

MINUTES OF SEPTEMBER 18, 2017

The regular meeting of the Sussex County Board of Adjustment was held on Monday, September 18, 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. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. 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 was led by Mr. Callaway.

Motion by Mr. Mills, seconded by Ms. Magee, and carried unanimously to approve the Agenda as revised with the addition of Approval of Minutes and Finding of Facts for July 24, 2017; Approval of Minutes and Findings of Facts for August 7, 2017; the Approval of revisions to the Minutes and Finding of Facts for Case No. 11986 from July 10, 2017; the addition of Old Business Case No. 12015 (Jason M. Harshbarger) and Case No. 12003 (Coastal Station); the addition of Additional Business and to move Case No. 12003 to the front of the agenda. Motion carried 5-0.

Mr. Sharp provided clarification on the discrepancy found on the Minutes and Facts of Finding for Case No. 11986 from July 10, 2017 brought to his attention by the Applicant and therefore requiring the Board's attention to approve revisions of the minutes and findings of act as to that application. The original minutes and findings inaccurately stated the size of the variance which was requested and approved by the Board. The revisions are to correct that typographical error.

Motion by Mr. Mills, seconded by Ms. Magee to Approve the Minutes and Revised Finding of Facts for Case No. 11986 from July 10, 2017. Motion carried 5-0.

Motion by Mr. Rickard, seconded by Mr. Workman to Approve the Minutes and Finding of Facts for July 24, 2017. Motion carried 5-0.

Motion by Mr. Mills, seconded by Mr. Rickard to Approve the Minutes and Finding of Facts for August 7, 2017. Motion carried 5-0.

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

OLD BUSINESS

Case No. 12003 – Coastal Station Development Co., LLC - seeks a special use exception to allow multi-family dwellings and structures of mixed commercial and residential use and variances

from the building length requirement for a multi-family dwelling (Sections 115-80, 115-83.6, and 115-188(E) of the Sussex County Zoning Code). The property is located at the northeast corner of Coastal Highway (Route 1) and Holland Glade Road (Route 271). 911 Address: 19791 Coastal Highway, Rehoboth Beach. Zoning District: C-1 / CR-1. Tax Map No.: 3-34-13.00-325.08.

Mrs. Walls presented the case, which has been tabled since August 7, 2017.

The Board discussed the Application.

Mr. Rickard stated that he believes the Property can otherwise be developed in strict conformity with the Sussex County Zoning Code; and that the need for the variance has been created by the Applicant.

Mr. Workman stated that most of the concerns raised by the opposition related to traffic; that there are homes, a church, and ballpark along Holland Glade Road; that the proposed traffic signal will improve the traffic conditions in the area; that the Property is split-zoned; and that he does not oppose the Application.

Ms. Magee stated that the Applicant does not meet the variance standards; and that the installation of a traffic signal is under the jurisdiction of the Delaware Department of Transportation (“DelDOT”).

Mr. Mills stated that the Applicant could develop the Property without a variance but such development would intensify the traffic problem in the area; that the nearby church and outlets have longer building lengths than what is proposed by the Applicant; that the variance request is reasonable; that he does not believe the Applicant’s request will not create any more adverse effect on the area than a by-right development for this zoning district; that the Board could grant the special use exception with the condition that a traffic signal be placed at the intersection; and that the proposed development is less intense than other uses which could be placed at this site.

Mr. Rickard stated that he is not convinced that the Applicant has met the five standards for granting a variance.

Mr. Sharp reminded the Board and the public that the Application consists of 2 parts (a special use exception and variances) and those requests must be reviewed independently of each other.

Mr. Mills stated that he believes the Property’s split-zoning has created the exceptional practical difficulty; and that there was a lack of proof regarding the adverse effect.

Mr. Rickard stated that he does not believe the variances should be granted.

Mr. Mills stated that the building length variances allow the buildings to be connected and to create a safer design on the site.

Mr. Sharp advised the Board that it could condition an approval on the Applicant entering into a traffic signal agreement with DelDOT; that DelDOT typically has its own timeline for installing traffic signals which are often out of the control of a developer; and that a condition granting approval subject to the installation of a traffic signal may be difficult due to DelDOT's time table but a condition granting approval subject to the Applicant entering into a traffic signal agreement is a condition that the County could more easily enforce and an Applicant could more easily control.

Mr. Workman stated that the opposition did not focus on the building length but the opposition complained about the traffic impact.

Mr. Sharp stated that the Applicant presented that it was prepared to pay for the traffic signal but was unaware of whether developers along Holland Glade Road were otherwise obligated to pay or contribute for such a traffic signal.

Mr. Rickard stated that he does not object to a special use exception with a condition regarding the traffic signal; that he objects to the variance application because the Property can otherwise be developed; that the Property can otherwise be reasonably used; that the building lengths do not need to exceed the limitations set forth in the Sussex County Code; and that the need for the variances has been created by the Applicant.

Mr. Sharp suggested that the Board take a vote separately for the variances and special use exception.

Mr. Callaway agreed that this is how the vote should be carried out.

Mr. Mills moved to approve the special use exception of Application No. 12003, based on the record made at the public hearings and for the following reasons:

1. Applicant proposes to use a portion of a 10.2 acre parcel for mixed residential and commercial use. The Applicant proposes to construct 3 buildings which will consist of 96 residential units and 36,000 square feet of commercial space. The Property is split-zoned and a special use exception is only needed for the rear portion of the Property which is zoned CR-1. No special use exception is needed for the front property of the Property which is zoned C-1 because a mixed-use is a permitted use in that zone. The front portion of the Property is under development for a gas station and brewpub. Portions of the mixed-use buildings are also located in the C-1 portion of the Property.
2. The area near the Property consists of different uses. To the north of the Property across Holland Glade Road are the Tanger Outlets Seaside. To the south of the Property along

Route 1 are the Outback Steakhouse, CVS Pharmacy, and Rehoboth Crossing residential community. To the east along Holland Glade Road are state owned lands, including the Junction & Breakwater bike trail, and the Epworth United Methodist Church. Other residential communities, a little league park, and a community center are located east of the site along Holland Glade Road. Businesses such as the Tanger Outlets Bayside, an Exxon gas station, and County Bank are located to the west of the site across Route 1.

3. The Application should be approved because the Applicant has met the standards for a special use exception.
4. Aesthetics:
 - The Applicant presented evidence to show that the development will have an attractive appearance and will be designed to locate the buildings near the center of the Property. The site will be landscaped and the proposed mixed-use buildings are located towards the center. Parking will be available underneath the buildings.
 - There should be no substantial adverse effect on the adjacent and neighboring properties from the aesthetics or physical impact of the mixed-use building.
5. Property Values:
 - Some members of the opposition mentioned that they believe the mixed-use buildings would negatively affect property values in the area. The opposition, however, presented no expert testimony, reports, or studies from a realtor or appraiser to support this argument. This concern appears to be speculative and unsupported by substantial evidence. Mr. Mills did not feel as though the mixed-use buildings will have a substantial adverse effect on property values of neighboring and adjacent properties.
6. Noise:
 - One member of the opposition questioned the noise emanating from the site. This concern appears to be speculative and there was no substantial evidence presented which demonstrates that mixed-use buildings would increase the noise pollution in the area more than other permitted uses on the Property.
7. Emissions:
 - There was no substantial evidence that there would be additional pollutants or negative environmental emissions from the mixed-use buildings. Members of the opposition presented evidence of nearby wellheads but did not providing convincing evidence that the existence of residential units on the Property would substantially affect adversely those wellheads.
 - Concerns were raised about the effect of the gas station on the area but the gas station is a permitted use on the Property and is not the subject of the application.

8. Traffic:

- The opposition expressed traffic and safety concerns related to the mixed-use buildings.
- Holland Glade Road is a road used by numerous residential communities in the area and is also used by persons attending the Epworth United Methodist Church and a ball park. The main exit from Holland Glade Road is onto Route 1. There is currently no traffic signal at that intersection.
- The Applicant has presented documentation from traffic counts based on generally accepted traffic engineering standards which indicate that the existing intersection is failing. The Applicant also demonstrated that, as part of the proposed development, DelDOT will likely require the installation of a traffic signal at the intersection and that the traffic signal would significantly improve the traffic conditions at this intersection. DelDOT has jurisdiction over the traffic impact of the site and a traffic impact study will be ordered. The Applicant will be required to make improvements based on the results of that study.
- The opposition argued that the proposed development would worsen the traffic along Holland Glade Road and, while it is clear that the traffic would increase at this intersection if Coastal Station is developed, the Property, by virtue of its existing zoning classification could be developed for other, more intensive uses which would likely have a larger traffic impact on the area. For example, if the Property was developed as a supermarket rather than as Coastal Station, the traffic would more than triple. By comparison, the proposed mixed-use, on the other hand, reduces the potential impact at this intersection.
- No evidence was presented by the opposition which proved convincing that the mixed-use buildings would produce any more traffic than the previous another permitted use within the CR-1 district. It is noted that uses such as a bank, restaurant, offices, car washes, hotels, indoor amusement and theaters, grocery stores, and home improvement stores are permitted in a CR-1 zone.
- The Board also notes that the mixed-use character of the site should also provide the residents of those buildings with an opportunity to patronize the other businesses on the site and thereby reduce the traffic impact. Meanwhile, the commercial buildings on the site would be available for residents along Holland Glade Road to use without having to go to Route 1.
- It is also important to note that the other properties along Holland Glade Road have resulted in heavy traffic at the Holland Glade Road / Route 1 intersection. There are many residential properties which use Holland Glade Road. The ballpark,

community center, and church likely all contribute to the traffic as well. The church, in particular, has many activities which result in increased vehicular use of Holland Glade Road. As previously noted, it appears clear that the proposed development will help this problem by likely resulting in a new traffic signal and other improvements which should benefit the neighborhood.

- Ultimately, it is not convincing that the mixed-use building will have a substantial adverse effect on traffic in the area.
9. Based on the record, the Applicant has demonstrated that the proposed use set forth in the application will not substantially affect adversely the uses of neighboring and adjacent properties.
 10. This approval was conditioned on the Applicant entering into a traffic signal agreement with DelDOT for the installation of a traffic signal at the Holland Glade Road / Route 1 intersection.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that **the special use exception be granted with condition**. Motion carried 5-0.

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

Mr. Rickard moved to deny the Variance Application No. 12003 for the requested variances based on the record made at the public hearings and for the following reasons:

1. The Property can otherwise be developed in strict conformity with the Sussex County Zoning Code; and
2. The Applicant has created the exceptional practical difficulty.

Motion by Mr. Rickard, seconded by Ms. Magee, that **the variance be denied for the reasons stated**. Motion carried 3-2.

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

PUBLIC HEARINGS

Case No. 12020 – DRC Properties - seeks special use exception to use a manufactured home type structure as an office (Sections 115-48 and 115-210 of the Sussex County Zoning Code). The property is located at the north side of Lighthouse Road (Route 54), approximately 553 feet east of Old Mill Bridge Road (Route 381). 911 Address: 32033 Seashore Way, Selbyville. Zoning District: HR-1. Tax Map No.: 5-33-12.00-76.05.

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

Jake Booth was sworn in and testified requesting a special use exception for the use of a manufactured home type structure as an office and submitted exhibits for the Board to review. Mr. Booth testified that he is a representative for Capstone Homes; that Capstone Homes has entered into an agreement with DRC Properties to build 87 townhome units; that the community is known as Seashore Villas; that the site improvements have been completed; that the entrance and roads are completed; that the building pads are graded; that the infrastructure is finished but there are no buildings currently constructed on the site; that the model unit is under construction; that the Applicant is proposing to place a construction trailer for use as a sales center to be located on the first building pad; that the model unit will be constructed on the second building pad; that the special use exception requested is for a period of one (1) year for the construction trailer to be used for a sales office; that the trailer will be placed near the entrance to the community and will be accessed from the main entrance to the community; that the unit will not substantially affect adversely the uses of the neighboring adjacent properties; that the sales center will be positioned facing Seashore Way; that the unit will have a clean and attractive appearance from the exterior and the surrounding area will be landscaped; that this site is surrounded by commercial property; that no buildings are currently completed on this parcel; that the model home building is currently under construction at this time; that the sales unit will have water and wastewater tanks serviced by Clean Delaware on an as needed basis; that the site and entrance will be maintained as the site is under construction; that there will be ten (10) parking spaces for the unit; that, once the model unit is completed, the trailer will be removed and the pad will be restored; that the sales trailer will be staffed no more than Monday through Saturday from 10 am to 5 pm; and that, should there be questions or concerns from neighbors about the trailer, there will be someone on staff to address them.

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

Mr. Rickard moved to approve special use exception 12020 for a period of one (1) year based on the record made at the public hearing because the use will not substantially affect adversely the uses of adjacent and neighboring properties.

Motion by Mr. Rickard, seconded by Ms. Magee and carried unanimously that the **special use exception be granted for one (1) year for the reasons stated**. Motion carried 5-0.

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

Case No. 12021 – Jeffrey A. Duerbeck & Ruth L. Duerbeck - seek a variance from the side yard setback requirement (Section 115-34 of the Sussex County Zoning Code). The property is located on the south side of Judson Lane, approximately 960 feet northwest of Seagrass Plantation Lane. 911 Address: 30046 Judson Lane, Dagsboro. Zoning District: MR. Tax Map No.: 1-34-7.00-704.00.

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

Jeff Duerbeck was sworn in and testified requesting a variance of two (2) feet from the 7.5 feet side yard setback requirement on the east side for a proposed addition to an existing dwelling, and submitted exhibits to the Board for review.

Mr. Duerbeck testified that he misinterpreted the third question in the Application regarding whether the need for the variance was created by the Applicant; that the proposal has been submitted to his homeowners association for approval pending the Board's decision on the Application; that he has been in contact with neighbors within 200 feet of the Property and they do not object to the project.

Mr. Sharp on behalf of the Board requested explanation from Mrs. Walls as to why the side yard setback is only 7.5 feet.

Mrs. Walls confirmed that the 7.5 feet side yard setback was designated for the RPC on the site plan.

Mr. Duerbeck testified that the addition is in character with other additions that have been built within the community; that the addition will be used for additional storage in the garage and for the master bedroom; that the Property is unique because it is narrow; that addition is needed to make the home more functional; that the entire community has been developed and there are no vacant lots; that the addition will be constructed to match the existing dwelling and will be consistent with other structures in the neighborhood; that the variance requested is the minimum variance necessary to afford relief; that the Applicants purchased the Property in 2012; that a smaller addition would not be worth the expense; that the home uses public water and sewer; that the garage does not provide much storage space so the addition will improve the usability of the garage; and that it is not practical to construct the addition towards the rear of the home due to the layout of the existing home.

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

Mr. Rickard moved to approve Variance Application No. 12021 for the requested variance with a condition based on the record made at the public hearing and for the following reasons:

1. The odd shape of the lot makes this Property unique;
2. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance sought is the minimum variance necessary to afford relief;

6. Condition: The Applicants must receive approval from their homeowners association and submit a copy of the homeowners association approval to the Board prior to proceeding with a building permit.

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

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

Case No. 12022 – John Yenish & Gloria Yenish - seek a variance from the rear yard setback requirement (Sections 115-34 and 115-183 of the Sussex County Zoning Code). The property is located at the north side of Owl Drive, approximately 150 feet west of West Fenwick Boulevard. 911 Address: 36996 Owl Drive, Selbyville. Zoning District: MR. Tax Map No.: 5-33-12.00-721.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received one (1) letter of support and no correspondence in opposition to the Application. The Applicants are seeking a variance of 7.2 feet from the ten (10) feet rear yard setback requirement for an existing deck.

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

Mr. Robinson requested confirmation that the deck could encroach into the setback up to five (5) feet.

Mr. Sharp confirmed that a deck can encroach up to five (5) feet but when a deck encroaches more than five (5) feet the measurements go back to the original setbacks and that is why the variance request is for 7.2 feet.

Mr. Robinson stated that the Applicants purchased the Property in the Swann Cove subdivision on July 14, 2017; that a survey completed just before settlement showed that the deck on the back of the home encroaches into the rear yard setback; that the deck is 2.8 feet from the rear property line and it is required that the deck be 10 feet from the rear property line; that the Property is unique because the lot is small and there is not a lot of room for improvements other than the house itself; that the deck was constructed by the prior owner in 2016; that, if the variance is not granted, the Applicants will be required to destroy a portion of the deck to come into compliance which would create a significant expense and would remove a portion of the improvement for which the Applicants paid for when they bought the home; that the variance is necessary to enable reasonable use of the Property because they cannot maintain the existing deck on the Property without the variance; that, if the variance is not granted, the deck would become a undue hardship and expense; that the problem was not created by the Applicants because, at the time they purchased the Property, the deck was already constructed by the previous owner Robert Wentz; that the variance will not alter the character of the community or impair the use or development of neighboring properties; that the Applicants are

seeking the minimum variance of 7.2 feet which would allow the deck to remain in its current location; and that the previous owner received a permit to build the deck but a certificate of compliance was never issued.

Mr. Yenish affirmed the statements made by Mr. Robinson as true and correct. Mr. Yenish testified that he never received any complaints from neighbors about the deck.

Anthony Morgan III was sworn in and testified against the Application and testified that he owns the property behind the Applicant's lot; that he purchased his lot at a sheriff's sale about 9 months ago; that the previous owner of the Property constructed the deck and other improvements to make the Property look larger than it actually is; that he approached the previous home owner about the shared property line; that the previous property owner stated he had a permit and a certificate of compliance for the deck; that Mr. Morgan proceeded to get a survey for his property because he intends to build a home and wanted to verify that the home would meet all setback requirements; that he discovered the deck is 30 inches from his property line; that he notified the realtor selling the Property of the encroachment; that the lots are small and he will have to build his home to meet the setback requirements; that he is concerned about the closeness of the deck to his property and the effect it will have on the ability to sell his home; that he believes there is money in escrow from settlement to pay for expenses related to the removal of the deck; that he will construct a home on his property to sell it; that his major concern is that, when he sells his property, buyers will not be interested because of the proximity of the deck on the Property; that he would like the deck to meet the setback requirements; and that the raised planter showing on his property was actually placed there by the previous owner of the Property in order to make the Property appear larger.

Mr. Robinson stated that he feels his client meets all the criteria for granting a variance and that the problem was not created by the Applicants but was created by the previous owner; that Mr. Morgan was speculating that the deck would cause an issue for him to sell his property; and that he did not handle the settlement for the Applicants but there is money in escrow set aside to bring the deck into compliance with the setback requirements.

Mr. Yenish testified that he does not know how difficult it would be to bring the deck into compliance with the Code; that the Property has other problems such as flooding due to the grading on neighboring lots; that the realtor told the Applicants that, if the variance was granted, he would not have to do anything; that he was aware that a variance would be needed in order for the deck to remain; and that, if the variance is not granted, there would be money in escrow to take care of the deck.

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

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

Ms. Magee moved to deny Variance Application No. 12022 for the requested variance based on the record made at the public hearing for the following reasons:

1. There is money in escrow to bring the deck into compliance with the Sussex County Zoning Code;
2. The Property can be developed in strict conformity and the variance is not necessary to enable reasonable use and thus it is not the minimum variance to afford relief.

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

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

Case No. 12023 – Charles Hairston - seeks a special use exception to operate a daycare facility (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located at the north side of Johnson Road (Route 207), approximately 300 feet east of Marshall Street (Route 225). 911 Address: 18601 Johnson Road, Lincoln. Zoning District: AR-1. Tax Map No.: 3-30-15.13-38.00

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

Melodie Morris was sworn in to testify about the Application. Ms. Morris testified requesting a special use exception to operate a daycare facility; that the facility will serve up to twelve (12) children; that the hours of operation would be from 7:00 am to 5:30 pm Monday through Friday; that there is ample parking for the facility; that the facility will have two employees; that the proposed facility will not substantially affect adversely neighboring properties; that an elementary school is located approximately 400 feet from the Property; that there is a trucking company and multiple businesses are located nearby along Johnson Road; and that the facility will have a fenced-in playground area.

Lyle Merrick and Everett Tyrell were sworn in and testified in opposition of the Application.

Ms. Merrick testified that her property is located across the street from the proposed daycare facility; that her brother owns the adjoining property to her property; that the Lincoln School is located next to her property and is separated by a chain-link fence; that the milkman is there at 4:00 am, the bread man at 5:00 am, and the dumpster at 6:00 am; that buses and traffic are also in the area most of the day; that Lincoln used to be a relatively residential place; that the center of Lincoln is mainly residential; that Johnson Road (Road 207) is located in front of her property and has become a thoroughfare from Route 113 to Route 1 and there is constant traffic along Johnson Road; that the driveway does not appear large enough for twelve people to come and pick up their children; that she does not feel they need any more activity in the area because of the noise and traffic associated with the school and Johnson Road; that the facility is not sufficient enough to help 12 kids learn and grow; that the owner bought the bungalow and renovated it and it looks

very nice, but it is in a residential area and should not be used for a daycare; and that the only access to the Property is a pull in / back out driveway.

Mr. Tyrell testified that he lives across the road and mowed the lawn for the lady that lived on the property in question; that, when the previous owner decided to sell the Property, the previous owner was in a nursing home and had not been at the home for 15 months; that, during the 15 months, one of her relatives would water and feed the cats in the home, but did not take care of the litter pans; that this relative tried to get them help by contacting animal control who came out 3 months before the house was sold and recovered 4 cats and 1 deceased cat; that these conditions are concern for the welfare of the children who will inhabit the daycare; and that the home has been renovated but he believes the crawl space under the house has not been cleaned.

Mr. Sharp interjected to remind Mr. Tyrell that there is a separate agency that checks on the welfare of children and regulates the operation of daycares and the Applicant will have to adhere to those regulations.

Mr. Tyrell testified that he is concerned for the welfare of the children; that there is too much noise already; that Johnson Road has a speed limit of 25 miles per hour; and that there is a shoulder on either side of the road.

Ms. Morris testified that the house consists of approximately 1,300 square feet; that the home is a fairly new structure; that the parking is a long driveway and there is plenty of room for cars to turn around without of backing out the driveway; that the driveway is large enough to accommodate at least six (6) cars; that all of the children will not be coming at the same time; that the home has adequate space for twelve (12) children; that she is currently operating a daycare for six (6) children in a residential development but is moving her operation to this new location in order to expand her business; that she will not be living on the Property; that this daycare will be operated as a business instead of a home daycare; that there are other commercial businesses on the road including a trucking company close to the Property; that the backyard will be fenced in for a play area; that there are teachers from the nearby elementary school that are excited there will be a daycare nearby; that the house has been renovated; and that the structure is not brand new.

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

The Board found that two (2) parties were in opposition of the Application.

Mr. Rickard moved to approve Case No. 12023 for a special use exception based on the record made at the public hearing and for the following reasons:

1. The special use exception will not substantially affect adversely the use of neighboring and adjacent properties.

Motion by Mr. Rickard, seconded by Mr. Mills, and carried unanimously that **the special**

use exception be granted for the reasons stated. Motion carried 5-0.

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

Case No. 12024 – Ralph McBride & Patricia McBride - seek variances from the rear yard setback requirement (Sections 115-34 and 115-181 of the Sussex County Zoning Code). The property is located on the northwest side of Mute Swan Lane, approximately 540 feet east of Dot Sparrow Drive. 911 Address: 34831 Mute Swan Lane, Rehoboth Beach. Zoning District: MR. Tax Map No.: 3-34-12.00-796.00.

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.

Ralph McBride was sworn in and testified that he is requesting a variance of 6.1 feet from the ten (10) feet rear yard setback requirement for a chimney and a variance of 4.1 feet from the ten (10) feet rear yard setback requirement for an addition to the home. Mr. McBride submitted an exhibit to the Board.

Mr. McBride testified that the Applicants built an addition to the home based on the original plot plan; that the plot plan showed that there was 26 feet from the rear of the home to the rear property line; that the Applicants believed that they could build a 16 feet addition within the building envelope; that the dwelling was constructed in 2007; that the Woods Cove development is located to the rear of the Property; that the permits were obtained based on the plot plan and a builder constructed the addition; that he learned of the encroachment after an inspection was conducted after the addition was constructed; that a new survey proved that the original plot plan was incorrect and that the structures encroached into the rear yard setback area; that the situation is unique because the original plot plan was incorrect; that the problem was not created by the Applicants; that he plans to retire to the Property; that the variances will not alter the essential character of the neighborhood; that the rear of the Property is adjacent to a storm water management pond and will not be developed; that there were no survey markers on the Property prior to the addition being constructed; that the addition was put on to expand the living space to make it more comfortable to live there; that that his neighbors do not object to the addition; and that the Applicants obtained approval from the homeowners association.

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

Mr. Mills moved to approve Variance Application No. 12024 for the requested variances based on the record made at the public hearing and for the following reasons:

1. There is a uniqueness due to the fact that the Applicants were misled as to the location of the property lines and relied to their detriment on someone else who should have known where the property lines were and did a proper job;

2. The variances are necessary to enable reasonable use of the Property;
3. The need for the variances was not created by the Applicants;
4. The variances would not alter the essential character of the neighborhood or be detrimental to the public welfare;
5. The variances will not substantially or permanently impair the uses of or development of adjacent property; and
6. The variances requested 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. Workman – yea, Mr. Rickard – yea, Ms. Magee – yea, Mr. Mills – yea, and Mr. Callaway – yea.

The Board took a five (5) minute recess.

Case No. 12025 – Chester V. Townsend IV - seeks a special use exception to use a manufactured home type structure to accommodate a person with an emergency or hardship situation (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located on the west side of Falling Point Road (Route 341), approximately 1,320 feet north of Ballast Point Road (Route 341A). 911 Address: 32523 Falling Point Road, Dagsboro. Zoning District: AR-1. Tax Map No.: 1-34-6.00-161.04.

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 and presented the Board with the Findings of Facts of previous Case No. 11039 regarding a previous special use exception on the Property.

Shirley Townsend was sworn in and testified about the Application. Ms. Townsend testified that, in 2014, she came before the Board for approval to place a 2014 model manufactured home on the Property to be used by her mother who was suffering from dementia and other medical problems; that the Board approved the previous application for a period of two (2) years; that every year she would get a letter from the doctor confirming that her mother's condition still existed; that the Applicants installed landscaping and a handicap ramp around the home; that the home is barely visible from the road and that the Applicants have several other outbuildings on the Property; that a few months ago her mother passed away and her mother-in-law's husband passed away; that her mother-in-law suffers from Parkinson's disease and needs assistance; that the Applicants would like to use the manufactured home for her mother-in-law; that the use does not substantially affect adversely neighboring properties; that the Applicants have not received any complaints regarding the home; and that the home has been on the Property since 2014.

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

Ms. Magee moved to approve the special use exception application for a period of two (2) years because the use will not substantially affect adversely the neighboring properties.

Motion by Ms. Magee, seconded by Mr. Mills, and carried unanimously that the special use exception be **granted for a period of two (2) years for the reasons stated**. Motion carried 5-0.

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

Case No. 12026 – Green Acres Farm, LLC - seeks a special use exception to operate a tourist home (bed-and-breakfast inn) (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located on the north side of Fisher Road (Route 262), 1,667 feet northeast of Hopkins Road (Route 286). 911 Address: 30249 Fisher Road, Lewes. Zoning District: AR-1. Tax Map No.: 3-34-10.00-53.00.

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.

Ingrid Hopkins was sworn in and testified requesting a special use exception to operate a tourist home (bed-and-breakfast). Ms. Hopkins testified that the Covered Bridge Inn is a bed-and-breakfast operated on Hopkins Dairy Farm; that the two hundred (200) year old farm house was renovated and had been in the Hopkins family since it was built; that the farmhouse is centrally located on 500 acres of preserved Delaware farmland; that the adjacent and adjoining properties are all family-owned cropland; that the only neighbor is the Applicant's father; that the requested use will not substantially affect adversely the uses of neighboring properties; that the home has three (3) bedrooms and two (2) parking spaces per room; and that there are no cooking facilities in any of the rooms.

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

Mr. Rickard moved to approve Case No. 12026 for a special use exception on the basis that the use will not substantially affect adversely the uses of adjacent and neighboring properties.

Motion by Mr. Rickard, seconded by Ms. Magee, 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, Ms. Magee – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

Mr. Rickard left council chambers.

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 and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and noted that the variance is for a 31.6 feet variance from the required 40 feet front yard setback for an existing dwelling that had been approved for a variance of 21.6 feet in the past but the previous variance approval appears to have incorrectly stated the size of the variance.

Mr. Sharp believes that there was a typo in the minutes or findings in 2003 where an incorrect front yard setback requirement was referenced.

No parties appeared to testify for the Application.

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

Motion by Mr. Mills, seconded by Ms. Magee to deny Variance Application No. 12027 for lack of representation.

Mr. Sharp suggested that the Applicant may not have gotten sufficient notification because the case was added to the agenda at the last minute.

Mrs. Walls confirmed that the letter was sent to the Applicant on August 28, 2017, and that the Applicant or other representation must be present at the Board meeting.

Mr. Mills withdrew his motion. Ms. Magee seconded the withdrawal of the motion.

Motion by Mr. Mills, second by Mr. Workman, and carried unanimously that the case be **left open and put on the agenda for the Board's next meeting on October 2, 2017**. Motion carried 4-0.

OLD BUSINESS

Case No. 12015 – Jason M. Harshbarger - seeks an appeal of a determination by the Planning Director (Sections 115-208 and 115-209 of the Sussex County Zoning Code). The property is located at the south side of South Shore Drive Extension, approximately 432 feet south of Marina View Court. 911 Address: 32 South Shore Drive, Bethany Beach. Zoning District: MR. Tax Map No.: 1-34-2.00-3.01 & 4.00.

Mrs. Walls presented the case, which is an appeal of a determination by the Planning Director.

Mr. Mills asked Mr. Sharp how the case could proceed.

Mr. Sharp stated that Ms. Cornwell testified that the Applicant has the option of placing a mobile home on the Property; that this mobile home park is probably older and non-conforming; that the lot size for a fee simple lot is 10,000 square feet where, in mobile home parks, the lot size requirement is only 5,000 square feet; that it would likely be difficult to convert all of the lots into fee simple lots; that, if leaseholders are going to convert to a fee simple community, the leaseholders and the landlord would have to come to the County for approval; that it is unclear how a conversion to a fee simple community would play out; that the Property is leased land and the park is considered a mobile home park with one landowner despite the leases being 99 year leases; that, if the Applicant was allowed to place a stick-built dwelling on the Property, the use would jeopardize the subdivision regulations because other mobile home parks may follow suit; and that the Applicant did not cite anything within the Code that would allow the Applicant to take the proposed steps.

Motion by Mr. Mills, seconded by Ms. Magee, and carried unanimously to **deny the appeal and uphold the decision of the Planning and Zoning Director with the condition the County will contact the landlord.** Motion carried 4-0.

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

ADDITIONAL BUSINESS

Mr. Rickard's son read a farewell statement written by Mr. Rickard.

Meeting Adjourned 10:00 p.m.