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May 28, 2013

ELECTRONIC TRANSMISSION AND FEDERAL EXPRESS OVERNIGHT

Ms. Barbara Delaney
(Barbara.R.Delaney@hud.gov)
Office of Fair Housing and Equal Opportunity
Philadelphia Center Director
100 Penn Square East - Wanamaker Building,
10th Floor
Philadelphia, PA 19107

Christopher J. Fregiato, Esq.
(Christopher.Fregiato@usdoj.gov)
Chief
Attn: DJ #175-15-46
Housing and Civil Enforcement Section
Civil Rights Division
United States Department of Justice
1800 G Street NW
Washington, DC 20006

Re: First Semi-Annual Compliance Report Under the Sussex County Voluntary Compliance Agreement (HUD) and Consent Decree (USDOJ)

Dear Ms. Delaney and Mr. Fregiato:

This correspondence serves as Sussex County's first semi-annual compliance report ("First Semi-Annual Compliance Report") as required under Section V(A)(1) of the Voluntary Compliance Agreement ("VCA") executed between Sussex County and the U.S. Department of Housing and Urban Development ("HUD") on November 28, 2012, and Section VI(18) the Consent Decree ("CD") executed between Sussex County and the U.S. Department of Justice ("USDOJ") on November 28, 2012, entered by the Court on December 19, 2012 (Civil Action No. 12-1591-MPT). Please note, however, that the County is expressly reserving its right to supplement this First Semi-Annual Compliance Report up through June 19, 2013, with information regarding the requirements under the CD since June 19, 2013 is the due date for the First Semi-Annual Compliance Report to USDOJ. Exhibits are attached as noted.

This correspondence expressly incorporates by reference all of the previous reporting information submitted to HUD and USDOJ in the County's correspondences dated December 28th, 2012 and March 28th, 2013. The County also incorporates by reference its submission to you of its revised Affordable and Fair Housing Marketing Plan, dated May 13, 2013. For the sake of brevity and efficiency, when an item required under the CD or the VCA has been fulfilled and notice of the fulfillment of that requirement has been provided to USDOJ and HUD in one of these previous correspondences, we will simply note the requirement below and the correspondence in which it has been addressed instead of repeating that information in this compliance report.

I. Requirements Under the Consent Decree

The compliance status of each requirement under the CD is addressed below in the numerical order in which the requirement is found.

A. **Section I(8)(a) through (d)** – General Injunction. The County believes it is in compliance with the elements of the general injunction as set forth in this section.

B. **Section II** – Development of New Horizons by Diamond State CLT. With the exception of Subsection II(11)(a), the requirements of this section become active upon submission of an application by Diamond State CLT. Since no application has yet been received, the requirements have not been activated. With regard to Subsection II(11)(a), the County affirmatively states that it is in compliance with the requirements of this subsection which prohibit public disparagement of Diamond State CLT, the New Horizons development project, or the viability of the community land trust model for affordable housing development.

C. **Section III(12)** – Additional Provisions Related to Affordable and Fair Housing. This section requires certain notice to an applicant should the County decline, reject, or deny any type of request or application for zoning or land use approval related to an Affordable Housing proposal or a proposal processed under the Moderately Priced Housing Unit ("MPHU") program or the Sussex County Rental Program ("SCRP"). Although the County believes the Planning and Zoning Commission has not declined, rejected, or denied any such request and therefore believes it is in compliance with this section, the County reserves the ability to amend this response once the County and USDOJ have clarified the parameters of what constitutes an application related to an Affordable Housing proposal.

D. **Section III(13)(a) through (d)** - Additional Provisions Related to Affordable and Fair Housing. This section requires the County to submit to USDOJ a draft Affordable and Fair Housing Marketing Plan ("Marketing Plan") inclusive of specific items within one hundred (100) days of the adoption of the CD. The one-hundred-day deadline was April 1, 2013. The County submitted its draft Marketing Plan in its correspondence to USDOJ and HUD dated March 28, 2013. USDOJ provided comments to the draft Marketing Plan by letter dated April 29, 2013,

and the County submitted a revised Marketing Plan to USDOJ by letter dated May 13, 2013. Under the provisions of this section, the County must proceed to implement the Marketing Plan within five (5) days upon its approval by USDOJ. At this time, the County is awaiting USDOJ's notice of approval.

One of the items required for inclusion in the Marketing Plan, under Section III(13)(a)(iii) of the CD, is that the County will propose an ordinance to modify its MPHU program to apply to homebuyers earning 50% to 125% of the County's median household income. The County is pleased to report that this ordinance (Ordinance No. 2302) was adopted by County Council at its meeting on April 23, 2013. A copy of Ordinance No. 2302 is attached as **Exhibit 1**.

E. **Section IV(14)** – Fair Housing Compliance Officer. This section requires the County to designate a Fair Housing Compliance Officer ("FHCO"). As set forth in its correspondence to USDOJ and HUD dated December 28, 2012, the County believes it is in compliance with this requirement.

F. **Sections IV(15) and (16)** - Fair Housing Compliance Officer. These sections require the FHCO to receive and review all complaints of housing discrimination made against the County, to keep a written record of verbal complaints, and to provide HUD and USDOJ with a copy of the complaints received and the County's response. The County has received, reviewed and concluded a complaint from Ms. Elva Allen, and has forwarded all of the required information to USDOJ. The County has also been contacted by two other individuals, Mr. Dennis Smith and Mr. [would not provide his first name] Fisher, alleging housing violations by the County. On both occasions, the individuals were provided with the County's Housing Discrimination Complaint Intake Form ("Form") and asked to complete the Form and return it to the County. Mr. Fisher declined to submit the Form, withdrew his request for a County response, and upon his request, was provided with contact information for USDOJ (Christopher Fregiato). Mr. Smith indicated that he would be completing the Form and, as of this time, the County is still waiting for the Form from Mr. Smith. Once it has been received, the County will forward it to USDOJ along with the County's response and any other documents received from Mr. Smith.

G. **Section IV(17)** - Fair Housing Compliance Officer. This section requires the FHCO to maintain copies of the CD, the Fair Housing Policy, the HUD Complaint form and HUD pamphlet entitled "Are you a victim of housing discrimination?" (HUD official forms 903 and 903.1, respectively) and make these materials freely available to anyone, upon request, without charge, including all persons making fair housing complaints to the FHCO. The required materials are freely available, upon request, without charge, to anyone at the County's office of Community Development and Housing. As a result, the County believes it is in compliance with this section.

H. **Section IV(18)** - Fair Housing Compliance Officer. This section requires the FHCO to report to the County every six months on activities taken in compliance with this CD. Six

months from the date of the CD is June 19, 2013. The FHCO anticipates reporting to the County at the upcoming County Council meeting on June 11th, in compliance with this section.

I. **Section V(19)** – Fair Housing Policy. Among other things, this section requires the County to adopt a Fair Housing Policy with the text as set forth in the CD at Attachment A. The policy was so adopted and notice of the fulfillment of this requirement was sent to USDOJ and HUD in the County's correspondence dated December 28, 2012.

This section also requires the County to include the Fair Housing Policy in all literature and information or application materials provided to residential developers, including developers of affordable housing. The County affirmatively states that it is now inserting the Fair Housing Policy in its land use application material. Lastly, this section requires the County to include the Fair Housing Policy as a readily accessible link on the County's website. This link is currently active and can be found on the County's website and under the Community Development & Housing webpage. As a result, the County believes it is in compliance with this section.

J. **Section V(20)** – Fair Housing Policy. This section requires the County to place the "Equal Housing Opportunity" or fair housing logo on the County's website and on all future published notices and advertisements related to housing or residential development. As reported in the County's submission to USDOJ and HUD dated December 28, 2012. This requirement has been fulfilled.

K. **Section VI(21) – (23)** – Training. As set forth in the County's correspondence to USDOJ and HUD dated March 28, 2013, the County has fulfilled all of the requirements for the initial, in-person training session required under sections 21 through 23. Additionally, there have been no newly elected, appointed, or hired individuals requiring training under the Consent Decree since the County's initial training session, and as a result, there are no additional Certificates of Training and Receipt of Consent Decree enclosed with this First Semi-Annual Compliance Report.

L. **Section VII(24)(a) through (c)** – Reporting and Recordkeeping. The requirements of this section do not become active until Diamond State CLT submits its application. No application has been submitted as of this time, therefore the requirements have not become activated.

M. **Section VII(25)** – Reporting and Recordkeeping. This section requires the submission to DOJ of contact information for the FHCO, the adopted Fair Housing Policy, a printout of the County's website showing the "Equal Opportunity Logo," the name of the fair housing trainer, and other information required by section 21(a). As set forth in the County's correspondences to USDOJ and HUD dated December 28, 2013, and March 28, 2013, the County has fulfilled the requirements of this section.

N. **Section VII(26)** – Reporting and Recordkeeping. This section requires the County to submit the executed Certificates of Training and Receipt of Consent Decree, and the proposed

Affordable and Fair Housing Marketing Plan, to USDOJ by April 1, 2013. These documents were submitted to USDOJ and HUD in the County's correspondence dated March 28, 2013. As a result, the County believes it has fulfilled the requirements of this section (also please see the County's response to Section VI(21) – (23) above).

O. **Section VII(27)(a) through (f)** – Reporting and Recordkeeping.

Webpage: This section requires the County to develop an Affordable Housing webpage and update the webpage twice annually with certain information. The County must post its first compliance report and notify USDOJ of such posting within six (6) months after entry of the CD (June 19th, 2013). The County is currently making final preparations for the launching of the webpage. The content of the webpage will conform to the requirements of this section and to the final, approved Affordable and Fair Housing Marketing Plan.

Compliance Report Postings: This section also sets forth the information that should be posted on the webpage as part of the compliance report postings. In particular, the compliance report postings on the webpage should include: (a) copies of any letters of support by the County for New Horizons; (b) a summary of each zoning or land-use request or application related to Affordable Housing or housing being processed under the MPHU or SCRP programs and certain information related to those requests or applications; (c) representative copies of any published notices or advertisements containing the phrase "Equal Housing Opportunity" or the fair housing logo; (d) copies of any Certifications of Training and Receipt of Consent Decree signed since the preceding compliance report; (e) copies of any materials previously submitted to USDOJ if such materials have been substantially altered or amended since they were last submitted; and (f) copies of any changes to the County's zoning or land use laws, regulations, policies or procedures addressing the construction of or approval process for Affordable Housing or housing being processed under the MPHU or SCRP programs enacted since the previous compliance report was submitted.

The County states affirmatively that the above required information will be posted on the Affordable Housing webpage when the webpage is activated on or before June 19, 2013. In the meantime, the County states the following with respect to the items required above, each in the order as presented above:

(a) To date, the County has not issued any letters of support for New Horizons and there is no active application for New Horizons in front of the County.

(b) The County's Board of Adjustment processed a request for a special use exception submitted by The Home of the Brave Foundation, Inc. Ultimately, the application was conditionally approved. The first page of the application, minutes from the Board of Adjustment meetings in which the application was considered and the Findings of Fact regarding the application are attached hereto as **Exhibit 2**. Additionally, the County processed a request for a special use exception submitted by Brandywine Seaside Pointe, LLC for the expansion of an existing

nursing home. This application was conditionally approved. The first page of the application, board minutes, and Findings of Fact regarding this application are attached hereto as **Exhibit 3.** The County reserves the ability to amend this response once the County and USDOJ have clarified the parameters of what constitutes an application related to Affordable Housing.

(c) Attached are representative copies of published notices containing the phrase "Equal Housing Opportunity" (**see Exhibit 4**). These notices are the agendas of County Council, the Planning and Zoning Commission, and the Board of Adjustment.

(d) There have been no newly elected, appointed, or hired individuals requiring training under the Consent Decree since the County's initial training session, and as a result, there are no additional Certificates of Training and Receipt of Consent Decree enclosed within this First Semi-Annual Compliance Report.

(e) There have been no materials altered or amended since such materials were last submitted to USDOJ.

(f) The County adopted Ordinance 2302 on April 23, 2013 to modify the MPHU program to apply to households earning 50% to 120% of the County's median household income. (See the attached **Exhibit 1**).

P. **Section VII(28)** – Reporting and Recordkeeping. This section requires the County to send to USDOJ any proposed change to the County's zoning or land-use laws, regulations, policies or procedures addressing the construction of or approval process for Affordable Housing or housing being processed under the MPHU or SCRP programs prior to the County's consideration. In its correspondence to USDOJ and HUD dated March 28, 2013, the County submitted a draft ordinance to modify the MPHU program to apply to households earning 50% to 120% of the County's median household income. This ordinance (Ordinance 2302) was subsequently adopted by the County on April 23, 2013 and is included as **Exhibit 1** in this correspondence.

Q. **Section VII(29)** – Reporting and Recordkeeping. This section requires the County to retain all records relating to any provision of the CD and gives USDOJ the opportunity to inspect and copy any such records. The County affirmatively states that it is in compliance with this section.

R. **Section VIII(30) – (31)** – Compensation of Aggrieved Persons. These sections require compensation to Diamond State CLT and set forth a procedure whereby, once the compensation is received, a release from Diamond State CLT ("Release") is obtained and sent to the County. The compensation has been received by Diamond State CLT and the Release has been received by the County via correspondence from USDOJ dated January 3, 2013. As a result, the County believes the requirements of these sections have been fulfilled.

S. **Section IX(32) – (33)** – Jurisdiction and Scope of Decree. These sections set forth the jurisdiction of the court in this matter and state that the CD is in effect for four (4) years. Nothing in these sections requires compliance on the part of the County.

T. **Section IX(34)** – Jurisdiction and Scope of Decree. This section states that modifications to the CD, other than a time limit for performance, will be effective upon the filing of a written agreement between the County and USDOJ with the Court. In order to modify the CD to include the agreement between USDOJ and the County regarding certain training provisions, calculations of deadlines, and posting of Certificates of Training and Receipt of Consent Decree as previously agreed upon between the County and USDOJ, attached as **Exhibit 5** is the County's draft Stipulation and Order for review.

U. **Sections X (Enforcement of This Decree), XI (Costs and Fees) and XII (Termination of Litigation Hold)**– Nothing in these sections require compliance on the part of the County.

II. Requirements Under the Voluntary Compliance Agreement

A. **Section II** – General Provisions. The only provision in this section requiring compliance on the part of the County is Section II(7). This section requires that the County make a copy of the VCA available for review to any person, in accordance with the law. The County affirmatively states that the VCA is so available under the Delaware Freedom of Information Act (7 Del. C. Ch. 100)("FOIA") and the County's FOIA policy which can be easily accessed from the County's website.

B. **Section III(1)** – Corrective Actions. This section references the training requirements as set forth in Section VI(21)(a) through (c) of the CD. Note: The reference to Section VI(d) is in error. The proper notation is Section VI(21), and there is no Section VI(21)(d). As mentioned above regarding compliance with the CD, and as set forth in the County's correspondence to USDOJ and HUD dated March 28, 2013, the County has fulfilled all of the requirements for the initial, in-person training session required under sections 21 through 23 of the CD. As a result, the County believes it is in compliance with the initial, in-person training requirement of the VCA.

C. **Section III(2)** – Corrective Actions. This section requires the County to address the decision to deny the New Horizons Cluster Subdivision proposal and reimbursement to Diamond State CLT as agreed upon in Sections II(10) and VIII of the CD. As mentioned above regarding compliance with the CD, the requirements of Section II (including Section II(10)) become active upon submission of an application by Diamond State CLT. Since no application has yet been received, the requirements have not been activated. Regarding Section VIII of the CD, and as mentioned above regarding compliance with the CD, compensation has been received by Diamond State CLT and the Release has been received by the County via correspondence from

USDOJ dated January 3, 2013. As a result, the County believes the requirements of Section VIII have been fulfilled.

D. **Section III(3)** – Corrective Actions. This section requires the County to limit the evaluation of future land use proposals to compliance with the County Code and State law. The County affirmatively states that it is in compliance with this section.

E. **Section III(4)** – Corrective Actions. This section requires the County to comply with guidance and instructions provided by the State of Delaware to affirmatively further fair housing, to the greatest extent feasible or practicable, contingent upon funding and the County's authority. The County believes it is in compliance with this section. The County sent its draft Sussex County AI Evaluation and Proposed Priority Fair Housing Plan ("Priority Plan") to the Delaware State Housing Authority on March 28, 2013, and received comments back from the DSHA. In response to the comments from DSHA, the County has revised the Priority Plan and sent the revised Priority Plan back to DSHA for further discussion.

F. **Section III(5)** – Corrective Actions. This section requires the County to hire or appoint the FHCO and to notify HUD of the appointment within 30 days. As set forth in the County's correspondence to HUD and USDOJ dated December 28, 2012, the County is in compliance with this requirement.

G. **Section III(6)** – Corrective Actions. This section only becomes active if the FHCO resigns or is otherwise terminated prior to the expiration of the VCA. That situation has not arisen, so there is nothing in this section that requires compliance by the County at this time.

H. **Section III(7)** – Corrective Actions.

Section III(7)(a) requires that the County review and evaluate the 1998, 2003, and 2011 Analysis of Impediments, develop a proposed priority fair housing plan to address the identified impediments that continue to exist, and submit the plan to DSHA and HUD for review and approval within 120 days of the effective date of the VCA (by March 28, 2013). In response, the County performed the required review and evaluation, drafted the Priority Plan, and submitted the Priority Plan to HUD and DSHA for review and approval. At this time, we have received comments back from DSHA (see the discussion above regarding Section III(4)) and are awaiting comments from HUD. The County believes it is in compliance with this section.

Section III(7)(a)(i) requires the Priority Plan to incorporate a strategy to increase housing opportunities throughout the County, taking into account the housing needs of African-Americans and Hispanic residents and it will develop mechanisms in which Sussex County will use CDBG and other funding to affirmatively further fair housing. The County believes that its draft Priority Plan is in compliance with this section.

Section III(7)(a)(ii) requires, in future planning efforts, Sussex County to collaborate with DSHA and the Office of State Planning and Coordination ("OSPC") to identify the County's priority actions to develop a strategy to integrate affordable housing that is fully available without regard to race or ethnicity into all communities throughout the County. To the extent that the County approves development outside designated growth areas, the provision of affordable housing shall be a consideration. To the extent that this section requires current compliance by the County, the County believes that it is in compliance. As set forth in the County's correspondence to HUD and USDOJ dated March 28, 2013, in order to draft the Priority Plan, the County conferred with DSHA on March 14, 2013 and met with the OSPC on March 18, 2013.

Section III(7)(a)(iii) requires that within 120 days of the effective date of the VCA (March 28, 2013), the FHCO must identify successful models of affordable housing strategies used in other states, counties or localities similar in jurisdiction and authority to Sussex County to recommend to County Council, to assist the County in formulating an affordable housing policy as prescribed in the CD Section III.13(a)(v). As set forth in the County's correspondence to HUD and USDOJ dated March 28, 2013, the FHCO identified six successful strategies and presented those strategies to County Council on March 26, 2013. As a result of this presentation, the County adopted Strategy #1 (the Anti-NIMBY Policy) at the County Council meeting held on April 16, 2013. Please see **Exhibit 6** for the memorandum presented to County Council by the FHCO prior to the April 16th meeting and a copy of the County's revised Fair Housing Policy incorporating the new Anti-NIMBYpolicy. Please note that the County also added a notation to the Fair Housing Policy referencing the requirements of the Delaware Fair Housing Act (6 Del. C. Ch. 46). The County believes it is now in compliance with the requirements of this section.

Section III(7)(b) requires the County to amend the MPHU ordinance to include provisions that create access to persons that are between 50% and 120% of the County's median household income. The revised provisions must be posted on the County's website. As mentioned above, the County is pleased to report that this ordinance (Ordinance No. 2302) was adopted by County Council at its meeting on April 23, 2013, and is attached as **Exhibit 1.** As required, the County has posted the revised provisions of the MPHU ordinance on its website and on the County's Community Development and Housing webpage.

Section III(7)(c) requires the County to perform an internal evaluation of the Impacted Communities through the Strong Communities Initiative in order to determine investment strategies, priority designation of infrastructure and/or community development for those elements of infrastructure over which the County has primary governing authority. The County must also evaluate its past participation in providing secondary elements of infrastructure in the Impacted Communities with the goal of prioritizing the funding for such infrastructure improvements and formalizing an approval process for continued County participation in such infrastructure projects. The County has been in active discussions with DSHA regarding the use of CDBG funds to assist in the collection of baseline data for the Impacted Communities. Once

the data has been collected, the County anticipates performing the evaluation and drafting an approval process for future primary and secondary infrastructure projects. At this time, the County anticipates approval from DSHA for the CDBG funding by July 1, 2013. After receiving this approval, the County will issue a Request for Proposals ("RFP") to perform the data collection work. The County is currently working with DSHA and the Sussex Housing Group to craft the survey document that will form the basis of the RFP. The County anticipates the data collection work to be completed by the end of June 2014.

I. **Section III(8)** – Corrective Actions. Following the internal evaluation and drafting of an approval process for future primary and secondary infrastructure projects, this section requires the County to provide such improvements and services so long as such assistance is consistent with the County's available resources, and is consistent with relevant statutes, rules, regulations and policies. The evaluation of the Impacted Communities, the approval process, and the approvals granted will be made publicly available on Sussex County's website on an on-going basis. Since the internal evaluation has not been completed and no approval process is yet in place, the requirements of this section have not yet been activated.

J. **Section III(9)** – Corrective Actions. This section requires the County to revise its methodology, as proposed by DSHA at the time the VCA was finalized, to target minorities with disproportionate housing needs to ensure that minorities are benefitting from all affordable housing programs supported by the County. Under the current system that exists in Delaware, Sussex County does not have the ability to determine CDBG allocations. The County applies for funding on behalf of incorporated communities and rural residents and DSHA makes the funding determinations. The County then administers the projects resulting from those determinations. As a result, changes by DSHA to the methodology for allocating CDBG funding automatically are applied to applications for such funding from the County. However, in addition, the County continues to review its methodology and such review may lead to additional changes in the future.

K. **Section IV** – Public Notice. Under this section, the County must publish a Notice in a newspaper of general circulation and on its website regarding the VCA within 30 days of the effective date of the VCA or the CD, whichever is later. The Notice must provide a summary of the general provisions of the VCA and must be approved by HUD before it is published. Thirty days from the effective date of the VCA expired on December 28, 2012. Thirty days from the effective date of the CD expired on January 18, 2013. As mentioned in the County's correspondence to USDOJ and HUD dated December 28, 2012, the requirements of this section have been satisfied.

L. **Section V** – Reporting and Compliance Requirements. Under Section A(1), the County must submit semi-annual reports to HUD for the duration of the CD. Under Section A(2) the reports must contain information on each corrective action (progress made, work remaining, reasons for any delay, dates of completion or proposed completion), and must be signed and certified as accurate by the FHCO. This correspondence from the County is meant to satisfy the requirements of these sections for the First Semi-Annual Compliance Report.

M. **Section VI** – Recordkeeping Requirements. This section requires the County to maintain adequate files along with all materials relating to the County's implementation of the VCA. The County asserts that it is in compliance with this section.

No other provisions of the VCA have action items that are required to be reported upon for inclusion within this First Semi-Annual Compliance Report. This concludes the County's First Semi-Annual Compliance Report. Please feel free to contact me with any questions or comments.

Sincerely yours,

Stephanie L. Hansen

cc: Alice Hung (via email at Alice.Hung@usdoj.gov)
Ms. Melody Taylor-Blancher (via email at Melody.C.TaylorBlancher@hud.gov)
Mr. Todd Lawson (via email at tlawson@sussexcountyde.gov)

I attest that the material presented in this First Semi-Annual Compliance Report is accurate to the best of my knowledge as the Sussex County Fair Housing Compliance Officer.

Brandy A. Nauman
Sussex County Fair Housing Compliance Officer

Exhibit List

Exhibit 1 - Sussex County Ordinance No. 2302.

Exhibit 2 – Board of Adjustment Notice of Appeal and Request for Variance or Special Use Exception for The Home of the Brave Foundation, Inc.; meeting minutes of March 4, 2013; meeting minutes of April 1, 2013; and Findings of Fact

Exhibit 3 - Board of Adjustment Notice of Appeal and Request for Variance or Special Use Exception for Brandywine Seaside Pointe, LLC; meeting minutes of April 15, 2013; and Findings of Fact

Exhibit 4 – Representative copies of agendas from the meetings of County Council, the Planning and Zoning Commission, and the Board of Adjustment

Exhibit 5 – County's Draft Stipulation and Order

Exhibit 6 - Memorandum from Brandy Nauman to County Council, dated April 12, 2013 and the redline version of the revised Sussex County Fair Housing Policy.

Exhibit 1

ORDINANCE NO. 2302

AN ORDINANCE TO AMEND CHAPTER 72, ARTICLE I OF THE CODE OF SUSSEX COUNTY BY AMENDING THE DEFINITION AND APPLICATION OF "MODERATE INCOME" USED TO DETERMINE ELIGIBILITY FOR MODERATELY PRICED HOUSING UNITS

WHEREAS, Sussex County Code, Chapter 72, Article I, defines "moderate income" and eligibility requirements for moderately priced housing units; and

WHEREAS, § 72-5 of the current ordinance defines "moderate income" as "80% to 125% of area median income adjusted for household size as defined by the U.S. Department of Housing and Urban Development (HUD)"; and

WHEREAS, Sussex County desires to broaden the definition of "moderate income" to "50% to 125% of the area median income adjusted for household size as defined by the U.S. Department of Housing and Urban Development (HUD)" and its application under the Chapter, thereby allowing a greater number of residents to qualify for moderately priced housing units;

NOW THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. Amend Sussex County Code, Chapter 72, Article I, § 72-3C., Governmental Findings, by deleting the language in brackets and inserting the underlined language as follows:

> **"C. In turn, the supply of moderately priced housing has decreased over the past 10 years as housing costs have escalated due to the influx of affluent households. The most recent real estate data suggests that households earning [80%]*50%* to 125% of the area median income have very few choices for modern, modest quality housing except in the most western areas of the County and, even there, choices and supply are limited."**

Section 2. Amend the definition of "Moderate Income" in Sussex County Code, Chapter 72, Article I, § 72-5, Definitions, by deleting the language in brackets and inserting the underlined language as follows:

> **"MODERATE INCOME**
>
> **Those levels of income established by the County Administrator which prohibit or severely limit the financial ability of persons to buy housing in Sussex County. [Initially, m]Moderate income is established as [80%]*50%* to 125% of area median income adjusted for household size as defined by the U.S. Department of Housing and Urban Development (HUD). Income includes salary, wages, dividends, interest and all other sources recognized by HUD from the eligible buyer and all other adults who will occupy the MPHU. Further, for persons or households with significant assets that do not produce income, the Department will establish criteria for imputing income to such assets."**

Section 3. Effective Date. This Ordinance shall become effective on April 23, 2013.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2302 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 23RD DAY OF APRIL 2013.

ROBIN A. GRIFFITH
CLERK OF THE COUNCIL

Exhibit 2

DATE FEE PAID 1.29.13
RECEIPT NO. 16990
AMOUNT $400.00

Case No. 2013006006
11168

NOTICE OF APPEAL AND REQUEST FOR VARIANCE OR SPECIAL USE EXCEPTION COUNTY BOARD OF ADJUSTMENT OF SUSSEX COUNTY

Applicant THE HOME OF THE BRAVE Foundation, Inc. Phone 302-424-1681
Address 6733 GRIFFITH LK DR MILFORD 19963
Owners Name THE HOME OF THE BRAVE FDN INC Phone 302 424-1681
Address 6632 SHARPS RD MILFORD 19963
Agent/Attorney N/A Phone
Address

Location: (N) (S) (E) (W) Road 432 (Griffith Lake Drive) 440 (feet) (miles),
(N) (S) (E) (W) of Road 420 (Abbotts Pond Rd)

District No. 130 Map No. 2 Parcel No. 13.20
Subdivision N/A Lot No. N/A Zone Agt
Hundred Cedar Creek Frontage N/A Depth N/A Acres 1.32

Request for a special use exception or variance from the provisions of:
Chapter 115 Article IV Subsection 115-23 Item C (4)
Date Property was acquired N/A
Plot Plan or drawing attached: Yes X NO

State specifically your request and the reason for this request.
SPECIAL USE: ESTABLISH A DEDICATED "WOMEN VETERANS' FACILITY" MODELED AFTER SUCCESSFUL MALE VETERAN PROGRAM. HOME OF THE BRAVE HAS 20 YEARS OF EXPERIENCE SUCCESSFULLY TRANSITIONING VETERANS OUT OF HOMELESSNESS, WITH SUPPORT & INVESTMENT FROM PARTNERS THROUGHOUT THE PENINSULA. FACILITY WILL HOUSE 6 WOMEN VETERANS AND THEIR CHILDREN, IF THEY HAVE CUSTODY.

Signature of Applicant/Agent/Attorney

FOR BOARD USE ONLY:
Date of Notice Date of Hearing MAR 4, 2013
Date of Decision 3.4.13 Tabled to 3.18.13
Decision of the Board 4.1.13 Approval (3-2)

RW
Person Accepting Application

MINUTES OF MARCH 4, 2013

The regular meeting of the Sussex County Board of Adjustment was held on Monday, March 4, 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, seconded by Mr. Hudson, and carried unanimously to approve the Revised Agenda as circulated. Motion carried 5 – 0.

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

PUBLIC HEARINGS

~~**Case No. 11164 – Francis Clamer & Debbie Clamer** – south of Road 358 (Sandy Cove Road)~~ approximately 1,480 feet west of Road 357 (Cedar Neck Road). (Tax Map I.D. 1-34-9.00-413.00)

An application for a variance from the front yard, side yard, and rear yard setback requirement.

Mr. Lank presented the case. Debbie Clamer was sworn in and testified requesting a variance of 18 feet from the 30 feet front yard setback requirement, a variance of 4.2 feet from the 10 feet side yard setback requirement and a variance of 7.7 feet from the 10 feet rear yard setback requirement for a proposed dwelling. Ms. Clamer testified that the existing dwelling on the Property was relocated to the Property by the previous owner; that the existing dwelling is non-conforming and was built in the 1940s; that she plans to demolish the existing dwelling and replace it with a modular dwelling; that they plan to use the existing footers and foundation from the existing dwelling for the new dwelling; that the proposed dwelling would be larger on the east side of the Property; that the Property is irregular in shape and the Applicants are limited in what they can do with the lot; that a ten (10) feet water easement runs along the front property line; that the proposed location of the dwelling will keep the dwelling a safe distance from the road; that the Property is located adjacent to a curve in the road and drivers have driven into their yard; that the proposed steps and deck will be located on the east side of the Property; that the existing crawlspace will not remain; that the neighbors have all replaced manufactured homes with modular dwellings; that the variances will enable reasonable use of the Property; that the variances will not alter the character of the neighborhood; that the use will not be detrimental to public welfare; and that the proposed dwelling will be twenty-six (26) feet wide.

Case No. 11168 – The Home of the Brave Foundation, Inc. – east of Road 633 (Griffith Lake Drive) approximately 440 feet north of Road 620 (Abbotts Pond Road). (Tax Map I.D. 1-30-2.00-13.20)

An application for a special use exception for a women's veteran facility.

Mr. Lank read an email received by the Office of Planning & Zoning into the record which opposed the Application.

Mr. Lank presented the case. Linda Boone, Chair of the Board of Directors of the Home of the Brave Foundation was sworn in and testified requesting a special use exception for a women's veteran facility. Ms. Boone testified that the Home of the Brave has serviced the area since 1992; that female veterans make up five percent (5%) of the nation's homeless veterans; that residents of Home of the Brave must meet certain qualifications in order to reside in the shelter; that the qualifications include: that the resident be honorably discharged from the military, that the veteran must meet the homeless standard, that the veteran must be open to living in a group environment; that residents are admitted as space is made available; that one in five female veterans experience Military Sexual Trauma; that one in five female veterans suffer from Post-Traumatic Stress Disorder, which leads to increased substance abuse and homelessness; that one in five of post-September 11 female veterans are unemployed; that the Home of the Brave is a nonprofit organization founded by eight Vietnam combat veterans; that the average stay at the Home of the Brave is approximately six (6) to nine (9) months; that the maximum stay is twenty four (24); that the average age of the veterans participating in the program has been from 51 to 61 years of age; that the majority of the veterans coming to the program has been due to economic situations; that veterans have to be clean and sober for a minimum of thirty (30) days before they can apply for admission to the program; that the goal is to discharge the veterans to permanent housing and to eliminate the barriers which led them to homelessness; that veterans sign a contract when entering the program and agree to and must follow the rules in order to stay in the program; that residents who fail to follow the rules are discharged from the facility; that they currently have a sixty seven percent (67%) success rate; that case plans are developed for each resident; that the Home of the Brave is a transitional living facility, not a shelter; that the majority of the residents are Delaware residents; that twelve (12) of the fifteen (15) residents at the Applicant's other location are Delaware residents; that residents are regularly drug tested; that they do not accept any applicants, with potential or high probability of criminal activity; that the facility will have staff coverage 24 hours a day, 7 days a week; that the residents are required to adhere to curfew schedules, signing in and out, performing assigned daily chores, and working on individual plans to move them to independent living; that the facility would not lead to a drop in property values of adjacent properties; that the proposed location has been vacant for over a year and has not been maintained; that the Home of the Brave has high standards for appearance and maintenance of their properties; that some repairs and renovations have already been made to the home; that once they obtain approval from the Board a plan for major renovations will be implemented which will include the construction of a larger septic system, a fire safety system, a new water heater, landscape improvements, and bathroom renovation; that there is no empirical evidence that supports a theory that property values will be decreased; that a recent study from Dr. Kevin Gillen from the

University of Pennsylvania showed that in two-thirds of the cases the impact of subsidized housing in Delaware was neutral or positive because of the design of the house and its management of the facility; that a study in Philadelphia showed that property values increased by 6.8% when a well-run homeless facility was in the neighborhood; that financial audits have met and often exceeded national nonprofit benchmarks; that the Board of Directors meets monthly to review the management of the facility and its finances; that in 2012 they had over 250 cash contributors and an additional 300 supporters who donated food and housing items; that there will not be a roadside sign on the Property, only a sign on the front door noting visitors need an appointment; that they are trying to limit visitor access and will require that visitors made an appointment; that the visitor policy will differ from the Applicant's other location on Sharps Road; that all donations will be accepted at the Sharps Road location; that they will provide contact numbers for the neighbors to report concerns and ask questions; that they welcome a neighborhood representative to be a part of the Women's Program Advisory Committee which provides advice to the Board of Directors; that most residents need help finding employment; that residents are transported to appointments and for shopping by the Applicant via the Applicant's van; that collocating genders in not permitted by the Veterans Association; that a maximum of six (6) adult women will stay at the home; that the staff is familiar with dealing with children; that the Applicant wants to review how many children would be able to live in residence and what services would be provided to those children; that the number of children is unknown at this time; that large activities will not be held at this location; and that the facility on Sharps Road has been open since May 1996 and there have been no problems.

Ms. Boone submitted a packet of exhibits regarding the Application to the Board.

Mike Rowe was sworn in and testified in support of the Application. Mr. Rowe testified that he works for People's Place and is the program director for the veteran's outreach program; that the proposal will help homeless veteran women and their children; that most homeless female veterans are homeless due to their economic situation; that the Applicant helps individuals get back on their feet; that women veterans have more trouble finding housing and jobs; that People's Place provides transportation for the veterans; that female veterans may have been victim of Military Sexual Trauma and that the Applicant provides those veterans with the help they need to improve their lives, not just a place to stay; and that fire and police services would serve the residence in the same way as if the house was used as a single family residence.

Robert Clauser was sworn in and testified in support of the Application. Mr. Clauser testified that he serves as a commissioner for the Delaware Department of Veteran's Affairs; that this Property has been vacant and in need of serious repair; that after inspecting the site and realizing the number of bedrooms available it was decided to be an ideal location for the Home of the Brave; that the house has five (5) bedrooms and 4 ½ bathrooms; that our veterans are sent to war and come home to no support; that urban areas do not work for this type of facility; that there are no services to help the veterans in the urban area; and that someone just built a house across the street from the other Home of the Brave location for $750,000.00.

Albert Weir was sworn in and testified in support of the Application. Mr. Weir testified that he is with the State Commission of Veteran Affairs, and that the veteran organizations support this Application.

Mark Gaglione, Amanda Gaglione, and David Murphy were sworn in to testify in opposition to the Application. Tim Willard, Esquire, appeared on their behalf and stated that his clients are opposed to the location of the facility; that the use will substantially adversely affect the neighboring and adjacent properties; that the neighbors are concerned about the vagueness of the Application; that the neighbors are concerned about the effect of including children in the facility; that the Applicant has presented that residents will receive outpatient care from the Department of Veteran's Affairs; that a transitional home is not clearly defined in the Planning & Zoning Ordinance; that the Application has been submitted as a special use exception for a convalescent home; that this use is not a convalescent home because there is no regular nursing care being provided on the Property; that a similar application was granted in the Bridgeville area where children would also be residing but there were major differences in that application from this Application; that the Bridgeville home was located on a large piece of property just outside the town of Bridgeville; that the home was located a good distance from the road and that permanent and full-time nursing staff would be located on site; that there is no evidence to the age of the children that may stay at the home with their mothers; that there is a big difference to a transitional home when children are involved; that the proposed location is in a tightly knit residential neighborhood several miles outside of Milford; that the email read at the beginning of the hearing well-articulated concerns of neighbors; that fire and police services are located miles away from the residence; that there is no public transportation in the area; that the opposition feels the transitional home should be located within town limits; that there would be more services available in a town setting; that the increased number of people living in the home will increase the traffic, trash, septic and well use; that there is a potential of six (6) families living on a property designed for single-family residence; that most transitional homes in this region are located in or near town centers; that property values in the area will decrease due to the location of the proposed transitional housing; that he does not have any evidence to support the claim that the property values will decrease; and that it is difficult to prove substantial adverse affect to the neighborhood when it hasn't happened yet.

Mr. Willard presented to the Board a packet of exhibits and a petition of sixty six (66) individuals who oppose the Application.

Amanda Gaglione testified that she supports the cause and has veteran family members; that she and her husband purchased property in this area for a quiet place to live and raise their children; that her children like to play outside and she has concerns the home will bring more strangers to the area; that her children have expressed concerns about the home as well; that there is no sidewalk in the area and it could create some safety concerns; that it was stated that women could not collocate on the Sharp Road property with the men, which concerns her because she has three (3) sons; that there are other homes in the Milford area she feels are much better suited for this use; that the other homes are in town and also near parks; that she spoke with a realtor who told her that property values will decrease due to the placement of the transitional facility; that the effect to property values can be determined since most transitional homes are in an urban area and not near a neighborhood like hers; that she has concerns about increased traffic; that her home is right next door to the facility; that she has four (4) bedrooms in her house; that the Applicant's property foreclosed on and sat vacant for some time; that her husband and other neighbor mowed the lawn; that some areas of the Applicant's dwelling was in disrepair from the

prior owner; that the dwelling has private water and septic and is concerned how this will affect her well and septic; that she does not know if she shares an aquifer with the Property; and that she confirmed the statements by Mr. Willard.

David Murphy testified that he lives across the street from the proposed veterans home; that the use will alter the character of the quiet country atmosphere; that there will be increased traffic to the area due to the facility; that the density of the home from a single-family to a multi-family use concerns him; that there are no businesses located near the Property; that he wants to know who will supervise the children and what credentials the staff have; that he is concerned about unsupervised children being on his property; that there are many questions about the facility which have not been answered; that lights from vehicles moving in and out of the Property flash into his bedroom; that there is nothing in the neighborhood for the children; that he feels the home should be within walking distance of schools, parks, stores and hospitals; that he is a former code enforcement officer; that he has experienced with homeless shelters that have overcrowding problems; that the existence of the veteran's home will dissuade potential purchasers from buying neighboring properties; that he would still object to the Application even if children were not allowed to live on the Property; that he has concerns about the effect of the facility on septic and well; that the Fire Marshal will require major renovations to the structure if this Application was approved; and that he feels the use will substantially adversely affect the neighboring and adjacent properties.

Mark Gaglione testifed that he is opposed to a shelter for both adults and children; that he has not found any neighbors that support this Application; that he agrees with his neighbors as to the reasons he opposes the Application; that a common sense approach dictates the affect a shelter will have for property values; that he feels it is easy to support a shelter when it is not in your neighborhood; that he lives fifty (50) feet from the proposed facility; and that he is a veteran.

Vernon Hood and Janna Hood were sworn in and testified in opposition to the Application. Janna Hood testified that they own the property adjacent to the proposed shelter; that she is concerned about the effect of a larger septic system being placed on the Property because it would require a distance of 100 feet from neighboring wells; and that the lots are only 150 feet wide.

Vernon Hood testified that he designs septic systems and feels the Property is not large enough to support a septic system needed for that amount of people; that the septic will need to be 150 feet from the well.

Janna Hood testified that DNREC approves systems based on the number of bedrooms.

Vernon Hood testified that the location is very different from the Sharps Road location and the neighborhood is very different; and that they feel this is the wrong location for the shelter.

Tim Willard submitted proposed Finding of Facts for denying the Application.

Karen Temple was sworn in and testified in opposition to the Application and stated that she volunteers at a homeless shelter in Dover; that a 67% success rate is not successful; that she is concerned for the veterans that are not successful; that where will the veterans go that do not successfully follow the rules; that she questions whether there are enough women veterans who are homeless to fill the facility; and that helping veterans does not make it a higher quality shelter.

Dororthy Doneker was sworn in and testified in opposition to the Application and stated that she lives nearby; that she is concerned for the veterans with addictions and the possible increase in crime to the area; that her son is an addict; that addicts with the best intentions still have trouble overcoming their addictions; that they will steal from their own families; and that this is not a good area for this shelter.

In rebuttal, James Stolvey was sworn in and testified in support of the Application and testified that he is the contractor for the Applicant; that the existing septic system is non-conforming; that the septic can be replaced in the same area as the existing septic and will not encroach on the neighbor's well; that he questions how Mr. Murphy could be receiving lights from vehicles in his bedroom when the house has been vacant for over a year; that he has no objection to Home of the Brave residents and would welcome them to his neighborhood; that the only construction done at this point has been work needed for the sale of the home in the event the shelter is denied; and that he does not see how the use will substantially adversely affect the uses of neighboring and adjacent properties.

In rebuttal, Linda Boone, stated that their investors, Department of Veteran Affairs and Housing and Urban Development monitor the facilities; that they would not receive grants if they house more veterans than approved for; that residents failing drug tests are relocated rather than put out on the street; and that they were aware a special use exception approval was needed prior to the purchase of the Property.

The Board found that twenty six (26) parties appeared in support of the Application.

The Board found that twenty six (26) parties appeared in opposition to the Application.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the case be **tabled until March 18, 2013**. 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. 11169 – Chris Tawa – east of Texas Avenue 200 feet southeast of Bay Shore Drive. (Tax Map I.D. 2-35-3.12-81.00)

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

Mr. Lank presented the case. Chris Tawa and Laurie Bronstein were sworn in and testified requesting a variance of 5 feet from the 10 feet rear yard setback requirement for an

MINUTES OF APRIL 1, 2013

The regular meeting of the Sussex County Board of Adjustment was held on Monday, April 1, 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, Ms. Melissa Thibodeau – Zoning Inspector II, and Mrs. Jennifer Norwood – Recording Secretary.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously to approve the Revised Agenda, with Case No. 11184 – CMF Bayside, LLC being withdrawn. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of March 4, 2013 as circulated. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously to approve the Findings of Fact for March 4, 2013. 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. 11178 – Albun, LLC c/o Robert Minutoli – southeast intersection of U.S. Route 113 (DuPont Boulevard) and Road 321 (Woodbranch Road) southwest intersection of Road 325 (Alm's House Road) and Road 326 (Bethesda Road). (Tax Map I.D. 1-33-2.00-22.00, 23.00, 24.00, & 24.01)

An application for a special use exception for promotional activities as accessory uses to a speedway for a period of five (5) years.

Mr. Lank presented the case and stated that the Office of Planning & Zoning did not receive any correspondence in reference to this case. Lewis Johnson was sworn in to testify about the Application.

James Fuqua, Esquire, presented the case to the Board on behalf of the Applicant and stated that the Applicant is requesting a special use exception for promotional activities for a period of five (5) years; that the Georgetown Speedway was built in 1949 and is located next to Route 113; that the Property is used for racing in the spring and summer months; that other than auto racing, the Property is used for non-profit community events such as tractor shows, rodeos, and carnivals; that these community events are sporadic in nature; that this use was granted approval of a special use exception in 1989 and again in 2003; that the current owner was not

Case No. 11168 – The Home of The Brave Foundation, Inc. – east of Road 633 (Griffith Lake Drive) approximately 440 feet north of Road 620 (Abbotts Pond Road). (Tax Map I.D. 1-30-2.00-13.20)

An application for a special use exception for women veterans' facility.

The Board discussed this case which has been tabled since April 1, 2013.

Mr. Sharp stated that any correspondence the Planning & Zoning Office received after the public hearing cannot be considered by the Board in its deliberation and that the decision is to be based on the public record only.

Mr. Rickard stated that the Property has been in disrepair; that the Applicant has made improvements to the Property such as work to the interior of the residence and landscaping improvements; that there are rules in place to hold the residents accountable; that the veterans will have supervision seven (7) days a week, 24 hours a day; that the veterans are subjected to random drug testing during their stay; that there is no other like facility to compare this use to and it differs from a shelter; that the use will not have a substantial adverse effect to the neighborhood; that there is no evidence that property values will be affected; and that he feels that the opposition's request to seek another location is discriminatory. For these reasons, Mr. Rickard stated that he seeks to approve the Application.

Mr. Mills stated that he disagrees with Mr. Rickard; that the Applicant has failed to demonstrate how the use will not substantially adversely affect the neighborhood; that a five (5) bedroom dwelling is not sufficient for six (6) adults and children; that there was no professional testimony submitted from a realtor or appraiser to show there will be no impact to property values; that a septic designer testified the negative impact a septic system needed for this capacity would have to neighboring wells; that he gives more weight to the septic designer's testimony than the testimony provided by the Applicant's contractor regarding the septic system; and that transportation for unscheduled activities has not been addressed.

Mr. Rickard stated that the emergency response time is the same for the neighbors and he does not think that is a valid concern; and that the proposed use will not substantially affect adversely the uses of neighboring and adjacent properties.

Mr. Lank noted that the Property is zoned Agricultural Residential and is not a planned residential community.

Mr. Hudson stated that transitional housing is a means of giving the women acclimation into a residential setting; that the house was in disrepair; that everyone that moves into a neighborhood is a stranger; that there is no control over who may move in next door if the dwelling were purchased by a private citizen; that he does feel that there should be a limit on the number of children permitted to reside in the home; that the women applying to reside in the facility must meet certain criteria; that the Applicant has twenty (20) years of experience in helping the veterans; and that he would support approval of the Application with restrictions.

Mr. Workman stated that he does not feel the Applicant has met the standards for granting a special use exception; that the number of children possible was never addressed; that he is concerned with how the monitoring is going to be conducted and enforced; that there are not enough bedrooms available for this use; that there are sixteen (16) residential lots in the area, which is a neighborhood in his opinion; and that there is no proof that this use will not substantially adversely affect the neighborhood.

Mr. Rickard stated that the Board could approve the use for a period of two (2) years.

The Board discussed the possibility of placing restrictions on the approval of the Application.

Mr. Hudson stated that he would move that the Board recommend approval of Special Use Exception Application No. 11168 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. As part of his Motion, Mr. Hudson moved that the following conditions be placed on the approval:

a. The approval is granted for a period of two (2) years.
b. No more than six (6) adult female veterans and no more than eight (8) total persons, not including staff members, may reside in the dwelling at any given time.

Mr. Hudson gave the following reasons for his Motion:

1. The Applicant has a history of providing home for veterans that will not substantially affect adversely the uses of neighboring and adjacent properties.
2. The proposed housing is designed for residential use in a residential area.
3. The existing dwelling has been unoccupied for over a year and fell into disrepair. The Applicant has taken steps to make improvements to the dwelling and intends to maintain the exterior of the property which will improve the area.
4. The Applicant referenced a study which evidences that the proposed housing will have a neutral or positive effect on housing prices in the neighborhood.
5. Opposition to the Application did not present any evidence from a realtor or appraiser as to substantial adverse effect to real estate values
6. The proposal does not appear to have an adverse effect on traffic in the area.
7. The Applicant has testified that visitor access to the site will be limited and that residents will be transported by a van for their appointments and daily living.
8. The Applicant's contractor testified that improvements have been made to the dwelling and the septic system would be placed in the same location as the existing septic system.
9. No signage will be located outside the Property to note its usage.
10. The residents of the home will be required to follow certain rules and regulations and will be discharged from the home if they fail to adhere to those rules.
11. The home will house a maximum of six (6) adult female veterans and no more than eight (8) total persons not including staff members.

Motion by Mr. Hudson, seconded by Mr. Rickard, and carried that the special use exception be **granted for the reasons stated and for a period of two (2) years and with the condition that no more than six (6) adult female veterans and no more than eight (8) total persons, not including staff members, may reside in the dwelling at any given time.** Motion carried 3 – 2.

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

Meeting Adjourned 10:45 p.m.

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: THE HOME OF THE BRAVE FOUNDATION, INC.

(Case No. 11168)

A hearing was held after due notice on March 4, 2013. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a special use exception for a women's veteran facility.

Findings of Fact

The Board found that the Applicant was seeking a special use exception for a women's veteran facility. This application pertains to certain real property located east of Road 633 (Griffith Lake Drive) approximately 440 feet north of Road 620 (Abbotts Pond Road); said property being identified as Sussex County Tax Map Parcel Number 1-30-2.00-13.20. After a hearing, the Board made the following findings of fact:

1. The Board found that the Office of Planning & Zoning received an email in opposition to the Application.
2. Linda Boone, Chair of the Board of Directors of the Home of the Brave Foundation, Inc., was sworn in to testify on behalf of the Application.
3. The Board found that Ms. Boone testified that the Home of the Brave has serviced the area since 1992.
4. The Board found that Ms. Boone testified that female veterans make up five percent (5%) of the nation's homeless veterans.
5. The Board found that Ms. Boone testified that residents of Home of the Brave must meet certain qualifications in order to reside in the shelter including: that the resident be honorably discharged from the military, that the veteran must meet the homeless standard, and that the veteran must be open to living in a group environment.
6. The Board found that Ms. Boone testified that residents are admitted as space is made available.
7. The Board found that Ms. Boone testified that one in five female veterans experience Military Sexual Trauma and that one in five female veterans suffer from Post-Traumatic Stress Disorder, which leads to increased substance abuse and homelessness.
8. The Board found that Ms. Boone testified that one in five of post-September 11 female veterans are unemployed.

9. The Board found that Ms. Boone testified that the Home of the Brave is a nonprofit organization founded by eight Vietnam combat veterans.
10. The Board found that Ms. Boone testified that the average stay at the Home of the Brave is approximately six (6) to nine (9) months and that the maximum stay is twenty four (24) months.
11. The Board found that Ms. Boone testified that the average age of the veterans participating in the program has been from 51 to 61 years of age.
12. The Board found that Ms. Boone testified that the majority of the veterans coming to the program have been due to economic situations.
13. The Board found that Ms. Boone testified that veterans have to be clean and sober for a minimum of thirty (30) days before they can apply for admission to the program.
14. The Board found that Ms. Boone testified that the goal is to discharge the veterans to permanent housing and to eliminate the barriers which led them to homelessness.
15. The Board found that Ms. Boone testified that veterans sign a contract when entering the program and agree to and must follow the rules in order to stay in the program.
16. The Board found that Ms. Boone testified that residents who fail to follow the rules are discharged from the facility.
17. The Board found that Ms. Boone testified that they currently have a sixty seven percent (67%) success rate.
18. The Board found that Ms. Boone testified that case plans are developed for each resident.
19. The Board found that Ms. Boone testified that the Home of the Brave is a transitional living facility and is not a shelter.
20. The Board found that Ms. Boone testified that the majority of the residents are Delaware residents and that twelve (12) of the fifteen (15) residents at the Applicant's other location are Delaware residents.
21. The Board found that Ms. Boone testified that residents are regularly drug tested and that they do not accept any applicants with potential or high probability of criminal activity.
22. The Board found that Ms. Boone testified that the facility will have staff coverage 24 hours a day, 7 days a week.
23. The Board found that Ms. Boone testified that the residents are required to adhere to curfew schedules, signing in and out, performing assigned daily chores, and working on individual plans to move them to independent living.
24. The Board found that Ms. Boone testified that the facility would not lead to a drop in property values of adjacent properties.

25. The Board found that Ms. Boone testified that the proposed location has been vacant for over a year and has not been maintained.
26. The Board found that Ms. Boone testified that the Home of the Brave has high standards for appearance and maintenance of their properties and that some repairs and renovations have already been made to the home.
27. The Board found that Ms. Boone testified that, once they obtain approval from the Board, a plan for major renovations will be implemented which will include the construction of a larger septic system, a fire safety system, a new water heater, landscape improvements, and bathroom renovation.
28. The Board found that Ms. Boone testified that there is no empirical evidence that supports a theory that property values will be decreased.
29. The Board found that Ms. Boone testified that a recent study from Dr. Kevin Gillen from the University of Pennsylvania showed that in two-thirds of the cases the impact of subsidized housing in Delaware was neutral or positive because of the design of the house and its management of the facility.
30. The Board found that Ms. Boone testified that a study in Philadelphia showed that property values increased by 6.8% when a well-run homeless facility was in the neighborhood.
31. The Board found that Ms. Boone testified that financial audits have met and often exceeded national nonprofit benchmarks.
32. The Board found that Ms. Boone testified that the Board of Directors meets monthly to review the management of the facility and its finances and that in 2012 they had over 250 cash contributors and an additional 300 supporters who donated food and housing items.
33. The Board found that Ms. Boone testified that there will not be a roadside sign on the Property and there will be a sign on the front door noting visitors need an appointment.
34. The Board found that Ms. Boone testified that they are trying to limit visitor access and will require that visitors made an appointment.
35. The Board found that Ms. Boone testified that the visitor policy will differ from the Applicant's other location on Sharps Road.
36. The Board found that Ms. Boone testified that all donations will be accepted at the Sharps Road location.
37. The Board found that Ms. Boone testified that they will provide contact numbers for the neighbors to report concerns and ask questions and that they welcome a neighborhood representative to be a part of the Women's Program Advisory Committee which provides advice to the Board of Directors.
38. The Board found that Ms. Boone testified that most residents need help finding employment.

39. The Board found that Ms. Boone testified that residents are transported to appointments and for shopping by the Applicant via the Applicant's van.
40. The Board found that Ms. Boone testified that collocating genders is not permitted by the Veterans Association.
41. The Board found that Ms. Boone testified that a maximum of six (6) adult women will stay at the home and that the staff is familiar with dealing with children.
42. The Board found that Ms. Boone testified that the Applicant wants to review how many children would be able to live in residence and what services would be provided to those children.
43. The Board found that Ms. Boone testified that the number of children is unknown at this time.
44. The Board found that Ms. Boone testified that large activities will not be held at this location.
45. The Board found that Ms. Boone testified that the facility on Sharps Road has been open since May 1996 and there have been no problems.
46. The Board found that Ms. Boone submitted a packet of exhibits regarding the Application to the Board.
47. The Board found that Mike Rowe was sworn in and testified in support of the Application.
48. The Board found that Mr. Rowe testified that he works for People's Place and is the program director for the veteran's outreach program.
49. The Board found that Mr. Rowe testified that the proposal will help homeless veteran women and their children.
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113. The Board found that Mr. Murphy testified that he would still object to the Application even if children were not allowed to live on the Property.
114. The Board found that Mr. Murphy testified that he has concerns about the effect of the facility on septic and well systems.
115. The Board found that Mr. Murphy testified that the Fire Marshal will require major renovations to the structure if this Application was approved.
116. The Board found that Mr. Murphy testified that he feels the use will substantially adversely affect the neighboring and adjacent properties.
117. The Board found that Mr. Gaglione testified that he is opposed to a shelter for both adults and children and that he has not found any neighbors that support this Application.
118. The Board found that Mr. Gaglione testified that he agrees with his neighbors as to the reasons he opposes the Application.
119. The Board found that Mr. Gaglione testified that a common sense approach dictates the affect a shelter will have for property values.
120. The Board found that Mr. Gaglione testified that he feels it is easy to support a shelter when it is not in your neighborhood but that he lives fifty (50) feet from the proposed facility.
121. The Board found that Mr. Gaglione testified that he is a veteran.
122. The Board found that Vernon Hood and Janna Hood were sworn in and testified in opposition to the Application.
123. The Board found that Janna Hood testified that they own the property adjacent to the proposed shelter and that she is concerned about the effect of a larger septic system being placed on the Property because it would require a distance of 100 feet from neighboring wells and that the lots are only 150 feet wide.

124. The Board found that Vernon Hood testified that he designs septic systems and feels the Property is not large enough to support a septic system needed for that amount of people and that the septic will need to be 150 feet from the well.
125. The Board found that Janna Hood testified that the Department of Natural Resources and Environmental Control approves systems based on the number of bedrooms.
126. The Board found that Vernon Hood testified that the location is very different from the Sharps Road location and the neighborhood is very different and that he feels this is the wrong location for the shelter.
127. The Board found that Karen Temple was sworn in and testified in opposition to the Application.
128. The Board found that Ms. Temple testified that she volunteers at a homeless shelter in Dover and that a 67% success rate is not successful.
129. The Board found that Ms. Temple testified that that she is concerned about the veterans that are not successful.
130. The Board found that Ms. Temple questioned where will the veterans go that do not successfully follow the rules.
131. The Board found that Ms. Temple testified that she questions whether there are enough women veterans who are homeless to fill the facility and that helping veterans does not make it a higher quality shelter.
132. The Board found that Dorothy Doneker was sworn in and testified in opposition to the Application.
133. The Board found that Ms. Doneker testified that she lives nearby and that she is concerned for the veterans with addictions and the possible increase in crime to the area.
134. The Board found that Ms. Doneker testified that her son is an addict and that addicts with the best intentions still have trouble overcoming their addictions.
135. The Board found that Ms. Doneker testified that addicts will steal from their own families.
136. The Board found that Ms. Doneker testified that this location is not a good area for this shelter.
137. James Stolvey was sworn in and testified in support of the Application.
138. The Board found that Mr. Stolvey testified that he is the contractor for the Applicant.
139. The Board found that Mr. Stolvey testified that the existing septic system is non-conforming and that the septic can be replaced in the same area as the existing septic and will not encroach on the neighbor's well.
140. The Board found that Mr. Stolvey testified that he questions how Mr. Murphy could be receiving lights from vehicles in his bedroom when the house has been vacant for over a year.

141. The Board found that Mr. Stolvey testified that he has no objection to Home of the Brave residents and would welcome them to his neighborhood.
142. The Board found that Mr. Stolvey testified that the only construction done at this point has been work needed for the sale of the home in the event the application is denied.
143. The Board found that Mr. Stolvey testified that he does not see how the use will substantially adversely affect the uses of neighboring and adjacent properties.
144. The Board found that Ms. Boone testified that their investors, the Department of Veteran Affairs and the Department of Housing and Urban Development monitor the facilities.
145. The Board found that Ms. Boone testified that the Applicant would not receive grants if the Applicant housed more veterans than approved.
146. The Board found that Ms. Boone testified that residents failing drug tests are relocated rather than put out on the street.
147. The Board found that Ms. Boone testified that the Applicant was aware a special use exception approval was needed prior to the purchase of the Property.
148. The Board found that twenty six (26) parties appeared in support of the Application.
149. The Board found that twenty six (26) parties appeared in opposition to the Application.
150. The Board tabled its decision the Application until April 1, 2013.
151. On April 1, 2013, the Board discussed the Application at great length.
152. Based on the findings above and the testimony presented at the public hearing, the Board determined that the application met the standards for granting a special use exception because the use does not substantially affect adversely the uses of adjacent or neighboring properties. The Board gave the following reasons for its decision:
    a. The Applicant has a history of providing home for veterans that will not substantially affect adversely the uses of neighboring and adjacent properties.
    b. The proposed housing is designed for residential use in a residential area.
    c. The existing dwelling has been unoccupied for over a year and fell into disrepair. The Applicant has taken steps to make improvements to the dwelling and intends to maintain the exterior of the property which will improve the area.
    d. The Applicant referenced a study which evidences that the proposed housing will have a neutral or positive effect on housing prices in the neighborhood.
    e. Opposition to the Application did not present any evidence from a realtor or appraiser as to substantial adverse effect to real estate values
    f. The proposal does not appear to have an adverse effect on traffic in the area.

g. The Applicant has testified that visitor access to the site will be limited and that residents will be transported by a van for their appointments and daily living.
h. The Applicant's contractor testified that improvements have been made to the dwelling and the septic system would be placed in the same location as the existing septic system.
i. No signage will be located outside the Property to note its usage.
j. The residents of the home will be required to follow certain rules and regulations and will be discharged from the home if they fail to adhere to those rules.
k. The home will house a maximum of six (6) adult female veterans and no more than eight (8) total persons not including staff members.

153. As part of its approval the Board placed the following conditions:
a. The approval is granted for a period of two (2) years.
b. No more than six (6) adult female veterans and no more than eight (8) total persons, not including staff members, may reside in the dwelling at any given time.

The Board granted the special use exception application for a period of two (2) years with the conditions stated herein finding that it met the standards for granting a special use exception.

Decision of the Board

Upon motion duly made and seconded, the special use exception application was granted for a period of two (2) years with the conditions stated herein. The Board Members in favor were Mr. Dale Callaway, Mr. Jeff Hudson, and Mr. Norman Rickard. Mr. John Mills and Mr. Brent Workman voted against the Motion to approve the special use exception application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY

Dale Callaway
Chairman

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: THE HOME OF THE BRAVE FOUNDATION, INC.

(Case No. 11168)

A hearing was held after due notice on March 4, 2013. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a special use exception for a women's veteran facility.

Findings of Fact

The Board found that the Applicant was seeking a special use exception for a women's veteran facility. This application pertains to certain real property located east of Road 633 (Griffith Lake Drive) approximately 440 feet north of Road 620 (Abbotts Pond Road); said property being identified as Sussex County Tax Map Parcel Number 1-30-2.00-13.20. After a hearing, the Board made the following findings of fact:

1. The Board found that the Office of Planning & Zoning received an email in opposition to the Application.
2. Linda Boone, Chair of the Board of Directors of the Home of the Brave Foundation, Inc., was sworn in to testify on behalf of the Application.
3. The Board found that Ms. Boone testified that the Home of the Brave has serviced the area since 1992.
4. The Board found that Ms. Boone testified that female veterans make up five percent (5%) of the nation's homeless veterans.
5. The Board found that Ms. Boone testified that residents of Home of the Brave must meet certain qualifications in order to reside in the shelter including: that the resident be honorably discharged from the military, that the veteran must meet the homeless standard, and that the veteran must be open to living in a group environment.
6. The Board found that Ms. Boone testified that residents are admitted as space is made available.
7. The Board found that Ms. Boone testified that one in five female veterans experience Military Sexual Trauma and that one in five female veterans suffer from Post-Traumatic Stress Disorder, which leads to increased substance abuse and homelessness.
8. The Board found that Ms. Boone testified that one in five of post-September 11 female veterans are unemployed.
9. The Board found that Ms. Boone testified that the Home of the Brave is a nonprofit organization founded by eight Vietnam combat veterans.
10. The Board found that Ms. Boone testified that the average stay at the Home of the Brave is approximately six (6) to nine (9) months and that the maximum stay is twenty four (24) months.
11. The Board found that Ms. Boone testified that the average age of the veterans participating in the program has been from 51 to 61 years of age.
12. The Board found that Ms. Boone testified that the majority of the veterans coming to the program have been due to economic situations.
13. The Board found that Ms. Boone testified that veterans have to be clean and sober for a minimum of thirty (30) days before they can apply for admission to the program.

14. The Board found that Ms. Boone testified that the goal is to discharge the veterans to permanent housing and to eliminate the barriers which led them to homelessness.
15. The Board found that Ms. Boone testified that veterans sign a contract when entering the program and agree to and must follow the rules in order to stay in the program.
16. The Board found that Ms. Boone testified that residents who fail to follow the rules are discharged from the facility.
17. The Board found that Ms. Boone testified that they currently have a sixty seven percent (67%) success rate.
18. The Board found that Ms. Boone testified that case plans are developed for each resident.
19. The Board found that Ms. Boone testified that the Home of the Brave is a transitional living facility and is not a shelter.
20. The Board found that Ms. Boone testified that the majority of the residents are Delaware residents and that twelve (12) of the fifteen (15) residents at the Applicant's other location are Delaware residents.
21. The Board found that Ms. Boone testified that residents are regularly drug tested and that they do not accept any applicants with potential or high probability of criminal activity.
22. The Board found that Ms. Boone testified that the facility will have staff coverage 24 hours a day, 7 days a week.
23. The Board found that Ms. Boone testified that the residents are required to adhere to curfew schedules, signing in and out, performing assigned daily chores, and working on individual plans to move them to independent living.
24. The Board found that Ms. Boone testified that the facility would not lead to a drop in property values of adjacent properties.
25. The Board found that Ms. Boone testified that the proposed location has been vacant for over a year and has not been maintained.
26. The Board found that Ms. Boone testified that the Home of the Brave has high standards for appearance and maintenance of their properties and that some repairs and renovations have already been made to the home.
27. The Board found that Ms. Boone testified that, once they obtain approval from the Board, a plan for major renovations will be implemented which will include the construction of a larger septic system, a fire safety system, a new water heater, landscape improvements, and bathroom renovation.
28. The Board found that Ms. Boone testified that there is no empirical evidence that supports a theory that property values will be decreased.
29. The Board found that Ms. Boone testified that a recent study from Dr. Kevin Gillen from the University of Pennsylvania showed that in two-thirds of the cases the impact of subsidized housing in Delaware was neutral or positive because of the design of the house and its management of the facility.
30. The Board found that Ms. Boone testified that a study in Philadelphia showed that property values increased by 6.8% when a well-run homeless facility was in the neighborhood.
31. The Board found that Ms. Boone testified that financial audits have met and often exceeded national nonprofit benchmarks.
32. The Board found that Ms. Boone testified that the Board of Directors meets monthly to review the management of the facility and its finances and that in 2012 they had over 250 cash contributors and an additional 300 supporters who donated food and housing items.
33. The Board found that Ms. Boone testified that there will not be a roadside sign on the Property and there will be a sign on the front door noting visitors need an appointment.

34. The Board found that Ms. Boone testified that they are trying to limit visitor access and will require that visitors made an appointment.
35. The Board found that Ms. Boone testified that the visitor policy will differ from the Applicant's other location on Sharps Road.
36. The Board found that Ms. Boone testified that all donations will be accepted at the Sharps Road location.
37. The Board found that Ms. Boone testified that they will provide contact numbers for the neighbors to report concerns and ask questions and that they welcome a neighborhood representative to be a part of the Women's Program Advisory Committee which provides advice to the Board of Directors.
38. The Board found that Ms. Boone testified that most residents need help finding employment.
39. The Board found that Ms. Boone testified that residents are transported to appointments and for shopping by the Applicant via the Applicant's van.
40. The Board found that Ms. Boone testified that collocating genders is not permitted by the Veterans Association.
41. The Board found that Ms. Boone testified that a maximum of six (6) adult women will stay at the home and that the staff is familiar with dealing with children.
42. The Board found that Ms. Boone testified that the Applicant wants to review how many children would be able to live in residence and what services would be provided to those children.
43. The Board found that Ms. Boone testified that the number of children is unknown at this time.
44. The Board found that Ms. Boone testified that large activities will not be held at this location.
45. The Board found that Ms. Boone testified that the facility on Sharps Road has been open since May 1996 and there have been no problems.
46. The Board found that Ms. Boone submitted a packet of exhibits regarding the Application to the Board.
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112. The Board found that Mr. Murphy testified that the existence of the veteran's home will dissuade potential purchasers from buying neighboring properties.
113. The Board found that Mr. Murphy testified that he would still object to the Application even if children were not allowed to live on the Property.
114. The Board found that Mr. Murphy testified that he has concerns about the effect of the facility on septic and well systems.
115. The Board found that Mr. Murphy testified that the Fire Marshal will require major renovations to the structure if this Application was approved.
116. The Board found that Mr. Murphy testified that he feels the use will substantially adversely affect the neighboring and adjacent properties.
117. The Board found that Mr. Gaglione testified that he is opposed to a shelter for both adults and children and that he has not found any neighbors that support this Application.
118. The Board found that Mr. Gaglione testified that he agrees with his neighbors as to the reasons he opposes the Application.
119. The Board found that Mr. Gaglione testified that a common sense approach dictates the affect a shelter will have for property values.
120. The Board found that Mr. Gaglione testified that he feels it is easy to support a shelter when it is not in your neighborhood but that he lives fifty (50) feet from the proposed facility.
121. The Board found that Mr. Gaglione testified that he is a veteran.
122. The Board found that Vernon Hood and Janna Hood were sworn in and testified in opposition to the Application.
123. The Board found that Janna Hood testified that they own the property adjacent to the proposed shelter and that she is concerned about the effect of a larger septic system being placed on the Property because it would require a distance of 100 feet from neighboring wells and that the lots are only 150 feet wide.
124. The Board found that Vernon Hood testified that he designs septic systems and feels the Property is not large enough to support a septic system needed for that amount of people and that the septic will need to be 150 feet from the well.
125. The Board found that Janna Hood testified that the Department of Natural Resources and Environmental Control approves systems based on the number of bedrooms.

126. The Board found that Vernon Hood testified that the location is very different from the Sharps Road location and the neighborhood is very different and that he feels this is the wrong location for the shelter.
127. The Board found that Karen Temple was sworn in and testified in opposition to the Application.
128. The Board found that Ms. Temple testified that she volunteers at a homeless shelter in Dover and that a 67% success rate is not successful.
129. The Board found that Ms. Temple testified that that she is concerned about the veterans that are not successful.
130. The Board found that Ms. Temple questioned where will the veterans go that do not successfully follow the rules.
131. The Board found that Ms. Temple testified that she questions whether there are enough women veterans who are homeless to fill the facility and that helping veterans does not make it a higher quality shelter.
132. The Board found that Dorothy Doneker was sworn in and testified in opposition to the Application.
133. The Board found that Ms. Doneker testified that she lives nearby and that she is concerned for the veterans with addictions and the possible increase in crime to the area.
134. The Board found that Ms. Doneker testified that her son is an addict and that addicts with the best intentions still have trouble overcoming their addictions.
135. The Board found that Ms. Doneker testified that addicts will steal from their own families.
136. The Board found that Ms. Doneker testified that this location is not a good area for this shelter.
137. James Stolvey was sworn in and testified in support of the Application.
138. The Board found that Mr. Stolvey testified that he is the contractor for the Applicant.
139. The Board found that Mr. Stolvey testified that the existing septic system is non-conforming and that the septic can be replaced in the same area as the existing septic and will not encroach on the neighbor's well.
140. The Board found that Mr. Stolvey testified that he questions how Mr. Murphy could be receiving lights from vehicles in his bedroom when the house has been vacant for over a year.
141. The Board found that Mr. Stolvey testified that he has no objection to Home of the Brave residents and would welcome them to his neighborhood.
142. The Board found that Mr. Stolvey testified that the only construction done at this point has been work needed for the sale of the home in the event the application is denied.
143. The Board found that Mr. Stolvey testified that he does not see how the use will substantially adversely affect the uses of neighboring and adjacent properties.
144. The Board found that Ms. Boone testified that their investors, the Department of Veteran Affairs and the Department of Housing and Urban Development monitor the facilities.
145. The Board found that Ms. Boone testified that the Applicant would not receive grants if the Applicant housed more veterans than approved.
146. The Board found that Ms. Boone testified that residents failing drug tests are relocated rather than put out on the street.
147. The Board found that Ms. Boone testified that the Applicant was aware a special use exception approval was needed prior to the purchase of the Property.
148. The Board found that twenty six (26) parties appeared in support of the Application.
149. The Board found that twenty six (26) parties appeared in opposition to the Application.

150. The Board tabled its decision the Application until April 1, 2013.
151. On April 1, 2013, the Board discussed the Application at great length.
152. Based on the findings above and the testimony presented at the public hearing, the Board determined that the application met the standards for granting a special use exception because the use does not substantially affect adversely the uses of adjacent or neighboring properties. The Board gave the following reasons for its decision:
    a. The Applicant has a history of providing home for veterans that will not substantially affect adversely the uses of neighboring and adjacent properties.
    b. The proposed housing is designed for residential use in a residential area.
    c. The existing dwelling has been unoccupied for over a year and fell into disrepair. The Applicant has taken steps to make improvements to the dwelling and intends to maintain the exterior of the property which will improve the area.
    d. The Applicant referenced a study which evidences that the proposed housing will have a neutral or positive effect on housing prices in the neighborhood.
    e. Opposition to the Application did not present any evidence from a realtor or appraiser as to substantial adverse effect to real estate values
    f. The proposal does not appear to have an adverse effect on traffic in the area.
    g. The Applicant has testified that visitor access to the site will be limited and that residents will be transported by a van for their appointments and daily living.
    h. The Applicant's contractor testified that improvements have been made to the dwelling and the septic system would be placed in the same location as the existing septic system.
    i. No signage will be located outside the Property to note its usage.
    j. The residents of the home will be required to follow certain rules and regulations and will be discharged from the home if they fail to adhere to those rules.
    k. The home will house a maximum of six (6) adult female veterans and no more than eight (8) total persons not including staff members.
153. As part of its approval the Board placed the following conditions:
    a. The approval is granted for a period of two (2) years.
    b. No more than six (6) adult female veterans and no more than eight (8) total persons, not including staff members, may reside in the dwelling at any given time.

The Board granted the special use exception application for a period of two (2) years with the conditions stated herein finding that it met the standards for granting a special use exception.

Decision of the Board

Upon motion duly made and seconded, the special use exception application was granted for a period of two (2) years with the conditions stated herein. The Board Members in favor were Mr. Dale Callaway, Mr. Jeff Hudson, and Mr. Norman Rickard. Mr. John Mills and Mr. Brent Workman voted against the Motion to approve the special use exception application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY

Dale Callaway

Dale Callaway
Chairman

If the use is not established within one (1) year from the date below the application becomes void.

Date May 7, 2013

Exhibit 3

DATE FEE PAID 2-26-2013 APPLICATION # 201302295
RECEIPT # 8641 CASE # 11189
AMOUNT $400.00

COUNTY BOARD OF ADJUSTMENT OF SUSSEX COUNTY
NOTICE OF APPEAL AND/OR REQUEST FOR:
VARIANCE
SPECIAL USE EXCEPTION
ADMINISTRATIVE VARIANCE

Applicant Brandywine Seaside Pointe LLC Phone 856-813-2000
Address 525 Fellowship Rd, Suite 360, Mount Laurel, NJ 08054
Owners Name 36101 Seaside Boulevard LLC Phone 856-813-2000
Address 525 Fellowship Rd. Suite 360, Mount Laurel, NJ 08054
Agent/Attorney Tim Willard Phone 856-7777
Address 26 The Circle, Georgetown, DE 19947
Location: (N) (S) (E) (W) Road northeast on Seaside Blvd. 580 feet and being 400' northeast of Route One
~~(N) (S) (E) (W) of Road~~
District No. 3-34 Map No. 13.00 Parcel No. 325.37
Subdivision N/A Lot No. C&D Zone GR-RPC
Hundred LEWES REHOBOTH Frontage N/A Depth N/A Acres 5.5

Request for a special use exception or variance from the provisions of:
Chapter 115 Article VI Subsection 115-40 Item C
Date Property was acquired January 19, 1998
Plot Plan or drawing attached: Yes X NO

State specifically your request and the reason for this request.
Applicant proposes to expand the existing assisted living facility with a separate two story building with 28 units. The parking lot will be expanded and the existing facility will be modified (approx. 4500 square feet). This Special Use Exception is required in a GR District because it is a convalescent or nursing home.

Requesting a Special Use exception to expand an existing Assisted Living Facility (Convalescent/Nursing Home)

Signature of Applicant/Agent/Attorney

Russell Warrington
Person Accepting Application

FOR BOARD USE ONLY:
Date of Notice ~~attachment~~ Date of Hearing April 15, 2013
Date of Decision 4.15.13
Decision of the Board Approved w/stip.
Maintain fence / double row planting 6' min Cypress.

MINUTES OF APRIL 15, 2013

The regular meeting of the Sussex County Board of Adjustment was held on Monday, April 15, 2013, at 7:00 p.m. in the County Council Chambers, County Administrative 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 & Zoning, Ms. Melissa Thibodeau – Zoning Inspector II, and Mrs. Jennifer Norwood – Recording Secretary.

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

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously to approve the Minutes of March 18, 2013 and the Finding of Facts of March 18, 2013. 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. 11189 – Brandywine Seaside Pointe LLC – northeast of Seaside Boulevard 580 feet east of Road 270A (Munchy Branch Road) and being 400 feet east of Route One (Coastal Highway). (Tax Map I.D. 3-34-13.00-325.37)

An application for a special use exception to expand an existing Assisted Living Facility (Convalescent / Nursing Home).

Mr. Lank presented the case. Mr. Lank advised the Board that the Office of Planning & Zoning received a letter from an owner of a nearby property who expressed concerns about his view if the Applicant expands its facility.

Michael Colvin, Peter Burke, Jr. and Steve Heene were sworn in to testify about the Application. Tim Willard, Esquire, presented the case to the Board on behalf of the Applicant and submitted exhibits for the Board to review. Mr. Willard stated that the Applicant is requesting a special use exception to expand an existing Assisted Living Facility (Convalescent/Nursing Home); that the use will not substantially affect adversely the uses of neighboring and adjacent properties; that the existing facility was approved in 1996 for a convalescent home; that the existing facility has been in operation for fifteen (15) years; that the Applicant plans to add an additional 28 beds for Alzheimer's and dementia patients; that the proposed addition will be called "Reflections"; that there is an increased need for this type of care in the area; that the Applicant operates a similar facility in Fenwick Island and there is a waiting list for that facility; that the Applicant is a leader in its field; that there will be changes made to the existing entrance of the facility as the entrance will be moved to the center of the

building; that the change in the entrance will result in a loss of six (6) beds in the old portion of the facility but will increase leisure space within the facility; that the available parking spaces will increase from 34 parking spaces to 64 parking spaces; and that there will be an additional six (6) employees hired for the proposed expansion.

Michael Colvin testified that the site will have one (1) parking space for every four (4) beds and that the Applicant is only required to have 55 parking spaces.

Mr. Willard stated that most residents no longer drive; that parking problems typically only exist during holidays such as Christmas and Mother's Day; that the Applicant will landscape the parking lot islands; that the Applicant will install additional lighting in the parking lot; and that the proposed addition will have the same appearance as the existing building.

Mr. Burke testified that he is the Vice President of Brandywine Seaside Pointe, LLC; that the Alzheimer's Disease epidemic is creating problems because those who suffer from the disease are living longer; that 40% of the residents at the Fenwick Island facility suffer from Alzheimer's Disease or related conditions; that the proposed expansion will help the Applicant meet a demand; that the closest facility is 25 miles away; and that only 2 or 3 current residents actually drive.

Mr. Colvin testified that the water runoff from the parking lot will be directed to the existing Storm Water Management Pond; that adequate capacity for the water and sewer is available to accommodate the proposed addition; that Tidewater provides water to the site and Sussex County provides sewer services; and that the proposed lighting is designed so that it does not disturb the neighboring properties.

Mr. Willard stated that the Applicant obtained an appraisal comparing the Beachfield community, which is adjacent to the facility, to other similar communities adjacent to convalescent homes and the appraisal showed that there is no substantial adverse effect to the surrounding neighborhoods; that there are Leland Cypress trees along the property line and the Applicant is willing to increase the buffer, if necessary; that there is intense commercial activity nearby as a pharmacy, a grocery store, and a bank are very close to the Property; that the facility is a transition property separating the residential properties in Beachfield from the nearby commercial properties; and that the facility is very secure.

Mr. Heene testified that the facility is equipped with keypad entry and alarms on all doors; that any outdoor activity for the residents is within a fenced in area; that nursing care is provided 24 hours a day / 7 days a week; that the Applicant operates 25 facilities in five (5) states; that the Applicant is very concerned about keeping the facility secure; that the Applicant will install cameras outside the facility's exit doors; and that the facility practices yearly disaster drills with the local fire department. Mr. Heene, under oath, confirmed the statements made by Mr. Willard.

Mr. Lank read into the record another letter the Office of Planning & Zoning received from a neighbor who was in opposition to the Application.

Sally Cooper was sworn in and testified in opposition to the Application. Ms. Cooper testified that she lives in Beachfield development; that she is concerned about the additional parking lot, lighting and landscaping; that her property abuts the parking lot; that she would like to see a double row of Leland Cypress trees planted along the property line; and that the existing fence is currently not maintained and that she would like the Applicant to maintain the fence.

Gabriel Fisher was sworn in and testified in opposition to the Application. Ms. Fisher testified that she is concerned about increased noise and lighting issues; that there are no trees planted between her property and the Applicant's property; that she would like to see a double row of Leland Cypress trees planted to create a buffer; that she is concerned the lighting for the Property will shine on her property; and that the Applicant should maintain the existing fence.

Bill Gallop was sworn in and testified in opposition to the Application. Mr. Gallop testified that he would like to know the shift schedule and hours of operation; that the Beachfield development never received a copy of the proposed plan from the Applicant; and that the Applicant has been a great neighbor.

In rebuttal, Tim Willard, stated that the Applicant is willing to plant additional Leland Cypress trees, beginning at the end of the existing row of Leland Cypress trees; and that the Applicant will have no objection to maintaining the existing fence.

Mr. Colvin testified that the Applicant could put a double row of Leland Cypress trees near the current trees; that he does not think there is enough space to plant a double row in the new area but there is enough space to plant a single row of the trees beginning at the end of the existing row of Leland Cypress trees; and that the lighting will be taller than eight (8) feet but is designed to minimize the impact to surrounding properties and not radiate outside the parking area.

Mr. Heene testified that the shifts will remain the same, which are 7:00 a.m. to 3:00 p.m., 3:00 p.m. to 11:00 p.m., and 11:00 p.m. to 7:00 a.m.

Mr. Willard submitted an exhibit book to the representative from the Beachfield development for their review.

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

The Board found that seven (7) parties appeared in opposition to the Application.

Motion by Mr. Rickard, seconded by Mr. Mills, 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 Special Use Exception Application No. 11189 for the requested special use exception because the use does not substantially affect adversely the uses of the adjacent and neighboring properties and for the following reasons:

a. The Applicant proposes to expand an already existing convalescent home. Specially, the new facility would add 28 units. The current facility has 96 units. The proposed addition would be approximately 20,000 square feet. The current facility is approximately 64,000 square feet. This expansion fills a significant demand for healthcare for the elderly and the expanded activity because of economies of scale is marginal and would not substantially affect adversely the neighbors or adjacent properties.
b. The use would be for a secure facility for patients with Alzheimer's or dementia related diseases and would not generate significant outdoor activity including traffic or noise.
c. An appraiser's report concluded that the expansion would not adversely affect property values on neighboring residential homes.
d. The Planning Director reported that the current facility has been in operation for over ten (10) years and has had no violation or known complaints.
e. The site plan provides for ample parking, appropriate storm water management, and sufficient infrastructure and utilities for the expansion.
f. The property is located in a GR-RPC which allows for application of a special use exception for convalescent home.
g. The adjacent property and neighbors include significant commercial activity which would not be adversely affected by this expansion.
h. The applicant will maintain and / or install sufficient buffers to all residential property and install landscaping and appropriate lighting.

As part of the Motion for approval, Mr. Rickard placed a stipulation that a double row of six (6) foot high Leland Cypress trees be planted by the Applicant along the property line and that the Applicant maintain the fence between the Applicant's property and the Beachfield development.

Motion by Mr. Rickard, seconded by Mr. Mills, and carried unanimously that the special use exception be **granted for the reasons stated and with the stipulation that a double row of**

6-foot high Leland Cypress trees be planted and that the Applicant maintains the fence. 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. 11190 – Charles Limmer & Betty Limmer – south of Route 54 (Lighthouse Road) west of Tyler Avenue, being Lot 41 within Cape Windsor development. (Tax Map I.D. 5-33-20.18-69.00)

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

Mr. Lank presented the case and stated the Office of Planning & Zoning has not received any letters regarding this Application. Charles Limmer, Sr., was sworn in to testify about the Application. James Fuqua, Esquire, presented the case to the Board on behalf of the Applicants and stated that the Applicants are requesting a variance of five (5) feet from the 10 feet side yard setback requirement for a proposed attached garage and a variance of five (5) feet from the 20 feet rear yard setback requirement for a proposed porch. Mr. Fuqua submitted exhibits to the Board for review. Mr. Fuqua stated that the Property is located within the Cape Windsor development; that the Applicants applied for variances in November 2012 and the Application was denied; that the Applicants have re-designed the proposed dwelling per the Board's comments; that there is a significant difference in the new site plan submitted with this Application from the site plan offered in the prior application; that the proposed dwelling is more in conformity with other dwellings in Cape Windsor; that Cape Windsor is a dense residential development; that the lot is 50 feet wide; that the existing home had to be removed and replaced; that the building envelope is being moved to the rear of the Property and is not being enlarged; that the rear yard variance will allow room for parking in front of the dwelling and will create a buffer area from the street; that the rear yard is adjacent to the existing lagoon; that the variance requests are consistent with other variances granted in the development; that lots within Cape Windsor are unique because the community was originally developed for manufactured homes; that there have been twenty-two (22) similar variances granted on Tyler Avenue; that the difficulty was not created by the Applicants; that the variances will not alter the character of the neighborhood; that the variances are necessary to enable reasonable use of the Property; that the variances are the minimum variances necessary to afford relief; and that the Applicants have safety concerns about placing their home five (5) feet from the road.

Mr. Limmer, under oath, confirmed the statements made by Mr. Fuqua. Mr. Limmer testified that he has experienced no problems with flooding in the rear of the Property.

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

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: BRANDYWINE SEASIDE POINTE, LLC

(Case No. 11189)

A hearing was held after due notice on April 15, 2013. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a special use exception to expand an existing Assisted Living Facility (Convalescent/Nursing Home).

Findings of Fact

The Board found that the Applicant was seeking a special use exception for promotional activities as accessory uses to a speedway for a period of five (5) years. This application pertains to certain real property located northeast of Seaside Boulevard 580 feet east of Road 270A (Munchy Branch Road) and being 400 feet east of Route One (Coastal Highway); said property being identified as Sussex County Tax Map Parcel Number 3-34-13.00-325.37. After a hearing, the Board made the following findings of fact:

1. Michael Colvin, Peter Burke, Jr. and Steve Heene were sworn in to testify about the Application.
2. Timothy Willard, Esquire, presented the Application on behalf of the Applicant.
3. The Board found that Mr. Willard submitted exhibits for the Board to review.
4. The Board found that Mr. Willard stated that the Applicant is requesting a special use exception to expand an existing Assisted Living Facility (Convalescent/Nursing Home).
5. The Board found that Mr. Willard stated that the use will not substantially affect adversely the uses of neighboring and adjacent properties.
6. The Board found that Mr. Willard stated that the existing facility was approved in 1996 for a convalescent home and that the existing facility has been in operation for fifteen (15) years.
7. The Board found that Mr. Willard stated that the Applicant plans to add an additional 28 beds for Alzheimer's and dementia patients and that the proposed addition will be called "Reflections".
8. The Board found that Mr. Willard stated that there is an increased need for this type of care in the area as the Applicant operates a similar facility in Fenwick Island and there is a waiting list for that facility.
9. The Board found that Mr. Willard stated that the Applicant is a leader in its field.
10. The Board found that Mr. Willard stated that there will be changes made to the existing entrance of the facility as the entrance will be moved to the center of the building.
11. The Board found that Mr. Willard stated that the change in the entrance will result in a loss of six (6) beds in the old portion of the facility but will increase leisure space within the facility.
12. The Board found that Mr. Willard stated that the available parking spaces will increase from 34 parking spaces to 64 parking spaces.
13. The Board found that Mr. Willard stated that there will be an additional six (6) employees hired for the proposed expansion.
14. The Board found that Mr. Colvin testified that the site will have one (1) parking space for every four (4) beds and that the Applicant is only required to have 55 parking spaces.

15. The Board found that Mr. Willard stated that most residents no longer drive and that parking problems typically only exist during holidays such as Christmas and Mother's Day.
16. The Board found that Mr. Willard stated that the Applicant will landscape the parking lot islands and will install additional lighting in the parking lot.
17. The Board found that Mr. Willard stated that the proposed addition will have the same appearance as the existing building.
18. The Board found that Mr. Burke testified that he is the Vice President of Brandywine Seaside Pointe, LLC.
19. The Board found that Mr. Burke testified that the Alzheimer's Disease epidemic is creating problems because those who suffer from the disease are living longer.
20. The Board found that Mr. Burke testified that 40% of the residents at the Fenwick Island facility suffer from Alzheimer's Disease or related conditions.
21. The Board found that Mr. Burke testified that the proposed expansion will help the Applicant meet a demand.
22. The Board found that Mr. Burke testified that the closest facility is 25 miles away.
23. The Board found that Mr. Burke testified that only 2 or 3 current residents actually drive.
24. The Board found that Mr. Colvin testified that the water runoff from the parking lot will be directed to the existing Storm Water Management Pond and that adequate capacity for the water and sewer is available to accommodate the proposed addition.
25. The Board found that Mr. Colvin testified that Tidewater provides water to the site and Sussex County provides sewer services.
26. The Board found that Mr. Colvin testified that the proposed lighting is designed so that it does not disturb the neighboring properties.
27. The Board found that Mr. Willard stated that the Applicant obtained an appraisal comparing the Beachfield community, which is adjacent to the facility, to other similar communities adjacent to convalescent homes and the appraisal showed that there is no substantial adverse effect to the surrounding neighborhoods.
28. The Board found that Mr. Willard stated that there are Leland Cypress trees along the property line and the Applicant is willing to increase the buffer, if necessary.
29. The Board found that Mr. Willard stated that there is intense commercial activity nearby as a pharmacy, a grocery store, and a bank are very close to the Property.
30. The Board found that Mr. Willard stated that the facility is a transition property separating the residential properties in Beachfield from the nearby commercial properties.
31. The Board found that Mr. Willard stated that the facility is very secure.
32. The Board found that Mr. Heene testified that the facility is equipped with keypad entry and alarms on all doors and that any outdoor activity for the residents is within a fenced in area.
33. The Board found that Mr. Heene testified that nursing care is provided 24 hours a day / 7 days a week.
34. The Board found that Mr. Heene testified that the Applicant operates 25 facilities in five (5) states.
35. The Board found that Mr. Heene testified that the Applicant is very concerned about keeping the facility secure and will install cameras outside the facility's exit doors.
36. The Board found that Mr. Heene testified that the facility practices yearly disaster drills with the local fire department.
37. The Board found that Mr. Heene, under oath, confirmed the statements made by Mr. Willard.

38. The Board found that Sally Cooper, Gabriel Fisher, and Bill Gallop were sworn in and testified in opposition to the Application.
39. The Board found that Ms. Cooper testified that she lives in Beachfield development.
40. The Board found that Ms. Cooper testified that she is concerned about the additional parking lot, lighting and landscaping and that her property abuts the parking lot.
41. The Board found that Ms. Cooper testified that she would like to see a double row of Leland Cypress trees planted along the property line.
42. The Board found that Ms. Cooper testified that the existing fence is currently not maintained and that she would like the Applicant to maintain the fence.
43. The Board found that Ms. Fisher testified that she is concerned about increased noise and lighting issues.
44. The Board found that Ms. Fisher testified that there are no trees planted between her property and the Applicant's property and that she would like to see a double row of Leland Cypress trees planted to create a buffer.
45. The Board found that Ms. Fisher testified that she is concerned the lighting for the Property will shine on her property.
46. The Board found that Ms. Fisher testified that the Applicant should maintain the existing fence.
47. The Board found that Mr. Gallop testified that he would like to know the shift schedule and hours of operation, that the Beachfield development never received a copy of the proposed plan from the Applicant, and that the Applicant has been a great neighbor.
48. The Board found that Mr. Colvin testified that the Applicant could put a double row of Leland Cypress trees near the current trees.
49. The Board found that Mr. Colvin testified that he does not think there is enough space to plant a double row in the new area but there is enough space to plant a single row of the trees beginning at the end of the existing row of Leland Cypress trees.
50. The Board found that Mr. Colvin testified that the lighting will be taller than eight (8) feet but is designed to minimize the impact to surrounding properties and not radiate outside the parking area.
51. The Board found that Mr. Heene testified that the shifts will remain the same, which are 7:00 a.m. to 3:00 p.m., 3:00 p.m. to 11:00 p.m., and 11:00 p.m. to 7:00 a.m.
52. The Board found that no parties appeared in support of the Application.
53. The Board found that seven (7) parties appeared in opposition to the Application.
54. The Board found that the Office of Planning & Zoning received two (2) letters in opposition to the Application.
55. Based on the findings above and the testimony presented at the public hearing, the Board determined that the application met the standards for granting a special use exception because the use does not substantially affect adversely the uses of adjacent or neighboring properties and for the following reasons:
    a. The Applicant proposes to expand an already existing convalescent home. Specially, the new facility would add 28 units. The current facility has 96 units. The proposed addition would be approximately 20,000 square feet. The current facility is approximately 64,000 square feet. This expansion fills a significant demand for healthcare for the elderly and the expanded activity because of economies of scale is marginal and would not substantially affect adversely the neighbors or adjacent properties.
    b. The use would be for a secure facility for patients with Alzheimer's or dementia related diseases and would not generate significant outdoor activity including traffic or noise.
    c. An appraiser's report concluded that the expansion would not adversely affect property values on neighboring residential homes.

d. The Planning Director reported that the current facility has been in operation for over ten (10) years and has had no violation or known complaints.
e. The site plan provides for ample parking, appropriate storm water management, and sufficient infrastructure and utilities for the expansion.
f. The property is located in a GR-RPC which allows for application of a special use exception for convalescent home.
g. The adjacent property and neighbors include significant commercial activity which would not be adversely affected by this expansion.
h. The applicant will maintain and / or install sufficient buffers to all residential property and install landscaping and appropriate lighting.

56. As part of its approval, the Board placed the following conditions on the special use exception:
    a. The Applicant plant a double row of six (6) foot high Leland Cypress trees along the property line; and
    b. The Applicant maintain the fence between the Applicant's property and the Beachfield development.

The Board granted the special use exception application with the conditions stated herein finding that it met the standards for granting a special use exception.

Decision of the Board

Upon motion duly made and seconded, the special use exception application with the conditions stated herein was approved. The Board Members in favor were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Members voted against the Motion to approve the special use exception application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY

Dale Callaway

Dale Callaway
Chairman

If the use is not established within one (1) year from the date below the application becomes void.

Date May 21, 2013

Exhibit 4

MICHAEL H. VINCENT, PRESIDENT
SAMUEL R. WILSON JR., VICE PRESIDENT
GEORGE B. COLE
JOAN R. DEAVER
VANCE PHILLIPS

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Sussex County Council

AGENDA

May 7, 2013

10:00 A.M.

Call to Order

Approval of Agenda

Approval of Minutes

Reading of Correspondence

American Legion Post 28 Auxiliary – Presentation of Memorial Poppy

Sally Beaumont, Chairperson, Advisory Committee on Aging & Adults with Physical Disabilities for Sussex County – Update on Sussex County Council Live Conference: Live Healthy…Live Active…Live at Home

Susan Love, Delaware Coastal Programs – Sea Level Rise Committee Update

Todd Lawson, County Administrator

1. **Proclamation – Community Action Month**
2. **Administrator's Report**

Gina Jennings, Finance Director Appointee

1. **Bank Resolutions**

Hal Godwin, Deputy County Administrator

1. **Wastewater Agreement – Hopkins Pettyjohn Subdivision (a/k/a/ Red Mill Pond North), Phase 2**
2. **Legislative Update**

EQUAL HOUSING OPPORTUNITY

Andy Wright, Chief of Building Code

1. **Discussion and Possible Introduction of a Proposed Ordinance relating to an update of the Sussex County Building Code**

John Ashman, Director of Utility Planning

1. **Long Neck EMS Station 106**

   A. **Change Orders**

Grant Requests

1. **Gumboro Community Center for operating expenses**

2. **Historic Georgetown Association for Old Firehouse and Train Station restoration**

3. **Delaware Technical & Community College for Kids on Campus scholarship funding**

4. **Nanticoke Young Life for Team Xtreme program expenses**

Introduction of Proposed Zoning Ordinances

Any Additional Business Brought Before Council

Executive Session – Job Applicants' Qualifications, Personnel, Pending/Potential Litigation, and Land Acquisition pursuant to 29 Del. C. §10004(b)

Possible Action on Executive Session Items

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Sussex County Council meetings can be monitored on the internet at www.sussexcountyde.gov.

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In accordance with 29 Del. C. §10004(e)(2), this Agenda was posted on April 30, 2013 at 5:00 p.m., and at least seven (7) days in advance of the meeting.

This Agenda was prepared by the County Administrator and is subject to change to include the addition or deletion of items, including Executive Sessions, which arise at the time of the Meeting.

Agenda items listed may be considered out of sequence.

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ROBERT C. WHEATLEY, CHAIRMAN
IRWIN G. BURTON III
MICHAEL B. JOHNSON
MARTIN L. ROSS
RODNEY SMITH

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Sussex County
Planning & Zoning Commission

AGENDA

MAY 9, 2013

6:00 P.M.

Call to Order

Approval of Agenda

Approval of Minutes – April 25, 2013

Old Business

Conditional Use #1962 **RW**

Application of **CHESAPEAKE AGRISOIL, LLC** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a composting facility as an extension to Conditional Use No. 1314 and Conditional Use No. 1691 (A micro-nutrient plant with related truck entrance and rail spur for processing and handling of poultry litter) , to be located on a certain parcel of land lying and being in Broad Creek Hundred, Sussex County, containing 228.88 acres, more or less, lying west of Route 13A north of Road 485 (Tax Map I.D. 1-32-6.00-88.01 and 95.00 and Tax Map I.D. 1-32-11.00-41.00).

Public Hearings

Change of Zone # 1728 **MJ**

Application of **LIGHTHOUSE CARILLON, LLC** to amend the Comprehensive Zoning Map from AR-1 Agricultural Residential District to a CR-1 Commercial Residential District, to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 2.81829 acres, more or less, lying southwest of Route 5 (Indian Mission Road) 600 feet west of Route 24 (John J. Williams Highway) (Tax Map I.D. 2-34-23.00 – Part of Parcels 260.00 and 269.18).

EQUAL HOUSING OPPORTUNITY

Subdivision #2013-1 **MJ**

Application of **BOARDWALK DEVELOPMENT, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 17.52 acres into 35 lots, (Cluster Development), located north of Road 277 (Angola Road) approximately 2,200 feet west of Road 278 (Tax Map I.D. 2-34-12.00-13.01).

Subdivision #2013-2 **MJ**

Application of **VESCO, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, for a 30 lot expansion to a preliminary approved 183 lot cluster subdivision for a total of 213 lots on 162.95 acres, located east of Road 277 (Robinsonville Road), 400 feet south of Road 287 (Kendale Road) (Tax Map I.D. 2-34-6.00-90.00).

AN ORDINANCE TO REPEAL CHAPTER 80, "LOT MAINTENANCE," § 80-3 IN ITS ENTIRETY AND AMEND CHAPTER 115, ARTICLE XXV, "SUPPLEMENTARY REGULATIONS," §§ 115-91.4 AND 115-191.5 OF THE CODE OF SUSSEX COUNTY BY INCLUDING IN § 115-191.4 MINIMUM STANDARDS FOR LOT MAINTENANCE PERTAINING TO PROHIBITED ACCUMLATIONS OF OVERGROWN GRASS AND WEEDS AND TO INCLUDING FAILURE TO COMPLY WITH THE MINIMUM LOT MAINTENANCE STANDARDS PROHIBITING OVERGROWN GRASS AND WEEDS IN THE PENALTY AND ENFORCEMENT PROVISIONS OF § 115-191.5

Other Business

Logo Motive **MJ**
Commercial Site Plan – Road 275A

Delf **MJ**
Commercial Site Plan – Road 275A

Ronald Wyatt **RW**
2 Parcels & 50' Easement – Road 474

Michael W., Sr. & Lori T. Short **MR**
3 Parcels & 50' Easements – Road 494

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Planning & Zoning Commission meetings can be monitored on the internet at www.sussexcountyde.gov.

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In accordance with 29 Del. C. §10004(e)(2), this Agenda was posted on April 26, 2013, at 3:00 p.m., and at least seven (7) days in advance of the meeting.

This Agenda is subject to change to include the addition or deletion of items, including Executive Sessions, which arise at the time of the Meeting.

Agenda items listed may be considered out of sequence.

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DALE A. CALLAWAY, CHAIRMAN
JEFFREY M. HUDSON
JOHN M. MILLS
NORMAN C. RICKARD
E. BRENT WORKMAN

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Sussex County Board of Adjustment

REVISED AGENDA

MAY 6, 2013

7:00 P.M.

Call to Order

Approval of Agenda

Approval of Minutes – April 1, 2013

Finding of Facts of - April 1, 2013

Public Hearings

Case No. 11197 Colonial East Community, LLC & Colonial East Limited Partnership
northeast of Route 1 (Coastal Highway) 0.25 miles northwest of Road 276 (Wolf Neck Road) within Colonial East Mobile Homes Estates (Tax Map I.D. 334-6.00-335.00 & 335.01)
A variance from the required separation distance between manufactured homes and other structures within a mobile home park and a variance from the permitted lot coverage within a mobile home park.

Case No. 11198 Robert & Barbara Robinson
southeast of Woodland Circle 300 feet northwest of Marina Drive West, being Lot 35 Block E Section 1 within Angola By The Bay, south of Road 277 (Angola Road) (Tax Map I.D. 2-34-17.08-126.00).
A variance from the front yard and side yard setback requirement.

Case No. 11199 Scott Boatman
north of Route 26, 1.04 miles east of Road 382 (Tax Map I.D. 2-33-11.00-95.00).
A special use exception to retain a manufactured home as a classroom.

Case No. 11200 Danny L. Willey
north of Route 24 (John J. Williams Highway) 735 feet northeast of Road 297 (Mount Joy Road) & Oak Orchard Road Intersection (Tax Map I.D. 2-34-29.00-263.07).
A special use exception to place a tent as a temporary facility for seasonal use over a five (5) year period.

EQUAL HOUSING OPPORTUNITY

Case No. 11201 John Sparacino
Northeast of Road 261 (Sweet Briar Road) west of Vivid View Drive and south of traffic circle, being Lot 321 within the Villages of Red Mill Pond- North (Tax Map I.D. 3-34-4.00-410.00)
A variance from the side yard setback requirement.

Case No. 11202 Michael & Kaleope Kapela
south of Route 54 west of Keen-wik Road, being Lot 14 within Keen-wik Subdivision (Tax Map I.D. 5-33-20.13-34.00).
A variance from the side yard setback requirement.

Case No.11203 Gautamkumar I. Brahmbhatt
south of Route 534 (Tharp Road) corner of Elm Street and being approximately 800 feet west of Road 535 (Middleford Road) (Tax Map I.D. 3-31-6.00-270.00).
A variance from the rear yard setback requirement.

Case No. 11204 Bay Twenty LLC
south of Route 20 (Zion Church Road) corner of Road 382A (Johnson Road) within Foxhaven Subdivision (Tax Map I.D. 5-33-11.00-45.01 & 46.03).
A special use exception for additional "temporary" ground signs.

Case No. 11205 Joan M. Groszkowski
south of Route 54 (Lighthouse Road) west of Tyler Avenue, 950 feet south of Lincoln Drive and being Lot 31 within Cape Windsor Subdivision (Tax Map I.D. 5-33-20.18-77.00).
A variance from the rear yard and side yard setback requirement.

Case No. 11206 CMH Homes / Gil Fleming
north of Road 402 (Blueberry Lane) approximately 2,000 feet west of Route 113 (DuPont Highway) (Tax Map I.D. 4-33-6.00-23.00).
A variance from the side yard setback requirement.

Case No. 11207 Donald & Margaret Dzedzy
northwest of Road 348 (Irons Lane) northwest of Segrass Court with access thru Seagrass Plantation Lane and fronting on Indian River Bay (Tax Map I.D. 1-34-7.00-97.00).
A variance from the front yard setback requirement.

Case No. 11208 Carole Rommal
south of Route 54 (Lighthouse Road) east of Grant Avenue, 170 feet south of Lincoln Drive, being Lot 3 within Cape Windsor Subdivision (Tax Map I.D. 533-20.14-29.00).
A variance from the side yard setback requirement.

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Board of Adjustment meetings can be monitored on the internet at www.sussexcountyde.gov.

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In accordance with 29 Del. C. §10004(e)(2), this Agenda was posted on April 11, 2013, at 2:30 p.m., and at least seven (7) days in advance of the meeting.

This Agenda is subject to change to include the addition or deletion of items, including Executive Sessions, which arise at the time of the Meeting.

Agenda items listed may be considered out of sequence.
Revised: April 26, 2013 (to remove Minutes of April 15, 2013, to add Minutes of April 1, 2013 & Finding of Facts of April 1, 2013)

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Exhibit 5

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA, Plaintiff, v. SUSSEX COUNTY, DELAWARE, AND PLANNING AND ZONING COMMISSION OF SUSSEX COUNTY, Defendants.	Civil Action No. 12-1591-MPT CONSENT DECREE

STIPULATION AND ORDER

WHEREAS, the parties in the above-captioned action have agreed to certain modifications the Consent Decree; and

WHEREAS, some of these modifications do not implicate a time limit for performance; and

WHEREAS, the Consent Decree states that modifications which do not implicate a time limit for performance will be effective upon filing of the written agreement with this Court.

IT IS HEREBY STIPULATED AND AGREED, by and between the parties hereto, through their respective counsel and subject to the approval of the Court, that the modifications of the Consent Decree which do not implicate a time limit for performance are as follows:

1. When the in-person training required by the Consent Decree would cause any given County department to operate with less than 25% of its regular employees for the duration of the training, then up to 25% of that department's staff may be considered to have good cause to be trained by video instead of in-person, provided that no individual asserts this basis for good

cause in any two consecutive years.

2. Training will be scheduled so as to maximize the number of required individuals who can attend in person.

A. Any elected, appointed, or hired individual who, for good cause, cannot attend the initial, in-person training may satisfy the initial training requirement by viewing the videotape of the live training within 90 days of entry of the decree, provided that any person who completes the video training in lieu of live training will report the reason on his/her training certification form (Attachment B of the Consent Decree) that will be submitted to the Department of Justice.

B. Any elected, appointed, or hired individual who, for good cause, cannot attend the annual, in-person training may satisfy the annual training requirement by viewing the videotape of the live training within 90 days after the live training, provided that any person who completes the video training in lieu of live training will report the reason on his/her training certification form (Attachment B of the Consent Decree) that will be submitted to the Department of Justice.

3. The parties will adhere to Federal Rule of Civil Procedure 6(a) in calculating deadlines in the Consent Decree.

4. The parties agree that home addresses and home telephone numbers of the trainees required to be trained under Section VI of the Consent Decree which appear on the Certifications of Training and Receipt of Consent Decree ("Certifications") may be redacted before the Certifications are posted on the County's website.

IT IS SO ORDERED:

This _____ day of _____, 2013.

_____

United States Magistrate Judge

The undersigned hereby consent to the entry of this Stipulation and Order:

UNITED STATES OF AMERICA
DEPARTMENT OF JUSTICE

_____

Steven H. Rosenbaum
Rebecca B. Bond
Christopher J. Fregiato
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Christopher.Fregiato@usdoj.gov

Attorneys for the Plaintiff

YOUNG CONAWAY STARGATT & TAYLOR, LLP

_____

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Attorneys for the Defendants

Dated: May 17, 2013_____

Exhibit 6

BRANDY BENNETT NAUMAN
HOUSING COORDINATOR &
FAIR HOUSING COMPLIANCE OFFICER
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Sussex County
DELAWARE
sussexcountyde.gov

MEMORANDUM

TO: Sussex County Council
The Honorable Michael H. Vincent, President
The Honorable Samuel R. Wilson, Vice President
The Honorable George B. Cole
The Honorable Joan R. Deaver
The Honorable Vance Phillips
Todd Lawson, County Administrator

FROM: Brandy Nauman, Fair Housing Compliance Officer

RE: Fair Housing Policy

DATE: April 12, 2013

On Tuesday, March 26, 2013, I presented several successful affordable housing strategies from other locales similar in jurisdiction and authority to Sussex County. After my presentation, Council suggested moving forward with the Anti-NIMBY policy. Below you will find an outline of the updates associated with the proposed policy.

- Amend the Rules & Procedures for Public Hearings of County Council, the Board of Adjustment, and the Planning & Zoning Commission to include the following:
    - "Sussex County, in its zoning and land use decisions, does not discriminate against persons based on race, color, religion, national origin, disability, familial status, sex, creed, marital status, age, or sexual orientation. Public comments made on the basis of bias and stereotype concerning people within these protected classes will not be taken into consideration by the County in its deliberations."

- Legal counsel representing County Council, the Board of Adjustment, and the Planning & Zoning Commission will read the above statement prior to the start of any public hearing.

- Amend the County's Fair Housing Policy (approved December 11, 2012) to:

- Add the additional four protected classes covered by the Delaware Fair Housing Act.

- Add the updated public hearing rule.

Thank you.

Cc: J. Everett Moore, Jr., Esquire
James P. Sharp, Esquire
Vince Robertson, Esquire
Lawrence Lank, Planning & Zoning
Robin Griffith, Clerk of Council

FAIR HOUSING POLICY

It is the policy of Sussex County to comply with the Fair Housing Act, as amended, (~~-~~42 U.S.C. §§ 3601-3619) and the Delaware Fair Housing Act (6 Del. C. Ch. 46), by ensuring that its zoning and land use decisions do not discriminate against persons based on race, color, religion, national origin, disability, familial status ~~or~~, sex, creed, marital status, age, or sexual orientation. This policy means that, among other things, the County and all its officials, agents and employees will not discriminate in any aspect of housing based on these protected characteristics, including by:

(a) making unavailable or denying a dwelling to any person based on a protected characteristic;

(b) discriminating against any person in the terms, conditions or privileges of a dwelling, or in the provision of services or facilities in connection therewith based on a protected characteristic;

(c) Making, printing, or publishing, or causing to be made, printed, or published any notice, statement, or advertisement, with respect to a dwelling that indicates any preference, limitation, or discrimination based on a protected characteristic;

(d) Representing to persons because of a protected characteristic that any dwelling is not available when such dwelling is in fact so available;

(e) interfering with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right protected by the Fair Housing Act;

(f) interfering with the funding, development, or construction of any affordable housing units because of a protected characteristic; and

(g) discriminating on the basis of race or color in any aspect of the administration of its zoning, land use, or building ordinances, policies, practices, requirements, or processes relating to the use, construction, or occupancy of dwellings.

Any person who believes that any of the above policies have been violated by the County may contact:

- Sussex County's Fair Housing Compliance Officer, Brandy Nauman, at bnauman@sussexcountyde.gov or (302) 855-7777.
- the U.S. Department of Housing and Urban Development at 1-888-799-2085, or
- the U.S. Department of Justice at 1-800-896-7743 or (202) 514-4713.

It is also the policy of Sussex County to ensure that conduct at public hearings regarding land use and zoning adhere to the intentions of the Fair Housing Policy as outlined above. Legal

counsel representing County Council, the Board of Adjustment, and the Planning & Zoning Commission will read the following statement prior to the start of all public hearings:

- "Sussex County, in its zoning and land use decisions, does not discriminate against persons based on race, color, religion, national origin, disability, familial status, sex, creed, marital status, age, or sexual orientation. Public comments made on the basis of bias and stereotype concerning people within these protected classes will not be taken into consideration by the County in its deliberations."