

MINUTES OF NOVEMBER 20, 2017

The regular meeting of the Sussex County Board of Adjustment was held on Monday, November 20, 2017, at 7:00 p.m. in the County Council Chambers, 2 The Circle, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Dale Callaway presiding. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman. Also in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Ms. Janelle Cornwell – Director of Planning and Zoning, Mrs. Jennifer Walls – Planning Manager, and Mrs. Jennifer Norwood – Recording Secretary.

The Pledge of Allegiance was led by Mr. Callaway.

Motion by Mr. Mills, seconded by Ms. Magee, and carried unanimously to amend the agenda and to move Old Business to the front of the agenda. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Ms. Magee, and carried unanimously to approve the Minutes and Finding of Facts for September 18, 2017. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Ms. Magee, and carried unanimously to approve the revised findings of fact for Case No. 12001 (John Floyd Lingo) to correct a typographical error. Motion carried 5 – 0.

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

OLD BUSINESS

Case No. 12030 – Kenneth L. Short & Jeffrey A. Short - seek variances from the minimum lot size and minimum road frontage requirements (Section 115-194 of the Sussex County Zoning Code). The property is located at the southeast corner of Shorts Landing Road and Warwick Road. 911 Address: 28530 Warwick Road, Millsboro. Zoning District: AR-1. Tax Map No.: 2-34-33.00-22.00.

Mrs. Walls presented the case which has been tabled since November 6, 2017.

Mr. Sharp reminded the Board that the Application pertains to Sussex County Code § 115-194 and that there are additional standards which the Applicants must meet pursuant to that code section.

The Board discussed the case.

Mr. Mills stated that the Property may be used for up to six (6) manufactured homes; that the proposal is for only three (3) units which is less than what the Applicants could place on the lot; and that he feels a manufactured home park has more impact than the proposed plan.

Ms. Cornwell stated the Property could still be used as a mobile home park.

Ms. Magee stated that she believes there could be two separate lots created rather than three lots as proposed by the Applicants.

Mr. Mears stated that he has a concern for the conservation district but three units are less than six units; and that the septic systems being upgraded is an improvement.

Mr. Workman stated that he would prefer there be two lots.

Ms. Magee stated that she believes the regulation is in effect to protect the bay and should be adhered to.

Mr. Mills stated that a non-conforming use exists and with the approval there can only be three lots.

Mr. Callaway stated that he agrees the proposed plan is less impactful than the existing use.

Ms. Magee moved to deny Variance Application No. 12030 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is located within the conservation zone;
2. The Applicants failed to meet the conservation zone standards;
3. The lots should consist of at least one acre and be 150 feet wide;
4. The Property can be developed in strict conformity with the Sussex County Zoning Code; and
5. The variances are not necessary to enable reasonable use of the Property.

Ms. Magee's motion failed due to lack of a second.

Mr. Mills moved to approve Variance Application No. 12030 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 the current use as a manufactured home park and the existence of the conservation zone;
2. The proposed use will be less impactful to the conservation zone than the existing manufactured home park;
3. The variances are necessary to enable reasonable use of the Property;
4. The exceptional practical difficulty has not been created by the Applicants;
5. The variances will not alter the essential character of the neighborhood; and
6. The requested variances represent the minimum variances necessary to afford relief.

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

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

Case No. 12036– CMH Homes d/b/a Oakwood Homes - seeks a special use exception to place a manufactured home (Section 115-23C and 115-210 of the Sussex County Zoning Code). The property is located at the north side of Hoot Owl Lane approximately 500 feet east of Irons Lane (Road 348). 911 Address: 34979 Hoot Owl Lane, Dagsboro. Zoning District: AR-2 (Agricultural Residential District). Tax Map No.: 1-34-7.00-191.00.

Mrs. Walls presented the case which has been tabled since November 6, 2017.

Mr. Sharp advised the Board that the Applicant must demonstrate that it complies with Section 115-20(A), which has certain technical requirements; that the Applicant must demonstrate that the proposed use is not specifically prohibited by restrictive covenants; that the restrictive covenants were created in 1974 and provide that “no trailer...shall be permitted on any lot”; that the definition of “manufactured home” under Section 115-4 includes language that a manufactured home is also known as a “house trailer, single-wide, double-wide, mobile home”; that the definition was amended in 2010; that the definition of “manufactured home park” is also known as “trailer park, trailer court, mobile home park or community” and that definition was also amended in 2010; that the ordinance amending those definitions also stated that the terms “house trailer”, “single-wide” “double-wide”, “mobile home”, or “trailer” wherever found in the Sussex County Zoning Code were to be replaced by the word “manufactured home”; that the opposition argued that the restrictions against “trailers” apply to “manufactured homes”; that the Board must first determine whether the restrictions prohibit the proposed manufactured home; that, if the Board determines that the restrictions do not prohibit the proposed manufactured home, the Board must then consider the special use exception request; that the Applicant argued that it relied on its detriment on an erroneously issued building permit; that, under Delaware law, there will be relatively few, if any, cases where a landowner will not be held responsible for knowing what the applicable land restrictions are; that the general rule is that a permit issued illegally or in violation of law or under mistake of fact does not confer a vested right upon the person to whom it is issued, even though that person has made substantial expenditures in reliance thereon; and that every person is presumed to know the extent of powers of the municipal authorities.

The Board discussed the case.

Mr. Mills stated that the restrictive covenants clearly state that the home is not permitted; and that the opposition presented evidence from appraisers about the negative effect on property values.

Mr. Workman stated that the home is out-of-character with the neighborhood.

Ms. Magee stated the difficulty was created by the Applicant.

Mr. Mills stated that the Applicant has been in business for a long time.

Ms. Magee stated that the home would affect the character of the neighborhood.

Mr. Mears stated that the manufactured home was still on wheels when Planning & Zoning learned of the issue; that the Applicant could have stopped work after learning of the violation; that the home exists on a false foundation; that 20 out of 26 lot owners opposed the Application; and that the proposed home will hurt the property values of the neighboring homes.

Ms. Magee moved to deny Special Use Exception Application No. 12036 for the requested special use exception based on the record made at the public hearing and for the following reasons:

1. The home will substantially affect adversely the uses of neighboring and adjacent properties; and
2. The restrictive covenants specifically prohibit the proposed home.

Motion by Ms. Magee, seconded by Mr. Mills that the special use exception be **denied for the reasons stated and because the use will substantially adversely affect the neighboring and adjacent properties**. Motion carried 5 – 0.

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

Case No. 12037– CMH Homes d/b/a Oakwood Homes - seek a special use exception to place a manufactured home (Sections 115-23C and 115-210 of the Sussex County Zoning Code). The property is located at the west side of Julie Court, approximately 886 feet southwest of Peppers Corner Road. 911 Address: 34481 Julie Court, Frankford. Zoning District: AR-1 (Agricultural Residential District). Tax Map No.: 1-34-18.00-76.00.

Mrs. Walls presented the case which has been tabled since November 6, 2017.

Mr. Sharp reiterated his comments from Case No. 12036 about the historical use of the term “trailer” in the Sussex County Zoning Code and that the Board needs to determine whether the restrictive covenants specifically prohibit the proposed manufactured home. Mr. Sharp advised the Board that Paragraph 13 of the restrictive covenants provide that “no structure of a temporary character and no trailer, tent, barn, or other similar outbuilding or structure shall be placed on any numbered lot ... within the development at any time, either temporarily or permanently”; that the restrictive covenants provide an exception for a construction trailer used in the construction of a dwelling or auxiliary building; that the restrictive covenants were created in 1973; and that the Board needs to consider the same legal requirements as discussed in Case No. 12036.

The Board discussed the case.

Mr. Mills stated that he is sympathetic with the Applicant but that it would be wrong to

approve the case.

Mr. Mears and Mr. Workman both stated that they are not in favor of approving the Application.

Mr. Mears stated that the neighboring opposition is concerned about the property value.

Mr. Mills moved to deny Special Use Exception Application No. 12037 for the requested special use exception based on the record made at the public hearing and for the following reasons:

1. The home will substantially affect adversely the uses of neighboring and adjacent properties; and
2. The restrictive covenants specifically prohibit the proposed home.

Motion by Mr. Mills, seconded by Mr. Mears that the special use exception be **denied for the reasons stated and because the use will substantially adversely affect the neighboring and adjacent properties**. Motion carried 5 – 0.

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

PUBLIC HEARINGS

Case No. 12054 – Rhonda Manship - seeks a variance from the minimum road frontage requirement (Section 115-25 of the Sussex County Zoning Code). The property is located on the south side of Neptune Road, approximately 494 feet west of Gravel Hill Road (Route 30) and on the west side of Gravel Hill Road approximately 743 feet south of Neptune Road. 911 Address: 23240 Neptune Road, Milton. Zoning District: AR-1. Tax Map No.: 2-35-25.00-4.07.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. The Applicant requests a variance of 98.69 feet from the one hundred and fifty (150) feet minimum road frontage requirement for a minor subdivision of land along Gravel Hill Road.

Rhonda Manship, Richard Manship, and Barbara Manship were sworn in to testify about the Application and submitted a survey for the Board to review.

Rhonda Manship testified that the Property has a pipeline driveway; that her mother-in-law previously owned the Property and combined two parcels; that she would like to reinstitute the line and give Parcel 2 to her daughter; and that Parcel 2 has access to Route 30 from the pipeline driveway.

Richard Manship testified that the Property was previously subdivided as proposed; that the frontage along Route 30 will be a driveway to Parcel 2 in the rear; and that the Property has 150 feet

of road frontage along Neptune Road.

Barbara Manship testified that the Property was combined in 2009; and that the Property previously consisted of two (2) lots.

Ms. Cornwell advised the Board that the Property was originally a combination of portions of four (4) lots; and that the other lots meet the minimum road frontage requirements.

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

Ms. Magee moved to approve Variance Application No. 12054 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 the irregular shape;
2. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
3. The exceptional practical difficulty has not been created by the Applicant;
4. The variance will not alter the essential character of the neighborhood; and
5. The requested variance is the minimum variance necessary to afford relief.

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

Case No. 12055 – Robert J. DiPalma & Cynthia A. DiPalma, Trustees - seek a variance from the side yard setback requirement (Section 115-25 of the Sussex County Zoning Code). The property is located on the south side of Rico Drive, approximately 300 feet east of East Sandy Cove Road. 911 Address: 38464 Rico Drive, Selbyville. Zoning District: AR-1. Tax Map No.: 5-33-19.00-640.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. The Applicants request a variance of 5.7 feet from the fifteen (15) feet side yard setback requirement on the west side for an existing dwelling.

Robert DiPalma was sworn in to testify about the Application. Manaen Robinson, Esquire, presented the case on behalf of the Applicants and submitted exhibits for the Board to review.

Mr. Robinson stated that the Applicants purchased the Property in August 2017; that the previous owner who purchased the Property in 2001 and passed away earlier this year; that the garage on the west side of the Property encroaches into the side yard setback area; that the Property is unique because it is narrow and wooded; that the house was constructed in 1988 and the garage was

constructed in 1989; that the garage is an attached garage; that the Property cannot otherwise be developed 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 Applicants; that the variance will not alter the essential character of the neighborhood; that the variance will not impair the uses of neighboring properties; and that the variance requested is the minimum variance necessary to afford relief.

Mr. DiPalma affirmed that the statements made by Mr. Robinson as true and correct.

Mr. Robinson stated that he was not able to locate a copy of the certificate of compliance for the garage; and that there have been no complaints from neighbors.

Mr. DiPalma testified that the Property is serviced by a septic system but the Property is being converted to sewer; and that the septic system is located in the building envelope.

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

Mr. Mears moved to approve Variance Application No. 12055 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 the narrow shape;
2. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
3. The exceptional practical difficulty has not been created by the Applicants;
4. The variance will not alter the essential character of the neighborhood; and
5. The requested variance is the minimum variance necessary to afford relief.

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

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

Case No. 12056 – Jere F. Danz & Sally L. Danz - seek a variance from the side yard setback requirement (Section 115-25 of the Sussex County Zoning Code). The property is located on the northeast side of Hudson Street Extension, in the Creek Falls Farm subdivision off of Hudson Road. 911 Address: 403 Hudson Street Extension, Milton. Zoning District: AR-1. Tax Map No.: 2-35-22.00-551.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. The Applicants request a variance of 1.8 feet from the fifteen (15) feet side yard setback requirement on the north side for an existing pole barn.

Deborah Galonsky, Esquire, appeared on behalf of the Applicants and submitted an exhibit to the Board.

Ms. Galonsky stated that she had no personal knowledge of the matter and no witness to verify her presentation; that the situation is unique because the Applicants had the pole barn placed on the Property and received a permit and Certificate of Compliance from Sussex County; that the Applicants learned of the encroachment when the Applicants listed the Property for sale; that the Applicants do not wish to remove the pole barn; that the Applicants caused the pole barn to be erected; that leaving the pole barn will not disturb the neighborhood or affect property values; that the Applicants relied on a contractor to place the pole barn; that the Applicants selected where to place the pole barn; that the Applicants did not physically construct the pole barn; that she is unsure of where the septic system is located; and that the Applicants are in the process of selling the Property.

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

Motion by Mr. Mears, seconded by Mr. Mills that Variance Application No. 12056 **be continued and left open until December 11, 2017**. Motion carried 5 – 0.

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

Case No. 12057 – Charles Hudson - seeks variances from the separation distance requirement from a poultry building and residence (Section 115-20 of the Sussex County Zoning Code). The property is located on the south side of Laurel Road (Route 24), approximately 20 feet southeast of Christ Church Road. 911 Address: 12254 Laurel Road, Laurel. Zoning District: AR-1. Tax Map No.: 2-32-18.00-8.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. The Applicant requests a variance of 58.9 feet from the two hundred (200) feet separation requirement between a poultry house and a dwelling and a variance of 67.2 feet from the two hundred (200) feet separation requirement between a poultry house / manure shed and a dwelling.

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

Mr. Willard stated that the Applicant seeks the variances from the separation distance requirement from poultry houses and a dwelling on a neighboring lot; that the Property consists of approximately 25 acres near the American Legion; that the Property is proposed to be subdivided into two lots; that the poultry houses will be located on a parcel separate from the parcel where the dwelling will be located; that the Applicant purchased the Property in 1980; that the Applicant constructed the

dwelling; that the Property has a unique shape and is bordered by the James Branch; that the poultry houses were constructed around 1980; that the Property has unique topography as it slopes dramatically behind the house and the poultry houses; that the Applicant is retired and wants to sell the poultry houses; that the Property would be subdivided into two parcels with the dwelling on one lot and the poultry houses on the other lot; that the setback requirements will be met with the proposed subdivision but the separation distance requirement cannot be met; that the 200 feet separation distance requirement was established in 1994; that the exceptional practical difficulty was not created by the Applicant; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code; that the dwelling has a basement; that the variances will not alter the essential character of the neighborhood; and that the variances requested represent the minimum variances necessary to afford relief.

Mr. Hudson affirmed the statements made by Mr. Willard as true and correct.

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 moved to approve Variance Application No. 12057 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 Property was developed prior to the enactment of the separation distance requirement;
3. The variances are necessary to enable reasonable use of the Property;
4. The exceptional practical difficulty has not been created by the Applicant;
5. The variances will not alter the essential character of the neighborhood; and
6. The requested variances are the minimum variances necessary to afford relief.

Motion by Mr. Mills, seconded by Ms. Magee, 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. Mears – yea, Ms. Magee – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 12058 – Robert Ogden & Wendy Ogden - seek variances from the side yard and rear yard setback requirements (Section 115-185 of the Sussex County Zoning Code). The property is located on the northeast side of Elmwood Avenue West, approximately 958 feet south of Woodland Circle. 911 Address: 23611 Elmwood Avenue West, Lewes. Zoning District: AR-1. Tax Map No.: 2-34-17.08-227.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received seven (7) letters in support of the Application and read the letters into the record, and no correspondence in opposition to the Application. The Applicants seek a variance of 4.5 feet from the

five (5) feet side yard setback requirement on the north side and a variance of 2.2 feet from the five (5) feet rear yard setback requirement for a shed.

Mr. Sharp advised the Board that variances were previously granted for the dwelling on the Property.

Robert Ogden was sworn in to testify about the Application. Mr. Ogden submitted a letter from the homeowners association in support of the Application.

Mr. Ogden testified that the homeowners association supports the variance request; that he proposes to replace the existing shed; that a variance was previously granted for the existing shed; that the new shed will measure 16 feet by 8 feet; that there is a concrete slab under the shed; that the rear of the lot is only 42 feet wide; that there is an elevated brick patio and stone walkway in the rear yard; that the shed cannot be placed elsewhere; that the original shed rotted out and the previous owner placed siding around the shed; that the original shed is dilapidated and needs to be removed; that the new shed will improve the surrounding area; that the variances requested represent the minimum variances necessary to afford relief; and that the new shed will not be any closer to the rear yard than the existing shed and the new shed will be farther from the side property line than the existing shed.

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

Mr. Mills moved to approve Variance Application No. 12058 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 the size;
2. The shed is a replacement shed;
3. The variances are necessary to enable reasonable use of the Property;
4. The exceptional practical difficulty has not been created by the Applicants;
5. The variances will not alter the essential character of the neighborhood; and
6. The requested variances are the minimum variances necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Mears, 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. Mears – yea, Ms. Magee – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 12059 – Thomas H. White - seeks a variance from the side yard setback requirement (Section 115-25 of the Sussex County Zoning Code). The property is located on the north side of Kits Burrow Court, approximately 1,965 feet south of Lewes-Georgetown Highway (Route 9). 911 Address: 26109 Kits Burrow Court, Georgetown. Zoning District: AR-1. Tax Map No.: 2-35-30.00-324.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. Mrs. Walls advised the Board that a Certificate of Occupancy was issued in 2017. The Applicant seeks a variance of 3.7 feet from the fifteen (15) feet side yard setback requirement on the west side for an existing pole building.

Thomas White was sworn in to testify about the Application. Mr. White submitted pictures for the Board to review.

Mr. White testified that the pole building existed at the time he purchased the Property; that the previous owner did not live on the Property; that he obtained a survey and the survey showed that a corner of the pole building encroached into the setback area; that the building cannot be seen from the road; that he spoke with three (3) neighbors about the Application; that the pole building is served by electricity; that septic is located behind the house in the building envelope; and that the pole building measures 12-14 feet tall.

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

Mr. Mills moved to approve Variance Application No. 12059 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 the narrow shape;
2. A Certificate of Compliance was issued;
3. The variance is necessary to enable reasonable use of the Property;
4. The exceptional practical difficulty has not been created by the Applicant;
5. The variance will not alter the essential character of the neighborhood; and
6. The requested variance is the minimum variance necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Mears, 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. Mears – yea, Ms. Magee – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 12060 – Troy Hardin, Jr., & Marshia K. Hardin - seek variances from the rear yard and side yard setback requirements (Sections 115-25, 115-181 and 115-183 of the Sussex County Zoning Code). The property is located on the east side of Wilson Avenue, approximately 435 feet south of Lincoln Drive. 911 Address: 38807 Wilson Avenue, Selbyville. Zoning District: AR-1. Tax Map No.: 5-33-20.18-153.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. Mrs. Walls advised the Board that the property is located in the Cape Windsor community. The Applicants request a variance of 8.0

feet from the ten (10) feet side yard setback requirement on the north side for an HVAC unit, a variance of 5.0 feet from the ten (10) feet side yard setback requirement on the north side for a proposed garage, a variance of 3.0 feet from the twenty (20) feet rear yard setback from a proposed dwelling, and a variance of 6.0 feet from the twenty (20) feet rear yard setback requirement for a proposed open deck.

Troy Hardin was sworn in to testify about the Application and submitted pictures and letters of support for the Board to review.

Mr. Hardin testified that the Applicants propose to construct a new home; that the Property is presently improved by a double-wide manufactured home; that the community was previously a manufactured home community but has evolved to a community with larger dwellings; that the proposed home will be 2 stories tall; that the Property measures 50 feet wide by 85.94 feet deep; that the proposed home will have a first floor master bedroom and a garage; that the dwelling will measure 63.3 feet deep and borders a lagoon; that the lots are unique; that the Property cannot be otherwise developed; that parking is needed on the south side of the house; that the house is designed to accommodate parking in the garage and along the south side of the house; that the community is evolving away from manufactured homes; that the variances will not alter the essential character of the neighborhood; that his neighbors support the Application; that other homes nearby encroach into the setback areas; that the proposed layout will allow him enough space to park cars on the south side of the home; that he is requesting a variance of 9 feet from the ten (10) feet side yard setback on the north side to allow for an HVAC issue because additional space will be needed for the system; that the HVAC system cannot be located elsewhere on the Property; that there are parking issues in the neighborhood; that he plans to elevate the house to alleviate flooding concerns; that the proposed home is similar in location to the existing home; and that the proposed home will be no closer to the north side property line or the front property line than the existing home.

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

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

Ms. Magee moved to approve Variance Application No. 12060 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 small size;
2. The Property cannot be developed in strict conformity with the Sussex County Zoning Code;
3. The exceptional practical difficulty has not been created by the Applicants;
4. The variances will not alter the essential character of the neighborhood; and
5. The requested variances are the minimum variances necessary to afford relief.

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

Case No. 12061 – Thomas C. Newhart - seeks a variance from the corner front yard setback requirement (Sections 115-42 and 115-182 of the Sussex County Zoning Code). The property is located on the southwest corner of Cedar Creek Road and Heritage Road. 911 Address: 10541 Heritage Road, Lincoln. Zoning District: GR. Tax Map No.: 2-30-21.00-52.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. The Applicants seek a variance of 3.4 feet from the fifteen (15) feet corner front yard setback requirement along County Route 228 for a garage.

Nanette Newhart and Thomas Newhart were sworn in to testify about the Application.

Mr. Newhart testified that the garage cannot be placed elsewhere on the lot; that the Property is triangularly shaped; that the dwelling was already on the lot; that the garage is close to the entrance of the house; that he wanted to construct a larger garage but was limited due to the lot; that the Property is wooded; that the Property is served by a well and septic system; that he relied on a contractor to construct the garage; that there is a gap between the edge of paving of County Route 228 and the property line; that the garage is at least 15 feet from the edge of paving of County Route 228; and that his contractor obtained the building permit.

Mrs. Newhart testified that the garage will not impact any traffic views.

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. Mears moved to approve Variance Application No. 12061 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 triangular shape;
2. The variance is necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty has not been created by the Applicants;
4. The variance will not alter the essential character of the neighborhood; and
5. The requested variance is the minimum variance necessary to afford relief.

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

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

Mr. Mills requested that Mr. Sharp send a letter to the Newharts' builder.

Ms. Magee asked Mr. Sharp about the letter to County administration about permitting issues.

Mr. Sharp advised the Board that he did not prepare the letter because, after the prior meeting, he learned that administration has been taking steps to improve the permitting process and that administration was aware of the issue.

Meeting was adjourned at 9:12 p.m.