

## MINUTES OF MAY 16, 2016

The regular meeting of the Sussex County Board of Adjustment was held on Monday, May 16, 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. J. Everett Moore, Jr. – 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. Workman, seconded by Mr. Rickard, and carried unanimously to approve the Revised Agenda as circulated. Motion carried 5 – 0.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously to approve the Minutes and Findings of Facts for March 7, 2016, as circulated. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes and Findings of Facts for March 21, 2016, as circulated. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously to approve the Minutes and Findings of Facts for April 4, 2016, as circulated. Motion carried 5 – 0.

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

### OLD BUSINESS

**Case No. 11750 – Ron Abremski & Diane Abremski** – seek a variance from the rear yard setback requirement (Sections 115-25C and 115-183C of the Sussex County Zoning Code). The property is located on the east side of Herring View Drive approximately 0.6 miles east of Angola Beach Road. 911 Address: 33613 Herring View Drive, Lewes. Zoning District: AR-1. Tax Map No.: 2-34-18.00-746.00.

Ms. Cornwell presented the case, which has been tabled since May 2, 2016.

Mr. Rickard stated that he wanted more time to review the case.

Mr. Workman stated that he would like to hear from the developer.

The Board discussed the possibility of re-opening the case to obtain more information from the developer.

Motion by Mr. Rickard, seconded by Mr. Workman that the case be tabled.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously to withdraw the motion to table the case. Motion carried 5 – 0.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the developer be subpoenaed for testimony and the public hearing be re-advertised. 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. 11757 – Pat Lewis & Karen Lewis** – seek a variance from the rear yard setback requirement (Section 115-25C of the Sussex County Zoning Code). The property is located on the east side of Riverwalk Drive in the Beaver Creek subdivision. 911 Address: 18841 River Walk Drive, Milton. Zoning District: AR-1. Tax Map No.: 2-35-30.00-517.00.

Ms. Cornwell presented the case, which has been tabled since May 2, 2016.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the developer be subpoenaed for testimony and the hearing be re-advertised. 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. 11746 – Glenn Coleman** – seeks variances from the front yard, side yard and rear yard setback requirements (Sections 115-25C and 115-185F of the Sussex County Zoning Code). The property is located on the south side of Boat Dock Drive West approximately 98 feet west of Woodlawn Circle. 911 Address: 23267 Boat Dock Drive West, Lewes. Zoning District: AR-1. Tax Map No.: 2-34-11.20-247.00.

Ms. Cornwell presented this case, which has been tabled since May 2, 2016.

Mr. Rickard stated that he listened to the public hearing audio for this case and is prepared to make a decision.

Mr. Rickard moved that the Board approve Variance Application No. 11746 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique in size as it is only 75 feet by 100 feet and the existing dwelling is small;
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 variances sought are the minimum variances necessary to afford relief; and
6. The variances represent the least modifications of the regulations at issue.

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. 11766 – Linda S. Shaw, Trustee** – seeks a variance from the side yard setback requirements (Section 115-34B of the Sussex County Zoning Code). The property is located on the south side of California Avenue approximately 139 feet east of North Bay Shore Drive. 911 Address: 15 California Avenue, Milton. Zoning District: MR. Tax Map No.: 2-35-3.12-9.00.

Ms. Cornwell presented the case, which has been tabled since May 2, 2016.

Mr. Rickard stated that he listened to the public hearing audio and is prepared to make a decision.

Mr. Rickard moved that the Board deny Variance Application No. 11766 for the requested variance based on the record made at the public hearing because the exceptional practical difficulty is being created by the Applicant.

Motion by Mr. Rickard, seconded by Mr. Hudson, and carried unanimously that the variance be **denied 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.

### **PUBLIC HEARINGS**

**Case No. 11767 – Bethesda Leasing, LLC** – seeks a variance from the front yard setback requirement (Section 115-34B of the Sussex County Zoning Code). The property is located on the north side of the dead end of Heather Lane in Bethany Dunes. 911 Address: 31002 Heather Lane, Bethany Beach. Zoning District: MR. Tax Map No.: 1-34-9.00-429.00.

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.

Timothy Tice, of Echelon Homes, was sworn in to testify about the Application. James Fuqua, Esquire, presented the case on behalf of the Applicant and submitted exhibits for the Board to review.

Mr. Fuqua stated that the Applicant is requesting a variance of sixteen (16) feet from the thirty (30) feet front yard setback requirement for a proposed dwelling; that the Property is a corner lot and the northern most lot in the development; that the Property only has fifty (50) feet of road frontage which is unusual; that the Applicant purchased the vacant property in 2016; that the

previous dwelling, including the pilings supporting the dwelling, was destroyed by two (2) fires in 2012; that the size of the Property and the Delaware Department of Natural Resources and Environmental Control (“DNREC”) building restriction line make this Property unique; that a majority of homes in the area were built prior to the establishment of the DNREC building restriction line; that all new structures must meet the DNREC building restriction; that DNREC refused to grant a waiver to the Applicant for the proposed dwelling because there was no portion of the prior dwelling remaining after the fire; that, if a portion of the existing dwelling remained after the fire, the Applicant would have been able to rebuild within the DNREC building restriction line; that the prior dwelling was east of the DNREC building line; that other dwellings in the neighborhood are also located east of the DNREC building line; that only a corner of the proposed dwelling will encroach into the setback requirement; that the DNREC building restriction line prohibits the proposed dwelling from being built in strict conformity with the Sussex County Zoning Code; that the variance is necessary to enable reasonable use of the Property; that the exceptional practical difficulty was not created by the Applicant; that the variance will not alter the character of the neighborhood; that the views of the neighboring properties will not be affected; that the Architectural Review Board of Bethany Dunes has approved the proposed dwelling; that the neighbors have no objection to the Application; and that the variance sought is the minimum variance to afford relief.

Mr. Tice, under oath, affirmed the statements made by Mr. Fuqua and testified that the proposed dwelling will be approximately 2,400 square feet in size; and that the proposed dwelling will be similar in style to the other dwellings in the area.

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. 11767 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The DNREC building restriction line creates a unique situation;
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 previous dwelling burned down and the Applicant must meet the DNREC requirements;
5. The variance will not alter the essential character of the neighborhood;
6. The homeowners association supports the Application; and
7. That 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. 11768 – James W. Baker** – seeks a variance from the front yard setback requirement (Sections 115-34B and 115-182D of the Sussex County Zoning Code). The property is located on

the south side of Nanticoke Lane approximately 103 feet west of Hiawatha Boulevard. 911 Address: 31413 Nanticoke Lane, Dagsboro. Zoning District: MR. Tax Map No.: 1-34-11.00-772.00.

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

Shannon Carmean Burton, Esquire, presented the case on behalf of the Applicant and submitted an affidavit signed by Annette M. Griffis who was unable to attend the public hearing.

Ms. Burton stated that the Applicant is requesting a variance of 5.4 feet from the thirty (30) feet front yard setback requirement for an existing dwelling; that the Applicant purchased the Property in February 2016 from Ms. Griffis; that Ms. Griffis lives in Maryland and was unaware of any encroachments; that Ms. Griffis purchased the Property in 2003 as it currently exists; that the existing dwelling was built in 1985; that a Certificate of Compliance was issued in 1986; that a survey completed in 2016 showed the encroachments; that there have been no modifications to the dwelling since it was constructed; that Ms. Griffis applied for a variance as soon as the encroachments were discovered; that the lot is irregular in shape and is at the end of a cul-de-sac creating a unique situation; that the Property cannot otherwise be developed in strict conformity at this time; that the variance is necessary to enable reasonable use of the Property; that the exceptional practical difficulty was not created by the Applicant; that the variance does not alter the essential character of the neighborhood; that the variance does not impair the uses of the neighboring and adjacent property owners; that the use is not detrimental to the public welfare; that there have never been any complaints from the neighbors; that the variance requested is the minimum variance to afford relief; and that the variance is the least modification of the regulation at issue.

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

Mr. Mills moved that the Board approve Variance Application No. 11768 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The odd shaped lot and cul-de-sac 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;
4. The variance will not alter the essential character of the neighborhood;
5. The use will not be 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. Rickard, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

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

**Case No. 11769 – Jennifer Flinchbaugh & Lisa Smith** – seek variances from the front yard, side yard, and rear yard setback requirements (Section 115-42B, 115-183C and 115-185A of the Sussex County Zoning Code). The property is located on the northeast side of 4<sup>th</sup> Street approximately 140 feet north of South Drive. 911 Address: 608 4<sup>th</sup> Street, Rehoboth Beach. Zoning GR. Tax Map No.: 3-34-13.00-92.04.

**Case No. 11770 – Jennifer Flinchbaugh & Lisa Smith** – seek variances from the front yard and side yard setback requirements (Section 115-183C, 115-185A, and 115-42B of the Sussex County Zoning Code). The property is located on the northeast side of 4<sup>th</sup> Street approximately 190 feet north of South Drive. 911 Address: 606 4<sup>th</sup> Street, Rehoboth Beach. Zoning District: GR. Tax Map No.: 3-34-13.00-92.08.

Mr. Moore stated that the testimony for Case No. 11769 and Case No. 11770 could be combined but the Board must act upon each case individually.

Ms. Cornwell presented the cases and read into the record four (4) letters of support of the Applications and stated that the Office of Planning and Zoning had not received any correspondence in opposition to the Applications.

The property which is the subject of the application in Case No. 11769 is hereafter identified as Lot 12 and the property which is the subject of the application in Case No. 11770 is hereafter identified as Lot 13.

Ryan Class and Jennifer Flinchbaugh were sworn in to testify about the Applications. David Hutt, Esquire, presented the case on behalf of Ryan Class, of Bayside Homes and submitted pictures and a survey for the Board to review.

The Applicants are requesting a variance of 0.4 feet from the ten (10) feet rear yard setback requirement for an existing dwelling on Lot 12, a variance of 0.4 feet from the five (5) feet side yard setback requirement for an existing set of steps on Lot 12, a variance of seven (7) feet from the ten (10) feet front yard setback requirement for a shed and steps on Lot 12, a variance of 0.4 feet from the five (5) feet side yard setback requirement for a set of existing steps on Lot 13, and a variance of 7.4 feet from the ten (10) feet front yard setback requirement for a shed and steps on Lot 13.

Mr. Hutt stated that the steps which encroach into the side yard on both lots are the steps which provide access to the rear of the dwelling; that the properties are located in TruVale Acres; that a standard lot in GR zoning is 10,000 square feet in size and a minimum of seventy-five (75) feet wide; that these lots measure only 5,000 square feet in size and are only fifty (50) feet wide; that the size of the lots and setback requirements only leave a building envelope measuring 30 feet by 60 feet; that Bayside Homes has offered this style home since 2009; that Bayside Homes sets over forty (40) homes a year; that, when placing a home, Bayside Homes has a survey completed first to determine the corners of the lot and then the footers are dug; that the dwelling is set based on this first survey and then a final survey is conducted after the dwelling is placed; that, during

the placement of these (2) homes, there was a slight error made; that the encroachments are so slight that they cannot be noticed by the eye; that Bayside Homes immediately applied for the variances; that the Applicants opted out of the administrative variance application in order to include the variances for the sheds; that the size of the lots make the properties unique; that the variances enable reasonable use of the properties; that the properties cannot otherwise be developed in strict conformity with the Sussex County Zoning Code; that the lots were not created by the Applicants, therefore the exceptional practical difficulty has not been created by the Applicants; that the variances will not alter the essential character of the neighborhood; that the dwellings are similar to other homes in the neighborhood; that the variances are the minimum variances to afford relief; that there have been no complaints from neighbors about the existing dwelling and steps on Lots 12 & 13; that these requests are the first variance requests Bayside Homes has ever made; and that, in future cases where a dwelling will be close to the setback lines, Bayside Homes intends to have a surveyor on site when a dwelling is placed.

Mr. Class, under oath, affirmed the statements made by Mr. Hutt.

Jennifer Flinchbaugh testified that she is an owner of the two (2) lots; that, in July 2015, the Applicants purchased the sheds for the newly constructed homes; that the sheds took hours to assemble and were first placed at the rear of the Property; that the Applicants were informed that the sheds did not comply with the side and rear setback requirements; that the Applicants moved the sheds to the front of the Property after discussion with the Planning & Zoning Department; that, when placing the sheds, the Applicants measured from the edge of the road and not the property line; that the sheds are necessary to provide storage for their tenants; that there are similar sheds in the area; that the sheds are attractive and keep the yards free of outdoor clutter; that the neighbors support the Applications; that the small lots makes the properties unique; that the properties cannot otherwise be developed; that the difficulty was not created by the Applicants; that the variances do not alter the character of the neighborhood; that the variances enable reasonable use of the Property; that the dwellings are on permanent foundations; that a neighbor has a shed in the front yard as well; and that the concrete pad is for parking.

The Board found that two (2) parties appeared in support of both applications Case No. 11769 and Case No. 11770.

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

Mr. Rickard moved that the Board approve Variance Application No. 11769 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The undersized lot makes 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 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.

Mr. Rickard moved that the Board approve Variance Application No. 11770 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The undersized lot makes 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 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. Hudson, 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. 11771 – Wayne James Brzoska** – seeks variances from the front yard, side yard, and rear yard setback requirements (Section 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 and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application. Ms. Cornwell advised the Board that there was no need for a rear yard variance for the deck.

Wayne James Brzoska was sworn in and testified requesting a variance of 12.3 feet from the thirty (30) feet front yard setback requirement off of Basin Road to enclose an existing deck, a variance of 16.3 feet from the thirty (30) feet front yard setback requirement off of Basin Road for an existing set of steps, and a variance of 14.8 feet from the twenty (20) feet side yard setback requirement on the north side for an existing dwelling; that the Property is a combined parcel of three (3) lots (Lots 67, 68 & 69); that the Property is pie-shaped and is unique; that he seeks permission to build a screen porch on an existing deck and to add 2.7 feet to the east side of the deck; that variances were approved by the Board in 1994 for the existing front deck and dwelling; that he did not create the exceptional practical difficulty; that the dwelling, garage, and deck were on the Property when he purchased the Property in 1993; that the proposed screened in porch will not alter the essential character of the neighborhood; that the porch will complement the Property; that the porch will not block any neighbor's views or impair the uses of the neighboring and adjacent properties; that the additional decking will create a cove along the driveway and block the view of trash receptacles from the front yard; that the variances are the minimum variance to



afford relief; that he applied for a building permit, which was granted; that he constructed the porch; that he was unaware of the encroachment until final inspection on the screened in porch; that there have been no changes to the Property other than the porch and the addition to the deck; and that his neighbor is in support of the Application.

Mr. Brzoska submitted two (2) letters from neighbors in support of the Application.

The Board found that one (1) person 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 June 6, 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. 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 Drive 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 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.

Rick Todd and Penny Todd were sworn in and testified that their attorney was not present on their behalf and requested that the hearing be held at a later date.

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

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

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the case be **left open for testimony to be heard on June 6, 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. 11773 – Larry R. Scott & Bonnie J. Scott** – seek a variance from the front yard setback requirement (Sections 115-74B and 115-185 of the Sussex County Zoning Code). The property is located on the east side of Smith Mill Church Road approximately 900 feet south of Whitesville Road. 911 Address: 36121 Smith Mill Church Road, Delmar. Zoning District: B-1. Tax Map No.: 5-32-15.00-1.00.

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.

Larry Scott, Jr. was sworn in and testified requesting a variance of two (2) feet from the forty (40) feet front yard setback requirement for an existing detached garage; that the detached garage was built in October 2014; that a building permit was obtained prior to construction; that electric was installed in 2014 and a concrete floor was completed in 2015; that the electrician did not arrange for a final electrical inspection and that he did not know this inspection had not been completed; that in September 2015 the Office of Planning and Zoning notified him that a final inspection must be completed; that he was later notified that the detached garage did not meet setback requirements; that a survey was completed and showed the encroachment; that the building permit does not clearly state the setback requirement or that a measurement must be taken from the property line; that he lined the detached garage with another existing detached garage on his property; that the older garage was on the Property when he purchased it in 1977; that four (4) acres of the rear of the Property consist of wetlands; that the existing detached garage and wetlands in the rear of the Property make it unique; that the garages are on concrete slabs; 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 variance does not alter the essential character of the neighborhood; that a neighbor has a garage which also encroaches into the front yard setback requirement; that his neighbors support the Application; and that the garage is fifty (50) feet from the adjacent road.

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. Rickard moved that the Board approve Variance Application No. 11773 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The existing detached garage and the building permit confusion create a unique situation;
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 variance necessary to afford relief.

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

**Case No. 11774 – Saul Holdings Limited Partnership** – seeks a special use exception for an outdoor display or promotional activities (Sections 115-80A and 115-210A(1) of the Sussex County Zoning Code). The property is located on the northwest corner of West Way Drive and

Coastal Highway. 911 Address: None Available. Zoning District: C-1. Tax Map No.: 1-34-17.00-52.08.

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.

Carrie W. Bennett was sworn in and testified requesting a special use exception for an outdoor display or promotional activities; that she represents a group of farmers who sell produce and agricultural products at the Sea Colony Farmer's Market; that the farmer's market was approved for a special use exception in 2011 for this site; that the market has been very successful; that the farmers sell only local fruit, vegetables, flowers, and plants at the market; that the property owner and stores in the center are very pleased with the farmer's market; that the market operates every Wednesday morning during the months of June, July, and August; that the market will operate for twelve (12) weeks total; that there are twelve (12) vendors, adequate parking, and the market is accessible to pedestrians; that there is no alcohol or flea market type items sold here; that neighbors support the Application and the market has helped neighboring businesses; that the use for the past five (5) years has not substantially adversely affected the uses of the neighboring and adjacent properties; and that the Applicant is requesting approval for another five (5) year period.

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. 11774 for twelve (12) weeks a year for a period of five (5) years 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. Hudson, and carried unanimously that the special use exception be **granted for twelve (12) weeks a year for a period of five (5) years 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. 11775 – David O'Donnell & Melanie O'Donnell** – seek variances from the front yard and rear yard setback requirements (Section 115-25C, 115-185F, and 115-182B of the Sussex County Zoning Code). The property is located on the northwest corner of South Bayshore Drive and Jackson Avenue. 911 Address: 507 South Bayshore Drive, Milton. Zoning District: GR. Tax Map No.: 2-35-4.17-71.00.

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 O'Donnell and Robert Jones were sworn in and testified requesting a variance of 0.8 feet from the five (5) feet rear yard setback requirement for an existing shed, a variance of 0.7 feet from the five (5) feet rear yard setback requirement for an existing shed, a variance of twelve (12)

feet from the fifteen (15) feet corner side yard setback requirement for an existing outside shower, a variance of 5.4 feet from the fifteen (15) feet corner side yard setback requirement for an existing dwelling, and a variance of four (4) feet from the thirty (30) feet front yard setback requirement for a proposed porch.

Mr. O'Donnell testified that he purchased the Property in January 2016; that winter storm "Jonas" ripped shingles from the roof and needed to be replaced; that the septic system needed to be replaced; that a survey was completed to design the new septic system; that the lot is very small as it measures 50 feet by 100 feet; that the existing dwelling is only 625 square feet in size; that the Property had been vacant for a number of years; that the previous owner purchased the Property in 2010 and advised him that all improvements on the Property met code requirements; that Mr. Jones is his contractor; that he has not made any structural changes to the Property since purchasing it in 2016; that the new septic system is in the rear of the Property and the peak tanks are in the front of the Property; that the septic lines run along the side of the existing dwelling; that the existing dwelling was built in the 1950s; that the proposed porch will be seven (7) feet wide and run the length of the existing dwelling; that the neighbor's dwelling encroaches on his property and an easement was prepared prior to the sale of his property; that the variances will not alter the character of the neighborhood; that the shed cannot be moved into compliance due to the existing septic system; that the septic system is the only location where DNREC would give approval; and that a porch which is less than seven (7) feet wide would not wide enough for reasonable use.

Mr. Jones testified that the existing dwelling encroaching onto the lot and size of the Property make this property unique; that the Property is also unique because it is a corner lot; that the porch allows for protected entrance to and from the home; that a porch on the side could only be three (3) feet wide but it would not meet code requirements as the rail needed for the porch would not provide a walking platform which is wide enough about which to walk; that the variances are necessary to enable reasonable use of the Property; that the difficulty has not been created by the Applicants; that the variances will not alter the character of the neighborhood; that other homes have portions thereof which protrude into setback areas; that the variances sought are the minimum variances to afford relief; and that porch was designed to minimize the need for a variance while still providing for usable space.

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. 11775 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The size of the lot 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 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. 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, Mr. Callaway – yea.

### **ADDITIONAL BUSINESS**

Discussion regarding Board of Adjustment training class

Mr. Rickard attended the Board of Adjustment training class and shared with the Board that all towns and counties were represented at the training; that the Board is a quasi-judicial board and should not allow emotions to be involved when making decisions; that the law dictates decisions made by the Board; and that Sussex County has the largest volume of variance applications.

Mr. Moore stated that Sussex County adopted the Zoning Code later than most jurisdictions and, due to the large non-conforming status of Sussex County properties, there are a large volume of variance requests.

**Meeting Adjourned 9:30 p.m.**