

MINUTES OF JULY 11, 2016

The regular meeting of the Sussex County Board of Adjustment was held on Monday, July 11, 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 James Sharp – Assistant County Attorney, and staff members Ms. Janelle Cornwell – Planning and Zoning Manager, and Mr. Daniel Brandewie – Planner I.

The Pledge of Allegiance was led by Mr. Callaway.

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

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously to approve the Minutes and Finding of Facts for May 16, 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.

PUBLIC HEARINGS

Case No. 11792 – Martin R. Spindler & K. Noel Spindler – seek a variance from the rear yard setback requirement (Sections 115-25C and 115-183C of the Sussex County Zoning Code). The property is located on the north side of Jahnigen Drive within the Hamlet at Dirickson Pond off Bayard Drive. 911 Address: 36846 Jahnigen Drive, Frankford. Zoning District: AR-1. Tax Map No.: 5-33-11.00-432.00.

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

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

Mr. Tomasetti stated that the Applicants are requesting a variance of 9.4 feet from the twenty (20) feet rear yard setback requirement for an existing deck; that Mr. Hinczynski is the seller of the Property; that the Applicants are purchasing the Property; that the Property is unique in size and shape; that the rear yard of the Property curves in towards the existing dwelling; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code; that a building permit and Certificate of Compliance were obtained for the deck; that the Homeowners Association approved the existing deck; that the sellers were unaware of any encroachments on the Property; that the Applicants did not create the difficulty; that the variance

will not alter the character of the neighborhood; that there are similar decks in the area in rear yards; and that the variance sought is the minimum variance to afford relief.

Mr. Hinczynski, under oath, affirmed the statements made by Mr. Tomasetti and testified that he was not aware of the encroachment; and that he relied on his builder to build the deck in compliance with the Sussex County Zoning Code.

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

Mr. Mills moved to approve Variance Application No. 11792 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 and the previous owner relied on the contractor to build the deck in compliance with the Sussex County Zoning Code;
2. That a certificate of compliance was issued
3. The Property cannot otherwise be developed in strict conformity the Sussex County Zoning Code,
4. The variance request is reasonable;
5. The exceptional practical difficulty was not created by the Applicants;
6. The variance will not alter the essential character of the neighborhood; and
7. The variance sought is the minimum variance 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. Workman – yea, Mr. Rickard – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 11793 – Edward Hinczynski & Caryl Baff Hinczynski – seek a variance from the side yard setback requirement (Section 115-25C of the Sussex County Zoning Code). The property is located on the north side of Willow Drove approximately 474 feet west of Lakeview Road. 911 Address: 23560 Willow Drive, Millsboro. Zoning District: AR-1. Tax Map No.: 1-33-19.00-367.00.

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

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

Mr. Tomasetti stated that the Applicants are requesting a variance of 1.9 feet from the fifteen (15) feet side yard setback requirement for an existing garage; that the Applicants purchased the Property with the existing garage; that the previous owner built the garage; that a building

permit and a Certificate of Compliance were obtained for the garage; that the Homeowners Association approved the garage; that the Property is narrow making it unique; that the exceptional practical difficulty was not created by the Applicants; that the garage has been on the Property for eight (8) years; that the garage does not alter the character of the neighborhood; that the use is not detrimental to the public welfare; that the variance requested is the minimum variance to afford relief; and that the garage cannot be moved into compliance.

Mr. Hinczynski, under oath, affirmed the statements made by Mr. Tomasetti, and testified that he purchased the Property in April 2016; that the previous owner was unaware of the encroachment; that the garage was built in 2008; that the garage is on a concrete slab; and that the septic system is in the front 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. 11793 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique as it is a through lot with a limited building envelope;
2. The exceptional practical difficulty was not created by the Applicants;
3. The garage was placed on the Property by a prior owner;
4. The variance is necessary to enable reasonable use of the Property;
5. The variance will not alter the essential character of the neighborhood;
6. The use is not detrimental to the public welfare; and
7. The variance sought is the minimum variance 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. Workman – yea, Mr. Rickard – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 11794 – Leonard L. Mathias & Susan J. Mathias – seek variances from the front yard setback requirement (Section 115-42B and 115-185A of the Sussex County Zoning Code). The property is located on the north side of Cherry Lane approximately 336 feet east of Cypress Drive in Angola Neck Park. 911 Address: 34295 Cherry Lane, Lewes. Zoning District: GR. Tax Map No.: 2-34-12.18-123.00.

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

Susan Mathias was sworn in to testify about the Application. John Sergovic, Esquire, presented the case on behalf of the Applicants and submitted exhibits for the Board to review.

Mr. Sergovic stated that the Applicants are requesting a variance of 5.2 feet from the thirty (30) feet front yard setback requirement for an existing carport, a variance of 28.8 feet from the thirty (30) feet front yard setback requirement for an existing addition to the dwelling, and a variance of 26.1 feet from the thirty (30) feet front yard setback requirement for an existing dwelling; that the Applicants discovered that a portion of the existing dwelling was located in an adjacent cul-de-sac; that the cul-de-sac was never actually developed and exists only on the development plan; that the development was created by Eugene Bookhammer; that the Property is irregularly shaped and unique due to the cul-de-sac; that the unique shape of the Property has created an exceptional practical difficulty for the Applicants; that the builder placed the dwelling in the cul-de-sac under the mistaken belief that there was no cul-de-sac; that the builder believed Cherry Lane to be a straight road and that the edge of the road was the front line of the Property; that a certificate of compliance was issued; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code; that an adverse possession claim against the homeowners association was filed in the Court of Chancery; that Cherry Lane is narrow; that the homeowners association was not active and the Court appointed a receiver on behalf of the association; that a settlement agreement was reached between the Applicants and the association whereby a portion of the paper cul-de-sac was deeded to the Applicants; that this settlement agreement was approved by the Court of Chancery; that the transcript of the hearing was submitted to the Board for review; that the improvements are now out of the cul-de-sac but encroach into the setback areas; that the exceptional practical difficulty was not created by the Applicants since they relied upon contractors to place the structures in compliance with the Sussex County Zoning Code; that the existing manufactured home and addition cannot be moved into compliance; that the Applicants received a Certificate of Compliance for the existing carport; that the cul-de-sac only exists on paper and errors were made when measuring from property lines; that the manufactured home was placed and received a Certificate of Compliance in 2004; that the addition was constructed and received a Certificate of Occupancy in 2005; that there have been no violations or complaints about the improvements on the Property until suit was filed in the Court of Chancery; that the Applicants have made every effort to bring the Property into compliance; that an existing shed has been moved into compliance; that the variances do not alter the character of the neighborhood; that the variances are the minimum variances to afford relief; and that Cherry Lane was originally a straight road on the original subdivision plan for the community but the plan was amended in the 1970s to allow for a cul-de-sac.

Ms. Mathias, under oath, affirmed the statements made by Mr. Sergovic and testified that the structures cannot be moved into compliance; that there have been no complaints from neighbors in the past; and that she relied on contractors to build and place the structures in compliance with the Sussex County Zoning Code.

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

Mr. Rickard moved to approve Variance Application No. 11794 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The paper cul-de-sac makes this property 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 Applicants;
4. The variances will not alter the essential character of the neighborhood;
5. The use will not be detrimental to the public welfare; and
6. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. 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. 11795 – Herman Wilkerson, Charles Wilkerson, Calvin Wilkerson, Robert Wilkerson, & Edith Rickards, Executrix – seek a special use exception to retain a manufactured home type structure (Sections 115-23C(15) and 115-210A(3)(q) of the Sussex County Zoning Code). The property is located on the northeast corner of Pear Tree Road and Lowes Crossing Road. 911 Address: 21473 Lowes Crossing Road, Millsboro. Zoning District: AR-1. Tax Map No.: 3-33-7.00-24.00.

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

Edith Rickards and Calvin Wilkerson were sworn in and testified requesting a special use exception to retain a manufactured home type structure.

Ms. Rickards testified that she and her siblings inherited an eleven (11) acre property and the existing manufactured home; that her brother Calvin Wilkerson is interested in keeping the manufactured home; that the manufactured home has been on the Property for twenty (20) years; that the Applicants would like to subdivide one (1) acre from the Property and retain the manufactured home thereon; that the neighbors have no objection to the Application; that the use will not substantially adversely affect the uses of the neighboring and adjacent properties; and that family owns the surrounding properties.

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

Mr. Rickard moved to approve Variance Application No. 11795 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. 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. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

Case No. 11796 – Joan Clarke – seeks variances from the front yard, side yard and rear yard setback requirements (Section 115-34B of the Sussex County Zoning Code). The property is located on the north side of Virginia Avenue approximately 159 feet east of North Bay Shore Drive. 911 Address: 6 Virginia Avenue, Milton. Zoning District: MR. Tax Map No.: 2-35-4.13-44.00.

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

Joan Clarke and Buddy Millman, of Beracah Homes, were sworn in and testified requesting a variance of twenty-five (25) feet from the thirty (30) feet front yard setback requirement, a variance of five (5) feet from the ten (10) feet side yard setback requirement on the southwest side, and a variance of five (5) feet from the ten (10) feet rear yard setback requirement for a proposed dwelling.

Ms. Clarke submitted exhibits to the Board to review.

Mr. Millman testified that the Applicant inherited the Property; that the Property is located in Broadkill Beach; that the Applicant has applied for a septic permit and a construction permit from the Delaware Department of Natural Resources and Environmental Control (“DNREC”); that it is not desirable to construct the dwelling to the east of the driveway easement located on the Property; that the existing porch is 1.5 feet from the side property line; that the dwelling is 4.6 feet from the rear property line and 4.4 feet from the front property line; that existing site plan shows the location of the existing dwelling and porch and the encroachments that existed; that the proposed dwelling will reduce the encroachments on all three (3) sides and will encroach less into those setback areas than the existing dwelling; that the existing dwelling is a fire hazard; that the proposed dwelling is modest in size; that the proposed two-story dwelling will measure 18 feet by 40 feet and will be on pilings; that the Property is unique because the existing dwelling does not comply with the setback requirements; that a driveway easement to the neighboring property existed prior to the Applicant’s acquisition of the Property; that the new septic system needs to go on the west side of the driveway; that the Applicant is attempting to place a dwelling and septic system in an area measuring approximately 50 feet by 50 feet inclusive of setback areas; that the setback requirements would limit the buildable area to 10 feet deep; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code; that over 50% of the Property is unable to be improved because of the dunes and the driveway easement; that DNREC will not allow for a septic system to be placed within the dune line; that the existing dwelling is uninhabitable; that the exceptional practical difficulty was not created by the Applicant; that the proposed dwelling will not alter the character of the neighborhood; that the dwelling will improve the character of the neighborhood; that other homes in the area encroach into the setback areas; that the proposed dwelling will not be taller than other new homes in the area; that the

proposed decks will face the water; that the only parking area will be under the dwelling; that the proposed dwelling will increase property values of neighboring properties; and that the Property is useless without variances.

Joan Clarke testified that she inherited the Property; that over the years portions of the Property were given away by a prior owner; that the neighbors have approached her about acquiring her property; that the neighbors' dwelling encroaches into the setback areas as well; that the previous owners felt bullied when granting the driveway easement; that the driveway is right in the middle of the Property; that the proposed dwelling will be safer than the existing dwelling; and that neighbors in opposition benefit from the driveway.

Mr. Millman testified that DNREC prohibits the construction of a dwelling or the placement of a septic system to the northeast of the driveway; that the proposed dwelling will be placed on pilings to meet flood zone requirements; that they looked at multiple house designs to find one to fit the lot; and that the dwelling cannot be turned due to the location of the septic system.

The Board found that four (4) parties appeared in support of the Application.

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

Mr. Mills moved to approve Variance Application No. 11796 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The driveway easement and DNREC restriction line make this property unique;
2. The Property cannot be otherwise developed in strict conformity with the Sussex County Zoning Code;
3. The variances sought are the minimum variances necessary to afford relief;
4. The variances are necessary to enable reasonable use of the Property;
5. The exceptional practical difficulty was not created by the Applicant;
6. The existing dwelling is detrimental to the public welfare since it is uninhabitable;
7. The variances will not alter the essential character of the neighborhood;
8. The use will not impair the uses or development of the neighboring and adjacent properties; and
9. The variances are the minimum variances necessary to afford relief.

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. 11797 – Gregory Wheeler & Chaminie Wheeler – seek a variance from the front yard setback requirement (Section 115-34B of the Sussex County Zoning Code). The property is located on the west side of Hassell Avenue approximately 283 feet north of Assawoman Street. 911 Address: 35211 Hassell Avenue, Bethany Beach. Zoning District: MR. Tax Map No.: 1-34-20.12-33.00.

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

Mark Redden was sworn in and testified requesting a variance of eight (8) feet from the thirty (30) feet front yard setback requirement for an existing dwelling; that the Applicants recently purchased the Property; that the Property is located in the FEMA flood zone; that the Applicants need to raise the dwelling due to a significant amount of water in the crawl space; that the Property is unique because the existing structure is non-conforming and was constructed prior to the FEMA flood maps; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code; that the exceptional practical difficulty was not created by the Applicants; that the Applicants did not construct the house; that the variance will not alter the essential character of the neighborhood; that the existing house will simply be raised; that there are taller dwellings in the area; that the variance requested is the minimum variance to afford relief; that new stairs and a landing will be built to access the dwelling and front porch; that the existing house is not designed to allow for an internal staircase; that the stairs and landing are necessary to access the dwelling; that the stairs and landing have been designed to minimize the encroachment into the setback area; that the lot is oddly shaped; that the variance is necessary to enable reasonable use of the Property; that the dwelling will be raised eight (8) feet; that there will be parking available under the dwelling; and that the lots were developed in the 1950s or 1960s.

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

Mr. Mills moved to approve Variance Application No. 11797 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The flooding in the area and the flood zone requirement make the 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 dwelling was constructed by a prior owner;
5. The variance will not alter the essential character of the neighborhood;
6. The use will not be detrimental to the public welfare; and
7. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Rickard, 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. 11798 – Rod Carson & Beth Carson – seek variances from the front, yard, side yard, and rear yard setback requirements (Sections 115-34B and 115-185F of the Sussex County Zoning Code). The property is located on the southwest side of Lagoon Lane approximately 302 feet south of Bay Haven Street. 911 Address: 37740 Lagoon Lane, Ocean View. Zoning District: MR. Tax Map: 1-34-8.00-133.00.

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

Mark Redden was sworn in and testified requesting a variance of 7.3 feet from the thirty (30) feet front yard setback requirement to extend a porch, a variance of 7.5 feet from the thirty (30) feet front yard setback requirement to extend a porch, a variance of 1.7 feet from the five (5) feet side yard setback requirement for an existing shed, a variance of 1.9 feet from the five (5) feet side yard setback requirement for an existing shed, a variance of 0.9 feet from the five (5) feet rear yard setback requirement for an existing shed, and a variance of one (1) foot from the five (5) feet rear yard setback requirement for an existing shed; that the existing dwelling is very old and likely was constructed in the 1950s or 1960s; that the dwelling was constructed in the flood zone; that the existing dwelling needs to be raised due to flooding issues; that a previous storm had caused flood damage to the existing dwelling; that the rear yard extends into the lagoon; that the Applicants have suffered damage from two (2) storms in the last ten (10) years; that the dwelling will be raised eight (8) feet; that the existing carport and sheds will be removed; that storage will be located under the dwelling once it is raised; that the carport and sheds encroached into the setback areas; that the Applicants purchased the Property as it exists; that the variances do not alter the character of the neighborhood; that the carport is unattractive and its removal will improve the aesthetics of the neighborhood; that the property values in the neighborhood should increase due to these improvements; that the variances are the minimum variances to afford relief; that raising the dwelling is more economical than building a new dwelling; that new stairs are needed to access the front porch once the house is raised; that the shed in the rear yard will either be removed or brought into compliance; that the lagoon and flooding make the Property unique; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code; that the difficulty was not created by the Applicants; and that the majority of neighbors are vacationers and the Applicants know of no complaints.

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

Mr. Rickard moved to approve Variance Application No. 11798 for the requested front yard variances for the dwelling and porch and to deny the side and rear yard variances for the existing shed since the Applicants will be removing the existing shed or moving the shed into compliance based on the record made at the public hearing and for the following reasons:

1. The flooding issues and flood zone requirements make the Property 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 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. Mills, and carried unanimously that the variances for the front yard be **granted for the reasons stated and the variances for the side and rear yard be denied 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. 11799 – Home Team Realty – seek a variance from the front yard setback requirement (Section 115-82B of the Sussex County Zoning Code). The property is located on the east side of Sussex Highway approximately 811 feet south of Sycamore Road. 911 Address: 30661 Sussex Highway, Laurel. Zoning District: C-1. Tax Map No.: 2-32-12.00-132.02.

Ms. Cornwell presented the case and read two (2) letters of support to the Application into the record and stated that the Office of Planning and Zoning had not received any correspondence in opposition to the Application.

Isabelle Cissnaros was sworn in and testified requesting a variance of twenty-nine (29) feet from the sixty (60) feet front yard setback requirement for a proposed addition; that she leases the Property from the Applicant; that she runs a Mexican Restaurant on the Property; that the proposed addition will be a vestibule; that the existing structure was built within the regulations existing at the time it was constructed; that the setback regulations have changed; that the vestibule can only be built in front of the building; that the proposed addition cannot be built on the side due to the existing parking area; that the proposed addition cannot be built to the rear of the building due to the existing kitchen and septic system; that the interior cannot accommodate the addition without losing seating in the restaurant; that the front of the building is the only location for available; that the vestibule will extend twelve (12) feet from the front door; that the proposed addition will provide a more desirable entrance to the restaurant; that the existing entrance allows a significant amount of flies into the restaurant; that the existing entrance also makes it difficult to maintain comfortable temperatures in the restaurant; that the proposed addition will allow the small restaurant provide a waiting area and safe entrance and exit from their small restaurant; that the vestibule will be used for wheelchair access to the restaurant as well; that the vestibule will be enclosed; that the current setback requirements cannot be met do to the location of the existing building; that the restaurant currently has handicap access but the vestibule would need to be constructed large enough to also provide reasonable wheelchair access; that the vestibule would be placed over an existing sidewalk; that there is a side entrance to the building on the north side but it is not used for customers; that a vestibule placed on the south side of the building would take up parking space if added to the building and would take up a significant amount of bar and seating space if placed inside the existing building; that the proposed addition will not be used for storage; that the Property is unique due to the need for a safe place for customers and to comply with the Americans with Disabilities Act; that the variance is necessary to enable reasonable use of the Property; that the Applicant did not construct the building; that the difficulty was not created by

the Applicant; that the variance will not alter the essential character of the neighborhood; that the neighbors support the Application; that the use will not be detrimental to the public welfare; that the variance is the minimum to afford relief; that the proposed addition will measure 8 feet wide by 12 feet deep; and that she is not aware of the distance between property line and the edge of paving for Route 13.

Donald D'Aquila was sworn in and testified in opposition to the Application and testified that he owns a property two (2) parcels over from the Property which is approximately 100 feet from the Property; that he has a car dealership on his property; that he believes the building is already compliant with the Americans with Disabilities Act; that there is no curbing prohibiting access; that he believes the Applicant could install an Air Door to solve the problems the Applicant is having with flies and weather; that the Air Door could be done without the need of a variance; that the proposed vestibule is not necessary; that the side of the Property could be used to provide access without the need of a variance; that he believes the sixty (60) feet setback requirement should be met or it may set a precedent; that he believes the character of the neighborhood would be affected by the proposed addition; that the existing buildings are all in line along the neighboring properties; that new construction would have to be set back sixty (60) feet; that he feels the Applicant is creating the difficulty; that an Air Door or a vestibule built to the side of the building would solve the Applicant's problem; that he was denied a variance in the past that protruded into the front yard setback requirement; and that the vestibule is not necessary to provide an ADA compliant entrance.

In rebuttal, Ms. Cissnaros, testified that the proposed vestibule will measure 8 feet by 12 feet; that the proposed addition cannot be built on either side of the building; that there are also bathrooms on the interior that prohibit access from the side of the building; that the building is quite old and the entrance door is not a thick door; that there is limited space within the restaurant; that there are seats near the entrance; and that she feels an Air Door would have an adverse effect on the patrons.

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

The Board found that one (1) party appeared in opposition to the Application.

Motion by Mr. Workman, seconded by Mr. Rickard, and carried unanimously that the case be **tabled until August 1, 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.

Case No. 11800 – Willard Hayes – seek a variance from the front yard setback requirement (Section 115-77A of the Sussex County Zoning Code). The property is located on the east side of Sussex Highway approximately 0.7 miles south of Iron Hill Road. 911 Address: 36959 Sussex Highway, Delmar. Zoning District: C-1. Tax Map No.: 5-32-20.00-97.01.

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

Willard Hayes was sworn in and testified requesting a variance of twenty (20) feet from the minimum twenty-five (25) feet setback requirement car sales display; that he would like to display the vehicles at his property line; that approximately eight (8) other dealerships in the area are not in compliance with the setback requirement; that he shares an entrance with the neighbors; that the trees and other nuisances were placed to block the view of his property and cause obstruction; that the entrance cannot be seen by passing traffic which creates a hazard; that, without proper braking distance, the cars miss the entrance and then park along the side of the road or pull off and back up to the entrance; that the State already has a fifty (50) feet setback from the road; that the additional twenty-five (25) feet setback creates a hardship; that car displays are attractions to people passing by; that when the cars are hard to see it can create a traffic hazard; that the Property is unique due to the shared entrance with adjacent business; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code; that the variance will not alter the essential character of the neighborhood; that the difficulty has been created by the Applicant; that the variance requested is the minimum variance to afford relief; that he has one wall sign on the building; that he had a ground sign but it was damaged in a storm; that the ground sign is difficult to see due to the obstructions of the neighboring property; that the neighbor also has a car dealership as well as a tree business and the neighbor lives on their property; that he has owned to the Property since 2003; that the setback requirement adversely affects his business and creates a danger; that he was approved for a temporary sales trailer in the past; that he has since removed the sales trailer and constructed a permanent office; that there are billboards are on neighboring properties; that he can display up to 100 vehicles on the Property in compliance with the Sussex County Zoning Code; that he has twelve (12) employees and parking spaces for each employee; that renovations, such as clearing of trees in the rear yard, would have to be made to the Property to accommodate that number of vehicles; that the septic system is in the rear of the Property; that the need for the variance is not caused by a lack of space available on the Property – rather the issue is due to the obstruction on the neighboring property; that the neighbor's trees and bushes block the view of his property; that he parks approximately 20 to 25 vehicles in the front of the Property; and that the neighbor is also in violation with the Sussex County Zoning Code.

William Toadvine was sworn in and testified in support of the Application and testified that he is the operations manager at Dreamcars; that the relationship with the neighbors has worsened over the years; that the neighbor parks van near the driveway and blocks the view of the Applicant's property; that the obstructions have created a hazard for customers of Dreamcars; that Dreamcars advertises on an adjacent billboard so that customers can see the location prior to passing it; that there are numerous violations in the area; that the neighbor has completely obstructed a portion of the driveway; that the Planning and Zoning department has been to the Applicant's property twice a month; that there are no parking signs along the Property but traffic stops just past the no parking area; that he believes the variance will benefit the area; that he believes the visibility issue will cause a serious accident sooner rather than later; that the variance

will enable customers to better see the Property and access it safely; that there is no turning lane to enter the properties; and that the variance is necessary to enable reasonable use of the Property.

Thomas Feret was sworn in and testified in support of the Application and testified that he works for the Delaware Department of Transportation (“DelDOT”); that the neighbor has put a ditch in the area and planted bamboo; that bamboo cannot be removed at ground level; that there is 25 to 30 feet of bamboo on the neighboring property; that the asphalt has prevented the bamboo from reaching the highway; that the neighbor has removed a portion of the asphalt and curbing has been removed by the neighbor, which allow the bamboo additional room to grow; and that a large vehicle is also parked to block the Applicant’s property.

Donald D’Aquila was sworn in and testified in support of the Application and testified that he is also in the auto dealership business; that cars take up a lot of space; that the front yard setback requirement for sales display creates an extreme difficulty in the sales business; that the variance is necessary to enable reasonable use; that the variance does not alter the character of the neighborhood; that numerous businesses in Sussex County are in violation of this zoning requirement; and that other variances have been granted for sales displays for this same reason.

Kelly Hales was sworn in and testified in opposition to the Application and testified that the Applicant always has a lot of cars on the Property; that she has counted 81 cars on the Property; that there are tires stored on the Property some in large trucks and other tires are located around the trucks; that the cars are always parked up to the property line; that they had approval from the State to extend their driveway by fifteen (15) feet; that she has not removed the blacktop; that she planted bamboo and erected a fence after obtaining a building permit; that the bamboo is located along the fence; that cars are parked in the front yard of the Property in violation of the Sussex County Zoning Code; that the Applicant has too many cars on his property; that there is no room for customers to pull into and turn around to exit the Property safely; that the Applicant’s customers have to back out of the Property onto the highway; that there are no parking signs posted but it makes no difference; that their access is blocked at times; that she blocks her entrance to keep the Applicant’s patrons off of her property and to prevent blocking her access; that the Delaware State Police have been called to keep people from blocking the access and parking on the side of the road; and that she has an issue with cars backing out onto the highway. Ms. Hales submitted pictures to the Board to review.

Ray Wisniewski was sworn in and testified in opposition to the Application and testified that the Applicant has too many cars on the Property; that there is not enough room for patrons to maneuver safely; that the vehicles that park along the highway create a hazard and block his view of the traffic on the highway; and that, if the Applicant is granted a variance, he feels the Applicant will use the area to increase the inventory.

Reese Hales was sworn in and testified in opposition to the Application and testified that he has on numerous occasions had to find someone to move cars that block him from entering and exiting his property; that this happens multiple times a day; that this has been an ongoing problem

for years; that the problem is there is no parking area for customers; and that the issue is not the sales display it is the lack of adequate parking.

Kelly Hales testified that the Applicant's property is not unique; that the Property consists of 1 acre; that there is a holding tank on the Property which only takes up a small portion of the lot; that the Property can be otherwise developed; that the variance will allow the Applicant to increase inventory and not address the parking issue; and that the Applicant is creating the safety issue.

In rebuttal, Willard Hayes testified that he disagrees that there is no room on his property for traffic to turn around; that cars park along the highway when they miss the entrance to the business; that visibility is the issue; that he addresses parking issues immediately; that he parks cars up to the property line and is in violation of the Sussex County Zoning Code; that, if he is unable to park in the setback area, his business will be difficult to see; that the neighbor has planted trees with intent to block his property; that without the variance the issue of visibility increases; that they have approximately 15 parking spaces available for customers; that he was not aware the flags were not permitted; that he believes the lack of visibility has hurt his business; and that the obstructions on the neighboring property have created the problem.

Reese Hales testified that there is a business nearby which is blocked by significantly more trees and that business is not affected.

The Board found that six (6) parties appeared in support of the Application.

The Board found that three (3) parties appeared in opposition to the Application.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously to **leave the case open for the opposition to provide video by July 18, 2016 to the Office of Planning and Zoning and allow the Applicant to review the video in the Office of Planning and Zoning by July 29, 2016 and submit a written statement of rebuttal in reference to the video.** 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.

OLD BUSINESS

Case No. 11786 – Robert Wooldridge & Amanda Wooldridge – seek variances from the separation requirement between units in a mobile home park, maximum lot coverage allowable in a mobile home park, and the rear yard setback requirement (Sections 115-172G(4) and 115-172G(7) of the Sussex County Zoning Code). The property is located on the east side of Old Landing Road approximately 350 feet north of Airport Road. 911 Address: 357 Magnolia Road, Rehoboth Beach. Zoning District: AR-1. Tax Map No.: 3-34-13.00-164.00-39071.

The Board discussed this case, which has been tabled since June 20, 2016.

Mr. Sharp advised the Board that there may be a need for a side yard variance for the porch which was not initially discovered. The survey appeared to have a buffer of 6 inches for placement so the variance may not be necessary. Since the side yard variance was not advertised, the Board cannot approve a side yard variance at this time.

Mr. Rickard said that the mobile home was of a reasonable size and the Property was small.

Motion by Mr. Rickard, seconded by Mr. Hudson, and carried unanimously that the variances be **granted**. 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

Reorganization

Mr. Callaway appointed Ms. Cornwell as Acting Chairman for the purpose of holding an Election of Officers.

Ms. Cornwell opened the nominations.

Motion by Mr. Mills, seconded by Mr. Hudson, to nominate Mr. Callaway as Chairman.

Motion was adopted to nominate Mr. Callaway as Chairman with a 5 – 0 vote.

Motion by Mr. Rickard, seconded by Mr. Hudson, to nominate Mr. Mills as Vice Chairman.

Motion was adopted to nominate Mr. Mills as Vice-Chairman with a 5 – 0 vote.

Ms. Cornwell 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. Rickard to appoint Ms. Janelle Cornwell as Secretary to the Board, with 5 – 0 vote.

Voted for Ms. Cornwell, as Secretary to the Board, by a 5 – 0 vote.

Meeting Adjourned 11:14 p.m.