west side of Coastal Highway (Route 1) approximately 212 feet south of Country Club Road. 911 Address: 36944 Country Club Road, Rehoboth Beach. Zoning District: C-1. Tax Map No.: 3-34-19.00-163.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received two (2) letters in support of the Application and one (1) letter in opposition to the Application and she read the letters into the record.

William D. Lingo, T. William Lingo, and John Barwick were sworn in to testify about the Application. David Hutt, Esquire, presented the case on behalf of the Applicant and submitted exhibits for the Board to review.

Mr. Hutt stated that the Applicant is requesting a variance of five (5) feet from the forty-two (42) feet height requirement and a variance of eighteen (18) feet from the forty-two (42) feet height requirement for a proposed waterslide; that the Property is a highly recognizable property used as an amusement park; that the park has been at this location since 1974; that the Applicant purchased the Property in 1998; that the Property consists of approximately fifteen (15) acres and is zoned C-1; that in 1974 the Sussex County Zoning Code permitted amusement parks but in 1992 the Zoning Code changed and required amusement parks to file for Conditional Use approval; that the park is non-conforming and the Applicant only needs commercial site plan approvals to make changes and update the existing park; that the Applicant submitted a commercial site plan for review which was approved; that in 2002 the Applicant made significant changes to the park pursuant to that plan; that the two tallest waterslides were constructed at that time and are approximately sixty (60) feet tall; that in 2008 the Applicant added a spray area to the park after commercial site plan review and approval; that there are residential neighborhoods adjacent to the Property; that the most frequent complaints from neighbors referred to the noise from the go-kart tracks; that the Applicant systematically removed the go-kart tracks from the park and the last track was removed last year; that the proposed waterslides will replace an existing go-kart track attraction; that the Applicant consulted with waterslide manufacturers about the proposed waterslides; that the proposed waterslide was designed to not exceed the height of the existing waterslides in the park; that most waterslides are designed in excess of seventy (70) feet tall; that the manufacturer stated the slide platform must be at forty-seven (47) feet in order to be safe and operate properly; that this platform must also have a thirteen (13) feet high canopy attached to provide the required railing and shade protection; that the proposed waterslide will be approximately eighty (80) feet from the southerly property line; that an addition of a waterslide to an existing waterpark will not negatively impact the surrounding and neighboring properties; that people using the waterslide will not be able to see into neighboring properties outside showers; that the most common complaint the Applicant received from neighboring properties was in reference to the go-karts; that in previous years the park would close at 8:00 p.m. and the go-kart tracks would remain open until 10:00 p.m.; that with all the go-kart tracks removed the entire park will close at 8:00 p.m. each night thereby eliminating any need for lighting and noise past 8:00 p.m.; that the park is open from Memorial Day until the weekend following Labor Day each year; that the park closes at 6:00 p.m. except from June 15th through August 15th when it will close at 8:00 p.m.; that to maintain the park and keep it viable updates and modernization are crucial; that modernization includes the replacement of certain rides; that the waterslide cannot be constructed with portions underground due to the topography of the Property; that the pre-existing non-conforming use of the Property makes it unique; that the variance was not created by the Applicant; that the variances sought are the minimum variances to afford relief and provide the park with a safe waterslide; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code while meeting the manufacturer's safety standards; that the variances are necessary to enable reasonable use of the Property; that the waterslides will not alter the character of the neighborhood and will eliminate the source of complaints from the neighboring properties; and that the proposed waterslide platform is two (2) inches lower than the platforms for the existing slides.

Mr. T. William Lingo testified that he has been a certified appraiser since 1978; that the park pre-dated the development of the neighboring residential neighborhoods; that the park does not negatively impact the property values since it was there prior to those developments; and that he affirmed the statements made by Mr. Hutt.

Mr. Barwick of Karins Engineering testified that the angles of deflection in a shower make it impossible for anyone to see down into a shower from the proposed waterslide; that only someone directly above a shower can see down into a shower; that the slide manufacturer stated in order for the thrill of the trap door platform to work properly and safely it must be a minimum of forty-seven (47) feet tall; that the proposed height will allow enough time for the slide to work as designed; and that the slides are approximately 125 feet from neighboring houses.

Mr. William D. Lingo testified that he is the general manager of the park; that the proposed waterslide will not create any more noise than what is currently created from the existing waterslides; that the removal of the go-karts will lower the noise level; and that the park will not have lights or loud music playing past 8:00 p.m. at night during their peak season.

Mr. T. William Lingo testified that the Applicant received many complaints from the go-karts; and that the Applicant has planted Leland Cypress trees around the perimeter of the Property to help buffer the residential properties.

Mr. Hutt stated that the park generates approximately 76,000 visitors each year; that updates to the park are needed to keep the park safe and desirable to returning and future visitors; that the removal of the go-karts had an economic impact on the park; and that the Applicant intends to use the new slides as a substitute for the go-karts.

Esther Downes was sworn in and testified in opposition to the Application. Ms. Downes testified that she lives on a neighboring property that borders the park; that the proposed waterslide serves no altruistic benefit to the community; that the slides will negatively impact the neighboring residents year round; that the waterslide will be an imposing structure; that the proposed waterslide will be placed squarely in the storm water drainage pond; that she is concerned about the impact of the waterslide on storm water management; that patrons to the Park previously parked across the street but those lands are being developed; that storm water management pond is filled at times; that the proposed waterslide will reduce property values of nearby property values; that the use of outdoor decks, hot tubs, and outside showers will be compromised; that users of the waterslides will be able to see into the outdoor showers; that the neighboring residents are entitled to their privacy; that she planted trees along the property line; that there are no trees on the Applicant's property adjacent to her property; that she is strongly opposed to the height and location of the proposed waterslide; that the waterslide will be closer to her house than the previous go-kart tracks; that the noise pollution has been reduced with the removal of the go-karts; that the other waterslides are located in a more interior location inside the park; and that she would still disapprove of the slide even if it complied with the height requirement.

Bruce Powell was sworn in and testified in opposition to the Application and testified that the proposed waterslide is in the worst possible location; that the area where the slide is proposed

to be located is surrounded by residential properties; that the noise generated from the waterslide will negatively impact the surrounding properties; that a commercial building of forty-two (42) feet tall would not be objectionable because it would not have the noise impact; that he lives approximately 1,000 feet from the park and can hear noise from the park; that the noise will carry further due to the height of the slides; that he has lived in the area for twenty-five (25) years; that he likes the park and feels it is well run; that he feels the noise will hurt the property values; that he is concerned about the impact of the slides on the storm water management pond; and that he would still be opposed if the waterslide met the forty-two (42) foot height requirement.

Ms. Cornwell stated that the Sussex Conservation District will handle the storm water management regulations for the Property.

In rebuttal, Mr. Hutt stated that the Applicant will meet with the Sussex Conservation District in regards to the changes to the storm water management pond; and that the existing go-kart track was located the same distance from the property line.

Mr. T. William Lingo testified that he is willing to plant additional Leland Cypress trees along the property line.

Ms. Esther Downes asked if the Applicant would have objection to moving the location of the proposed waterslide to the opposite side of the Property closer to the neighboring commercial properties.

Mr. Hutt stated that the existing layout of the park and overall functionality of the park make it difficult to locate the proposed waterslide elsewhere on the Property.

The Board found that no parties 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. Mills, and carried unanimously to table the case until February 29, 2016. Motion carried 5 – 0.

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

The Board took a ten (10) minute recess.

Case No. 11714 – Lullaby House, Inc. – seeks a special use exception to operate a daycare facility and to use a manufactured home type structure as a daycare building (Sections 115-23A, 115-23C(5), 115-210A(3)(e) of the Sussex County Zoning Code). The property is located on the south side of Lewes-Georgetown Highway, approximately 454 feet west of Harbeson Road. 911

Address: 26324 Lewes Georgetown Highway, Harbeson. Zoning District: AR-1. Tax Map No.: 2-35-30.00-99.17.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of the Application and read the letter into the record and had not received any correspondence in opposition to the Application.

Joseph Gebbia, Jr. and Sherry Gebbia were sworn in and testified requesting a special use exception to operate a daycare facility and a special use to use a manufactured home type structure as a daycare.

Ms. Gebbia testified that she and Joseph Gebbia are the owners of Lullaby House in Lewes; that the Board has approved their current daycare three different times in 2009, 2012 & 2014; that the daycare is currently located at the Village at Five Points in Lewes; that they have purchased their own property and wish to relocate the daycare to this property; at the proposed modular home is a 2016 model consisting of approximately 4,000 square feet; that the structure will strictly be used for the daycare; that they will live in the existing dwelling; that the use will not substantially adversely affect the surrounding and adjacent properties; that the neighboring properties are a chicken plant, cemetery, and a neighbor in support of the Application; that the Applicant has had no issues at their current location; that the children will range in age from birth to five (5) years old but may include school aged children in the future; that the Applicant employs twenty-three (23) people; that they plan to care for approximately fifty (50) children at the new location; that the Applicant currently cares for one-hundred (100) children; that there is adequate parking; that the Property consists of 3.5 acres; that she has been a licensed childcare provider for thirty (30) years; that there are no issues with the Delaware Department of Transportation ("DelDOT"); that the hours of operation will be 6:00 a.m. to 6:00 p.m.; and that there will be fenced in play area.

Mr. Gebbia testified that the proposed structure is a modular home and is not a manufactured home; that the prior owner was in the process of subdividing the Property but did not complete the subdivision; and that the survey shows the line where the Property was proposed to be subdivided but the Applicant does not intend to subdivide the Property.

The Board found that nineteen (19) parties appeared in support of the Application.

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

Ms. Cornwell stated that since the proposed structure is a modular structure and not a manufactured home type structure the request for a special use to use a manufactured home type structure is not needed.

Mr. Mills stated that he would move that the Board recommend approval of Special Use Exception Application No. 11714 for the requested special use exception to operate a daycare facility based on the record made at the public hearing because the use will not substantially adversely affect the uses of the neighboring and adjacent properties.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the special use exception for a daycare be **granted for the reasons stated**. Motion carried 5 – 0.

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

Case No. 11715 – Norman E. Davidson, Jr. – seeks a special use exception for a garage / studio apartment and a variance for size requirement of the garage / studio apartment (Sections 115-23C(6) and 115-4B of the Sussex County Zoning Code). The property is located on the south side of Piney Neck Road approximately 183 feet east of Hudson Road. 911 Address: 29350 Piney Neck Road, Dagsboro. Zoning District: AR-1. Tax Map No.: 2-33-11.00-78.01.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Norman Davidson, Jr. was sworn in and testified requesting a special use exception for a garage / studio apartment and a variance of 400 square feet from the 800 square feet maximum size of a garage / studio apartment; that a manufactured home was placed on the Property in 1992; that six (6) years ago the manufactured home collapsed due to a snow storm; that he built the existing building and apartment to replace the manufactured home; that the building has a concrete floor; that he does not believe the building could be reduced in size; that the building is in the same location as the prior mobile home; that his son lives in the apartment; that the structure will not alter the character of the neighborhood; that it would be hardship to remove the structure; that the garage is used for farm equipment; and that there is no other dwelling on the Property. He submitted pictures to the Board to review.

During the public hearing it was determined the Application was not necessary since the apartment is the primary dwelling on the Property. Staff was under the impression that there was another dwelling on the Property when the Application was filed.

The Board found that one (1) person 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 special use exception be **denied since the special use exception and variance are not necessary and to refund the Applicant the filing fee**. 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. 11716 – Amick Farms, LLC – seeks a special use exception to use a multi-sectional manufactured home type structure as an existing office building (Sections 115-105A, and 115-210A(1) of the Sussex County Zoning Code). The property is located on the west side of Bi-State

Boulevard across from Allens Mill Road. Address: 10281 Amick Drive, Delmar. Zoning District: LI-2. Tax Map No.: 5-32-13.00-37.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Mr. Hudson and Mr. Workman recused themselves from the public hearing due to a conflict of interest and then left the Chambers for the duration of the public hearing.

John Shahan and Richard Martinson were sworn in and testified requesting a special use exception to use a multi-sectional manufactured home type structure as an office building.

Mr. Shahan testified that the Applicant seeks to add additional office space at its feed mill; that the structure will be a modular structure located on a permanent foundation; that the area around the unit will be landscaped; that the Applicant chose this structure for the speed in which it would be available; that the unit will meet all setback requirements; that the unit will be 773 feet from the front property line; that the unit will be 283 feet from the side property line; that the neighboring properties consist of an existing scrapyard and farmland; that the building will be 2,077 square feet in size; that the Applicant is working with the Delaware Department of Transportation to ensure that the entrance meets all of its standards; that the Applicant has received approvals from the Sussex Conservation District and the Office of the State Fire Marshal; that the Applicant is aware the special use exception can only be approved for a period of (5) years; that there will be a walkway connecting the unit to the existing building; that the use will not substantially adversely affect the uses of the neighboring and adjacent properties; and that the existing railroad adjacent to the Property is used for grain deliveries to the feed mill.

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 Special Use Exception Application No. 11716 for the requested special use exception for a period of five (5) years based on the record made at the public hearing because the use does not substantially adversely affect the uses of the neighboring and adjacent properties.

Motion by Mr. Rickard, seconded by Mr. Mills, and carried unanimously that the special use exception be **granted for a period of five (5) years and for the reasons stated**. Motion carried 3 – 0.

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

Mr. Workman and Mr. Hudson returned to the Chambers.

Case No. 11717 – David Gatchel and Helen Gatchel – seek a variance from the front yard setback requirement (Sections 115-25C and 115-182D of the Sussex County Zoning Code). The property is located on the west side of Dogwood Drive approximately 747 feet south of Angola

Road. 911 Address: 22852 Dogwood Drive, Lewes. Zoning District: AR-1. Tax Map No.: 2-34-12.17-46.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Helen Gatchel was sworn in and testified requesting a variance of ten (10) feet from the thirty (30) feet front yard setback requirement for an existing deck; that the Property is located in Angola by the Bay; that the Property measures 50 feet by 100 feet and is unique in size; that the deck existed when the Applicants purchased the Property in 1987 and she was unaware that the deck was not in compliance with the Sussex County Zoning Code; that the dwelling was built in the 1970s; that the prior owner built the dwelling and the deck; that a survey from October 1987 shows the deck and is noted as being approved by the Sussex County Planning & Zoning Commission; that there have been no complaints about the deck; that the variance requested is the minimum variance to afford relief; that there are other decks in the neighborhood; that the Applicants did not create the difficulty; that the Applicants are selling the Property due to health issues; that a realtor advised them of the encroachment; and that the Applicants tried to build a roof over the deck at one point but the Homeowners Association denied that request.

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

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11717 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The situation is unique since encroachment has existed since 1987;
2. The variance is necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variance will not alter the essential character of the neighborhood;
5. The variance is not detrimental to neighboring properties; 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. 11718 – Charles H. Hayes, Jr. – seeks variances from the side yard and front yard setback requirements (Section 115-34B of the Sussex County Zoning Code). The property is located on the east side of Bayberry Lane approximately 434 feet south of Cedar Road. 911 Address: None Available. Zoning District: MR. Tax Map No.: 5-33-20.09-108.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received one (1) letter from the Homeowners Association in support of the Application and two (2) letters in opposition to the Application. Ms. Cornwell read the letters into the record.

Charles Hayes, Jr. was sworn in and testified requesting a variance of five (5) feet from the ten (10) feet side yard setback requirement on the north side for a proposed dwelling and a variance of five (5) feet from the thirty (30) feet front yard setback requirement for a proposed dwelling; that he is a retired builder who builds one or two houses a year; that the Property is unique because it measures 50 feet wide by 100 feet deep; that the Property is narrow; that the proposed dwelling will meet the Homeowners Association setback requirements; that the proposed two story dwelling will be 2,400 square feet in size; that the proposed dwelling is reasonable and comparable to other dwellings in the area; that the exceptional practical difficulty was not created by him; that the variances will not alter the character of the neighborhood; that the neighboring lots have similar variance approvals; that it would be unreasonable to build a house which complies with the Sussex County Zoning Code; that the proposed dwelling will measure 28.3 feet wide by 48 feet deep; that he has built a 24 feet wide dwelling on a forty (40) feet wide lot previously but needed a variance for that dwelling as well; that the variances requested are the minimum variances necessary to afford relief; and that the Homeowners Association supports this request. Mr. Hayes submitted pictures and construction plans of the proposed dwelling.

Phyllis Hayes was sworn in and testified in support of the Application and testified that she has been in the development; that there are large houses throughout the development; that the proposed dwelling will improve the community; and that the proposed dwelling will improve the property values in the community.

Ms. Cornwell stated that the lot to the north of the Applicant's lot is a double lot and the lot to the south of the Applicant's lot received approval for side yard and front yard variances.

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

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

Motion by Mr. Hudson, seconded by Mr. Rickard, and carried unanimously that the case be **tabled until February 29, 2016**. 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.

Meeting Adjourned 10:15 p.m.