



BOARD OF ADJUSTMENT

AGENDAS & MINUTES

MINUTES OF OCTOBER 15, 2012

The regular meeting of the Sussex County Board of Adjustment was held on Monday, October 15, 2012, at 7:00 p.m. in the County Council Chambers, County Administrative Building, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Brent Workman, Mr. Jeff Hudson, and Mr. Norman Rickard, with James Sharp – Assistant County Attorney, and staff members Mrs. Susan Isaacs – Chief Zoning Inspector, and Mrs. Jennifer Norwood – Recording Secretary.

Motion by Mr. Hudson, seconded by Mr. Rickard, and carried unanimously to approve the Revised Agenda as circulated. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously to approve the Minutes of September 24, 2012 as circulated. Motion carried 5 – 0.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously to approve the Finding of Facts for September 24, 2012. 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.

PUBLIC HEARINGS

Case No. 11066 – Andrew Gordon and Lynn Gordon – east of Road 357, southwest of Bayfront Drive, being Lot 5, within Quillen's Point development. (Tax Map I.D. 1-34-5.00-314.00)

A variance from the front yard setback requirement.

Mrs. Isaacs presented the case. Lynn Gordon was sworn in to testify about the Application. Joseph Raskauskas, Esquire, presented the case to the Board on behalf of the Applicants and stated that the Applicants are requesting a 0.6-foot variance from the required 30-foot front yard setback requirement for an existing dwelling; that the dwelling was built in 1984; that the lot is unique since it is narrow in size and a corner lot; that Bayfront Drive is the road on two sides of the lot; that the Applicants purchased the property in March 2012; that the property has changed owners 4 times since the construction of the dwelling; that there are two surveys for

the property that show differences in the measurements; that the dwelling would have to be moved to comply; that the variance will enable reasonable use of the property; that the difficulty was not created by the Applicants; that the dwelling is one of the smaller dwellings in the development; that the dwelling has not been added to since its construction; that it will not alter the character of the neighborhood; that neighbors have no objection to the application; that the dwelling is one of the smaller houses in the development; and that the variance sought is the

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minimum variance to afford relief. Mrs. Gordon, under oath, confirmed the statements by Mr. Raskauskas.

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

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11066 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The property is a corner lot which makes it unique;
2. The variance will enable reasonable use of the property;
3. The difficulty was not created by the Applicants;
4. The variance, if granted will not alter the essential character of the neighborhood; and
5. The variance sought is the minimum variance to afford relief.

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

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

Case No. 11067 – Francis Schneider & Henrienne Schneider – west of Route 1 (Coastal Highway) west of Le Pointe Drive, being Lot 25 within Ocean Ridge West development. (Tax Map I.D. 1-34-9.00-1068.00)

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Francis Schneider was sworn in to testify about the Application. James Fuqua, Esquire, presented the case to the Board on behalf of the Applicant and stated that the Applicants are requesting a 0.5-foot variance from the required 10-foot side yard setback requirement and a 0.3-foot variance from the required 10-foot side yard setback requirement for an existing dwelling, and a 0.2-foot variance from the required 10-foot side yard setback requirement for an existing second floor deck; that the Applicants purchased the Property in 1998; that the dwelling was constructed in 1999; that the lot is only 70 feet wide; that the dwelling was designed to be 50 feet wide; that a survey was completed prior to construction

to assure the setback requirements were met; that the dwelling was built at a slight angle and the Applicants feel this angle created the encroachments; that the Property is unique in shape and that precautions were taken prior to construction; that the Property cannot be otherwise developed; that the Applicants have lived on the Property for 12 years; that the difficulty was not created by the Applicants; that the variances will not alter the essential character of the neighborhood because the dwelling has been on the Property for 12 years; that the variances sought are the minimum variances to afford relief; and that the application was submitted prior to

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the Administrative Variance Ordinance that was passed by the County Council. Mr. Fuqua submitted exhibits including surveys and aerial photographs of the Property. Mr. Schneider, under oath, confirmed the statements by Mr. Fuqua.

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

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11067 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The property is unique in shape and that the dwelling was constructed up to the building restriction line;
2. There is no possibility the property can be developed in strict conformity with the zoning ordinance
3. The variances will enable reasonable use of the property;
4. The difficulty was not created by the Applicants;
5. The variances, if granted, will not alter the essential character of the neighborhood; and
6. The variances sought are the minimum variances to afford relief.

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

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

Case No. 11068 – Zoe Ministries/Yolanda Schlabach – southwest of Route 48 (Zoar Road) approximately 510 feet northwest of Penn Central Railroad.(Tax Map I.D. 1-33-2.00-83.00)

A special use exception requesting residential maternity housing (similar to convalescent housing).

Mrs. Isaacs presented the case. Yolanda Schlabach was sworn in and testified requesting a special use exception for residential maternity housing, similar to convalescent housing. Ms. Schlabach testified that the building is currently used as a bed and breakfast; that the proposed

use will provide housing for homeless pregnant women from the ages of 18 years old to 26 years old; that the home will provide professional counseling, schooling and transportation to and from doctor appointments; that the Applicant will provide housing for up to 6 women at one time; that there will be a house parent on the premises at all times; that the women are eligible to stay in the home up to 12 weeks after childbirth; that there will be no other children in the home; that there is adequate parking available; that there will be no medical staff on site; that there is a great need in Sussex County for this service; that the use will not substantially adversely affect the

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surrounding properties; that there will be less traffic to the site than the current bed and breakfast as currently there are three to five vehicles at the site at any given time; and that, with the proposed use, she expects no more than three vehicles on site at any given time.

The Board found that 11 parties appeared in support of the application.

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

Mr. Mills stated that he would move that the Board recommend approval of Special Use Exception No. 11068 for the requested special use exception based on the record made at the public hearing because the use does not substantially affect adversely the uses of the adjacent and neighboring properties.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted for the reasons stated**. Motion carried 5 – 0.

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

Case No. 11069 – Marshall Properties LLC – northeast of Route 1 (Coastal Highway) approximately 220 feet northwest of Melson Road.(Tax Map I.D. 3-34-6.00-86.00)

A special use exception to place a billboard.

Mrs. Isaacs presented the case. Darlene Matthes and Lynn Rogers were sworn in and testified requesting a special use exception to place a billboard; that the proposed billboard will meet all required size and setback requirements for a billboard; that the proposed billboard will be a double-sided steel monopole structure measuring 12 feet by 24 feet; that the billboard will be 25 feet high; that the proposed billboard is smaller than other billboards in the area; that the billboard allows local business to advertise at a more affordable rate; that the billboard is located adjacent to commercial property; and that the use will not substantially adversely affect the adjacent and neighboring properties.

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

Mr. Rickard stated that he would move that the Board recommend approval of Special Use Exception No. 11069 for the requested special use exception based on the record made at the public hearing because the use does not substantially affect adversely the uses of the adjacent and neighboring properties.

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

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

Case No. 11070 – The Edge Group Inc. @ Nassau – northeast of Route 1 (Coastal Highway) approximately 500 feet southeast of Road 266 (New Road). (Tax Map I.D. 3-34-5.00-89.00)

A special use exception to place a billboard, a variance from the maximum height requirement, and a variance from the required square footage for a billboard.

Mrs. Isaacs presented the case. Darlene Matthes and Lynn Rogers were sworn in and testified requesting a special use exception to place a billboard, a 35 foot variance from the 25 foot maximum height requirement, and a 600 square-foot variance from the 300 square-foot maximum square-footage requirement for a billboard. Mr. Rogers asked the Board if he may incorporate his testimony for both Case No. 11070 and Case No. 11071 because the applications are nearly identical and the properties are adjacent to each other. The Board agreed to hear the testimony for both applications at the same time. Mr. Rogers testified that the proposed billboards will be double-sided steel monopole structures measuring 12 feet by 48 feet; that the need for the height variance is due to the Nassau Bridge which limits visibility of billboards; that there are similar billboards with similar variances on the opposite side of the bridge; that the proposed use will not substantially adversely affect the adjacent and neighboring properties; that the uniqueness to the property is the height of the Nassau Bridge; that the property cannot be developed in strict conformity due to the bridge; that the difficulty was not created by the Applicant; that the surrounding properties are zoned Commercial; that the billboard will not alter the character of the neighborhood; that the variances will not be detrimental to the public welfare; that the proposed billboards will meet the required distance between billboards requirement; that the variances sought are the minimum variances to afford relief; and that the signs will create an easier way to disseminate information to the public. Mr. Rogers submitted exhibits in support of the Application.

The Board agreed to incorporate the testimony for both Case No. 11070 and Case No. 11071.

The Board requested that any persons in support of or in opposition to this Application present their position to the Board.

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

After closing the public record, the Board voted separately on Case No. 11070 and Case No. 11071. Mr. Mills stated that he would move that the Board recommend approval of Special Use Exception/Variance Application No. 11070 for the requested special use exception and the requested variances based on the record made at the public hearing and for the following reasons:

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1. The use will not substantially adversely affect the adjacent and neighboring properties;
2. The existing Nassau Bridge creates a uniqueness to the property;
3. The variances will enable reasonable use of the property;
4. The difficulty was not created by the Applicant;
5. The variances, if granted will not alter the essential character of the neighborhood; and
6. The variances sought are the minimum variances to afford relief.

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

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

Case No. 11071 – The Edge Group Inc. @ Nassau – northeast of Route 1 (Coastal Highway) approximately 700 feet southeast of Road 266 (New Road). (Tax Map I.D. 3-34-5.00-90.00)

A special use exception to place a billboard, a variance from the maximum height requirement, and a variance from the required square footage for a billboard.

The testimony for this case was incorporated with Case No. 11070. The Board separately heard any opposition or support to the Application for Case No. 11071.

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

After closing the public record, the Board separately voted on Case No. 11071. Mr. Rickard stated that he would move that the Board recommend approval of Special Use Exception/Variance Application No. 11071 for the requested special use exception and the requested variances based on the record made at the public hearing and for the following reasons:

1. The use will not substantially adversely affect the adjacent and neighboring properties;
2. The existing Nassau Bridge creates a uniqueness to the property;

3. The variances will enable reasonable use of the property;
4. The difficulty was not created by the Applicant;
5. The variances, if granted will not alter the essential character of the neighborhood;
and
6. The variances sought are the minimum variances to afford relief.

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

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

Case No. 11072 – Dwayne D. Wiltbank – northwest of Road 302 (Phillips Branch Road) approximately 2,100 feet northeast of Road 301 (Holly Lake Road). (Tax Map I.D. 2-34-17.00-9.01)

A special use exception to utilize existing manufactured home for storage and to retain manufactured home on less than five (5) acres.

Mrs. Isaacs presented the case. Dwayne Wiltbank was sworn in and testified requesting a special use exception to use a manufactured home as storage and to retain a manufactured home on less than five (5) acres. Mr. Wiltbank testified that there are two (2) manufactured homes on the property; that a manufactured home was placed on the Property in 2001 with Board of Adjustment approval for a medical hardship and that home is in good shape; that the medical hardship is no longer needed; that the home previously used for a medical hardship is needed for the family to reside in; that the other manufactured home on the Property is in poor shape and he would like to use it for storage; that the special use exception will not substantially adversely affect the surrounding or adjacent properties; that the area surrounding the Property is rural; that he plans to remove the frame from the unit to be used for storage; and that the unit marked as #1 on the survey is to be used as storage and the unit marked as #2 is to be the unit his family will reside in.

James Collins was sworn in and testified in opposition to the application and testified that he is the former owner of the adjacent property; that he is representing the current owners of the adjacent property who have concerns; that there are other uninhabitable manufactured homes on the property; that the neighbors are concerned with the loss of property value; that the property is in bad shape; and that the other units have been recently placed on the property. He submitted pictures of the Property.

In rebuttal, Dwayne Wiltbank testified that the survey identifies the structures as sheds; that these structures have been on the property since 1999; that these structures were shown on the survey used in 2001 to apply for the medical hardship; that he stores lumber, bikes and other

materials he collects in these structures; that the structures have always been used as sheds; that the original structure he wants to use as storage was once a dwelling with a manufactured home addition; and that he collects scrap metal.

In rebuttal, James Collins testified that he does not believe the structures shown as sheds on the survey have been on the lot since 1999. Mr. Collins further testified that he believes those structures were placed on the Property in the past few months.

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Mr. Rickard stated that he received a letter in the mail in reference to this case and has submitted it without review to Mrs. Isaacs to have her read into the record.

Mrs. Isaacs stated that there has been no placement permits or board approvals for the existing sheds.

The Board found that 1-party appeared in support of the application.

The Board found that 1-party appeared in opposition to the application.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be left open to allow the staff to research the prior case as it pertains to a survey and permits. Motion carried 5 – 0.

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

Case No. 11073 – Viola Loeffler – north of Route 54 (Lighthouse Road) east of Blue Teal Road, being Lot 28 Block B within Swann Keys development. (Tax Map I.D. 5-32-12.16-488.00)

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Darrell Grier was sworn in and testified requesting a 4.4 foot variance from the required 10 feet side yard setback requirement for an attached shed. Mr. Grier testified that the Property is located within the Swann Keys development and is a small lot; that the shed is needed for additional storage; that the lots are small; that the variance will enable reasonable use of the Property as it will enable the Applicant to store a lawnmower and a water heater; that the variance will not be detrimental to public welfare; that the variance will not alter the essential character of the neighborhood; that he prefers to build an attached shed with a fire rated wall; that the water heater is stored in the shed; that the location of the water heater creates easier access for the homeowner; that the water heater would have to be relocated if the variance is not approved; that the shed is on a cement foundation; that there is no harm to the public welfare; that there will be no negative effect on neighboring properties; and that there is still adequate parking for the lot.

Mrs. Isaacs stated that the Applicant received approval for the location of steps and an HVAC unit in August 2012 and that it was discovered that the shed would also need a variance.

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

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Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case be taken under advisement. Motion carried 5 – 0.

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

At the conclusion of the public hearings, the Chairman referred back to this case. Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11073 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The lot is unique;
2. The variance will enable reasonable use of the property;
3. The variance, if granted, will not alter the essential character of the neighborhood;
and
4. The variance sought is the minimum variance to afford relief.

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

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

Case No. 11074 – Charles Carroll – north of Route 54 (Lighthouse Road) east of Mallard Drive, being Lot 4 Block H within Swann Keys development.(Tax Map I.D. 5-33-12.16-139.00)

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Darrell Grier was sworn in and testified requesting a 4.4-foot variance from the required 10-foot side yard setback requirement for a proposed porch roof over steps; that the property is located within the Swann Keys development; that the stairs to the dwelling encroach into the setback area and that the Applicant wants to place a roof over the steps; that the steps have been built to support a lift; that the Applicant has suffered a broken back; that the Applicant's condition may result in the need for a wheelchair; that the proposed roof will provide needed shelter; that all other structures on the lot comply with required setback

requirements; that the Applicant's disability creates a unique situation; that the variance will not alter the essential character of the neighborhood; that the difficulty was not created by the Applicant; that the variance sought is the minimum variance to afford relief; and that the Applicant has no intention of enclosing the structure. Mr. Grier also submitted a letter from the Applicant.

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

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Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11074 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The lot is unique in size;
2. The variance will enable reasonable use of the property;
3. The difficulty was not created by the Applicant;
4. The variance, if granted, will not alter the essential character of the neighborhood;
and
5. The variance sought is the minimum variance to afford relief.

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

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

Case No. 11075 – Cora Burgan – west of Road 362 (Parker House Road) north of Mahogany Street, being Lot 36 Block L within Shady Dell Park development. (Tax Map I.D. 1-34-16.00-517.00)

A variance from the side yard and front yard setback requirements.

Mrs. Isaacs presented the case. Mearl Layton was sworn in and testified requesting a 1.1-foot variance from the required 10-foot side yard setback requirement for an existing manufactured home, a 0.6-foot variance from the required 10-foot side yard setback requirement and a 13.5-foot variance from the required 30-foot front yard setback requirement for an existing handicapped ramp. Mr. Layton testified that the manufactured home was placed on the Property in 1981; that the unit was set at a slight angle; that the handicap ramp was built for the Applicant by the Lions Club and her church; that a building permit was obtained; that the ramp was placed into the setback area for easier access; that the ramp was built to the paved driveway to keep the wheelchair out of the dirt; that the variances will not alter the essential character of the neighborhood; that the variances sought are the minimum variances to afford relief; and that the Certificate of Compliance was issued in 1981 for the manufactured home. Mr. Layton submitted letters of support from the Homeowners Association and a neighbor.

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

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11075 for the requested variances based on the record made at the public hearing and for the following reasons:

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1. The variances will enable reasonable use of the property;
2. The variances, if granted, will not alter the essential character of the neighborhood;
and
3. The variances sought are the minimum variances to afford relief.

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

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

Case No. 11076 – Clarence E. Young – west of Road 211 (Elks Lodge Road) approximately 1,130 feet southeast of Road 206 (Wilkins Road). (Tax Map I.D. 3-30-15.00-51.00)

A variance from the minimum lot width requirement for a parcel.

Mrs. Isaacs presented the case. Bob Nash, a surveyor, was sworn in and testified requesting a 68.77-foot variance from the 150 foot lot width requirement for a parcel. Mr. Nash testified that the Property was bequeathed to the Applicant's family in 1963; that the Property originally consisted of two parcels; that in 1982 or 1983 the heirs deeded their interests in the Property to Lawrence Young and Clarence Young; that in 1984 the Youngs combined the two parcels to create one larger parcel; that the Youngs subdivided a half acre parcel from the larger parcel; that one of the heirs is now deceased and his son wants to separate the Property as it existed prior the combination of the two parcels; that the Applicant now wants to subdivide the remaining acreage into two (2) separate 2.5 acre parcels; that the Property cannot be developed in strict conformity with the Sussex County Zoning Code due to the lack of road frontage; that the lots will be of ample width in the rears of those lots; that the difficulty was not created by the Applicant; that the half acre lot creates a uniqueness; that the variance will not adversely affect the uses of neighboring properties; that the variance will not be detrimental to public welfare; that the request will not alter the character of the neighborhood; and that the manufactured home will be relocated to comply with the setback requirements. Mr. Nash submitted pictures.

The Board found that 5 parties appeared in support of the application.

The Board found the no parties appeared in opposition to the application.

Motion by Mr. Workman, seconded by Mr. Rickard, and carried unanimously that the case be taken under advisement. Motion carried 5 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Mr. Hudson stated that he would move that the Board recommend approval of Variance Application

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No. 11076 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The prior subdivision creates a uniqueness;
2. The variance, if granted will not alter the character of the neighborhood; and
3. The variance sought is the minimum to afford relief.

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

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

Case No. 11077 – Marvel Properties, LLC – south of Road 325 (Bull Pine Road) approximately 1,185 feet southeast of Road 469 (Parker Road). (Tax Map I.D. 1-33-1.00-8.00)

A special use exception to retain a manufactured home on less than five (5) acres and a variance from the front yard setback requirement.

Mrs. Isaacs presented the case. Bob Nash, a surveyor, was sworn in and testified requesting a special use exception to retain a manufactured home on less than five (5) acres and a 5.9 foot variance from the 40 foot front yard setback requirement for an existing manufactured home. Mr. Nash testified that the manufactured home has been on the lot since the 1960's; that in 1992 a Conditional Use was approved for an auto repair shop on the Property; that the Applicant wants to subdivide the parcel and give a portion to an employee; that the variance will not alter the essential character of the neighborhood; that the right of way was increased from 30 feet to 50 feet in size and created the encroachment; that the variance enables reasonable use of the Property; that the variance requested is the minimum variance to afford relief; and that the variance will not be detrimental to the public welfare. Mr. Nash submitted photographs of the Property.

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

Mr. Mills stated that he would move that the Board recommend approval for Application No. 11077 for the requested special use exception and the requested variance based on the record made at the public hearing and for the following reasons:

1. The use will not substantially affect adversely the uses of the adjacent and neighboring properties;
2. The property is unique due to the expanded right of way and the non-conforming manufactured home;
3. The variance is necessary to enable reasonable use of the Property;

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4. The difficulty was not created by the Applicant;
5. The variance, if granted, will not alter the essential character of the neighborhood; and
6. The variance sought is the minimum to afford relief.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception and variance be **granted for the reasons stated**. Motion carried 5 – 0.

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

Case No. 11078 – Melissa Cassimore – northwest corner of Route 24 (Shaprtown Road) and Randall Street. (Tax Map I.D. 4-32-8.13-6.00)

A special use exception to operate a daycare facility.

Mrs. Isaacs presented the case. Melissa Cassimore was sworn in and testified requesting a special use exception to operate a daycare facility. Ms. Cassimore testified that she has been licensed for three (3) years and currently runs a daycare; that she has been licensed as a Level 2 daycare provider with the State; that she wants to increase the number of children served at her facility to twelve (12); that her hours of operation will be Monday through Friday from 7:30 a.m. to 5:30 p.m.; that she moved to this location in April 2012; that she has adequate parking and a fenced in play area; that the age of the children will range from birth to twelve (12) years of age; and that the Property is surrounded by farmland and residential homes.

The Board found that 1 party appeared in support of the application.

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

Mr. Mills stated that he would move that the Board recommend approval of Special Use Exception Application No. 11078 for the requested special use exception based on the record made at the public hearing because the use does not substantially adversely affect the uses of the adjacent and neighboring properties.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted for the reasons stated**. Motion carried 5 – 0.

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

The Board took a five (5) minute recess.

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Case No. 11079 – Jameson B. Russell – south of Road 592 (Russell Road) approximately 6,400 feet southwest of Road 42 (Chaplains Chapel Road).(Tax Map I.D. 4-30-21.00-6.02)

A special use exception to place a multi-sectional home that is more than five (5) years old.

Mrs. Isaacs presented the case. Jameson Russell was sworn in and testified requesting a special use exception to place a manufactured home on the lot that is more than five (5) years old. Mr. Russell testified that he purchased a 2006 manufactured home; that the unit measures 28 feet by 76 feet and will be placed on a block foundation; that he has been given land by his family and the manufactured home will be placed thereon; that the surrounding property is owned by family. Mr. Russell submitted pictures and a copy of the title.

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

Mr. Rickard stated that he would move that the Board recommend approval of Special Use Exception Application No. 11079 for the requested special use exception based on the record made at the public hearing because the use does not substantially affect adversely the uses of the adjacent and neighboring properties.

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

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

Case No. 11080 – Twinings Lobster Shanty – southwest of Route 54 (Lighthouse Road) approximately 3,800 feet east of Road 58 (Bayville Road). (Tax Map I.D. 5-33-20.00-34.00)

A variance from the side yard and rear yard setback requirements.

Mrs. Isaacs presented the case. David Twining was sworn in and testified requesting a 2 foot variance from the 5 foot side yard setback requirement for a deck with a roof, a 29.97 foot

variance from the 30 foot rear yard setback requirement for an existing deck with a roof, a 27.2 foot variance from the 30 foot rear yard setback requirement for an existing commercial building, a 0.3 foot variance from the 5 foot side yard setback requirement for an existing commercial building, a 2.1 foot variance from the 5 foot side yard setback requirement for an existing shed, and a 3.2 foot variance from the 5 foot side yard setback requirement for an existing shed; that the building was constructed in 1984; that a restaurant has occupied the Property for over twenty five (25) years; that the deck has been on the Property for twelve (12) years; that he wants to construct a roof over the existing deck to provide cover for diners; that he has not done any external renovations; that the difficulty was not created by the Applicant; that

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he is currently using a tarp to provide cover for the diners; that this request will not impair the uses of surrounding properties; that he leases property to the west of the Property for parking; that he purchased the Property in June 2012; that he obtained a building permit to extend the deck in May 2012; that these variances are the minimum variances to afford relief. Mr. Twining submitted a picture and a copy of building permit application.

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

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the case be taken under advisement. Motion carried 5 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11080 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The history of the building creates a uniqueness;
2. The variances will enable reasonable use of the property;
3. The variances, if granted, will not alter the essential character of the neighborhood;
and
4. The variances sought are the minimum variances necessary to afford relief.

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

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

Case No. 11081 – Mark Cathell/Create 1 Dream Foundation – west of Route 13, 3,800 feet north of Route 54. (Tax Map I.D. 5-32-20.00-83.01)

A special use exception for outdoor display or promotional activity.

Mrs. Isaacs presented the case. Mark Cathell was sworn in to testify about the Application. Blake Carey, Esquire, presented the case to the Board on behalf of the Applicant and stated that the Applicant is requesting a special use for an outdoor display. Mr. Carey submitted exhibits to the Board and stated that the outdoor display will be a Christmas light display similar to the Ocean City Festival of Lights; that the dates of the event will be November 15th thru December 23rd, and December 25th thru January 5th; that the hours of operation will be weekdays 6:00 p.m. to 10:00 p.m. and on weekends from 6:00 p.m. to 11:00 p.m.; that the Property is also used as the US 13 Dragway and DE International Speedway so the proposed use will not substantially adversely affect the surrounding properties; that the Applicant requests the

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approval for a period of five (5) years; that surrounding properties are commercially zoned. Mr. Cathell, under oath, affirmed the statements of Mr. Carey. Mr. Cathell further testified that props will be built on site and judged and the prize money will be used as a fundraiser for non-profit organizations; that volunteers will help staff the event; that the money generated will be used to provide grants and scholarships within the community; that the existing buildings will be used to create the scenes; that visitors will use the existing roadways and parking areas; that the visitors will drive their own vehicles through the two (2) mile tour; that there will be shops, concession and Santa visits at the end of the tour; that the Applicant currently has signed a three (3) year lease with the property owner with a five (5) year option; and that the Applicant plans to open November 15, 2012.

The Board found that 20 parties appeared in support of the application.

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

Mr. Rickard stated that he would move that the Board recommend approval of Special Use Exception Application No. 11081 for the requested special use exception based on the record made at the public hearing because the use does not substantially affect adversely the uses of the adjacent and neighboring properties.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted for a period of five (5) years for the reasons stated.**
Motion carried 5 – 0.

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

OTHER BUSINESS

Case No. 10884 – Coastal Way Exchange, LLC – northeast intersection of Route 1 (Coastal Highway) and Kings Highway Lot 8 within Ann Acres development.

A variance from the buffer requirement in a combined highway corridor overlay zone district and a variance from the minimum number of parking spaces requirement.

Request for a time extension.

Mrs. Isaacs read a letter from the Applicant requesting a one (1) year time extension.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the request for a time extension be **granted for a period of one (1) year**. Motion carried 5 – 0.

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

Meeting Adjourned 10:00 p.m.