

MINUTES OF FEBRUARY 20, 2017

The regular meeting of the Sussex County Board of Adjustment was held on Monday, February 20, 2017, 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 Vice-Chairman John Mills presiding. The Board members present were: Mr. John Mills, Mr. Jeff Hudson, and Mr. Brent Workman. Mr. Dale Callaway and Mr. Norman Rickard were absent. Also in attendance were James Sharp – Assistant County Attorney, and staff members Ms. Janelle Cornwell – Director of Planning and Zoning, Ms. Jennifer Walls – Planning Manager, Mrs. Jennifer Norwood – Planning Technician and Ms. Christin Headley – Recording Secretary.

The Pledge of Allegiance was led by Mr. Mills.

Motion by Mr. Workman, seconded by Mr. Hudson, and carried unanimously to move Case No. 11896 – James Truitt Farm, LLC and Case No. 11916 – Custom Siding Inc. under Old Business to the beginning of the proceedings and to approve the Revised Agenda as circulated and amended. Motion carried 3 – 0.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously to approve the Minutes for January 9, 2017 as circulated. Motion carried 3 – 0.

Motion by Mr. Workman, seconded by Mr. Hudson, and carried unanimously to approve the Finding of Facts for January 9, 2017 as circulated. Motion carried 3 – 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. 11896 – James Truitt Farm, 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 approximately 0.2 miles west of Coastal Highway (Route 1). 911 Address: 20054 Shuttle Road, Rehoboth Beach. Zoning District: MR. Tax Map No.: 3-34-19.00-3.00.

Ms. Cornwell presented the case which has been tabled since December 19, 2016.

The Board discussed the case. Mr. Mills mentioned that the Board has had some time to consider the Application.

Mr. Hudson discussed the Application and stated that the Applicant proposes to place an assisted living facility on a portion of a 23 acre parcel off of Shuttle Road near Rehoboth Beach; that the proposed assisted living facility will contain no more than 88 residential units with a maximum of 120 bedrooms and related service, rehabilitation, and community space; that the site is located in

the environmentally sensitive zone, which is one of the growth districts under the Sussex County comprehensive plan, where development is anticipated and planned; that the site is zoned MR under the Sussex County Zoning Ordinance and assisted living facilities are authorized as a special use exception in the MR zoning district; that the site is located in an Investment Level 2 area under the Delaware Strategies for State Policies and Spending, which is an area where the State supports the development of a broad mix of housing options; that the facility will be served by central water for domestic use and fire protection by Tidewater Utilities, that the site is located in an area containing a mixture of uses including small and large retail stores, a water park, a large park-and-ride parking lot and bus depot, and multi-family and single family residential developments; that the facility will be part of and will be centrally located within the 90 unit, age restricted community approved by the Sussex County Council as Conditional Use No. 2029, which is being developed by the Applicant; that this Application for a special use exception for an assisted living facility is consistent with representation made by the Applicant at both earlier public hearings and with the “aging in place” concept for the community.

After review of the record and testimony presented, Mr. Hudson moved to approve the Special Use Application No. 11896 for the requested special use exception based on the record made at the public hearing and for the following reasons:

1. Traffic:

- A. The opposition expressed traffic concerns related to the facility.
- B. Shuttle Road is located west of Route 1 near Rehoboth Beach. Near the intersection of Shuttle Road and Route 1 are several businesses including a gas station, a bank, and an outlet shopping center. Across from the proposed development in Shuttle Road is a park-and-ride facility operated by the Delaware Department of Transportation (“DeIDOT”).
- C. There are several residential developments nearby with most of the residential development being located to the south, east, and west of the site. There are some residences located between the site and Route 1 but most of the residential properties in the neighborhood are not located in that direction.
- D. The facility, as well as the approved development on the Property, will be accessed from Shuttle Road.
- E. All entrance and roadway improvements required by DeIDOT for both the age restricted development and assisted living facility will be the responsibility of the Applicant and will address any traffic impact.
- F. DeIDOT has jurisdiction over the traffic impact of the facility and the Applicant will have to comply with DeIDOT regulations as part of the site plan approval process. To the extent that the additional traffic along Shuttle Road has an impact on the neighborhood, compliance with DeIDOT regulations should minimize the impact.
- G. The facility will also provide shuttle services for its residents and this service should help to reduce the amount of traffic from the facility.
- H. Ultimately, it is not convincing that the facility will have a substantial adverse effect on traffic in the area.

2. Parking:

- A. By code, the facility is required to have at least 45 parking spaces but the Applicant

is proposing to have 88 parking spaces available for the facility.

3. Lighting:
 - A. All lighting associated with the assisted living facility will be directed at a downward angle to minimize the light pollution on adjacent properties.
4. The site was previously used as a par 3 golf course and the Applicant recently received approval to subdivide the property as previously discussed.
5. Use:
 - A. The facility will be similar to other assisted living facilities in Sussex County such as Manor House in Seaford, Cadbury on Gills Neck Road near Lewes, and Brandywine Living on Route 1. Like those facilities, the use results in minimal noise and no negative impact on the uses or values of neighboring and adjacent properties. Mr. Hudson was not convinced by arguments made by the opposition to the contrary.
6. Property Values:
 - A. The opposition argued that the assisted living facility may negatively affect property values in the area. The opposition, however, presented no expert testimony, reports, or studies from a realtor or appraiser to support this argument. Since no empirical data was presented which supports the oppositions vague conclusion, Mr. Hudson was not convinced that the facility will have a substantial adverse effect on the property values of neighboring and adjacent properties.

Based on the record, the Applicant has demonstrated that the proposed use set forth in the Application will not substantially affect adversely the uses of neighboring and adjacent properties. For these reasons, Mr. Hudson moved to approve the Application.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the special use be **granted for the reasons and under the conditions stated**. Motion carried 3 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yeah.

Case No. 11916 – Custom Siding, Inc. - seeks variances from the side yard and rear yard setback requirements (Sections 115-25C, 115-181B, and 115-185F of the Sussex County Zoning Code). The property is located on the east side of Cleveland Avenue approximately 944 feet south of Lincoln Drive. 911 Address: 38847 Cleveland Avenue, Selbyville. Zoning District: AR-1. Tax Map No.: 5-33-20.18-122.00

Ms. Cornwell presented the case which has been tabled since February 6, 2017.

Mr. Hudson moved to approve Variance Application No. 11916 for the requested variances based on the record made at the public hearing and under the condition that the HVAC be moved closer to Cleveland Avenue and for the following reasons:

1. The exceptional practical difficulty was not created by the Applicant;
2. The variances are necessary to enable reasonable use of the Property;
3. The variances will not alter the essential character of the neighborhood;
4. The use will not be detrimental to the public welfare; and

5. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the variances be **granted for the reasons and under the condition that the HVAC be moved closer to Cleveland Avenue**. Motion carried 3 – 0.

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

PUBLIC HEARINGS

Case No. 11905 – Ryan Mitchell & Cynthia Mitchell - seek a variance from the rear yard setback requirement (Section 115-25C of the Sussex County Zoning Code). The property is located on the north side of Gum Road approximately 566 feet west of Roxana Road. 911 Address: 36215 Little Creek Lane, Frankford. Zoning District: AR-1. Tax Map No.: 5-33-10.00-46.02.

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.

Ryan Mitchell, Jaclyn Hills, and Robert Maddox were sworn in to testify about the Application. Mr. Mitchell submitted a letter from his neighbor to the Board to review.

Jaclyn Hills testified that the Applicants are requesting a variance of 11.3 feet from the twenty (20) feet rear yard setback for an existing pool house; that the dwelling was built in the mid-1970s; that the buyer plans to use the Property as it exists now; that the pool and the pool house have been on the Property since the dwelling was constructed; that the Property has changed hands several times since the pool house was constructed; that the encroachment was not discovered until the most recent survey was completed; that the neighbor supports the request; that the Applicants do not intend to make additions to the pool house; that the sheds have been removed; that the Property cannot otherwise be developed; that the difficulty was not created by the Applicants; that the existing structures were built by the original owner; that a new septic is to be installed; that the pool house cannot be moved as it is in on a permanent foundation; and that the pool house is used to service the pool.

Ms. Hills submitted pictures of the Property.

Ms. Cornwell stated that the pool complies with setbacks but the pool house needs a variance.

Mr. Mitchell testified that the Property was last sold in 2001 and the survey represents the lot as it was in 2001; that his neighbor supports the request; that he is unaware of any complaints about the pool house; and that the septic system is on the west side of the rear of the house.

Robert Maddox testified that he represents the buyer who is his son; that he supports the Application; and that the Property was likely part of a larger farm that was subdivided in the 1950s.

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

Mr. Workman moved to approve Variance Application No. 11905 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to the early construction of all existing structures located on the Property that occurred in the early 1970s;
2. The exceptional practical difficulty was not created by the Applicants as the dwelling and other structures were pre-constructed by the previous owner;
3. The variance is necessary to enable reasonable use of the Property;
4. The variance will not alter the essential character of the neighborhood;
5. The use will not be detrimental to the public welfare; and
6. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Workman, seconded by Mr. Hudson, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 3 – 0.

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

Case No. 11906 – Delaware Electric Cooperative, Inc. - seeks a variance from the front yard setback requirement (Section 115-82B of the Sussex County Zoning Code). The property is located on the west side of Sussex Highway (Route 13), east side of Cart Branch Road and north side of Adams Road. 911 Address: None Available. Zoning District: C-1. Tax Map No.: 5-30-14.00-16.00 & 18.01.

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.

Harold Dew and Patrick Ryan were sworn in to testify about the Application. Terry Jaywork, Esquire, presented the case on behalf of the Applicant and submitted exhibit booklets for the Board to review.

Mr. Jaywork stated that the Applicant is requesting a variance of 15.3 feet from the sixty (60) feet front yard setback requirement along Cart Branch Road for a proposed 80,000-gallon water tank; that the Applicant is constructing a new 20,000 square foot warehouse; that Sussex County Council approved a conditional use for the warehouse; that the Applicant received site plan approval from the Planning & Zoning Commission for the warehouse; that the site plan approval was contingent upon the Applicant receiving approval from the State Fire Marshal; that the State Fire Marshal determined that the Applicant did not have sufficient water storage for the fire suppression system for the warehouse; that the existing storage tank holds 48,000 gallons; that 123,000 gallons of water are needed to have the sufficient amount of water storage for the fire suppression system; that the new storage tank must be close enough to the existing fire protection system to allow gravity flow of water from the new tank to the existing tank; that, the farther away the tank is from existing pump house, the more water will be lost and the larger the tank will need to be; that the proposed position is the best location for the new tank; that the proposed tank will be located near the existing tank; that the proposed tank will be taller than the existing tank; that the proposed tank will be 40 feet tall with a railing on top; that the proposed tank will be farther from the road than the existing structures on the Property; that the structures have been in place since 1982; that the tank is along the Cart Branch

Road side of the Property; that there are only 4 houses on Cart Branch Road; that there are agricultural fields and woodlands nearby; that the structures were constructed in the 1980s and the setback requirements at that time were different; that the setback requirements in 1982 were forty (40) feet from the front making the existing structures much closer to the road than the proposed water tank; that the Applicant developed the Property over time and purchased nearby lands as the operation expanded; and that there is limited area for development.

Mr. Dew testified that he is the manager of purchasing and storage at Delaware Electric Cooperative, Inc.; that he is familiar with the new warehouse; and he affirmed the statements made by Mr. Jaywork.

Mr. Jaywork stated that the Property is unique; that the Property houses all of the offices, warehousing, equipment, and storage for the Applicant; that the Applicant received conditional use approval as a public service facility; that the Property is an island of land because it is surrounded by road frontage on three sides and woods and wetlands on the other side; that the Property is a through lot; that the side of the Property facing Route 13 is generally considered the front yard and the side of the Property facing Cart Branch Road is generally considered the rear yard but both sides are considered front yards for zoning purposes; that Cart Branch Road is a lightly traveled road; that the setback requirements were increased in 1999 from 40 feet to 60 feet; that, if the setback requirements had not been increased, there would be no need for the variance; that the Applicant is installing approximately 200 new electric meters per month; that the Applicant's operation is growing; that the proposed tank needs to be in close proximity to the existing tank and pump house; that state fire regulations require a new water tank; that the variance is needed to enable reasonable use of the Property; that the variance will not alter the essential character of the neighborhood; that the Applicant has been on the Property for decades; and that the Property is a large parcel.

Mr. Ryan, of Ryan Architects, testified that a new tank must connect into the existing pump system in order to pump water to all buildings.

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

Mr. Workman moved to approve Variance Application No. 11906 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to the fact it is a through lot;
2. The variance is necessary to enable reasonable use of the Property;
3. The location of the tank is the only location where the tank can be placed;
4. The variance will not alter the essential character of the neighborhood;
5. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Workman, seconded by Mr. Hudson, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 3 – 0.

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

Case No. 11913 – Alison Taylor - seeks a special use exception to operate a daycare facility (Sections 115-80C and 115-210A(3)(e) of the Sussex County Zoning Code). The property is located on the east side of DuPont Boulevard approximately 0.74 miles north of Clayton Street. 911 Address: 31101 DuPont Boulevard, Dagsboro. Zoning District: C-1. Tax Map No.: 2-33-10.00-15.00.

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.

Alison Taylor was sworn in and testified requesting a special use exception to operate a daycare facility; that the Property is located along Route 113 near Dagsboro; that the Property has been used as a daycare for as long as she has known about the Property; that the daycare will serve 24 children aged five (5) years old; that all adjacent properties are commercial properties; that the hours of operation will be Monday – Friday from 7:00 a.m. – 5:30 p.m.; that adequate parking will be provided; that the daycare will not substantially affect adversely the uses of neighboring and adjacent properties; that she has spoken with her neighbors and they do not object to the Application; that a playground is located behind the building; that the playground is fenced in but will provide parents access to the playground when picking up their children; that she will have three (3) employees; that the building is being rented; and that the State has approved of the daycare.

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

Mr. Hudson moved to approve Special Use Exception Application No. 11913 for the requested special use exception based on the record made at the public hearing and because the use will not substantially adversely affect the uses of the neighboring and properties as it has been a daycare for a long time.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 3 – 0.

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

Case No. 11917 – James Sheaf & Laurie Sheaf - seek variances from the side yard setback requirements (Sections 115-42B and 115-181B of the Sussex County Zoning Code). The property is located on the southeast side of Blue Teal Road approximately 1,295 feet northeast of Swann Drive. 911 Address: 37050 Blue Teal Road, Selbyville. Zoning District: GR. Tax Map No.: 5-33-12.16-483.00.

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.

Laurie Sheaf was sworn in to testify about the Application. James Fuqua, Esquire, presented the case on behalf of the Applicants and submitted exhibits for the Board to review.

Mr. Fuqua stated that the Applicants are requesting a variance of 5 feet from the ten (10) feet side yard setback requirement on the north side for a proposed dwelling, a variance of 8.2 feet from the ten (10) feet side yard setback requirement on the north side for a proposed HVAC system, a

variance of 6.7 feet from the ten (10) feet side yard setback requirement on the north side for a proposed fireplace, and a variance of 4.4 feet from the ten (10) feet side yard setback requirement on the south side for proposed attached storage; that the Property is located in the Swann Keys development; that the Property fronts on Blue Teal Road and is bordered by a lagoon in the rear; that the Property is 40 feet wide and consists of 4,064 square feet; that the lot is zoned GR (General Residential); that the Applicants propose to construct a new house that will be 24.4 feet wide by 66 feet deep with a porch in the rear; that the lot is narrow and small; that a reasonably sized home cannot be constructed on the Property in compliance with the Sussex County Zoning Code; that the Property is unique in size and shape; that the exceptional practical difficulty was not created by the Applicants; that the lot size was originally created when Swann Keys was developed; that Swann Keys was once a manufactured home community; that over the past 20-30 years, Swann Keys has evolved from a manufactured home community to a community with stick-built homes throughout the community; that the variances requested are consistent with similar variances granted throughout Swann Keys; that the variances will not alter the essential character of the neighborhood; that 17 variances have been granted within close proximity to the Property; and that the new homes have improved the appearance of the community and have significantly increased property values in the neighborhood.

Mrs. Sheaf, under oath, affirmed the statements made by Mr. Fuqua and testified that the proposed dwelling will be two stories tall; that the proposed fireplace will be attached to the home; that neighbors have no issues with the proposal; that neighbors were pleased that the prior home on the Property was removed; that the HVAC system cannot be moved to the opposite side because of the stairs and storage located on that side of the Property; and that parking will be located in the front yard.

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

Mr. Workman moved to approve Variance Application No. 11917 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 size;
2. Other variances have been granted in the neighborhood;
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 variances sought are the minimum variances necessary to afford relief; and
6. The variances requested represent the least modifications of the regulations at issue.

Motion by Mr. Workman, seconded by Mr. Hudson, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 3 – 0.

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

Case No. 11918 – Jenstar of Delmarva, LLC - seeks a special use exception to use a manufactured home type structure as an office (Sections 115-80A and 115-210A(1) of the Sussex County Zoning Code). The property is located on the east side of Sussex Highway (Route 13) approximately 1,887 feet south of Whitesville Road. 911 Address: 35085 Sussex Highway, Delmar. Zoning District: C-1. Tax Map No.: 5-32-6.00-85.00.

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.

Jeff Finney was 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 special use exception of a manufactured home type structure as an office for a period of five (5) years; that Jeff Finney is the general manager of Hale Trailer Break & Wheel which operates Jenstar of Delmarva, LLC; that the manufactured home will be used as a sales and rental office for Hale Trailer Break & Tire; that the manufactured home has been there for some time; that the Property is located along Route 13 between Laurel and Delmar; that the lot is zoned C-1; that the business has been operated by Hale on the Property for 15 years; that surrounding areas are wooded or used for agricultural purposes; that other nearby lands which are not wooded or agricultural are used for commercial or industrial purposes; that the manufactured home-type structure has been on the Property since 2006; that the Board approved a special use exception for the manufactured home in 2006; that, in 2006, the manufactured home-type structure was new; that a five (5) year extension was granted by the Board in 2011; that the manufactured home is well maintained and compatible with the site; and that the retention of this structure will not adversely affect adversely the uses of neighboring and adjacent properties.

Mr. Finney, under oath, affirmed the statements made by Mr. Hutt and testified that two years ago a new building was constructed for the use of parts and services; that the Applicant made a significant investment with that building; that the business is growing in the parts and services areas; that the property to the south was purchased for expansion of the business as well; that the manufactured home is still in excellent condition and is adequate for its purposes at this time; that a timeline cannot be given as to when the manufactured home would be replaced with a new building; that the Applicant would like to construct an additional building; that the manufactured home is a triple-wide model; and that a large part of the Applicant's business is the sale and rental of road trailers.

Mr. Hutt stated that the Sussex County Zoning Code – as it pertains to manufactured home-type structures in a commercial zone – limits the approval of the structure for five (5) years; that the purpose of this section of the Code is to ensure that the structure continues to be well-maintained and does not stay on the Property long after its condition has deteriorated; and that the Applicant has kept the structure well-maintained.

Mr. Finney testified that there have been no complaints from neighbors; that the lot consists of approximately 9 acres; and that there is a pole barn on the Property as well.

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

Mr. Hudson moved to approve Special Use Exception Application No. 11918 for the requested special use exception based on the record made at the public hearing and because the use will not substantially adversely affect the uses of the neighboring and properties **for a period of five (5) years.**

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the variances be **granted for the reasons stated for a period of five (5) years**. Motion carried 3 – 0.

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

Case No. 11919 – Sussex Conservation District - seeks a special use exception to use a manufactured home type structure as an office (Sections 115-23A and 115-210A(1) of the Sussex County Zoning Code). The property is located on the northwest side of Shortly Road approximately 1,433 feet southwest of DuPont Boulevard. 911 Address: 23818 Shortly Road, Georgetown. Zoning District: AR-1. Tax Map No.: 1-35-23.00-5.00.

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.

David Baird was sworn in and testified requesting a special use exception to use a manufactured home-type structure as an office; that the Applicant will be relocating an existing office trailer due to State Fire Marshal regulations; that additional parking for staff and customers will be added; that the Applicant’s staff is growing; that the Applicant employs 34 employees, which is an increase of 10 employees over the past 4-5 years; that the Applicant is a quasi-governmental agency; that the new manufactured home-type structure will house the Applicant’s storm water inspection program and equipment operation management; that the Applicant has outgrown its existing space; that the Applicant has retained an architect to explore options for a permanent structure; that the manufactured home-type structure will provide relief in the interim while the permanent structure is explored; that the adjacent property to the west is an uninhabited property used for a poultry house operation; that there have been no conflicts with the neighbor to the west; that the lands to the east are lands owned by the State of Delaware used for a courthouse, State Police barracks, and facilities management; that those buildings are approximately ¼ miles away; that nearby properties are also used for farmland; that he does not anticipate that the structure will have an impact on the neighboring properties; that the Sussex Conservation District leases the Property from the State; that approvals have been received from the Office of the State Fire Marshal, the Department of Natural Resources & Environmental Control (“DNREC”), and the Delaware Department of Transportation (“DelDOT”); that Building #2 will be relocated due to State Fire Marshal regulations; that Building #2 was placed on the Property in 2006; and that the parcel consists of approximately 27 acres.

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. Hudson moved to approve Special Use Exception Application No. 11913 for the requested special use exception based on the record made at the public hearing and because the use will not substantially adversely affect the uses of the neighboring properties as a manufactured home type structure has already existed on the Property.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted for the reasons stated**. Motion carried 3 – 0.

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

Case No. 11920 – Gerald Foreman, Jr. - seeks variances from the side and rear yard setback requirements (Sections 115-25C and 115-185F of the Sussex County Zoning Code). The property is located on the southwest side of Iron Branch Road approximately 875 feet northwest of Power Plant Road. 911 Address: 30670 Iron Branch Road, Dagsboro. Zoning District: AR-1. Tax Map No.: 2-33-6.00-76.00.

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.

Mr. Sharp recused himself from the case due to a conflict of interest and advised the Board that his firm has represented the Applicant in the past and that if the Board had any questions, they should direct them to Vince Robertson, Esquire.

Gerald Foreman was sworn in and testified requesting a variance of 2.2 feet from the fifteen (15) feet side yard setback requirement on the northwest side for a dwelling, a variance of 1.9 feet from the five (5) feet rear yard setback requirement for a shed, and a variance of 1.6 feet from the five (5) feet rear yard setback requirement for a shed; that the Property is unique because it has many large oak trees; that the Property originally had a garage and a large concrete pad; that he built a shed on the concrete pad; that he believed the concrete pad conformed with the zoning requirements; that he only learned of the encroachment after a new shed was constructed; that he purchased the Property in 2001; that the dwelling was on the Property at that time in the same location; that the variances will not alter the essential character of the neighborhood; that his neighbor does not have an issue with the request; that the variances requested are the minimum variances necessary to afford relief; that the concrete pad was on the Property when he purchased the Property and he placed a shed on the concrete pad in 2005; that he relied on a contractor to place the shed on the Property; that the contractor obtained the permit for the shed; that he moved the shed and then built a building on the pad; that he believed the old shed was in compliance with the Code; that he came to the County to obtain a permit for the new shed and learned after it was constructed that the new shed did not comply with the Code; that the new shed is on the same footprint as the previous shed; and that there was no shed on the pad when he purchased the Property in 2005.

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. Hudson moved to approve Variance Application No. 11920 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Applicant purchased the Property in 2001 and the dwelling was in its existing location at that time;
2. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
3. The exceptional practical difficulty was not created by the Applicant;

4. The variances will not alter the essential character of the neighborhood; and
5. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 3 – 0.

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

Case No. 11921 – Renato Reyna, Jr. - seeks variances from the rear and front yard setback requirements (Sections 115-25C of the Sussex County Zoning Code). The property is located on the west side of Coon Den Road approximately 1,198 feet north of Shawnee Road. 911 Address: 11226 Coon Den Road, Greenwood. Zoning District: AR-1. Tax Map No.: 4-30-3.00-1.08, 1.09, & 1.00.

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.

Donald Miller was sworn in and testified on behalf of the Applicant requesting a variance of 6.4 feet from the thirty (30) feet front yard setback requirement for an existing dwelling on Proposed Lot #1 and a variance of 7.8 feet from the twenty (20) feet rear yard setback requirement for an existing dwelling on Parcel 1.08; that the Applicant owns three parcels of land; that the Applicant intends on extending an existing lot line; that the dwellings existed prior to the Applicant's purchase of the lands; that the driveway used by both homes has existed prior to the purchase of the lands; that this request will not create any change within the neighborhood since the dwellings and easement already exist; that there will be no effect on future development of nearby properties because the dwellings already exist; that it would be a substantial financial burden to move the existing dwellings; that the difficulty was not created by the Applicant because the dwellings already existed in their present positions; that the variances will not alter the character of the neighborhood because the dwellings have existed for some time; that there are no conflicts with neighbors; and that no changes are being made to the existing dwellings.

Ms. Cornwell states the Planning & Zoning Commission will address the right-of-way issue and that issue does not have to come before the Board of Adjustment.

Mr. Miller testified that the Applicant intends to move the property line; that both existing dwellings were nonconforming; that the age of the homes is unknown; that four new lots are being created and lots lines for other parcels are being moved; that the subdivision has already been approved as a concept plan by the Planning & Zoning Commission; that the fifty-foot easement will access to both dwellings; that he is not sure if each of the dwellings is on an individual septic system; that the existing driveway has existed since the dwellings have existed; and that the access will still be used.

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

Mr. Workman moved to approve Variance Application No. 11921 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 since the dwellings existed prior to the Applicant's purchase of 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;
6. The variances sought are the minimum variances necessary to afford relief; and
7. The variances represent the least modifications of the regulations at issue.

Motion by Mr. Workman, seconded by Mr. Hudson, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 3 – 0.

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

Case No. 11922 – Hans Pfab - seeks a variance from the side yard setback requirement (Sections 115-42B and 115-181B of the Sussex County Zoning Code). The property is located on the northwest side of Swann Drive approximately 122 feet from the corner of Swann Drive. 911 Address: 37787 Swann Drive, Selbyville. Zoning District: GR. Tax Map No.: 5-33-12.20-57.01.

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.

Hans Pfab was sworn in and testified requesting a variance of 8.5 feet from the ten (10) feet side yard setback requirement on the north side for a proposed HVAC system and a variance of 6 feet from the ten (10) feet side yard setback requirement on the north side for a proposed dwelling.

Mr. Pfab testified that the Property is only 40 feet wide and was previously improved by a singlewide mobile home; that the proposed dwelling is 24 feet wide; that variances are needed for the home and to provide space for parking; that the Property is narrow and cannot be developed without a variance; that the variances will not alter the essential character of the neighborhood; that five variances have been granted for properties on the same street as the Property; that the existing singlewide needs to be removed and replaced with the proposed dwelling; that the proposed home is a modular home type structure; that the home will be 5 feet from the north side yard property line so only a variance of 5 feet is needed on that side of the Property; that the buffer shown on the survey is not needed; that he asked the builder about the location of the HVAC system but the system fits on that side of the Property due to the blue prints; that he has never experienced flooding on the Property; that his neighbors are supportive of the proposed dwelling replacing the existing singlewide; that the proposed dwelling is the smallest home the Applicant could find to build on the Property; and that the HVAC system needs a variance of 8.5 feet.

Mr. Sharp asked the Applicant to confirm that the variances being requested area variance of 8.5 feet from the ten (10) feet side yard setback requirement on the north side for a proposed HVAC system and a variance of 5 feet from the ten (10) feet side yard setback requirement on the north side for a proposed dwelling.

Mr. Pfab confirmed Mr. Sharp's statement.

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

Mr. Hudson moved to approve Variance Application No. 11922 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 size as it is 40 feet wide;
2. The exceptional practical difficulty was not created by the Applicant since the Applicant did not create the lot size;
3. The variances are necessary to enable reasonable use of the Property;
4. The variances will not alter the essential character of the neighborhood as many other variances exist on adjacent properties;
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. Hudson, seconded by Mr. Workman, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 3 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Workman- yea, Mr. Mills – yea.

Case No. 11923 – Brian Steele - seeks variances from the side and rear yard setback requirements (Sections 115-25C of the Sussex County Zoning Code). The property is located on the west side of Cods Road approximately 1,383 feet north of Thirteen Curves Road. 911 Address: 8920 Cods Road, Milford. Zoning District: AR-1. Tax Map No.: 2-30-16.00-2.00.

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.

Brian Steele was sworn in and testified requesting a variance of 10 feet from the fifteen (15) feet side yard setback requirement on the south side for an existing shed and a variance of 15 feet from the twenty (20) feet rear yard setback requirement for an existing shed.

Mr. Steele testified that there is one letter in support of the Application which was submitted to the record; that the Property is unique due to a survey issue which has led to an exceptional practical difficulty; that a shed was incorrectly placed on the Property; that he was able to purchase a portion of adjacent lands to minimize the encroachment; that there is no possibility that the Property can be developed in strict conformity with the Sussex County Zoning Code; that the variances are necessary to enable reasonable use of the Property; that the exceptional practical difficulty was not created by the Applicant; that the variances will not alter the essential character of the neighborhood or be detrimental to the public welfare; that the variances requested are the minimum variances to afford relief and represent the least modifications of the regulations at issue; that the shed shown on the southwest corner of the Property is actually a pole barn; that the shed shown on the survey in the northwest corner of the Property has been removed; that he is requesting the variances for the pole barn; that he reached an agreement with his neighbor to acquire a portion of the land where the pole barn encroached onto their lands; that the neighbor has submitted a letter supporting this request; that the survey stakes were moved at some point during construction; that the pole barn has been on the

Property since 2006; that he has not received any complaints from neighbors about the pole barn; that the issue arose when he obtained a survey prior to listing the Property for sale; that he obtained an inspection after the pole barn was constructed and believed it complied with the Code at that time; and that the survey marker was on the Property but he believes it was in the wrong location.

William Emmert was sworn in to testify in support of the Application. Mr. Emmert testified that he and his two partners have owned the surrounding farm for 35 years and they do not object to the request; that the Applicant has always been a great neighbor; that he believes the issue arose due to a surveying error; that an agreement was reached regarding the piece of the Property purchased by the Applicant; and that Mr. Emmert and his partners are in support of the Application.

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

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

Mr. Hudson moved to approve Variance Application No. 11923 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 surveying error;
2. The structure has been on the Property since 2006 and the Applicant purchased additional land to minimize the encroachment;
3. The Property cannot be developed in strict conformity with the Sussex County Zoning Code;
4. The exceptional practical difficulty was not created by the Applicant;
5. The variances are necessary to enable reasonable use of the Property;
6. The variances will not alter the essential character of the neighborhood; and
7. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 3 – 0.

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

Case No. 11924 – David J. Hodges & Deborah A. Hodges - seek variances from the side yard, front yard, and rear yard setback requirements (Sections 115-25C, 115-183C, 115-181B, 115-182B, and 115-182D of the Sussex County Zoning Code). The property is located on the east side of Tyler Avenue approximately 1,156 feet south of Lincoln Drive. 911 Address: 38849 Tyler Avenue, Selbyville. Zoning District: AR-1. Tax Map No.: 5-33-20.18-87.00.

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

David J. Hodges and Deborah A. Hodges were sworn in and testified requesting a variance of 0.6 feet from the fifteen (15) feet corner side yard setback requirement on the south side for a proposed dwelling, a variance of 10.1 feet from the twenty (20) feet rear yard setback requirement for proposed

steps, a variance of 5.6 feet from the fifteen (15) feet corner front yard setback requirement on the south side for proposed steps, a variance of 4.8 feet from the twenty (20) feet rear yard setback requirement for a proposed dwelling, a variance of 7 feet from the ten (10) feet side yard setback requirement on the north side for a proposed HVAC and propane tank, and a variance of 5 feet from the ten (10) feet side yard setback requirement on the north side for a proposed dwelling.

Mr. Hodges testified that the Property is located in the Cape Windsor development; that the community was created over 40 years ago under zoning that is non-existent today; that the situation is unique and it is not economically viable to develop the Property without a variance; that the Property cannot be otherwise developed; that a home constructed in compliance with the Sussex County Zoning Code would result in extremely undersized rooms and would adversely affect the overall value and appeal of the home; that a smaller home effects the overall value, appeal, and resale of proposed dwelling and neighboring dwellings; that the Property was purchased by the Applicants in 2003; that the existing dwelling measures 26 feet wide and 60 feet deep; that the Sussex County Zoning Code limits the size of the dwelling to 25 feet wide and 41 feet deep; that the existing dwelling is a singlewide manufactured home with a stick built addition constructed by a prior owner; that the exceptional practical difficulty was not created by the Applicants; that the Applicants had no involvement with the original development over 40 years ago; that the variances will not alter the essential character of the neighborhood; that there will be no effect on the neighborhood; that the proposed dwelling will be an enhancement to the neighborhood if the Applicants are able to replace the existing dwelling; that Cape Windsor is experiencing a revitalization with the building of newer, modern homes that are slowly replacing older mobile homes; that the new dwelling will meet all construction codes and will be elevated out of the flood plain; that the proposed dwelling will be a modular home with a one vehicle garage for parking; that the proposed dwelling is wider but shorter than the existing dwelling; that the variances requested are the minimum variances necessary to afford relief; that the proposed dwelling will have the same side yard setback on the north side as the existing dwelling and will be located farther from the front yard setback than the existing dwelling; that the proposed dwelling will be closer to the rear yard setback line than the existing dwelling but it will be 15 feet from the canal; that the proposed dwelling will be nearly 20 feet from the edge of paving of Tyler Avenue in the corner side yard; that Cape Windsor Community Association has given the Applicants approval; that the proposed dwelling will line up with the neighboring dwellings in the rear yard but will be farther off of the road in the front yard than most of the neighboring dwellings; that the proposed dwelling will consist of two stories; that the Property is a corner lot; that tractor trailers often travel Tyler Avenue to make deliveries; that the tractor trailers make wide turns; that the Applicants designed the house to be located farther off of Tyler Avenue to provide a safe distance from tractor trailers to move; that recently a tractor trailer damaged some of his property in making a turn; that moving the home farther from Tyler Avenue also provides better road visibility; that he spoke with his neighbor about the proposed dwelling; that the HVAC and propane tank are placed on that side of home due to the development of the home; and that the character of the neighborhood is evolving.

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

Mr. Hudson moved to approve Variance Application No. 11924 for the requested variances based on the record made at the public hearings and for the following reasons:

1. The Property is unique due to its size;
2. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
3. The exceptional practical difficulty was not created by the Applicants since the Applicants did not create the lot size;
4. The variances will not alter the essential character of the neighborhood as other variances exist on adjacent properties;
5. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 3 – 0.

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

ADDITIONAL BUSINESS

Case No. 11273 – Zerby, LLC - seeks a variance from the front yard setback requirement for a through lot (Section 115-77.1B(2) of the Sussex County Zoning Ordinance). The property is located on the southeast corner of the intersection of Rehoboth Avenue Extension and Route 1. 911 Address: None Available. Zoning District: C-1. Tax Map No.: 3-34-13.19-84.00, 85.00, & 86.00.

REQUEST FOR A TIME EXTENSION

Ms. Cornwell read a letter from the Applicant requesting a six (6) month time extension due to sewer connection problems.

Mr. Workman moved to approve the extension request for six (6) months.

Motion by Mr. Workman, seconded by Mr. Hudson, and carried unanimously that the request be **granted**. Motion carried 3 – 0.

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

Meeting Adjourned 9:00 p.m.