

## MINUTES OF MAY 2, 2016

The regular meeting of the Sussex County Board of Adjustment was held on Monday, May 2, 2016, at 7:00 p.m. in the County Council Chambers, County Administrative Office Building, 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, and Mr. Brent Workman. Mr. Norman Rickard was absent. Also in attendance were Mr. James Sharp – Assistant County Attorney and Mr. Jim Griffin – 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. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Revised Agenda with Old Business Case No. 11663 – Terry Megee being moved to the end of Old Business and to move Public Hearing Case No. 11759 – WJ Hudson Enterprises, LLC, Case No. 11762 – Paul B. Nordoff, and Case No. 11764 – Michael Schimmel to the beginning of the public hearings due to a conflict of interest with the Board's attorney.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to table the approval of the Minutes and Finding of Facts for March 7, 2016 until the May 16, 2016 agenda. Motion carried 4 -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. 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 April 18, 2016.

Mr. Mills suggested that the Board defer action until Mr. Rickard was present since he initially moved to table this application.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case be tabled until the May 16, 2016. Motion carried 4 – 0.

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

**Case No. 11753 – Saheb, LLC** – seeks a variance from the front yard setback requirement (Section 115-82B of the Sussex County Zoning Code). The property is located on the west side of Concord Road, Seaford. Zoning District: C-1. Tax Map No.: 1-32-2.00-324.00.

Ms. Cornwell presented the case, which has been tabled since April 18, 2016.

Mr. Mills stated that the Applicant stated the additional space was needed for cooler space for the store; that the proposed addition is substantially larger than the existing store; that deliveries to the store would be made at the front of the store yet the Applicant seeks a front yard variance; that the proposed addition increases the size of the building by 200%; that he feels the Applicant could design a smaller addition to meet his needs and be built within the setback requirements; that the variance is not necessary for the reasonable use of the Property; and that the exceptional practical difficulty is being created by the Applicant.

Mr. Mills moved that the Board deny Variance Application No. 11753 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The exceptional practical difficulty is being created by the Applicant;
2. The Property can otherwise be developed in strict conformity with the Sussex County Zoning Code; and
3. The variance is not necessary to enable reasonable use of the Property.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **denied for the reasons stated**. Motion carried 4 – 0.

The vote by roll call: Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – 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 Riverwalk 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 April 18, 2016.

The Board discussed the Application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until May 16, 2016**. Motion carried 4 – 0.

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

**Case No. 11663 – Terry Megee** – seeks a special use exception to place a billboard and a variance from the maximum height requirement for a billboard (Section 115-159.5C, 115-80C, & 115-

210A(3)(q) of the Sussex County Zoning Code). The Property is located on the northwest corner of DuPont Boulevard and Dickerson Road. 911 Address: None Available. Zoning District: C-1. Tax Map No.: 2-33-5.00-110.02.

Ms. Cornwell presented the case, which has been tabled since November 2, 2016, with the record left open for a wetlands determination.

Mr. Sharp advised the Board that his firm has represented the Applicant in the past and that, if the Board had any questions, they should direct them to Jim Griffin, Esquire. Mr. Sharp left the Chambers.

Ms. Cornwell stated that the Office of Planning and Zoning received correspondence from the Delaware Department of Natural Resources and Environmental Control (“DNREC”) and the Army Corps of Engineers, which stated the Army Corps of Engineers Regulatory Branch will not be taking jurisdiction but the DNREC Wetlands & Subaqueous Lands Section is taking jurisdiction and has determined this section of stream / ditch would require permitting prior to any work being performed within its limits. The Applicant is also reducing the height of the proposed billboard and is now seeking a variance of eight (8) feet from the maximum twenty-five (25) feet height requirement for a billboard, making the total sign height thirty-three (33) feet above grade.

Mr. Mills moved that the Board approve Special Use Exception and Variance Application No. 11633 for the special use exception based on the record made at the public hearing because the use does not substantially adversely affect the uses of the neighboring and adjacent properties and for the variance of eight (8) feet based on the record made at the public hearing and for the following reasons:

1. The topography of the Property and the wetlands 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 variance will not be detrimental to the public welfare; and
6. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception and variance of eight (8) feet be **granted for the reasons stated**. Motion carried 4 – 0.

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

## PUBLIC HEARINGS

**Case No. 11759 – WJ Hudson Enterprises, LLC** – seeks variances from the side yard and rear yard setback requirements (Section 115-42B and 115-182B of the Sussex County Zoning Code). The property is located on the east side of South Bay Shore Drive approximately 0.8 miles Broadkill Road. 911 Address: 2002 South Bay Shore Drive, Milton. Zoning District: GR. Tax Map No.: 2-35-10.06-37.00.

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 and Mr. Griffin was available for any questions the Board may have in reference to this case.

Wade Hudson was sworn in to testify about the Application. Shannon Carmean Burton, Esquire, presented the case to the Board on behalf of the Applicant and submitted exhibits for the Board to review.

Ms. Burton stated that the Applicant is requesting a variance of 4.3 feet from the fifteen (15) feet side yard setback requirement for an existing deck and proposed sunroom, a variance of 4.1 feet from the ten (10) feet rear yard setback requirement for an existing deck and proposed sunroom, and a variance of 3.4 feet from the fifteen (15) feet side yard setback requirement for an existing dwelling; that the existing dwelling and deck were built in 1984; that the Applicant plans to enclose a portion of the existing deck with a sunroom; that Certificates of Compliance have been issued for all of the existing structures; that the lot is irregular shaped and the property lines are angled; that the existing dwelling was built parallel with the front property line; that the Property is considered a corner lot due the right-of-way; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code; that the variances are necessary to enable reasonable use of the Property; that the exceptional practical difficulty has not been created by the Applicant; that the proposed addition will not further encroach into the setback requirement; that it will not alter the character of the neighborhood; that the use will not be detrimental to the public welfare; that the use does not impair the uses of adjacent properties; that the neighbors have no objection to the Application; that the variances are the minimum variances to afford relief; and that the variances are the least modifications of the regulations at issue.

Mr. Hudson, under oath, affirmed the statements made by Ms. Burton and testified that he is the owner of the Property; that the proposed sunroom is for his personal use; that the proposed sunroom will measure approximately 13.9 feet by 28 feet; that he was not aware of the encroachment in 2008 when he purchased the Property; that the proposed sunroom will not block any neighbor's view of the water; and that the lots are angled to prevent any blocked views.

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. 11759 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property has been developed since 1984 and received Certificates of Compliances for the existing structures thereby creating 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 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 use is not detrimental to the public welfare.

Motion by Mr. Mills, seconded by Mr. Hudson, 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. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11762 – Paul B. Nordhoff** – seeks variances from the front yard and rear yard setback requirements (Sections 115-25C and 115-185F of the Sussex County Zoning Code). The property is located on the southwest side of Quaker Road approximately 234 feet south of Savannah Road. 911 Address: 104 Quaker Road, Lewes. Zoning District: AR-1. Tax Map No.: 3-35-12.06-41.00.

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 and Mr. Griffin was available for any questions the Board may have in reference to this case.

Jamie Hammond, of Beracah Homes, was sworn in and testified requesting a variance of 4.5 feet from the thirty (30) feet front yard setback requirement for a proposed front porch and a variance of 1.5 feet from the five (5) feet rear yard setback requirement for an existing shed; that size of the lot creates a uniqueness; that the setback requirements for the lot leave only thirty (30) feet in depth to build a dwelling in conformity; that the proposed dwelling is the smallest model Beracah offers; that the proposed porch is six (6) feet wide, which allows reasonable use of the Property; that the proposed dwelling meets the setback requirements; 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 character of the neighborhood; that the use is not detrimental to the public welfare; that the variance requested is the minimum variance to afford relief; that the existing shed was built in 1968; that the structure is actually a block building; that the proposed dwelling is 1,512 square feet in size; and that the previous dwelling encroached into the rear yard setback requirement.

Mr. Hammond submitted a petition in support of the Application with seven (7) signatures.

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. 11762 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The setback requirements take up a significant portion of this property creating a unique situation;
2. The Property cannot otherwise be developed in strict conformity with the Zoning Code;
3. The variance sought is the minimum variance necessary to afford relief;
4. The exceptional practical difficulty was not created by the Applicant; and
5. The variance is necessary to enable reasonable use of the Property.

Motion by Mr. Mills, 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. Mills – yea, and Mr. Callaway – yea.

**Case No. 11764 – Michael Schimmel** – seeks a special use exception to place a manufactured home type structure for use as an office (Sections 115-23A and 115-210A(1) of the Sussex County Zoning Code). The property is located on the north side of Staytonville Road. approximately 858 feet east of North Union Church Road. 911 Address: 21429 Bella Terra Drive, Lincoln. Zoning District: AR-1. Tax Map No.: 2-30-26.00-1.02.

Ms. Cornwell presented the case and read one (1) letter of opposition into the record and stated that the Applicant has an approved Conditional Use for a landscaping business on this property and stated that the Office of Planning and Zoning had not received any correspondence in support of the Application.

Mr. Sharp recused himself from the case due to a conflict and Mr. Griffin was available for any questions the Board may have in reference to this case.

Michael Schimmel was sworn in and testified requesting a special use exception to place a manufactured home type structure for use as an office; that his landscaping business has grown over the past few years; that he has purchased a forty (40) acre parcel to create a nursery and plans to move the landscaping business to that Property; that he placed the manufactured home type structure and placed on the Property without proper permits; that he was not aware a special use exception was required for the use; that the manufactured home measures 14'x 70'; that the unit is not connected to the existing septic system; that there is no bathrooms in the unit; that the unit is sixty-six (66) feet from the property line; that he hopes to have the business moved to the other property in approximately six (6) months; that the unit has been on the lot for approximately one (1) year; and that he is seeking a six (6) month approval from the Board.

Thomas Robbins was sworn in and testified in opposition to the Application and testified that he lives to the rear of the Property; that the business in the residential area is disruptive; and that he has no objection to an approval of one (1) year as long as the business is relocated.

Virginia Gillman was sworn in and testified in opposition to the Application and testified that the business in the residential area is too noisy; and that she has no objection to an approval of one (1) year as long as the business is relocated.

Ada Amador was sworn in and testified in opposition to the Application and testified that the business is too noisy for the residential area; and that she has no objection to an approval of one (1) year as long as the business is relocated.

Ms. Cornwell stated that the Office of Planning and Zoning has not yet received a Conditional Use Application for the Property the Applicant plans to use for his landscaping business.

Mr. Mills moved that the Board approve Special Use Exception Application No. 11764 for the requested special use exception because the use has had an adverse effect to the neighborhood; however, the use will not substantially adversely affect the uses of the neighboring and adjacent properties if the use is only approved for a period of one (1) year.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted for a period of one (1) year**. Motion carried 4 – 0.

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

Mr. Sharp returned to the Chambers and Mr. Griffin left.

**Case No. 11743 – John D. Fish & Lori A. Fish** – seek variances from the side yard and front yard setback requirements (Sections 115-42B and 115-183C of the Sussex County Zoning Code). The property is located on the southeast side of Blue Bill Drive approximately 1,635 feet northeast of Swann Drive. 911 Address: 37072 Blue Bill Drive, Selbyville. Zoning District: GR. Tax Map No.: 5-33-12.16-191.00.

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.

John Fish was sworn in to testify about the Application. Susan Weidman, Esquire, presented the case on behalf of the Applicants and submitted pictures for the Board to review.

Ms. Weidman stated that the Applicants are requesting a variance of 0.6 feet from the ten (10) feet side yard setback requirement on the north side for an existing outside shower, a variance of 0.3 feet from the ten (10) feet side yard setback requirement on the north side for an existing dwelling, a variance of one (1) foot from the five (5) feet side yard setback requirement on the south side for an existing shed, and a variance of 0.8 feet from the ten (10) feet front yard setback requirement for an existing dwelling; that the Property is located in the Swann Keys community; that the Applicants recently purchased the Property and a survey completed for settlement showed

the encroachments; and that the encroaching structures were on the Property when the Applicants purchased the Property.

Mr. Fish testified that the Applicants learned of the encroachments at the time they purchased the Property; that the Applicants were advised at settlement that they could purchase the Property as it exists and apply for variances after settlement; that the dwelling cannot be brought into compliance with the Sussex County Zoning Code; that the lot measures 50 feet by 90 feet; that the lagoon is at the rear of the Property and a portion of the lot is in the lagoon; that the lot is too narrow and shallow to bring the dwelling and structures into compliance; that the Property has unique physical conditions; that the shed cannot be relocated on the Property in compliance with the Code; that the neighbors have no objection to the Application; that there are numerous sheds in the community which appear to encroach into setback areas; that the setback violations were not caused by the Applicants; that the variances will not alter the character of the neighborhood; that the dwelling has been on the lot since 1984 and is on a permanent foundation; that there are other mobile homes in the neighborhood which appear to be similarly situated; that it would be an undue burden on the Applicants to move the dwelling into compliance; that the shed is under 600 square feet in size; and he believes the edge of paving for Bluebill Drive goes to the front yard property line.

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

Mr. Hudson moved that the Board approve Variance Application No. 11743 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 size and because a portion of the rear yard is in the lagoon;
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 structures were placed on the Property by a prior owner;
5. The variances will not alter the essential character of the neighborhood; and
6. The variances sought are the minimum variances to afford relief.

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call: Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – 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 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 the case and read two (2) letters of support to the Application into the record and stated that the Office of Planning and Zoning had not received any correspondence in opposition to the Application.

Glenn Coleman was sworn in and testified requesting a variance of 1.6 feet from the five (5) feet side yard setback requirement for an existing carport, a variance of 0.4 feet from the thirty (30) feet front yard setback requirement for an existing front porch, and a variance of 0.2 feet from the five (5) feet rear yard setback requirement for an existing shed; that the Property is located in Angola by the Bay and he sought to construct a small carport; that he built the carport after he received approval from the Homeowners Association; that the front porch and shed encroachments were discovered by the survey completed for this application; that the shed has been moved into compliance; that he obtained a building permit and Certificate of Compliance for the front porch; that the dwelling is slightly askew from the front property line and the original survey did not show the existing dwelling at this angle; that the porch encroaches into the front yard setback by approximately 5 inches due to the slight difference in the angle of the dwelling from the property line; that the dwelling was built in 1985; that there is not enough room between the dwelling and the side yard to allow for a garage large enough to hold a full size vehicle; that the carport encroaches into the side yard setback; that the carport is a pergola type structure; that the carport does not alter the character of the neighborhood or have a visual impact to the neighborhood; that he worked off of the original survey when constructing the porch; that steps for the front porch were built within the porch to prevent encroachment into the front yard setback requirement; that the carport / pergola cannot be moved into compliance due to the existing dwelling and steps; that there are other carports in the neighborhood; and that the carport could not be used if it met the setback requirements. Mr. Coleman submitted pictures and a copy of survey dated 2010 for the Board to review.

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

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the case be **tabled until May 16, 2016**. Motion carried 4 – 0.

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

**Case No. 11760 – Billie Matsen & Patrick Hancock** – seek variances from the front yard and side yard setback requirements (Sections 115-24C, 115-182D, and 115-183C of the Sussex County Zoning Code). The property is located on the northwest side of Madison Avenue approximately 573 feet south of Lighthouse Road. 911 Address: 13404 Madison Avenue, Selbyville. Zoning District: AR-1. Tax Map No.: 5-33-20.19-80.00.

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.

Patrick Hancock was sworn in and testified requesting a variance of 0.1 feet from the ten (10) feet side yard setback requirement on the south side for an existing dwelling, a variance of

3.6 feet from the ten (10) feet side yard setback requirement on the south side for a proposed set of steps and landing, and a variance of 7.7 feet from the thirty (30) feet front yard setback requirement for a proposed set of steps and landing; that the Applicants purchased the Property in November 2010; that a previous owner moved the dwelling to the Property; that previous variances were granted by the Board for the rear and northeast side yard setback requirements in 2001 (identified as Case No. 7616); that the existing dwelling must be raised to eight (8) feet above grade to protect the dwelling from flooding; that, during Hurricane Sandy, water came to the front door of the dwelling; that the Applicants have noticed standing water in the crawl space and mold related to the water; that the raising of the dwelling will help alleviate those problems while lowering their flood insurance; that the footprint of the dwelling will remain the same; that the proposed set of steps and landing are needed to access the dwelling once it is raised; that raising the dwelling will require more steps than is currently needed to access the dwelling; that the Applicants are unable to raise the dwelling without a variance; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code; that the variances will not alter the essential character of the neighborhood; that there are other dwellings in the area that have been raised; that the steps have been designed to limit encroachment into the front yard setback by having two (2) runs of steps rather than one (1) run of steps; that the proposed front steps and landing could not be built underneath the dwelling; that there will be no living space on the ground floor of the dwelling; and that the variances are the minimum variances to afford relief.

Ms. Cornwell stated that since there is no living space on the ground level and the proposed steps and landing on the side of the dwelling access the first floor living area of the dwelling that the proposed steps and landing can encroach into the side yard setback requirement five (5) feet.

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. 11760 for the requested variances of 0.1 feet from the ten (10) feet side yard on the south side for the dwelling and 7.7 feet from the thirty (30) feet front yard setback for the proposed steps and landing based on the record made at the public hearing and for the following reasons:

1. The need for the dwelling to be raised creates 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;
5. The variances will not be detrimental to the public welfare;
6. The variances sought are the minimum variances necessary to afford relief; and
7. No variance is needed for the south side for the steps because the raised dwelling will still only have first floor living and the steps can encroach five (5) feet into the setback area.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the variances of 0.1 feet from the ten (10) feet side yard on the south side for the dwelling and 7.7 feet from the thirty (30) feet front yard setback be **granted for the reasons stated but the variance of 3.6 feet from the ten (10) feet side yard for proposed steps and landing is not needed since**

**proposed steps and landing access the first floor living area and can encroach five (5) feet into the setback area.** Motion carried 4 – 0.

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

**Case No. 11761 – Alice Videlock & Michael Videlock** – seek variances from the side yard setback requirements (Section 115-25C and 115-183C of the Sussex County Zoning Code). The property is located on the northwest side of Miller Street approximately 951 feet northeast of Mount Joy Road. 911 Address: 26296 Miller Street, Millsboro. Zoning District: AR-1. Tax Map No.: 2-34-21.00-175.00.

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.

Michael Videlock was sworn in and testified requesting a variance of 9.3 feet from the fifteen (15) feet side yard setback requirement on the north side for an existing dwelling and a variance of five (5) feet from the five (5) feet side yard setback requirement on the north side for an existing set of steps; that the dwelling was built too close to the property line; that a Certificate of Compliance was issued for the dwelling; that a previous owner built the dwelling; that the Property cannot otherwise be developed; that the steps are necessary to access the dwelling; that the difficulty was not created by the Applicants; that the variances do not alter the character of the neighborhood; that the Applicants intend to fix up the dwelling and the Property; that the Property was foreclosed on and he purchased the Property in 2015; that the variances requested are the minimum variances to afford relief; that the previous owner owned the adjacent Lot B-9 also; that the septic system is in the rear of the Property; that he had the well for the Property relocated since it was on an adjacent lot; and that the Applicants are making no additions to the dwelling.

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. 11761 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Certificate of Compliance being issued and that the Property was in foreclosure when purchased creates a unique situation;
2. The Property cannot otherwise be developed in strict conformity with the Zoning Code;
3. The house is located on a block foundation;
4. The variances are necessary to enable reasonable use of the Property;
5. The exceptional practical difficulty was not created by the Applicants;
6. The variances will not alter the essential character of the neighborhood;
7. The use will not be detrimental to the public welfare; and
8. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 4 – 0.

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

**Case No. 11763 – 02 Delaware Property Investments, LLC** – seek variances from the aggregate of the front yard and rear yard setback requirements (Section 115-188D(4) of the Sussex County Zoning Code). The property is located on the south side of Linkside Drive approximately 287 feet south of Bridgeville Center Road. 911 Address: 23605 Linkside Drive, Bridgeville. Zoning District: C-1. Tax Map No.: 1-31-15.00-77.00.

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.

Peter Malmberg was sworn in and testified requesting a variance of 9.39 feet from the forty (40) feet aggregate front and rear yard setback requirement; that he has been involved with this project for four (4) years; that the original approval was for a 52 unit condominium development; that the developer was unable to sell as condominiums and banks would not finance condominiums; that the development converted to fee simple lots and is now being sold as fee simple lots; that the units are now selling; that the last unit to sell was constructed with a sunroom; that the unit was originally built as the sales model; that the unit does not meet the required setback requirements for a fee simple lot; that the Property cannot be otherwise developed in strict conformity without losing two (2) future units; that the sunroom will not be offered on any other units in the development; that the difficulty was not created by the Applicant; that the building was constructed as a condo and converted to a fee simple lot, which created the encroachment; that the variance requested is the minimum variance to afford relief; that the neighbors have no objection to the Application; that a Certificate of Compliance has been issued for the existing units; that units are approximately 1,300 square feet in size; that the sunroom measures 10 feet by 20 feet; that it would be extremely difficult to remove the existing sunroom; that this unit is within the only existing pack of townhouse buildings completed in this development; and that the unit has a contract for sale if the variance is approved.

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. 11763 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property was constructed as a condominium and its conversion to fee simple lots 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 Applicant;
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. Mills, 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. Mills – yea, Mr. Workman – yea, and Mr. Callaway – yea.

**Case No. 11765 – Doug Motley / Jack Lingo / Asset Management** – 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 west side of Coastal Highway approximately 281 feet south of Shuttle Road. 911 Address: 30134 Veterans Way, Rehoboth Beach. Zoning District: C-1. Tax Map No.: 3-34-13.00-325.18.

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.

Doug Motley and Laszlo Csatay were sworn in and testified requesting a special use exception for an outdoor display or promotional activities.

Mr. Motley testified that he represents the landlord and developer who owns the Rehoboth Gateway project located along Route 1 near Jungle Jim's; that Bed Bath & Beyond is one of the tenants at this site; that this request is solely for the Bed Bath & Beyond building; that a Wawa will sit in front of the Bed Bath & Beyond; that a grocery store will be located in the development; that there are pad sites on the Property for future development; and that there is a property nearby used by DART.

Mr. Csatay testified that he represents Bed Bath & Beyond; that the building was designed with an overhead awning for seasonal sales; that the new Bed Bath & Beyond plans to have sidewalk sales during the summer season; that the covered sidewalk area will be used for seasonal sales; that an enclosure underneath the canopy with a metal fence has been removed from the proposal; that the sales will be held seven (7) days a week during store hours from mid-May to mid-September; that there will be two (2) registers outside to handle sales; that the store stands alone from other stores in the shopping center; that the sidewalk area is safe and will provide protection for pedestrians; that the area is large enough to accommodate both merchandise and customers; and that the use will not substantially adversely affect the uses of the neighboring and adjacent properties.

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. 11765 for the requested special use exception for seasonal use from May 15 to September 15 for a period of five (5) years 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 seasonal use beginning May 15<sup>th</sup> and ending September 15<sup>th</sup> for a period of five (5) years**. Motion carried 4 – 0.

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

**Case No. 11766 – Linda S. Shaw, Trustee** – seeks a variance from the side yard setback requirement (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 and read one (1) letter of opposition to the Application into the record and stated that the Office of Planning and Zoning had not received any correspondence in support of the Application.

Linda Shaw and Burt Shaw were sworn in and testified requesting a variance of eight (8) feet from the ten (10) feet side yard setback requirement on the west side for a proposed deck and screen porch.

Ms. Shaw testified that she purchased the Property in November 2015; that the Property is located in Broadkill Beach; that she intends to construct a deck and porch addition; that the Property is unique because it is narrow and measures 50 feet wide by 100 feet deep; that the septic system is located in the front of the lot; that the sand mound for the septic is located in the rear of the Property; that the house to the west is on a larger lot and its septic system is near their property line; that the proposed screen porch and deck will be less intrusive to the neighbor on the west side; that the difficulty was not created by the Applicant; that she did not construct the dwelling; that the property to the east of the Property has a dwelling almost identical to her dwelling; that virtually all of the building envelope on her lot is occupied by the house and septic system; that the dwelling does not have any outdoor living space; that the proposed deck and screen porch will not alter the character of the neighborhood; that there are similar porches and decks in the neighborhood; that no views will be blocked by the proposed deck and screen porch; that the variance is the minimum variance to afford relief; that the underground septic lines run from the front to the rear of the Property; that the proposed location of the deck and screen porch is to prevent damage to the existing septic lines; that she is unable to build a narrower deck due to the septic lines; that the existing dwelling is only 11.8 feet from the east side property line; that the dwelling on her property is no more than 25 feet from the house to the east of her property; that the deck will be on the third floor; and that the porch will be on the second floor with parking below the porch.

Mr. Shaw testified that the septic lines are approximately four (4) to eight (8) feet from the side of the dwelling; that the footers for the proposed deck and screen porch must be at least eighteen (18) inches from the septic lines; and that the deck would have to either be three (3) feet wide or ten (10) feet wide so as not to disrupt the septic lines.

Chris Burke was sworn in and testified in opposition to the Application and testified that he lives across the street; that the Property is not unique since most of the lots in Broadkill Beach measure 50 feet by 100 feet; that the Property was sold at a lower price because it did not have a deck; that the Applicant was aware of the situation when she purchased the lot; that the granting of the variance would set a bad precedent in Broadkill Beach; and that his deck complies with the setback requirements.

Laurence Burke was sworn in and testified in opposition to the Application and testified that he submitted the letter of opposition; that the request is a want and not a need; and that he objects to the Application.

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

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

Motion by Mr. Workman, seconded by Mr. Hudson, and carried unanimously that the case be **tabled until May 16, 2016**. Motion carried 4 – 0.

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

### **Additional Business**

Discussion regarding the Board of Adjustment training class – moved to May 16, 2016 Agenda due to Mr. Rickard's absence.

**Meeting Adjourned 9:43 p.m.**