

MINUTES OF JANUARY 4, 2016

The regular meeting of the Sussex County Board of Adjustment was held on Monday, January 4, 2016, at 7:00 p.m. in the County Council Chambers, County Administrative Office Building, 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. Norman Rickard, and Mr. Brent Workman, 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. Workman, seconded by Mr. Rickard, and carried unanimously to approve the Revised Agenda with Old Business Case No. 11686 Immanuel Shelter, Inc., moved to the beginning of the Agenda. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes and Findings of Fact for November 16, 2015 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. 11686 – Immanuel Shelter, Inc. – seeks a special use exception to operate an emergency homeless shelter (Section 115-72C of the Sussex County Zoning Ordinance). The property is located on the northwest corner of Hebron Road and Burton Avenue. 911 Address: 19878 Hebron Road, Rehoboth Beach. Zoning District: B-1. Tax Map No.: 3-34-13.19-2.00.

Motion by Mr. Rickard, seconded by Mr. Hudson, and carried unanimously that the case be tabled until January 25, 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.

PUBLIC HEARINGS

Case No. 11687 – Daniel P. Golden and Jeanette E. Golden – seek variances from the front yard setback requirements (Sections 115-34B and 115-182B & D of the Sussex County Zoning Ordinance). The property is located on the northeast corner of 5th Street and Surf Road. 911 Address: 103 5th Street, Unit C, Bethany Beach. Zoning District: MR. Tax Map No.: 1-34-13.16-27.00-Unit C.

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 stated that the pergola extends over the property line and the Board could not approve more than a five (5) feet variance.

Daniel Golden and Timothy Tribbitt were sworn in and testify about the Application. Ray Tomasetti, Esquire, presented the case to the Board on behalf of the Applicants and submitted exhibits for the Board to review.

Mr. Tomasetti stated that the Applicants are requesting a variance of 22.9 feet from the thirty (30) feet front yard setback requirement, a variance of 9.3 feet from the fifteen (15) feet front yard setback requirement for a proposed third floor addition and a variance of five (5) feet from the fifteen feet front yard setback requirement for an existing pergola; that the Applicants purchased the Property in 1992; that the Property is part of a condominium; that the Applicant's unit was constructed in the late 1960s; that the building was converted into condo units in 1990; that Units A & B are also close to Fifth Street; that the neighbors who own Units A & B have no objection to the Application; that the Applicants propose to add a third floor to the existing unit; that the proposed third floor will not encroach any further than the existing footprint; that the Property is shallow as it is only seventy (70) feet deep; that the Property cannot otherwise be developed in compliance with the Sussex County Zoning Code; that the unit has been in its present location for nearly 50 years; that the difficulty was not created by the Applicants; that the variances will not alter the essential character of the neighborhood; that the variances requested are the minimum variances to afford relief; and that the addition will improve the aesthetics of the building and will not compromise its integrity.

Daniel Golden testified that he is an owner of the Property; that the proposed addition will be on the same footprint as the existing structure and will not further encroach into the setback area; that the Homeowners Association has no objection to the Application; that the proposed addition will not exceed the height of the neighboring units; that the pergola was built in 1992; and that Surf Road is an easement and no vehicles use the road.

Timothy Tribbitt testified that he is the contractor; that the proposed addition will meet the flood zone requirement and not exceed the maximum allowable dollar amount for renovations to an existing dwelling; and that they have obtained a permit for the addition from the Delaware Division of Natural Resources and Environmental Control ("DNREC").

Mr. Golden, under oath, affirmed the statements made by Mr. Tomasetti.

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. 11687 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The shape and shallowness of the lot make the Property unique;

2. The exceptional practical difficulty was not created by the Applicants;
3. The variances will not alter the essential character of the neighborhood; and
4. 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. 11688 – Main Street Homes at Sussex, LLC – seek variances from the rear yard and front yard setback requirements (Section 115-34B of the Sussex County Zoning Ordinance). The property is The Woods at Arnell Creek located off of Fairway Drive. 911 Address: None Available. Zoning District: MR. Tax Map Nos.: 3-34-18.00-957.00 – 988.00 Inclusive.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received six (6) letters of opposition and read the letters into the record and stated that no letters of support were received.

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

Mr. Fuqua stated that the Applicant is requesting a variance of five (5) feet from the ten (10) feet rear yard setback requirement for Lots 1 – 20, or a variance of five (5) feet from the thirty (30) feet front yard setback requirement for all thirty-two (32) lots in the development; that the Applicant is not seeking both a rear yard and a front yard variance; that the Applicant would prefer a variance for the front yard setback requirement for all lots be approved to maintain uniformity; that the Applicant is the owner and developer of the development known as the Woods at Arnell Creek; that no lots have been sold in the development; that site work has started on the Property; that the original subdivision was approved in 2008 for thirty-five (35) lots; that the original subdivision approval allowed for a rear yard setback of ten (10) feet; that the approval was voided when the plan was not recorded; that the subdivision was approved again 2013 for thirty-two (32) lots; that, due to changes in the subdivision regulations, a twenty (20) feet wide buffer around the perimeter of the subdivision was required; that the new buffer requirements resulted in the reduction of the length of the lots and in the removal of three (3) lots from the original plan; that the type of dwellings marketed for this area will not fit within the building envelope; that the market calls for first floor living which includes a first floor master suite; that causes this style dwelling to have a larger footprint; that an additional five (5) feet is needed to accommodate this type of dwelling; that the concerns raised by most of the opposition pertain to the subdivision and not the proposed variance; that trees on the Property have been cleared due to the site work; that the buffer will be replanted and landscaped per Sussex County regulations; that the rear yard variance request would only affect five (5) lots in the neighboring subdivision; that he believes the front yard variance request is the preferred solution for the Applicant as it will allow for the size home intended for these lots to be built and the front yard variance will only affect the interior lots within the subdivision; that the front yard variance request would have no effect to the neighboring

subdivision; that the front yard variance would also create uniformity in the community; that the situation is unique; that the exceptional practical difficulty was created by the change in the buffer requirement; that the Property cannot otherwise be developed due to the buffer requirement; that the difficulty was not created by the Applicant; that the variance will not alter the character of the neighborhood; and that the variance is the minimum variance necessary to afford relief.

Mr. Dombert, under oath, affirmed the statements made by Mr. Fuqua and testified that the proposed dwellings are 2,800 square feet two-story dwellings with first floor master suites.

Mr. Fuqua stated that the original plan only required the dwellings to be ten (10) feet from the lots in the adjacent community; that the new plan requires that the dwellings be thirty (30) feet from the adjacent community; that there are no houses to the north of the Property and that area cannot be developed; and that the Applicant cannot place the type of house which is demanded in this market on these lots without a variance.

Richard Morgante was sworn in and testified in opposition to the Application and testified that he is the President of Old Landing Woods Homeowners Association; that the Association opposes this application; that Old Landing Woods was developed in 1974 and consists of forty-one (41) large lots; that Old Landing Woods abuts the Applicant's development; that the only access to the Woods at Arnell Creek is through the roads in Old Landing Woods; that six (6) lots in Old Landing Woods abut to lots in the Woods at Arnell Creek; that they believed the mature trees in the buffer would remain; that the difference between the subdivisions will be clearly visible; that the rear setback variance will place the homes closer to the lots in Old Landing Woods; that there have not been any dwellings built; that there is no reason a dwelling cannot be built within the required setback requirements; that there is no a hardship to the owner; and that the Homeowners Association is opposed to any variances being proposed.

Patrice Riggin was sworn in and testified in opposition to the Application and testified that she has lived in Old Landing Woods for thirty-three (33) years; that her property is adjacent to Lot 20; that the original plan had only four (4) lots adjacent to Old Landing Woods; that the new plan has five (5) lots adjacent to Old Landing Woods; that she is concerned for the water issues and drainage problems the new lots may create; that Lot 20 is currently under water; that large houses on small lots create less impermeable surface; that she is concerned the variance will crowd the area; that there is no stormwater management plan; that she is afraid that water will run off into her yard; and that the lots in the Woods at Arnell Creek are smaller than the lots in Old Landing Woods. Ms. Riggin submitted photographs for the Board to review.

Lyle Riggin was sworn in opposition to the Application and testified that he wanted to know if the proposed 2,800 square foot dwellings included areas for attached garages, decks, sidewalks, driveways, and patios; that the more the lot is covered with improvements the more run off issues will be created; that the surrounding communities have stormwater management ponds; that the Woods at Arnell Creek do not have stormwater management ponds; that he has lived in Old Landing Woods for thirty years; that DNREC has no delineation plan for this development; that he feels the Applicant can design a different house to fit on the lots; and that the lots in Old Landing Woods are large enough to allow for proper run-off.

Karen Oates was sworn in and testified in opposition to the Application and testified that Old Landing Woods is forty-two (42) years old; that the variance creates a hardship for the neighbors; and that the developer can build smaller houses on the lots.

In rebuttal, Mr. Fuqua, stated that there is a Stormwater Management plan for the development; that there are rules and regulations the developer must adhere to; that there will be swales and grading to address drainage for the development; that the Applicant is not permitted to encroach into the existing wetlands; and that the proposed variances will not affect the stormwater management pond for the development.

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

The Board found that fifteen (15) parties appeared in opposition to the Application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be taken under advisement. 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.

At the conclusion of the public hearings, the Chairman referred back to this case and the Board discussed the Application. Mr. Rickard stated that he would move that the Board recommend approval in part and denial in part for Variance Application No. 11688. Mr. Rickard moved that the requested front yard variance be approved based on the record made at the public hearing and for the following reasons:

1. The required buffer created a uniqueness to the size of the lots;
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.

As part of his motion, Mr. Rickard moved that the variance for the rear yard variance be denied based on the record made at the public hearing because it is not necessary. The Applicant only sought approval for a front yard variance or a rear yard variance; not both.

Motion by Mr. Rickard, seconded by Mr. Mills, and carried unanimously that **the front yard variance be granted and the rear yard variance be denied 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. 11689 – Harlton Communities, LLC – seek variances from the side yard and corner side yard setback requirements (Section 115-25C and 115-182B of the Sussex County Zoning Ordinance). The property is located on the south side of Old Mill Road, east of Irons Road, and Murray Road. 911 Address: None Available. Zoning District: AR-1. Tax Map No.: 1-34-11.00-169.00.

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.

Tom Natelli and Tom Natelli, Jr. were 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 three (3) feet from the side yard setback requirement for all lots in the subdivision and a variance of eight (8) feet from the fifteen (15) feet corner side yard setback requirement for all corner lots in the subdivision; that the variances are sought for an approved undeveloped subdivision; that the subdivision was approved for 191 lots and 16 lots are corner lots; that the Board approved an identical request filed by the Applicant in April 2014; that it took longer than anticipated for the Applicant to obtain all necessary agency approvals for the subdivision; that the prior Board approval expired in June 2015; that the Applicants did not request a time extension prior to expiration of the variance approval; that the subdivision was approved in 2007 but no development took place due to the economic recession; that the Army Corps of Engineers redefined the wetlands on the Property which resulted in additional portions of the Property being classified as wetlands; that the Applicant redesigned the subdivision and relocated the entrance after this wetlands delineation; that a reasonably sized home cannot be placed on the lots without a variance; that the Applicant did not create the exceptional practical difficulty; that no lots in the community have been sold; that there is no negative impact on neighboring properties; that the variances requested are the minimum variances necessary to afford relief; that there have been no changes from the application previously filed by the Applicant and approved by the Board; that the final site plan was approved December 2015 and the Applicants are ready to proceed with development.

Messrs. Natelli, under oath, affirmed the testimony of Mr. Fuqua.

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. 11689 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The change to the wetlands designation created a uniqueness to the Property;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicant;
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. Mills, seconded by Mr. Rickard, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 5 – 0.

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

Case No. 11690 – Insight Homes – seeks a special use exception to place a temporary manufactured home type structure for a sales office (Section 115-23A and 115-210A(1) of the Sussex County Zoning Ordinance). The property is located on the north side of Lewes-Georgetown Highway (Route 9) approximately 914 feet east of Gravel Hill Road. 911 Address: None Available. Zoning District: AR-1. Tax Map No.: 1-35-11.00-66.00.

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.

Tony Crane was sworn in and testified requesting a special use exception to place a temporary manufactured home type structure for a sales office. Mr. Crane testified that he is the Land Acquisition Manager for Insight Homes; that the Applicant placed a sales trailer on the Property; that the Applicant applied for the special use exception right after being notified that it was required; that the use does not substantially adversely affect the surrounding and adjacent properties; that the area surrounding the Property is largely wooded and along Route 9; that the Applicant only intends to use the trailer for 6 months; that the unit will be removed once the model is constructed; that the model should be completed in a few months; that the Applicant requests a period of one (1) year for the sales trailer in case it takes longer to complete the model home; that the unit is a construction trailer that is in good condition and is approximately 4 years old; that the Applicant will provide an adequate parking area; that there will be landscaping around the unit; that the unit measures 10 feet by 30 feet; that he was not with the company at the time the unit was placed; and that the unit has been on the Property since the late summer.

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. 11690 for the requested special use exception for a period of one year 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 variance be **granted for a period of one year 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. 11691 – Gregory K. Lusby and JoAnn A. Lusby – seek variances from the side yard and rear yard setback requirements (Section 115-25C of the Sussex County Zoning Ordinance). The property is located on the east side of Tyler Avenue approximately 554 feet south of Lincoln Drive. 911 Address: 38791 Tyler Avenue, Selbyville. Zoning District: AR-1. Tax Map No.: 5-33-20.18-99.00.

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.

Gregory Lusby and JoAnn Lusby were sworn in and testified requesting a variance of 4.7 feet from the ten (10) feet north side yard setback requirement on the south side for a proposed dwelling, a variance of 4.7 feet from the ten (10) feet south side yard setback requirement for a proposed dwelling on the north side, and a variance of 7.6 feet from the twenty (20) feet rear yard setback requirement for a proposed second floor deck.

Mr. Lusby testified that his parents bought the Property in 1971; that the Applicants plan to remove the existing manufactured home and build a dwelling; that the Applicants will become full time residents; that the lot is unique in size since it is 50 feet wide by 90 feet deep; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code; that the variances are necessary to enable the reasonable use of the Property because the variances will allow them to build this dwelling; that the exceptional practical difficulty was not created by the Applicants; that the difficulty was created by the original developer of the community; that the variances will not alter the character of the neighborhood; that the proposed dwelling will enhance the character of the community and is similar to others in the development; that the variances requested are the minimum variances to afford relief; that he collects antique cars; that the proposed attached garage is large enough to store his collectible antique cars; that the second and third floors of the dwelling will be used for living space; that the HVAC is within the mechanical room; and that there is adequate parking on the Property to comply with the community's off-street parking requirement.

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

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

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11691 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique in size as it is only 50 feet wide by 90 feet deep;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variances will not alter the essential character of the neighborhood; 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. 11692 – Lawrence Witucki & Barbara Witucki – seek variances from the side yard and front yard setback requirements (Section 115-25C and 115-183C of the Sussex County Zoning Ordinance). The property is located on the west side of Sycamore Drive approximately 335 feet south of Angola Road. 911 Address: 22834 Sycamore Road, Lewes. Zoning District: AR-1. Tax Map No.: 2-34-11.16-16.00.

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.

Lawrence Witucki, Barbara Witucki and Rich McFarland were sworn in and testified requesting a variance of 0.4 feet from the thirty (30) feet front yard setback requirement for an existing dwelling and a variance of 7.6 feet from the thirty (30) feet front yard setback requirement for a proposed deck.

Ms. Witucki testified that the dwelling was built in 1980; that the Applicants purchased the Property in 1985; that the dwelling and deck existed at that time; that the deck is rotting and must be replaced; that there is no other location for the deck; that Mr. McFarland is the Applicants' contractor; that the dwelling has large sliding glass doors across the front to access the deck; that the Property cannot otherwise be developed; that the difficulty was not created by the Applicants; that the variances will not alter the essential character of the neighborhood; that the current deck is L-shaped; that the new deck will be smaller; that neighbors have no objection to the variance; that the new deck will be one (1) foot wider which will afford better use of the deck; that the Applicants are removing approximately 12 feet from the deck on the side; that the Property is located in Angola by the Bay and the Homeowners Association approved the variances; and that the existing deck's railings and joists are not up to code. Mr. & Mrs. Witucki, submitted pictures and two (2) letters of support to the Application.

Mr. McFarland testified that the deck needs to be entirely rebuilt; that the usable width of the current deck is only 5.6 feet due to the location of the handrail; that the deck's width will be increased from 6.2 feet wide to 7.2 feet wide; and that approximately 120 square feet of deck space will be eliminated elsewhere.

Ms. Cornwell advised the Board that no side yard setback is required.

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

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

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11692 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique in size as it is only 52.7 feet wide;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicants;
4. The dwelling and deck were on the Property when the Applicants acquired the Property;
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. 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.

The Board took a ten (10) minute recess.

Case No. 11693 – Nancy Tankelson and Francois Reverdy – seek a variance from the height requirement for a fence (Section 115-185C of the Sussex County Zoning Ordinance). The property is located on the southeast corner of Josephine Street and Fisher Street. 911 Address: 38386 Josephine Street, Rehoboth Beach. Zoning District: MR. Tax Map No.: 3-34-20.09-138.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of the Application. Ms. Cornwell read one (1) letter of opposition to the Application into the record. Ms. Cornwell advised the Board that variance is only for the height of the fence along Josephine Street and along fifteen (15) feet of the rear yard on the Josephine Street side of the Property. The fence is only allowed to be 3.5 feet tall in those cases.

Nancy Tankelson and Francois Reverdy were sworn in and testified requesting a variance of 0.5 feet from the maximum 3.5 feet height requirement for a fence.

Mr. Reverdy testified that the Board approved a variance for an in-ground pool in October 2015; that the Sussex County Zoning Code requires a four (4) feet high fence surround an in-ground pool; that the Code requires that the fence along Josephine Street not exceed 3.5 feet tall; that the proposed fence will not exceed the maximum height requirement on the opposite side of the Property as the height requirement on that side of the Property is higher; that the variance requested is the minimum variance to afford relief; that the Applicants intend to plant shrubs around the fence to screen it from view; that the Applicants cannot build the pool without the variance; that the variance is only needed for a portion of the proposed fence; that the corner lot and fence requirement for an in-ground pool create a unique situation; that the variance is

necessary to enable reasonable use of the Property; that the difficulty was not created by the Applicants; and that the variance will not alter the essential character of the neighborhood.

Ms. Tankleson testified that she suffers from a disability; that she needs the pool for exercise; that the pool had to be of a certain length in order to swim laps; and that the pool had to be located in its location due to the location of geothermal wells on the Property.

Mr. Reverdy testified that, had they known at the time of the previous application of the fence height requirement, they would have included that request in their prior 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. 11693 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The fence requirement for an in-ground pool creates a unique situation;
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 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. 11694 – Central Storage at Harbeson, LLC – seeks a special use exception to place a billboard (Section 115-159.5 and 115-83.6C of the Sussex County Zoning Ordinance). The property is located on the north side of Lewes-Georgetown Highway (Route 9) approximately 509 feet west of Harbeson Road. 911 Address: 23673 Lewes-Georgetown Highway, Harbeson. Zoning District: CR-1. Tax Map No.: 2-35-30.00-8.02.

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 stated that the Office received a letter of no objection from the Delaware Department of Transportation (“DelDOT”).

Mr. Sharp recused himself and advised the Board that he has a conflict of interest and that if the Board had any questions, they should direct them to Vince Robertson, Esquire. Mr. Sharp left the Council chambers.

Mark Schaeffer 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 to place a billboard; that the proposed billboard will be placed on a property that is zoned CR-1; that the surrounding properties consist of a cemetery, gas station, shops, an abandoned building, and Compass Point survey company; that DelDOT will be expanding the nearby intersection, which will give more visibility to the proposed billboard; that DelDOT will have to remove existing trees on the adjacent property for the expansion of the intersection; that there will also be a stormwater management pond installed on the adjacent property; that the billboard will meet all setback, separation, square-footage, and height requirements for a billboard; that the proposed billboard will be a steel monopole structure; that the proposed billboard will measure 10 feet by 30 feet and be twenty-five (25) feet tall; and that the proposed billboard will not substantially adversely affect the uses of the neighboring and adjacent properties.

Mr. Schaeffer, under oath, affirmed the statements made by Mr. Hutt.

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 Special Use Exception Application No. 11694 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. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception 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. 11695 – Gerald W. Hocker, Trustee and Emily W. Hocker, Trustee – seek a special use exception to replace two (2) billboards and variances from the maximum height, the maximum square footage, side yard setback, and distance from a residential dwelling requirements (Sections 115-159.5B, 115-159.5B(3), 115-159.5C, 115-210A(3)(p), and 115-80C of the Sussex County Zoning Ordinance). The property is located at the southeast corner of Atlantic Avenue and Roxana Road. 911 Address: 34960 Atlantic Avenue, Ocean View. Zoning District: C-1. Tax Map No.: 1-34-12.00-330.01.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received four (4) letters in support of the Application and read the letters into the record and had not received any correspondence in opposition to the Application.

Gerald Hocker, Jr. was sworn in to testify about the Application. David Hutt, Esquire, presented the case on behalf of the Applicants and submitted exhibits for the Board to review.

Mr. Hutt presented the case and stated that the Applicants are requesting a special use exception to replace two (2) billboards, a variance of six (6) feet from the twenty-five (25) feet height requirement for a billboard, a variance of three-hundred (300) square-feet from the three-hundred (300) maximum square footage requirement for a billboard, a variance of fourteen (14) feet from the fifty (50) feet side yard setback requirement for a billboard, a variance of 45.5 feet from the three-hundred (300) feet separation requirement from a neighboring dwelling, and a variance of 171.3 feet from the three-hundred (300) feet separation requirement from a neighboring dwelling; that the Applicants seek to replace two existing billboards; that the existing billboards are located on the same property as the Hocker Super Center at the intersection of Route 26 and Route 17; that the Applicants have owned the Property since the 1980s; that the Property is zoned C-1 which is the appropriate zoning district for off-premise signs; that the Property is located along a busy corridor and consists of numerous businesses; that the existing billboards are wooden structures with eight (8) support poles and each board measures 12 feet by 24 feet; that the proposed billboard will be a single steel monopole structure and each sign facing will measure 10 feet by 30 feet; that the Board approved the existing billboards in August 2000; that the existing billboards are located near the entrance to the Hocker Super Center; that a stormwater management pond is located behind the billboards which prevents them from being moved away from the entrance; that the proposed billboard structure will be located in the same location as the existing billboards; that DelDOT has no objection to the Application; that the billboards will be 31 feet tall; that the proposed height of the billboards will help with current issues the current billboards create; that the existing billboards interfere with the traffic, visibility, and do not allow enough room for proper sign maintenance; that the proposed billboard will have a catwalk; that the catwalk will provide a safety to anyone maintaining the signage on the proposed billboard; that a catwalk cannot be placed on a billboard 25 feet tall because it would then interfere with the traffic entering the Property; that the extra height will provide more room for large vehicles entering and exiting the Property; that the billboard signs will be 10 feet tall rather than 12 feet tall so as to minimize the height of the sign structure; that the use will not substantially adversely affect the uses of the neighboring and adjacent properties; that the nearby properties have already developed and the existing billboards did not affect that development; that the proposed billboard will not alter the character of the neighborhood since there are other billboards in the area; that this application is consistent with other applications for replacement billboards which have been approved recently by the Board; that the proposed billboard is a safer structure than the existing billboards; that the Property is unique due to changes required by DelDOT in 2000; that the proposed location is the only available location for the proposed billboard due to the existing structures, storm water pond, and parking lot; that the Property is already being used in this capacity; that the Property cannot otherwise be developed; that the variances will enable reasonable use of the Property; that the exceptional practical difficulty was not created by the Applicants; that the billboard will not be detrimental to the public welfare; that the proposed billboard is in the same location as the previous billboards but will be a safer structure and less intrusive on traffic in the parking lot; that neighbors immediately adjacent to the site support the Application; and that the variances sought are the minimum variances to afford relief.

Mr. Hocker, under oath affirmed the statements made by Mr. Hutt. Mr. Hocker testified that all four (4) facings have always been leased on the existing billboards; that the current vacant

board is a tenant that is out of business; and that he has a new lease pending the approval of the proposed billboard.

Mr. Hutt stated that the proposed billboard is wider than the existing billboards so it is slightly closer to the residential dwellings; that the billboard will have 4 facings with a small gap between the signs; that the billboard will not have electronic message capabilities; that the signs will be lit by traditional lighting; and that the proposed signs will be 12 square feet larger per side than the existing sign.

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.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the case be **tabled until January 25, 2016**. Motion carried 5 – 0.

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

Meeting Adjourned 10:21 p.m.