

## **MINUTES OF FEBRUARY 29, 2016**

The regular meeting of the Sussex County Board of Adjustment was held on Monday, February 29, 2016, at 7:00 p.m. in the County Council Chambers, County Administrative Office Building, 2 The Circle, Georgetown, Delaware.

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

The Pledge of Allegiance was led by Mr. Callaway.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously to approve the Revised Agenda as circulated. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously to approve the Minutes and Finding of Facts for December 21, 2015 as circulated. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously to approve the Minutes and Finding of Facts for January 4, 2016 as circulated. Motion carried 5 – 0.

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

### **OLD BUSINESS**

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

Ms. Cornwell presented the case, which has been tabled since February 15, 2016.

Mr. Workman stated that he has no issues with the request since it is replacing the go-cart track and the Applicant plans to plant trees along the Property line for extra buffer.

Mr. Rickard stated that he feels the Applicant is creating its own difficulty; that the Property can be developed without a height variance; and that he feels approval of the variances would create a precedent.

Mr. Mills stated that the proposed height is required for the proposed slide to be safe and the existing slides exceed the maximum height requirement; that the proposed slide is also needed to keep the park viable and attractive to visitors; that the platform of the proposed slide will be

forty-seven (47) feet with a thirteen (13) feet required canopy; and that the Applicant meets the standards for granting of a variance.

Mr. Hudson stated that he feels the proposed slide is less intrusive than prior go-kart tracks on the Property – particularly in regards to the noise from the go-cart tracks; that the hours of operation will also be less intrusive since the entire park will now close at 8:00 p.m.; that there are other slides already on the Property; that the existing slides in the non-conforming amusement park are at a similar height and the proposed slide will not be more obtrusive or imposing than what exists or was previously there.

Mr. Rickard stated that he is still not convinced the Property cannot otherwise be developed.

Mr. Callaway stated that he also feels the Applicant would still have reasonable use of the Property without the proposed slides.

Mr. Mills stated that the Property is an amusement park and the slide is necessary; and that the Applicant could reasonably use the Property by leaving the go-cart track in the park.

Mr. Rickard stated the engineers findings do not prove that the Applicant meets the criteria for granting the variance and the Property can otherwise be developed.

Mr. Workman stated that the additional five (5) feet would be unnoticeable.

Motion by Mr. Rickard to deny the Application because the Property can otherwise be developed and has been created by the Applicant did not pass due to the lack of a second.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11713 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The non-conforming amusement park has been in operation since 1974, which makes this Property unique;
2. The amusement park is an excitement driven use and the slides need to be a certain height;
3. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
4. The exceptional practical difficulty was not created by the Applicant since the proposed slides must be a certain height for safety reasons;
5. The variances will not alter the essential character of the neighborhood since the amusement park existed prior to the construction of most of the nearby dwellings; and
6. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Workman, and carried that the variances be **granted for the reasons stated with the stipulation that the Applicant plant fast growing trees such as**

**Leland Cypresses on the inside of the fence along the southeast and southwest sections of the Property that border the residential properties to create a buffer.** Motion carried 3 – 2.

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

**Case No. 11718 – Charles H. Hayes, Jr.** – seek variances from the side yard and front yard setback requirements (Section 115-34B of the Sussex County Zoning Code). The property is located on the east side of Bayberry Lane approximately 434 feet south of Cedar Road. 911 Address: None Available. Zoning District: MR. Tax Map No.: 5-33-20.09-108.00.

Ms. Cornwell presented the case, which has been tabled since February 15, 2016.

Mr. Rickard stated that he believes the Applicant can redesign the proposed dwelling to comply with the Sussex County Zoning Code; that the exceptional practical difficulty has been created by the Applicant; and that the Property can otherwise be developed.

The other Board members agreed with Mr. Rickard.

Mr. Rickard stated that he would recommend denial of Variance Application No. 11718 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The proposed dwelling can be redesigned to comply with the Sussex County Zoning Code;
2. The exceptional practical difficulty has been created by the Applicant; and
3. The Property can be otherwise developed within strict conformity of the Sussex County Zoning Code.

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

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

### **PUBLIC HEARINGS**

**Case No. 11719 – Madon Church, LLC** – seeks variances from the side yard setback requirement (Section 115-42B of the Sussex County Zoning Code). The property is located on the northwest side of Swann Drive within the Swann Keys development. 911 Address: 37873 Swann Drive, Selbyville. Zoning District: GR. Tax Map No.: 5-33-12.16-530.00.

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

Todd Crkvenic was sworn in to testify about the Application. David Hutt, Esquire, presented the case to the Board on behalf of the Applicant and submitted exhibits for the Board to review including copies of portions of the tax maps, photographs and aerial images of the Property, and decisions of the Board of Adjustment.

Mr. Hutt stated that the Applicant is requesting a variance of four (4) feet from the ten (10) feet side yard setback requirement on both sides of the Property for a proposed dwelling; that Mr. Crkvenic is a member of the Madon Church, LLC; that the lot is in Swann Keys which was developed as a manufactured home community with small single-wide manufactured homes; that the community is evolving and replacing single-wide manufactured homes with single-family dwellings; that, within the last five (5) years, over fifty (50) variances have been granted in this community; that the Property is undersized and narrow; that a standard approved lot in a GR zoning district consists of 10,000 square feet and must be seventy-five (75) feet wide; that a minimum sized lot in a GR zoning district has a building envelope of approximately 5,000 square feet; that the Applicant's lot is currently vacant and measures 40 feet by 100 feet which is 6,000 square feet smaller than a standard lot in a GR zoning district; that the Property has a building envelope of only 1,200 square feet; that the proposed two-story dwelling will be 28 feet wide by 30 feet deep with three (3) bedrooms and two (2) bathrooms; that the proposed dwelling will be six (6) feet from each side yard; that the proposed dwelling is similar in size and scale to other dwellings in the neighborhood; that the variances requested allow for the proposed deck and porch without further encroachment; that the location of the proposed structure allows room for a shed and HVAC unit to be placed at the rear of the proposed dwelling; that there will be room for off street parking in front of the dwelling; that the requested variances are less than the variances granted for neighboring properties; that the non-conforming undersized lot makes this Property unique; 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; and that the variances are the minimum variances necessary to afford relief.

Mr. Crkvenic, under oath, affirmed the statements made by Mr. Hutt. Mr. Crkvenic testified that the existing single-wide manufactured home has been removed; that the rear deck is a second floor deck; that the front porch is on the first level; that a dwelling built in compliance with the Sussex County Zoning Code would be unusually small; that the proposed shed will be behind or under the proposed deck; that there are no flooding issues on the Property; and that he has not spoken with the neighbors about the Application.

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

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11719 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique as a portion of the Property is in the lagoon and the lot is undersized;
2. The variances are necessary to enable reasonable use of the Property;

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

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

**Case No. 11720 – Town of Bethany Beach** – seeks a special use exception to operate a target / shooting range (Sections 115-23A and 115-210A(1) of the Sussex County Zoning Code). The property is located on the west side of Blackwater Road approximately 1,230 feet north of Burbage Road. 911 Address: 32492 Blackwater Road, Frankford. Zoning District: AR-1. Tax Map No.: 1-34-11.00-54.01.

Ms. Cornwell presented the case and read two (2) letters of support into the record and read two (2) letters of opposition into the record that the Office of Planning and Zoning received. Ms. Cornwell confirmed that notice was mailed to property owners within 200 feet of the Property, and posted on the Property, in the Planning & Zoning Office, and on the Sussex County website, and published as required by Board rules.

John Murray and Captain Darin Cathell were sworn in to testify about the Application. Mr. Richard Berl, Esquire, presented the case to the Board on behalf of the Applicant and submitted exhibits for the Board to review.

Mr. Berl stated that the Applicant is requesting a special use exception to operate a target / shooting range; that the Property consists of approximately seven (7) acres; that the proposed range will be a police training facility and will only be used by the Bethany Beach Police Department to gain and maintain firearm certifications; that the police department has ten (10) active members and two (2) retired members – one of whom is the City Manager; that the range will not be open to the public or other police departments; that Bethany Beach officers travel to Bridgeville for training; that the Property is located in an AR-1 zoning district and the area is not highly populated but there are homes nearby; that the proposed range will be approximately 1,200 feet from the road; that the adjacent property owners most affected by the range (including the owner of the vineyard) have no objection to the Application; that a local realtor opined that the proposed use will not adversely affect the surrounding property values; that the Applicant has improved the appearance of the Property; that the Applicant intends to be a good neighbor; that the Applicant is open to conditions being placed on the special use exception such as limiting the use to active and retired members of the Bethany Beach Police Department within limited days and times; that the range is proposed to be used on Tuesday, Wednesday, and Thursdays from 10:00 a.m. to 2:00 p.m.; and that a couple of times per year the range would be used more intensely for the required training the officers must complete; and that the range will not be used on the weekends.

Mr. Murray testified that he is the project engineer; that the proposed range will be protected by a three-sided earthen berm designed to meet the U.S. Department of Energy regulations; that the berm is quite substantial in size and will prevent ricocheting bullets and projectiles; that the Property was historically used for agricultural purposes with a dwelling and a poultry house; that the Applicant has removed the dwelling and several outbuildings; that the existing poultry house will be used as storage for the Town of Bethany Beach; that the closest residential structure is approximately 932 feet from the proposed range; that other residential structures are over 1,200 feet away; that the closest property on the other side of Blackwater Road is 1,240 feet away from the proposed range; that the range is to be situated on the rear of the Property and the shots fired at the range will be directed away from any residential structures; and that property to the rear of the proposed range is wooded and any residential structures in that direction are over 5,000 feet away.

Capt. Darin Cathell testified that he is a captain for the Bethany Beach Police Department; that he has been a certified firearms instructor for 19 years; that two (2) other officers are also certified firearms instructors; that the Applicant is governed by the Council on Police Training which sets forth the type of training required by the Applicant; that each officer must be certified annually; that the annual training requires each officer to participate in two (2) daylight shootings and one (1) low light shooting; that the Applicant may combine a daylight and low light training into one day; that the Applicant estimates the range will be used 2 or 3 days a year to complete the training for the entire force; that the rest of the year the range will only be used by officers on their days off for practice; that the officers must be given permission to use the range; that the range will only be used between the hours of 10:00 a.m. and 2:00 p.m. on a Tuesday, Wednesday, or Thursday; that the proposed hours of operation are designed to minimize the impact on neighbors; that the Applicant currently uses a shooting range in Bridgeville; that the other ranges available are too far away and result in the Town of Bethany unattended when the Department goes for recertification; that the proposed location will allow the officers to remain close to the Town of Bethany; that the range will be self-contained and will face away from dwellings; that the use will not substantially adversely affect the uses of the neighboring and adjacent properties; that the Town of Bethany had a decibel reader; that a decibel test was performed at the site and the reading was 83 decibels at the front of the Property near Blackwater Road; that the noise is comparable to the sound from a lawn mower, which is 85 decibels; that the Department has had ten (10) officers since he has been with the Department; that the guns used at the range will be the .357 patrol gun and 223 round rifle; that there will be no shotguns used at the range; that maintenance employees will be at the site daily; that the Property will be posted to let the public know they cannot enter; that security cameras may be installed in the future; that the low light training is scheduled in late February – early March so there is no shooting done late at night; that he is not sure if the area will be gated; that the berm is 30 yards wide and 75 feet deep; that all shooting will be within the berm; that the noise from the range will be similar to the noise generated by hunters in the area; that the Applicant has no objection to planting Leland Cypress trees to serve as an additional buffer and to baffle the noise from the range; that the Applicant will maintain the Property and clean up the debris from the range; that the Applicant is requesting the approval for a period of five (5) years; that he affirmed the statements made by Mr. Berl; and that the range will likely not be used as much in the summer.

Kirk Owen Phillips was sworn in and testified in opposition to the Application and testified that he lives approximately  $\frac{1}{4}$  mile from the Property; that he is concerned about the effect of lead from bullets shot at the range; that hunters use steel bullets due to the lead pollution issues; that the area is a high traffic area and has concerns for others safety; that the lack of a gate is also a concern and he feels trespassers could be an issue; that he feels the range should be contained in a building; and that the government should regulate and provide a space for them to train.

Lou Csoky was sworn in and testified in opposition to the Application and testified that he lives approximately 200 yards from the Property; that he is representing the Hidden Acres community; that there are many retirees living in the area; that there are other ranges in Bridgeville, Dover, Millsboro, Seaford, and the National Guard properties; that he does not feel there is a need for the Bethany Beach Police Department to have their own range; that there is great concern for the safety of the neighborhood; that there is a nearby daycare center and school busses in the area; that he is concerned about the effect of the range on property values in the neighborhood; that he heard the decibel test from a property on the other side of Blackwater Road and it was very loud; that he cited the Delaware State Code Section 71A; and that he submitted exhibits to the Board for review.

Deborah Salins was sworn in and testified in opposition to the Application and testified that her letter had been previously read into the record; that she read and submitted a letter from a neighbor in opposition to the Application; that her neighbor has a deaf child and other children that play outside and she is concerned for their safety; and that, due to her own health issues, the shooting noise from the range bothers her.

Scott Smith was sworn in and testified in opposition to the Application and testified that he lives approximately  $\frac{1}{8}$  to  $\frac{1}{4}$  mile from the Property; that he is concerned with lead pollution; that outdoor firearms put lead into the environment; that he works with lead hazard control; and that he would support it if the officers use green bullets and noise suppression systems at the proposed range.

Owen Smith was sworn in and testified in opposition to the Application and testified that he lives approximately  $\frac{1}{4}$  mile from the Property; that the proposed range will alter his quality of life; that noise travels easily in open space – particularly in this area; and that the proposed range will compromise property values because no one wants to live near a firing range.

Willia Peoples was sworn in and testified in opposition to the Application and testified that she owns property to the south from the Property approximately 1,240 feet from the proposed range; she purchased the 11 acre parcel in October 2015; that she uses the Property for her pet training business; that she specializes in working with rescue animals; that she works with dogs that have fear issues; that the proposed times the range will be used are when she would be utilizing her property for training; that the use will not have a positive effect to her property and her business; and that the use will substantially adversely affect the uses of her property.

Bryan Marvel was sworn in and testified in opposition to the Application and testified that he also lives 2 lots down from the proposed range; that he has lived in the area for thirty-eight (38)

years; that he feels the Applicant is still unsure how often the range will be used and who else may use the range in the future as there is no detailed plan; and that an indoor range would be more acceptable.

Ernest Marvel was sworn in and testified in opposition to the Application and testified that he is a World War II veteran; that he is concerned about the effect of stray bullets; and that he has seen the dangers of stray bullets.

Nancy Potts was sworn in and testified in opposition to the Application and testified that she also lives across the street from the Property; that she did not receive a notice of the public hearing; that she moved to her property two (2) years ago; that she is very concerned about the noise; that her pets will be adversely affected because they have troubles when around fireworks; that she feels the range is a waste of tax payer money; and that the Applicant should continue to use the Bridgeville range.

Charles Kaiser was sworn in and testified in opposition to the Application and testified that he lives less than a tenth of a mile from the Property; that the range will affect the tranquility of the neighborhood; that property values will be adversely affected; that there are adequate facilities elsewhere for the Applicant to conduct its training; that he feels over time the range will be open to other police departments or the public; and that the Property was purchased for storage and communications for the Town of Bethany Beach.

Ronald Buggenhagen was sworn in and testified in opposition to the Application and testified that he lives approximately 300 yards from the Property; that there are agriculture fields surrounding the proposed range and he is concerned for the farmers working in those fields; that he hunts and photographs in the area behind the proposed range; that there are seven (7) bald eagles living in the area; at the pristine area will be substantially adversely affected by the use; that the nearby woods behind the proposed range is called the "Swamp Woods"; that the lead will run off into a nearby ditch which drains the woods; that the range will be a total disruption to the neighborhood; that the neighborhood children play in the wooded area; that he posts signs during hunting season to help keep the children safe; that he uses lead bullets when hunting squirrels; that his deer stand is 15 feet high and is located in the woods; that he believes he could get permission from the Salisbury Gun Club to allow the Bethany Beach Police Department access to use their facility; and that Blackwater Road is often used by bikers.

Patrick Marino was sworn in and testified in opposition to the Application and testified that he lives approximately 600 feet from the Property; that the proposed range is not safe; that he is not comfortable with guns being fired outside; that he has lived in the area for three (3) years; and that he enjoys the quiet neighborhood.

Martha Holland was sworn in and testified in opposition to the Application and testified that she lives across the street; that a shot was fired into her house last year; that the Delaware State Police still have no idea where the bullet came from; that children in the area wait for the school bus and she is concerned for their safety; that neighbors cut grass during the proposed time of operation for the range; and that she feel the range should be in a more secluded area.



Zachary Chew was sworn in and testified in opposition to the Application and testified that he lives in Hidden Acres approximately 1,500 to 2,000 feet away; that the use seems to accommodate a small amount of people but will disrupt twice as many people; that the safety concerns and property values of the neighborhood will be negatively affected; and that there are existing facilities the Applicant can use without disrupting an entire neighborhood.

Paul Copeland was sworn in and testified in opposition to the Application and testified that he lives approximately a ¼ mile from the Property; that noise and safety are a huge factor; that he has experience as a competition shooter for the Delaware State Police; that stray bullets are dangerous; and that numerous bikers and walkers use the area and the range would disrupt this use.

Marianne Phillips was sworn in and testified in opposition to the Application and testified that she lives ¼ mile from the Property; that she moved to the area four (4) years ago seeking the quiet; and that the use would adversely affect the wildlife in the area.

Argetta Shupe was sworn in and testified in opposition to the Application and testified that she owns two (2) houses in the area; that she enjoys sitting on her front porch and watching the wildlife; that she is concerned for the safety of the children in the area; and that the range is waste of money.

Mr. Cathell testified that the officers will be shooting 75 feet away from the berm; and that they conducted the decibel testing today.

Mr. Berl, stated that the opposition has not provided any evidence to support their concerns of property values; that there was no evidence to dispute the decibel test; that the use will not substantially adversely affect the uses of the neighboring and adjacent properties; that the use is a minimal intrusion to the area; that only four (4) shooters at a time could regularly use the range; and that the location is five to six miles from town because there is no property within the town limits that could accommodate the proposed range.

Willia Peoples testified that the range will affect the use of her property and her business; that she would still have concerns if the Property was fenced in; that she has concerns with the Applicant's ability to monitor the use of the range and trespassers thereon; and that she would rather see the range contained in a building.

Martha Hall testified that she heard the test shots today for the decibel test; that the noise was loud; and that a stray bullet is still dangerous even when police fire the gun.

Nancy Potts testified that the opposition did not have adequate time to gather the information needed to show the impact to property values; that the report submitted by the Applicant is simply an opinion; that noise is an issue; and that she hears bullets fired from hunting nearby.

Scott Smith testified that he has five (5) articles that show the dangers of lead pollution from shooting ranges.

Brian Marvel testified that the opposition did not have a chance to provide proof.

Mr. Berl, stated that the Applicant has not started any work on the berm; and that three (3) shots were fired today to conduct the decibel test.

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

The Board found that thirty-four (34) parties appeared in opposition to the Application.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the case be **tabled until March 21, 2016**. Motion carried 5 – 0.

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

The Board took a ten (10) minute recess.

**Case No. 11721 – Charles Greaves and Christy Greaves** – seek a special use exception to operate a bed and breakfast (Sections 115-23C(14) and 115-210A(3)(o) of the Sussex County Zoning Code). The property is located on the north side of Broadkill Road approximately 655 feet west of Reynolds Road. 911 Address: 26285 Broadkill Road, Milton. Zoning District: AR-1. Tax Map No.: 2-35-15.00-4.01.

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

Charles Greaves, Christy Greaves and Ron Ladue were sworn in and testified requesting a special use exception to operate a bed and breakfast and submitted exhibits to the Board to review.

Mr. Greaves testified that the Applicants purchased the Property in 2005; that the Applicants plan to move and feel this is the best use for the Property; that the bed and breakfast will benefit the Town of Milton; that the existing dwelling is ideal for a bed and breakfast; that the Property is surrounded by farmland and the nearest dwelling is approximately 400 feet away and is owned by the Applicant; that there is a need for such a facility; that the use will not substantially adversely affect the uses of the neighboring and adjacent properties; that there are up to 14 parking spaces on the Property; and that there will be no cooking facilities in the individual rooms.

Mr. Ladue testified that the Property is registered with the National Historic Trust; that the surrounding property is in the Agriculture Preservation program; that there is commercial zoning nearby; that Delaware Tourism and Milton Chamber of Commerce view the proposed bed and breakfast as an asset to the community; that there is minimal impact to the neighboring property;

that the proposed bed and breakfast will have six (6) bedrooms available; that the Sussex County Economic Development Department supports the Application; that the 8% accommodation tax will benefit Southern Delaware tourism; that the history of the Property will attract visitors; and that there is adequate parking available.

Dr. Greaves testified that she supports the Application; that the surrounding farmland consists of approximately 134 acres; and that the proposed use will not substantially adversely affect the uses of neighboring and adjacent properties.

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

Mr. Rickard stated that he would move that the Board recommend approval of Special Use Exception Application No. 11721 for the requested special use exception based on the record made at the public hearing because the use does not substantially adversely affect the uses of the neighboring and adjacent properties.

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

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

**Case No. 11722 – Eastburn Estates, LLC** – seek variances from the side yard and front yard setback requirements (Sections 115-34B of the Sussex County Zoning Code). The property is located on the northwest corner of Ayres Road and Surf Road. 911 Address: 39923 Ayres Road, Bethany Beach. Zoning District: MR. Tax Map No.: 1-34-13.16-15.00.

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

Mike Cummings and Ron Eastburn were sworn in and testified requesting a variance of 12.9 feet from the thirty (30) feet front yard setback requirement and a variance of 3.6 feet from the fifteen (15) feet corner side yard setback requirement for an existing dwelling.

Mr. Cummings testified that the existing masonry footprint of the dwelling was built over fifty (50) years ago; that the age of the existing dwelling makes this property unique; that the foundation is structurally sound but encroaches into the setback areas; that the dwelling above the foundation is in poor condition and has been vacant for more than four (4) years; that the Applicant plans to remodel and update the living space over the existing foundation; that the variances will enable reasonable use of the Property; that the exceptional practical difficulty was not created by the Applicant; that the Applicant inherited the Property; that the Property cannot otherwise be developed; that the Property has been in the Applicant's family since the 1950s and the cost of demolishing the structure and rebuilding it would be substantially greater than the cost of the proposed renovation; that the existing structure meets the Sussex Shores Homeowners Association requirements; that the variances will not alter the essential character of the neighborhood; that the

dwelling is in dire need of repair; that the exterior remodel will consist of new roof, windows, and siding; that the interior of the dwelling will be remodeled; that the renovated dwelling will be an improvement to the neighborhood and will look similar to other homes in the area; that the variances are the minimum variances to afford relief; that the renovated dwelling will not exceed the existing footprint; that the proposed renovations have to meet the current flood zone requirements; and that the edges of paving for Surf Road and Ayres Road do not extend to the property line separating the road from the property.

Mr. Cummings submitted pictures for the Board to review.

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

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11722 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The non-conforming dwelling makes this Property unique;
2. The variances are necessary to enable reasonable use of the Property;
3. The Applicant inherited the Property, therefore 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. Rickard, seconded by Mr. Workman, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 5 – 0.

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

**Case No. 11723 – Richard Blitz, Jr.** – seeks variances from the front yard setback requirements (Section 115-42B, 115-182D, and 115-183C of the Sussex County Zoning Code). The property is located on the south side of Hickory Manor Road approximately 688 feet west of Vines Creek Road. 911 Address: 31685 Hickory Manor Road, Frankford. Zoning District: GR. Tax Map No.: 1-34-11.00-21.00.

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

Richard Blitz, Jr. was sworn in and testified requesting a variance of 8.4 feet from the forty (40) feet front yard setback requirement for an existing covered porch and steps and a variance of 14.4 feet from the forty (40) feet front yard setback requirement for an existing garage; that he purchased the Property and had the dwelling built in 1994; that the builder is now out of business; that his wife passed away in 2013 and he now wants to sell the dwelling; that all permits and Certificate of Compliances were issued for the structures on the Property; that a survey completed for settlement showed the encroachments; that he was unaware of any encroachments prior to the

survey; that the covered porch was built at the same time as the dwelling; that the variances requested are the minimum variances necessary to afford relief; that the garage on the west side of the dwelling was placed at the time the house was built; that the shed on the east side of the Property was placed on the Property later and has been moved into compliance; that the difficulty was not created by the Applicant; that the existing driveway extends into the road; and that the edge of the tar and chipped road varies each time it is redone.

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

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11723 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The shape of the Property makes it unique;
2. The Applicant was issued a Certificate of Compliance and reasonably believed that his property was in compliance with the Code;
3. The variances are necessary to enable reasonable use of the Property;
4. The exceptional practical difficulty was not created by the Applicant;
5. The variances will not alter the essential character of the neighborhood; and
6. The variances sought are the minimum variances necessary to afford relief.

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

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

**Case No. 11724 – Debra Haley** – seeks variances from the side yard setback requirement (Section 115-34B of the Sussex County Zoning Code). The property is located on the south side of Lake Shore Drive approximately 2,700 feet south of Dorman Road. 911 Address: 11 Lakeshore Drive, Lewes. Zoning District: MR. Tax Map No.: 2-34-11.00-254.00.

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

Pam McDonald of Del Coast Design and Build was sworn in and testified requesting a variance of 7.4 feet from the ten (10) feet side yard setback requirement on the east side of the Property and a variance of 4.2 feet from the ten (10) feet side yard setback requirement on the east side of the Property for a proposed attached garage; that the Property is irregularly shaped and narrow; that the mound septic system, existing driveway, and landscaping forced the home to be placed in the current location near the side yard setback line; that the existing location of the dwelling leaves little space to develop the Property; that the septic system is located in the front yard and cannot be relocated; that a small deck and shed are located on the west side of the dwelling; that the proposed garage will line up with the existing driveway; that the garage cannot be located elsewhere on the Property; that the difficulty was not created by the Applicant, since

the Applicant did not build the dwelling; that the proposed attached garage is similar to others in the development; that the variances will not alter the character of the neighborhood; that the use is not detrimental to the public welfare; that there is an existing fence and tree line between the Applicant's lot and the adjacent neighbor's lot; that the proposed attached garage will add a level of security to the Applicant's property; that the variances are the minimum variances to afford relief; and that the proposed attached garage is being located slightly forward of the existing dwelling to minimize the variances needed.

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

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11724 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The shape of the Property makes it unique;
2. The variances are necessary to enable reasonable use of the Property and will provide security for the Applicant;
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. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

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

**Case No. 11725 – Richard Mulvanerton** – seeks a variance from the rear yard setback requirement (Section 115-25C, 115-183C, and 115-42B of the Sussex County Zoning Code). The property is located on the south side of South Acorn Way approximately 95 feet south of Marie Boulevard. 911 Address: 22370 South Acorn Way, Lewes. Zoning District: AR-1 & GR. Tax Map No.: 2-34-6.00-737.00.

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

Richard Mulvanerton was sworn in and testified requesting a variance of nine (9) feet from the ten (10) feet rear yard setback requirement for a proposed deck; that the proposed deck will measure 14 feet by 32 feet; that the Applicant purchased the Property from Ryan Homes in September 2014; that his previous home had a deck that measured 12 feet by 16 feet and found it to be too small; that the common area and storm water pond are located adjacent to the rear of his property; that the rear yard is shallow; that he did not place the dwelling on the Property; that the proposed deck will enhance the use of the Property; that the Property is odd shaped; that the

variance requested is the minimum variance to afford relief; and that it was difficult to maneuver around the smaller deck.

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

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11725 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The dual zoning districts and shape of the lot make this Property unique;
2. The variance is necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance sought is the minimum variance necessary to afford relief.

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

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

**Case No. 11726 – Diana Tyson** – seeks a variance from the separation requirement between units in a mobile home park (Section 115-172G(7) of the Sussex County Zoning Code). The property is located on the east side of A Street approximately 30 feet east of Old Landing Road. 911 Address: 21801 A Street, Rehoboth Beach. Zoning District: AR-1. Tax Map No.: 3-34-19.00-1.01 Unit 55064.

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

Diana Tyson and Rio Almeda were sworn in and testified requesting a variance of ten (10) feet from the twenty (20) feet separation requirement between units in a mobile home park for a proposed shed.

Ms. Tyson testified that she purchased the home in August 2015; that the existing manufactured home is small and the lot is quite small and narrow; that there is not much storage in the existing manufactured home; that Mr. Almeda plans to use the shed as a workshop; that the proposed shed will measure 10 feet by 16 feet; that the rear yard is the preferred location for the proposed shed; that other sheds in the park are also at the rear of the homes; and that, when she purchased the manufactured home, the proposed shed was included.

Krista Fluharty was sworn in and testified in support of the Application and testified that she is the former manager of the park; that she handled the settlement for the Applicant; that the lot is smaller than other lots in the park; that the Applicant did not place the dwelling on the lot and the placement of the home makes this Property unique; that the proposed location and style of

the shed is similar to other sheds within the neighborhood; that the variance will not alter the character of the neighborhood; that the Property cannot be otherwise developed; that the difficulty was not created by the Applicant; and that the variance requested is the minimum variance to afford relief.

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

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

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11726 for the requested variance based on the record made at the public hearing because the request meets the standards for granting a variance.

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

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

**Case No. 11727 – Jesse Bare and Elizabeth Bare** – seek a special use exception for a garage / studio apartment and a variance from the front yard setback requirement (Sections 115-23C(6) and 115-25C of the Sussex County Zoning Code). The property is located on the southwest corner of Roxana Road and Persimmon Place. 911 Address: 34556 Persimmon Place, Frankford. Zoning District: AR-1. Tax Map No.: 1-34-15.00-108.09.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application. Ms. Cornwell advised the Board that Persimmon Place is considered the front yard.

Jesse Bare, III, Elizabeth Bare and John DuPont were sworn in and testified requesting a special use exception for a garage / studio apartment and a variance of fifteen (15) feet from the thirty (30) feet front yard setback requirement for the detached garage / studio apartment.

Mr. DuPont testified that he is the father of the Applicants and will live in the proposed apartment; that the Property is unique because it is a corner lot; that Persimmon Road is actually considered the front yard and is a gravel road; that the twelve (12) feet right of way serves only four (4) lots; that the edge of Persimmon Place is fifteen (15) feet from the front property line; that the garage cannot be placed further away from the front yard property line due to the location of the septic system; that the rear portion of the lot is a low lying area; that neighbors support the Application; that the proposed location of the garage is the only practical location where it can be placed; that the variance requested is the minimum variance to afford relief; that the existing driveway comes off of Persimmon Place which makes the proposed location of the garage practical; that the variance will not alter the character of the neighborhood; that the area is a residential area; that the apartment will be 700 square feet in size; that there is adequate parking;



and that the use will not substantially adversely affect the uses of the neighboring and adjacent properties.

Mr. Bare testified that the lot has major flooding issues on the opposite side of the lot and is unbuildable.

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

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

Mr. Rickard stated that he would move that the Board recommend approval of Special Use Exception/Variance Application No. 11727 for the requested special use exception based on the record made at the public hearing because the use does not substantially adversely affect the uses of the neighboring and adjacent properties and for the requested variance based on the record made at the public hearing and for the following reasons:

1. The existing structures, water table issue, and that the lot is a corner lot make this Property unique;
2. The variance is necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance sought is the minimum variance necessary to afford relief.

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

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

### **Additional Business**

#### Discussion of Sign Regulations

The Board decided to not discuss the regulation due to the late hour and will forward any questions or concerns to Mr. Sharp or Ms. Cornwell before the next sign workshop.

**Meeting Adjourned 11:20 p.m.**