

MINUTES OF SEPTEMBER 23, 2013

The regular meeting of the Sussex County Board of Adjustment was held on Monday, September 23, 2013, at 7:00 p.m. in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

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

Motion by Mr. Mills, and seconded by Mr. Rickard, and carried unanimously to approve the Revised Agenda, with Case No. 11216 – Allen Harim Foods, LLC, under Old Business, being moved to the beginning of the Agenda. 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.

OLD BUSINESS

Case No. 11216 – Allen Harim Foods, LLC – west of Road 331 (Iron Branch Road) and southeast of Iron Branch and the Town of Millsboro. (Tax Map I.D. 2-33-5.00-14.00, 15.00, & 16.00)

An application for a special use exception for a potentially hazardous use (poultry processing facility).

The Board discussed this case which has been tabled since June 17, 2013.

Mr. Hudson stated that he previously recused himself from participating in this hearing due to a conflict of interest and that he would not participate in the discussion or vote of this Application.

The Board discussed the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Special Use Exception Application No. 11216 for the requested special use exception based on the record made at the public hearings because the use does not substantially affect adversely the uses of the adjacent and neighboring properties.

Mr. Rickard gave the following reasons for his Motion:

1. Under the Sussex County Code, the Board shall review the plans and statements and shall not permit such buildings, structures or uses until it has been shown that the public health, safety, morals and general welfare will be properly protected and that

- necessary safeguards will be provided for the protection of water areas or surrounding property and persons. The Board, in reviewing the plans and statements, shall consult with other agencies created for the promotion of public health and safety and shall pay particular attention to protection of the county and its waterways from the harmful effects of air or water pollution of any type.
2. The proposed use is for a poultry processing facility in an industrial area.
 3. The site was previously used for approximately forty (40) years as a cucumber pickling plant.
 4. There are other industrial facilities in the neighborhood including a concrete plant and a propane business: both of which have been there for many years.
 5. Opposition also testified that the area is a heavily industrialized area.
 6. The Applicant demonstrated that it will implement and/or follow necessary safeguards to protect the public health, safety, morals, and general welfare.
 7. Fire:
 - a. The existing building is protected throughout by a sprinkler system which will be maintained to meet current standards.
 - b. The facility is a non-combustible building and will meet Delaware State Fire Prevention Regulations.
 - c. The Delaware State Fire Marshal shall ensure that the Fire Prevention Regulations are met.
 8. Explosion:
 - a. The Applicant presented evidence that poultry processing operations do not present any normal explosion hazards or risks and no evidence to the contrary was presented.
 - b. The Applicant advised the Board that ammonia or refrigeration systems will be built to meet all current standards with ventilation and detection systems to reduce the risk of explosion if a leak were to occur.
 9. Pursuant to the Applicant's Application and presentation, the Applicant will address noise from the facility as follows:
 - a. Trailer parking will mainly be at the rear of the site away from residential areas thereby reducing the impact of noise to residential neighbors.
 - b. Live receiving trailers will be loaded in the existing building.
 - c. Forklift operations and unloading live poultry will be kept inside the facility to contain noise and dust.
 - d. Loaded refrigerated trailers will be parked in the area surrounded by a landscape buffer.
 - e. Landscape buffers will be planted along County Road 331 to help buffer noise and odor from the facility.
 - f. Additional trees will be planted along Iron Branch Road.
 - g. The plant will be hidden from neighboring residential areas.
 10. Vibration:

- a. The Applicant noted that there are no known causes for vibration on this site and no evidence to the contrary was presented.
11. The Applicant addressed the handling of dust and odor from the plant as follows:
 - a. Site work including dust control will be conducted in accordance with sediment and erosion control regulations promulgated by the State of Delaware and the Sussex Conservation District will ensure that these regulations are followed.
 - b. The site will be stabilized by either the building itself or pavement and vegetation.
 - c. The Applicant advised the Board that odors will be kept to a minimum by proper housekeeping and good airflow throughout the facility to prevent residue buildup.
 - d. The holding shed will be cleaned regularly to avoid manure buildup.
 - e. All live poultry will be housed in a ventilated holding shed.
 - f. No rendering will be done on site.
 - g. Offal by-products will be loaded directly to trucks in an enclosed building and shipped daily to an off-site rendering facility.
 - h. The Applicant intends to use state of the art ventilation systems in the facility.
12. Emissions:
 - a. The Wastewater Treatment System will be located at the rear of the site adjacent to the railroad to be as far away as possible from residential neighbors.
 - b. The Stormwater system will utilize existing the wastewater system to treat the first flush from rain events to capture contaminants from the paved areas and meet Delaware stormwater regulations.
13. Traffic:
 - a. The Applicant testified that truck traffic will have a designated route subject to DelDOT approval and that truck drivers will be subject to disciplinary action if the route is not followed.
 - b. Opposition to the Application did not present evidence from a traffic engineer as to any negative impact the Application would have on traffic in the neighborhood.
 - c. The Delaware Department of Transportation (“DelDOT”) will ultimately have jurisdiction over the traffic impact of the plant.
14. Lighting:
 - a. The Applicant testified that lighting in the rear of the Property will be reduced and there will be no increase in lighting elsewhere on the site.
15. The Neighborhood:
 - a. The evidence is clear that numerous residential homes and developments were constructed after the existence of the pickle plants; though some homes pre-dated the previous pickle plant.
 - b. The evidence shows that this area is a heavily industrialized area and has been that way for many years.
 - c. Opposition to the Application did not present any evidence from a realtor or appraiser as to any substantial adverse effect to real estate values due to the proposed plant.

16. The Board solicited comments on the Application from the Delaware Department of Natural Resources and Environmental Control (“DNREC”), the Delaware Department of Transportation, the Delaware Office of the Fire Marshal, the Chief Building Code Inspector for Sussex County, and the Sussex Conservation District. These agencies were created for the promotion of public health and safety.
17. The Board received comments from DNREC which stated that:
 - a. DNREC administers several programs including air emissions permitting, well permitting, water allocations, National Pollution Elimination Discharge permits, and Large On-Site Wastewater Treatment and Disposal Systems permitting and these programs may apply to the facility.
 - b. The facility may require approvals for any solid or hazardous wastes that may be generated, stored, and transported from the site and compliance with DNREC’s Accidental Release Program.
 - c. DNREC may also apply additional requirements on the Applicant for erosion and stormwater management depending on the physical modification to the existing building or on new construction.
 - d. The Applicant may need to obtain a modification of existing permits. If so, modifications to permits generally require public notice and an opportunity for a public hearing.
 - e. DNREC will work with the Applicant to ensure that adequate water supply for the facility will not have any negative effects on existing water supply wells in the area.
 - f. Appropriate permits will be required for all wastewater from the plant and DNREC will work with the Applicant to make sure that the wastewater systems meet all regulatory requirements and are appropriately permitted through NPDES and LOWTDS programs.
 - g. The facility has two (2) boilers that are currently permitted and comply with air quality regulations.
 - h. Any new equipment the Applicant intends to install must comply with all air quality regulations and permitting requirements. DNREC will require that any new equipment does not adversely affect public health or the environment.
 - i. DNREC has no objections to the Board granting a special use exception to Allen Harim.
18. The Board has consulted with DNREC, which has jurisdiction over the air and water pollution emanating from the site and over the systems and permits the Applicant intends to use, and DNREC has noted that it does not object to the Application and that it will ensure that neighboring properties are not adversely affected.
19. Applicant has noted to the Board that, in order to construct its facility, Applicant will need to obtain the permits and approvals from DelDOT, DNREC, Sussex County Building Inspector, and the State Fire Marshal. Those agencies were created for the promotion of public health and safety. DNREC, through its rules and regulations, will have jurisdiction to protect the County and its waterways from the harmful effects of

- air and water pollution of any type. DNREC's extensive involvement in the permitting process as outlined in its letter to the Board clearly states that it will make sure that the public health, safety, morals, and general welfare will be properly protected and that necessary safeguards will be provided for the protection of water areas or surrounding property and persons.
20. 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. Furthermore, the Applicant has demonstrated that the public health, safety, morals, and general welfare will be properly protected and that necessary safeguards will be provided for the protection of water areas or surrounding property or persons.

Motion by Mr. Rickard, seconded by Mr. Mills, 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. Workman – yea, Mr. Rickard – yea, and Mr. Callaway – yea. Mr. Hudson did not participate.

PUBLIC HEARINGS

Case No. 11265 – Thomas A. Casadevall, Trustee – south of Route 54 (Lighthouse Road) and being north of Riverbirch Drive 50 feet from the end of the cul-de-sac and being Lot 19 Section 7 within Keen-wik development. (Tax Map I.D. 5-33-19.16-5.00)

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

Mr. Lank presented the case. Jean Churney was sworn in to testify about the Application. Raymond Tomasetti, Esquire, presented the case to the Board on behalf of the Applicant and submitted exhibits for the Board to review. Mr. Tomasetti stated that the Applicant is requesting a variance of 1.1 feet from the ten (10) feet side yard setback requirement for an existing second floor deck; that the Applicant's family has owned the Property for over thirty six (36) years; that the Property is located within the Keen-wik development; that the Property is located on a cul-de-sac; that the cul-de-sac does not follow the survey; that a boundary marker appears to be off by 0.3 feet which led to surveys of lots in Keen-wik having discrepancies; that the deck was constructed along with the existing dwelling; that the building permit was issued in December 1976 and the Certificate of Compliance was issued in July 1977; that the difficulty was not created by the Applicant; that the variance will enable reasonable use of the Property; that the variance will not alter the character of the neighborhood because the deck has been in its current location for thirty six (36) years; that the variance requested is the minimum variance to afford relief; and that the Applicant wishes to have the deck remain in its current location.

Ms. Churney, under oath, confirmed the testimony of Mr. Tomasetti.

Larry Thyne was sworn in and testified in support of the Application and testified that he is a neighbor of the Applicant; that his only concern was if the variance was for future construction; and that he has no objection to the existing structure.

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. 11265 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique;
2. The variance is necessary to enable reasonable use of the Property;
3. The 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. Mill, 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. Workman – yea, Mr. Rickard – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 11266 – Boys & Girls Club of Delaware – southwest of Route 297 (Oak Orchard Road) 425 feet southeast of Route 24 (John J. Williams Highway). (Tax Map I.D. 2-34-29.00-69.06)

An application for a special use exception to retain a manufactured home type structure as a classroom for a period of five (5) years.

Mr. Lank presented the case. Millie Charnick was sworn in and testified requesting a special use exception to retain a manufactured home type structure as a classroom for a period of five (5) years. Ms. Charnick testified that the Board granted a special use exception in September 2008 for the manufactured home classroom; that the classroom has been a great asset to the center; that the classroom is used for quiet home work area and prevention programs; that they have added vinyl siding and a shingled roof to the structure; that they care for eighty seven (87) children at the facility and provide homework help to those students; that the original plan was to construct an addition; that the Applicant currently does not have the funding to construct an addition; and that there have been no complaints about the facility. Ms. Charnick submitted photographs of the Property to the Board.

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

Mr. Rickard stated that he would move that the Board recommend approval of Special Use Exception Application No. 11266 for the requested special use exception for a period of five (5) years based on the record made at the public hearing because the use does not substantially affect adversely the uses of the adjacent and neighboring properties.

Motion by Mr. Rickard, seconded by Mr. Mills, and carried unanimously that the special use exception be **granted for the reasons stated for a period of five (5) years and the Board suggested that the Applicant seek funding for a permanent structure in the future.** 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. 11267 – Fahmi Smadi – northwest of Road 224 (Fleatown Road) 150 feet southwest of Road 214 (Cabbage Pond Road) and east of Cabbage Way, a Subdivision Street. (Tax Map I.D. 2-30-13.00-166.02)

An application for a special use exception to retain a manufactured home type structure for storage and security for a period of five (5) years.

Mr. Lank presented the case and stated that the Applicant previously applied for a similar use on the Property in 2004.

Fahmi Smadi was sworn in and testified requesting a special use exception to place a manufactured home type structure for storage and security. Mr. Smadi testified that he operates a grocery business on the Property and that he has experienced multiple break-ins to his business; that he has reported the break-ins to law enforcement officials; that in 2004 the Board denied his request to place the unit on the Property; that he placed the unit on the Property without a permit in 2004; that he removed the unit from the Property after the Board denied his Application; that he would like to place the unit on the Property so that he can provide security for his business; that he feels living on the Property will help deter crime; that he currently lives in the unit in a mobile home park nearby; that the store does have an alarm system but he has problems with responsiveness from law enforcement; that he plans to use the unit solely as a residence and storage for the business; that he does not otherwise intend to use the unit for the grocery store; that he has adequate parking on the Property; that the unit will use the existing well and septic system on the Property; that the unit will not be attached to the store; that the unit will be located behind the existing store; that the unit is in good condition and measures fourteen (14) feet by seventy (70) feet; that he purchased the unit in 2004 and was told it was a 1992 model; that the unit will be approximately ten (10) to fifteen (15) feet from the property line; that

he would be able to place the unit on the Property without going onto his neighbor's property; that there are other manufactured homes in the area; and that he is not sure if the unit is a 1992 model or a 1984 model.

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

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

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

At the conclusion of the public hearings, the Chairman referred back to this case. Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the case be **left open for the Applicant to submit pictures of the manufactured home for the Board to review**. Motion carried 5 – 0.

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

Case No. 11268 – Mary Ford & Judy Hedrick – southwest corner of Road 275 (Warrington Road) and Road 274 (Old Landing Road). (Tax Map I.D. 3-34-12.00-121.01)

An application for a special use exception to operate a bed and breakfast.

Mr. Lank presented the case and stated that the Office of Planning & Zoning received one letter which questioned whether the improvements made were compliant with Sussex County Code.

Mary Ford was sworn in to testify about the Application. Adam Gerber, Esquire, presented the case to the Board on behalf of the Applicants and stated that the Applicants are requesting a special use exception to operate a bed and breakfast. Mr. Gerber stated that, in 1998, the Board granted a special use exception to operate a bed and breakfast housing four (4) bedrooms on the Property. Mr. Gerber submitted copies of the Findings of Fact evidencing that decision. Mr. Gerber stated that the Applicants want to expand the bed and breakfast to include five (5) bedrooms; that the original use was to operate with four (4) bedrooms; that there is adequate parking available on the Property; that the fifth bedroom will be in the existing pool house; and that the pool has been removed from the Property.

Ms. Ford, under oath, affirmed the statements made by Mr. Gerber. Ms. Ford also testified that that she has owned and operated the business for ten (10) years; that there is no pool

on the Property; that the main dwelling was constructed in 1899; that there are twelve (12) parking spaces; that there will be no adverse effect on neighboring properties; that the neighbors support the Application; that she has operated the business since purchasing it in 2003; that there will be no cooking facilities in the proposed bedroom; that the pool house will serve as the fifth bedroom and that the pool house has its own bathroom.

Linda Bova was sworn in and testified in support of the Application and testified that she is a local real estate agent and is familiar with the Property; that the additional bedroom will not substantially adversely affect the neighborhood; and that there is adequate parking on the Property.

Ms. Ford testified that the bedroom to be added is eight (8) feet by ten (10) feet and is already part of the pool house.

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 Special Use Exception Application No. 11268 for the requested special use exception for a fifth bedroom at the bed and breakfast based on the record made at the public hearing because the use does not substantially affect adversely the uses of the adjacent and neighboring properties.

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

Case No. 11269 – Tom Viscount – 250 feet southwest of Route One and being Southeast of Ann Avenue and being Lot 11 Block A within Ann Acres development. (Tax Map I.D. 3-34-20.13-30.00)

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

Mr. Lank presented the case. Tom Viscount was sworn in and testified requesting a variance of 2.8 feet from the ten (10) feet side yard setback requirement for a proposed addition; that he recently purchased the Property and plans to use the dwelling as a summer home; that the existing dwelling is 1,325 square-feet in size; that the existing bathroom is very small and the existing laundry room is in the basement; that the basement is usually wet making it difficult to use regularly; that the proposed addition will measure eight (8) feet by sixteen (16) feet; that the existing dwelling was built in 1959 and is a pre-existing, non-conforming dwelling; that the

proposed addition will house a new bathroom and laundry room; that the proposed addition will not extend any further out than the existing dwelling. Mr. Viscount submitted pictures of the Property to the Board.

Mr. Viscount testified that the Property is unique; that he has no plans in changing the façade and wants to keep in conformity with the design of the original house; that the Property cannot be developed in strict conformity with the Sussex County Zoning Code; that the addition will not alter the character of the neighborhood as there are other similar style homes in the neighborhood; that the use will not impair the neighboring or adjacent properties; that the variance will not be detrimental to the public welfare; that the variance is the least modification of the regulation at issue possible; that the wetness in the basement hinders its use; that the variance will enable reasonable use of the Property; and that the variance requested is the minimum variance 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. 11269 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The existing dwelling was constructed in 1959, which was prior to the implementation of the Sussex County Zoning Code and which makes the situation unique;
2. The need to relocate the laundry room from the basement due to wetness makes the Property unique;
3. The variance is necessary to enable reasonable use of the Property;
4. The difficulty was not created by the Applicant;
5. The dwelling was not constructed by the Applicant;
6. The variance will not alter the essential character of the neighborhood;
7. The variance sought is the minimum variance necessary to afford relief; and
8. The variance represents the least modification of the regulation at issue.

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.

Case No. 11270 – Rodney Wilson, Sr. & Geraldine Wilson – west of Road 249 (Shingle Point Road) approximately 816 feet north of Road 253 (Briarwood Road). (Tax Map I.D. 1-35-11.00-50.03)

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

Mr. Lank presented the case. Rodney Wilson and Geraldine Wilson were sworn in and testified requesting a special use exception to place a manufactured home more than five (5) years old. Mr. Wilson testified that the existing stick-built dwelling needs to be torn down due to the termite damage; that the Applicants want to replace the dwelling with a 1994 manufactured home that measures twenty eight (28) feet by forty four (44) feet. Mr. Wilson submitted pictures of the old dwelling. Mr. Wilson testified that the proposed unit is in excellent shape; that the Applicants intend to place the dwelling on a foundation at some point; that the Applicants will put skirting around the house; that the Applicants will connect to the existing septic system and well; that the Property is surrounded by farmland and family; and that there are other manufactured homes in the area.

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

Mr. Rickard stated that he would move that the Board recommend approval of Special Use Exception Application No. 11270 for the requested special use exception based on the record made at the public hearing because the use does not substantially affect adversely the uses of the adjacent and neighboring properties.

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

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

Case No. 11271 – Nicole Sartori & Louis Sartori – northwest of Road 270 (Wolfe Neck Road) 1,100 feet northeast of Route One near Midway. (Tax Map I.D. 3-34-6.00-349.01)

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

Mr. Lank presented the case. Louis Sartori was sworn in and testified requesting a variance of 2.1 feet from the five (5) feet rear yard setback requirement and a variance of 2.2 feet from the five (5) feet side yard setback requirement for an existing shed. Mr. Sartori testified that he placed the shed on the Property without a building permit; that once he discovered a building permit was required he obtained one right away; that when he obtained the building permit he realized the shed did not meet the required setbacks; that there is a large maple tree in the center of his backyard that prohibits the shed from complying with the required setbacks; that he does not want to cut down the tree; that there was a previous shed on the Property in the same location; that the previous shed measured ten (10) feet by twelve (12) feet; that his neighbors

sheds all seem to be set close to the property lines; that he has no storage space in the house and that he cannot put anything of value under the house; that the Property is narrow and has a small backyard; that the variances will enable reasonable use of the Property; that the tree was on the Property prior to the house being built; that the variances will not alter the character of the neighborhood; and that the variances requested are the minimum variances 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. 11271 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The small yard and existing tree makes the Property unique;
2. The variances are necessary to enable reasonable use of the Property;
3. The 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. Mills, seconded by Mr. Rickard, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

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

Case No. 11272 – Kevin M. Kerrigan – northeast corner of Pearl Street (a.k.a. Whitledge Street) and Phillips Road 100 feet southwest of Mercer Avenue (Road 297A) in Oak Orchard area northeast of Road 297 (Oak Orchard Road). (Tax Map I.D. 2-34-35.05-46.00)

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

Mr. Lank presented the case and advised the Board that the Office of Planning & Zoning received one (1) letter in support of the Application.

Kevin Kerrigan and Douglas Annand were sworn in and testified requesting a variance of 16.4 feet from the thirty (30) feet from the front yard setback requirement for a proposed deck and a variance of 0.8 feet from the five (5) feet side yard setback requirement for an existing shed.

Mr. Annand testified that he is a surveyor; that the Applicant obtained the Property in 2008; that the existing dwelling is non-conforming structure as it pre-dates the existence of the Sussex County Zoning Code and is located in the setback areas; that the Property is located in

Oak Orchard and floods frequently; that Applicant had the existing dwelling raised straight up to comply with flood zone regulations; and that the builder obtained a building permit but did not realize raising the dwelling created a further encroachment. Mr. Annand submitted to the Board pictures of the dwelling and an old survey of the Property. Mr. Annand testified that the Property fronts on Pearl Street; that the proposed decks are within the same footprint as the previous porches on the Property; that the proposed decks are needed to access the dwelling through existing doors; and that the shed has been on the lot for many years.

Mr. Kerrigan testified that he inherited the Property from his father; that he always recalls the shed being on the Property; and that the lot has flooded during most storms.

Mr. Lank advised the Board that the Property was originally laid out as three (3) separate twenty five feet wide lots.

Mr. Kerrigan testified that there is a need for stairs and decking leading to the access points of the dwelling; that the intersection of Pearl Street and Phillips Road is not an active intersection; that the lot is small which makes it unique in size; that the Property cannot be developed in strict conformity; that the variances will enable reasonable use of the Property; that the difficulty was not created by the Applicant; that the variances will not alter the essential character of the neighborhood; that the variances will not be detrimental to the public welfare; and that the variances 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. Hudson stated that he would move that the Board recommend approval of Variance Application No. 11272 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The flooding issues and the size of the lot make the Property unique;
2. The Property cannot be developed in strict conformity with the Sussex County Zoning Code;
3. The 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. Hudson, 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. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

OLD BUSINESS

Case No. 11258 – Michelle Benson – southeast of Route One, southeast of Center Avenue, and 90 feet south of Skyview Street, being Lot 59 Block D within Sea Air Village, a Mobile Home Park. (Tax Map I.D. 3-34-13.00-310.00 Unit 19813)

An application for a variance from the separation requirement between units in a mobile home park and the maximum allowable lot coverage in a mobile home park.

Mr. Lank presented the case, which had been left open to allow the Applicant time to prepare their case that was previously scheduled on September 9, 2013. Judith Benson and William Benson were sworn in and testified requesting a variance of four (4) feet from the twenty (20) feet separation requirement between units for a proposed shed, a variance of 5.6 feet from the twenty (20) feet separation requirement between units for a proposed deck, and a variance of forty one (41) square feet from the maximum thirty five percent (35%) lot coverage requirement.

Ms. Benson testified that the Applicants previously had a deck and shed on the Property with their old mobile home; that the older mobile home has been replaced; that the deck and shed would be consistent with the prior use; that the use will not alter the character of the neighborhood; that the neighbors on one side have a covered porch and the neighbors on the other side have a gazebo and patio; that they have permission from the Sea Air for the deck; that the proposed deck will be 14.4 feet from the neighboring dwelling; that the contractor only needs six (6) feet to build the deck; that there is plenty of space between the units; that their neighbors have outdoor living space; that the variances will not be detrimental to the public welfare; that the variances represent the least modifications of the regulations at issue; that the variances are necessary to afford relief; that the new unit measure twelve (12) feet wide; that the proposed deck and shed will enhance the Property; that they plan to retire and live here permanently; that the difficulty was not created by the Applicant; that the variances will not impair the uses of adjacent and neighboring properties; that the shed will provide the only storage available on the lot; and that the neighbor has no objection to the Application.

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

Mr. Lank read one (1) letter of support into the record.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11258 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The shape of the Property is unique;

2. The variances are necessary to enable reasonable use of the Property;
3. The 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. Hudson, 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.

OTHER BUSINESS

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

An application for a special use exception to place a billboard.

Requesting an eighteen (18) month time extension.

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

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

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

Meeting Adjourned 9:22 p.m.