

## MINUTES OF OCTOBER 2, 2017

The regular meeting of the Sussex County Board of Adjustment was held on Monday, October 2, 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, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman. Ms. Ellen Magee was absent. Also in attendance were Mr. James Sharp – Assistant County Attorney, and staff members Mrs. Jennifer Walls – Planning Manager and Mrs. Jennifer Norwood – Recording Secretary.

The Pledge of Allegiance and moment of silence 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 4-0.

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

### PUBLIC HEARINGS

**Case No. 12028– Louis Donald O’Neal, Trustee & Shirley Faye O’Neal, Trustee** - seek a special use exception to place a telecommunication tower (Sections 115-23 and 115-194.2 of the Sussex County Zoning Code). The property is located at the northeast side of Sycamore Road (Road 466), approximately 892 feet northeast of East Elliot’s Dam Road (Road 467A). 911 Address: 12537 Sycamore Road, Laurel. Zoning District: AR-1. Tax Map No.: 2-32-7.00-33.00.

Mrs. Walls presented the case and stated that the Office of Planning & Zoning received no correspondence in support of or in opposition to the Application.

Sue Manchel, Andrew M. Petersohn, and Mike Cleary were sworn in to testify about the Application. John Tracey, Esquire, presented the case on behalf of the Applicants.

Mr. Tracey stated that the Applicants seek a special use exception to place a telecommunications tower on the Property; that Verizon Wireless is building out its wireless network – particularly in western Sussex County; that the proposed tower will be 150 feet tall which includes a 5 feet tall lightning rod; that the tower will be located in a portion of the Property near existing tree lines and away from existing structures; that the nearest structures to the tower on the same side of the street are over 1,000 feet away and 950 feet away from the other side of the street; that existing agricultural buildings will screen views of the tower; that the surrounding area is rural and used agriculturally; that no variances are needed for the tower; that the tower will meet the Sussex County lighting requirement; that a fence will be located around the compound; that the Federal Aviation Administration (“FAA”) does not require that the tower be lit; that the Applicant has submitted documentation to the Board demonstrating the need for the tower in this

area; that the tower will fill a gap in coverage; that there are no structures within two miles available for collocation for Verizon; that the tower will be designed to allow for collocation by two other providers; and that, under the worst-case scenario, the tower will fall 160 times below the federal minimum RF requirements.

Mr. Cleary and Mr. Petersohn affirmed the statements made by Mr. Tracey as true and correct.

Mr. Tracey stated that the tower will not substantially affect adversely the uses of neighboring and adjacent properties; that the tower will not tax services; that the tower will have no impact on schools; and that the tower will necessitate approximately one vehicular trip per month for service.

Mr. Petersohn testified that two nearby towers suffer from capacity issues and this tower will help offload the traffic from those towers; and that the new tower will improve coverage in the area as a whole.

Mr. Tracey stated that the tower will use an existing entrance off Sycamore Lane.

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

Mr. Mills moved to approve Special Use Exception Application No. 12028 for the requested special use exception based on the record made at the public hearing and because the use will not substantially adversely affect the uses of the neighboring properties and the proposed telecommunications tower meets the requirements set forth in Sussex County Code § 115-194.2.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted for the reasons stated**. Motion carried 4 – 0.

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

**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 and stated that the Office of Planning & Zoning received no correspondence in support of or in opposition to the Application.

Bruce Esham was sworn in to testify about the Application and Tom Carney, Esquire, presented the case on behalf of the Applicant.

Mr. Carney stated that the Applicant is requesting a variance of 5.57 feet from the thirty (30) feet front yard setback requirement for an existing barn near New Lot 1 and a variance of 5.62 feet from the fifteen (15) feet side yard setback requirement on the west side for an existing barn near New Lot 1; that the Applicant is subdividing the Property and needs variances related to the subdivision; that the Applicant is separating the residential portion of the Property from the agricultural portion of the Property; that the need for the variances is caused by the uniqueness of the Property; that the variances will not alter the character of the neighborhood; that there is no development being proposed; that the need for the variance was not created by the Applicant; and that the variances requested are the minimum variances necessary to afford relief.

Mrs. Walls advised the Board that a 50 feet wide easement would be created for the residual parcel to access Westwoods Road.

Ms. Cornwell advised the Board that the residual parcel only needs to have 100 feet of road frontage off the easement; and that the Applicant will have to go through the subdivision process with the Planning & Zoning Commission and the subdivision is subject to the Commission's approval.

Mr. Esham affirmed the statements made by Mr. Carney as true and correct. Mr. Esham testified that the residual parcel will remain farmland; that the barn behind the existing house was placed on the Property in 1969; that the barn to the rear of the Property, was erected approximately 25 years ago; and that he and his family own the surrounding parcels.

Mr. Carney stated that the structures were constructed some time ago; that the need for the variances was not created by the Applicant; and that the Applicant intends to enter into a proper ground lease for the operation of the agricultural business and to separate the residence from the business for liability purposes.

Mr. Esham testified that his son lives on adjacent property and his aunt lives across the street.

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

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the Application be **tabled until October 16, 2017**. Motion carried 4 – 0.

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

**Case No. 12031– Frederick English & Darlene M. English** - seek a variance from the minimum lot width requirement (Section 115-25 of the Sussex County Zoning Code). The property is located on the south side of Laurel Road (Route 24), approximately 606 feet west of Old Stage Road (Road

461). 911 Address: None Available, Laurel. Zoning District: AR-1. Tax Map No.: 3-32-2.00-76.00.

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.

Ed Higgins and Frederick English were sworn in and testified requesting a variance of 78.86 feet from the 150 feet road frontage requirement for Tract 4 of a proposed subdivision.

Mr. Higgins testified that the Applicants are seeking a variance for a single-lane entrance off Route 24; that the Applicants have received a letter of no objection from the Delaware Department of Transportation (“DelDOT”); that the Property would be subdivided into four (4) parcels; and the variance is needed for the proposed Tract 4.

Mr. English testified that Tracts 1-3 will meet the lot width requirement along Old Stage Road; that Tract 4 consists of approximately 14 acres; and that the Property will not be further developed.

Mr. Higgins testified that the subdivision will be used for single-family home lots; and that the Property was previously farmland.

Mr. English testified that there was previously a house on Tract 4; that his grandmother subdivided lots from the original parcel in the 1950s; and that a road has existed there for many years.

Mr. English requested additional time to prepare responses to the variance standards.

Claudia Downs was sworn in to testify regarding the Application. She had a question about where the road would be located.

Motion by Mr. Mills, seconded by Mr. Mears, and carried unanimously that the Application be left open until the end of the public hearings this evening so the Applicants could prepare to address the standards for granting a variance. Motion carried 4 – 0.

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

At the conclusion of the public hearings, the Board referred back to this case.

Mr. English testified that the Property is unique; that the Property has an irregular shape and an existing road; that the road was recorded in the 1940s; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code; that the Property only has limited frontage along Route 24; that the exceptional practical difficulty was not created by the

Applicants; that the variance will not alter the essential character of the neighborhood; that his grandmother subdivided the lots along Route 24 leaving the narrow strip of the Property along Route 24; that the narrow strip of the Property on Route 24 has existed since the 1950s; and that he has spoken with neighbors about the variance.

Ms. Cornwell advised the Board that the Applicants have made an application for a subdivision to the Planning & Zoning Commission but the application is still pending.

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

Mr. Workman moved to approve Variance Application No. 12031 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 shape;
2. The variance is necessary to enable reasonable use of the Property;
3. The variance will not alter the essential character of the neighborhood; and
4. The variance sought is the minimum variance necessary to afford relief.

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

**Case No. 12032 – 1995 Property Management, LLC** - seeks a variance from the side yard setback requirement (Section 115-42 of the Sussex County Zoning Code). The property is located on the northeast side of Avalon Drive, approximately 295 feet southwest of Durham Street. 911 Address: 27741 Avalon Drive, Georgetown. Zoning District: GR. Tax Map No.: 2-34-15.00-105.00.

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.

Mr. Shawn Silva was sworn in and testified requesting a variance of 1.1 feet from the ten (10) feet side yard setback requirement on the north side for an existing dwelling. Mr. Silva testified that the manufactured home was placed on the Property by a prior owner in 2003; that the home is located on a foundation and is considered a Class “C” structure; that Sussex County issued a Certificate of Compliance after the home was placed; that he purchased the Property in February 2017 at a sheriff’s sale; that the encroachment was discovered in August 2017 when a survey was completed; that the home cannot be moved into compliance with the Sussex County Zoning Code; that the septic system is located to the rear of the home; that he did not create the exceptional practical difficulty; and that he has received no complaints from neighbors about the home’s location.

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

Mr. Mills moved to approve Variance Application No. 12032 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique and the septic system limits the options where a home can be placed on the lot;
2. There is no possibility the Property can be developed in strict conformity with the Sussex County Zoning Code;
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 home was placed on the property by a prior owner;
6. The variance will not alter the essential character of the neighborhood;
7. The variance will not be detrimental to the public welfare; and
8. The variance sought is the minimum variance necessary to afford relief.

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

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

**Case No. 12033 – Home Depot** - seeks a special use exception to place a tent for outdoor sales to exceed the maximum three (3) day requirement (Sections 115-80 and 115-210 of the Sussex County Zoning Code). The property is located on the southwest side of Coastal Highway (Route 1), approximately 298 feet southeast of Shady Road (Road 276). 911 Address: 17832 Coastal Highway, Lewes. Zoning District: C-1. Tax Map No.: 3-34-6.00-526.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition of the Application.

Mr. Edward Wade was sworn in and testified that he is requesting a special use exception seeking another five years to use a tent for outdoor sales twice a year. Mr. Wade testified that the Applicant was approved for a special use exception for the tent five years ago; that there have been no issues with the tent; that the Applicant seeks permission to continue this use; that the tent will be located in the front of the store in the same location; that the tent is a high quality tent; that the Applicant sells rugs in the tent; that there have been no complaints from neighbors; that the Applicant plans to use the tent at different points in the year; that the Applicant proposes to use the tent for 4-6 weeks in the fall and 4-6 weeks in the spring; and that the tent will not substantially affect adversely the uses of neighboring and adjacent properties.

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

Mr. Mills moved to approve Special Use Exception Application No. 12033 for the requested special use exception based on the record made at the public hearing and because the use will not substantially adversely affect the uses of the neighboring properties. The motion for approval was subject to the condition that the approval was for a period of five (5) years and that the tent may be used for up to six (6) weeks in the spring and up to six (6) weeks in the fall of each year.

Motion by Mr. Mills, seconded by Mr. Mears, and carried unanimously that the special use exception be **granted for the reasons stated for a period of five (5) years and that the tent be used for up to six (6) weeks in the spring and up to six (6) weeks in the fall of each year.** Motion carried 4 – 0.

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

**Case No. 12035 – Ronald H. Neuman & Joan M. Neuman** - seek variances from the front yard setback requirement for a through lot (Sections 115-42 and 115-182 of the Sussex County Zoning Code). The property is located on the east side of South Bayshore Drive (Route 16A), approximately 1,300 feet south of Truman Avenue. 911 Address: 1206 South Bay Shore Drive, Milton. Zoning District: GR. Tax Map No.: 2-35-4.17-118.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support or in opposition of the Application. The Applicants are seeking a variance of 15.3 feet from the thirty (30) feet front yard setback requirement from Bay Front Road for an existing deck and a variance of 26.3 feet from the forty (40) feet front yard setback requirement from South Bay Shore Drive for an existing dwelling.

Terry Coleman was sworn in to testify about the Application and Shannon Carmean Burton, Esquire, presented the case on behalf of the Applicants. Mrs. Burton submitted exhibits to the Board to review.

Mrs. Burton stated that the Applicants seek a variance for a dwelling and deck; that the Applicants are elderly and live in Maryland; that Mr. Coleman is here on the Applicants' behalf; that affidavits from the Applicants are included in the record; that the Applicants purchased the Property in 1997; that the Property was improved by the existing dwelling and an open deck; that the Applicants' predecessor-in-title obtained a variance in 1987 for the dwelling and deck; that the Applicants enclosed the deck in 1999; that a Certificate of Compliance was issued for the enclosure; that the Applicants entered into a contract to sell the Property; that a survey conducted prior to settlement uncovered the encroachments; that dwelling and deck have been in their present location since 1988; that the Property is unique in shape; that the Property is irregularly shaped; that the Property is located in Broadkill Beach; that the development of the Property is limited by the location of the septic system; that the exceptional practical difficulty was created by the unique

physical conditions of the Property; that the Property cannot be developed in strict conformity with the Sussex County Zoning Code; that the variances are necessary to enable the reasonable use of the Property; that the Applicants did not create the exceptional practical difficulty; that the Applicants relied on a contractor to enclose the deck; that the Applicants reasonably believed that the structures complied with the Sussex County Zoning Code; that the variances will not alter the essential character of the neighborhood; that the variances will not be detrimental to the public welfare; that the Applicants have received no complaints from neighbors about the location of the home; that the variances requested represent the minimum variances necessary to afford relief; and that the variances requested represent the least modifications of the regulations at issue.

Mr. Coleman affirmed the statements made by Mrs. Burton as being true and correct.

Mrs. Walls advised the Board that the front yard setback requirement from South Bay Shore Drive is 40 feet so the variance needed for the dwelling is 26.3 feet; that the front yard setback requirement from Bay Front Road is 30 feet so the variance needed for the enclosed deck is 15.3 feet; and that the enclosed deck is considered an extension of the dwelling since it is enclosed.

Davis Lawrence was sworn in to testify in support of the Application. Mr. Lawrence testified that he is purchasing the Property and supports the Application.

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

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

Mr. Mears moved to approve Variance Application No. 12036 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Applicants have met the five (5) standards for granting a variance; and
2. The variances will not alter the essential character of the neighborhood;

Motion by Mr. Mears, 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. 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.



Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received no correspondence in support of the Application and five (5) letters in opposition to the Application.

Bruce Mears stated that he received a phone call regarding this case but would base his decision solely on the record he will hear tonight and disregarded the call.

Gil Fleming was sworn in and testified that he is requesting a special use exception to place a manufactured home on a lot. Mr. Fleming submitted an exhibit to the record.

Mr. Fleming testified that the house has been constructed on site; that the Applicant learned after the home was placed that the Property was an undersized lot; that the Applicant received a building permit prior to placing the home; that there are no restrictive covenants prohibiting the placement of the home; that his salesperson was told by Sussex County officials that the home could be placed on the lot; that Mr. Hitch, who developed the community, approved of the plans; that the Applicant did not begin construction without a permit; and that the Applicant conducted its due diligence prior to placing the home and relied on the permit.

Mr. Sharp advised the Board that, while normally the Board does not take into consideration restrictive covenants, in this instance, the Sussex County Zoning Code requires that the restrictive covenants of the community do not have a provision specifically prohibiting the placement of a manufactured home.

Mr. Fleming testified that there are modular homes in the area; that the manufactured home is an attractive home that will not adversely affect the neighborhood; that the manufactured home was constructed to code requirements; that the home will be permanently affixed to a foundation; that all wheels, axles, transportation lights, and removable towing apparatus will be removed; that all utilities will be permanently connected; that the home is a double-wide structure and the siding is continuous to enclose any joining of the two sections; and that the home will meet all pertinent provisions of the Sussex County Housing Code and the Fire and Health Codes of the State of Delaware.

Kenneth Lieb, Charles Campbell, Nancy Butters, Angela Schab, and Norman Holte were sworn in to testify in opposition to the Application.

Mr. Sharp advised the opposition that the Board does not have jurisdiction to enforce private deed restrictions and that the issue before the Board is whether the manufactured home substantially affects adversely the uses of neighboring and adjacent properties.

Mr. Lieb testified that Mr. Hitch no longer owns any properties in the community; that the neighbors in the community have the right to enforce the deed restrictions; that he owns property adjacent to the Property; that the home is out-of-character for the neighborhood; and that there are older farm houses in the community.

Mr. Campbell testified that he lives in the neighborhood; that he reviewed the Sussex County Zoning Code and that a manufactured home can only be placed on a lot consisting of  $\frac{3}{4}$  acre or more; that the Applicant must demonstrate that the manufactured home does not violate restrictive covenants in the community; that Paragraph 7 of the restrictive covenants provides that no trailers are permitted in the community; that the building permit was issued in error; that the lot consists of approximately 17,000 square feet; that a Planning & Zoning official told him that the home is not allowed on the Property; that a “stop work” order was issued; that, after he was told that a “stop work” order had been issued, an HVAC system was hooked up to the home, a well was drilled on the Property, and a lot was graded and a driveway was installed; that there are 26 lots in the community; that the Property is similar in size to other lots in the neighborhood; that there are no other mobile homes in the neighborhood; that the pitch of the roof is 2:12 which is consistent with a mobile home; that the home will substantially affect property values in the neighborhood; that many neighbors object to the Application; that Mr. Hitch no longer owns a lot in the community; and that the community does not have a formal homeowners association.

Mr. Campbell submitted exhibits to the record.

Ms. Cornwell advised the Board that there was a notation handwritten on the permit after it was issued to the Applicant; and that there was no “stop work” order was issued but a hold was placed on the permit which means that the County would not be conducting inspections until after this application was heard.

Ms. Butters testified that she owns property in the neighborhood; that the manufactured home will be a detriment to property values; that her home is a stick-built home and she has lived in the neighborhood for 32 years; that other homes in the neighborhood are modest, ranch-style homes which comply with the deed restrictions; and that the manufactured home does not fit with the character of the neighborhood.

Ms. Schab testified that the home was delivered and placed on the site; that the home is not a stick-built home; that the neighbors were surprised when the home was placed on the Property; and that the Applicant should have stopped work when it learned of the problem.

Mr. Holte testified that he lives near the Property; that he is a builder; that the home is a disgrace to the neighborhood; that the home is located on a block foundation; and that he opposes the Application.

Mr. Campbell testified that the permit was improperly issued and appears to have been issued to a lot in a manufactured home park; and that only 2 homes have been built in the community in the past 13 years.

Mr. Lieb testified that Mr. Hitch told him that he believed he approved a stick-built home being placed on the Property and not a manufactured home; and that all properties in the community are subject to the deed restrictions.

Mr. Fleming testified that Mr. Hitch reviewed the specifications of the home and approved the same; that there was no homeowners association to confer with about the proposal; that the Applicant learned of the issue with the permit after the home had already been set on the Property; that the Applicant incurred thousands of dollars of costs when it learned of the problem; that the Applicant did install an HVAC system, well, and driveway after learning of the problem; that the well and driveway are land improvements; that the project was almost complete when the Applicant learned of the problem; that a permit was issued by Sussex County and the Applicant relied on that permit; and that the Applicant would not have installed the footers had a permit not been issued.

Ms. Cornwell advised that the Board that Sussex County only performed a footer inspection; and that there was no home on the Property at that time.

Mr. Fleming testified that the home was placed on the Property on August 24<sup>th</sup> and that the Applicant was informed of the problem on September 13<sup>th</sup>; that the home is not a “trailer”; that there is no restriction against manufactured homes in the neighborhood; that someone from Sussex County made a mistake and that the Applicant relied on that mistake.

Mr. Sharp suggested that a copy of the building permit may be helpful to the Board to review along with the opportunity to question staff about the permit.

Mr. Fleming submitted a written timeline to the Board to review.

The Board found that two (2) parties appeared in support of the Application.

The Board found that fifteen (15) parties appeared in opposition to the Application.

Motion by Mr. Mills, seconded by Mr. Mears, and carried unanimously that the Application be **left open until October 16, 2017 for the limited purpose of allowing Planning & Zoning staff to provide a copy of the building permit and to question staff about the permit.** Motion carried 4 – 0.

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

Ms. Cornwell presented the case and stated that the office of Planning and Zoning received no correspondence in support of the Application and two (2) letters in opposition to the Application.

James Brown and Stacy Brown were sworn in to testify about the Application. Gil Fleming remained under oath from his testimony under Case No. 12036.

Mr. Fleming testified that the Applicants are seeking a special use exception to place a manufactured home; testified that Mr. Brown acquired a building permit to place a manufactured home on the Property; that a doublewide manufactured home was placed on the Property; that he was notified after the home was placed that the building permit was issued in error; and that Mr. Brown lost his home due to a fire.

Mr. Brown testified that he lost his house in a fire; that his wife is disabled; that he has owned the Property for several years; that the restrictive covenants do not prohibit doublewide manufactured homes; that the home meets the community's square footage requirement; that the home is the only home he can afford; that the permit was issued in error; that the home consists of 1,300 square feet and is on a block foundation; that there is no hitch underneath the home; that the home does not affect neighboring properties; that his aunt owns 4 lots across the street and she does not object to the Application; that the home is not out of character of the neighborhood; that other homes in the neighborhood are ranch-style homes; that the home which was destroyed by fire was located on a different parcel; that the Property consists of approximately ½ acres; that the home is permanently affixed on a foundations; that utilities are connected to the home; and that all wheels, axles, and towing apparatus have been removed.

Mr. Brown submitted an exhibit to the Board.

Mr. Fleming testified that the home consists of 2 sections and is connected by siding; and that the home complies with all building and housing codes.

Ms. Cornwell advised the Board that the building permit was issued for the parcel where the house destroyed by the fire is located; that the error on the building permit was discovered when the inspection was scheduled; that the concept plan initially submitted by the Applicant had 2 incorrect tax map parcel numbers listed; that a corrected concept plan has been submitted; and that she will provide a copy of the building permit to the Board.

Mr. Fleming testified that the error was discovered after the home was placed on the Property.

Mr. Brown testified that the home is anchored on the foundation and is only missing steps.

Ms. Cornwell advised the Board that there is a hold on the building permit.

Mr. Brown testified that the home will not substantially affect adversely the uses of neighboring and adjacent properties.

Sandra Prettyman and Nicole Harrell were sworn in to testify in opposition to the Application.

Ms. Harrell testified that she lives in the community and did not place a manufactured home because it is against the restrictive covenants; that there have been problems with children in the neighborhood; that she has lived in the community for over 10 years; that the home may affect the value of her property; that she is a realtor; that lots in manufactured home communities sell for less than lots developed with stick-built homes; that there are ranch-style homes in the neighborhood; and that the home is out of character for the neighborhood.

Ms. Harrell submitted exhibits to the Board.

Ms. Prettyman testified that she lives in a different development; and that she believes that Oakwood Homes should have known that the home needed a special use exception before placing the home.

The Board found that two (2) parties appeared in support of the Application.

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

Motion by Mr. Workman, seconded by Mr. Mears, and carried unanimously that the Application be **tabled until October 16, 2017**. Motion carried 4 – 0.

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

### **OLD BUSINESS**

**Case No. 12027 – S&S Property Holdings, LLC** - seeks a variance from the front yard setback requirement (Section 115-25 of the Sussex County Zoning Code). The property is located on the southeast side of Sharon's Road (Road 641), approximately 152 feet northeast of DuPont Boulevard (Route 113). 911 Address: 18010 Sharon's Road, Ellendale. Zoning District: AR-1. Tax Map No.: 2-30- 26.00-117.00.

Mrs. Walls presented the case, which has been left open since September 18, 2017, and stated that the Office of Planning and Zoning received no correspondence in support or in opposition to the Application.

Clayton Snead and Devin Scott were sworn in and testified requesting a variance of 31.6 feet from the forty (40) feet front yard setback requirement for an existing dwelling.

Mr. Snead testified that the home was built 73 years ago; that the variance was originally granted for 21.6 feet; that the Applicants purchased the Property in 2017 and discovered that the variance was incorrect; and that the exceptional practical difficulty was not created by the Applicants.

Mr. Sharp advised the Board that a variance of 21.6 feet was granted in 2003; that the written decision for the previous variance did not identify the size of the setback requirement; that, since the Property is located off a numbered road, the front yard setback requirement is 40 feet; that the variance needed is actually 31.6 feet; and that the predecessor-in-title obtained the variance and it appears as though there was an error in the record as to the size of the variance needed.

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

Mr. Mills moved to approve Variance Application No. 12027 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property and situation are unique;
2. The variance is necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance sought is the minimum variance necessary to afford relief.

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

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

**Meeting was adjourned at 10:08 p.m.**