

MINUTES OF FEBRUARY 19, 2018

The regular meeting of the Sussex County Board of Adjustment was held on Monday, February 19, 2018, 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. Bruce Mears, Mr. John Mills, and Mr. Brent Workman. Ms. Ellen Magee was absent. Also in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Mrs. Jennifer Walls – Planning Manager and Ms. Christin Headley – Recording Secretary.

The Pledge of Allegiance was led by Mr. Callaway.

Motion by Mr. Mills, seconded by Mr. Mears, and carried unanimously to approve the revised agenda as circulated. Motion carried 4 – 0.

Motion by Mr. Mills, seconded by Mr. Mears, and carried unanimously to approve the Minutes and Findings of Facts for December 18, 2017. Motion carried 4 – 0.

Mr. Sharp read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing the case.

PUBLIC HEARINGS

Case No. 12100 – Christopher A. Holt & Emory H. Bevill - seek special use exceptions to operate a tourist home (also referred to as a bed and breakfast inn) and for garage / studio apartments (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located on the east side of Willow Creek Road, approximately 868 feet northeast of the intersection of Coastal Highway (Route 1) and Willow Creek Road. 911 Address: 16239 Willow Creek Road, Lewes. Zoning District: AR-1. Tax Map No.: 2-35-23.00-4.11.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received nine (9) letters in support of the Application and no correspondence in opposition to the Application. The Applicants request two (2) special use exceptions, one to operate a tourist home (also referred to as a bed and breakfast inn) and one for a garage / studio apartment.

Emory Bevill was sworn in to testify about the Application. William Schab, Esquire, presented the case on behalf of the Applicants and submitted exhibits for the Board to review.

Mr. Schab stated that the Property has a house and 2 outbuildings; that these structures were on the Property when the Applicants purchased the lot; that the Applicants later added a pool and a shed; that the Property is a large, attractive property with ample parking; that the Property is wooded; that the Property is located in the Willow Creek subdivision but is the first property found upon entering the subdivision; that there are commercial properties on 2 sides of the Property; that a large field is located near the Property as well; that 9 of the 10 neighbors support the Application

and the tenth neighbor could not be reached by the Applicants prior to the hearing; that the auxiliary building is called the log cabin; that the log cabin has 1 bedroom; that the dwelling has 4 bedrooms; that the pool house has 1 bedroom; that a bed and breakfast is allowed to have up to 6 bedrooms; and that the uses will not substantially affect adversely the uses of neighboring and adjacent properties.

Mr. Bevill testified that the log cabin measures approximately 20 feet by 20 feet; that the log cabin is one story with a loft area; that the log cabin has no cooking facilities; that the Applicants intend to operate the bed and breakfast 7 days a week for short-term rentals; that the facilities may be closed at times for cleaning; that the pool house has a small kitchenette with no cooking facilities; that the dwelling has 4 bedrooms and will be used as a bed and breakfast inn; that there are no cooking facilities in the bedrooms in the dwelling; that there are ample parking spaces on the Property for all users of the facilities; and that he affirmed the statements made by Mr. Schab as true and correct.

Mr. Sharp suggested that the Applicants need a special use exception for a tourist home for the dwelling and 2 special use exceptions for garage / studio apartments for the log cabin and the pool house.

Mrs. Walls confirmed that the Applicants need a special use exception for a tourist home for the dwelling and 2 special use exceptions for garage / studio apartments for the log cabin and the pool house.

Mr. Bevill testified that there are no restrictive covenants which prohibit the proposed uses; and that meals will be prepared in the main dwelling.

Mr. Schab stated that there is already a bed and breakfast located within the community.

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

Mr. Mills and Mr. Sharp discussed the Code section regarding special use exceptions and whether multiple special use exceptions could be approved.

Mr. Mills moved to approve Special Use Exception Application No. 12100 for the requested special use exceptions (1 special use exception for a tourist home and 2 special use exceptions for garage / studio apartments for the log cabin and the pool house) based on the record made at the public hearing and because the uses will not substantially adversely affect the uses of the neighboring and adjacent properties.

Motion by Mr. Mills, seconded by Mr. Mears, and carried unanimously that **the special use exceptions be granted for the reasons stated**. Motion carried 4 – 0.

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

Case No. 12101 – Scott Schoenfeld & Leslie Skelley - seek variances from the front yard and side yard setback requirements (Section 115-25 of the Sussex County Zoning Code). The property is located on the east side of Mulberry Knoll Road (Road 284), approximately 218 feet north of the intersection of Concerto Lane and Mulberry Knoll Road (Road 284). 911 Address: 20683 Mulberry Knoll Road, Lewes. Zoning District: AR-1. Tax Map No.: 3-34-18.00-57.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received twelve (12) letters in support of the Application and no correspondence in opposition to the Application. The Applicants request a variance of 9.8 feet from the thirty (30) feet front yard setback requirement for a proposed garage addition, a variance of 8.2 feet from the thirty (30) feet front yard setback requirement for a proposed covered entry addition, and a variance of 0.4 feet from the thirty (30) feet front yard setback requirement for an existing dwelling. Mrs. Walls stated that this Property is a corner lot; that Bayshore Drive is the front yard and East Sands Street is the corner front yard; that no variance is needed from the side yard because the side yard setback requirement on the south side is ten (10) feet.

Mr. Sharp stated that the side yard setback requirement is ten (10) feet because Bay Shore Drive is not a numbered road.

Scott Schoenfeld was sworn in to testify about the Application. William Schab, Esquire, presented the case on behalf of the Applicants and submitted exhibits for the Board to review.

Mr. Schab stated that he met with Planning & Zoning Director Janelle Cornwell and she informed him that the side yard setback requirement on both sides of the Property was 15 feet; that the Property is similar in shape to a parallelogram; that the dwelling was constructed parallel to Bay Shore Drive less than 30 feet from the road; that the Applicants had a survey conducted as part of the settlement process when purchasing the Property but they were not aware of the encroachments which existed at the time they purchased the lot; that the septic system takes up the southern rear portion of the lot; that the existing garage will be moved closer to Bay Shore Drive and the rear of the existing garage will be converted to living space; that an addition is proposed for the rear of the dwelling but no variances are needed for that addition; that the existing front porch encroaches into the front yard setback area; that the Applicants intend to modernize the porch and these renovations will increase the porch's encroachment into the front yard setback area by approximately 5 inches; that the existing dwelling encroaches into the front yard setback area by 0.4 feet; that the dwelling was built by a prior owner; that the Applicants have met with most of the neighboring property owners and reviewed these plans with those neighbors; that the neighbors support the Application; that the Applicants intend to live in the home full-time and need to modernize the home to accommodate year-round use; that the Applicants did not create the need for the variances; that the location of the septic system, the corner lot setback

requirements, and the original design of the dwelling have limited the building envelope; and that the variances will not adversely affect the neighborhood.

Mr. Schoenfeld affirmed the statements made by Mr. Schab as true and correct. Mr. Schoenfeld testified that the Property is serviced by a well; that the Property is located in a subdivision; that the lot was created in the early 1970s; that there is approximately 10 feet from the front property line to the edge of paving of Bay Shore Drive; that the structures will be no closer than 30 feet from the edge of paving of Bay Shore Drive; that the laundry room will be placed to the rear of the garage; that there are structural reasons why the garage could not be located farther away from Bay Shore Drive; and that the garage will hold 2 cars.

Mr. Sharp stated that he looked further into the Code and 10 feet side yard setback requirements would apply if the lot consisted of less than 20,000 square feet and was the lot was created prior to January 1, 1971.

Mrs. Walls stated that she does not have evidence that the lot was created prior to January 1, 1971.

Mr. Sharp stated that, since we do not have information regarding when the lot was created, the Board should treat the Property as having a side yard setback requirement of 15 feet; and that a side yard setback variance would be needed.

Ms. Headley stated that she reviewed the paper maps and paper map state that the side yard setback requirement is 10 feet and that the paper maps is in place for lots which were created prior to 1971. Ms. Headley submitted a copy of the paper map into the record.

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

Mr. Mears moved to approve Variance Application No. 12101 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, the location of the septic and well, and the original design of the house in relation to Bay Shore Drive;
2. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
3. The exceptional practical difficulty has not been created by the Applicants;
4. The variances will not alter the essential character of the neighborhood;
5. The improvements will enhance the character of the neighborhood; and
6. The requested variances are the minimum variances necessary to afford relief.

Motion by Mr. Mears, seconded by Mr. Workman, and carried unanimously that the **variances be granted for the reasons stated**. Motion carried 4 – 0.

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

Case No. 12102 – John W. Rauber, Jr., & Diane Boyd Rauber - seek variances from the side yard and rear yard setback requirements (Sections 115-25, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located on the south side of Bayberry Lane, approximately 141 feet northeast of the intersection of Anchor Road and Bayberry Lane. 911 Address: 21 Bayberry Lane, Rehoboth Beach. Zoning District: AR-1. Tax Map No.: 3-34-8.17-86.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of the Application and no correspondence in opposition to the Application. The letter of support, which was from the homeowner's association, was read into the record. The Applicants request a variance of 0.4 feet from the ten (10) feet side yard setback requirement on the west side for an existing porch, a variance of 0.5 feet from the ten (10) feet side yard setback requirement on the west side for an existing dwelling, a variance of 2.4 feet from the twenty (20) feet rear yard setback requirement for existing steps, a variance of 2.3 feet from the twenty (20) feet rear yard setback requirement for an existing outdoor shower, and a variance of 1.6 feet from the ten (10) feet side yard setback requirement on the east side for an existing carport.

Diane Boyd Rauber was sworn in to testify about the Application. William Schab, Esquire, presented the case on behalf of the Applicants.

Mr. Schab stated that the Applicants acquired the Property in September 2017; that the Applicants obtained a survey prior to settlement and discovered the encroachments; that the Property is trapezoidal in shape; that the west side of the home encroaches into the side yard setback area by inches; that the dwelling cannot be brought into compliance with the Sussex County Zoning Code; that the carport on the east side of the Property encroaches into the side yard setback area; that the front part of the carport meets the setback requirements but the rear portion of the carport does not; that the side property line on the east side is angled and that angle has led to the carport's encroachment; that the carport is a normal sized carport; that these structures were placed on the Property by a prior owner; that the homeowners association indicated that the structures have been on the Property for many years; that the variances will not alter the essential character of the neighborhood; that the Applicants do not seek to expand any of the structures; that an outdoor shower and stairs, which encroach into the rear yard setback area, cannot be brought into compliance with the Sussex County Zoning Code.

Ms. Rauber affirmed the statements made by Mr. Schab as true and correct. Ms. Rauber testified that she cannot bring the structures into compliance with the Sussex County Zoning Code; that the Applicants have not received any complaints from neighbors; and that these structures were constructed in 1991.

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

Mr. Mills moved to approve Variance Application No. 12102 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The exceptional practical difficulty was not created by the Applicants;
2. The structures were on the Property when the Applicants purchased the Property;
3. The variances will not alter the essential character of the neighborhood;
4. The variances will not be detrimental to the public welfare;
5. The variances requested are the minimum variances necessary to afford relief;
6. The Property is unique in shape; and
7. The variances are necessary to enable the reasonable use of the Property.

Motion by Mr. Mills, seconded by Mr. Mears, and carried unanimously that the **variances be granted for the reasons stated**. Motion carried 4 – 0.

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

Case No. 12103 – Daniel F. Conaty & Joanne M. Conaty - seek variances from the front yard, side yard, and rear yard setback requirements (Sections 115-74, 115-182, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located on the north side of South Avenue, approximately 460 feet northwest of the intersection of Ann Avenue and South Avenue. 911 Address: 20889 South Avenue, Rehoboth Beach. Zoning District: C-1. Tax Map No.: 3-34-20.09-190.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received six (6) letters in support of the Application and no correspondence in opposition to the Application. The Applicants request a variance of 3.0 feet from the five (5) feet rear yard setback requirement for an existing shed, a variance of 4.4 feet from the five (5) feet side yard setback requirement on the southeast side for an existing shed, a variance of 4.1 feet from the five (5) feet side yard setback requirement on the southeast side for an existing shed, a variance of 5.3 feet from the ten (10) feet side yard setback requirement on the southeast side for a proposed set of steps, a variance of 5.2 feet from the ten (10) feet side yard setback requirement on the southeast side for an existing dwelling, a variance of 10.4 feet from the thirty (30) feet front yard setback requirement for a proposed set of steps, a variance of 11.4 feet from the thirty (30) feet front yard setback requirement for a proposed addition, and a variance of 3.0 feet from the ten (10) feet side yard setback requirement on the northwest side for the proposed addition and an existing dwelling.

Daniel Conaty was sworn in to testify about the Application. William Schab, Esquire, presented the case on behalf of the Applicants and submitted exhibits for the Board to review.

Mr. Schab stated that the dwelling was built prior to the enactment of the Sussex County Zoning Code; that the Property is a commercially-zoned lot; that 5 variances would be needed regardless of whether the Applicants sought to improve the home; that the Applicants seek to make some additions and improvements to the home; that there is an existing deck which encroaches

into the front yard setback area; that the Applicants propose to enclose the deck; that the enclosed deck will be no closer to the front property line than the existing open deck; that the Applicants discovered that the shed was partially located on a neighboring property; that the Applicants moved the shed entirely onto their lot as far as possible; that trees are located near the shed and limit the area where the shed could be located; that there is no other place the shed could be placed; that none of the additions to the home are creating additional encroachments into the setback areas than would otherwise exist with the existing structures; that the additions will not alter the essential character of the neighborhood; that the additions will enhance the Property; that the variances requested are the minimum variances necessary to afford relief; and that the additions will not increase the degree of non-conformity.

Mr. Conaty affirmed the statements made by Mr. Schab as true and correct. Mr. Conaty testified that the Applicants have lived in the home for 36 years and have a growing family; that the dwelling consists of only 1,200 square feet; that the addition will better accommodate their family; that neighbors have not objected to the proposal; that his 6 closest neighbors support the Application; that the neighbor to the southeast is a townhouse community and the fence separating the two lots was built 3-4 feet onto the townhouse community parcel thereby making the Property appear larger than it actually is; and that the front and rear decks are proposed to be enclosed.

Mrs. Walls stated that the landing and stairs off the front of the dwelling can encroach into the side yard setback area provided the landing and stairs are no larger than 4 feet by 8 feet.

Mr. Conaty testified that the landing on the front of the dwelling is existing and measures 8 feet wide; that the steps for the existing deck in the front yard will be relocated to the side of the proposed deck / addition; that the landing and steps off the front addition can be reduced in size so that no side yard setback variance is needed for that structure; and that there is no gap between the edge of paving of South Avenue and the front property line.

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

Motion by Mr. Mills, seconded by Mr. Mears, and carried unanimously that the **case be taken under advisement**. Motion carried 4 – 0.

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

At the end of the public hearings, the Board discussed the case.

Mr. Mills moved to approve Variance Application No. 12103 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is a small lot;
2. The shed has been moved as far as possible due to the existing trees;

3. The proposed additions will be made to existing decks;
4. The dwelling is a small house which was built prior to the enactment of the Sussex County Zoning Code;
5. The variances are necessary to enable reasonable use of the Property;
6. The exceptional practical difficulty not created by the Applicants; and
7. The variances will not alter the essential character of the neighborhood.

Motion by Mr. Mills, seconded by Mr. Mears, and carried unanimously that the **variances be granted for the reasons stated**. Motion carried 4 – 0.

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

Case No. 12104 – Charles E. Walls, Jr. & Priscilla J. Walls - seek variances from the front yard and side yard setback requirements (Sections 115-34 and 115-185 of the Sussex County Zoning Code). The property is located on the east end of Pearl Street, approximately 384 feet southeast of the intersection of Delaware Avenue and Pearl Street. 911 Address: 33193 Pearl Street, Millsboro. Zoning District: MR. Tax Map No.: 2-34-35.05-110.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. The Applicants seek a variance of 3.3 feet from the five (5) feet side yard setback requirement on the northwest side for an existing accessory structure, a variance of 3.6 feet from the five (5) feet side yard setback requirement on the northwest side for an existing accessory structure, a variance of 3.4 feet from the five (5) feet side yard setback requirement on the west side for an existing accessory structure, a variance of 3.9 feet from the five (5) feet side yard setback requirement on the west side for an existing accessory structure, a variance of 8 feet from the ten (10) feet side yard setback requirement on the northwest side for a proposed garage, a variance of 8 feet from the ten (10) feet side yard setback requirement on the west side for a proposed garage, and a variance of 7.5 feet from the ten (10) feet side yard setback requirement on the northeast side for an existing dwelling with a proposed addition.

Charles Drummond was sworn in to testify about the Application. William Schab, Esquire, presented the case on behalf of the Applicants.

Mr. Schab stated that the Applicants are Mr. Drummond's mother and stepfather; that the Applicants will be transferring the Property to Mr. Drummond; that the Property is unusually shaped; that the Property is shaped like a rifle; that every structure on the Property requires a variance; that the Applicants purchased the Property in March 2017; that, after the Applicants purchased the Property, the Applicants worked with Mr. Schab to determine how to make the Property useful while minimizing the need for variances; that the existing garage is a standalone building but is very close to the dwelling and lines up with the dwelling; that the garage is in poor condition and needs to be totally renovated; that the Applicants propose to add the existing garage to the home; that the garage and the dwelling are currently 2.5 feet from the north side property

line; that the proposed renovation will turn the 2 structures into 1 structure but will not encroach farther into the side yard setback area; that the renovation will lead to an expansion of the dwelling; that the Applicants propose to construct a new garage as shown on the site plan; that there is no other location on the Property where the garage could be located and be reasonably used; that all existing structures were built prior to the enactment of the Sussex County Zoning Code; that the structures are in poor condition; that other variances have been granted in the area; that the Applicants did not create the exceptional practical difficulty; that the Property cannot be developed in strict conformity with the Sussex County Zoning Code; that the variances requested are the minimum variances necessary to afford relief; that the variances are necessary to enable the reasonable use of the Property; that there is also a shed on the Property which needs variances; and that there is no other location where the shed can be located.

Mr. Drummond affirmed the statements made by Mr. Schab as true and correct. Mr. Drummond testified that the Property was used as a vacation home by the prior owner; that he intends to use this Property as a permanent residence and his parents intend to move in with him; that the addition to the home will afford them space for his parents to move around; and that he has been working on the project for some time.

Mr. Schab stated the Property is unusual.

Mr. Drummond testified that the garage is a single-story garage; that the shed stores garden tools and a lawn mower; that the garage will be used for vehicles; that he is unaware of flooding problems on the Property; that Pearl Street is a private road used by 5 properties; and that the structures do not block access to Pearl Street.

Brooke Lloyd and Mike Smith were sworn in and testified in opposition to the Application.

Ms. Lloyd testified that she does not oppose the variance for the dwelling; that she owns Lot 111.02 which is located on Pearl Street; that she is selling her lot; that she does not object to the shed; that she has concerns about the proposed garage; that she saw paperwork which indicated that the garage will be a two-story garage; that she has water views from her deck; that a two-story garage will block her water views; that she does not oppose the garage provided it is only a single-story garage; and that Pearl Street is a private road.

Mr. Smith testified that he also has concerns about the height of the garage and the maintenance of Pearl Street; and that he is opposed to a two-story garage but does not oppose a single-story garage.

Mr. Drummond testified that the garage is proposed to be a two-story garage and that the second story of the garage will be used for storage.

Mr. Mills stated that no one is entitled to a view from their property.

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

The Board found that two (2) parties appeared in opposition to the Application.

Mr. Mills moved to approve Variance Application No. 12104 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The opposition concerns were only about views;
2. The variances will not alter the essential character of the neighborhood;
3. The variances will not be detrimental to the public welfare;
4. The exceptional practical difficulty was not created by the Applicants;
5. The variances are necessary to enable the reasonable use of the Property;
6. The Property is extremely unique; and
7. The variances requested are the minimum variances necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the **variances be granted for the reasons stated**. Motion carried 4 – 0.

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

Case No. 12105 – Anthony Crivella - seeks variances from the front yard and rear yard setback requirements (Sections 115-25, 115-182, and 115-185 of the Sussex County Zoning Code). The property is located on the north side of Beaver Dam Road (Road 23), approximately 1,714 feet southwest of the intersection of Belltown Road and Beaver Dam Road (Road 23). 911 Address: 17822 Beaver Dam Road, Lewes. Zoning District: AR-1. Tax Map No.: 3-34-5.00-182.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of the Application and one (1) letter in opposition to the Application and read the letter of opposition into the record. The Applicant seeks a variance of 23.3 feet from the forty (40) feet front yard setback requirement for an existing dwelling and porch and a variance of 13.0 feet from the twenty (20) feet rear yard setback requirement for a proposed garage.

Anthony Crivella was sworn in to testify about the Application.

Mr. Crivella testified that he purchased the Property a year ago; that the Sussex County Tax Maps indicate that the Property measures 80 feet wide by 170 feet deep; that he ordered a survey and learned that the Property measures 55 feet wide by 160 feet deep; that the Property has a unique angle; that the house is an old house built in the 1920s and that he plans to restore it; that he proposes to build a detached garage in the rear yard; that the garage will be built close to the rear yard property line so that he has enough room to turn a vehicle in the rear yard; that the Property is located along Beaver Dam Road, which is a busy road; that there is a buffer of 12-15 feet between his rear property line and the fence for the adjacent Lewes Crossing community; that

he maintains the buffer area; that there is an additional buffer of 15-30 feet on the other side of the fence to the nearest neighboring lot in the rear; and that he is concerned about having enough space to turn a vehicle if the garage is parked closer to the house.

Mr. Mills stated that there appears from the site plan to be 68.2 feet from the garage to the rear of the existing dwelling.

Mr. Crivella testified that he also has a small trailer to park in the garage; that he could build a smaller garage up to 5 feet from the property line but his truck is longer than 20 feet and he needs the additional room of the garage for his vehicles; that he wants a two-car garage rather than a single-car garage; that, if the variance is not approved, he will move the garage away from the rear property line; that the Property is unique because it is narrower than most AR-1 zoned lots; that the Property is angled and slopes to the rear; that he is trying to maximize the use of the Property; that he did not create the lot; that the variances will not affect the neighborhood; that there are other sheds closer to property lines in the neighborhood; that the variances requested are the minimum variances necessary to afford relief; that there is a gap of 2-3 feet between the front property line and the edge of paving of Beaver Dam Road; that the garage will be 10 feet tall; that the Property is serviced by public water and sewer; that he looked at smaller garages; that anything can be made to work but he wanted some additional space in the garage; that the garage is a single-story garage; and that, if the Property was as large as he originally believed, no variance would be needed.

Gene Modzelewski, Susan Malec, and Fred Scott were sworn in to testify in opposition to the Application.

Mr. Modzelewski testified that he owns the property directly to the rear of the Property; that his lot is located in Lewes Crossing and he understood that the community consisted of single-family dwellings; that the Applicant's house was built in 1921 and does not have a garage; that the Applicant's house consists of 900 square feet; that the proposed garage will consist of 1,088 square feet and will be 7 feet from the rear property line; that Lewes Crossing has a drainage easement adjacent to the rear of the Property; that the structure is out of character for the neighborhood; that he owns a truck and he can fit the truck in his garage; that his garage measures 19 feet by 20 feet; that his neighbors have similar sized trucks; that a neighboring property is a commercial property with a garage and the garage on that property appears to meet the setback requirements; that trucks using the garage appear to have no difficulty moving in and out of the garage; that he believes the proposed garage will have a negative impact on his property; that he assumes that the garage will be used for oversized commercial vehicles due to the height of the garage; that he is concerned about commercial use in the neighborhood; that there is a significant amount of room on the Property for a detached garage; that there are 5 or 6 storage sheds on properties along Beaver Dam Road which appear to meet the rear setback requirement; and that the only similarly sized structure to the proposed garage is a structure located on a commercial property which he believes is a pre-existing use.

Ms. Malec testified that she agrees with Mr. Modzelewski's testimony; that her garage measures 458 square feet and fits 2 cars; that her husband owns an F-250 truck and she can turn it around in an area less than 68 feet deep; that Beaver Dam Road is a busy road but the Applicant can back out of it; that she is concerned about outside lighting; and that the Property is not located in Lewes Crossing; that her property is located to the rear of the Property

Mr. Scott testified that he owns property to the rear of the Property; that his property is located in Lewes Crossing; that he supports restoration of dwellings along Beaver Dam Road but is concerned about the garage and its use.

Mr. Mills stated that he was not convinced that the Applicant met the standards for granting a variance but he also was not convinced by the arguments made by the opposition; and that the opposition live in a neighborhood but the Applicant's property is outside that neighborhood.

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.

Mr. Mills moved to deny Variance Application No. 12105 for the requested variances based on the record made at the public hearings because the Applicant has failed to meet the standards for granting a variance.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the **variances be denied for the reasons stated**. Motion carried 4 – 0.

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

Case No. 12106 – Paul Merrill & Marie Merrill - seek variances from the fence height requirement and front yard setback requirement for a through lot (Sections 115-34, 115-182, and 115-185 of the Sussex County Zoning Code). The property is located on the north end of Nassau Court North, approximately 238 feet northwest of the intersection of Nassau Loop and Nassau Court North. 911 Address: 32850 Nassau Court North, Lewes. Zoning District: MR. Tax Map No.: 3-35-7.00-125.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received three (3) letters in support of the Application and no correspondence in opposition to the Application. Mrs. Walls read the three letters of support into the record. The Applicants request a variance of 18.9 feet from the forty (40) feet front yard setback requirement from New Road for a proposed swimming pool and a variance of 2.5 feet from the 3.5 feet fence height requirement for a fence in a front yard.

Paul Merrill and Marie Merrill were sworn in to testify about the Application

Mrs. Merrill testified that the Property is considered a through lot with two front yards; that

the Property is unique; that the community requires that the front of the house face the development; that the New Road side of the Property is considered by the Applicants to be the rear yard; that the Applicants are unable to reasonably use the Property; that the Applicants did not create the exceptional practical difficulty; that the community was created approximately 15 years ago; that the rear of the home faces New Road; that the variances will not alter the essential character of the neighborhood; that neighbors support the Application; that there are other pools in the neighborhood; that the variances will enable the Applicants to maximize the use the area they consider to be the rear of the lot; that Sussex County Code requires that fences surrounding a pool be at least 4 feet tall but the Code restricts the height of fences in a front yard; that the Applicants considered placing the pool to the west side of the Property; and that there are no windows on the west side of the house and, thus, there would be no visibility from inside the home to the pool if the pool was located on the west side of the home.

Mr. Merrill testified that, if the pool was located to the west side, the pool would be very close to the house and neighboring property; and that the Applicants discussed that option with the pool installer.

Mrs. Merrill testified that the Applicants want to enclose the pool completely with a fence.

Mr. Merrill testified that the Applicants intend to place concrete or pavers in some areas around the fence; that the fence will line up with the house; and that Applicants have considered erecting a shed for the pool pump but the shed would be located within the building envelope.

Mrs. Merrill testified that the variances will not affect visibility on New Road; that there are other properties along New Road with similarly situated fences and structures; and that the fence will be no taller than five (5) feet tall.

Mr. Merrill testified that the fence will be see through.

Charles Vickers was sworn in and testified in support of the Application. Mr. Vickers testified that he is the direct neighbor to the Property; that he had a similar situation when he added a fence on his property line; that the subdivision was created in 2001; that modern subdivisions require a buffer from adjacent roads and similarly situated lots would not be considered through lots; that the subdivision requires that all homes face the cul-de-sac and all utilities enter from the cul-de-sac; that no utilities come from New Road to the lots; that his fence is 6 feet tall and he needed a variance for his fence; and that there is no vehicular access to New Road from the lots adjacent to a cul-de-sac.

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.

Mr. Mills moved to approve Variance Application No. 12106 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 it being a through lot;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty has not been created by the Applicants;
4. The variances will not alter the essential character of the neighborhood;
5. The requested variances are the minimum variances necessary to afford relief; and
6. The variances requested are not detrimental to public welfare.

Motion by Mr. Mills, seconded by Mr. Mears, and carried unanimously that the **variances be granted for the reasons stated**. Motion carried 4 – 0.

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

Case No. 12107 – Ray W. McGaha - seeks variances from the side yard and rear yard setback requirements (Sections 115-25, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located on the south side of Hoot Owl Lane, approximately 1,107 feet east of the intersection of Irons Lane (Road 348) and Hoot Owl Lane. 911 Address: 35032 Hoot Owl Lane, Dagsboro. Zoning District: AR-2. Tax Map No.: 1-34-7.00-202.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of the Application and no correspondence in opposition to the Application. Mrs. Walls read the letter of support into the record. The Applicant seeks a variance of 2.0 feet from the fifteen (15) feet side yard setback requirement on the west side for an existing dwelling, a variance of 1.0 foot from the fifteen (15) feet side yard setback requirement on the west side for an existing dwelling, a variance of 5.4 feet from the fifteen (15) feet side yard setback requirement on the east side for an existing building, a variance of 5.7 feet from the fifteen (15) feet side yard setback requirement on the east side for an existing building, and a variance of 14.1 feet from the twenty (20) feet rear yard setback requirement for an existing building. Mrs. Walls stated that the dwelling was relocated on the Property in 1983 but there is no record of building permits for the accessory building or additions.

Ray McGaha and Jaclyn Matsin were sworn in to testify about the Application.

Mr. McGaha testified that he purchased the Property 14 years ago; that the dwelling and shed were located on the Property at that time; and that additions were made to the existing shed to create a larger building.

Ms. Mastin testified that she was unaware the existing house and shed encroached into the setback area; that the addition on the west side of the house existed at the time the Applicant purchased the Property; that the shed backs up to chicken houses; that the rear of the Property is heavily wooded; that the shed cannot be seen; that the variances will not alter the essential character of the neighborhood; that the dwelling is a single-family home; that the addition was added to the dwelling

prior to the Applicant's purchase of the Property; that the Applicant added to the existing shed but was unaware that the shed was in violation of the Sussex County Zoning Code; that there are other sheds in the neighborhood; that the shed cannot be moved into compliance with the Sussex County Zoning Code; and that the Applicant is selling the Property and the buyers want the shed for storage.

Mr. McGaha testified that he added lean-tos to the existing shed but did not obtain a building permit; that he did not think he needed a building permit because the lean-tos were small; and that they have received no complaints from neighbors.

Ms. Mastin testified that the encroachments were discovered when the buyers obtained a survey as part of the settlement process.

Mr. McGaha testified that the lean-tos were added to the east side of the shed; that the lean-tos did not encroach into the side yard setback area; that the lean-tos do not encroach farther into the rear yard setback area than the existing shed; that the lean-tos encroach less into the rear yard setback area than the shed; that the lean-tos have been enclosed; that there is a well on the Property in the rear yard; and that the septic system is located in the front yard.

Mrs. Walls stated that the original shed was likely less than 600 square feet so the setbacks for the original shed would have been 5 feet but the addition of the lean-tos enhanced the size of the shed and larger setback requirements then applied.

Mr. McGaha testified that the original shed measures 16 feet by 20 feet; and that the lean-tos measure 20 feet by 20 feet.

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

Mr. Mears moved to approve Variance Application No. 12107 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 existing structures;
2. The exceptional practical difficulty has not been created by the Applicant;
3. The structures have been on the Property for some time;
4. The variances will not alter the essential character of the neighborhood; and
5. The requested variances are the minimum variances necessary to afford relief.

Motion by Mr. Mears, seconded by Mr. Workman, and carried unanimously that the **variances be granted for the reasons stated**. Motion carried 4 – 0.

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

Case No. 12108 – James Hitchens, Jr. & Mara Leigh Hitchens - seek a variance from the side yard setback requirement (Sections 115-25, 115-183 and 115-185 of the Sussex County Zoning Code). The property is located on the southwest corner of Summer Road and Hickory Hill Road. 911 Address: 25282 Summer Road, Millsboro. Zoning District: AR-1. Tax Map No.: 2-33-9.00-19.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. The Applicants seek a variance of 3.6 feet from the fifteen (15) feet side yard setback requirement on the west side for an existing pole barn. The Property is considered a corner lot.

Mara Hitchens was sworn in to testify about the Application.

Ms. Hitchens testified that the Property is unique because it is heavily wooded and is a corner lot; that the shed was built in 1980; that she inherited the Property from her grandparents; that the septic used to be located in the rear of the Property and the shed was likely located in its present location due to the septic system's location; that the shed is a pole barn with a concrete pad and electricity thereby making it very costly to move; that she did not create the need for the variance; that the building permit for the pole barn indicated that the setback was five (5) feet from the property line; that the building will not alter the essential character of the neighborhood; that the building has existed since 1980; that there have been no complaints about the building; and that the neighbors have received a similar variance.

Mrs. Walls stated that a different setback requirement applied between 1979 and 1982 for accessory structures.

Matt Williams was sworn in and testified in support of the Application. Mr. Williams testified that his garage backs up to the Applicants' property; that he has lived next-door for 23 years; that the Applicants' pole building has never bothered him; that his property is the lot most affected by the variance; and that he supports the Application.

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.

Mr. Mears moved to approve Variance Application No. 12108 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The exceptional practical difficulty has not been created by the Applicant but by the former owner;
2. The building was likely located in its present location due to then-existing site conditions; and
3. The requested variance is the minimum variance necessary to afford relief.

Motion by Mr. Mears, seconded by Mr. Mills, and carried unanimously that the **variance be**

granted for the reasons stated. Motion carried 4 – 0.

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

Mrs. Walls and Mr. Sharp advised the Board that nine (9) ordinances have been introduced by Sussex County and public hearings on those ordinances will be heard on March 20, 2018.

Mr. Sharp advised the Board that one of the proposed ordinances deals with administrative variances.

Mr. Mills reminded staff that there is an open case from January 2017 that has not yet been resolved.

Mr. Sharp stated that the open case should be placed on a future agenda.

Meeting was adjourned at 9:45 p.m.