

MINUTES OF JULY 24, 2017

The regular meeting of the Sussex County Board of Adjustment was held on Monday, July 24, 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, Mr. Norman Rickard, and Mr. Brent Workman. Also in attendance were Mr. James Sharp – Assistant County Attorney, and staff members Ms. Janelle Cornwell – Director of Planning and Zoning, Mrs. Jennifer Walls – Planning Manager, and Ms. Christin Headley – Recording Secretary.

The Pledge of Allegiance was led by Mr. Callaway.

Ms. Cornwell advised the Board that Case No. 11999 can be removed from the Agenda as no variance is needed.

Motion by Mr. Workman, seconded by Ms. Magee, and carried unanimously to remove Case No. 11999 from the Agenda and approve the Revised Agenda as circulated and amended. Motion carried 5 – 0.

Motion by Mr. Workman, seconded by Mr. Rickard, and carried unanimously to approve the Minutes and Finding of Facts for May 15, 2017. 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. 11991 – Bruce L. Reed - seeks a variance from the side yard setback requirement (Section 115-25 of the Sussex County Zoning Code). The property is located at the north side of Staytonville Road (Road 224) approximately 1,250 feet west of Blacksmith Shop Road (Route 44). 911 Address: 13881 Staytonville Road, Greenwood. Zoning District: AR-1. Tax Map No.: 1-30-11.00-1.03.

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.

Bruce Reed was sworn in and testified requesting a variance of 3.0 feet from the fifteen (15) feet side yard setback requirement on the east side for a proposed addition.

Mr. Reed testified that the Property is triangularly shaped; that the shape of the Property has made it difficult for him to develop Property; that he proposes to construct an addition to his garage; that the addition will measure 20 feet wide; that the addition will be used to house his truck; that he cannot place the addition elsewhere due to the location of the septic system and dwelling; that the Delaware Department of Natural Resources and Environmental Control (“DNREC”) determined where the septic system must be located; that the surrounding area is zoned Agricultural Residential

and neighboring lots have similar structures; that the septic system is located in the front of the dwelling; that the well is locating in the rear of the existing garage; that his neighbors have no objection to the Application; that the neighboring property to the east is used as a residence; that he could not redesign the garage to fit on the Property; and that the garage is a concrete block structure.

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

Mr. Rickard moved to approve Variance Application No. 11991 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 irregular shape and the location of the septic system;
2. The exceptional practical difficulty was not created by the Applicant;
3. The variance sought will not alter the essential character of the neighborhood; and
4. 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 carries 5 – 0.

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

Case No. 11992 – Tevy Schalfman & Linda W. Schlafman - seek a variance from the rear yard setback requirement (Section 115-34 of the Sussex County Zoning Code). The property is located at the west side of Tivoli Court approximately 119 feet off Bella Via Way. 911 Address: 32880 Tivoli Court, Ocean View. Zoning District: MR. Tax Map No.: 1-34-12.00-2463.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received three (3) letters of support and one (1) letter from the homeowners association for approval, and read those letters into the record, and received no correspondence in opposition to the Application.

Tevy Schlafman and Linda Schlafman were sworn in, submitted pictures, and a PowerPoint presentation for the Board to review, and testified requesting a variance of 4.0 feet from the ten (10) feet rear yard setback requirement for a proposed addition.

Mr. Schlafman testified that, when the Applicants purchased the Property, they were led to believe that an enclosed porch would not be a problem since the builder offered an enclosed porch as an option; that the Applicants thought the builder's costs for the porch was excessive so they chose to use a different contractor; that the plan has been submitted and approved by the homeowners association; that his neighbors support the Application; that the rear of the home faces a storm water management pond; that the porch will extend to the rear yard setback area; that there are no flooding issues in the area; that the addition will be barely visible from his next-door neighbors; that they expressed an interest in the addition when constructing the house but felt the cost was too much at that time; that the builder never mentioned the need for a variance for the porch; that the Applicants spoke with a contractor and he said that a variance would be needed; that the Property is unique due to its shape and shallowness; that the orientation of the house does not allow for the addition; that the Property is a pie-shaped lot; that the Applicants did not create

the problem; that the Applicants believed the addition was feasible when they purchased the Property; that the variance will not alter the essential character of the neighborhood; that the Applicants have worked with a contractor and architect to keep the addition consistent with the neighborhood; that the addition will extend four (4) feet into the rear yard setback area; that the Property is shallower than other lots in the neighborhood; that a smaller addition could be built but a door wide enough to allow furniture to be moved needs to be four (4) feet wide; that the addition needs to be eight (8) feet wide to accommodate this use; that the addition is similar to his neighbor's addition; that the Applicants purchased the Property in September 2016; that the Applicants explored building the addition off of the side of the house but it is not a desirable placement; that he suffers from allergies and prefers an enclosed area; and that there is no possibility that the addition could be built towards the interior of the home because the addition would not be heated or cooled.

Mrs. Schlafman testified that their builder was NV Homes; that the salesperson informed the Applicants that they could build a deck measuring 8 feet wide but could seek a variance for an addition; that the view from the rear yard is beautiful; and that the addition will have windows and fans.

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

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the case be **tabled until August 7, 2017**. Motion carried 5 – 0.

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

Case No. 11993 – Elton Ray Beauchamp - seeks a variance from the front yard setback requirement (Section 115-77 of the Sussex County Zoning Code). The property is located at the west side of Sussex Highway (Route 13) approximately 1,154 feet south of Dorothy Road. 911 Address: 34902 Sussex Highway, Delmar. Zoning District: C-1. Tax Map No.: 5-32-6.00-80.08 & 80.10.

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.

Elton Ray Beauchamp was sworn in and testified requesting a variance of twenty-five (25) feet from the twenty-five (25) feet front yard setback requirement for display of automobile sales.

Mr. Beauchamp testified that the Property is located along Route 113 and is used for automobile sales; that the Property has been used for that purpose for over twenty (20) years and complied with the Sussex County Zoning Code when it was developed; that the Property is shallow and has a septic system in the rear yard; that there is a setback of fifty (50) feet from Route 113; that the zoning regulations changed since the Property was developed; that there is no area for automobile display for sales; that he has displayed vehicles in this area for years; that he believes he is the victim of a dispute between neighbors along Route 113; that he owns rental properties on adjacent properties; that the neighbor to the south does not object to the Application; that there is no other room to display vehicles for sales; that there will be no change as the Property has been used this way for twenty (20)

years; that the 25 feet setback requirement would make the setback into the existing building; that other car dealers in the area have cars placed a similar distance from the front property line; that the display does not obstruct views of the highway from cars entering and exiting the site; that he only has space to display thirty (30) cars and ten (10) of those cars are parked in the front; and that the garage doors for the dealership are located in the front of the building and, if the setback was reduced to five (5) feet, a car would have to be moved every time a car is pulled into the garage.

Ms. Cornwell advised the Board that the Sussex County Zoning Code has not been revised regarding the setback for automobile displays.

Mr. Beauchamp testified that he was unaware that the automobile display did not meet the Code; that other dealers also violate the display requirement; that he wants to have his cars displayed on the property line but he has no objection to being required to park his cars no closer than one (1) foot from the property line; that there is approximately fifty (50) feet from the front property line to the edge of paving of Route 113; that he stores approximately thirty (30) cars on the Property; and that a portion of the Property is used for a cross-access easement for his neighbor to the north; that he is unable to park vehicles in the easement area.

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

Mr. Mills moved to approve Variance Application No. 11993 for a variance of twenty-four (24) feet for a maximum of ten (10) cars in the setback area based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to its shallowness;
2. The Property has been used as an automobile dealership for many years;
3. The exceptional practical difficulty has not been created by the Applicant;
4. The variance is necessary to enable reasonable use of the Property for automobile sales;
5. The Property cannot be developed in strict conformity with the Sussex County Zoning Code;
6. The variance will not alter the essential character of the neighborhood as it has been used for automobile sales for some time; and
7. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Mills, seconded by Ms. Magee, and carried unanimously that the variance be **granted for a maximum of twenty-four (24) feet for a maximum of ten (10) cars being displayed in the setback area, and for the reasons stated.** Motion carries 5 – 0.

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

Case No. 11994 – Charlie Clark - seeks variances from the front yard and rear yard setback requirements (Section 115-42 of the Sussex County Zoning Code). The property is located on the east side of Wynykako Avenue approximately 260 feet +/- north of River Road. 911 Address: 28467 Wynykako Avenue, Millsboro. Zoning District: GR. Tax Map No.: 2-34-34.00-84.00-55598.

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.

Charles Clark and Gil Fleming were sworn in and testified requesting a variance of 17.6 feet from the thirty (30) feet front yard setback requirement for a dwelling and a variance of 0.7 feet from the ten (10) feet rear yard setback requirement for a dwelling.

Mr. Clark testified that Riverdale Park is a family-owned operation and has been in business for over 110 years; that the Property is identified as Lot 258 in Riverdale; that the proposed dwelling will improve the neighborhood; that the Property was previously improved by a small trailer that was improved with an addition; that the Property is 77 feet wide by 99 feet deep; that the lots in Riverdale consist of different sizes; that there are over 400 lots in the park; that the Property is not usable without a variance; that a home that would be placed parallel to Wyneciko Avenue would not meet the side yard setback requirements; that the placement of the proposed dwelling will provide approximately 30 feet on either side from neighboring properties; that other homes in the neighborhood are similarly situated; that the variances will not negatively impact the neighborhood; and that neighbors have not expressed objection to the Application.

Mr. Fleming testified that the manufactured home measures 16 feet wide by 72 feet deep; and that any additions to the home will be made on the sides and within the building envelope.

Mr. Clark testified that the dwelling has been placed on the Property; that he relied on the installer for the placement of the home; and that he was unaware of the encroachment issue until after the home was placed.

Mr. Fleming testified that he received the permit approval but did not receive the setback information; that he contacted a surveyor and received a placement survey showing setback of ten (10) feet on all sides of the Property, which is not unusual for manufactured home lots; and that, prior to placement of the home, he believed the surveyor correctly showed the setback areas.

Ms. Cornwell advised the Board that Riverdale is not a mobile home park so it does not have a ten (10) foot setback.

Mr. Clark testified that the park is served by County sewer and private well water; that the front property line comes right to the right of way; that the rear variance requested is needed due to a mistake made by the installer; that the front yard variance poses no safety concern; and that Wyneciko Avenue is a road where the speed limit is only 25 miles per hour.

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

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

Ms. Magee moved to approve Variance Application No. 11994 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 Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code
3. The exceptional practical difficulty has not been created by the Applicant;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances sought are the minimum variances necessary to afford relief.

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

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

Case No. 11995 – KLEM, LLC - seeks variances from the height requirement (Sections 115-82 and 115-179 of the Sussex County Zoning Code). The property is located at the southwest corner of Coastal Highway (Route 1) at the intersection with South Street. 911 Address: 19178 Coastal Highway, Rehoboth Beach. Zoning District: C-1. Tax Map No.: 3-34-13.00-157.00 & 158.00.

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

William Klemkowski, Michael Meoli, and Matt Runyon 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 Applicant is requesting a variance between 2.49 feet and 8.49 feet from the forty-two (42) feet height requirement for a proposed building and a variance of 13.74 feet from the forty-two (42) feet height requirement for a proposed rooftop HVAC unit. Mr. Fuqua stated that Mr. Klemkowski and Mr. Meoli are members of the Applicant; that the variance is for a proposed hotel to be located on the Property; that Mr. Meoli previously operated the Hampton Inn on Route 1 for 13 years; that the Property is currently used for the Jake's Seafood restaurant; that the Property is rectangular shaped with a panhandle; that the Property and other nearby properties are zoned C-1 commercial; that the Property contains 2.15 acres; that the Applicant intends to construct a Hilton hotel under the Tru by Hilton brand; that the design of the hotel is a major part of the Tru by Hilton brand; that the design contains distinct architectural features; that the prototype of the hotel will exceed the Sussex County height restriction; that the deck of the roof is 44.49 feet tall; that the hotel has other height elevations as well which are related to the hotel's architectural design and do not include habitable space; that the hotel's HVAC equipment will be housed on the roof; that the Applicant seeks a variance for the HVAC system but "cooling towers" are considered authorized exceptions to the height ordinance; that HVAC equipment is similar to a "cooling tower" and is arguably exempt from the height requirements but the Applicant seeks the variance for the HVAC system to be safe either way; that the proposed hotel will not alter the essential character of the neighborhood; that hotels are permitted in this zoning district; that a Comfort Inn is located on an adjacent parcel and there are other hotels located nearby; that the hotel will improve the storm water management of the Property to allow for improved groundwater

recharge; that the Planning & Zoning Commission has approved the preliminary site plan for the hotel; that the exceptional practical difficulty results from the design requirements of the Tru by Hilton brand; that the Holiday Inn on Route 1 is approximately 46 feet tall; that the Hampton Inn on Route 1 is approximately 48 feet tall; that the Heritage Inn on Route 1 is approximately 45 feet tall; that the Fairfield Inn on Route 1 is 52 feet tall; that the Board approved a variance in May 2017 for a Days Inn to be 47 feet tall (Case No. 11994 – Destiny, LLC); that standard brand hotels have standard heights beyond the Sussex County height requirements; that the Sussex County Zoning Code previously allowed for public and semi-public buildings to be 60 feet tall but the Code has since been amended; that a typical 98 room hotel cannot fit within the 42 feet height limit; that a floor could be removed from the hotel but the hotel would not be economically viable; that the circumstances were not created by the Applicant; that the variances will not be out of character with the neighborhood; that the increased height will have no negative impact on neighboring properties and will likely be imperceptible; that the hotel will result in more jobs for the area; that the variances requested are the minimum variances necessary to afford relief; and that the Delaware Supreme Court in Kwik-Check Realty held that the inability to improve one's business or to stay competitive as a result of area limitations may be a legitimate exceptional practical difficulty that may justify a variance.

Mr. Meoli and Mr. Klemkowski, under oath, affirmed the statements made by Mr. Fuqua.

Mr. Meoli testified that the hotel chains have been stringent on the number of rooms that will be permitted; that Hilton will not approve a hotel of fewer than 90 rooms; that the economics of the hotel will not work if the hotel was only 3 stories tall; that the Comfort Inn is the last hotel built in Sussex County that has fewer than 4 stories; that mechanical designs have changed over the years to allow for ductwork improvements; that hotels had mold problems because of the design of previous HVAC systems; and that the roof-top HVAC systems have been designed to alleviate these problems but the ductwork has grown to accommodate these systems.

Mr. Klemkowski testified that he purchased the Property in 2002 and opened Jake's Seafood in 2003.

Mr. Fuqua stated that the panhandle portion of the Property is useful only as parking; that there is no extremely unique physical feature of the site; and that the economic reality of the use and the industry standards do not conform with the Sussex County height limitation.

Shawn Tucker, Esquire, appeared in opposition to the Application and submitted exhibits to the Board to review. Mr. Tucker stated that he represents Resort Hotel, LLC, which owns the Comfort Inn located adjacent to the Property; that the Comfort Inn is a 3 story hotel with 96 rooms and complies with the Sussex County height requirement; that other hotels exceed the height limitation but those hotels utilized an exception in the Code and those hotels did not need a height variance; that the Sussex County Superior Court recently rendered a decision regarding an appeal of a height variance granted regarding Jungle Jim's Amusement Park; that the Applicant must demonstrate that there is some unique physical condition with the Property; that the "panhandle" portion of the Property cited by Mr. Fuqua was obtained by the Applicant after acquiring the main portion of the lot; that site design costs cited by the Applicant do not rise to the level of unique physical conditions; that there is no substantial evidence in the record that a unique physical

condition exists which creates a hardship; that the Property is already developed by a restaurant and there is no evidence that a restaurant could not succeed on the Property; that the Applicant could build a hotel within the 42 feet height limitation; that the exceptional practical difficulty is self-created; that the Applicant's partnership with a hotel chain that has certain design requirements does not satisfy the legal requirements for the granting of a variance; that the character of the immediate area is that buildings do not exceed 42 feet tall; that the Applicant received a parking waiver from the Planning & Zoning Commission whereby the number of parking spaces required for the site were reduced; that his client has concerns about the Applicant's patrons parking on his client's property; that there is no evidence in the record that a hotel could not succeed on the site while still complying with the height requirements; that approval of the variance creates an unfair advantage for the Applicant; that his client's hotel provides for approximately 33 rooms per acre; that the Applicant's hotel provides for an increase in density over the Comfort Inn; that the increase in density is approximately 47% and provides a competitive business advantage; that the Comfort Inn parcel and the Property share an access to Route 1; that parking overflow from the Applicant's hotel will most likely go to the Comfort Inn parcel; and that the greater height of the hotel leads to more rooms on the site and a greater need for parking.

Mr. Sharp advised the Board that there was a change in the height ordinance in the past couple of years.

Mr. Fuqua stated that he was involved in the Vineyards at Nassau and the issue at that time was a clause in the Code which allowed for public or semi-public buildings to be constructed up to 60 feet tall if they increased their yard setbacks; that the Vineyards was planned to be public on the first floor and residential on the upper floors; that he argued that the building fit within the definition of a public or semi-public structure and should be allowed to be constructed up to 60 feet tall and the County agreed with that position – which was the first time that specific interpretation was given; that another hotel also used that same interpretation as well; that, thereafter, Sussex County Council amended the Code to limit buildings which can exceed 42 feet tall to governmental buildings and other similar public uses; and that the industry standard for parking for a hotel is 1.5 spaces per room plus spaces for employees.

Mr. Tucker stated that the case law is clear; that, if a property is being reasonably utilized or can be reasonably utilized without exceeding the height limitation, the property can be developed without a variance; that reasonable use can exist even if it is not the applicant's preferred use; and that his client's parcel has approximately 3 acres.

Mr. Stephen Silver was sworn in to testify in opposition to the Application. Mr. Silver testified that his hotel has a large breakfast room that also serves as a conference room after breakfast hours; that the conference room is sometimes used by local groups for meetings and trainings; and that the statements made by Mr. Tucker are true and correct.

Mr. Tucker stated that there is a risk of overflow parking onto his client's parcel due to the shift from the use of the Property as a restaurant to a hotel.

Mr. Meoli testified that the Applicant regularly allows employees of the Comfort Inn to park on the Property; that the Comfort Inn has a much larger parking waiver than is being provided

to the Applicant; and that hotels and restaurants typically have different traffic flows.

Mr. Silver testified that he has shared a good relationship with the Applicant; that the Property was sold to the Applicant; that the restaurant is a compatible business with his hotel and his patrons often go to the Jake's Seafood restaurant currently on the Property; that he is concerned about the parking for the proposed hotel; and that his property has significant parking for his 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. Rickard, seconded by Mr. Workman, and carried unanimously that the case be **tabled until August 7, 2017**. Motion carried 5 – 0.

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

The Board took a five (5) minute recess.

Case No. 11996 – Thomas B. Ellis & Karen B. Ellis - seek variances from the front yard and side yard setback requirements (Sections 115-34 and 115-181 of the Sussex County Zoning Code). The property is located at the north side of River Road (Road 312) approximately 79 feet west of the intersection of Pond Road (Road 312 A) and River Road (Road 312). 911 Address: 31498 River Road, Millsboro. Zoning District: MR. Tax Map No.: 2-34-34.10-62.00.

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.

Thomas Ellis and Karen Ellis were 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 5.0 feet from the ten (10) feet side yard setback requirement on the northwest side for a proposed chimney, a variance of 4.0 feet from the ten (10) feet side yard setback requirement on the northwest side for a proposed dwelling, and a variance of 19.1 feet from the forty (40) feet front yard setback requirement for a proposed dwelling.

Mr. Ellis reviewed the pictures with the Board and testified that the Property is serviced by sewer and well; that his neighbor's house to the southeast is approximately 1 foot from the property line; that the Property has a natural bluff which is 12-13 feet above the adjacent Indian River and the Property slopes towards Indian River; that the bluff limits the use of the rear of the Property; that the Applicants purchased the Property in September 2016; that the Applicants intended to renovate the existing dwelling but, during the renovation projection, the Applicants discovered significant mold problems; that the existing house was built in 1934 and several additions were made thereto; that the

mold appears to be related to dampness in the crawl space; that he is a cancer survivor; that he was recently diagnosed with sarcoidosis which may be related to the mold; that there is no easy way to remediate the mold problem so the Applicants propose to demolish the existing home and replace it with a new home; that approximately 35 feet of the rear yard is either the slope from the bluff or lands close to Indian River; that the topography of the rear yard limits the building envelope; that the Applicants intend to retire on the Property and need first floor living so the home will not be elevated; that the dwelling will consist of approximately 1,500 square feet; that the well is located to the southwest of the proposed dwelling which limits the Applicants' options in moving the home to meet the side yard setback requirements; that the Applicants also seek to maintain a buffer between their home and the home on the lot to the southeast because that home is located very close to the property line; that the proposed dwelling will reduce the non-conformities related to the existing home; that the variances are necessary to enable reasonable use of the Property; that the variances requested are the minimum variances necessary to afford relief; that the Applicants did not create the need for the variances; that the variances will not alter the essential character of the neighborhood; that other homes in the neighborhood are close to property lines and the proposed dwelling is similar to other homes in the neighborhood; that the adjacent neighbors do not object to the Application; and that the proposed home will be elevated 3 feet and they plan to install an encapsulated dehumidifier system underneath 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. 11996 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 limited building space;
2. The variances sought are necessary to enable reasonable use of the Property;
3. The Property cannot be developed in strict conformity with the Sussex County Zoning Code;
4. The exceptional practical difficulty has not been created by the Applicants;
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. Mills, seconded by Mr. Rickard, and carried unanimously that the variances be **granted for the reasons stated**. Motion carries 5 – 0.

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

Case No. 11997 – Windstone, LLC - seeks variances from the front yard setback requirement (Section 115-25 of the Sussex County Zoning Code). The property is located at the south side of Riverstone Road approximately 110 feet east of Brookstone Drive. 911 Address: 29649 Riverstone, Drive, Milton. Zoning District: AR-1. Tax Map No.: 2-35-22.00-1102.00.

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

Jamie Seckler and Justin Hensley were sworn in and testified requesting a variance of 14.9 feet from the thirty (30) feet front yard setback requirement and a variance of 1.0 foot from the thirty (30) feet front yard setback requirement for a proposed dwelling.

Mr. Seckler testified that the subdivision was recorded in 2006 and was amended in 2009; that the variance is needed due to the uniqueness of the lot; that the Property is pie-shaped and only has one side yard; that the Property could be developed but the home would differ from other homes in the community; that a home consisting of approximately 1,000 square feet would fit on the lot but would not be similar to other homes in the neighborhood; that a smaller home would likely affect property values; that the home would conform with the orientation of other lots and would face Riverstone Drive; that Lot 131, which is located to the rear of the Property, is a traditional corner lot with a 15 feet setback from Riverstone Drive; that the proposed variance would allow for construction of a home that fits with the character of the community; that the home will be consistent with the orientation of homes on Lots 128 and 129; that the community has 360 home sites; that there is approximately 13 feet from the edge of the curb of Riverstone Drive to the property line; that the gap between the curb and the property line has grass; and that the design of home will not affect visibility along Riverstone Drive.

Mr. Hensley testified that one-third (1/3) to one-half (1/2) of the home sites have been developed; that he works for the Applicant; that he worked with the engineer to design a home that will fit on the lot; that he found a model home that would fit on the lot but it would not have a garage and would not fit with the character of the neighborhood; that the lot is buildable; and that the Property is the only home in the community with this shape.

Frank Schmidt and James Gonzalez were sworn in to testify in opposition to the Application.

Mr. Schmidt testified that he lives on Lot 129 which is adjacent to the Property; that he said that there are worsening drainage issues in the rear yard; that his window well filled with water during the last heavy rain; that an LC Milton 1 model home would be a better option for the lot; that he is opposed to the water problems; that he believes the home will block his views and box in his property; that the proposed home is long and narrow and the other homes in the neighborhood are more square; that the LC Milton 1 model would fit better on the lot and would require a lesser variance than the proposed home; and that the LC Milton 1 model is nearly identical to other homes in the neighborhood.

Mr. Gonzalez testified that he objects to the variance application; that his home is 32 feet from the curb of Riverstone Drive; that he owns Lot 131; that his setback is 15 feet from Riverstone Drive and 30 feet from Brookstone; that he believes the Applicant created the difficulty when he created the lot; and that the variance will alter the essential character of the neighborhood.

Mr. Hensley testified that LC Homes no longer makes the LC Milton 1 model home and ceased making the home 4 years ago; that, even if the Applicant used the floor plan for the LC Milton 1 model home, a variance would still be needed; and that the proposed home is one of the smallest available model homes.

Mr. Seckler testified that the Property has a unique pie-shaped with a reduced buildable area; that the Property is developable with a 900 to 1,000 square foot home; that such a home would not fit with the character of the neighborhood; that the hardship is that the Applicant would have to construct a custom home rather than a model home; that the home would be consistent with other homes in the large neighborhood; that a large portion of the Property is considered the front yard; and that the Property has 166 feet of road frontage which is all considered to be the front yard rather than a side yard as seen with other lots in the neighborhood.

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

The Board found that two (2) parties appeared in opposition to the Application.

Motion by Mr. Workman, seconded by Mr. Rickard, and carried unanimously that the case be **tabled until August 7, 2017**. Motion carried 5 – 0.

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

Case No. 11998 – Guy Marcozzi & Christine Marcozzi - seek variances from the front yard, side yard, and rear yard setback requirements (Sections 115-34, 115-181, 115-182, and 115-183 of the Sussex County Zoning Code). The property is located at the south corner of the intersection of Anna B. Street and Fisher Street. 911 Address: 38262 Anna B. Street, Rehoboth Beach. Zoning District: MR. Tax Map No.: 3-34-20.09-55.01.

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

Guy Marcozzi and Christine Marcozzi were sworn in, submitted exhibits for the Board to review, and testified requesting of 12.2 feet from the fifteen (15) feet corner front setback requirement on the southeast side for a proposed deck, a variance of 1.2 feet from the five (5) feet side yard setback requirement on the northwest side for an existing shed, a variance of 3.6 feet from the ten (10) feet side yard setback requirement on the northwest side for an existing outdoor shower, and a variance of 1.0 from the seven (7) feet rear yard setback requirement for an existing HVAC system.

Mr. Marcozzi testified that there is a petition signed by sixteen (16) neighbors in support of the Application; that the Applicants purchased the Property in April 2017; that the Property is small; that the Property consists of 5,000 square feet and is a corner lot; that the home was on the Property when they purchased the home; that the steps from the home are very steep and awkward; that there is no egress from the rear or side yard; that there is approximately 17 feet from the edge of the Property to the edge of Fisher Street which gives the home the appearance of being set back farther from the property line than it actually is; that pine trees line the property line; that a six (6) feet tall privacy fence borders the property lines; that there is no room for expansion without a variance; that the shower, shed and HVAC system were placed on the Property by a prior owner and those structures are similar to others in the neighborhood; that there is no landing at the top of the steps; that his parents

have difficulty entering and exiting the home due to the steps; that the steps are not safe; that the exceptional practical difficulty was not created by the Applicants; that the variances will not alter the essential character of the neighborhood; that most homes in the neighborhood have open showers, HVAC systems with outside compressors, sheds, and decks; that many of the homes in the neighborhood are non-conforming structures; that two (2) nearby properties were recently approved for a variance; that the opposition live farther away from the Property than neighbors who support the Application; that the deck will have no negative visual impact; and that the shed in the northwest corner will be relocated to minimize the setback encroachment.

Neil Dolan was sworn in to testify in support of the Application. Mr. Dolan testified that he is in favor of the proposal; that he owns seven (7) properties in the neighborhood; that his daughters live on Anna B Street; that the home was built about three (3) years ago; and that the steps are very steep and dangerous.

The Board found 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 Variance Application No. 11998 for the requested variances based on the record made at the public hearing and for the following reasons:

1. There is no possibility the Property can be developed in strict conformity with the Sussex County zoning ordinance;
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 sought will not alter the essential character of the neighborhood; and
5. The variances sought are the minimum variances necessary to afford relief.

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

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

Meeting Adjourned 10:39 p.m.