

MINUTES OF OCTOBER 16, 2017

The regular meeting of the Sussex County Board of Adjustment was held on Monday, October 16, 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 – Assistant County Attorney, and staff members Mrs. Jennifer Walls – Planning Manager, Jamie Whitehouse – Planner III, and Mrs. Jennifer Norwood – Recording Secretary.

The Pledge of Allegiance was led by Mr. Callaway.

Motion by Mr. Mills, seconded by Mr. Mears, and carried unanimously to approve the Agenda as circulated and amended. Motion carried 5-0.

Motion by Mr. Mills, seconded by Mr. Workman, to approve the Minutes and Finding of Facts for the August 21, 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.

PUBLIC HEARINGS

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, and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. Mrs. Walls explained that the property in question is in a conservation zone and therefore minimum lot size for subdivision is one acre and with 150 feet of road frontage per lot. The Applicants propose to subdivide the Property into three (3) lots (Lots A, B, & C) and the Applicants seek a variance of 0.0683 acres from the minimum one (1) acre lot size requirement for the proposed Lot A, a variance of 0.1852 acres from the minimum one (1) acre lot size requirement for the proposed Lot B, a variance of 0.2495 acres from the minimum one (1) acre lot size requirement for the proposed Lot C, and a variance of 9.12 feet from the minimum 150 feet lot width requirement for the proposed Lot C.

Michael Robert Berry was sworn in and testified that he is one of the owners of the Property; that there are three (3) individual residences on the Property which have their own addresses, well, septic, and utilities; that the Property previously consisted of a 6 unit mobile home

park; that existing topography separates the three (3) existing units; that the Property consists of 2.5 acres more or less; that the need for the variances was not created by the Applicants; that the existing buildings have been on the Property since before 1970; that two (2) of the units are older mobile homes; that the variances will not alter the essential character of the neighborhood; that the variances requested are the minimum variances necessary to afford relief; that the units are served by well and septic; that the Applicants acquired the Property in August 2017; that the Applicants have no intent to tear down these structures in the near future; that the soil has been tested and the lots meet the regulations for standard septic systems; that new septic systems may be needed; that the lots will be divided among the existing owners; that he trying bring a non-conforming use more in compliance with the existing zoning code; that nearby lots are similar in size to the proposed lots; that the Property is quite high and slopes towards Indian River; that the variances will not adversely affect the water quality of Indian River; that the variances are in general harmony with the spirit of the conservation zone; and that the variances are not based on conditions or circumstances which are a result of actions by the Applicants nor do the variance requests arise from any condition relating to the land use, either permitted or non-conforming, on any neighboring property.

Mr. Berry submitted exhibits to the Board to review.

Mrs. Walls confirmed that a copy of the Application has also been forwarded to the Sussex County Administrator.

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

Mr. Sharp advised the Board that the Applicants must meet the standards set forth in Section 115-194(C) of the Sussex County Zoning Code as well as the variance standard.

Motion by Ms. Magee, seconded by Mr. Mears and carried unanimously that the variance application be **tabled until the next scheduled meeting on November 6, 2017**. Motion carried 5-0.

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

Case No. 12038– Jo Anne Elliott, Executrix of the Harold Hartman Estate - seeks a variance from the side yard setback requirement (Sections 115-42 and 115-185 of the Sussex County Zoning Code). The property is located at the northeast side of Baltimore Avenue, 215 feet northwest of Clubhouse Road (Road 351). 911 Address: 36751 Baltimore Avenue, Ocean View. Zoning District: GR. Tax Map No.: 1-34-12.00-1088.00.

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 variance of 1.9

feet from the five (5) feet side yard setback requirement on the southeast side for an existing garage.

Jo Anne Elliott was sworn in to testify about the Application and testified that she is Executrix of the Estate of her father Harold Hartman; that Mr. Hartman passed away in June 2017 and his Last Will & Testament directed that his real estate located at 36751 Baltimore Avenue be sold; that an agreement of sale was reached and the buyers obtained a survey which revealed that the garage encroaches into the side yard setback area; that the garage contains less than 600 square feet; that the Property is unique as it is a small lot; that the garage was on the Property when her father purchased the Property in 1984 and has been located on the Property prior to the enactment of the Sussex County Zoning Code; that the garage has been in the same location for over thirty (30) years without complaint; that the variance is necessary to enable reasonable use of the Property; that the exceptional practical difficulty was not created by the Applicant; that the variance is needed to bring the Property into compliance with the Sussex County Zoning Code; that the garage has not altered the essential character of the neighborhood or been detrimental to the public welfare; that the garage is structurally sound; that the variance requested is the minimum variance necessary to afford relief and represents the least modification of the regulation at issue; and that the Property had a septic system at one point but is now connected to sewer.

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

Ms. Magee moved to approve Variance Application No. 12038 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is already developed;
2. The need for a variance was not created by the Applicant;
3. The garage was already built when the Applicant's father purchased the home;
4. The variance requested is the minimum variance necessary to afford relief;
5. The variance will not alter the essential character of the neighborhood.

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

Case No. 12039 – Robert Harmon & Natisha Harmon-Belle - 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 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 and stated that the Office of Planning and Zoning received no letters in support of or in opposition to the Application. The Applicants are seeking a variance of 3.3 feet from the fifteen (15) feet side yard setback requirement on the northwest side for an existing dwelling and a variance of 7.3 feet from the fifteen (15) feet side yard setback requirement on the northwest side for an existing set of steps.

Mr. Sharp advised the Board that he has a potential conflict of interest and that he will not participate in the discussion of this Application but will remain in Chambers to swear in witnesses. Mr. Sharp advised the Board to direct any questions it may have to Vince Robertson, Esquire.

John Starke was sworn in and testified that he is the construction manager for Atlantis Homes; that the home measures 30 feet by 76 feet; that the Property is wooded and the lot had to be cleared for the house and septic system; that the home could not be turned to fit on the lot; that the home is a modular home and is set on a foundation; that the surveyor set placement markers for the home; that the home had to be placed on one side of the lot so that the equipment to set the home could safely maneuver on site and set the home; that the home was too wide to turn it on the lot; that the Applicants were unaware of the encroachment until they sought a final inspection after the home was placed; that the variances will not alter the essential character of the neighborhood; that there are manufactured and modular homes in the area; that the surveyor placed the home in the wrong spot; that he relied on the surveyor to determine the area where the home could be placed; that the footers and foundation were inspected and the encroachment was only discovered after the home was placed on the Property; that, if the Property was slightly smaller, only a 10 foot side yard setback would be required – in which case no variance would be needed; and that the neighboring properties are wooded.

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

Motion by Ms. Magee, seconded by Mr. Mills, and carried unanimously to **leave the hearing open until the next scheduled meeting on November 6, 2017, for the limited purpose of allowing the Applicant to provide a copy of the original survey showing the incorrect setback lines and any other related documentation from the surveyor.** Motion carried 5-0.

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

Case No. 12040 – David Herchik & Richard Looman - seek a variance from the side yard setback requirement (Section 115-25 of the Sussex County Zoning Code). The property is located on the northwest side of Country Club Road, approximately 4,648 feet southwest of Coastal Highway (Route 1). 911 Address: 603 Country Club Road, Rehoboth Beach. Zoning District: AR-1. Tax Map No.: 3-34-19.00-13.04.

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 Applicants seek a variance of 2.7

feet from the ten (10) feet side yard setback requirement on the southwest side for a proposed addition.

David Allen Herchik was sworn in to testify about the Application and he submitted a letter of no objection from a neighbor living on the proposed garage side.

Mr. Herchik testified that the Applicants purchased the Property in 2009 and the existing home was moved to the Property between 2004 and 2006 by the Truitt family; that the dwelling is a farmhouse and the Applicants have restored the home; that the Property is narrow; that the Applicants propose to construct a garage addition; that he suffers from leg problems and Mr. Looman suffers from vision problems; that the proposed garage will accommodate a wheelchair; that the dwelling fits with the character of the neighborhood; that the garage needs to be as wide as proposed to allow for persons entering or exiting the vehicle to open the door safely without hitting a wall or another vehicle; that the neighbor who submitted the letter of no objection lives to the southwest of the Property; that the garage will measure 24 feet wide; that the garage will have a cinder block foundation; that the minimum width for a car in a garage is 11 feet; that the addition will include additional living space to the rear of the garage; that the garage portion of the addition will measure 27 feet deep; that the addition will be two stories tall; that the addition will include a screened-in porch, living room, master bedrooms, and an office; that if an elevator was needed in the future, it would be located inside the structure; that the portion of the addition which is not being used for the garage could fit within the building envelope; that the main entrance to the house is located on the southwest side of the home; that the Applicants seek to build the addition per the survey and not the drawings; that the survey shows the garage as 24 feet wide but the drawing shows the garage as 22 feet wide; that the dwelling will have six (6) bedrooms; that the HVAC system will be located within the building envelope and any additions to the HVAC system will be located within the building envelope; and that the dwelling is connected to sewer but has well water.

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

Mr. Mears moved to approve Variance Application No. 12040 in part for the requested side yard variance for the garage only based on the record made at the public hearing and for the following reasons:

1. The Applicants have demonstrated a medical need exists whereby the Applicants need a wider garage;
2. The garage will measure 24 feet wide by 27 feet deep;
3. The Property is unique;
4. The variance is necessary to enable reasonable use of the Property; and
5. The exceptional practical difficulty was not created by the Applicants.

As part of his motion, Mr. Mears moved to deny the variance for the addition for the living space.

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

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

Case No. 12041– Somerset Green Holdings, LLC - seeks a variance from the fence height requirement (Section 115-185 of the Sussex County Zoning Code). The property is located at the northeast corner of Shady Road and Plantations Road (Route 10). 911 Address: None Available, Lewes. Zoning District: C-1. Tax Map No.: 3-34-6.00-687.00.

Ms. 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 variance of three (3) feet from the ten (10) feet height requirement for a fence.

Ms. Magee recused herself from this case and left the Chambers.

Ronald Alexander was sworn in to testify about the Application. David Hutt, Esquire, presented the case on behalf of the Applicant and submitted exhibits for the Board to review.

Mr. Hutt stated that the Property consists of approximately 6.5 acres; that the Property is located near the Lowe's home improvement store at Five Points and the Lewes Park & Ride facility; that the Property is zoned C-1 (Commercial); that the Property is planned to be developed as a townhome development known as Somerset Green; that the infrastructure and four (4) model homes have been constructed; that the development will consist of 53 townhomes; that the Applicant proposes to install a fence that measures ten (10) feet tall rather than seven (7) feet tall as allowed in the Code; that the fence will serve as a visual barrier as well as a barrier for noise, dust, and light from Lowe's and the Park & Ride Facility; that deliveries are made to the rear of the Lowe's facility; that a fence measuring ten (10) feet tall is less likely to be scaled without the assistance of a ladder; that Ryan Homes is constructing the homes in the development; that Ryan Homes has constructed a similar fence near Bayside Americana to buffer a drugstore and McDonald's restaurant from a similar community; that a residential fence can only be seven (7) feet tall but a commercial fence could be taller; that the general manager of Lowe's supports the Application; that the Property is unique because it is developed by a residential community but is adjacent to a large retail business and the park and ride facility; that the topography is flat so there is no physical barrier to otherwise provide a barrier; that a seven (7) feet tall fence does not provide an adequate barrier; that the variance is necessary to enable the reasonable use of the Property; that the exceptional practical difficulty was not created by the Applicant because the Applicant did not create the light, noise, and dust from the neighboring properties; that the variance will not alter the essential character of the neighborhood; that the proposed fence is shorter than the outdoor storage fence used by Lowes; that the variance requested is the minimum variance necessary to afford relief; and that a ten (10) feet tall fence will provide a barrier to the first floor of the dwellings.

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

Mr. Hutt stated that the rear entrance to Lowes is an easement over the Property; that the easement area will be fenced off as well; that the ten (10) feet tall fence will be along the shared property line on the northwest side of the Property; and that the fence will gradually reduce in height to 3.5 feet near the entrance.

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

Mr. Mills moved to approve Variance Application No. 12041 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The situation is unique due to the large commercial development adjacent to the residential property;
2. The variance is necessary to enable reasonable use of the property;
3. The Applicant did not create the exceptional practical difficulty;
4. The variance will not alter the essential character of the neighborhood;
5. The variance will not inhibit the use of neighboring properties or be detrimental to public welfare;
6. The variance requested is the minimum variance necessary to afford relief.

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

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

Ms. Magee returned to the Chambers

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 (Route 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 and stated that the Office of Planning and Zoning received no letters in support of or in opposition to the Application. The Applicant is seeking a special use exception for a waiver from or reduction of the loading space requirement.

Alan Hill from Hillcrest Associates was sworn in to testify about the Application. Mr. Hill testified that Love Creek is a proposed community consisting of a condominium complex, restaurant, and parking areas; that the restaurant will sit on approximately 1.8 acres; that the Applicant seeks relief from the loading space requirement so as to allow for additional parking; that the restaurant will be a facility used for lunch and dinner; that deliveries will be made during the morning hours; that the loading area measures 12 feet by 40 feet and would be used for box trucks and smaller delivery vehicles; that the elimination of the loading area provides 5 additional parking spaces; that there are 113 parking spaces for the restaurant which exceeds the parking space requirement; that no tractor trailers will deliver to the site; that the layout of the parking lot would make it difficult for a tractor trailer to navigate; that a tractor trailer cannot access the site but a fire truck would be able to access the building; that the site meets the Fire Marshal requirements; that there is no need for a tractor trailer to access a restaurant of this size; that there is no tenant for the restaurant at this time; that trucks will not be able to access the condominium portion of the development because that area is gated; that the restaurant will be a public restaurant; that the project has preliminary plan approval from the Planning & Zoning Commission; that the Applicant seeks a waiver of the loading requirement under Section 115-88(B)(4); that the restaurant will have less than 10,000 square feet of floor area; that the restaurant will only consist of 1 floor; that the Applicant could meet the loading space requirement but the Applicant would lose some parking; that the use of the space for parking rather than loading would be a better use of the site; that the Applicant lost some potential parking spaces due to the boat ramp and tidal areas of the Property; that the restaurant could not be moved to allow for loading space behind the building because the restaurant would be too close to the boat ramp and more parking spaces would be eliminated; that the proposed location of the restaurant is a safe distance from the boat ramp; that the loading area, if required, would be located to the left side of the building; that boat slips are owned by the condominium unit owners; that there are no additional parking spaces needed for the boat slips; and that there is no parking for the boat trailers.

Nancy Guerin was sworn in to testify about the Application. Ms. Guerin had questions about the Application and the development.

Mr. Sharp advised Ms. Guerin that Mr. Hill testified that the Applicant has received preliminary site plan approval from the Planning & Zoning Commission subject to the approval of this special use exception; and that the Applicant would be required to go through a final site plan approval process.

Ms. Guerin asked that, if the loading space was not required, could the Applicant still put in the restaurant; and how the visitors to the restaurant and the people living in the condos were expected to get out onto Route 24.

Mrs. Walls advised the Board that no public hearing was required for the preliminary site plan approval but the Applicant did go through the preliminary site plan process with the Planning & Zoning Commission; that the Applicant must receive necessary agency approvals before

obtaining final site plan approval; and that the Delaware Department of Transportation (“DelDOT”) is an agency which provides comments in the site plan process.

Mrs. Walls invited Ms. Guerin to stop into the Planning & Zoning Office to review the file.

Deborah Harris was sworn in and testified in opposition of the Application and testified that she keeps her boat at the marina; that the area where the restaurant is proposed to be located floods; and that she believes that the restaurant should be on stilts.

Mr. Sharp advised the Board as to the standard set forth in Section 115-88(B)(4) which the Applicant must also meet in order to receive approval.

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

The Board found that one (1) party appeared in opposition to the Application.

Motion by Ms. Magee, seconded by Mr. Workman, and carried unanimously that the case be **tabled until November 6, 2017**. Motion carried 5 – 0.

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

Case No. 12043 – Norma T. Slade - seeks variances from the front and side yard setback requirements (Section 115- 42 of the Sussex County Zoning Code). The property is located on the east side of Pintail Drive, approximately 909 feet northeast of Swann Drive. 911 Address: 36998 Pintail Drive, Selbyville. Zoning District: GR. Tax Map No.: 5-33-12.16-49.00.

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 variance of 3.3 feet from the ten (10) feet front yard setback requirement for a dwelling, a variance of 3.4 feet from the ten (10) feet front yard setback requirement for a dwelling, and a variance of 2.9 feet from the ten (10) feet side yard setback requirement on the north side for a screened porch.

Thomas Carney was sworn in to testify about the Application. Ray Tomasetti, Esquire, presented the case on behalf of the Applicant and submitted exhibits for the Board to review.

Mr. Tomasetti stated that Mr. Carney is the past president of the Swann Keys Civic Association and has knowledge of the Property; that the Applicant purchased the Property in 2015 and the encroachment issue arose when she tried to sell the Property; that the prior owner owned the Property from 1978 to 2015; that the prior owner placed the manufactured home on the Property in 2000; that certificates of compliance were issued for the placement of the home and, later, the addition of a porch and shed to the Property; that the Property is unique; that 25 feet of the rear of the Property is located in the adjacent lagoon; that the Property cannot otherwise be

developed in strict conformity with the Sussex County Zoning Code; that the exceptional practical difficulty was not created by the Applicant; that the variances will not alter the essential character of the neighborhood; that the structures have been on the Property since 2000; that there are other similar encroaching structures in the neighborhood; that other homes are set back a similar distance from the property lines; that the variances requested represent the minimum variances necessary to afford relief; and that the Applicant did not obtain a survey when she purchased the Property and only recently learned of the encroachments.

Mr. Carney testified that he lives in Swann Keys and has knowledge of the Property; that he was once President of the Swann Keys Civic Association; and that the statements made by Mr. Tomasetti are true and correct.

Mr. Tomasetti stated that there have been no additions made to the home since the certificates of compliance were issued; and that there have been no complaints from neighbors.

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

Ms. Magee moved to approve Variance Application No. 12043 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 small lot;
2. The Property is already developed;
3. The exceptional practical difficulty was not created by Applicant; and
4. The variances will not alter the essential character of the neighborhood.

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. Workman – yea, Mr. Mears – yea, Mr. Mills – yea, Ms. Magee - yea, and Mr. Callaway – yea.

Case No. 12044 – Barbara McClay - seeks a special use exception for a tourist home (Bed & Breakfast) (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located on the east side of Doe Run, approximately 804 feet south of Woods Drive. 911 Address: 34453 Doe Run, Lewes. Zoning District: AR-1. Tax Map No.: 2-34-18.00-190.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received one (1) letter of support to the Application and six (6) letters in opposition to the Application. Mrs. Walls read the correspondence. The Applicant seeks a special use exception for a tourist home – otherwise known as a bed & breakfast inn.

Barbara McClay was sworn in and testified about the Application. Ms. McClay testified that her husband passed away and she needed additional income; that she rents her home through

Air BnB; that Air BnB allows the landlord to learn more about the renters; that she is the on-site host when her guests are in the home except on three (3) occasions when she was not present; that she limits the rentals to no more than six (6) guests for a period of no more than six (6) days; that she prohibits smoking and enforces noise restrictions; that the restrictive covenants do not prohibit the rental of homes; that the restrictive covenants allow her to delegate her rights to use common areas to her tenants provided they follow the community rules; that she initially started by renting one room to one tenant; that she has had a wonderful experience meeting people from all over the country and from many different backgrounds who have rented her home; that the community is worried that the tenants will do something negative to the community; that the guests are generally coming to the area to participate in other activities outside of the home; that she was giving her tenants breakfast; that her neighbors are concerned that the tenants will break into their homes; that her home was previously burglarized on two (2) occasions; that her primary residence is located in Pennsylvania; that one of her neighbors actually feels better that there are people at the home more frequently; that she has met with her community on three (3) occasions; that the community's lawyer said there is nothing in their bylaws which prevents her from renting her home in this fashion; that the community held a meeting in July 2017 and proposed to amend the bylaws to restrict rentals to a minimum of one (1) year but the amendment did not pass due to lack of support; that she only rents about ten (10) days out of the month; that the rentals bring revenue to the area; that tenants typically arrive in one (1) car and there is no additional damage to the roads; that, on some occasions, the tenants only stay the night and neighbors do not even realize her tenants were there; that she does not know who is staying at her neighbors' homes; that her use of the home does not negatively impact the neighborhood; that she has declined prospective tenants for not properly supervising their children; that she has had twenty (20) different renters; that only two (2) of her tenants have cooked on her grill when they visit; that most of her tenants eat meals out; that there are no cooking apparatuses in the individual rooms; that she did not know she needed a special use exception to run a bed and breakfast; that the use will not substantially affect adversely the use of neighboring and adjacent properties; that she is present 80% of the time; that she can read reviews on her guests and see who they are before renting to them; that one (1) tenant decided to use the community pool once with her grandchild and daughter; that she could not determine if she would purchase a home next to an Air BnB; that she did not consider having a real estate appraiser evaluate the effect of the proposed use on property values; that the Property consists of nearly an acre; that the Property has two large driveways that can accommodate 6-8 cars in each; that she only rents to one family at a time; that the house sleeps up to fifteen (15) people but she restricts the number of people who may rent the home at a given time; that the use will not have a substantial adverse effect on noise, light, or dust in the neighborhood; that the traffic related to the use is minimal; that the house has three (3) bedrooms; and that the home has enough room for up to fifteen (15) people to sleep to accommodate her large family but will never rent to that many people.

Joseph Haney was sworn in and testified in support of the Application.

Mr. Haney testified that he has been a resident in the neighborhood for 17 years; that Ms. McClay is a widowed woman trying to supplement her income by occasionally renting her home;

that the opposition is fearful of the unknown and of losing property value; that the community held a vote to change its bylaws regarding rentals but the amendment failed; that there are approximately 175 homes in the neighborhood and that each home sits on approximately one acre; that the homes are spread apart; that the community is not a gated community and persons are free to come and go as they please; that the opposition is prejudging all potential renters as criminals or undesirables; that, if there was a problem with the renters, systems are in place just like in any community where the police would be called and issues would go through the courts and things would be dealt with between the homeowner and the tenants; that the request will not substantially affect adversely the use of neighboring properties; and that the opposition is afraid of the unknown.

The Board took a five (5) minute recess.

Walter Lindsay, Karen Gastil, James Meehan, Laurence Fedorka, Brenda Meehan, Walt LaFontaine, and Edgar Carr were sworn in and testified in opposition of the Application.

Ms. Gastil testified that she and her husband purchased property in the neighborhood in 1985 and constructed a home in 1995; that the community has a homeowners association and restrictive covenants; that Article 6 of the restrictive covenants prohibit businesses in the community; and that a bed and breakfast inn is a business. Ms. Gastil submitted an exhibit to the Board.

Mr. Sharp stated that the Board does not enforce restrictive covenants and that the issue before the Board is whether the proposed special use exception substantially affects adversely the uses of neighboring and adjacent properties.

Ms. Gastil testified that the special use exception will affect property values; that the neighborhood is a quiet residential community with retirees; that the neighborhood is not set up for businesses; that the Applicant has operated the business since 2016; that she learned of the business in July 2017; that she called the Planning & Zoning Department about the issue; and that the traffic and noise generated by the bed & breakfast has not affected her.

Mr. Sharp explained to Ms. Gastil the special use exception which is being sought by the Applicant and the standard which must be met.

Mr. Lindsay testified that he submitted a letter to the Board but had additional comments; that the Applicant's bed and breakfast has not impacted him; that he does not oppose one home in the neighborhood being used as a tourist home but he is concerned that, if one home is allowed to be used in this fashion, other homes will follow suit; that the existence of multiple tourist homes will result in additional traffic and noise; that he believes the existence of the tourist home will decrease his property value; and that he lives close to the Applicant.

Mr. Meehan testified that he has lived in the neighborhood for five (5) years; that he previously lived near Philadelphia and that community dropped off in 2008 when the economy

deteriorated; that there is noise when the Applicant's children are in town setting off fireworks; that the Applicant joined Air BnB in September 2016; that Air BnB requires users to contact neighbors, homeowners associations, and local zoning officials; and that the Applicant was made aware of this requirement but claimed she did not know the requirement.

Ms. Meehan testified that she is concerned that, if the tourist home is approved, other homes will be used for businesses; that, prior to purchasing her home, she contacted the homeowners association to ask about rental properties; that she was told that rental properties in the neighborhood were long-term rental properties; that her previous neighborhood had many short-term rental units and it made it difficult to live in the neighborhood; that the proposed special use exception will adversely affect property values in the neighborhood; that a neighbor, who is a property management company owner, advised her that a homeowner in a different community lost a sales contract when the buyer learned that there was an Air BnB in the neighborhood; and that she is concerned of a similar impact in this neighborhood.

Mr. Fedorka testified that he is a licensed realtor in the state of Pennsylvania; that he purchased a home in the Woods on Herring Creek; that, in his experience in real estate, when you allow a business to open in a residential neighborhood, things change; that his concern is that if you have one tourist home in the neighborhood you can have others; that the tourist home will increase traffic and usage of the pool because tenants have permission to access the recreation facilities; that the homeowners pay an annual fee for the pool and road and he can see the fees escalating due to the additional cost of needing to maintain those facilities; and that he has been a part-time resident in the community until recently.

Mr. LaFontaine testified that he bought a lot in the community because it is a quiet neighborhood; that he is concerned about the liability related to tenants using the road, pools, and other amenities; that granting the Applicant's request will open the door to other tourist homes in the neighborhood that will devalue the properties in the neighborhood.

Mr. Carr testified that he has been a resident in the neighborhood for over 13 years; that the approval of this application will result in a change in how the Board views other applications in the neighborhood; that there is a loss of value when there is a loss of control; that there are 175 lots in the community; that the community has restrictive covenants; that the Board should consider the voice of the community; and that some homeowners have rented their homes out through local real estate agents but they are long-term rentals.

Mr. Fedorka testified that there are two (2) homes in the neighborhood that are rented for one year or more with leases.

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

The Board found that fourteen (14) people appeared in opposition to the Application.

Mr. Mills stated that he was not convinced by the Applicant that the use will not substantially adversely affect the uses of neighboring and adjacent properties; that the testimony by Mr. Fedorka regarding property values was helpful; that the fees related to an increase in maintenance of community facilities from a tourist home is a reasonable concern; and that he shares the concern of neighbors that approval of this application will result in other tourist homes in the neighborhood.

Mr. Sharp advised the Board that the approval of the special use exception runs with the land but the Board could condition the approval by limiting the number of residents.

Mr. Mills moved to deny special use exception application No. 12044 for the requested special use exception based on the record made at the public hearing and for the following reasons:

1. The Applicant failed to demonstrate that the use will not substantially affect adversely the use of neighboring properties; and
2. The opposition did demonstrate that the use would substantially affect adversely the use of the neighboring properties.

Motion by Mr. Mills, seconded by Mr. Mears, and carried unanimously that the **special use exception be denied**. Motion carried 5-0.

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

Case No. 12045 – Horizon Land Co., LLC - seeks a variance for the separation distance between units (Section 115-172 of the Sussex County Planning and Zoning Code). The property is located at Lot 23, on Kings Lane, off Knight Lane. 911 Address: 25879 Kings Lane, Millsboro. Zoning District: AR-1. Tax Map No.: 2-34-23.00-307.01-54108.

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 two (2) feet from the twenty (20) feet separation distance requirement from the dwelling on Lot 22 for a covered porch, a variance of 1.7 feet from the twenty (20) feet separation distance requirement from a dwelling on Lot 22 for a dwelling, and a variance of 1.9 feet from the twenty (20) feet separation distance requirement from a dwelling on Lot 22 for a dwelling.

George Russell was sworn in and testified that he is the park manager of Enchanted Acres; that the home on Lot 23 encroaches into the separation distance area; that Ruben Perez did not own the house when the process started; that the park's rule is that, if Sussex County approves the house, the construction is allowed; that footers were dug by a prior owner and Sussex County officials approved the addition; that the prior owner sold the house to Mr. Perez; that Mr. Perez assumed that he could complete the construction because it had been approved; that the inspector missed the separation distance requirement when inspecting the addition; that Mr. Perez was

unaware of the encroachment until the construction was complete; that the lot is narrow and the home already exists on the lot; that the deck was already on the lot; that the licensed contractor submitted a permit and had an inspection complete; that the variances requested are the minimum variances necessary to afford relief; that the permit was issued for an addition; that the permit was issued to the builder; that the shed on Lot 24 is located near the shared property line; that the house has been on the Property since the 1970s; that the home cannot be moved into compliance with the Code; and that there was previously a porch attached to the house which was removed and expanded.

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

Mr. Mills moved to approve Variance Application No. 12045 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique as the original home has been on the lot for many years and it is difficult to make any additions thereto;
2. The exceptional practical difficulty was not created by Applicant;
3. The project was started by a prior owner;
4. The variances are necessary to enable reasonable use of the Property;
5. The variances will not be detrimental to the public welfare;
6. The variances will not alter the essential character of the neighborhood; and
7. The variances requested are the minimum variances necessary to afford relief.

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

OLD BUSINESS

Case No. 12029 – Bruce J. Esham - seeks variances from the front yard and side yard setback requirements (Section 115-25 of the Sussex County Zoning Code). The property is located on the east side of Westwood Road (Road 426), approximately 780 feet south of Pear Tree Road (Road 424). 911 Address: 21906 Esham Lane, Millsboro. Zoning District: AR-1. Tax Map No.: 3-33-7.00-2.07.

Mrs. Walls presented the case which has been tabled since October 2, 2017.

Ms. Magee recused herself from discussion of the Application.

The Board discussed the case.

Mr. Mills moved to approve Variance Application No. 12029 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Applicant seeks to subdivide the Property and there is no possibility the Property can be subdivided in strict conformity with the Sussex County Zoning Code;
2. The exceptional practical difficulty was not created by the Applicant;
3. The variances will not alter the essential character of the neighborhood;
4. The variances will not be detrimental to the public welfare; and
5. The variances sought 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 4 – 0.

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

Case No. 12036– CMH Homes d/b/a Oakwood Homes - seek 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.

Ms. Magee recused herself from discussion of the Application.

Mr. Sharp advised the Board that the Applicant must meet some technical requirements under Section 115-20(A)(1) as well as the special use exception standard.

The Board discussed the case.

Mr. Mears stated that the homeowners have stated a legitimate concern about the effect of the home on property values; and that the Applicant should have known the Sussex County Zoning Code.

Mr. Workman stated that a permit was issued; that he does not object to the Application; and that the County appears to have made a mistake by issuing the permit.

Mr. Mills stated that the County has put the Board in a difficult situation.

Mr. Sharp advised the Board that the restrictive covenants had a provision regarding the original developer; that the restrictive covenants are relevant as to whether they specifically

prohibit what is being proposed here; that Paragraph 7 of the restrictive covenants refers to “no trailers” being permitted; that the Board must determine whether the restrictive covenants permit the proposed manufactured home; that the law presumes that a property owner knows the zoning code provisions which are applicable to his or her property.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case be **tabled until November 6, 2017**. Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Mears – 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 October 2, 2017.

Ms. Magee recused herself from discussion of the Application.

Mr. Sharp advised the Board that the issue before the Board is similar to the issue before the Board in Case No. 12036 but the record is different and the Board must determine the Application based on this record.

The Board discussed the case.

Mr. Mills stated that he is not ready to make a decision.

Mr. Mears stated that he is concerned about the impact of the home on neighboring property values.

Mr. Sharp advised the Board to make sure that there is substantial evidence to support its decision.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case be **tabled until November 6, 2017**. Motion carried 4 – 0.

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

OTHER BUSINESS

Case No. 11849 – Harry Keswani - seeks a variance from the minimum off-street parking space required for a hotel (Sections 115-162A and 115-80B(1) of the Sussex County Zoning Code). The property is located on the northeast corner of Parsonage Road and Coastal Highway (Route 1). 911 Address: 35863 Parsonage Road, Rehoboth Beach. Zoning District: C-1. Tax Map No.: 3-34-13.00-5.00.

Request for Time Extension

Mrs. Walls presented the request of the Applicant to extend the approval for a variance for a period of one (1) year.

Mr. Sharp reminded the Board that the Applicant received an additional approval for a different variance earlier this year that arose during the sitework process. This request, however, is for a variance granted in 2016 for the same parcel.

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

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

Meeting was adjourned at 10:35 p.m.