

## MINUTES OF JUNE 5, 2017

The regular meeting of the Sussex County Board of Adjustment was held on Monday, June 5, 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, Mr. John Mills, Ms. Ellen Magee, 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.

Motion by Mr. Workman, seconded by Mr. Mills, and carried unanimously to move the Old Business to the front of the Agenda and approve the Revised Agenda as circulated and amended. Motion carried 5 – 0.

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

### OLD BUSINESS

**Case No. 11961 – Faith United Methodist Church Inc.** - seeks a special use exception to operate a homeless shelter (Section 115-23 of the Sussex County Zoning Code). The property is located on the southeast corner of Lewes-Georgetown Highway (Route 9 / 404) at the intersection with Church Street. 911 Address: 19940 Church Street, Lewes. Zoning District: AR-1. Tax Map No.: 3-34-5.00-215.00.

Mrs. Walls presented the case which has been tabled since May 15, 2017.

Ms. Magee was not present at the May 15, 2017 hearing so she abstained from the discussion and vote on the Application.

The Board discussed the case.

Mr. Workman stated that he needs more time to consider the Application.

Motion by Mr. Workman, seconded by Mr. Rickard, and carried unanimously that the case be **tabled until June 19, 2017**. Motion carried 4 – 0.

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

**Case No. 11962 – Jill Cicierski & June Cicierski** - seek a variance from the height requirement for fences, a special use exception to operate a commercial dog kennel, and a special use exception for a garage / studio apartment (Section 115-23 and 115-185 of the Sussex County Zoning Code). The

property is located on the northeast side of Gravel Hill Road (Route 30) approximately 754 feet southwest of intersection of Gravel Hill Road (Route 30) and Neptune Road (SCR 251). 911 Address: 16808 Gravel Hill Road, Milton. Zoning District: AR-1. Tax Map No.: 2-35-25.00-4.10.

Mrs. Walls presented the case which has been tabled since May 15, 2017.

Ms. Magee was not present at the May 15, 2017 hearing so she abstained from the discussion and vote on this Application.

The Board discussed the case.

Mr. Rickard stated that he needed more time to consider the Application.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the case be **tabled until June 19, 2017**. Motion carried 4 – 0.

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

### **PUBLIC HEARINGS**

**Case No. 11955 – George V. Haughney** - seeks a variance from the front yard setback requirement for a through lot (Sections 115-42B and 115-182 of the Sussex County Zoning Code). The property is located at southeast corner of Railway Road (SCR 350) and Denton Woods Road. 911 Address: 30973 Oakwood Road, Ocean View. Zoning District: GR. Tax Map No.: 1-34-8.00-375.00.

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.

John Starke and George Haughney were sworn in and testified requesting a variance of 4.0 feet from the forty (40) feet front yard setback requirement for a proposed dwelling along Railway Road.

Mr. Starke testified that he represents Atlantis Homes; that he is the builder of the proposed dwelling; and that the lot is unique because it has three front yards.

Ms. Cornwell stated that there are separate setback requirements for the three frontages that were mentioned; that Denton Woods Road is on the corner side of the Property with a setback requirement of fifteen (15) feet; that Railway Road is adjacent to the front of the Property with a setback requirement of forty (40) feet; that Oakwood Road is adjacent to the front of the Property with a setback of thirty (30) feet; and that the east side has a side yard setback requirement of ten (10) feet.

Mr. Starke testified that the front door of the house will face Denton Woods Road; that the

proposed dwelling meets the setback requirements from Oakwood Road, Denton Woods Road, and the side yard; that the variance requested is the minimum variance necessary to afford relief; that a home measuring 66 feet wide is available but the Applicant does not want a home of that size; that it is unusual for a lot to have three front yard setbacks; that Railway Road eventually ends when it approaches water to the northeast; that the Property has a small building envelope; that the shape of the lot does not allow the turning of the proposed dwelling to otherwise fit on the lot; that the home will face Denton Woods Road; that the Property is not an interior lot and has an extra setback requirement that other homes in the neighborhood do not have; that the exceptional practical difficulty was not created by the Applicant as the Applicant only recently purchased the lot; that the variance will not alter the essential character of the neighborhood; that the proposed dwelling is consistent with the neighboring homes; and that the variance requested is the minimum variance necessary to afford relief.

Mr. Haughney submitted an original signed and sealed survey into the record for the Board to review. Mr. Haughney testified that he was not aware at the time he purchased the Property that the setback requirements take up more than 50% of the lot.

Mr. Starke testified that the Property is a very restricted lot; and that the proposed home measures 28 feet by 70 feet.

Ms. Cornwell stated that the neighboring interior lots have 10 feet side yard and rear yard setback requirements; and that the neighboring properties are closed to Railway Road.

Mr. Starke testified that, if the lot did not have these restrictions that the neighboring lots do not have, the home could be built without the need for a variance.

Mr. Haughney testified that the proposed dwelling was chosen because it was a lot model that was on sale; that the home is a single-story dwelling; that the home is a doublewide manufactured home which is comparable to other homes in the neighborhood.

Mr. Starke testified that other homes in the neighborhood are singlewide or doublewide manufactured homes; that the Property will be accessed from Oakwood Road; that there is no access to Railway Road; that other lots in the neighborhood do not access Railway Road; that drainage is located between the proposed dwelling and Railway Road within the utility setback; that there is about ten to fifteen feet from the edge of paving of Railway Road to the property line; and that he seeks the minimum variance requested with a one foot buffer to allow for error.

Mr. Sharp stated that the HVAC system will need to meet setback requirements.

Mr. Haughney testified that the previous home was a singlewide manufactured home and has been removed.

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

Mr. Mills moved to approve Variance Application No. 11955 for the requested variance for a

proposed dwelling based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to the three front yard setback requirements;
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 as the setback requirements cover more than 50% of the available lot area;
4. The exceptional practical difficulty was not created by the Applicant;
5. The variance will not alter the essential character of the neighborhood; and
6. 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 the reasons stated**. Motion carried 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. 11963 – Edward C. Jackson & Ruth G. Jackson** - seek a variance from the front yard setback requirement (Section 115-34 of the Sussex County Zoning Code). The property is located on the north side of Beach Avenue approximately 644 feet east of Coastal Highway (Route 1). 911 Address: 17 Beach Avenue, Rehoboth Beach. Zoning District: MR. Tax Map No.: 3-34-23.06-72.00.

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.

Edward Jackson and Ruth Jackson were sworn in to testify about the Application. Raymond Tomasetti, Esquire, presented the case on behalf of the Applicants and submitted pictures for the Board to review.

Mr. Tomasetti stated that the Applicants are requesting a variance of 12.3 feet from the thirty (30) feet front yard setback requirement for an addition and access to the second floor.

Mr. Tomasetti stated that the Applicants propose to make an addition to the existing home for a relocation of the main entrance, the addition to rooms in the home, and the placement of a small deck; that the Property is unusual due to its shape and size; that the dwelling was in violation of the Sussex County Zoning Code at the time when the Applicants purchased the home in 2014 because the home encroached into the front yard setback area by 4.9 feet; that the variance is necessary to enable reasonable use of the Property; that the exceptional practical difficulty was not created by the Applicants; that the granting of the variance will not alter the essential character of the neighborhood; that other homes in the neighborhood are closer to the road than the Applicants' home and the proposed addition; that a front yard variance was granted for a neighboring home in 2003; and that there have been four to five variances granted to neighboring properties.

Mr. Jackson testified that Lots 71, 70, 89, 88, and 66 all received setback variances; that one neighboring lot was denied a variance; and that permission for the addition was granted by the

homeowners association.

Mr. Tomasetti stated that the variance sought is the minimum variance necessary to afford relief; that the variance sought represents the least modification of the regulation at issue; that the lot is not very deep; and that the proposed addition of stairs to the second floor is a safety feature.

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

Mrs. Jackson testified that the proposed addition will not extend farther into the front yard setback than other structures in the neighborhood.

Ms. Cornwell advised the Board that the Applicants are unable to use the average front yard setbacks in the neighborhood because the lot is not vacant.

Mr. Jackson testified that the addition will include an elevator to be used by his wife's aging parents; that no variance was granted for the existing home; that Beach Avenue floods at times; that there is no septic system on the Property; and that the property line is three to four feet from the edge of paving of Beach Avenue.

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

Motion by Mr. Mills, seconded by Ms. Magee, and carried unanimously that the case be **tabled until June 19, 2017**. Motion carried 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. 11964 – Kris S. Meck** - seeks a variance from the rear yard setback requirement (Section 115-25 of the Sussex County Zoning Code). The property is located on the south side of Linden Way approximately 404 feet south of Woodland Circle, Angola By the Bay. 911 Address: 23046 Linden Way, Lewes. Zoning District: AR-1. Tax Map No.: 2-34-11.20-355.00.

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 and that a previous variance was granted for the existing dwelling.

Kris Meck was sworn in and testified requesting a variance of 7.1 feet from the twenty (20) feet rear yard setback requirement for a proposed enclosed deck addition that he intends on closing in with windows and a roof.

Mr. Meck testified that he proposes to extend the existing deck and create a closed in deck covered with a roof; that the Property is located in Angola by the Bay; that the Applicant has received approval from the homeowners association; that neighbors support the Application; that the Property is pie shaped which makes it unique; that, due to the unique shape, the home had to be moved closer toward the rear yard; that the community was first developed for manufactured homes; that newer

homes are not supported by the lots in the community; that the Applicant did not create the exceptional practical difficulty; that the home was designed to comply with the design of other homes in the neighborhood; that the variance requested is the minimum variance necessary to afford relief; that the proposed addition will be constructed off of the existing deck; that the addition to the deck will not extend farther into the rear yard than the existing home; that the addition will blend in with the existing home; that there is a wooded area in the rear yard; that there is a common area in the rear yard that is forty (40) to fifty (50) feet wide; that the home cannot be seen from the homes in the rear that are located on the other side of the common area; and that the original existing deck is not enclosed.

Mr. Sharp advised the Board that the original variance granted for the Property in 2014 was for 9.72 feet from the rear yard property line for the dwelling but the survey shows that the dwelling is 10.1 feet from the rear yard property line; and that a variance for the dwelling is also needed to bring the home into compliance with the Sussex County Zoning Code.

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.

Ms. Magee moved to approve Variance Application No. 11964 for the requested variances because the Applicant has met the standards for granting a variance.

Motion by Ms. Magee, 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. Mills – yea, Ms. Magee – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

**Case No. 11965 – James D. Sherlock & Jennifer A. Sherlock** - seek a variance from the rear yard setback requirement (Section 115-25 and 115-183 of the Sussex County Zoning Code). The property is located on the northeast side of Linden Drive approximately 568 feet east of Sycamore Drive, Angola By the Bay. 911 Address: 22923 Linden Drive, Lewes. Zoning District: AR-1. Tax Map No.: 2-34-11.16-50.00.

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.

James Sherlock was sworn in, and testified requesting a variance of 11.3 feet from the twenty (20) feet rear yard setback requirement for a proposed deck addition. Mr. Sherlock also submitted a deck plan dated May 12, 2017, to the Board to review.

Mr. Sherlock testified that he purchased the home three (3) years ago; that the house includes a deck measuring eight (8) feet wide which is in disrepair; that the existing deck is poorly attached and incorrectly installed and water flows into the rim joists; that the Applicants propose to lower the deck 14 inches and anchor the deck to concrete; that the proposal will alleviate flooding problems with their basement; that the deck will be widened to accommodate steps and a landing; that the

Property is a pie shaped lot and is located in Angola by the Bay; that there is common area to the rear of the Property; that the Applicants did not create the exceptional practical difficulty; that the deck was existing on the Property when they purchased the lot; that the Applicants are trying to rectify the situation; that the Applicants are concerned about the safety of the deck; that the proposed addition will not alter the essential character of the neighborhood; that the deck will improve the neighborhood; that the homeowners association has approved the proposal; that he would be satisfied with a narrower deck of 14 feet; that the deck is so small that it is unusable; that deck cannot even accommodate a table and chairs; and that the proposed addition will grant them entrances to the deck from both sides.

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

Motion by Mr. Mills, seconded by Ms. Magee, and carried unanimously that the case be **tabled until June 19, 2017**. Motion carried 5 – 0.

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

**Case No. 11966 –Estate of Dorothy J. Wallin** - seeks variances from the rear yard setback requirement (Section 115-25, 115-183, and 115-185 of the Sussex County Zoning Code). The property is located on the south side of Elmwood Avenue East approximately 1,177 feet south of Woodland Circle, Angola By the Bay. 911 Address: 23805 Elmwood Avenue East, Lewes. Zoning District: AR-1. Tax Map No.: 2-34-18.09-2.00.

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.

Gayle Edwards and Mark Showmaker were sworn in and testified requesting a variance of 6 feet from the twenty (20) feet rear yard setback requirement for a deck and a variance of 15 feet from the twenty (20) feet rear yard setback requirement for steps.

Mr. Showmaker testified that he and Ms. Edwards are the legal owners of the Property through inheritance; that the dwelling was built in 1975; that the deck and steps were built at that time; that they plan to put the home up for sale but, prior to doing so, they investigated the setbacks for the Property and learned that the deck and steps encroach into the rear yard setback area; that the deck and steps were built in 1975 and were approved by Sussex County at that time; that the lot has a unique pie shape which necessitated placing the dwelling closer to the rear property line; that there is common area located adjacent to the rear yard and the common area leads to water; that, due to the uniqueness of the Property, the Property cannot be further developed; that the Applicants did not create the exceptional practical difficulty; that their parents purchased the Property in 1995 and they were unaware of the setback issue at that time; that the common area has gravel leading to the pond but it was not graveled in the past and likely caused the rear yard of the Property to appear larger than it actually is; that the variances will not alter the essential character of the neighborhood; that the structures have been on the Property for 42 years; that the variances requested are the minimum variances necessary to afford relief; that they intend to place the home for sale and wanted to be proactive for the next owners; that the home is existing as it was built in 1975 and no additions have

been made; and that a shed was constructed prior to his family's ownership of the lot.

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

Mr. Mills moved to approve Variance Application No. 11966 for the requested variances for the shed and deck based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to its shape;
2. The Property cannot be developed in strict conformity with the Sussex County Zoning Code;
3. The variances are necessary to enable reasonable use of the Property;
4. The exceptional practical difficulty was not created by the Applicants;
5. The variances will not alter the essential character of the neighborhood;
6. The variances will not be detrimental to the public welfare; and
7. 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 carried 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. 11967 – Eugene Greco & Joanne Greco** - seek a variance from the front yard setback requirement on a through lot (Section 115-34, 115-182 and 115-185 of the Sussex County Zoning Code). The property is located on the west side of Ridge Court approximately 164 feet north of Oakcrest Drive. 911 Address: 30807 Ridge Court, Lewes. Zoning District: MR. Tax Map No.: 2-34-6.00-554.00.

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

Eugene Greco was sworn in and testified requesting a variance of 25.1 feet from the forty (40) feet front yard setback requirement on a through lot along Beaver Dam Road for an existing shed.

Mr. Greco testified that the Property has two front yards with Beaver Dam Road located to the rear of the dwelling; that, per the community's restrictive covenants, the shed cannot be placed in the front or side yard; that the shed cannot be placed to meet both the 40 feet setback requirement and the restrictive covenants; that these conditions existed at the time he purchased the Property in 2009 but he was unaware of the setback requirements; that there are only ten properties in the development which are through lots and four of those lots have been granted variances; that his neighbors do not object to the variance request; that there are large trees located to the rear of the dwelling along Beaver Dam Road; that his deck is three (3) feet wide and he would like to expand his deck to eight (8) feet wide; that he did not acquire a permit to build the shed; that he constructed the shed; that there are four other sheds which are closer to Beaver Dam Road; that he received permission from the



homeowners association for the shed; that he believed the setback for the shed was ten (10) feet; that he placed the shed fifteen (15) feet from Beaver Dam Road; that the shed cannot be moved into compliance with the Sussex County Zoning Code while still complying with the restrictive covenants; that there is approximately forty (40) feet from the edge of paving of Beaver Dam Road to the shed; that there is no access from the Property to Beaver Dam Road; that the shed was built four (4) years ago; that the existing deck is an open deck that is three (3) feet wide; and that he has no plans at this time to add to the deck.

Ms. Cornwell advised the Board that the deck appears, from the survey, to be 43.1 feet from the Beaver Dam Road side of the lot; that the Applicant could build the deck an additional 7.9 feet while still complying with the Sussex County Zoning Code as an open, unenclosed deck may encroach up to five (5) feet into the setback area; and that any addition would be subject to a review of a new survey.

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

Mr. Greco testified that he was not interested in a variance for the deck at this time.

Mr. Workman moved to approve Variance Application No. 11967 for the requested variance for the shed based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to its size and shape being a “through lot”;
2. The variance is necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variance will not alter the essential character of the neighborhood;
5. The variance will not be detrimental to the public welfare; and
6. The variance sought is the minimum variance necessary to afford relief.

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

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

**Case No. 11968 – Robert Buckler** - seeks a variance from the front yard setback requirement (Section 115-25 of the Sussex County Zoning Code). The property is located on the east side of Derrickson Drive approximately 609 feet +/- southeast of Old Mill Bridge Road (SCR 381). 911 Address: 36393 Derrickson Drive, Selbyville. Zoning District: AR-1. Tax Map No.: 5-33-12.00-51.00.

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.

Christina Wagner and Robert Buckler were sworn in and testified requesting a variance of 0.2 feet from the thirty (30) feet front yard setback requirement for an existing dwelling. They also

submitted exhibits for the Board to review.

Ms. Wagner testified that she represents Insight Homes who is the builder of the dwelling; that the variance request is for a bay window that extends into the front yard setback area; that the Property is unique because it is located in a flood zone and the dwelling had to be placed closer to the front yard to avoid the flood zone; that there was a structure on the Property previously but the builder did not place the dwelling on the same location in order to avoid having to use fill dirt; that the exceptional practical difficulty was not created by the Applicant; that the surveyor made a measuring error of 3 inches; that the surveyor only measured the foundation when preparing the site plan and did not take into account the bay window; that the site plan and the as-built survey show the difference in measurements; and that the encroachment is not noticeable without a survey.

Mr. Buckler testified that the house shown on the aerial photograph has been removed; that the house includes an open deck in the rear yard which does not encroach into the setback area; that the garage was completed approximately 2 weeks ago and it meets all setback requirements; that Derrickson Drive is a gravel and dirt road; and that the edge of Derrickson Drive varies along the front property line.

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.

Ms. Magee moved to approve Variance Application No. 11968 for the requested variances for the dwelling based on the record made at the public hearing and for the following reasons:

1. The Property is unique; and
2. The exceptional practical difficulty was not created by the Applicants.

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

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

**Case No. 11975 – Bernard Miller & Alison E. Miller** - seek a special use exception to operate a daycare facility (Sections 115-80 and 115-210 of the Sussex County Zoning Code). The property is located at the west side of Stingey Lane approximately 300 feet north of Lewes-Georgetown Highway (Route 9). 911 Address: 17584 Stingey Lane, Lewes. Zoning District: C-1. Tax Map No.: 3-34-5.00-129.00.

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.

No one appeared for the Application.

Mr. Mills made a motion to move Case No. 11975 to the end of the public hearings.

Motion by Mr. Mills, seconded by Ms. Magee, and carried unanimously that Case No. 11975 be moved to the end of the public hearings.

At the end of the public hearings, Mrs. Walls presented the case.

Bernard Miller was sworn in and testified requesting a special use exception to operate a daycare facility.

Mr. Miller testified that he purchased the Property from Mt. Zion Church and the Property was previously leased to the Telamon Corporation; that he intends to reopen the daycare / early learning center that was previously on site; that he spoke with neighbors on either side of the Property and they support the request; that new condominiums have been constructed nearby; that a taxi business is located on the corner of Stingey Lane; that properties located to the rear of the Property are rental properties; that a neighboring property has been vacant for years; that the daycare center will not substantially affect adversely the uses of neighboring and adjacent properties; that the daycare center previously served 45 children; that he intends to find someone qualified to run the daycare facility; that he will have to obtain necessary permits and licenses from the State; that the rear yard of the lot is fenced in; that there is currently no playground equipment as the equipment was removed by Telamon when its lease expired; that he intends on installing a playground; that there is parking available for approximately eight (8) cars; and that the hours of operation will be from 6:00 a.m. to 6:00 p.m.

Gail Baschwitz was sworn in and testified in support of the Application. Ms. Baschwitz testified that she has some concerns about the cars and traffic but she favors the idea.

Mr. Miller testified that parking should not be a problem; that most of the traffic along Stingey Lane is related to a business on the corner; that there is ample room for parents to drop off and pick up their children; and that Stingey Lane is a dead-end road and the Property is located near the dead-end.

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.

Ms. Magee moved to approve Special Use Exception Application No. 11975 for the requested special use exception.

Motion by Ms. Magee, seconded by Mr. Rickard, 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, Ms. Magee – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

**Case No. 11976 – Patrick William Snyder** - seeks a special use exception to operate a daycare facility (Sections 115-80 and 115-210 of the Sussex County Zoning Code). The property is located at the south side of Tulip Drive at the intersection of Coastal Highway (Route 1). 911 Address: 152 Tulip Drive, Lewes. Zoning District: C-1. Tax Map No.: 3-35-11.00-90.00.

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 received no correspondence in opposition to the Application.

Patrick Snyder was sworn in and testified requesting a special use exception to operate a daycare facility.

Mr. Snyder testified that he is planning to open a Montessori school for children ages 2 to 12 on the campus of St. Jude's the Apostle Church; that there are three buildings on the Property; that the proposed daycare will be a part of the existing education building; that the education building was constructed seven (7) years ago and is barely used during the day; that he has registered with the State and has received an exemption from the Office of Childcare Licensing; that he has received a permit from the State Fire Marshal; that approximately nine (9) families have already committed to send their children to the proposed school; that he has spoken with the church's parishioners and they do not object to the Application; that the Property is a large parcel with a large parking lot; that there are trees separating the neighbors from the proposed daycare center; and that the building is currently being used for Sunday School.

Eileen Snyder was sworn to testify in support of the Application. Ms. Snyder testified that the daycare and school will be beneficial to St. Jude's; that the existing building is used on a regular basis; that there will be no additional impact on neighboring properties; and that ten (10) to thirty (30) families will use the school.

Judy Gibson was sworn in to testify in support of the Application. Ms. Gibson testified that her daughter will attend the school; that she supports the Application; and that she prefers that her daughter go to the proposed daycare for education.

James Hadfield was sworn in to testify in opposition to the Application. Mr. Hadfield testified that he lives on Tulip Drive which is to the rear of the Property; that his neighbor had a daycare and he saw an increase in traffic related to the daycare center; that Tulip Drive also has increased traffic due to the nearby Mr. Tire business; that Tulip Drive traffic also increases with the Church's Saturday Mass; that he does not object to the school but he is concerned about the growth of the school over time and its impact on the neighborhood; that, if the access to the Property is from Route 1, he does not object to the application; that the neighborhood along Tulip Drive is a quiet neighborhood; and that he believes it would be difficult to enforce a condition restricting access to the school from Tulip Drive.

Herb Von Goerres was sworn in to testify in opposition to the Application. Mr. Von Goerres testified that he has traffic concerns; that the new development being constructed nearby will also use Tulip Drive as an access; that the Application is deceiving as it states "daycare" when the Applicant

is requesting a school; that the traffic impact related to the daycare is speculative; that Tulip Drive is a state maintained, public road; that he has lived there for 25 to 30 years; and that the church was already existing at the time he moved to Tulip Drive.

Christina Melchiorre was sworn in to testify in opposition to the Application. Ms. Melchiorre testified that she also has traffic concerns; that she lives on Tulip Drive; that there are no sidewalks located on that street; that she questions what will happen with the children; that the amount of noise concerns her; and that she questions whether the children will be inside or outside.

The Board found that three (3) parties appeared in support of the Application.

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

Ms. Magee moved to approve Special Use Exception Application No. 11976 for the requested special use exception based 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 Ms. Magee, seconded by Mr. Rickard, and carried unanimously that the special use exception be **granted for the reasons stated**. Motion carried 5 – 0.

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

**Case No. 11977 – Kmart Corporation** - seeks a special use exception to place a tent for special purposes (Sections 115-80 and 115-210 of the Sussex County Zoning Code). The property is located at the northeast side of Coastal Highway (Route 1) approximately 1,800 feet northwest of Holland Glade Road (Route 271). 911 Address: 19563 Coastal Highway, Rehoboth Beach. Zoning District: C-1. Tax Map No.: 3-34-13.00-325.33.

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.

Monica Cohen was sworn in and testified requesting a special use exception to place a tent for special purposes.

Ms. Cohen testified that the tent will measure 20 feet by 40 feet; that the tent will be located in the K-Mart parking lot; that the store has recently been divided in half and leased to a different tenant so K-Mart has less space for merchandise; that the Applicant intends to sell summer merchandise in the tent; that the tent will only be used during the summer season; that the tent will be located in front of the building; that the tent will take up ten (10) parking spots but none of the spots are handicapped parking spaces; that the tent will not impact the fire lane; that the Applicant is requesting approval to use the tent through Labor Day; and that she has no other outside tent specials and events scheduled.

The Board took a ten (10) minute recess to determine if a special use exception for a boat

show had previously been approved.

Ms. Cornwell advised the Board that there is no currently valid special use exception for the Property.

Ms. Cohen testified that the neighboring properties are used for restaurants and retail buildings; that the other part of the building will be used for a Petsmart and a Christmas Tree Shop affiliate; that the outlet stores are located nearby; that there had been no discussion with the neighbors; and that the tent will be located near the front doors.

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. 11977 for the requested special use exception for a period of five (5) years from June 4 to September 9 each year based 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 a period of five (5) years from June 4 to September 9 each year and for the reasons stated**. Motion carried 5 – 0.

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

**Meeting Adjourned 9:34 p.m.**