

## **MINUTES OF JULY 10, 2017**

The regular meeting of the Sussex County Board of Adjustment was held on Monday, July 10, 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 Chairman Dale Callaway presiding. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, and Mr. Brent Workman. Mr. Norman Rickard was absent. Also in attendance were Mr. James Sharp – Assistant County Attorney, and staff members Mrs. Jennifer Walls – Planning Manager and Ms. Christin Headley – Recording Secretary.

The Pledge of Allegiance was led by Mr. Callaway.

Motion by Mr. Mills, seconded by Ms. Magee, and carried unanimously to move Old Business to the beginning of the Agenda and approve the Revised Agenda as circulated and amended. Motion carried 4 – 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. 11971 – Patricia A. Barthelmess** - seeks variances from the minimum lot size requirement (Section 115-34 of the Sussex County Zoning Code). The property is located at the east side of Lagoon Lane approximately 150 feet southeast of Bay Haven Road. 911 Address: 37735 Lagoon Lane, Ocean View. Zoning District: MR. Tax Map No.: 1-34-8.00-140.04 & 140.05.

Mrs. Walls presented the case which has been tabled since June 19, 2017.

Ms. Magee recused herself from the discussion due to a conflict of interest.

The Board discussed the case.

Mr. Mills stated that the argument of the opposition focused on flooding and that he doesn't seem to think the subdivision will affect that.

Mr. Workman stated that he does not see runoff as an issue and he does not object to the variance request.

Mr. Callaway stated that the flooding and the runoff are issues for the Delaware Department of Natural Resources & Environmental Control (“DNREC”) and he is in agreement with Mr. Mills and Mr. Workman.

Mr. Mills stated that the parcel and surrounding area is zoned Medium-Residential.

The Board was then ready to take a vote.

Mr. Mills moved to approve Variance Application No. 11971 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 shallowness and size;
2. The Property is in an MR zoning district;
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 requested are the minimum variances necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Workman that the variance be **approved for the reasons stated**. Motion carried 3 – 0.

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

**Case No. 11978 – Steven Conway** - seeks variances from the front yard setback requirement (Sections 115-42 and 115-182 of the Sussex County Zoning Code). The property is located at the northeast side of Chippewa Avenue approximately 570 feet north of North Avenue. 911 Address: 28339 Chippewa Avenue, Millsboro. Zoning District: GR. Tax Map No.: 2-34-34.00-81.00-6694.

Mrs. Walls presented the case which has been tabled since June 19, 2017.

The Board discussed the case.

Ms. Magee stated that the Applicant could not find the marker for the property line, he obtained a building permit, and built the structure into the setbacks without knowledge of where the property line was.

Mr. Mills stated that the Applicant assumed the setback was measured from the road.

Ms. Magee stated that the builder should have known.

Mr. Workman and Mr. Mills stated that, if the request for a variance is denied, the Applicant will have to remove the existing porch.

Mr. Mills stated that there was no opposition and that he does not think the structure would affect the character of the neighborhood.

Mrs. Walls stated that there is a letter from Riverdale, LLC, in support of the variance.

The Board was then ready to take a vote.

Mr. Mills moved to approve Variance Application No. 11978 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique;

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 requested are the minimum variances necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Workman that the variance be **approved for the reasons stated**. Motion carried 4 – 0.

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

### **PUBLIC HEARINGS**

**Case No. 11982 – Morris L. Lewis** - seeks a variance from the rear yard setback requirement (Sections 115-25 and 115-183 of the Sussex County Zoning Code). The property is located at the southwest side of Wilson Avenue approximately 300 feet south of Lincoln Drive. 911 Address: 38788 Wilson Avenue, Selbyville. Zoning District: AR-1. Tax Map No.: 5-33-20.14-65.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application.

Morris Lewis was sworn in to testify about the Application. Raymond Tomasetti, Esquire, presented the case on behalf of the Applicant and submitted exhibits for the Board to review.

Mr. Tomasetti stated that the Applicant is requesting a variance of five (5) feet from the twenty (20) feet rear yard setback requirement for a proposed deck; that the Property is vacant; that the dwelling previously located on the Property was demolished; and that the proposed home will comply with the side and front yard setback requirements.

Mr. Lewis testified that he purchased the Property in 2003; that he demolished the previous home because it was a liability; that a portion of the previous home was an older manufactured home; that the development was created in 1967; that he had difficulty obtaining insurance for the previous home; that the previous home was underwater whenever a Nor' Easter hit the Property; that the proposed home will be located on pilings; that the previous home violated the side yard setback requirement; that the proposed home will be in the same location pertaining to the rear yard as the previous home; that the home on the adjacent Lot 28 is located close to the canal as are other homes in the area; that the Property measures 85 feet by 50 feet; that the proposed dwelling will not alter the essential character of the neighborhood; that the hardship was created by the neighboring homes being located so close to the canal; that views from the home are important; that, if the home was a single story home, no variance would be needed for the deck; that the home cannot be a single story home due to the flooding problems; that the dwelling will include a smaller second floor deck that will cover approximately 30% of the first floor deck; that all HVAC systems will be placed within the building setback areas; that there will be no sheds on the Property; that the first floor deck will be raised and will not be ground level; that the home is a Cape Cod style home; that a majority of the first floor

deck is uncovered; that the first floor deck will be 8 feet from ground level; that, if the Property was not subject to flooding, the deck could be built in compliance with the Sussex County Zoning Code; that the stairs to the dwelling and the deck will be placed within the building envelope; that parking is a problem in the community; and that the front portion of the Property is needed for parking.

Mr. Morris, 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.

Ms. Magee moved to approve Variance Application No. 11982 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique in size and due to the flooding of the lot;
2. The variance sought is the minimum variance necessary to afford relief; and
3. The request meets all the standards for granting a variance.

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

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

**Case No. 11983 – Thomas B. Haney & Tina A. Haney** - seek variances from the front yard and side yard setback requirements (Sections 115-34 and 115-183 of the Sussex County Zoning Code). The property is located at the east side of Maple Lane approximately 1,377 feet south of Cedar Road. 911 Address: 38397 Maple Lane, Selbyville. Zoning District: MR. Tax Map No.: 5-33-19.16-51.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application.

Thomas Haney and Tina Haney were sworn in, submitted pictures for the Board to review, and testified requesting a variance of 5 feet from the thirty (30) feet front yard setback requirement for a proposed addition, a variance of 0.5 feet from the ten (10) feet side yard setback requirement on the southwest side for a proposed set of stone wrapped posts, a variance of 9.2 feet from the ten (10) feet side yard setback requirement on the southwest side for an existing pergola, a variance of 9.0 feet from the ten (10) feet side yard setback requirement on the southwest side for an existing pergola, and a variance of 3.8 feet from the ten (10) feet side yard setback requirement on the northeast side for a set of stairs.

Mr. Haney testified that the pergola will be demolished so there is no need for the variances related to the pergola; that the requested variances are for a proposed addition; that he and his family are moving to the existing dwelling as their full-time residence; that the existing garage is only 20 feet deep and his truck is 22 feet long and will not fit in the garage; that he stores equipment related to his disc jockey business in the truck; that the garage will provide more open space in the front yard for parking of other vehicles; that parking is an issue in the community where cars are parking along the street; that the neighboring dwelling to the southwest encroaches into the setback area; that most of

the homes in the neighborhood are two story homes; that the proposed addition will be consistent with the homes in the development; that the Applicant proposes to repair the posts for an existing deck and to place stone around the post to enhance its appearance; that the stairs on the northeast side of the home are being removed so no variance is needed for them; that the requested 1 foot variance is for the purpose of expanding the deck posts all the way to the ground to create more support; that the bulkhead in the rear yard was just replaced; that the front property line does not match the edge of paving of Maple Lane; that there is approximately 3 feet between the edge of paving and the front property line; and that the Applicants just purchased the Property and did not construct the home.

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

Mr. Mills moved to approve Variance Application No. 11983 for the requested variances for the garage and deck posts only based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to the reinforcing posts required for the deck;
2. The variances are necessary to enable reasonable use of the Property so as to fit a business vehicle in the garage;
3. The exceptional practical difficulty was not created by the Applicants;
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 sought are not detrimental to public welfare.

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

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

**Case No. 11984 – Samuel Jay Culver & Jeanette E. Culver** - seek a special use exception for a garage / studio apartment (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located at the northeast side of Progress School Road (Route 562) at the intersection of Federalsburg Road (Route 18). 911 Address: 18731 Progress School Road, Bridgeville. Zoning District: AR-1. Tax Map No.: 1-31-13.00-32.02.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application.

Joseph Lesner was sworn in and testified requesting a special use exception for a garage / studio apartment.

Mr. Lesner testified that the apartment was built as a lean-to in 2010; that the lean-to was later enclosed for the owner's father-in-law who was in bad health at the time; that he is trying to buy the Property; that the Applicants have moved to Montana; that he has no plans to use the lean-to for an apartment; that the apartment was built in 2012; and that there were no permits issued for the apartment but he thinks the Applicants have applied for permits.

Mrs. Walls advised the Board that a Certificate of Compliance was issued for the pole barn in 2010; and that there is no building permit on file for the lean-to.

Mr. Lesner testified that there is no plan to continue using it as an apartment; that there are cooking facilities in the apartment; and that the apartment is 13 feet from the side property line.

Mr. Sharp advised Mr. Lesner that no variance has been requested for the apartment; that, if the cooking facilities are removed, no special use exception is needed but a variance from the side yard setback requirement may be needed.

Mr. Lesner testified that his neighbor does not object to the apartment; that the apartment has been on the Property since 2010 with no complaints; that the Property consisted of 23 acres but a three-acre parcel was subdivided out of the Property two weeks ago; that the pole building and the dwelling are now located on the three-acre parcel that was recently subdivided; that he still seeks permission to use the apartment; and that space for parking is available for continued use of the apartment.

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

Mr. Mills moved to approve Special Use Exception Application No. 11984 for the requested special use exception on the record made at the public hearing and because the use will not substantially adversely affect the uses of the neighboring properties. This approval was subject to the conditions that the Applicants obtain proper permits and a Certificate of Occupancy for the apartment and that the Applicants provide an updated survey to the Office of Planning & Zoning demonstrating that no variance is needed. If a variance is needed, the Applicants must apply for and obtain a variance in order for the approval of the special use exception to be valid.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted with conditions**. Motion carried 4 – 0.

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

**Case No. 11985 – DE Storage Rehoboth, LLC** - seeks variances from the front yard and side yard setback requirements and a variance from the height requirement (Section 115-81, 115-82, 115-159, and 115-159.5 of the Sussex County Zoning Code). The property is located at Bluebird Lane and Coastal Highway (Route 1). 911 Address: 19659 Bluebird Lane, Rehoboth. Zoning District: C-1. Tax Map No.: 3-34-13.00-309.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of the Application and read the letter into the record, and no correspondence in opposition to the Application.

Terry Strine and Casey Kenton were sworn in, submitted exhibits for the Board to review, and testified requesting a variance of 10 feet from the twenty-five (25) feet height requirement for a

proposed sign and a variance of 18.5 feet from the twenty (20) feet side yard setback requirement on the east side for a proposed sign.

Mr. Strine testified that he is a member of DE Storage, LLC; that the Property is unique; that when the Applicant acquired the Property, the Applicant discovered that the existing sign advertising the Applicant's business encroaches onto the neighboring property by 1.8 feet; that the previous owner failed to disclose the encroachment to the Applicant; that the previous owner had been sending lease payments to the neighbor who owned the neighboring Crabhouse property until eight (8) years ago; that the neighbor required a significant lease payment; that the existing sign is considered an off-premises sign and is non-conforming as to height, size, and setbacks; that the sign has been in its present location for approximately 25 years; that the Applicant proposes to remove the sign and erect a new sign on the Property; that the proposed sign will meet the front yard setback requirement but will not meet the side yard setback requirement; that the Applicant accesses Route 1 from Blue Bird Lane, which is a roadway measuring 30 feet wide, and the sign will be located adjacent to that roadway; that the Applicant's business is located approximately 575 feet from Route 1; that the proposed sign will be compliant as to size; that the proposed sign will not comply as to height so as not to disturb the visibility of signage on neighboring property; that the proposed sign will improve the neighborhood; that the proposed sign will be 13 feet lower than the existing sign; that the sign cannot be placed farther from the side property line without disturbing the Applicant's vehicular access to Route 1; that the Applicant owns two-thirds (2/3) of Blue Bird Lane; that the other owner of Blue Bird Lane has executed an easement agreement to allow for the proposed sign; and that the neighbor wants the existing sign off of its property.

Mr. Kenton testified that the existing sign is a standalone sign and will be removed; that the existing sign is 48 feet tall; that the Applicant discussed the sign proposal with the owner of the neighboring property; that the proposed sign is 13 feet shorter than the existing sign; that the existing sign consists of 332 square feet; and that the proposed sign will consist of 198 square feet.

Mr. Sharp advised the Board of the change in the sign ordinance passed last year which altered the definition of an on-premises sign.

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

Mr. Mills moved to approve Variance Application No. 11985 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 shape;
2. The variances sought are necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty has not been 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 sought are not detrimental to public welfare.

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

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

**Case No. 11986 – Dawn M. Brinkman** - seeks variances from the side yard setbacks (Sections 115-42, 115-181, and 115-183 of the Sussex County Zoning Code). The property is located at the south side of Blue Teal Road approximately 1,174 feet northeast of Swann Drive. 911 Address: 37042 Blue Teal Road, Selbyville. Zoning District: GR. Tax Map No.: 5-33-12.16-487.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application.

Dawn Brinkman 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 8.2 feet from the ten (10) feet side yard setback requirement on the north side for a proposed HVAC system, a variance of 4.0 feet from the ten (10) feet side yard setback requirement on the north side for a proposed dwelling, a variance of 7.0 feet from the ten (10) feet side yard setback requirement on the north side for a proposed fireplace, a variance of 4.4 feet from the ten (10) feet side yard setback requirement on the south side for a proposed shed, a variance of 4.4 feet from the ten (10) feet side yard setback requirement on the south side for a proposed porch, and a variance of 4.4 feet from the ten (10) feet side yard setback requirement on the south side for a proposed shed; that the Property is in the Swann Keys development; that the Property borders a lagoon in the rear; that the lot measures 40 feet by 100 feet; that the request is for a proposed dwelling; that the Applicant has owned the Property for approximately 10 years; that the Applicant is proposing to replace the existing manufactured home with a new dwelling; that the proposed dwelling is 24.4 feet wide by 61 feet long; that the lot size restricts the building envelope; that the Property is unique due to its narrowness; that the narrowness of the Property has created an exceptional practical difficulty for the Applicant because a modern home cannot be placed on the Property without a variance; that the variances are necessary to enable reasonable use of the Property; that the exceptional practical difficulty was not created by the Applicant but by the original layout of Swann Keys; that Swann Keys was originally developed as manufactured home community but the community has evolved to a community with newer homes replacing the older manufactured homes; that the variances requested are the minimum variances necessary to afford relief; that the variances will not alter the essential character of the neighborhood; that the improvements will be consistent with similar improvements in the neighborhood; that numerous variances have been granted in the neighborhood due to the narrow lots; that 18 nearby lots, including 4 adjacent lots, have been granted variances; and that the new homes in the neighborhood have increased property values in the neighborhood.

Mrs. Brinkman, under oath, affirmed the statements made by Mr. Fuqua.

Mrs. Brinkman testified that the existing manufactured home is almost 40 years old; and that the proposed dwelling will be 1.5 stories tall.

Mr. Fuqua stated that parking is an issue; and that the Property will have room for only 2 parking spaces.



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

Ms. Magee moved to approve Variance Application No. 11982 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 size of the lot;
2. There is no possibility the Property can be developed within strict conformity with the Sussex County Zoning Code;
3. The exceptional practical difficulty has not been created by the Applicant;
4. The proposed improvements will improve the neighborhood; and
5. The variances sought are the minimum variances necessary to afford relief.

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

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

**Case No. 11987 – Kathleen Fowler** - seeks a special use exception to operate a daycare facility (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located at the south side of Seashore Highway (Route 18) approximately 1,250 feet east of Royetta Lane (Route 528). 911 Address: None Available. Zoning District: AR-1. Tax Map No.: 2-31-7.00-34.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application.

Marcella Camara-Macaly, Elton Brown, and Melody Hines were sworn in and testified requesting a special use exception to operate a day care facility.

Ms. Camara-Macaly testified that the Applicant operates a daycare at another location in Long Neck; that the Applicant proposes to open a second location because there is a need for child care centers; and that the current daycare is at maximum capacity with a waiting list.

Ms. Hines testified that, when the Applicant looked for a second location, the Applicant took into consideration the new housing, schools, and medical buildings in the area; that the Property is an ideal location for a childcare center; that the daycare will not substantially affect adversely the uses of neighboring and adjacent properties; that the hours of operation will be Monday through Friday from 6:30 a.m. to 6:30 p.m.; that the daycare will have adequate fencing to protect children and neighbors; that there is an existing driveway and a parking lot will be available and will be regulated by the Delaware Department of Transportation (“DelDOT”); that the proposed sign will be within the regulations of the Sussex County Zoning Code; and that noise and traffic generated by the daycare will not be an issue.

Ms. Camara-Macaly testified that they are purchasing the Property from Ms. Fowler; that the facility will hold around 150 children; that the proposed building will consist of 7,200 square feet;

that the Property is approximately 7 acres in size; that the neighboring properties are used for agricultural or residential uses; and that the Property is currently vacant.

Corie Wingate was sworn in to testify in support of the Application. Ms. Wingate testified that her son attends the current day care and she supports the center and its growth.

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 moved to approve Special Use Exception Application No. 11987 for the requested special use exception on the record made at the public hearing and because the use will not substantially adversely affect the uses of the neighboring properties.

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

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

**Case No. 11988 – Douglas A. Keller & Patricia S. Keller** - seek variances from the front yard setback requirements (Sections 115-34 and 115-182 of the Sussex County Zoning Code). The property is located at the southeast side of West Virginia Avenue approximately 242 feet northeast of North Bayshore Drive (Route 16B). 911 Address: 1 West Virginia Avenue, Broadkill Beach. Zoning District: MR. Tax Map No.: 2-35-4.13-41.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of the application and read the letter into the record, and no correspondence in opposition to the Application.

Douglas Keller and Patricia Keller were sworn in to testify about the Application. Shannon Carmean Burton, Esquire, presented the case on behalf of the Applicants and submitted exhibits for the Board to review.

Mrs. Burton stated that the Applicants are requesting a variance of 19.5 feet from the thirty (30) feet front yard setback requirement for proposed steps and a variance of 16.5 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling; that the Applicants propose to replace the existing dwelling with a new dwelling; that the Property is currently improved with a non-conforming dwelling and shed; that the dwelling was constructed around 1960; that the existing dwelling has a setback of 9 feet and the stairs to the home have a setback of 3.7 feet; that the Applicants plan to remove the shed once the septic system is installed; that the Property is zoned MR; that the Property is unique due to its “L” shape; that the Property abuts the Delaware Bay; that the existing dwelling has ground level living space and a basement; that the existing home is considered to be grandfathered by DNREC; that the uniqueness of the Property has created the exceptional practical difficulty; that the proposed dwelling will be constructed to minimize potential damage from storms and flooding; that the building envelope is reduced due DNREC building restrictions; that the

proposed dwelling will comply with side yard and rear yard setback requirements; that the proposed dwelling will encroach less into the front yard setback than the existing dwelling; that the home will be placed on pilings; that the Applicants have received a septic permit; that there is no possibility the Property can be developed in strict conformity with the Sussex County Zoning Code and the variances are necessary to enable reasonable use of the Property; that the Applicants purchased the Property in 1996; that the new dunes completely block the Applicants' view of the Delaware Bay; that the Applicants have designed the proposed dwelling to minimize damage from floods and storms; that the exceptional practical difficulty has not been created by the Applicants; that the Applicants did not create the size of the lot or place the existing home on the lot; that the variances, if approved, will not alter the essential character of the neighborhood or impair the use of neighboring properties; that the variances will not be detrimental to the public welfare; that nearby properties have also received variances; that the variances requested represent the minimum variances to afford relief and the least modifications of the regulation at issue; and that the proposed dwelling will reduce the size of the existing front yard setback encroachment.

Mr. and Mrs. Keller, under oath, affirmed the statements made by Mrs. Burton.

Mrs. Keller testified that the proposed dwelling is to be located in a position that will not block their neighbor's view of the Delaware Bay; that the proposed location of the dwelling was the only place where the home could be placed which met the DNREC requirements; that the unique shape of the Property also limited the placement options for the home; and that the Applicants wanted to place the home as far away from the Delaware Bay as possible.

Mr. Keller testified that DNREC required that the septic system be placed in the rear portion of the Property.

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

Mr. Mills moved to approve Variance Application No. 11988 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 "L" shape and DNREC's requirements;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty has not been created by the Applicants;
4. The variances will not be detrimental to the public welfare;
5. The variances sought 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. Mills, seconded by Ms. Magee, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 4 – 0.

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

**Case No. 11989 – Leonard Chatham Marsch** - seeks a variance from the side yard setback requirement (Section 115-34 of the Sussex County Zoning Code). The property is located at the

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northeast corner of Loganberry Court and Loganberry Lane. 911 Address: 101 Loganberry Court, Rehoboth Beach. Zoning District: MR. Tax Map No.: 3-34-13.00-423.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received three (3) letters in support of the Application and read the letters into the record, and no correspondence in opposition to the Application.

Eva Morrison was sworn in to testify about the Application. Shannon Carmean Burton, Esquire, presented the case on behalf of the Applicant and submitted exhibits for the Board to review.

Mrs. Burton stated that the Applicant is requesting a variance of 1.7 feet from the ten (10) feet side yard setback requirement on the east side for an existing porch; that Ms. Morrison is a predecessor in title; that the dwelling was constructed in 1979; that the porch was constructed in 1982 and was later enclosed in 1989; that permits were issued for the porch and its later enclosure but no certificates of compliance were issued; that the Property is located in the Breezewood subdivision; that the exceptional practical difficulty is due to the uniqueness of the Property; that there is no possibility that the Property can be developed in strict conformity with the Sussex County Zoning Code; that the variance is necessary to enable reasonable use of the Property; that the exceptional practical difficulty was not created by the Applicant; that the Applicant purchased the Property in April 2017; that a survey prepared for closing uncovered the encroachment; that Ms. Morrison inherited the Property from her mother in 2016; that Ms. Morrison was previously unaware of the encroachment; that the variance will not alter the essential character of the neighborhood; that the variance will not be detrimental to the public welfare; that the Applicant and Ms. Morrison are unaware of any complaints about the location of the porch; that neighbors have submitted letters supporting the Application; that there is a natural forested buffer on the perimeter of the Property; and that the variance requested represents the minimum variance to afford relief and is the least modification possible of the regulation at issue.

Ms. Morrison, under oath, affirmed the statements made by Mrs. Burton.

Mr. Sharp advised the Board that Loganberry Lane is considered the front yard and Loganberry Court is considered the side yard.

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

Mr. Mills moved to approve Variance Application No. 11989 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 its shape;
2. There is no possibility the Property can be developed in strict conformity with the Sussex County Zoning Code;
3. The variance is necessary to enable reasonable use of the Property;
4. The exceptional practical difficulty has not been created by the Applicant;
5. The variance sought will not alter the essential character of the neighborhood; and
6. The variance sought is the minimum variance necessary to afford relief.

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

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

**Case No. 11990 – Mark Gruzin** - seeks a variance from the front yard setback requirement (Section 115-34 of the Sussex County Zoning Code). The property is located at the west side of Dune Road approximately 180 feet north of Evergreen Road. 911 Address: 9 Dune Road, Bethany Beach. Zoning District: MR. Tax Map No.: 1-34-17.16-88.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application.

Mark Gruzin 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 5.0 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling; that the Property is located south of Bethany Beach; that the Property measures 60 feet wide by 120 feet deep; that the Applicant plans to demolish the existing home and replace it with the proposed dwelling; that the Applicant plans to install a pool in the rear yard for a family member with special needs; that the existing house has a front yard setback of 25.2 feet; that the proposed house will have a front yard setback of 25 feet; that a variance was granted to a prior owner for the existing dwelling; that the proposed dwelling is similar to the existing home that has been there for 25 years; that the development is an older development created in 1959; that the development has private restrictive covenants which allow for a front yard setback of 25 feet; that the development was created prior to the enactment of the Sussex County Zoning Code; that the Board has approved six (6) front yard variances along Dune Road since 2000; that a unique situation exists; that the variance is necessary to enable a reasonable use of the Property; that the exceptional practical difficulty was not created by the Applicant; that the variance will not alter the essential character of the neighborhood; and that the requested variance is the minimum variance necessary to afford relief.

Mr. Gruzin, under oath, affirmed the statements made by Mr. Fuqua. Mr. Gruzin testified that no structures, stairs, or HVAC system will protrude into the setback areas.

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

Ms. Magee moved to approve Variance Application No. 11990 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique;
2. There is no possibility the Property can be developed within strict conformity with the Sussex County Zoning Code;
3. The exceptional practical difficulty has not been created by the Applicant;
4. The variance sought will alter the essential character of the neighborhood; and

5. The variance sought is the minimum variance necessary to afford relief.

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

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

### **ADDITIONAL BUSINESS**

#### **Reorganization**

Mr. Callaway appointed Mrs. Walls as Acting Chairman for the purpose of holding an Election of Officers.

Mrs. Walls opened the nominations.

Motion by Mr. Mills, seconded by Mr. Workman, to nominate Mr. Callaway as Chairman. Motion carried 4-0.

Motion by Mr. Workman, seconded by Ms. Magee, to nominate Mr. Mills as Vice Chairman. Motion carried 4-0.

Mrs. Walls closed the nominations and turned the meeting over to Mr. Callaway, the re-elected Chairman.

Motion was made by Mr. Mills, and seconded by Mr. Workman to appoint Mrs. Jennifer Walls as Secretary to the Board. Motion carried 4-0.

**Meeting Adjourned 9:10 p.m.**