

MINUTES OF MARCH 21, 2016

The regular meeting of the Sussex County Board of Adjustment was held on Monday, March 21, 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 Mr. James Sharp – Assistant County Attorney and Vince Robertson – Assistant County Attorney, and staff members Ms. Janelle Cornwell – Planning and Zoning Manager, and Mrs. Jennifer Norwood – Recording Secretary.

The Pledge of Allegiance was led by Mr. Callaway.

Motion by Mr. Rickard, seconded by Mr. Mills, and carried unanimously to approve the Revised Agenda with Case No. 11738 – Lori A. Hudson and James E. Hudson, Jr. moved to the beginning of the Public Hearings due to a conflict with Mr. Sharp. Motion carried 5 – 0.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously to approve the Minutes and Finding of Facts for January 25, 2016 as circulated. Motion carried 5 – 0.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously to approve the Minutes and Finding of Facts for February 1, 2016 as circulated. Motion carried 5 – 0.

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

OLD BUSINESS

Case No. 11720 – Town of Bethany Beach – seeks a special use exception to operate a target / shooting range (Sections 115-23A and 115-210A(1) of the Sussex County Zoning Code). The property is located on the west side of Blackwater Road approximately 1,230 feet north of Burbage Road. 911 Address: 32492 Blackwater Road, Frankford. Zoning District: AR-1. Tax Map No.: 1-34-11.00-54.01.

Ms. Cornwell presented the case, which has been tabled since February 29, 2016.

Mr. Workman stated that he is not in favor of this application; that the use will substantially adversely affect the uses of the neighboring and adjacent properties; that thirty-four (34) people from the neighborhood opposed the Application; that the Applicant did not propose any gates to keep others out or trees to help buffer the noise; and that the use is out of place and possibly a safety issue for children.

Mr. Rickard stated that he is not in favor of this application; that he believes the Applicant wants the use but it is not a need; that there are other locations available to the Applicant; that it

does not seem cost effective; that the use will be detrimental to the wildlife in the area; and that approval of the use could set a precedent.

Mr. Hudson stated that he is not in favor of the Application; that the residential area is growing; and that the use will substantially adversely affect the uses of the neighboring and adjacent properties.

Mr. Mills stated that he is in favor of the Application; that he feels the opposition's concern was speculative; that the Applicant provided professional opinion the use would not adversely affect the uses of the neighboring properties; that the range is a controlled environment; that the proposed three (3) sided berm provides a safe use of the Property; that the use would be limited to lessen the burden on the neighborhood; and that hunters in the area pose more of a risk than the range.

Mr. Callaway stated that he is not in favor of the Application and stated that the Property was formerly used as a residence and poultry farm; that he is convinced the shooting range will have a substantial adverse effect on neighboring and adjacent properties; that the record is quite clear that the area near the shooting range is an area of agricultural and residential uses and that the area is quiet; that neighbors have enjoyed the general peacefulness related to the tranquil atmosphere of the neighborhood and have demonstrated that the shooting range will be an unnecessary intrusion into the area; that the largest concern raised by the opposition relates to the noise generated from the range; that the range will be located outdoors where the sounds of repeated shots fired will reverberate throughout the area; that the neighborhood is quite flat and open and the noise will likely travel a great distance; that neighbors also testified that a recent decibel test performed by the Applicant was clearly heard; that additional noise from the outdoor shooting range will likely increase the noise pollution in this quiet neighborhood and unnecessarily disturb neighbors; that testimony of a neighbor who owns an animal training facility also proved compelling as the neighbor testified that she trains dogs and has horses on her property; that she specialized in working with rescue animals and dogs that have fear issues; that the times the Applicant intends to use the range coincide with the times she typically trains those animals; that the existence of the shooting range will likely have a substantial adverse and chilling effect on the operation of her business; that the Applicant failed to demonstrate how the range will not lead to an adverse effect on the environment of neighboring and adjacent properties; that it is undisputed that bullets will be fired at the site and opposition expressed concerns about the effect of the emissions from fired rounds into the ground will have on the ground and nearby waterways; that testimony indicates that the Property drains to a nearby ditch thereby potentially exposing the ditch to pollution; that the Applicant testified it would maintain the Property, but did not present a convincing plan as to how it will limit the exposure of neighboring and adjacent properties (particularly the waterways) from pollution due to emissions from fired rounds at the range; that the proposed use is out of character for the neighborhood as there are residential properties nearby; and that the shooting range will substantially affect adversely the uses of neighboring and adjacent properties.

Mr. Rickard stated that he would move that the Board recommend denial of Special Use Exception Application No. 11720 for the requested special use exception based on the record made

at the public hearing because the use will substantially adversely affect the uses of the neighboring and adjacent properties.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried that the special use exception be **denied for the reasons stated**. Motion carried 4 – 1.

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

Case No. 11731 – Robert Betts – seeks 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 Mustang Run in Sugar Maple Farms Subdivision. 911 Address: 7668 Mustang Run, Milford. Zoning District: AR-1. Tax Map No.: 3-30-16.00-79.00.

Ms. Cornwell presented the case, which has been tabled since March 7, 2016.

Mr. Mills recused himself from the case since he was not present at the public hearing held on March 7, 2016.

Mr. Rickard stated that the Applicant has built two or three other dwellings in the subdivision without issue; that the Applicant made a mistake when measuring and used the wrong property marker; that the lot is odd in shape; and that it would be a great financial hardship to bring the dwelling into compliance.

Mr. Hudson stated that he agrees with Mr. Rickard; that the variance will not have an adverse effect to the neighborhood; that the lot is on a cul-de-sac; and that the dwelling does not alter the character of the neighborhood.

Mr. Workman stated that he agrees and had no issue with the Application; that it would be an extreme hardship to bring into compliance; that the cul-de-sac creates an odd shape to the lot; and that the Applicant made an honest mistake.

Mr. Callaway stated that he agrees with the other members.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11731 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 variance does not alter the essential character of the neighborhood;
4. The variance sought is the minimum variance necessary to afford relief;
5. That the Applicant has a good record of building homes in compliance with the Sussex County Zoning Code; and

6. That the Applicant would suffer a financial hardship to bring the dwelling into compliance with the Code.

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

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

Case No. 11733 – Kenneth A. Hubley & Priscilla M. Hubley – seek 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 Bayview West in Bayview Estates. 911 Address: 39016 Bayview West, Selbyville. Zoning District: AR-1. Tax Map No.: 5-33-19.00-207.00.

Ms. Cornwell presented the case, which has been tabled since March 7, 2016.

Mr. Mills recused himself from the case since he was not present at the public hearing held on March 7, 2016.

Mr. Rickard stated that a portion of the Property is in the lagoon; that the Applicants could build up to the bulkhead; that he feels the addition could be built in the rear yard; and that the Applicants are creating their own difficulty.

Mr. Workman stated that the Applicant is adding on to an existing bedroom; and that an addition to the rear of the Property will not be beneficial to the needs of the Applicants.

Mr. Hudson stated that the Applicants are requesting a minimum variance to afford relief; that the neighbors and Homeowners Association support the Application.

Mr. Callaway stated that an addition to the rear of the Property would impact the environment; and that the front yard variance is similar to other variances granted in the neighborhood.

Mr. Rickard stated that he has been convinced by the other Board members the variance will be similar to others in the neighborhood.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11733 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique in size and a portion of the Property is located in the lagoon;
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 4 – 0.

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

NEW BUSINESS

Case No. 11738 – Lori A. Hudson & James E. Hudson, Jr. – seek a special use exception to retain an existing manufactured home type structure that is on less than ten (10) acres (Section 115-210A(3)(q) of the Sussex County Zoning Code). The property is located on the south side of Wilson Road approximately 2,015 feet southwest of Savannah Road. 911 Address: 21148 Huckleberry Lane, Georgetown. Zoning District: AR-1. Tax Map No.: 1-35-10.00-3.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Mr. Sharp recused himself from the case due to a conflict.

Mr. Robertson was present to provide legal counsel to the Board for this Application.

James Hudson, Jr., and Lori Hudson were sworn in and testified requesting a special use exception to retain an existing manufactured home type structure that is on less than ten (10) acres; that the existing manufactured home was placed on the Property in 1980; that since then the Property has been sold back and forth between family members; that his son renovated the existing unit; that they have recently purchased three (3) acres and the manufactured home; that they do not want to purchase the entire ten (10) acres; that in October they moved into the manufactured home; that due to some health issues they have sold their other property; that they plan to build a dwelling within the next five (5) years on the Property and remove the manufactured home; and that the manufactured home does not substantially adversely affect the uses of the neighboring and adjacent properties.

Mr. Hudson submitted pictures for the Board to review.

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.

Mr. Mills stated that he would move that the Board recommend approval of Special Use Exception Application No. 11738 for the requested special use exception for a period of five (5) years because the use will not substantially adversely affect the uses of the neighboring and adjacent 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 and for the reasons stated**. Motion carried 5 – 0.

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

Case No. 11735 – Marc Bastow & Nancy Bastow – seek variances from the rear yard setback requirements (Section 115-34B of the Sussex County Zoning Code). The property is located on the south side of Bethany Loop approximately 200 feet west of Pond View Drive in the Salt Pond Subdivision. 911 Address: 531 Bethany Loop, Bethany Beach. Zoning District: MR. Tax Map No.: 1-34-13.00-1444.00

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

Marc Bastow was sworn in to testify about the Application. James Fuqua, Jr., Esquire, presented the case on behalf of the Applicants and submitted exhibits for the Board to review.

Mr. Fuqua stated that the Applicants are requesting a variance of 3.5 feet from the ten (10) feet rear yard setback requirement and a variance of 2.8 feet from the ten (10) feet rear yard setback requirement for a proposed addition; that the Applicants plan to enclose and extend an existing screen porch; that the second floor addition will cantilever over the ground level porch; that the existing porch measures 9 feet by 12 feet; that the addition will extend an additional 3.5 feet; that the Property is a large lot but a large portion of the front yard consists of Federal Non-Tidal Wetlands which cannot be encroached upon or disturbed; that the existing dwelling had to be built to the rear of the Property due to the wetlands; that the rear of the Property is adjacent to a small strip of common area owned by the homeowners association which separates the Property from the Salt Pond; that the Applicants use this space as a portion of their backyard; that the existing dock is owned by the Applicants; that an addition cannot be constructed without a variance; that the exceptional practical difficulty was not created by the Applicants; that the variance will not alter the character of the neighborhood; that variance will not adversely affect the neighborhood; that the addition will be 16 feet from the Salt Pond; that the Salt Pond Architectural Committee approved the plan; that the Property is unique due to the wetlands and the strip of land between the Property and the Salt Pond; that the variance requested is the minimum variance to afford relief; that all the lots along the pond have the same open space; that the owners of land adjacent to the strip of land between a residential lot and the Salt Pond have a license to use the strip of land; that the proposed addition will afford the Applicants with reasonable use of the space; that the proposed room will be used as a nursery; and that the Property is serviced by Sussex County sewer.

Mr. Bastow, under oath, affirmed the statements made by Mr. Fuqua. Mr. Bastow testified that he purchased the Property in 1999 with the existing improvements.

Bruce Mears was sworn in and testified that the existing porch is so narrow that it is not usable; and that the existing garage and driveway prevent the addition being built to the west of the house.

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

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

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11735 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The existing wetlands make the Property unique;
2. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variances are necessary to enable reasonable use of the Property; and
5. 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. Rickard – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 11736 – Phyllis M. Goulden & Gary Landis Gardin – seek variances from the side yard and front yard setback requirements (Sections 115-25C and 115-185F of the Sussex County Zoning Code). The property is located on the northeast side of Woodland Court South approximately 560 feet west of Woodland Circle in Angola by the Bay. 911 Address: 33121 Woodland Court South, Millsboro. Zoning District: AR-1. Tax Map No.: 2-34-11.20-386.00-387.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

James Goulden was sworn in to testify about the Application. Tim Willard, Esquire, presented the case on behalf of the Applicants.

Mr. Willard stated that the Applicants are requesting a variance of 4.9 feet from the ten (10) feet side yard setback requirement on the north side for an existing dwelling, a variance of 0.4 feet from the ten (10) feet side yard setback requirement on the south side for an existing dwelling, a variance of 0.6 feet from the thirty (30) feet front yard setback requirement for an existing dwelling, and a variance of 0.1 feet from the five (5) feet side yard setback requirement on the south side for an existing shed; that the Applicant is a guardian of Phyllis Goulden; that Phyllis Goulden is in a nursing home; that the dwelling must be sold to pay the nursing home expenses;

that the dwelling and shed were on the Property when Ms. Goulden purchased it in the mid-1970s; that the Property is located in Angola by the Bay; that the dwelling was built in the 1970s; that the Property is unique as it is a pie shaped property and consists of only 5,123 square feet; that the rear of the Property is 18.87 feet wide; that the need for the variances was discovered when a survey was completed for settlement and showed the encroachments; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code; that the exceptional practical difficulty was not created by the Applicants; that the variances will not alter the essential character of the neighborhood; that the Property is heavily wooded; and that the variances sought are the minimum variances to afford relief.

Cindy Baker was sworn in and testified in support of the Application and testified that she is the realtor for the Property; that the rear yard of the Property is adjacent to the common area in the development; and that the common area is undevelopable.

James Goulden, under oath, affirmed the statements made by Mr. Willard.

The Board found that five (5) parties appeared in support of the Application.

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

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11736 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The irregular shape of the Property makes it unique;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances sought are the minimum variances necessary to afford relief.

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

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

Case No. 11737 – Peter Damian Bringe & Kimberly Ann Bringe – seek variances from the front yard and side yard setback requirements (Sections 115-25C and 115-183C of the Sussex County Zoning Code). The property is located on the west side of Garfield Avenue approximately 1,225 feet southwest of Lighthouse Road. 911 Address: 39180 Garfield Avenue, Selbyville. Zoning District: AR-1. Tax Map No.: 5-33-20.18-184.01.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Peter Bringe and Kimberly Bringe were sworn in to testify about the Application. Raymond Tomasetti, Jr., 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 4.4 feet from the thirty (30) feet front yard setback requirement for an existing pergola and a variance of 0.8 feet from the ten (10) feet side yard setback requirement on the north side for an existing deck and set of stairs; that the Applicants purchased the Property in October 2015; that a survey completed for settlement showed the encroachments; that the previous owner built the dwelling in 2004; that the pergola was also built by the previous owner; that the Property is irregularly shaped; that the deck is small and did not encroach in the first survey; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code; that the variances do not alter the character of the neighborhood; that the difficulty was not created by the Applicants; that the use is not detrimental to the public welfare; that the variances will not alter the character of the neighborhood; and that the variances sought are the minimum variances to afford relief.

Mrs. Bringe testified that the Property is located at the end of a dead end street; that the pergola houses the wiring for the flood light; that the light provides a buffer between her dwelling and traffic turning around in the street; that the light also provides visibility of the entrance to the dwelling located on the side; and that she affirmed the statements made by Mr. Tomasetti.

Mr. Tomasetti stated that the pergola is part of the home and serves a purpose; that edge of the existing road does not extend to the front line of the Property; and that a portion of the rear yard is in the bay.

Mrs. Bringe testified that the adjacent street is pitch black with no street lights and the light attached to the pergola provides improved visibility.

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.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11737 for the requested variances based on the record made at the public hearing and for the following reasons:

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

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

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

Case No. 11739 – Upesch Vyas – seeks variances from the front yard setback requirement (Section 115-83.8B of the Sussex County Zoning Code). The property is located on the northwest corner of John J. Williams Highway and Indian Mission Road. 911 Address: 24858 John J. Williams Highway, Millsboro. Zoning District: CR-1. Tax Map No.: 2-34-23.00-269.08.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

James Robert Clark, Architect and Upesch Vyas were sworn in and testified requesting a variance of eighteen (18) feet from the sixty (60) feet front yard setback requirement from Route 5 (Indian Mission Road) and a variance of eighteen (18) feet from the sixty (60) feet front yard setback requirement from Route 24 (John J. Williams Highway) for a proposed building, a variance of 58.9 feet from the sixty (60) feet front yard setback requirement and variance of 56.3 feet from the sixty (60) feet front yard setback requirement for an existing canopy.

Mr. Clark testified that the Applicant plans to construct a new store on the Property; that the Property is irregularly shaped; that the existing canopy and building have been on this property for many years; that the Delaware Department of Transportation (“DelDOT”) took a portion of the Property when widening the intersection; that the Applicant purchased the Property in 2002 as it exists; that the Property is of little value if the variances are not approved; that the existing underground pumps cannot be relocated; that the difficulty was not created by the Applicant; that incoming traffic will enter the Property from the Food Lion parking lot; that the variances will not alter the essential character of the neighborhood; that the Property is zoned commercial; that the surrounding properties are also commercially zoned; that the existing building will be removed; that the proposed building will cantilever over the existing underground pumps; that the existing building has been on the Property for approximately 35 years; that there will be adequate parking available; that the new store is needed to enable reasonable use of the Property; that the Applicant will be removing egress access from Route 24 and Route 5; that traffic will have to use an access from the existing shopping center parking lot; that the existing store is quite small and the new store will be larger; that the Property is being developed around the existing storage tanks; that it would be cost prohibitive to move the tanks; and that the proposed store will be selling liquor and an entrance to their property must be 0.9 miles from any other liquor store in the area.

Mr. Vyas testified that DelDOT took a portion of the Property.

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.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the case be **tabled until April 4, 2016**. Motion carried 5 – 0.

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

Case No. 11740 – Anthony Morgan, III – M&M Properties, LLC – seeks 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 Nassau Drive approximately 114 feet south of Minos Conaway Road. 911 Address: 31276 Nassau Drive, Lewes. Zoning District: AR-1. Tax Map No.: 3-34-5.00-13.00.

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

Anthony Morgan, III, was sworn in and testified requesting a variance of 2.6 feet from the fifteen (15) feet side yard setback requirement on the north side for a proposed attached garage; that he purchased the Property at a Sheriff's sale; that he has torn down the existing dwelling; that he plans to use the existing foundation for the proposed dwelling; that the prospective buyer is handicapped and uses a wheelchair; that the prospective buyer needs an attached garage for better access to the proposed dwelling; that the old dwelling was 20 feet deep and he is adding 10 feet to the rear of the old dwelling as an expansion to the dwelling; that the proposed dwelling will be close to the existing septic system; that the proposed dwelling and garage are similar to other dwellings in the neighborhood; that the Property is unique due to the existing foundation; that he is trying to use the same foundation and, if there was no foundation, he could shift the dwelling to fit within the building envelope; that he considered placing the garage where it would face the side of the Property rather than the front but such a placement would require a change in the angle of the driveway; that the proposed location is the best for the proposed attached garage for entry and exit to the Property; that the proposed dwelling will be an improvement to the neighborhood; that the neighbors support the Application; that the ramp needed will be within the interior of the proposed attached garage; that, if the Application is denied, he will move the foundation towards the other side of the Property or build a smaller garage; that the Property can be otherwise developed but it would be more expensive to do so; and that he is creating the need for the variance.

Mr. Morgan submitted exhibits 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 April 4, 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. 11741 – Alan Dodson & Nancy Dodson – seek a variance from the rear yard setback requirement (Sections 115-34B and 115-120B of the Sussex County Zoning Code). The property

is located on the southwest side of Seagrass Plantation Lane across from Habersham Lane. 911 Address: 35105 Seagrass Plantation Lane, Dagsboro. Zoning District: MR. Tax Map No.: 1-34-7.00-667.00.

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

Pam McDonald, of Del-Coast Design and Build, was sworn in and testified requesting a variance of ten (10) feet from the thirty (30) feet rear yard setback requirement for a proposed three season room; that Del-Coast Design and Build was hired by the Applicants to build a three season room measuring approximately 18 feet by 16 feet; that the Property is unique due to its narrow width; that the size of the lot and dwelling leave no room for the proposed addition; that there is an undeveloped wooded lot to the rear which also consists of wetlands areas; that Ryan Homes developed this lot and led the Applicants to believe an addition could be built at a later date; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code; that the variance is the minimum variance to afford relief; that the need for the variance was not created by the Applicants; that the variance will not alter the essential character of the neighborhood; that the proposed addition is similar to others in the neighborhood; that she has constructed approximately fifty (50) three season rooms in the development and this is the first variance needed; that the use is not detrimental to the public welfare; that the Applicants were misled by Ryan Homes; that the thirty (30) feet rear yard setback for this lot adds to the uniqueness of the Property; that the rear yard of the Property is adjacent to open area designated for this development; and that existing dwelling is on a slab, therefore the proposed addition will also be on a concrete slab.

Ms. Cornwell advised the Board that different lots in the community have different setbacks and that other lots in the community have smaller rear yard setbacks.

Howard Simons was sworn in and testified with concerns about the Application and testified that he is representing the Homeowners Association; that the Applicant has not submitted any proposed plans to their Association; that this public hearing is how they were notified any proposed additions were being considered for this property; and that he is neither supports or opposes the Application.

In rebuttal, Ms. McDonald, testified that she is aware the Applicants must have Homeowners Association approval prior to construction and plans to meet with them if the Board approves the requested variance.

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

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11741 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The unusual rear yard setback requirement makes this property unique;
2. The exceptional practical difficulty was not created by the Applicants;
3. The variance is necessary to enable reasonable use of the Property;
4. The variance will not alter the essential character of the neighborhood;
5. The use is not detrimental to the public welfare; and
6. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried that the variance be **granted for the reasons stated**. Motion carried 4 – 1.

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

Case No. 11742 – Gaw Ventures Group, LLC – seeks variances from the lot width requirement for a parcel, from the side yard setback requirement, and the square footage for a parcel requirement (Sections 115-25B(1) and 115-25C of the Sussex County Zoning Code). The properties are located on the southwest corner of 7th Street and Bay View Road. 911 Address: None Available. Zoning District: AR-1. Tax Map No.: 3-34-19.16-87.00 & 87.01.

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

John Gaw was sworn in to testify about the Application. Richard Berl, Esquire, presented the case on behalf of the Applicant and submitted exhibits for the Board to review.

Mr. Berl stated that the Applicant is requesting to rotate two (2) lots perpendicular to Bay View Road, a variance of fifty (50) feet from the one-hundred (100) feet lot width requirement for both parcels, a variance of five (5) feet from the fifteen (15) feet side yard setback requirement for both parcels, and a variance of 15,000 square feet from the 20,000 square feet minimum lot size requirement for both parcels; that the two (2) lots already exist; that the Applicant wants to turn the lots 90 degrees so the front yard will face Bay View Road rather than 7th Street; that the lots are in the older section of Bay Vista; that all lots in Bay Vista were developed as twenty-five (25) feet wide lots; that most lots have been combined and are a minimum of fifty (50) feet wide; that there are a few lots measuring seventy-five (75) feet and one-hundred (100) feet wide; that the prior dwelling on the Property had to be torn down; that the prior dwelling was in poor condition; that the Property is low and the crawl space of the older house was usually wet; that the area floods due to the nearby bay; that the lots measure 5,000 square feet and are undersized so there is no way to rotate the lots without creating a need for variances; that the current direction of Lot 314A faces existing power line guy wires and a pole thereby making it difficult to enter the lot; that, once the lots are rotated, the existing power lines will be to the rear of the Property and, thus, less obtrusive; that there are 69 other lots in Bay Vista which measure 50 feet by 100 feet; that each of those lots have ten (10) feet side yard setbacks; that most dwellings along Bay View Road face Bay View Road; that the fifteen (15) feet corner yard setback requirement will be maintained for Lot 314A as proposed; that the lots are unique due to their narrow width and the location of the

guy wires and electric pole; that the size of the lots will not be changed; that the proposed rotation of the lots will enable reasonable use of the Property; that the community is a non-conforming community; that the exceptional practical difficulty was not created by the Applicant, since the development was many created years ago; that the prior dwelling also faced Bay View Road; that the variances will not alter the character of the neighborhood; that the new dwellings will improve the character of the neighborhood; and that the variances are the minimum variances necessary to afford relief.

John Gaw testified that the proposed dwellings will comply with current flood zone regulations; that the prior dwelling was uninhabitable and needed to be torn down; that the proposed dwellings will be raised out of the flood zone; that the proposed dwellings will be on block foundations; that the electric pole cannot be removed and creates issues for parking and the driveway; that the proposed dwellings will better align with other homes along Bay View Road; that a majority of the homes along Bay View Road face Bay View Road and the proposed alignment will allow for the dwellings to face Bay View Road; that the prior dwelling occupied both lots; and that he affirmed the statements made by Mr. Berl.

Grant Dockitty was sworn in and testified in opposition to the Application and testified that he owns a property on 7th Street; that the lots along 7th and 8th Streets are the lowest lying lots in the development; that flooding comes from tidal flooding and rain; that there are no street drains and all the rain collects in this low lying area; that there are fifty (50) feet wide lots in Bay Vista; that there are no corner lots in the development less than seventy-five (75) feet wide; that most corner lots are one-hundred (100) feet wide; that Bay Vista was developed with twenty-five (25) feet wide lots; that the entire neighborhood is opposed to the Application; that he will see the rear of the Applicant's dwelling because the dwelling will only be fifteen (15) feet from 7th Street; that the lots will not align properly with lots on 7th Street; that the variances will set a precedent; that there is only one sewer hook-up available for the Property; that the original plot survey shows this property as a 100 feet by 100 feet lot; that the proposed dwelling for Lot 314A will be closer to 7th Street and will then be further out than other dwellings on 7th Street; that the previous dwelling was in character with the neighborhood; that the proposed dwellings will be out of character with the neighborhood; and that he objects to the Applicant building two (2) dwellings on the corner lot.

Chuck Wilson was sworn in and testified in opposition to the Application and testified that he lives in the area; and that he feels the Applicant should maintain the side yard setback requirements for the proposed dwellings.

In rebuttal, Mr. Berl, stated that the requested variance for the side yard setbacks are consistent with the standard setbacks in the development; that the existing lots have 10 feet side yard setback requirements but the requirement would increase to 15 feet if the lots are rotated; and that other lots measuring 50 feet by 100 feet have 10 feet side yard setback requirements.

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

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until April 4, 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.

Meeting Adjourned 10:45 p.m.