

MINUTES OF NOVEMBER 6, 2017

The regular meeting of the Sussex County Board of Adjustment was held on Monday, November 6, 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 Mrs. Jennifer Walls – Planning Manager, Mr. Jamie Whitehouse – Planner III and Ms. Samantha Bulkilvish – Recording Secretary.

The Pledge of Allegiance was led by Mr. Callaway.

Motion by Ms. Magee, seconded by Mr. Mills, and carried unanimously to move Old Business to the beginning of the proceedings and approve the Revised Agenda as circulated and amended. Motion carried 5-0.

Motion by Mr. Mills, seconded by Mr. Mears, and carried unanimously to approve the Minutes and Finding of Facts for the September 11, 2017 meeting. Motion carried 5-0.

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

OLD BUSINESS

Case No. 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 October 16, 2017.

Mr. Sharp reminded the Board that this case is subject to requirements under §115-194 of the Sussex County Zoning Code due to its location in the conservation zone; and that the Application has been forwarded to the County Administrator.

The Board discussed the Application.

Ms. Magee stated that she does not feel that the proposed subdivision meets the criteria outlined in §115-194; that lots are required to meet those requirements for a reason; and that Indian River Bay is a valuable asset which should be protected.

Mr. Mills stated that the Applicant could not otherwise improve the Property.

Ms. Magee stated that the Property is not served by central sewer or water.

Mr. Workman stated that the Applicants are asking for three parcels, and that the Applicants could re-survey for two parcels and still meet the acreage requirement.

Mr. Mills stated that there are three homes on the Property and, at one time, there were six homes on the Property; and that the Applicants are just trying to bring a non-conforming use into compliance.

Ms. Magee stated that the Applicants have had the parcel tested for onsite septic and the lots meet requirements for standard septic, that the land is high and slopes toward the river; and that Board should uphold the one-acre requirement.

Mr. Sharp also reminded the Board that there is also a lot width variance request for two of the three proposed lots.

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 parcels, as proposed, do not meet the minimum area and frontage requirements for lots in the conservation zone;
2. The Property is not unique;
3. The Property can otherwise be developed in strict conformity with the Sussex County Zoning Code;
4. The problem is being created by the Applicants; and
5. The variances requested are not the minimum variances necessary to afford relief.

Motion by Ms. Magee, seconded by Mr. Workman, to deny the variances failed by a vote of 2-3.

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

Motion by Mr. Mears, seconded by Mr. Mills, and carried unanimously that the case be **tabled until November 20, 2017**. Motion carried 5-0.

Case No. 12039 – Robert Harmon & Natisha Harmon-Belle - seek variances from the side yard setback requirements (Section 115-25 of the Sussex County Zoning Code). The property is located on the northeast side of Harbeson Road (Route 5), approximately 1,471 feet southeast of Rust Road. 911 Address: 20401 Harbeson Road, Harbeson. Zoning District: AR-1. Tax Map No.: 2-34-4.00-16.00.

Mrs. Walls presented the case, which has been tabled since October 16, 2017.

Mr. Sharp reminded the Board that the record was left open for the submittal of a survey and related documentation and that he has a potential conflict of interest so he will be recusing himself from the case. If the Board has any questions, those questions should be submitted to Vince Robertson, Esquire.

Mrs. Walls needed additional time to make copies of the survey for the Board.

Motion by Mr. Mills to move the case to the end of the public hearings to give staff enough time to locate the survey, seconded by Ms. Magee, and carried unanimously. Motion carried 5-0.

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

At the end of the public hearings, the Board revisited the Application.

Mrs. Walls passed out to the Board the survey submitted by the Applicant.

The Board discussed the Application.

Ms. Magee stated that the Applicants relied on the surveyor for the placement of the home.

Mr. Mills stated that the exceptional practical difficulty was not created by the Applicants.

Mr. Mills moved to approve Variance Application No. 12039 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique as it is a long and narrow lot;
2. The home would not fit on the Property within the building envelope if it was turned sideways;
3. The Applicants relied on the surveyor;
4. The exceptional practical difficulty was not created by the Applicants;
5. 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. Mills – yea, Ms. Magee – yea, Mr. Mears – yea, Mr. Workman – yea, Mr. Callaway – yea.

Case No. 12042 – Love Creek Development, LLC - seeks a special use exception for a waiver or reduction from the loading space requirement (Sections 115-88 and 115-210 of the Sussex County Zoning Code). The property is located on the southeast side of John Williams Highway (Rote 24), approximately 1,678 feet northeast of Camp Arrowhead Road. 911 Address: 33833 Boat Hole

Boulevard, Lewes. Zoning District: Marine. Tax Map No.: 2-34-7.00-108.00.

Mrs. Walls presented the case, which has been tabled since October 16, 2017, and advised the Board that the Applicant submitted a request to withdraw the application. The request for withdrawal was submitted today and not within two (2) days of the public hearing as required by Sussex County Code §115-208(F).

Mr. Mills moved to deny Special Use Exception Application No. 12042 for the requested special use exception based on the record made at the public hearing because the Applicant failed to demonstrate that the request would not substantially affect adversely the uses of neighboring and adjacent properties.

Motion by Mr. Mills, seconded by Ms. Magee, and carried unanimously that **the special use exception be denied** 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, 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 October 2, 2017.

Mr. Mears stated that he stands by his previous comments that home in question is a mobile home in a housing community and it significantly impacts the value of the surrounding homes.

Ms. Magee advised the Board that she has reviewed the record and the testimony and is prepared to vote on this case.

Mr. Workman stated that the builder went and got a permit and relied on the permit.

Mr. Callaway stated that he would like additional time to consider the Application.

Ms. Magee said she is prepared to vote; that the Applicant knows what it is doing and is in the business of placing homes; and that the Board must follow the Sussex County Zoning Ordinance.

Mr. Mears stated that after reviewing the case he, too, is ready to vote; that there was a lot of conflicting information in the testimony; that the Application said the roof pitch was 5-12, but the picture clearly shows a 2-12 roof pitch; and that the homes in the pictures of neighboring homes provided by the opposition did not look anything like the proposed mobile home.

Mr. Mills stated that he does not believe that the Board saw clear evidence that the mobile home would substantially affect negatively the value of neighboring properties; and that there was not a realtor who gave testimony.

Mr. Sharp reminded the Board that in the letter and packet that submitted by Rick Berl included a letter from a realtor and an appraiser.

Motion by Mr. Workman, seconded by Mr. Mills, and carried by a vote of 3-2 that the case be **tabled until November 20, 2017**. Motion carried 3-2.

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

Case No. 12037– CMH Homes d/b/a Oakwood Homes - seeks 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 October 2, 2017.

Ms. Magee stated that she has reviewed the record for the Application and listened to all testimony and is prepared to vote on this case.

Mr. Mills stated that there was no substantial evidence regarding property values either way; and that regarding the neighborhood there was no evidence that this proposed home was not allowed.

Ms. Magee stated that the permit was for another parcel.

Mr. Sharp explained that the Applicant owned two parcels; that a home on one of the parcels a home burned down; that the Applicant came to the building permit office to place a home on the other lot and there was an error on the permit as to the lot where the home would be placed; that, despite this case being similar to the last case, the records differ; and that the survey attached to the Application has incorrect tax map parcel information.

Mrs. Walls clarified that, when the Applicant came in for the building permit, an incorrect tax map parcel number was used and the property identified would have met the minimum requirements for the placement of the home; and that, when the correct tax map and parcel number were given, the parcel did not meet the minimum requirements for the placement of a manufactured home.

Mr. Sharp advised the Board that the advertisements were correct; that the Applicant is applying for the special use exception to release the hold on the permit; that whether the permit was

issued in error is not pertinent to the issue at hand; and that the issue is whether the placement of the manufactured home would substantially affect adversely the use of neighboring and adjacent properties.

Mr. Mears stated that he heard testimony from two women who felt that having a mobile home placed in their neighborhood would negatively affect the value of their properties.

Mr. Workman stated that he is familiar with the area and that the proposed home is similar to other homes in the area.

Ms. Magee asked if there were covenants in Pine Manor Estates subdivision.

Mr. Sharp stated that he was unaware of any covenants in the record.

Mrs. Walls confirmed that there was an exhibit submitted at the hearing of the restrictive covenants for Pine Manor Estates.

Mr. Callaway suggested that copies of the restrictive covenants be given to Board members for further review.

Motion by Mr. Mills, seconded by Ms. Magee, and carried unanimously that the case be **tabled until November 20, 2017**. Motion carried 5-0.

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

Ms. Magee requested that, if there are issues with the permitting office, the Board should notify County administration of the issue.

PUBLIC HEARINGS

Case No. 12046 – Gene C. Horner & Dorcas A. Horner seek a variance from the front yard setback requirement (Section 115-25 of the Sussex County Zoning Code). The property is located at the southwest side of Progress School Road (Road 562) approximately 1,685 feet southwest of Seashore Highway (Route 404). 911 Address: 16104 Progress School Road, Bridgeville. Zoning District: AR-1. Tax Map No.: 1-31-5.00-10.01.

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 are requesting a variance of 8 feet from the forty (40) feet front yard setback requirement for an existing dwelling and proposed porch.

Gene Horner was sworn in to testify about the Application. Mr. Horner submitted photographs for the Board to review.

Mr. Horner testified that the front property line is angled; that one portion of the front corner of the house complies with the setback requirement; that the home was placed on the home by a prior owner; that the Property is poorly graded and he has dealt with water problems for years; that he proposes to construct a porch off the front of the home and to extend the roofline so that storm water will drain away from the home; that the proposed porch will add to the value of the Property; that the front corner of the house is 39 feet from the front property line; that the proposed porch will be 6 feet deep; that he has been repairing considerable water damage and is making other improvements to the existing home; that the home was constructed in 1976; that he purchased the Property in 1979; that he believes the front property line matches the edge of paving; that he spoke with his neighbors about the proposal; and that the septic system is located in the front yard.

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

Mr. Workman moved to approve Variance Application No. 12046 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique in size and the angle of the front property line;
2. The Applicant has suffered from water problems;
3. The variance is necessary to enable reasonable use of the Property;
4. The exceptional practical difficulty was not created by the Applicant;
5. The variance will not alter the essential character of the neighborhood because it has been there for a long time; and
6. The variance requested is the minimum variance necessary to afford relief.

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

Case No. 12047 – Michael Curry - seeks variances from the side yard and rear yard setback requirements (Sections 115-34 and 115-185 of the Sussex County Zoning Code). The property is located at the north side of East Quail Trail, approximately 750 feet east of Mallard Drive. 911 Address: 125 East Quail Trail, Lewes. Zoning District: MR. Tax Map No.: 3-35-8.00-67.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received one letter in support of and no correspondence in opposition to the Application. The Applicant seeks a variance of 1.8 feet from the five (5) feet rear yard setback requirement for a shed, a variance of 1.3 feet from the five (5) feet side yard setback requirement on the east side for a shed, a variance of 4.3 feet from the ten (10) feet rear yard setback requirement for an existing enclosed porch addition, and

a variance of 8.3 feet from the ten (10) feet rear yard setback requirement for an existing set of steps. Building permits were issued for the porch and shed and a Certificate of Compliance was issued for the shed.

Michael Curry was sworn in to testify about the Application and submitted exhibits to the Board.

Mr. Curry testified that the neighborhood has restrictive covenants but there is no rear yard setback requirement in the covenants; that, when he inquired about the rear yard setback requirement with his homeowners association president, he was told that the rear yard setback is 6 feet because the community is adjacent to retired railroad tracks; that he was unaware of Sussex County setback requirements which supersede the neighborhood setback requirements; that he obtained a permit and Certificate of Compliance for the shed and was unaware of the encroachment until the violation notice was received; that the porch has a poured concrete floor; that neighbors support this Application; that the variances will not negatively affect the Property or property values; that the shed is located on cinder blocks; that the homeowners association president incorrectly advised him that the Sussex County setback requirements did not apply to the shed; that his builder obtained the permit for the porch; that he obtained the permit for the shed; that he made an error when determining where to place the shed; that the homeowners association president is insistent that he knows the setback requirements and that the County is wrong; that he relied on his builder to build the porch and steps in compliance with Sussex County Code; that there is a wooded berm between his rear property line and the railroad which makes the rear of the Property appear larger than it actually is; that the Property is served by well water from the front corner of the lot; that the variances will not alter the essential character of the neighborhood; that the porch is difficult to see from the front of the Property and there are no homes to the rear of the Property; that, on the other side of the railroad tracks, is a multi-acre horse farm; that the shed will have no impact on the neighborhood; that the neighbor to the east side of the Property does not object to the side yard variance request; and that the shed is similar to other sheds in the neighborhood.

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

Mr. Mills moved to approve Variance Application No. 12047 for the requested variances for the porch and steps based on the record made at the public hearing and for the following reasons:

1. The Applicant relied on the builder and the builder did not construct the porch in a professional manner;
2. The situation is unique;
3. The variances for the porch and steps are necessary to enable reasonable use of the property;
4. The exceptional practical difficulty was not created by the Applicant;
5. The addition does not alter the essential character of the neighborhood;
6. The porch and steps are not detrimental to the public welfare; and
7. The variances for the porch and steps are the minimum variances necessary to afford

relief.

As part of his motion, Mr. Mills also moved to deny the variances for the shed based on the record made at the public hearing and for the following reasons:

1. The shed is not on a permanent foundation.
2. The permit was received by the Applicant and therefore he should have been aware of the setback requirements.

Motion by Mr. Mills, seconded by Mr. Mears, and carried unanimously that **the variances for porch and steps be granted for the reasons stated and the variances for the shed be denied 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, Mr. Callaway – yea.

The Board recommended that a letter be sent to the builder and the homeowners association president informing them of the correct setback requirements.

Case No. 12048 – Alex Sadowski & Sohie Sohn - seek variances from the front yard setback requirement (Sections 115-34 and 115-182 of the Sussex County Zoning Code). The property is located on the north side of cul-de-sac at the end of Willet Road. 911 Address: 39688 Willet Road, Bethany Beach. Zoning District: MR. Tax Map No.: 1-34-13.00-1281.00.

Mr. Mears recused himself from this case and left the Council Chambers.

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 2.5 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling, a variance of 14.9 feet from the thirty (30) feet front yard setback requirement for a proposed set of stairs, and a variance of 9.4 feet from the thirty (30) feet front yard setback requirement for a proposed deck.

John Sadowski was sworn in to testify about the Application. Jim Fuqua, Esquire, presented the case on behalf of the Applicants and submitted exhibits for the Board to review.

Mr. Fuqua stated that the Property is located in the Ocean Village subdivision off a cul-de-sac; that the Property is zoned MR; that the Applicants have owned the Property since 2010; that the existing dwelling has been demolished and the Applicants propose to construct a new home on the lot; that there are several factors which create a unique situation and an exceptional practical difficulty for the Applicants; that the variances are necessary to enable reasonable use of the Property; that the Property is irregularly shaped and small; that the Property is only 59.79 feet wide and 85.18 feet deep; that other lots in the neighborhood are 102 feet deep; that Ocean Village is located north of Bethany Beach between Route 1 and the Atlantic Ocean; that, when the subdivision was created, the

subdivision did not include the lands closest to Route 1; that a second section of Ocean Village was created in 1987 which subdivided the lands closest to Route 1; that the 1987 subdivision resulted in the creation of several lots at the end of Willet Drive and a hammerhead-shaped cul-de-sac; that the Property fronts on the cul-de-sac but only a small portion of the cul-de-sac is paved; that there is 26 feet of unpaved area between the front of the Property and the edge of paving of the cul-de-sac; that this unpaved area is, for all intents and purposes, considered part of the front yard of the Property; that there is an easement measuring 10 feet wide along the rear of the Property; that the easement starts 7 feet from the rear property line thereby precluding ground-level construction within 17 feet of the rear property line; that the Property is small and the building envelope, which is already small, is further reduced by the rear yard easement; that the exceptional practical difficulty was not created by the Applicants; that the new home will not alter the essential character of the neighborhood; that the new home is consistent with other homes in the area; that the home will not have adverse impact on property values; and that the variances requested are the minimum variances necessary to afford relief.

Mr. Sadowski affirmed the statements of Mr. Fuqua as true and correct.

Mr. Fuqua stated that there will be parking underneath the proposed home and sufficient room for parking up to 4 cars on the site.

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

Ms. Magee moved to approve Variance Application No. 12048 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 and shape;
2. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances requested represent the minimum variances necessary to afford relief.

Motion by Ms. Magee, 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. Mills – yea, Ms. Magee – yea, Mr. Workman – yea, Mr. Callaway – yea.

The Board took a five (5) minute recess.

Mr. Mears returned to the Council Chambers after the Board returned from its recess.

Case No. 12049 – Barry Dukes 2nd - seeks a special use exception to operate a rifle / pistol range for a period of time not to exceed five (5) years (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located at the northeast side of Dukes Lumber Road (Road 474) approximately 1,465 feet northwest of Sycamore Road (Road 476). 911 Address: 28417 Dukes Lumber Road, Laurel. Zoning District: AR-1. Tax Map No.: 2-32-8.00-5.04.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no letters in support of or in opposition to the Application. The Applicant seeks a special use exception to operate a rifle / pistol range for a period of time not to exceed five (5) years. A special use exception for this use was previously approved in 2012 under Case No. 11031.

Barry Dukes 2nd and Evan Rogers were sworn in to testify about the Application.

Mr. Rogers testified that Mr. Dukes and he are the co-owners of East Coast Defense, a business focused on fire arms training; that they are requesting a renewal of a special use exception; that the portion of the Property is used for a shooting range; that the shooting range has been used for the last 5 years; that Mr. Dukes and he have taken the National Rifle Association (“NRA”) firearm instructors program; that they are both certified range safety officers; that he has been a police officer in Sussex County for 9 years and is a certified instructor for law enforcement in the State of Delaware; that there have been no injuries at the range; that there have been no complaints from residents in the area; that this is a private range only utilized for their firearm safety class; that the range is only used once or twice a month; that there is a low volume of firing at the range; that the impact on the community is minimal; that most of the neighbors in the area are family; and that the hours of operation would be Saturdays from 8 am-4 pm once a month.

Mr. Dukes testified that the most classes held on the site in a year has been 10 and that they have only had 7 classes in 2017; that an earthen berm measuring 12 feet tall and modeled to NRA guidelines has been constructed and maintained; that the berm is a considerable distance from neighboring properties; that the range will not have any substantial adverse effect on neighboring and adjacent properties; and that the Applicants are certified to provide handgun training only and that is the only type of firearm used on the site.

Mr. Rogers testified that his primary residence is located on the Property; that there is a wooded area behind the berm; that there is no housing behind the berm for miles; and that the range is limited to 4 shooters at a time.

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

Mr. Mills moved that the application for a special use exception for the continued operation of a shooting range to be used once a month for another five (5) years be approved based on the record made at the public hearing and for the following reason:

1. The range will not substantially affect adversely the use of neighboring and adjacent

properties and there were no testimony or evidence to the contrary.

Motion by Mr. Mills, seconded by Ms. Magee, and carried unanimously that the **special use exception be granted for five (5) years for use once a month and 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, Mr. Callaway – yea.

Case No. 12050 – Stephanie Adams - seeks variances from side and rear yard setback requirements (Sections 115-34 and 115-185 of the Sussex County Zoning Code). The property is located on the south side of First Street approximately 595 feet east of Bald Eagle Road. 911 Address: 37448 First Street, Rehoboth Beach. Zoning District: MR. Tax Map No.: 3-34-19.16-13.00.

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 seeks a variance of 3.8 feet from five (5) feet side yard setback requirement on the east side for an existing shed, a variance of one (1) foot from the five (5) feet rear yard setback requirement for an existing shed, a variance of 4.7 feet from the five (5) feet rear yard setback requirement for an existing shed, a variance of five (5) feet from the five (5) feet rear yard setback requirement for an existing cover, and a variance of five (5) feet from the five (5) feet side yard setback requirement on the west side for an existing cover.

Stephanie Adams was sworn in to testify about the Application. Harold Dukes, Esquire, presented the case on behalf of the Applicant and submitted exhibits for the Board to review.

Mr. Dukes stated that his client purchased the Property earlier this year from an elderly couple; that, at closing, the Applicant discovered that the sheds encroached into the setback areas; that the Property is located in the Bay Vista development which was created in 1952; that there are many encroachments on lots in Bay Vista; that when the development was created, Bay Vista was not served by central water or sewer and septic systems were placed in the front yard and wells were located in the rear yard; that most units in the area have structures located near the rear property lines; that the situation was not created by the Applicant; that the issue was created by prior owners of the Property; that the Applicant spoke with her neighbors and received letters of support for this application; that the Applicant has no intent to enhance these structures; that the home is a small house and the structures are necessary for the Applicant to reasonably use the home; and that the Applicant is active in outdoor recreational activities.

Ms. Adams testified that she purchased the home on September 1, 2017; that she learned of the encroachments right before settlement; that, after she purchased the home, she filed this variance application; that the storage area provided by the sheds was a major factor in her purchasing the Property; that she spoke with her neighbors and they were surprised that there were not variances already in place for these structures; that she is unsure if the fence behind the sheds belongs to her or her neighbor; that the survey was completed before closing; and that the cover is a roof supported by

posts but it is not big enough to be a carport.

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

Mr. Mills moved to approve Variance Application No. 12050 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The situation is unique due to the development of the neighborhood;
2. The exceptional practical difficulty was not created by the Applicant;
3. The Property cannot be developed in strict conformity with the Sussex County Zoning Code;
4. The variances are necessary to enable reasonable use of the Property;
5. The variances will not alter the essential character of the neighborhood or be detrimental to the public welfare; and
6. The variances requested represent 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. Mills – yea, Ms. Magee – yea, Mr. Mears – yea, Mr. Workman – yea, Mr. Callaway – yea.

Case No. 12051 – Howard Hynson - seeks variances from the side yard setback requirement (Section 115-42 of the Sussex County Zoning Code). The property is located on the south side of Blue Teal Road, approximately 1,246 feet northeast of Swann Drive. 911 Address: 37046 Blue Teal Road, Selbyville. Zoning District: GR. Tax Map No.: 5-33-12.16-485.00.

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 seeks a variance of 4 feet from the ten (10) feet side yard setback requirement on the north side for a proposed dwelling and a variance of 4 feet from the ten (10) feet side yard setback requirement on the south side for a proposed dwelling.

Howard Hynson was sworn in to testify about the Application.

Mr. Hynson testified that he plans to remove the existing dwelling on the Property and replace the home with a new modular home; that the proposed dwelling measures 28 feet wide by 66 feet deep; that he spoke with his neighbors; that he purchased the Property in February 2017 with the intention of removing the existing dwelling; that his neighbors support the Application; that the existing dwelling has zero value and needs to be removed; that there have been numerous variances granted in the neighborhood; that the minimum width for a modular home is 28 feet wide and he chose that model; that the Property is located in Swann Keys; that the Property does not flood; that he will obtain a flood elevation certificate; that there is no off-street parking in the neighborhood; that

he will need the front portion of the Property for parking; that areas which could have been used for the home must be used for parking; that the stairs will be located in the front and rear of the home; that the HVAC system will be located in the rear of the home; that the existing home measured 16 feet wide by 70 feet deep; and that the existing home is a mobile home.

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

Ms. Magee moved to approve Variance Application No. 12051 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is small and narrow;
2. The home cannot be replaced within the setback areas due to the size and shape of the lots in Swann Keys.

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, Mr. Callaway – yea.

Case No. 12052 – Karen L. Halverstadt, Trustee - seeks variances from the front and side yard setback requirements and a variance from the fence height requirement (Sections 115-34 and 115-185 of the Sussex County Zoning Code). The property is located on the north side of Robinsons Drive, approximately 525 feet west of Silver Lake Drive. 911 Address: 38261 Robinsons Drive, Rehoboth Beach. Zoning District: MR. Tax Map No.: 3-34-20.05-311.02.

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 seeks a variance of 0.3 feet from the thirty (30) feet front yard setback requirement for an existing porch, a variance of 0.3 feet from the ten (10) feet side yard setback requirement on the west side for an existing porch, a variance of 0.2 feet from the ten (10) feet side yard setback requirement on the west side for an existing screened-in porch, and a variance of 0.5 feet from the 3.5 feet fence height requirement for privacy fence around a pool.

Patricia Kolosy was sworn in to testify about the Application. Daniel Myers, Esquire, presented the case on behalf of the Applicant and submitted exhibits for the Board to review.

Mr. Myers stated that the Property was originally plotted in 1929; that the Property was originally a triangularly shaped lot; that a small portion in the southeast corner was subdivided at some point and this subdivision created a small side yard for the Property; that the subdivision made an already unique property, more unique; that the Property has a small building envelope; that in 2003 an old house was removed and a new house constructed; that the home nearly complies with the setback requirements; that a pool was constructed in 2014; that there was not enough room to the rear

of the home for the pool; that the pool was placed to the side of the house; that the pool is technically in the rear yard but the privacy fence required for the pool is located in the front yard; that the fence height requirement in a front yard is to limit visibility concerns; that the fence meets the requirements for a safety fence but does not pose visibility concerns; that the Applicant did not subdivide the Property, build the house, or construct the pool; and that the exceptional practical difficulty was not created by the Applicant.

Ms. Kolosy testified that she is a realtor; that the encroachments do not alter the essential character of the neighborhood; that the statements made by Mr. Myers are true and correct; and that the variances requested are minimum variances necessary to afford relief.

Mr. Myers stated that the Property is very unique and cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.

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

Mr. Mills moved to approve Variance Application No. 12052 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique;
2. The Property cannot be developed in strict conformity with the Sussex County Zoning Code;
3. The variances requested are necessary to enable reasonable use of the Property;
4. The exceptional practical difficulty was not created by the Applicant;
5. The variances will not alter the essential character of the neighborhood or be detrimental to the public welfare; and
6. The variances requested 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. Mills – yea, Ms. Magee – yea, Mr. Mears – yea, Mr. Workman – yea, Mr. Callaway – yea.

Case No. 12053 – Suzanne Rodenheiser - seeks a variance from the front and rear yard aggregate measurement and a variance from the distance between dwellings requirement (Section 115-188 of the Sussex County Zoning Code). The property is located on the south side of Cypress Lane, approximately 330 feet south of Oceanside Parkway. 911 Address: Unknown. Zoning District: MR. Tax Map No.: 1-34-17.00-39.03-106.

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 seeks a variance of 11 feet from forty (40) feet front and rear yard aggregate setback requirement and a variance of 3.4

feet from the forty (40) feet separation distance between buildings requirement to the dwelling on Unit 116.

Brian Martin was sworn in and testified that he is the Applicant's contractor; that the Applicant proposes to construct a set of steps; that she is concerned about egress from the home and proposes the steps from the rear of the home; that there is no other location where these steps could be constructed; that the steps will come from the rear of the home and otherwise meet the setback requirements; that the Applicant did not construct the deck or porch; that there are other homes in the neighborhood with similar steps; that there is only one way to currently access the home; and that no neighbors have objected to the requests.

Mrs. Walls confirmed that, when the town home was built, it did not meet the aggregate setback requirement.

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

Ms. Magee moved to approve Variance No. 12053 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The lot is unique in the fact that the home was built with only one point of ingress/egress;
2. The Property cannot be developed in strict conformity with the Sussex County Zoning Code;
3. The exceptional practical difficulty was not created by the Applicant as she purchased the Property in its present state;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances represent the minimum variances necessary to afford relief.

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

OTHER BUSINESS

Case No. 11634 – Ockel Acres, LLC seeks a special use exception to place a telecommunication tower (Section 115-23 of the Sussex County Zoning Code). The property is located on the north side of East Redden Road and on the west side of Donovan Road. 911 Address: 17120 Ockels Lane, Milton. Zoning District: AR-1. Tax Map No.: 2-35-24.00-1.05.

Request for Time Extension

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received a letter from Cellco Partnership (d/b/a Verizon Wireless) seeking a second one-year time extension because of site relocation due to unanticipated resource impacts with the construction of the telecommunication tower. The Applicant intends to begin construction during the second quarter of 2018. The case originally came before the Board on September 14, 2015, and there was no opposition to the Application.

Motion by Mr. Workman, seconded by Mr. Mills, and carried unanimously that the **time extension of one (1) year 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, Mr. Callaway – yea

Case No. 11863 – Melanie Shelly, Rebecca Clemmet, and Joan Tedeschi - seek a variance from the side yard setback requirement (Section 115-25C of the Sussex County Zoning Code). The property is located on the north side of Seagrass Court approximately 623 feet northwest of Seagrass Plantations Lane. 911 Address; 29766 Seagrass Court, Dagsboro. Zoning District: AR-1. Tax Map No.: 1-34-7.00-101.00.

Request for Time Extension

Mrs. Walls presented the case and stated that the Applicants are requesting a time extension for the approval of the variance request. The Office of Planning & Zoning received a letter from Donald Dzedzy explaining that he purchased the Property on July 21, 2017 and, as per the requirements of the variance that was previously granted, the shed and house have been removed. The approval will expire on December 20, 2017 and the Applicants are not in a position to apply for a building permit prior to the expiration of the original approval and they seek a one (1) year extension of the approval.

Motion by Mr. Mills, second by Ms. Magee, and carried unanimously that the **time extension of one (1) year 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, Mr. Callaway – yea

ADDITIONAL BUSINESS

2018 Meeting Schedule

The Board was given a proposed schedule of dates for 2018 Board meetings and staff requested that the Board submit any comments or concerns about the schedule by the next meeting.

The Board also discussed changing the start time of the meeting to earlier in the evening but Board agreed that 7:00 pm worked best for all members.

Discussion regarding recent training

Ms. Magee and Mr. Mears attended a training on Board of Adjustment matters. Mr. Mears stated that the training was very educational and the attorney that gave the presentation cited a lot of things that could give you a problem and that the County should look at the setback requirements for communities where many variances have been granted.

Ms. Magee said that it was very informative and that there were a lot of people there.

Mr. Sharp advised the Board that staff has kept a list of possible changes to the Code and is open to suggestions from the Board.

Ms. Magee suggested the Board write a letter to County Council addressing the permitting issues that have resulted in a few of the cases heard throughout the night.

Mr. Sharp agreed to draft a letter that the Board would review as Additional Business at the next Board meeting.

Meeting was adjourned at 9:55 p.m.