MINUTES OF DECEMBER 10, 2012

The regular meeting of the Sussex County Board of Adjustment was held on Monday, December 10, 2012, 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. John Mills, Mr. Brent Workman, Mr. Jeff Hudson, and Mr. Norman Rickard, with James Sharp – Assistant County Attorney, and staff members, Mrs. Susan Isaacs – Chief Zoning Inspector, and Mrs. Jennifer Norwood – Recording Secretary.

Motion by Mr. Workman, seconded by Mr. Rickard, and carried unanimously to approve the Revised Agenda as circulated. Motion carried 4 – 0.

Motion by Mr. Workman, seconded by Mr. Rickard, and carried unanimously to approve the Minutes of November 5, 2012 as circulated. Motion carried 4 – 0.

Motion by Mr. Hudson, seconded by Mr. Rickard, and carried unanimously to approve the Minutes of November 19, 2012 as circulated. Motion carried 4 – 0.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously to approve the Findings of Fact for November 5, 2012. Motion carried 4 – 0.

Motion by Mr. Hudson, seconded by Mr. Rickard, and carried unanimously to approve the Findings of Fact for November 19, 2012. Motion carried 4 – 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. 11102 – Howard Miller & Carole Miller – north of Road 362 (Parker House Road) north of Georgia Drive, being Lot 30 Section II within Plantation Park development. (Tax Map I.D. 1-34-19.00-185.00)

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

Mrs. Isaacs presented the case. Howard Miller 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 2.1 foot variance from the 5 foot side yard setback requirement for an existing deck; that the Applicants purchased the Property in 2001; that the previous owner placed the manufactured home on the Property in 1987; that two (2) decks were constructed in 1997 by the prior owner; that a survey completed in 2001 shows the decks and encroachment; that there have been no changes made to the decks by the Applicants; that a survey was completed in 2012 for settlement and the existence of the encroachments has delayed the sale of the Property by the Applicants; that a building permit and certificate of compliance

were issued for the decks in 1997; that the situation is unique because the certificate of compliance has been issued; that the difficulty was not created by the Applicants; that the variance will enable reasonable use of the Property; that the variance is necessary for continued reasonable use; that the variance will not alter the character of the neighborhood because the decks have been in place for fifteen (15) years; and that the variance sought is the minimum variance to afford relief. During his presentation, Mr. Fuqua submitted to the Board a packet of exhibits. Mr. Miller, under oath, confirmed the statements by Mr. Fuqua.

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

Mrs. Isaacs stated that the Office of Planning & Zoning received one (1) letter in support of the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11102 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique since there is a cul-de-sac located adjacent to the Property;
2. That the situation is unique due to the issuance of the Certificate of Compliance;
3. The difficulty was not created by the Applicants;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance sought is the minimum variance to afford relief.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 4 – 0.

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

Case No. 11103 – John C. Leahy & Adalia V. Leahy – north of Route 54 (Lighthouse Road) east of Blue Bill Drive, being Lot 40 within Swann Keys development. (Tax Map I.D. 5-33-12.16-186.00)

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

Mrs. Isaacs presented the case. John Leahy was sworn in to testify about the Application. Raymond Tomasetti, Esquire, presented the case to the Board on behalf of the Applicants and stated that the Applicants are requesting a 4.4 foot variance from the 5 foot side yard setback for an existing shed, a 2.9 foot variance from the 10 foot side yard setback requirement for an existing manufactured home, and a 3.25 foot variance from the 5 foot side yard setback requirement for existing steps; that the Applicants purchased the Property in 2012; that the

previous owner purchased the Property in 1983; that the manufactured home was placed on the Property in 1983; that the shed was placed on the Property in 2010; that the Planning & Zoning Department contacted the previous owner stating the shed had to be moved since it was on the neighbor's Property; that the previous owner moved the shed but was not aware of the setback requirements; that the previous owner was unaware of any encroachments; that the difficulty was not created by the Applicants; that the shed is located near the property line; that the proposed variances will not alter the character of the neighborhood as there are many similar homes in the community; that the shed cannot be moved into compliance; that there is no adverse affect to the adjacent neighbors; that the variances sought are the minimum variances necessary to afford relief. Mr. Tomasetti submitted pictures to the Board. Mr. Leahy, under oath, confirmed the statements by Mr. Tomasetti. Mr. Leahy also stated that the shed is located on a concrete slab and that moving the shed forward would not alleviate the problem with the steps and sidewalk.

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

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11103 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The difficulty was not created by the Applicants;
2. The Property is unique in size;
3. The variances will not alter the essential character of the neighborhood; and
4. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Rickard, seconded by Mr. Hudson, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 4 – 0.

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

Case No. 11104 – Nancy Kaiser – north of Route 1 (Coastal Highway) and east of Road 270A (Munchy Branch Road) northeast of Beaver Dam Reach, being Lot 50 Phase II within Woods at Seaside development. (Tax Map I.D. 3-34-13.00-1256.00)

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

Mrs. Isaacs presented the case. Nancy Kaiser and Peter Giaquinto were sworn in and testified requesting a 9.99 foot variance from the 10 feet rear yard setback requirement for an existing screen porch and a 0.6 foot variance from the 25 feet front yard setback requirement for an existing dwelling. Ms. Kaiser testified that Peter Giaquinto purchased the property in 2010; that she is a contractor who built a screen porch for Mr. Giaquinto; that the screen porch was

built on the existing deck; that they believed the deck was in compliance with the setback requirements; that the adjacent neighbor has a similar screen porch which encroaches into the setback area; that she obtained a building permit for the screen porch; that the rear yard is adjacent to common area and the Delmarva Power & Light right of way area for transmission lines; that an exceptional practical difficulty exists due to the deck; that the Homeowners Association approved the screen porch; that an adjacent property has had a similar variance granted for a porch; that a survey completed in 2002 does not show the deck; that the variances are necessary to enable reasonable use of the Property; that the Applicant did not create the difficulty; that they were not aware the dwelling did not meet the front yard setback requirement; that the Property cannot be built in strict conformity with the Sussex County Zoning Ordinance; that the use is not detrimental to public welfare; that the variances sought are the minimum variances necessary to afford relief; and that the deck and porch would have to be removed in order to comply with the setback requirements.

Mr. Giaquinto testified that he purchased the Property in November 2010 and that the house has not moved since he purchased it.

Ms. Kaiser testified that the situation is unique because the house is existing and cannot be moved; that moving the house would create other setback issues; that the house has no adverse effect on the character of the neighborhood; and that the variance for the dwelling is the least modification necessary.

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

Mrs. Isaacs stated that the Office of Planning & Zoning received seven (7) letters in support of the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11104 for the requested variances based on the record made at the public hearings and for the following reasons:

1. The Property is unique since it is adjacent to the Delmarva Power & Light easement area;
2. The situation is unique due to the surveying differences;

3. The difficulty was not created by the Applicant;
4. The variances are necessary to enable reasonable use of the Property;
5. The variances will not alter the essential character of the neighborhood; and
6. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 4 – 0.

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

Case No. 11105 – Charles Crichley & Susan Crichley – east of Road 299 (Bay Farm Road) north of Marina Bay Circle, being Unit 29 within The Peninsula development. (Tax Map I.D. 2-34-30.00-311.00-Unit 29)

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

Mrs. Isaacs presented the case. Charles Crichley was sworn in and testified requesting a 4.07 foot variance from the required 5 foot rear yard setback requirement for a proposed patio with a seating wall; that the Applicants intend to construct a patio on the rear of their dwelling and that the patio will include a seating wall; that the proposed seating wall will measure 36 inches in height; that the proposed seating wall will provide extra seating needed on the proposed narrow patio; that the Homeowners Association Architectural Review Committee approved the proposed plan subject to the Applicants obtaining a variance; that the Property has a shallow depth; that the Property is unique since the property slopes and has a narrow rear yard; that the dwelling was constructed one (1) foot less deep in order to fit on the lot; that the patio will not pose any safety concerns; that the patio that the variance will not alter the essential character of the neighborhood; that the rear yard is adjacent to seventeen (17) feet of open space; that the open space also slopes towards a pond; that the variance is the minimum variance to afford relief; that Units 28 and 31 are adjacent to the Property; that the owner of Unit 28 supports the Application; that Unit 31 is a vacant lot; that the patio was not an option with the builder when the dwelling was constructed; that the deck is small and the variance is necessary to enable reasonable use; that the patio will not be visible from the street; and that there will be no seating wall near the proposed grill on the deck. Mr. Crichley submitted exhibits to the Board.

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

Motion by Mr. Workman, seconded by Mr. Rickard, and carried unanimously to take the case under advisement. Motion carried 4 – 0.

At the conclusion of the public hearings, the Vice-Chairman referred back to the case. Mr. Hudson stated that he would recommend approval of Variance Application No. 11105 for

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

1. The Property is unique since it slopes and is narrow in size;
2. The variance is necessary to enable reasonable use of the Property;
3. The difficulty was not created by the Applicants;
4. The variance will not alter the essential character of the neighborhood; and

5. The variance sought is the minimum variance to afford relief.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 4 – 0.

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

Case No. 11106 – Alice P. Robinson – north of Route 1 (Coastal Highway) northwest corner of Terrace Road and Silver Lane, being ½ Lot 2, 3,4,5, & ½ 6 within Silver Lake Manor development. (Tax Map I.D. 3-34-20.05-325.00 & 326.00)

An application for a variance from the required lot size requirement for a parcel, the minimum lot width for a parcel and a corner side yard setback requirement.

Mrs. Isaacs presented the case. Alice P. Robinson and Mark Davidson were sworn in to testify about the Application. Dennis Schrader, Esquire, presented the case to the Board on behalf of the Applicant and stated that the Applicant is requesting a 3,465 square-feet variance from the 10,000 square-feet lot size requirement, a 24.98 feet variance from the 75 feet lot width requirement, and a 5 feet variance from the 15 feet corner side yard setback requirement for proposed Lot 2, a 3,531 square-feet variance from the 10,000 square-feet lot size requirement and a 24.98 feet variance from the 75 feet lot width requirement for proposed Lot 3, a 3,596 square-feet variance from the 10,000 square-feet lot size requirement and a 24.98 lot width variance from the 75 feet lot width requirement for proposed Lot 4, and a 3,662 square-feet variance from the 10,000 square-feet lot size requirement and a 24.99 feet lot width variance from the 75 feet lot width requirement for proposed Lot 5. Mr. Schrader presented a packet of exhibits to the Board. Mr. Schrader stated that the Property consists of lots which were originally created in 1929; that the lots were approximately 50 feet by 100 feet at that time which were consistent with normal lot sizes at that time; that the Applicant owns three (3) lots and two (2) half lots within the Silver Lake Manor development; that the Applicant wants to create four (4) lots out of her three (3) lots and two (2) half lots; and that each of the new lots would consist of approximately 6,300 square-feet.

Mark Davidson, of Pennoni Assoc. Inc., testified that he surveyed the Property; that he obtained a copy of the 1929 plot from the Office of the Recorder of Deeds; that he searched in

Silver Lake to locate the monuments for the survey; that the existing lots have 200 feet of total road frontage; that the Applicant acquired Lots 4 & 5 in 1951; that the Applicant acquired one-half (1/2) of Lot 6 in 1972; that one-half (1/2) of Lot 2 was conveyed to the neighbor since the neighbor's lot was landlocked and needed access; that the Applicant later purchased one-half (1/2) of Lot 2 and all of Lot 3 in 1978; that the adjacent lots to the North are in the city limits of Rehoboth Beach; that access to those lots is through Silver Lane; that there is uniqueness to the property since the half lots are on opposite ends of the larger lots; that the lots do not have

enough depth to allow for the minimum 10,000 square-feet requirement; that the proposed fifty (50) feet wide lot will only allow for a twenty five (25) feet wide building envelope; that the exceptional practical difficulty is the half lots are on opposite ends and therefore the Director of Planning & Zoning is unable to approve the proposed subdivision without a variance; that if the two (2) half lots were adjacent to each other, the Director of Planning & Zoning would have approved the fifty (50) feet wide lot; that seventy five (75) feet wide lots will not have enough depth to obtain the minimum 10,000 square-feet lot size; that the increased building area will allow the construction of a dwelling similar to other dwellings in the area; that the Property cannot be developed in strict conformity with the Sussex County Zoning Regulations since the half lots are on opposite sides of the Property; that the existing lots are currently less than the minimum 10,000 square-feet lot size; that the corner side yard setback requirement applies to all corner lots regardless of the size of the corner lot; that the variance is necessary to enable reasonable use so the Applicant may deed a proposed lot to each of her four (4) children; that the use will be consistent with the intent of the original 1929 subdivision plat; that the variance from the corner side yard will enable Lot 2 to have the same building width as the other three (3) proposed lots; that the difficulty was not created by the Applicant since the Applicant acquired the twenty five (25) feet of Lot 6 in 1972 and the half lot of Lot 2 in 1978; that twenty five (25) feet of Lot 2 was deeded to Silver Lake Shores for access prior to the Applicant's acquisition of half of Lot 2; that the majority of the lots in the subdivision are less than 10,000 square-feet in size; that the corner side yard setback requirement does not allow for multiple scale lot sizes; that the variance will not alter the essential character of the neighborhood since the majority of the lots in the area are fifty (50) feet wide; that the existing dwelling owned by the Applicant is located on two (2) lots and the Applicant intends to tear it down; that the lots throughout the neighborhood contain less than 10,000 square-feet in size; that the side yard setback variance will allow a proposed dwelling to have a width in character with the neighborhood; that the variances will not substantially or permanently impair the use for development of adjacent properties since the adjacent properties are residential and are fifty (50) feet wide lots; that the majority of lots are less than 10,000 square-feet; that adjacent properties all have dwellings closer to the road than what is being requested; that the dwellings in Silver Lake Shores are only required to have a ten (10) feet front yard setback; that the variances will not be detrimental to the public welfare since they will not increase the density of the subdivision; that the proposed lots will be larger than other lots in the subdivision; that the reduced side yard setback will still require the proposed dwelling to sit further back on the Property than other existing dwellings in the neighborhood; and that the variances are the least modification since the lots are going back to the original lot sizes; that the average lot size of the proposed lots are 6,300 square-feet in size

which is still larger than other existing lots in the subdivision; that the side yard setback will be ten (10) feet which is the required setback requirement in Medium Residential Zoning District; that the variances are necessary to afford relief since they will give all the lots the same building area; that the Applicant may build a dwelling on Lots 2 and 3 within a year; that most of the lots laid out in Rehoboth Beach at the time were set up as fifty (50) feet wide lots; that only three (3) of the nine (9) lots in Silver Lake Shores exceed 10,000 square feet in size; that one (1) of the lots in Silver Lake Shores is only 5,000 square feet in size; that some lots in Silver Lake Shores

are not fifty (50) feet wide; that there is commercial property less than 200 feet to the west of the proposed lots; that the lots are serviced by public water and sewer available; that the proposal will not result in a change to the adjacent streets; and that there is little-to-no-impact to traffic in the area.

Ms. Robinson, under oath, confirmed the statements made by Mr. Schrader.

Mr. Schrader stated that the Applicant has three (3) lawful, non-conforming, buildable lots and wants to shuffle the bookend, half lots to add one (1) additional lot; that the net impact on density would be one (1) lot; and that parking will be available under the proposed dwellings or in front of the dwelling.

Mr. Rickard has concerns for future variances on the proposed lots due to the undersized lots.

Mr. Schrader stated that the risk for variances already exists on the lots as they exist now.

Mr. Sharp questioned how the side yard variance will affect visibility to traffic.

Mr. Davidson testified that the road in front of the proposed lots is a one-way road with westbound traffic only; that there will be no adverse effect to the visibility due to the corner lot setback variance; and that there is not any eastbound traffic.

Ken Mills was sworn in to testify in opposition to the Application. Jane Patchell, Esquire, presented on behalf of the neighboring homeowners who oppose the Application and stated that there are concerns for additional traffic problems; that the traffic pattern currently has two (2) one-way roads converging in front of the Property; that many owners obtain half lots to combine with regular lots; that the average lot width in the development is seventy five (75) feet; that the Applicant never acquired four (4) full lots; that Lots 4 and 5 and half of Lot 6 are used as one (1) home site; that the Applicant was aware that the half lots could not be improved; that a case in Superior Court, Yost vs. Pomilio (Sept. 20, 2011), held that an undersized lot is not unique and does not support a variance approval; that the Applicant's lots are not unique since other lots in the neighborhood have the same issues with depth and narrowness; that the Applicant has failed to meet the uniqueness standard; that the Property could be subdivided into two (2) lots without the need for any variance; that in another case, BET, Inc. vs. Board of Adjustment, the Supreme

Court affirmed the Board's decision that a property can be developed in strict conformity and that the difficulty was created by the Applicant; that the Court in BET found that the applicant in that case would be able to reasonably use the property even if the use was not the same as the use the applicant sought; that the Applicant in this case could reasonably use the Property without the need for a variance; that the Applicant has shown no exceptional practical difficulty; that Verleysen vs. Board of Adjustment case referenced that an Applicant cannot create a self-imposed hardship; that the Applicant is creating her own hardship; that the proposed subdivision

will alter the character of the neighborhood; that the proposed development will result in an increase of run off into Silver Lake; that the Applicant has not met the standards for granting a variance; that there is limited parking in the area; that most lots in the neighborhood are not fifty (50) feet wide; that the one-way street is very narrow; that the Property is in the Environmentally Sensitive Overlay District and the stability of the lake is a concern; that neighbors are opposed to the additional lot; that she sees subdividing based on 1929 rules as obsolete; and that a letter from Wingate Surveyor about a discrepancy of an older survey could create a boundary line dispute, which in turn would create a domino effect in the neighborhood. Ms. Patchell submitted exhibits for the Board to review. Ken Mills, under oath, confirmed the statements made by Ms. Patchell.

Peter Gambrell was sworn in and testified in opposition to the Application and testified that he owns property north of the Property and across Silver Lane; that the topography of the area causes massive flooding to his property when it rains; that most lots in the area are seventy five (75) feet lots; that the proposed subdivision will have an adverse affect to the neighborhood; that a dwelling built that close to the tiny twelve (12) foot paved road will have a dramatic effect to the neighborhood; and that there are mostly two (2) story dwellings in the neighborhood.

Joe Fillapek was sworn in and testified in opposition to the Application and testified that he lives in Silver Lake Shores; that one lot in Silver Lake Shores is only 5,000 square feet in size; that his dwelling is built on Lots 8 & 9; that there are eight (8) lots in the development; that there are only two (2) lots less than 7,500 square-feet in size; and that the character of the neighborhood is larger lots.

In rebuttal, Dennis Schrader, stated that he would like the opportunity to review the court cases referenced in the opposition's testimony.

In rebuttal, Jane Patchell, stated that review of the cases should not be necessary and that the Applicant has not met the burden of proof.

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

The Board found that eight (8) parties appeared in opposition to the Application.

Mrs. Isaacs read eight (8) letters of opposition into the record.

Motion by Mr. Rickard to table the case until December 17, 2012 was not supported due to lack of a second.

Motion by Mr. Hudson, seconded by Mr. Rickard, and carried unanimously that the case be taken under advisement. Motion carried 4 – 0.

At the conclusion of the public hearings, the Vice-Chairman referred back to this case. The Board discussed ways to handle the Applicant's request to review the cases cited by the opposition and to respond thereto. Mr. Schrader and Ms. Patchell recommended that the Board do not leave the public record open for evidentiary issues.

Motion by Mr. Rickard, seconded by Mr. Hudson, and carried unanimously that the case **be left open for the limited purpose of acceptance of submission of letters by the Applicant's attorney Dennis Schrader and the opposition's attorney Jane Patchell, regarding the court cases cited in the hearing to the Board's counsel, with the stipulation that Mr. Schrader submit his letter on or before January 11, 2013, and that Ms. Patchell a submitted her letter in response on or before January 21, 2013, and that the case be placed on the January 28, 2013 agenda**. Motion carried 4 – 0.

Case No. 11107 – Robert Davis – west of Route 5 (Oak Orchard Road) south of West James Court, being Lot 76 within Captain's Grant development. (Tax Map I.D. 2-34-29.00-634.00)

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

Mrs. Isaacs presented the case. Robert Davis was sworn in and testified requesting a 5 foot variance from the required 10 feet side yard setback requirement for a proposed detached garage. Mr. Davis testified that the proposed detached garage will measure 24 feet by 32 feet; that the existing septic system led to the placement of a previous shed; that the Property is now served by County Sewer; that he thought the setback requirement was five (5) feet; that his neighbor has no objection to the proposed detached garage; that the garage will store his truck, car, garden supplies and a workbench; that his neighbor does not object to the Application; that due to the placement of the existing dwelling and existing trees he will be unable to drive a truck between the dwelling and the detached garage; that he has firewood delivered to the Property; that there are forty (40) feet high trees along the property line; that the garage would not hurt the neighborhood; that the dwelling as placed in its location due to the septic system location; that the garage could not be placed on the Property without a variance; that he cannot attach the garage due to the interior layout of his dwelling and an existing porch on the rear of the dwelling; that the placement of the septic system also makes it difficult to attach the garage; that he could not build the garage elsewhere due to the location of the trees; that the variance is necessary to enable reasonable use of the Property; that the variance will not alter the character of the neighborhood since there are other two (2) car garages in the area; that the variance will

represent the least modification of the regulation at issue; and that the variance is the minimum variance to afford relief. Mr. Davis submitted an old survey of the Property to the Board.

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

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

Mr. Rickard stated that he would move that the Board recommend denial of Variance Application No. 11107 for the requested variance based on the record made at the public hearings and since the Applicant does not meet the standards for granting a variance. Motion defeated 2 – 2.

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

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the case be tabled until December 17, 2012. Motion carried 4 – 0.

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

Case No. 11108 – Samantha Haas – north of Oak Orchard Road west corner of Orchard Manor and Circle Drive, being Lot 42A Section II within Orchard Manor development. (Tax Map I.D. 2-34-34.08-147.00)

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

Mrs. Isaacs presented the case. Keith Haas was sworn in to testify about the Application. Shannon Carmean, Attorney, presented the case to the Board on behalf of the Applicant. Ms. Carmean stated that the Applicant is requesting a variance of 14.1 feet variance from the 30 feet front yard setback requirement for an existing detached garage; that the Applicant purchased the Property in September 2012; that a variance was granted in 1991 for the detached garage on the Property; that the previous owner passed away in 2011; that a survey completed for settlement when the Applicant purchased the Property showed the encroachment; that the previous owners were never aware that the detached garage did not comply with the granted variance; that the previous owner's contractor placed the garage too close to the property line; that a Certificate of Compliance was issued for the detached garage; that the Property is unique in shape; that the difficulty was not created by the Applicant; that the variance will not alter the character of the neighborhood since the garage has been in place since 1991; that the Property cannot be developed in strict conformity with the Sussex County Zoning Regulations; that the Applicant would have to remove the garage to comply with the zoning regulations; that the variance is necessary to enable reasonable use of the Property; and that the variance is the minimum

variance to afford relief. Mr. Haas, under oath, affirmed the statements of Ms. Carmean as true and correct.

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

Mr. Hudson stated that he would recommend approval of Variance Application No. 11108 for the requested variance based on the record made at the public hearings and for the following reasons:

1. The Property is unique in shape;
2. The Property cannot be developed in strict conformity with the Sussex County zoning regulations;
3. The difficulty was not created by the Applicant;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Hudson, seconded by Mr. Rickard, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 4 – 0.

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

Case No. 11109 – Dorothy Abbs – north of Route 16 (Broadkill Road) southeast of North Carolina Avenue, being Lot 20 within Broadkill Beach development. (Tax Map I.D. 2-35-3.16-97.00)

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

Mrs. Isaacs presented the case. Dorothy Abbs was sworn in and testified requesting a variance of 6.9 feet from the 10 feet side yard setback requirement for an existing porch, a variance of 8.2 feet from the 10 feet side yard setback requirement for an existing non-conforming dwelling, and a variance of 0.2 feet from the 5 feet side yard setback requirement for an existing shed. Ms. Abbs testified that her father purchased the Property in 1963; that she inherited the Property 25 years ago; that the porches on the Property were in poor shape and needed repair; that she rebuilt the porches on the same location as the existing porches; that the builder obtained the building permit; that the Property is unique since the existing structures are non-conforming and existed prior to the enactment of the Sussex County Zoning Code; that the Property cannot be developed in strict conformity with the Sussex County Zoning Regulations; that the variances will enable reasonable use of the Property; that the variances will not be detrimental to public welfare; that the variances are the minimum variances necessary to afford

relief; that Tiger Construction built the porches and she can provide an address to the Planning & Zoning Office. Ms. Abbs submitted two (2) letters in support of the Application.

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

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

The Board found that the Office of Planning & Zoning received one (1) letter in support of the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11109 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique since it has non-conforming structures which pre-date the Sussex County Zoning Code;
2. The Property cannot be developed in strict conformity with the Sussex County Zoning Code;
3. The variances is necessary to enable reasonable use of the Property;
4. The difficulty was not created by the Applicant;
5. The variances will not alter the essential character of the neighborhood; and
6. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Rickard, seconded by Mr. Hudson, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 4 – 0.

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

Case No. 11110 – Steven M. Adkins Land Surveying – north of Road 224 (Fleatown Road) approximately 1,229 feet west of Road 213 (North Old State Road). (Tax Map I.D. 2-30-19.00-99.01)

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

Mrs. Isaacs presented the case. Stephen Roode and Steve Adkins were sworn in and testified requesting a variance of 4.7 feet from the 40 feet front yard setback requirement for an existing dwelling. Mr. Adkins testified the owner of the Property hired Mr. Adkins' surveying company to survey and subdivide the Property; that the Property was subdivided approximately one (1) year ago; that the actual variance needed is 9.5 feet from the front yard setback requirement due to an existing porch; that the Applicant retained a mason and built the dwelling; that at the time of construction there were numerous stakes on the Property marking the property

lines and septic area; that the Applicant measured for the location from the wrong stakes on the Property; that the dwelling on Lot 2 is non-conforming; that the variance, if granted, will not alter the character of the neighborhood; that the Property cannot be otherwise developed; that the Applicant received a temporary certificate of occupancy and permit for the placement of the dwelling; that the variance will not be detrimental to the public welfare; that the variance sought is the minimum variance necessary to afford relief; that the variance sought is the least modification of the regulation at issue; that a temporary Certificate of Compliance has been

issued; that the stakes were placed on the Property marking the boundaries in 2010; that the stakes may have been buried between the time the Property was surveyed and the dwelling constructed; and that the dwelling a stick-built house.

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

Mr. Hudson stated that he would move that the Board recommend approval of Variance Application No. 11110 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The situation was unique due to the mistake and the fact that the Applicant owns the adjacent property;
2. The Property cannot be developed in strict conformity;
3. The difficulty was not created by the Applicant;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Hudson, seconded by Mr. Rickard, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 4- 0.

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

Case No. 11111 – Kerry S. Wertz – southwest of Route 54 (Lighthouse Road) south of Wilson Avenue, being Lot 19 within Cape Windsor development. (Tax Map I.D. 5-33-20.18-143.00)

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

Mrs. Isaacs presented the case. Kerry Wertz and Margaret Wertz were sworn in and testified requesting a 5 feet variance from the 10 feet side yard setback requirement for a proposed addition. Mr. Wertz testified that he was previously denied a request for a 5.8 feet variance from the 10 feet side yard setback requirement earlier this year; that prior to the last hearing he had just lost his mother-in-law and feels he was unprepared for his hearing; that he has altered his request and is asking the Board to consider his new application; that he is

requesting a 5 feet variance for constructing a smaller addition that will no longer be large enough to store a car; and that his previous application was for an attached garage.

The Board found that 1 party was in support of the Applicant's request for a rehearing.

The Board found that no parties appeared in opposition to the Applicant's request for a rehearing.

Motion by Mr. Workman, seconded by Mr. Hudson, and carried unanimously that the request for a new hearing be granted because the Application differs substantially from the prior application. Motion carried 4 – 0.

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

Mr. Wertz testified that the Property is located in Cape Windsor; that he purchased the Property in 2000; that the dwelling located thereon at that time was uninhabitable; that he tore down the existing structure and built a new dwelling that is smaller than the previous manufactured home located on the Property; that the new dwelling needed significant repair due to severe water damage; that he did not include the addition at the time of his previous variance application for fear he would not have the money to complete that project; that the proposed attached shed will provide much needed storage; that the proposed addition will still allow four (4) cars to park on the Property; that the original dwelling afforded less parking on the Property; that the dwelling is unique because it is so far off of the street which is odd for the Cape Windsor community; that if the addition is not attached, he will lose a parking spot which is an inefficient way to develop the Property; that the Property is located on Assawoman Bay; that the Property is unique since it is only 40 feet wide; that most lots in Cape Windsor are 50 feet wide; that the variance will enable reasonable use of the Property; that the difficulty was not created by the Applicant; that the variance will not alter the character of the neighborhood; that the variance is the minimum variance necessary to afford relief; and that all electrical and plumbing in the attached area will be well above ground to avoid flooding problems. Mr. Wertz submitted pictures and letters of support to the Board.

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

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

Mrs. Isaacs stated that the Office of Planning & Zoning received five (5) letters in support of the Application.

Mr. Hudson stated that he would move that the Board recommend approval of Variance Application No. 11111 for the requested variance based on the record made at the public hearing because the Applicant met the standards for granting a variance

Motion by Mr. Hudson, seconded by Mr. Rickard, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 4 – 0.

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

Case No. 11112 – Laurie Bronstein, Agent – north of Route 16 (Broadkill Road) northeast of South Bay Shore Drive, being Lot 24 Section 3 within Broadkill Beach development. (Tax Map I.D. 2-35-10.00-30.00)

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

Mr. Sharp stated to the Board that the Applicant has been a client in the past and wanted to advise the Board that, if the Board believed that a conflict exists, they may want to refer legal questions to Vince Robertson, Esquire.

Mrs. Isaacs presented the case. Laurie Bronstein was sworn in to testify about the Application. Shannon Carmean, Attorney, presented the case to the Board on behalf of the Applicant. Ms. Carmean stated that Laurie Bronstein is the agent for George Strick and Eileen Strick who live in an assisted living facility in Maryland and who own the Property; that the Applicant is requesting a 2.5 feet variance from the front yard setback requirement for an existing cantilevered deck; that the Stricks purchased the Property in January 1986; that the dwelling was built on the Property in 1988; that the original builder did not complete the job due to bankruptcy; that the second builder showed the deck on the plan in August 22, 1989; that the Stricks were approved for a variance in August 1989 for the dwelling; that the Stricks believed the variance included the existing deck; that the 1989 survey did not show the deck even though it did exist at that time; that the Applicant recalls a conversation with a Planning & Zoning Official that the deck was narrow and would not deter view; that the Property is unique in shape; that the difficulty was not created by the Stricks; that the variance will enable reasonable use of the Property; that the Property cannot otherwise be developed; that the deck would have to be removed to comply with the zoning requirements; that the variance will not alter the character of the neighborhood; and that the variance is the minimum variance necessary to afford relief. Laurie Bronstein, under oath, confirmed the statements by Ms. Carmean. Ms. Carmean submitted an affidavit from George Strick and pictures for the Board.

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

Mrs. Isaacs stated that the office received one (1) letter in support of the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11112 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique;
2. The variance is necessary to enable reasonable use of the Property;
3. The difficulty was not created by the Applicant;
4. The variance will not alter the essential character of the neighborhood; and

5. The variance sought is the minimum variance to afford relief.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 4 – 0.

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

Case No. 11113 – William P. Fischer & Phyllis Fischer – north of Route 1 (Coastal Highway) northwest of Elizabeth Avenue, being Lot 8 within Ann Acres development. (Tax Map I.D. 3-34-20.13-113.00)

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

Mrs. Isaacs presented the case. William Fischer and Phyllis Fischer were sworn in and testified requesting a 12.2 feet variance from the 30 feet front yard setback requirement for a proposed addition to an existing porch. Ms. Fischer testified that the Applicants purchased the Property in 2003 with a 900 square feet dwelling located thereon; that in 2010 they constructed a larger dwelling on the Property; that the proposed addition will only extend out as far as the existing steps; that the addition will make the porch a more usable space; that the large pillars on the porch take up a lot of space on the existing porch; that the dwelling in its current state looks drab and unfinished; that the variance will not alter the character of the neighborhood; that the variance will be an improvement to the neighborhood; and that the pillars securing the second floor limit the usable space on the existing slab. Ms. Fischer also submitted pictures to the Board.

Mr. Fischer testified that the original bungalow on the Property has been upgraded to a two (2) story dwelling; that the Applicants want to use the porch but it is not useful now due to the existing pillars; that the variance is necessary to enable reasonable use of the Property because the house looks unfinished due to the existing concrete slab; that they have consulted with contractors; that the variance will not alter the character of the neighborhood; that the variance requested will not impact any neighboring or adjacent properties; and that the variance requested is the minimum variance necessary to afford relief.

Ms. Fischer testified that contractors believe that the proposed addition will allow for a uniform look to the dwelling.

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

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11113 for the requested variance based on the record made at the public hearing and for the following reasons:

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

Motion by Mr. Rickard, seconded by Mr. Hudson, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 4 – 0.

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

Case No. 11114 – Donald K. Miller – west of Road 410 (Revel Road) approximately 535 feet south of Road 328A (Godwin School Road). (Tax Map I.D. 1-33-16.00-81.00)

An application for a special use exception to retain a double-wide manufactured home on a parcel of less than five (5) acres.

Mrs. Isaacs presented the case. Marjorie Fisher and Donald Miller were sworn in to testify about the Application. Shannon Carmean, Attorney, presented the case to the Board on behalf of the Applicant and stated that the Applicant is requesting a special use exception to retain a manufactured home on a parcel containing less than five (5) acres; that the home has been the primary residence for the Applicant since 1979; and that the Applicant plans to subdivide her 10.22-acre parcel and keep 1.22-acres for herself. Mr. Miller testified that the Applicant wishes to subdivide the Property at a later date and retain the existing manufactured home located on the Property; that, in 1979, the Zoning Ordinance required a double-wide to be placed on a parcel not less than five (5) acres; that the proposed lot will be over one (1) acre; that the current Zoning Ordinance permits double-wide manufactured homes on a minimum of ¾ acre parcel; that there is no detriment to the public welfare; that the use will not substantially

affect adversely the uses of adjacent and neighboring properties; and that there are residential lots nearby. The Applicant submitted to the Board a petition in support of the Application with thirteen (13) signatures.

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

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

Mr. Rickard stated that he would move that the Board recommend approval of Special Use Exception Application No. 11114 for the requested special use exception based on the record made at the public hearing because the use does not substantially affect adversely the uses of adjacent and neighboring properties.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted for the reasons stated**. Motion carried 4 – 0.

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

Case No. 11115 – Thomas Tewes – south of Route 54 (Lighthouse Road) east of Roosevelt Avenue, being Lot 3 within Cape Windsor development. (Tax Map I.D. 5-33-20.14-9.00)

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

Mrs. Isaacs presented the case. Thomas Tewes was sworn in and testified requesting a variance of 3.5 feet from the 10 feet side yard setback requirement for an existing dwelling and a variance of 3.8 feet from the 20 feet rear yard setback requirement for an existing second floor deck; that he has been a resident in Fenwick Island for forty (40) years; that the dwelling on the Property was built in 2005; that he submitted an elevation certificate and survey to his builder; that he was contacted by Planning & Zoning in 2012 that the elevation certificate and survey were never submitted; that an occupancy permit was issued and he was not aware of any encroachments until he submitted the survey in 2012; that the deck is four (4) feet into the rear yard setback area; that he placed the deck in the location of the original deck on the Property; that the second floor deck has no permanent roof; that had he known about the problem with the encroachment when the house was built, he could have moved the dwelling closer to the front yard setback where he had room; that he believed that the builder should have known about the setbacks; that the builder obtained the permit for the structure; that the variances will enable reasonable use of the Property; that the variances will not alter the character of the neighborhood; that the difficulty was not created by the Applicant; that the variances sought are the minimum variances necessary to afford relief; and that none of his neighbors have complained about the location of the structure. The Applicant submitted a letter from the

homeowners association evidencing that the original structure was approved by the association in 2005.

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

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

Mr. Hudson stated that he would move that the Board recommend approval of Variance Application No. 11115 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The situation is unique since the Applicant thought the builder had submitted all the proper paperwork;
2. There is no possibility the Property can be developed in strict conformity with the Sussex County zoning ordinance;
3. The difficulty was not created by the Applicant;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Hudson, seconded by Mr. Rickard, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 4 – 0.

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

Case No. 11116 – State of Delaware – Del DOT – north of Road 344 (Dagsboro Road) approximately 3,000 feet west of Road 333 (Thorogoods Road). (Tax Map I.D. 2-33-5.00-179.00)

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

Mr. Hudson recused himself from the hearing since he is an adjacent property owner.

Mrs. Isaacs presented the case. Jeff Reed was sworn in and testified requesting a ten (10) feet variance from the fifteen (15) feet side yard setback requirement for a proposed equipment shed; that the proposed shed is needed to store trucks and snowplows; that the lot is unique because it is long and narrow in size; that the size of trucks and plows have increased which require a larger shed be constructed; that due to the location of the existing buildings and the need for room to maneuver the large trucks, the variance is necessary to enable reasonable use of the Property; that the existing building was constructed in the 1960's and is not large enough to

store the larger equipment used now; that the difficulty was not created by the Applicant as the Applicant did not create the lot; that the variance will not alter the essential character of the neighborhood; and that the variance sought is the minimum variance to afford relief.

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

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11116 for the requested variance based on the record made at the public hearing since the Applicant meets the standards for granting a variance and for the following reasons:

1. The Property is unique;
2. The variance is necessary to enable reasonable use of the Property;
3. The difficulty was not created by the Applicant;
4. The variance will not alter the essential character of the neighborhood;
5. The variance sought is the minimum variance necessary to afford relief; and
6. The variance requested represents the least modification possible of the regulation at issue.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variance be granted since it meets the standards for granting a variance. Motion carried 3 – 0.

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

OLD BUSINESS

Case No. 11101 – Donald G. D'Aquila – east of Route 13 (Sussex Highway) approximately 684 feet south of Road 466 (Sycamore Road). (Tax Map I.D. 2-32-12.00-132.01)

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

The Board discussed the case which has been tabled since November 19, 2012. Mr. Mills expressed concern about the Applicant failing to meet the standards for granting a variance.

Mr. Rickard stated that he would move that the Board recommend denial of Variance Application No. 11101 for the requested variance based on the record made at the public hearing since the difficulty has been created by the Applicant.

Motion by Mr. Rickard was not supported due to lack of a second.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the case be tabled until December 17, 2012. Motion carried 4 – 0.

Case No. 11086 – Geoffrey Manns – north of Route 54 (Lighthouse Road) east of Canvasback Road, being Lot 32 within Swann Keys development. (Tax Map I.D. 5-33-12.16-391.00)

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

The Board discussed the case which has been tabled since November 19, 2012. Mr. Sharp explained to the Board the Code's definition of a shed.

Mr. Rickard stated that he would move that the Board recommend approval in part and denial in part of Variance Application No. 11086. Mr. Rickard moved that the requested five (5) feet side yard variance for the proposed manufactured home and porch be approved based upon the record made at the public hearing and for the following reasons:

1. The Property is unique in size;
2. The variance will enable reasonable use of the Property;
3. The difficulty was not created by the Applicant;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance sought is the minimum variance to afford relief.

As part of his Motion, Mr. Rickard moved that the Board deny the requested 4.4 feet variance for the proposed attached shed based on the record made at the public hearing and for the following reasons:

1. The difficulty is being created by the Applicant; and
2. The shed can be detached and meet the required setbacks.

Motion by Mr. Rickard, seconded by Mr. Hudson, that the variance be **granted for the proposed manufactured home and porch and the proposed air conditioning unit based on the reasons stated, and denied for the attached shed based on the reasons stated** was defeated as the motion carried 2 – 2.

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

The case was tabled until December 17, 2012 due to tie in the voting.

Meeting Adjourned 12:45 a.m.