

## **MINUTES OF OCTOBER 6, 2014**

The regular meeting of the Sussex County Board of Adjustment was held on Monday, October 6, 2014, at 7:00 p.m. in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called 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, Mr. Lawrence Lank – Director of Planning and Zoning, and Mrs. Jennifer Norwood – Recording Secretary.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Revised Agenda as circulated. 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. 11458 – Gary Keith and Mary P. Hrybryk-Keith** – south of Dutch Road, 120 feet southwest of Route One (Coastal Highway) and west of Dodd Avenue and being Lot F-7 within Seabreeze Development (911 Address: 302 Dutch Road, Dewey Beach, DE) (Tax Map I.D. 3-34-20.13-188.00)

An application for a variance from the front yard setback requirement.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Nathan Allen Jarmon was sworn in to testify about the Application. Chad Meredith, Esquire, presented the case to the Board on behalf of the Applicants and submitted an aerial photograph to the Board to review.

Mr. Meredith stated that the Applicants were requesting a variance of 0.4 feet from the thirty (30) feet front yard setback requirement for an existing dwelling; that the Property is located in the Seabreeze subdivision which was created in 1958; that the dwelling was constructed in 1969 and may predate the enactment of the Sussex County Zoning Code; that there have been no changes to the dwelling since the 1999 survey was completed; that the neighbors' dwellings are similarly situated on the lots; that the aerial photograph shows the placement of the dwelling in relation to other homes in the neighborhood; that the Property has already been developed and cannot be built in strict conformity with the Sussex County Zoning Code; that it would be very expensive to bring the dwelling into compliance as the structure would need to be moved or a part of the structure would have to be removed; that the variance is necessary to enable reasonable use of the Property; that the exceptional practical difficulty was not created by the Applicants; that the variance does not alter the essential character of the

neighborhood as other homes on Dutch Road are similarly situated; that the use is not detrimental to the public welfare; that the use does not impair the uses of neighboring and adjacent properties; that the variance represents the least modification of the regulation at issue; and that the variance is the minimum variance necessary to afford relief.

Nathan Allen Jarmon testified that he is the Real Estate Broker and is familiar with the Property and the Seabreeze development; that the requested variance will not have an adverse effect to the property values; and that the statements made by Mr. Meredith are true and correct.

The Board found that three (3) 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 Variance Application No. 11458 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The existence of the non-conforming dwelling makes the Property unique;
2. The variance is necessary to enable reasonable use of the Property;
3. The hardship and exceptional practical difficulty was not created by the Applicants;
4. The variance will not alter the essential character of the neighborhood;
5. The variance sought is the minimum variance necessary to afford relief; and
6. The variance represents the least modification of the regulation at issue.

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 call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

**Case No. 11459 – Stephanie A. Ginos & Maureen L. Goley** – southeast of Mississippi Avenue, 502 feet southwest of Bay Shore Drive and being Lot 35 and ½ Lot 34 Block J Section One within North Shores-Broadkill Beach (911 Address: 113 Mississippi Avenue, Milton, DE) (Tax Map I.D. 2-35-3.16-24.00)

An application for variances from the front yard setback requirement.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Laurie Bronstein was sworn in to testify about the Application. William Schab, Esquire, presented the case to the Board on behalf of the Applicants and submitted pictures for the Board to review.

Mr. Schab stated that the Applicants were requesting a variance of 4.5 feet from the thirty (30) feet front yard setback requirement for an existing dwelling, a variance of 17 feet from the thirty (30) feet front yard setback requirement for an existing set of steps, and a variance of 0.3 feet from the thirty (30) feet front yard setback requirement for an existing deck; that the Property is located in Broadkill Beach; that lots in Broadkill Beach are small; that the Applicants purchased the Property in 2003; that a survey was completed in 2003 but it was never reviewed by the Office of Planning and Zoning; that the dwelling was constructed too close to the front property line by a prior owner; that the Applicants were not aware of any encroachments until a new survey in 2014 was reviewed by the Office of Planning and Zoning; that the deck was attached the house when the Applicants purchased the Property; that the Applicants are selling the Property; that the sale is contingent on the Board's approval of the variance request; that the Applicants added the front steps to the dwelling; and that, since the dwelling already encroached, there was no way to build the steps in conformity with the Sussex County Zoning Code.

Ms. Bronstein testified that she is the Real Estate Broker and is familiar with the area; that the requested variances will not have an adverse effect to the property values; that there are no dwellings on either side of the Property; that the properties across the street are septic fields for dwellings on another street; that Mississippi Avenue is a dead end road with limited access; that the front steps serve as access to the main entrance of the dwelling; that the dwelling and deck were constructed in 1992; that the front steps enable reasonable use of the Property; and that the variances do not adversely affect the neighboring properties or their property values.

Mr. Schab stated that the existence of the dwelling when the Applicants purchased the Property makes the Property unique; that the existing dwelling and deck cannot be otherwise developed; that the variances are necessary for the reasonable use of the Property; that the difficulty was not created by the Applicants since the dwelling existed in its current location when they purchased the Property; that the variances represent the least modification of the regulation at issue; that the variances are the minimum variances to afford relief; and that the steps are the only access to the dwelling.

Ms. Bronstein testified that the Applicants were unaware of the encroachments; that the shed has been moved into compliance with the Sussex County Zoning Code; that it is not clear if a building permit was obtained for the steps; that the deck was built by the prior owner; that the dwelling is an elevated ranch house and the decks and steps provide the only access to the dwelling; that she confirmed the statements made by Mr. Schab as true and correct; that Mississippi Avenue is not a paved road; and that the front yard appears larger because the actual road on Mississippi Avenue does not extend all the way to the Applicants' front yard property line.

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. 11459 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique in size as it is only 75 feet wide;
2. The variances are necessary to enable reasonable use of the Property;
3. The hardship and exceptional practical difficulty were not created by the Applicants;
4. The variances will not alter the essential character of the neighborhood;
5. The variances sought are the minimum variances necessary to afford relief; and
6. The variances represent the least modifications of the regulations at issue.

This Motion to approve was conditioned on the Applicants obtaining a building permit for the front steps. Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variances be **granted for the reasons stated and that the Applicant obtain a building permit for the steps**. Motion carried 5 – 0.

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

**Case No. 11460 – Paul C. Bartlett & Ann R. Bartlett, Trustee** – southeast corner of Bay Shore Drive & Jefferson Avenue and being Lot 5 Block 4 of the Old Broadkill Section (911 Address: 301 S Bay Shore Drive, Milton, DE) (Tax Map I.D. 2-35-4.17-43.00)

An application for a variance from the corner front yard setback requirement.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Laurie Bronstein was sworn in to testify about the Application. William Schab, Esquire, presented the case to the Board on behalf of the Applicants and submitted pictures for the Board to review.

Mr. Schab stated that the Applicants were requesting a variance of five (5) feet from the fifteen (15) feet corner (front) setback requirement for a proposed dwelling; that the vacant lot measures fifty (50) feet by one-hundred (100) feet; that the Applicants have owned the Property since 2003; that the Applicants have a contract to sell the Property; that the Property is a corner lot which makes it unique; that adjacent lots have ten (10) feet side yard setbacks; and that the variance is needed to enable reasonable use of the Property.

Laurie Bronstein testified that she is the Real Estate Broker and is familiar with the area; that the Property is small; that the side yard setbacks for the two adjacent properties are ten (10) feet; that the Applicants would be very limited in what they could place on the Property if they had to comply with the corner yard setback requirement; that the requested variance will not have an adverse effect to neighboring properties; that the variance is necessary to enable reasonable use of the Property; and that the variance will allow the Property to be developed in a similar manner to other properties nearby.

Mr. Schab stated that the Property is unique because it is a corner lot; that a septic system and driveway will take up a portion of the Property; that it is impractical to build a house that would comply with the Sussex County Zoning Code; that the variance is necessary to enable reasonable use of the Property; that the difficulty was not created by the Applicants since the lots were created prior to the enactment of the Sussex County Zoning Code; that the variance will not alter the essential character of the neighborhood; that the lots in Broadkill Beach are small; that the variance represents the least modification of the regulation at issue; and that the variance requested is the minimum variance necessary to afford relief.

Ms. Bronstein testified that the property on the other side of Jefferson Avenue, which is also a corner lot, has a dwelling that is very close to the road.

Mr. Lank advised the Board that there have been similar variances granted in the area.

Ms. Bronstein testified that a septic system is needed for the dwelling and the septic system limits the buildable area; that the proposed dwelling will have to be on pilings to meet flood zone specifications; that the proposed dwelling will not hinder visibility at the intersection as it will be placed away from the intersection; that Jefferson Avenue is not a well-traveled road; and that she confirms the statements made by Mr. Schab as true and correct.

Mr. Schab stated that the need for the variance was not created by the Applicants because the lots were created many years ago with no setback requirements; and that the lot is very small.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11460 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The size of the corner lot makes this Property unique;
2. The variance is necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variance will not alter the essential character of the neighborhood;
5. The variance sought is the minimum variance necessary to afford relief; and
6. The variance represents the least modification of the regulation at issue.

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

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

**Case No. 11461 – James K. Clark & Carla J. Clark** – southwest of Road 312 (River Road) 0.4 mile east of Road 312A (Layton Davis Road) and being Lot 14 within “Whit’s Point on the Indian River” Subdivision (911 Address: 32100 River Road, Millsboro, DE) (Tax Map I.D. 2-34-34.11-39.00)

An application for variances from the front yard and side yard setback requirements.

Mr. Lank presented the case and stated that the Office of Planning and Zoning received on letter regarding the Application.

James Clark was sworn in to testify about the Application. William Schab, Esquire, presented the case to the Board on behalf of the Applicants.

Mr. Schab stated that the Applicants are requesting a variance of seven (7) feet from the ten (10) feet side yard setback requirement and a variance of 34.7 feet from the forty (40) feet front yard setback requirement for an existing detached garage, and a variance of 10.7 feet from the forty (40) feet front yard setback requirement for an existing dwelling; that the variance requirements for properties along River Road have varied historically depending on when the lots were developed; that the house is 29.3 feet from the road; that the garage is only a few feet from the road; that the setback may have only been ten (10) feet from the road when the garage was constructed; that the Applicants purchased the Property in 2012; that other houses along River Road are situated close to the road; that the Property is long and skinny; that the structures have been in their current location for many years; that the variances are necessary to enable reasonable use of the Property; that the practical difficulty was not created by the Applicants; that the structures were placed on the Property in the early 1970s; that other properties along River Road have garages near the road; that the variances will not affect property values in the area; that the structures would have to be moved or removed in order to bring the Property into compliance with the Sussex County Zoning Code and that this would be a hardship to the Applicants.

Mr. Clark testified that he lives on the Property; that the statements made by Mr. Schab are true and correct; that the character of the neighborhood has structures close to the road and consider the waterfront to be their front yards; that a neighbor has a garage located two (2) feet from the road; that the houses tend to be located closer to River Road than to the water; and that the garage is being used and is full.

Mr. Schab stated that house is compatible with other houses in the neighborhood; that the situation is unique; that there is no adverse effect to the neighborhood; and that a survey dated 2007 showed the encroachment.

Mr. Clark testified that the rear yard floods and the Property slopes in the rear yard towards the water; and that it would difficult to move the garage to the rear yard due to the flooding issues.

Charles Kelly was sworn in and testified with concerns about the Application; that he owns the property next door; that his father was denied a variance by the Board in 1972 due to the safety factor; that the cars must back out onto the road and the road has a dangerous curve; that the garage was not there in 1972; that he has no objection to the variance; that he does not want to see the garage removed; and that he feels Sussex County should address the safety issue on River Road.

Laurie Bronstein was sworn in and stated Mr. Kelly may want to address his concerns with the Delaware Department of Transportation (“DelDOT”).

The Board found that three (3) parties appeared in support of the Application.

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

Motion by Mr. Rickard, seconded by Mr. Workman, and carried that the case be taken under advisement. Motion carried 4 – 1.

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

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. 11461 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The history of the Property, its small size, and its waterfront location make this Property unique;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances 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. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

**Case No. 11462 – Emil Lewis Lesko, Trustee** – southeast corner of Route 26 (Atlantic Avenue) and Diane Road and being Lot 1 within Howard Manor and being 650 feet east of Road 348 (Irons Lane) (911 Address: 31763 Diane Road, Ocean View, DE) (Tax Map I.D. 1-34-11.00-184.00)

An application for a variance from the height limit requirement for a fence from the front yard and corner yard.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Emil Lewis Lesko was sworn in to testify about the Application. William Schab, Esquire, presented the case to the Board on behalf of the Applicant and submitted pictures for the Board to review.

Mr. Schab stated that the Applicant is requesting a variance of 3.5 feet from the 3.5 feet height limit for a solid fence along the front and corner (front) property lines; that the Property is located along Route 26; that the Applicant has owned the Property for many years; that the Applicant planted trees many years ago to create a sight and sound buffer from the traffic along Route 26 and Diane Road; that DelDOT recently widened Route 26 which resulted in the Applicant losing fifty (50) feet of his property bordering Route 26; that DelDOT also removed the majority of the trees previously used as a buffer by the Applicant; that the Applicant constructed a fence seven (7) feet high along Route 26 to within twenty-five (25) feet of the Route 26 intersection with Diane Road at which point the fence lowers to 3.5 feet tall; that the Applicant also installed a fence 3.5 feet tall along Diane Road from the intersection to his driveway; that the fences on the Property were constructed in compliance with the Sussex County Zoning Code; that the Applicant seeks the variance to allow him to construct a fence that is seven (7) feet tall along both Route 26 and Diane Road; that the portions of the fence that are 3.5 feet tall do not block out enough sight and sound emanating from Route 26 and Diane Road; that DelDOT also changed the drainage pattern and the trees along Diane Road are subject to wetter ground and the trees are now dying; that the proposed height of the fence will not be detrimental to the public welfare; that the fence will not hinder visibility to on-coming traffic as the stop sign where Diane Road and Route 26 actually intersect is away from the fence; that the situation is very unique; that the need for the variance was not caused by the Applicant; that the Property is already developed; that the variance is necessary to enable reasonable use of the Property; that the fence will not alter the character of the neighborhood; that the use will not have an adverse effect to the surrounding and neighboring properties; and that variance requested is the minimum variance to afford relief.



Mr. Lesko, under oath, confirmed the statements made by Mr. Schab. Mr. Lesko testified that DelDOT took a large portion of the Property; that the loss of land has affected the marketability of the Property; that the variance will have no effect on neighboring property or on traffic; that the right-of-way is being expanded dramatically; and that the trees along Diane Road shield the fence but those trees are dying.

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. 11462 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to the expansion of the DelDOT right-of-way;
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;
5. The variance sought is the minimum variance necessary to afford relief; and
6. The use is not detrimental to the public welfare.

Motion by Mr. Mills, 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. Rickard – yea, Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

The Board took a ten (10) minute recess.

**Case No. 11463 – Jeffrey A. Johnson** – southeast of Mississippi Avenue, 275.77 feet northeast of Bay Shore Drive and being Lot 7 Block J within North Shores Section of Broadkill Beach (911 Address: 5 Mississippi Avenue, Milton, DE) (Tax Map I.D. 2-35-3.12-102.00)

An application for variances from the front yard and side yard setback requirements.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Jeffrey Johnson was sworn in to testify about the Application. William Schab, Esquire, presented the case to the Board on behalf of the Applicant and submitted pictures for the Board to review.

Mr. Schab stated that the Applicant is requesting a variance of 5.3 feet from the ten (10) feet side yard setback requirement for an existing deck and steps, a variance of 24.3 feet from the thirty (30) feet front yard setback requirement for an existing deck, a variance of 8.4 feet from the ten (10) feet side yard setback requirement for an existing deck, and a variance of 10.2 feet from the thirty (30) feet front yard setback requirement for an existing dwelling. Mr. Schab stated that the Property is located in Broadkill Beach; that the Applicant recently purchased the Property and obtained a survey prior to settlement which showed the encroachments; that the dwelling was built before the enactment of the Sussex County Zoning Code and is non-conforming; that the previous owner purchased the Property in 1983 and obtained a building permit to build the deck in 1984; that the deck was extended in 1993; that the previous owner was not aware of the encroachments until 2014; and that the dwelling is a rectangular, one-story house on pilings which is compatible with other dwellings in the neighborhood.

Mr. Johnson testified about the pictures submitted to the Board; that it would be difficult to bring the dwelling and decks into compliance with the Zoning Code; that the decks would have to be removed and the dwelling would need to be moved or portions thereof removed in order to comply with the Zoning Code; and that he has received no complaints from neighbors about the Application.

Laurie Bronstein testified that she is the Real Estate Broker and is familiar with the area; that the dwelling was built in the 1960s; that the dwelling is placed in a similar proximity to the road as a neighboring dwelling; that the requested variances will not have an adverse effect to the surrounding properties; that the dwelling is not out of character for the neighborhood; that the Property currently has a cesspool and will need to be replaced with a septic system in the rear yard; and that she doubts the house and decks could be moved away from the road.

Mr. Schab stated that the lot is unique in size as it is only fifty (50) wide and one-hundred (100) feet deep; that the Property cannot otherwise be developed; that the variances are necessary to enable reasonable use of the Property; that the house is inaccessible without the decks and steps; that the exceptional practical difficulty was not created by the Applicant; that the variance does not alter the character of the neighborhood; that the variances are the minimum variances to afford relief; and that there are similar dwellings in the area.

Mr. Johnson, under oath, confirmed the statements made by Mr. Schab.

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. 11463 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique in size as it is only fifty (50) wide and one-hundred (100) feet deep;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variances will not alter the essential character of the neighborhood;
5. The variances sought are the minimum variances necessary to afford relief; and
6. The variances represent the least modifications of the regulations at issue.

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. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

**Case No. 11464 – John M. Wilkins & Pearl I. Wilkins** – south of Johnson Avenue (Road 207) west of intersection of Third Street (Road 225) and Washington Street (Road 225C) in Lincoln. (911 Address: None Available) (Tax Map I.D. 2-30-6.17-39.01)

An application for a variance from the minimum square footage for a parcel.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had received one (1) letter in support of the Application and had not received any correspondence in opposition to the Application.

John Wilkins was sworn in and testified requesting a variance of 8,912-square-feet from the 32,670-square-foot lot size requirement for Lot 1 and a variance of 8,863-square-feet from the required 32,670-square-foot lot size requirement for Lot 2; that his family has owned the property since 1964; that he lives on the adjacent Parcel 38 and his son lives on adjacent Parcel 39; that he wants to subdivide Parcel 39.01 into two (2) lots and give it to his children; that the Property is located in Lincoln; that the streets are very wide with a large right-of-way; that the lots would almost meet the minimum lot requirement if there was no right-of-way in place; that a similar subdivision in the neighborhood was previously approved; that the proposed lots are in character with the neighborhood; that proposed lots are larger than the adjacent lots; that the existing lots do not have dwellings on them; and that he is splitting the existing lot (Parcel 39.01) in half.

The Board found that four (4) 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 Variance Application No. 11464 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variances will not alter the essential character of the neighborhood;
5. The variances sought are the minimum variances necessary to afford relief; and
6. The variances represent the least modifications of the regulations at issue.

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. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

**Case No. 11465 – Peggy Brockway (Truitt)** – north of Road 269 (Clay Road) 0.2 mile east of Road 276 (Shady Road) (911 Address: 34053 Clay Road, Lewes, DE) (Tax Map I.D. 3-35-12.06-63.00)

An application for variances from the front yard and side yard setback requirements.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Thomas White was sworn in and testified requesting a variance of 9.4 feet from the forty (40) feet front yard setback requirement for a proposed porch and a variance of 1.9 feet from the ten (10) feet side yard setback requirement for an existing shed; that the proposed front porch will give the Applicant an easier and safer access to the dwelling; that the dwelling was built in the 1940's or early 1950's and was previously owned by the Applicant's parents; that the Applicant's brother owns property to the east and conveyed a portion of that property to the Applicant to square up the Property; that the lot is 75-feet wide but is deep and backs up to a swamp; that there are other dwellings in the area built close to the road; that the Property cannot be built in strict conformity with the Sussex County Zoning Code; that the lots along Clay Road are angled due to the curvature of the road; that the proposed porch is six (6) feet wide; that the existing shed is on a permanent foundation and cannot be moved into compliance; that the existing deck on the east side of the Property will be removed; that the deck on the east side of the Property is more than six (6) feet wide; that the Property is unique because it is only 75 feet wide; that the proposed porch will be more functional than the existing side entrance; that the exceptional practical difficulty has not been created by the Applicant as she inherited the house;

that the porch will be enclosed; that the variances will enhance the neighborhood; and that the variances will not alter the essential character of the neighborhood.

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

Motion by Mr. Rickard, seconded by Mr. Mills, and carried unanimously that the case be **left open until the October 20, 2014 meeting to allow the Applicant more time to prepare.** Motion carried 5 – 0.

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

**Case No. 11466 – Jeffrey Moore** – south of Route 54 (Lighthouse Road) and being east of Wilson Avenue, 125 feet southeast of Lincoln Drive and being Lot 2 Block 3 within Cape Windsor Subdivision (911 Address: 38871 Wilson Avenue, Selbyville, DE) (Tax Map I.D. 5-33-20.14-69.00)

An application for variances from the side and rear yard setback requirements.

Mr. Lank presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of the Application and no correspondence in opposition to the Application.

Jeffrey Moore was sworn in and testified requesting a variance of five (5) feet from the ten (10) feet side yard setback requirement for a proposed dwelling, a variance of nine (9) feet from the twenty (20) feet rear yard setback requirement for a proposed dwelling with a second floor deck, a variance of eleven (11) feet from the twenty (20) rear yard setback requirement for a proposed deck, and a variance of eight (8) feet from the ten (10) feet side yard setback requirement for a proposed HVAC platform; that the Property is located in Cape Windsor; that the existing dwelling on the Property is old and needs to be replaced; that the proposed dwelling will measure thirty (30) feet by thirty (30) feet with an attached garage; that the proposed rear deck will have two (2) levels; that the second level deck will be twelve (12) feet wide and the first floor level will be ten (10) feet wide; that the Property is unique because it is only fifty (50) feet wide by eighty-five (85) feet deep; that other lots in the neighborhood are ninety (90) feet deep; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code due to the small size of the lot; that the variances will not have a detrimental effect on neighboring properties; that the proposed dwelling is nearly identical to a dwelling built across the street; that one of the neighboring properties is a vacant lot; that the difficulty was not created by the Applicant since the lot was created so small; that the variances will enable reasonable use of the Property; that the variances will have no adverse effect to the neighboring or adjacent properties; that the variances will not alter the character of the

neighborhood; that the neighbors support the Application; and that the variances are the minimum variances necessary to build a reasonable sized house on the lot.

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

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

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11466 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The size of the Property is unique;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variances will not alter the essential character of the neighborhood;
5. The use is not detrimental to the public welfare; and
6. The variances sought are the minimum variances necessary 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. Rickard – yea, Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11467 – Kris Connelly & Courtney Connelly** – south of Route 54 (Lighthouse Road) and being west of Grant Avenue 1,250 feet south of Lincoln Drive and being Lot 38 Block 6 within Cape Windsor Subdivision (911 Address: 38848 Grant Avenue, Selbyville, DE) (Tax Map I.D. 5-33-20.18-40.00)

An application for variances from the side yard and rear yard setback requirement.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had received one (1) letter in support of the Application and had not received any correspondence in opposition to the Application.

Kris Connelly and Courtney Connelly were sworn in and testified requesting a variance of five (5) feet from the twenty (20) feet rear yard setback requirement for a proposed porch and deck, a variance of three (3) feet from the ten (10) feet side yard setback requirement for a proposed dwelling, a variance of four (4) feet from the ten (10) feet side yard setback requirement for a proposed spiral staircase, and a variance of six (6) feet from the ten (10) feet side yard setback requirement for a proposed HVAC unit. Mr. Connelly testified that the Property is located in Cape Windsor; that the Applicants purchased the Property in 2013; that the

variances will enable the Applicants to improve the Property by removing the existing manufactured home and building a new dwelling; that Cape Windsor was developed in the 1960s as a mobile home community; that setbacks for the community were modified in the 1990s; that the entire community is located in a flood zone; that the character of the neighborhood has changed from mobile homes to dwellings which are raised; and that many variances have been approved in the neighborhood. Mr. Connelly submitted an aerial picture for the Board to review. Mr. Connelly testified that his neighbor to the south obtained a variance to allow for a deck within fifteen (15) feet of the adjacent canal; that the existing dwelling does not meet three (3) of the four (4) setback requirements but is a legal, non-conforming structure; that the proposed dwelling will encroach less into the setback areas than the existing manufactured home; that the existing dwelling is close to the canal, the road, and the south side of the Property; that the Applicants plan to replace the existing bulkhead; that, due to the small size of the lot, the variances are necessary to enable reasonable use of Property; that the Applicants intend to build an elevated, reasonably sized dwelling on the Property; that neighbors on both sides of the Property support the Application; that the proposed dwelling will compliment other dwellings in the area; that normal improvements cannot be made to the existing dwelling due to its legal, non-conforming status; that the dwelling will improve property values; that, by raising the dwelling, the degree of flood plain compliance will be improved; that the variances will provide the additional space needed for off street parking; that parking has been an issue in the neighborhood due to the narrowness of the right-of-ways; that the proposed dwelling will be approximately the same distance from the street as his neighbor's dwelling; that the exceptional practical difficulty was not created by the Applicants as the lots were created prior to the creation of the Sussex County Zoning Code; that the Property cannot be built in strict conformity of the Sussex County Zoning Code due to the history of the subdivision; that the small right-of-ways also create a difficulty because they limit the ability to park along the street; that the variances will promote the health, safety, and welfare of the community by complying with the flood zone requirements and providing parking spaces; that the variances increase the degree of conformity with the Code; that the variances will not alter the character of the neighborhood; that the use will not be detrimental to the public welfare; and that the variances requested are the minimum variances necessary to afford relief.

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. 11467 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The history of the subdivision makes the Property unique;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variances will not alter the essential character of the neighborhood;

5. The use will not be detrimental to the public welfare; and
6. The variances sought are the minimum variances necessary 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. Rickard – yea, Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway – yea.

### **OLD BUSINESS**

**Case No. 11453 – Anthony Balsamo** – south of Route 54 (Lighthouse Road) and being west of Cleveland Avenue 1,050 feet sought of Lincoln Drive and being Lot 26 Block 4 within Cape Windsor Subdivision. (911 Address: 38852 Cleveland Avenue, Selbyville, DE) (Tax Map I.D. 5-33-20.18-115.00)

An application for variances from the side yard and rear yard setback requirements.

Mr. Lank presented the case which had been left open from the September 22, 2014 hearings to allow the Applicant more time to prepare his case.

Anthony Balsamo was sworn in and testified requesting a variance of 1.5 feet from the ten (10) feet side yard setback requirement on the north side of the Property for a proposed dwelling, a variance of 6.5 feet from the fifteen (15) feet corner yard setback on the south side of the Property for a proposed dwelling, and a variance of 4.7 feet from the twenty (20) feet rear yard setback requirement for a proposed deck; that the Homeowners Association supports the Application; that the lot is a corner lot; that a neighboring property owner obtained a variance for a similar dwelling as proposed by the Applicant; that the existing manufactured home will be removed; that the proposed dwelling is the best use of the Property; that there are similar homes in the neighborhood; that the community was previously a mobile home community but is now transitioning to a community of single family dwellings; that the variances are necessary to enable reasonable use of the Property; that the proposed dwelling is in character of the neighborhood; that the use will not be detrimental to the public welfare; that the variances are the minimum variances to afford relief; and that Cleveland Avenue is not paved up to the Applicant's property line.

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. 11453 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The history of the subdivision and size of the lot make the Property unique;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variances will not alter the essential character of the neighborhood; and
5. 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. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

**Case No. 11370 – Richard Cook** – 250 feet northwest of Road 500 (Watson Road) 2,200 feet northeast of Road 498 (Ellis Grove Road) (Tax Map I.D. 4-32-6.00-35.00)

An application for a special use exception to place a manufactured home type structure in AR-1 zoning.

Mr. Lank presented the case, which was left open on April 7, 2014 for the Applicant to provide pictures of the proposed manufactured home.

The Board reviewed the pictures of the proposed manufactured home submitted by the Applicant.

Mr. Rickard stated that he would move that the Board recommend approval of Special Use Exception Application No. 11370 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 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. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

### **OTHER BUSINESS**

**Case No. 11292 – Gregory Stevens & Rita Stevens** – south of Road 284 (Mulberry Knoll Road) and being south of East Lane which is 1,800 feet south of State Maintenance of Mulberry Knoll Road and Bay Shore Drive and also being Lots 6 and 7 Bay Shore Hills. (Tax Map I.D. 3-34-18.00-49.01)

An application for variances from the front yard and rear yard setback requirements.

A request for a time extension.

Mr. Lank read a letter from the Applicant requesting a one (1) year time extension.

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

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

**Case No. 11204 – Bay Twenty LLC** – south of Route 20 (Zion Church Road) corner of Road 382A (Johnson Road) within Foxhaven Subdivision (Tax Map I.D. 5-33-11.00-45.01 & 46.03)

An application for a special use exception for additional “temporary” ground signs.

A request for a time extension.

Mr. Lank read a letter from the Applicant requesting an eighteen (18) month 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.

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

**Meeting Adjourned 11:00 p.m.**