

## MINUTES OF JANUARY 27, 2014

The regular meeting of the Sussex County Board of Adjustment was held on Monday, January 27, 2014, 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 – Director of Planning and Zoning, and Mrs. Jennifer Norwood – Recording Secretary.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously to approve the Revised Agenda as circulated. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously to approve the Minutes and Finding of Facts for November 18, 2013 as circulated. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes and Finding of Facts for December 9, 2013 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. 11318 – William R. Sands** – south of Route 54 (Lighthouse Road) and being southwest of Cleveland Avenue on the end of the street and 1,100 feet south of Lincoln Drive and being Lot 24 within Cape Windsor Subdivision. (Tax Map I.D. 5-33-20.18-117.00)

An application for variances from the side 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 other than exhibits submitted by the Applicant through his attorney.

William Sands and Beverly Houtchins were sworn in to testify about the Application. Raymond Tomasetti, Esquire, presented the case to the Board on behalf of the Applicant and stated that the Applicant is requesting a variance of eight (8) feet from the ten (10) feet side yard setback requirement for proposed mechanical equipment, a variance of five (5) feet from the ten (10) feet side yard setback requirement for a proposed dwelling, and a variance of five (5) feet from the ten (10) feet side yard setback requirement for proposed steps and landing.

Mr. Tomasetti stated that the parents of Mr. Sands and Ms. Houtchins purchased the Property from the developer of Cape Windsor in 1970; that a plot for Cape Windsor originally showed an error of four (4) feet along the common property line with Lot 25; that to correct this

error a four (4) feet portion was conveyed from a portion of the five (5) feet walkway from Cleveland Avenue to Big Assawoman Bay; that the error was not discovered until after the placement of the existing manufactured home; that no variances were obtained for the existing manufactured home; that the existing manufactured home is only 3.3 feet from the common property line with Lot 23; that the Applicant seeks approval for variances for placement of a new dwelling on the Property; that the proposed dwelling will be five (5) feet from the property line; and that there will be no greater impact on neighboring properties by the placement of the proposed dwelling. Mr. Tomasetti submitted pictures of the Property to the Board for consideration. Mr. Tomasetti stated that, if the existing dwelling remained, a variance of 6.7 feet would be needed rather than the five (5) feet variance requested for the proposed dwelling; that a greater buffer between Lot 23 will be created; that the existing HVAC unit is on the Property; and that the difficulty was not created by the Applicant.

Mr. Sands testified that he only seeks a variance that is consistent with other lots in the neighborhood and that similar variances were granted for Lot 25. Mr. Sands, under oath, confirmed the statements made by Mr. Tomasetti.

Darin Shartzter and Vicki Shartzter were sworn in and testified in opposition to the Application. Mr. Shartzter testified that he owns Lot 25; that he is not so much opposed to the variance as he is concerned there is still an error on the survey in respect to the property line. Ms. Shartzter testified that she also has questions about the location of the property line. Mr. Shartzter testified that the deed and survey conflict with one another; that they have had their deed corrected and believe the survey submitted by the Applicants is incorrect; that they have been granted a variance for their lot; and that they have no objection to the requested variances which are on the eastern side of the Property but they want clarification of their lot line, which is on the western side of the Property.

In rebuttal, Mr. Tomasetti stated that the survey submitted with the Application is accurate; and that the deed has been corrected.

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

The Board found that four (4) parties appeared in opposition to the Application.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the case be taken under advisement. 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.

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. 11318 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique because it is small and only forty (40) feet wide;
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. Workman, and carried unanimously that the variances be **granted for the reasons stated, and based on the survey submitted with the Application, dated November 14, 2013**. 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. 11319 – William Broadfoot & Marie Broadfoot** – south of Route 54 (Lighthouse Road) and being east of Wilson Avenue 600 feet south of Lincoln Drive and being Lot 12 Block 3 within Cape Windsor Subdivision. (Tax Map I.D. 5-33-20.18-150.00)

An application for variances from the side yard and rear 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.

Darrell Grier was sworn in to testify about the Application. James Fuqua, Esquire, presented the case to the Board and stated that the Applicants are requesting a variance of five (5) feet from the ten (10) feet side yard setback requirement, a variance of five (5) feet from the twenty (20) feet rear yard setback requirement for a proposed dwelling, and a variance of 8.2 feet from the ten (10) feet side yard setback requirement for proposed HVAC units.

Mr. Fuqua submitted exhibits to the Board for its consideration. Mr. Fuqua stated that the Applicants are in Florida and Mr. Grier is the contractor for the proposed dwelling; that the Applicants own Lot 12, Block 3 in Cape Windsor which is on the south side of Route 54; that the lot is fifty (50) feet wide and the rear yard borders the lagoon; that the Cape Windsor community was developed as a manufactured home community; that Cape Windsor has unique setback requirements; that there has been a history in Cape Windsor of replacing mobile homes with larger, modern dwellings; that the Applicants intend to place a larger dwelling on the Property; that the proposed dwelling will measure 28.4 feet by 65.4 feet; that the variances will enable reasonable use of the Property in a manner similar to the use of other lots in Cape Windsor; that the difficulty has been created by the design of the community; that the variances will not alter the essential character of the neighborhood, since the proposed dwelling will conform to other

dwellings in the community; that there have been numerous variances granted in the development; that the difficulty was not created by the Applicants; that the Property cannot otherwise be developed; and that the variances are the minimum variances to afford relief.

Mr. Grier, under oath, confirmed the statements made by Mr. Fuqua.

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. 11319 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;
2. The Property is only fifty (50) feet wide;
3. The variances are necessary to enable reasonable use of the Property;
4. The difficulty was not created by the Applicants;
5. The variances will not alter the essential character of the neighborhood as there have been other variances granted in the neighborhood;
6. The variances sought are the minimum variances necessary to afford relief; and
7. The variances requested are 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. 11320 – Ronald Elburn & Sharon Elburn** – north of Route 54 (Lighthouse Road) and being west of Blue Teal Road 220 feet north of Swann Drive and being Lot 5 Block C within Swann Keys Subdivision. (Tax Map I.D. 5-33-12.20-39.00)

An application for variances from the side 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.

Ronald Elburn and Sharon Elburn were sworn in to testify about the Application. James Fuqua, Esquire, presented the case and stated that the Applicants are requesting a variance of five (5) feet from the ten (10) feet side yard setback requirement for a proposed dwelling, a variance of 8.2 feet from the ten (10) feet side yard setback requirement for a proposed HVAC unit, a variance of 4.4 feet from the ten (10) feet side yard setback requirement for a proposed

attached shed, and a variance of 3.4 feet from the ten (10) feet side yard setback requirement for a proposed roof over a landing.

Mr. Fuqua stated that the Property is located within Swann Keys; that the Property measures 40 feet wide by 105 feet deep; that the Property fronts on Blue Teal Road and borders a lagoon in the rear; that the proposed dwelling will measure twenty-four (24) feet wide by sixty-six (66) feet long; that the lots in Swann Keys are narrow in size as compared to conventional lots; that the variances will enable reasonable use of the Property; that the Applicants will comply with the front and rear yard setbacks; that the Property is unique due to its narrow width and small size; that the proposed home is a reasonable use of the Property as it is similar to other homes in the community; that the Applicants did not create the difficulty; that the community has evolved from a mobile home community to a community for single family dwellings; that similar variances have been granted in the community; that the variances requested will not alter the character of the neighborhood as the proposed dwelling will be similar to other dwellings in Swann Keys; that the variances requested are the minimum variances necessary to afford relief; that over eighty (80) variances have been granted in the development; and that over thirty (30) variances have been granted on Blue Teal Road, including a lot adjacent to the Property.

Mr. and Mrs. Elburn, under oath, confirmed the statements made by Mr. Fuqua.

Mr. Fuqua stated that the attached shed cannot be accessed from inside the dwelling and that the shed is ground level

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. 11320 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 and narrow width;
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;
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. 11321 – Clyde Betts & Son, Inc.** – south of Route 16 (Broadkill Road) 1,834 feet west of Road 233 (Reynolds Road). (Tax Map I.D. 2-35-15.00-26.00 (part of))

An application for variances from the side yard and rear yard setback and minimum lot width requirements, and a variance to retain a mobile home on less than ten (10) acres.

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

Wesley Betts and Harold Betts were sworn in to testify about the Application. Bruce Rogers, Esquire, presented the case to the Board on behalf of the Applicants and stated that the Applicants seek a variance of 0.973 acres from the ten (10) acre requirement to retain a mobile home, a variance of 4.9 feet from the fifteen (15) feet side yard setback requirement for an existing mobile home, a variance of 25.44 feet from the one hundred fifty (150) feet lot width requirement, a variance of five (5) feet from the one hundred (100) feet setback requirement for an existing hog house, a variance of 71.5 feet from the required one hundred (100) feet setback requirement for an existing hog house, a variance of 95.9 feet from the one hundred (100) feet setback requirement for an existing hog house, a variance of 82 feet from the one hundred (100) feet setback requirement for an existing hog house, and a variance of twenty-five (25) feet from the one hundred (100) feet setback requirement for an existing hog house. Mr. Rogers submitted exhibits for the Board to review.

Mr. Rogers stated that the Property was carved out of a larger parcel in the 1970s for the hog farm and was formally surveyed in the 1990s when Purina required that the Property be separated from the larger parcel for insurance reasons; that the Property is designed as such due to the topography of the land; that the Applicant owns all of the adjacent property; that all structures on the Property pre-date the comprehensive land use plan; that the existing manufactured home is occupied by the on-site farm manager; that the Property is just under the ten (10) acre requirement for the mobile home; that the size and shape of the parcel were designed to preserve the surrounding farmlands; that there would be an exceptional practical difficulty to relocate the existing hog houses; that the variances will enable the continued use of the properties and avoid default on loans associated with the Property; that the Applicant did not create the exceptional practical difficulty; that the proposed variances do not interfere with the working farm surrounding the hog farm; that the proposed property will allow both farms to continue “as is”; that the surrounding property is in the Farmland Preservation Act and cannot be developed; and that the character of the neighborhood would not be affected by the variances as the neighborhood consists of farmland.

Mr. Betts, under oath, confirmed the statements made by Mr. Rogers.

Mr. Rogers stated that the Property is not being transferred; that the hog farm was separated from the larger farm in such a way that it would be isolated.

Mr. Betts testified that and that the hog houses have concrete foundations and underground pits for the removal of manure.

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. 11321 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The use of the Property is unique;
2. The Property has been used as a hog farm;
3. The variances are necessary to enable reasonable use of the Property;
4. The difficulty has not been created by the Applicant;
5. The variances will not alter the essential character of the neighborhood; and
6. The variances sought are the minimum variances necessary to afford relief.

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

**Case No. 11322 – Evan Krometis** – east of Route 1 and being northeast of South Carolina Avenue and Bunting Avenue and being Unit One. (Tax Map I.D. 1-34-23.16-300.00)

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 not received any correspondence in support of or in opposition to the Application.

Evan Krometis, Toni Krometis, and David Elko were sworn in and testified requesting a variance of 3.8 feet from the ten (10) feet side yard setback requirement and a variance of 3.8 feet from the ten (10) feet rear yard setback requirement for a duplex unit and decks.

Evan Krometis submitted exhibits to the Board for its consideration. Mr. Krometis testified that the existing duplex townhouse is twenty-eight (28) years old; that the Property is located on Bunting Avenue and faces the Atlantic Ocean in the rear; that the lot is narrow as the entire lot is only fifty (50) feet wide and the Applicant's portion is twenty-five (25) feet wide; that the additions would be made to the north and east sides of the Property; that the Department of Natural Resources and Environmental Control ("DNREC") has reviewed the plans and approved of them; and that the proposed renovations will update and improve the existing structure in character with other homes in the neighborhood.

Toni Krometis testified that the Applicants want to relocate the north facing entrance to the west side of the unit to provide adequate protection from the elements; and that the existing entrance is continually battered by the winds.

Evan Krometis testified that the existing porch was approved for a previous side yard variance and that this request is to extend the porch, but not to further encroach into the setback areas; that the neighbors support the Application; that the variances are necessary to enable reasonable use of the Property; that the Applicants did not create the need for the variances; that the narrow lot is unique; that the proposed layout is consistent with other homes in the neighborhood; that the property to the north is a very wide property and the structure located thereon will be forty (40) feet from the proposed additions; that the variances will not be detrimental to the public welfare; that the variances represent the least modifications possible; that the variances are necessary to afford relief; that the Applicants own twenty-five (25) feet of the Property; that the owner of the other half of the duplex has similar plans to update its unit; that there is currently no first floor powder room; that the variances will not alter the character of the neighborhood; that the Applicants are not building into common elements; that the area of expansion is on property owned by the Applicants; and that there are numerous condominiums in the area.

Mr. Elko testified that the proposal will not interfere with the parking; that the dwelling will be extended 3.8 feet on the east side for a deck and screen porch.

Mr. Krometis testified that there is one parking space under the building; that the original unit consisted of 1,680 square feet and that the additional conditioned space will be 110 square feet.

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. 11322 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to the damaging winds;
2. The variances are necessary to enable reasonable use of the Property;
3. The variances sought are the minimum variances to afford relief; and
4. The variances will not alter the essential character of the neighborhood.

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, Mr. Hudson – yea, Mr. Mills - yea, and Mr. Callaway – yea.

**Case No. 11323 – M. Deloris Winkelman** – north of Route 54 (Lighthouse Road) and being east of Canvasback Road 1,600 feet north of Swann Drive and being Lot 40 Block D within Swann Keys Subdivision. (Tax Map I.D. 5-33-12.16-383.00)

An application for variances from the side 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.

Charles Shade, of Chesapeake Homes, was sworn in and testified requesting a variance of five (5) feet from the north side yard setback requirement and a variance of five (5) feet from the five (5) feet south side yard setback requirement for a proposed manufactured home. Mr. Shade testified that he is the owner of Chesapeake Homes; that the Property is located in Swann Keys; that the lots in Swann Keys are very narrow; that the existing manufactured home is in disrepair; that Swann Keys was developed originally as a mobile home community but has evolved into a community with larger dwellings; that the proposed dwelling is in character with the neighborhood; that the existing single-wide manufactured home would require variances on this lot in order to comply with the Sussex County Zoning Code; that there have been numerous variances granted in the community; that the variances will enable reasonable use of the Property; that the difficulty was not created by the Applicant; that the proposed dwelling will enhance the character of the neighborhood; that the neighbors on the north and south sides of the Property have no objection to the Application; that the use will not be detrimental to the public welfare; that the variances are the least modifications possible of the regulation at issue; and that the requested variances of five (5) feet were to include the overhang for the dwelling.

Mr. Lank stated that the Applicant would be allowed to have an overhang of two (2) feet.

Mr. Shade testified that the variance needed would actually be four (4) feet on each side; that the dwelling will be placed on a concrete foundation; and that the HVAC unit will meet the required setbacks.

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. 11323 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The narrow lot is unique in size;

2. The Property is only forty (40) feet wide;
3. The variances are necessary to enable reasonable use of the Property;
4. The difficulty was not created by the Applicant;
5. The variances will not alter the essential character of the neighborhood; and
6. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Rickard, seconded by Mr. Mills, and carried unanimously that the variances be **granted for a variance of four (4) feet on each side and 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. 11324 – John C. Weisel, Trustee** – north of Road 351 (Clubhouse Road) and being north of Seaside Drive 100 feet east of Ocean View Place and being Lot 38 within Whites Creek at Bethany Residential Planned Community. (Tax Map I.D. 1-34-8.00-576.00)

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.

John Weisel was sworn in and testified requesting a variance of 2.12 feet from the thirty (30) feet front yard setback requirement for a proposed attached garage extension. Mr. Weisel submitted exhibits to the Board for consideration. Mr. Weisel testified that the proposed eighty (80) square-foot extension will allow space for his woodworking; that the Property is unique because the rear of the Property backs up to wetlands and does not allow room for a shed; that he cannot expand into the side yard due to the side yard setback requirements; that the Homeowners Association and his neighbors support the Application; that the dwelling is over forty (40) feet from the existing street; that the addition should have no effect on the neighborhood; that the addition will mirror the front of the existing dwelling; and that the variance will not alter the character of the neighborhood.

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. 11324 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 Property is small and is located in a Residential Planned Community;

3. The variance is necessary to enable reasonable use of the Property;
4. The dwelling cannot be expanded in strict conformity with the Sussex County Zoning Ordinance;
5. The difficulty was not created by the Applicant;
6. The variance will not alter the essential character of the neighborhood; and
7. The variance sought is the minimum variance necessary to afford relief.

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

**Case No. 11325 – Norman Sugrue** – east of Road 273 (Country Club Road) and being southeast of Kings Bridge Road 500 feet southwest of Sherborne Road and also being Lot 25 Block 7 in Rehoboth Beach Yacht and Country Club. (Tax Map I.D. 3-34-19.00-921.00)

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.

Norman Sugrue was sworn in and testified requesting a variance of five (5) feet from the thirty (30) feet front yard setback requirement for a proposed dwelling. Mr. Sugrue testified that he purchased the Property with his wife ten (10) years ago; that the Property did not have a bulkhead when he purchased the Property but he had one installed; that the Property is adjacent to federal wetlands; that he has lost over twelve (12) feet from the Property since he purchased it; that he wants to build a house on the Property; that the side yard setbacks are the same as the rear yard setback requirement which limits the buildable area; that the minimum elevation of the house is seven (7) feet; that the dwelling will have a reverse floor plan with the entrance on the second floor; that it has been challenging to configure the location of the staircase to the home; that, due to the erosion of Property, there is not much room in the rear yard for a patio and pool; that a similar variance granted in the area several years ago due to erosion issues but nothing was constructed thereon; that the variance will not be detrimental to the public welfare; that his neighbor across the street supports the Application; that the front yard setback requirement for Rehoboth Beach Yacht & Country Club is twenty-five (25) feet but the Sussex County requirement is thirty (30) feet; and that the variance will not alter the character of the neighborhood.

Mr. Lank stated that parcel 919, which is two properties away from the Property, received a variance for a front yard setback in 2007.

Alvin Goldfarb was sworn in and testified in support of the Application. Mr. Goldfarb testified that he has lived in the area for thirty (30) years and that he looks forward to having the Applicant as his neighbor.

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 the Variance Application No. 11325 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 location of the federal wetlands and the physical changes to the Property caused by the wetlands;
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;
5. The proposed dwelling will enhance the neighborhood; and
6. The variance sought is the minimum variance 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. 11326 – Joseph Roy & Virginia Roy, Trustees** – southeast of Road 350 (Railway Road) and southwest of Denton Woods Road and northwest of Oakwood Road and being Lot 1 within Denton Woods Subdivision. (Tax Map I.D. 1-34-8.00-325.00)

An application for a variance from the corner side 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.

Janice Clark and Michael Roy were sworn in and testified requesting a variance of two (2) feet from the required fifteen (15) feet corner side yard setback requirement for an existing dwelling. Mr. Roy testified that the dwelling on the Property is located thirteen (13) feet from the side yard property line; that Ms. Clark and he inherited the Property from their parents through their trust; that they are trying to sell the Property and have found suitable purchasers; that their father purchased the Property in 2004; that the existing dwelling and additions were built in 1995; that their father did not make any changes to the Property; that the non-conforming

issues pre-date his father's purchase of the Property; that the conditions surrounding the Property are unique; that the variance is necessary to enable reasonable use of the Property; that the need for the variance was not created by the Applicants; that an old shed was removed from the Property; that the survey completed for settlement showed the encroachment; that the variance will not alter the character of the neighborhood; that the variance will not impair the uses of the neighboring properties; that the variance is not detrimental to the public welfare; that the variance is the least modification possible of the regulation at issue; and that the variance requested is the minimum variance to afford relief.

Mr. Lank stated that the dwelling was originally a mobile home and that certificates of compliance were issued for additions to the dwelling; and that the Property is a very restricted lot with double front yard setback requirements and a corner lot setback requirement.

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. 11326 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The situation regarding the Property is unique;
2. The variance is necessary to enable reasonable use of the Property;
3. The difficulty was not created by the Applicants;
4. The dwelling was on the Property prior to the Applicants' acquisition of the Property;
5. The variance will not alter the essential character of the neighborhood;
6. The variance will not be detrimental to public welfare; and
7. The variance sought is the minimum variance necessary to afford relief.

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

**Case No. 11327 – Raymond Leak and Claudia Leak** – northeast of Route 54 (Lighthouse Road) and southwest of Janice Circle and 600 feet east of Oliver Drive and being Lot 181 within Bayview Landing Residential Planned Community. (Tax Map I.D. 5-33-13.00-201.00)

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

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

Claudia Leak, Raymond Leak, and Tom Nuttle were sworn in and testified requesting a variance of 12.6 feet from the required thirty (30) feet front yard setback requirement for an existing shed. The Applicants submitted pictures and letters of the support for the Board to review.

Mr. Nuttle testified that he is the builder who obtained the building permit for the shed; that the Homeowners Association approved the location of the shed; that he was unaware the shed was not in compliance with Sussex County Zoning Code as he mistakenly thought the Property was a corner lot; that the shed is located in the front yard to the side of the dwelling; that he believed the shed was being placed in the side yard, in which case, the shed would have been in compliance; that his building permit clearly showed the location of the shed; that the lot is unique in size and shape; that there is no other location on the Property for the shed; that the shed had been built on a concrete foundation with footers; that the variance does not alter the character of the neighborhood; that the neighbors support the Application; and that the shed to be used for lawn care equipment.

Mr. Lank stated that he has received eighteen (18) letters in support of the Application including the one previously received by the Office of Planning & Zoning.

Patricia Cusak was sworn in and testified in opposition to the Application. Ms. Cusak testified that she feels the Applicants must abide by the County rules; and that the shed could have been placed elsewhere on the Property without the need for a variance.

Audrey Pickup was sworn in and testified in support of the Application. Ms. Pickup testified that she lives across the street and has been a member of the developments Board of Directors; that the shed was approved by the Architectural Review Board; and that she believes the variance request meets the standards for granting a variance.

Nick Michael was sworn in and testified in support of the Application. Mr. Michael testified that the shed looks good and compliments the dwelling.

Robert Pickup was sworn in and testified in support of the Application. Mr. Pickup testified that the shed is well constructed and has a good appearance; and that it is not out of character with the neighborhood.

Rosemary Rogers was sworn in and testified in support of the Application. Ms. Rogers testified that she can see the shed from her dwelling; and that she has no problem with the location of the shed.

Dee Michael was sworn in and testified in support of the Application. Ms. Michael testified that she lives across the street and the shed is a favorable addition to the neighborhood.

The Board found that eight (8) parties appeared in support of the Application.

The Board found that one (1) party appeared 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. Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11327 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique as it is oddly shaped and has no rear yard;
2. The variance is necessary to enable reasonable use of the Property;
3. The 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.

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.

The Board recessed for ten (10) minutes.

### **OLD BUSINESS**

**Case No. 11310 – Zea, LLC** – northeast corner of Bunting Avenue and West Virginia Avenue and 450 feet east of Route One (Coastal Highway) and being Lot 1 E in the unincorporated section of Fenwick Island. (Tax Map I.D. 1-34-23.16-329.00)

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

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the case be **tabled until February 3, 2014 since the Board has not been able to review the minutes from the public hearing held on January 6, 2014.** Motion carried 5 – 0.

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

**Case No. 11296 – AT&T** – east of Route 1 (Coastal Highway) 100 feet north of Jefferson Bridge Road (Road 361-A). (Tax Map I.D. 1-34-17.07-191.00)

An application for a special use exception for a telecommunications tower.

The Board discussed the case, which has been tabled since January 6, 2014.

Mr. Rickard stated that the Board had a lot of evidence to review on this case; that the Applicant meets most technical requirements for the tower; that the argument is whether the tower will substantially adversely affect the uses of neighboring and adjacent properties; and that he feels the proposed tower substantially affects adversely the uses of the neighboring and adjacent properties.

Mr. Mills stated that both sides had strong arguments; that the opposition showed strong emotion and feel they proved that the tower will substantially adversely affect the uses of their properties; particularly their enjoyment of their properties; and that all possibilities for collocation have not been exhausted.

Mr. Rickard stated that there was not a significant drop in rentals in the area.

Mr. Hudson stated that he does not feel the tower substantially adversely affects the uses of neighboring and adjacent properties; that the Property is a commercial property; and that the number of calls serviced by the tower will likely grow.

Mr. Mills stated that the tower has affected the enjoyment of the neighboring properties.

Mr. Workman stated that the tower has not affected the use and enjoyment of the neighboring properties; that the properties have still been rented and the tenants still use the pool area; that there has been no negative comments made in reference to the tower in reviews made by renters; that the tower is on commercial property and that he does not feel that the use substantially adversely affects the surrounding and adjacent properties; and that the opposition did not prove otherwise.

Mr. Hudson stated that this is the third time the tower has been before the Board; that this Application differs in the fact that there has been a tower on the site and in his opinion has not

substantially adversely affected the surrounding properties; and that he believes towers do not differ much from other utility poles.

Mr. Rickard stated that he would move that the Board recommend denial of Special Use Exception Case No. 11296 for the requested special use exception based on the record made at the public hearing because the use does substantially affect adversely the uses of the adjacent and neighboring properties.

Motion by Mr. Rickard, seconded by Mr. Mills, and carried with three (3) votes that the special use exception be **denied for the reasons stated**. Motion carried 3 – 2.

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

**Meeting Adjourned 10:05 p.m.**