

## **MINUTES OF JUNE 6, 2016**

The regular meeting of the Sussex County Board of Adjustment was held on Monday, June 6, 2016, 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, 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, Mr. Daniel Brandewie – Planner II, and Mrs. Jennifer Norwood – Recording Secretary.

The Pledge of Allegiance was led by Mr. Rickard.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously to approve the Revised Agenda 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. 11776 – Tina E. Windsor** – seeks a variance from the side yard setback requirement (Sections 115-34B and 115-185F of the Sussex County Zoning Code). The property is located on the south side of Club House Road approximately 19 feet west of Bay Haven Street. 911 Address: 37400 Club House Road, Ocean View. Zoning District: MR. Tax Map No.: 1-34-8.00-74.00.

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.

Shannon Carmean Burton, Esquire, presented the case on behalf of the Applicant and submitted an affidavit with exhibits to the Board to review.

Ms. Burton stated that the Applicant is requesting a variance of 0.6 feet from the five (5) feet side yard setback requirement on the west side for an existing shed; that the Applicant is the current owner of the Property but only purchased the Property in March 2016; that the Applicant purchased the Property from the Estate of Lemuel Wingate; that Cheryl Martin is the Executrix of the Estate of Lemuel Wingate, Sr., but resides in Missouri and could not attend the hearing; that Ms. Martin's mother inherited the Property in 2006 and later transferred the Property to herself and her husband Lemuel Wingate; that the dwelling and shed existed on the Property at that time; that the dwelling and shed were constructed in the 1960s; that her mother and father have since passed away and the Property was to be sold per her father's will; that, in February 2016, a survey completed for settlement showed that the shed encroached into the rear yard setback area as well as onto adjacent property; that, in an effort to bring the shed into compliance, the rear yard boundary line was adjusted; that the side yard could not be adjusted to bring the shed into compliance; that the irregularly shaped lot and age of the shed make this Property unique; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code

due to the age and condition of the shed; that the shed is usable but would not withstand a relocation; that the exceptional practical difficulty was not created by the Applicant or Ms. Martin's parents; that Ms. Martin believed that the shed was in compliance with the Sussex County Zoning Code until the survey was completed; that the variance will not alter the essential character of the neighborhood; that the variance will not be detrimental to the public welfare; that the use does not impair the use or development of adjacent and neighboring properties; that Ms. Martin is unaware of any complaints about the location of the shed; that the variance requested is the minimum variance necessary to afford relief; and that, originally, the Applicants planned to remove the shed but the new owner wanted the shed.

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

Mr. Rickard moved that the Board approve Variance Application No. 11776 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;
2. The variance is necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance sought is the minimum variance necessary to afford relief.

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

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

**Case No. 11777 – David P. Elliott Construction, LLC** – seeks a variance from the front yard setback requirement (Section 115-25C of the Sussex County Zoning Code). The property is located on the south side of Beacon Circle approximately 380 feet east of Robinson Drive. 911 Address: 65 Beacon Circle, Millsboro. Zoning District: AR-1. Tax Map No.: 1-33-19.00-279.00.

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. Ms. Cornwell stated that a Certificate of Compliance has been issued for the dwelling.

David Elliott was sworn in to testify about the Application. Shannon Carmean Burton, Esquire, presented the case on behalf of the Applicant and submitted an exhibit booklet for the Board to review.

Ms. Burton stated that the Applicant is requesting a variance of 3.5 feet from the thirty (30) feet front yard setback requirement for an existing dwelling; that the Applicant purchased the Property in May 2014; that the Applicant is a builder and he built the dwelling with the intent to construct a dwelling to sell to a third party; that the Property was vacant at the time of purchase; that the dwelling was constructed and a Certificate of Compliance was issued for the dwelling;

that the Applicant contracted to sell the Property and a survey completed for settlement showed the encroachment; that the Property is unique in shape; that the Property is located on a cul-de-sac and the cul-de-sac creates an irregular shaped lot; that the Applicant miscalculated the measurement due to the curve in the front property line; that the exceptional practical difficulty is due to the shape of the lot; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code without removing a portion of the front of the dwelling which includes a small bedroom; that the variance is necessary to enable reasonable use of the Property; that the exceptional practical difficulty was not created by the Applicant since he did not create the lot and received a Certificate of Compliance after the dwelling was built; that the variance will not alter the essential character of the neighborhood; that the use will not be detrimental to the public welfare; that variance will not impair the uses or development of the neighboring and adjacent properties; that the Applicant has not received any complaints about the location of the dwelling; that the variance sought is the minimum variance to afford relief; and that the variance represents the least modification of the regulation at issue as the variance will bring the existing dwelling into compliance with the Sussex County Zoning Code.

Mr. Elliott, under oath, affirmed the statements made by Ms. Burton and testified that he made a mistake when measuring; that the two interior markers were not marked by his surveyor; that he has built several dwellings and has never had an issue with setback violations; that the edge of the paving does not meet with the front property line; and that no additions were made to the dwelling after the Certificate of Compliance was issued.

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

Mr. Rickard moved that the Board approve Variance Application No. 11777 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The cul-de-sac and Certificate of Compliance make this Property unique;
2. The variance is necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicant; 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 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. 11778 – Carol Walker** – seeks variances from the side yard setback requirements (Section 115-25C and 115-185F of the Sussex County Zoning Code). The property is located on the southwest side of Council Lane approximately 40 feet west of Herring Landing. 911 Address: 35480 Council Lane, Lewes. Zoning District: AR-1. Tax Map No.: 2-34-24.00-25.00.

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.

Carol Walker was sworn in to testify about the Application. Tim Willard, Esquire, presented the case on behalf of the Applicant.

Mr. Willard stated that the Applicant is requesting a variance of 1.8 feet from the five (5) feet side yard setback requirement on the south side and a variance of 2.4 feet from the five (5) feet side yard setback requirement on the south side for an existing shed; that the Applicant has owned property in Sussex County since the 1970s; that in 1991 the Applicant purchased the Property and her husband built the shed; that Property is a long, skinny lot which slopes towards Herring Creek; that the shed encroaches into the setback area; that the Applicant was unaware of the setback violation; that the Applicant's husband passed away in 2009; that, in August 2015, she was notified by an inspector in Planning and Zoning that the shed did not comply with the setback requirements; that the Property is unique due to its narrowness and slope; that the original cottage was replaced with a larger dwelling after the shed was constructed; that the fence blocks the view of the shed from the road; that the variance is necessary to enable reasonable use of the Property; that the shed provides storage for tools and outdoor furniture; that a shed located closer to Herring Creek was destroyed in a storm; that the difficulty was not created by the Applicant; that the shed does not alter the character of the neighborhood; that the variances are the minimum to afford relief; that there have been no complaints from the neighbors; that the Property is located at the end of Camp Arrowhead Road; and that the shed cannot be located elsewhere on the Property and is stick built making it difficult to move.

Ms. Walker, under oath, affirmed the statements made by Mr. Willard and testified and that the rear yard slopes in the rear making it difficult to access; that a shed cannot be placed in the rear yard due to the slope; and that there are other sheds in the neighborhood.

James Walls was sworn in and testified in support of the Application and testified that he has been a neighbor of the Applicant for approximately thirty (30) years; that the shed is attractive; that the shed is in an ideal location; and that the shed can only be seen from their two (2) houses. Mr. Walls submitted a letter of support to the Board.

John Hughes was sworn in and testified in opposition to the Application and testified that he can see the shed from his property; that he was unable to enlarge his existing garage due to setback requirements; that he feels the shed should conform with the required setbacks; that the shed can be moved; that he has lived next door to the Applicant for twenty-five (25) years; that he was unaware the shed did not comply until the hearing; that the rear of the Property is sloped; and that his lot is 100 feet wide.

Paul Reiger was sworn in and stated that he wanted to know if a complaint had been filed with the Office of Planning & Zoning or if the zoning inspector inspected the Property without a complaint.

In rebuttal, Mr. Willard, stated that the shed cannot be seen from the opposite side of the Property due to the Applicant's dwelling and the neighbor's dwelling.

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

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

Mr. Mills moved that the Board approve Variance Application No. 11778 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The narrow lot and sloping rear yard make this Property unique;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variances will not alter the essential character of the neighborhood;
5. The use has not been detrimental to the public welfare;
6. The use does not and has not impaired the uses of the neighboring and adjacent properties; and
7. 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 carried 5 – 0.

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

**Case No. 11780 – BE & F, LLC** – seeks a variance from the rear yard setback requirement (Section 115-25C of the Sussex County Zoning Code). The property is located on the south side of Elmwood Avenue East approximately 1,214 feet south of Woodland Circle. 911 Address: 23801 Elmwood Avenue East, Lewes. Zoning District: AR-1. Tax Map No.: 2-34-18.09-3.00.

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.

Catherine Ford was sworn in to testify about the Application. Ray Tomasetti, Jr., Esquire, presented the case on behalf of the Applicant.

Mr. Tomasetti stated that the Applicant is requesting a variance of 13.4 feet from the twenty (20) feet rear yard setback requirement for an existing second-level deck; that the Applicant purchased the Property in February 2016; that the previous owner owned the Property since 1973; that the dwellings and decks have existed on the Property for over 43 years; that a survey completed in 1973 showed the decks but the survey did not show the distance from the rear yard property line; that a survey completed in 2015 showed the encroachment; that the previous owners were unaware of the encroachment; that the rear of the Property is adjacent to common area; that the Property is unique in shape and size as the Property is pie-shaped and is very narrow in the front yard; that the narrow front yard forced the dwelling to be placed to the rear of the Property; 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 Applicant; that the variance will not alter the essential character of the neighborhood; that the use is not detrimental

to the public welfare; that the variance requested is the minimum variance necessary to afford relief; and that the neighbors were not aware of the encroachment and have no objection to the Application.

Ms. Ford, under oath, affirmed the statements made by Mr. Tomasetti and testified that the dwelling and deck are unique in shape; that the encroachment went unnoticed until the survey; that there have been no complaints about the deck; that there are similar decks in the area; and that the entire rear wall of the dwelling consists of sliding doors that lead directly onto the deck.

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

Mr. Rickard moved that the Board approve Variance Application No. 117780 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is irregularly shaped and only 35 feet wide making it unique;
2. The Property cannot otherwise be developed in strict conformity with the Zoning Code;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried.

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

**Case No. 11781 – Ruth Ann Crovetto** – seeks 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 south side of Mallard Drive approximately 200 feet west of Bay Drive. 911 Address: 5 Mallard Drive, Lewes. Zoning District: AR-1. Tax Map No.: 2-34-12.00-121.00.

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.

David Wilkins was sworn in and testified requesting a variance of 6.13 feet from the twenty (20) feet rear yard setback requirement for an existing deck; that, in July 2015, he surveyed the Property for the builder; that the previous dwelling was demolished; that the septic system is in the front of the Property; that the survey indicated the rear yard setback requirement was ten (10) feet from the property line which is consistent with the rear yard setback requirements in the restrictive covenants; that he did not know the Sussex County Zoning Code was more restrictive than the restrictive covenants; that the Property was created prior to the enactment of the Sussex County Zoning Code; that the new dwelling had to be placed away from the existing septic system; that the Property is a waterfront property and is unique; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code due to the existing septic system; that, when placing the dwelling, the builder used the setbacks as established on the

erroneous survey; that the exceptional practical difficulty was not created by the Applicant or the builder; that the variance does not alter the essential character of the neighborhood; that there are other structures which intrude into the setback areas in the development; that the variance requested is the minimum variance to afford relief; that the open deck measures 12 feet by 20 feet; that he has taken steps to prevent future mistakes; that the building permit probably referenced the correct setback requirements; that he feels the builder followed his survey and he takes responsibility for the encroachment; and that there are concrete pillars under the deck. Mr. Wilkins submitted construction plans for the Board to review.

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until June 20, 2016**. 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. 11782 – Richard Carmine & Phyllis Carmine** – seek a special use exception to retain a manufactured home type structure for a security office (Sections 115-80A and 115-210A(1) of the Sussex County Zoning Code). The property is located on the southwest corner of Trussum Pond Road and Old State Road. 911 Address: 11450 Trussum Pond Road, Laurel. Zoning District: C-1. Tax Map No.: 3-32-2.00-82.00.

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.

Richard Carmine was sworn in and testified requesting a special use exception to retain a manufactured home type structure for a security office; that a manufactured home has been on the Property for over 30 years without a complaint; that the business has existed on the Property since 1972; that the manufactured home is needed for security; that his son lives in the manufactured home; that there are other businesses along Trussum Pond Road which have been broken into recently; that the business houses copper and expensive tools; that the use does not and has not substantially adversely affected the uses of the neighboring and surrounding properties; that the home is identified as Building 8 on the survey; that there are several manufactured homes in the area; that there is a mobile home park approximately one quarter mile away; that the single-wide unit was replaced by a double-wide approximately five (5) years ago; and that he is asking for approval of five (5) more years.

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

Mr. Mills moved that the Board approve Special Use Exception Application No. 11782 for the requested special use exception for a period of five (5) years based on the record made at the public hearing because the use does not substantially adversely affect the uses of the neighboring and surrounding properties.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted for a period of five (5) years 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. 11783 – William K. Messmer & Edna M. Messmer** – seek a special use exception for a private garage for more than four (4) cars and per 900 square feet floor area (Sections 115-23C(1) and 115-210A(3)(a) of the Sussex County Zoning Code). The property is located on the north side of Middleford Road approximately 97 feet west of Pineview Road. 911 Address: 9445 Middleford Road, Seaford. Zoning District: AR-1. Tax Map No.: 3-31-6.00-50.00.

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.

William Messmer was sworn in and testified requesting a special use exception for a private garage for more than four (4) cars and consisting of more than 900 square feet of floor area; that the proposed garage will not substantially adversely affect the uses of the neighboring and adjacent properties; that he plans to store his vehicles and have a work area to repair the cars; that he was not aware he needed a special use exception until applying for the building permit; that there similar garages in the area; that he has been collecting antique cars since he was sixteen (16) years old; that he has seven (7) vehicles in total; that he restores the vehicles and is a member of different vintage car clubs; that the proposed garage will meet all setback requirements; that he lives on the Property; and that the garage will not be commercial and will only be used for his personal use.

Ruth Anne Forbes Thompson was sworn in and testified in opposition to the Application and testified that she owns the Property next door and just received the notice of the public hearing on Saturday; that she is concerned the garage will not conform to the area; that she was not aware of other garages in the neighborhood similar to the proposed garage; that the garage seems like a commercial use because it is so large; that she is concerned about the effect of the proposed garage on property values; that the potential for car sales and noise issues is a concern; that she has not spoken to the Applicants about this Application; that she is unsure if the garage being used for personal use would create a substantial adverse effect on her property; that the proposed garage is large; that she does not live on her property full-time but plans to move to the area after retirement; and that she would not object to a home being built of the same size as the garage.

In rebuttal, Mr. Messmer testified that the Property is wooded; that the Property consists of 1.41 acres; that the trees will block the neighbor's view of the proposed garage; and that the only direct view of the proposed garage would be from Middleford Road.

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.



Mr. Mills moved that the Board approve Special Use Exception Application No. 11783 for the requested special use exception based on the record made at the public hearing because the use will not substantially adversely affect the uses of the neighboring and adjacent properties.

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

**Case No. 11784 – Julie Saragosa & Claude Saragosa** – seek a variance from the side yard setback requirement (Section 115-25C of the Sussex County Zoning Code). The property is located on the west side of Boat Dock Circle East approximately 170 feet north of Woodland Circle. 911 Address: None Available. Zoning District: AR-1. Tax Map No.: 2-34-11.20-268.01.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of the Application and no correspondence in opposition to the Application.

Julie Saragosa and Claude Saragosa were sworn in and testified requesting a variance of 3.71 feet from the ten (10) feet side yard setback requirement for a proposed dwelling. Mrs. Saragosa testified that the Property is located in Angola by the Bay; that the Applicants purchased the Property in 2009; that the Applicants have searched numerous house plans to fit on this lot and to accommodate their family; that the Property is oddly shaped and is unique; that the proposed dwelling allows for the minimum variance to afford relief; that the Property is irregular shaped and narrow in the rear; that, without a variance, the Property cannot be built in strict conformity with the Sussex County Zoning Code; that the irregular shaped lot was not created by the Applicants; that the variance will not alter the essential character of the neighborhood; that the dwelling will be an attractive house which will benefit the neighborhood; that the Applicants tried to sell the Property but, due to the irregular shape, it could not be sold; that the rear of the Property is adjacent to a common area and the adjacent lot has not yet been developed; that the dwelling will consist of two (2) stories; and that the proposed outdoor space is crucial to their family's needs and the screened porch is necessary.

Mr. Saragosa testified that the Applicants have looked at many plans but could not find one that fit on the Property; that only a small portion of the dwelling will encroach into the setback area; and that a standard sized ranch dwelling would not fit on this lot.

Lawrence Folly was sworn in and testified in support of the Application and testified that he lives in Angola by the Bay; that the Homeowners Association has approved the proposed dwelling; that the entire subdivision consists of irregular shaped lots; and that a large number of variances for side yards and rear yards have been granted over the years due to the irregularly shaped lots.

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

Mr. Rickard moved that the Board approve Variance Application No. 11784 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The irregular shaped lot makes this 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 variance will not alter the essential character of the neighborhood; and
5. The variance sought is the minimum variance necessary to afford relief.

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

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

### **OLD BUSINESS**

**Case No. 11771 – Wayne James Brzoska** – seeks variances from the front yard, side yard, and rear yard setback requirements (Sections 115-25C, 115-182D, 115-182B, and 115-183C of the Sussex County Zoning Code). The property is located on the northeast corner of Basin Street and Bald Eagle Road. 911 Address: 37403 Basin Street, Rehoboth Beach. Zoning District: AR-1. Tax Map No.: 3-34-19.16-18.01.

Ms. Cornwell presented the case, which has been tabled since May 16, 2016.

Mr. Sharp stated that he was not in attendance for the public hearing but he listened to the audio and stated that there is a unique history to this property due to the previous variances granted.

Mr. Rickard moved that the Board approve Variance Application No. 11771 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is a corner lot making it unique;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances sought are the minimum variances necessary to afford relief.

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

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

**Case No. 11772 – Rickie Todd** – seeks a variance from the height requirement for a fence (Section 115-185C of the Sussex County Zoning Code). The property is located on the west side of Lewis Dr. at the end of Chipmans Lane. 911 Address: 244 Lewis Drive, Laurel. Zoning District: AR-1. Tax Map No.: 2-32-12.20-12.00.

Ms. Cornwell presented this case, which was left open for testimony at the May 16, 2016 hearing.

Rickie Todd was sworn in to testify about the Application. Chad Lingenfelder, Esquire, presented the case on behalf of the Applicant.

Mr. Lingenfelder stated that the Applicant is requesting a variance of 1.25 feet from the 3.5 feet maximum height requirement in the front yard for wooden fence and a variance of 2.5 feet from the 3.5 feet maximum height requirement in the front yard for a metal fence with a six (6) feet tall gate; that the fence was erected to deter criminal activity in the area and eliminate noise and light pollution from the neighboring properties; that the Property faces Route 13 and is in direct line from Chipmans Lane; that the existing commercial properties have increased traffic in the area; that the Applicant has owned the Property since 1999; that, since that time, the nearby commercial properties have affected the use and enjoyment of the Applicant's property; that there is a hotel and numerous commercial properties nearby; that the Property is located in a high crime area; that the wooden fence is 4.25 feet and the metal fence with a gate is 6 feet tall; that the height of the fence is needed to prevent trespassing on the Applicant's property; that the height of the fence has kept trespassers from scaling the fence and entering the Property; that the Applicant has not created the illegal activity in the community; that the exceptional practical difficulty has not been created by the Applicant; that the Applicant has taken steps to curtail illegal activity in the area by forming a neighborhood watch group; that the variances will not alter the essential character of the neighborhood; that the wooden fence blocks light pollution from the Property; that the fence has not impaired the uses of the neighboring an adjacent properties; that there are other similar fences in the neighborhood; that the variances sought are the minimum variances necessary to afford relief; that he submitted with the Application were seven (7) signatures in support of the Application; and that on May 16, 2016, the night of the scheduled hearing, there were four (4) people in support to the Application.

Rickie Todd, under oath, affirmed the statements made by Mr. Lingenfelder and testified that he is the owner of the Property; that there is a hotel and liquor store nearby; that he has been attacked four (4) times in his driveway; that he no longer feels safe on his own property; that he has not had any incidents since the fence was erected; that the open gates allow for visibility and there are no visibility issues with the fence or the gates; and that he has moved the existing hot tub and pergola into compliance.

Charles Swift was sworn in and testified in support of the Application and testified that the neighboring hotel is a major crime area; that the Neighborhood Watch program has helped lessen problems on his side of the neighborhood; and that he feels the fence was the right thing to do.

Jean Smith was sworn in and testified in support of the Application and testified that she and her husband have lived in the neighborhood for fifty (50) years; that she lives across the street from the Applicant; that the area has become a short cut for through traffic creating issues; that speed bumps have been added but has not helped with the speeding in the neighborhood; that her existing hedge keeps people out of her driveway; and that the crime in the area has affected the property values.

Paul Reigor was sworn in and stated that he questioned the Sussex County Zoning Code and asked for determination of an “open fence”; and asked if barbwire is an option to the Applicant.

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

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

Mr. Mills moved that the Board approve Variance Application No. 11772 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The crime in the area creates a unique situation to the Property;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variances will not alter the essential character of the neighborhood;
5. The use is not detrimental to the public welfare; 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 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.

### **ADDITIONAL BUSINESS**

**Case No. 11204 – Bay Twenty, LLC** – seek a special use exception for additional “temporary” ground signs (Sections 115-41 and 115-159I of the Sussex County Zoning Code). The property is located on the south side of Route 20 (Zion Church Road) corner of Road 382A (Johnson Road) within Fox Haven Subdivision. 911 Address: None Available. Zoning District: GR. Tax Map No.: 5-33-11.00-45.01 & 46.03.

### **REQUEST TIME EXTENSION**

Ms. Cornwell presented the case and read a letter from the Applicant requesting an eighteen (18) month time extension.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the request for a time extension be **granted for a final time for a period of one (1) year**. Motion carried 5 – 0.

The vote by roll call: Mr. Mils – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

**Meeting Adjourned 9:38 p.m.**