

## MINUTES OF AUGUST 21, 2017

The regular meeting of the Sussex County Board of Adjustment was held on Monday, August 21, 2017, at 7:00 p.m. in the County Council Chambers, 2 The Circle, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Dale Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Ms. Ellen Magee, Mr. Norman Rickard and Mr. Brent Workman. Also in attendance were Mr. Vince Robertson – Assistant County Attorney, and staff members Ms. Janelle Cornwell – Director of Planning and Zoning, Mrs. Jennifer Walls – Planning Manager, and Ms. Christin Headley – Recording Secretary.

The Pledge of Allegiance was led by Mr. Callaway.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously to move Old Business Case No. 12003 to the beginning of the agenda. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Ms. Magee, and carried unanimously to approve the Minutes and Finding of Facts for June 19, 2017. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously to approve the Minutes and Finding of Facts for July 10, 2017. Motion carried 5 – 0.

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

### **OLD BUSINESS**

**Case No. 12003 – Coastal Station Development Co., LLC** - seeks a special use exception to allow multi-family dwellings and structures of mixed commercial and residential use and a variance from the building length for a multi-family dwelling (Sections 115-80, 115-83.6, and 115-188(E) of the Sussex County Zoning Code). The property is located at the northeast corner of Coastal Highway (Route 1) and Holland Glade Road (Route 271). 911 Address: 19791 Coastal Highway, Rehoboth Beach. Zoning District: C-1 / CR-1. Tax Map No.: 3-34-13.00-325.08.

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

The Board discussed the case.

Mr. Workman stated he would like to table the case as he needs additional time to consider the Application.

Mr. Rickard, Ms. Magee, and Mr. Mills stated that they do not object to tabling the Application.

Motion by Mr. Workman, seconded by Mr. Rickard, and carried unanimously that the

Application be **tabled until September 11, 2017**. Motion carried 5 – 0.

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

### **PUBLIC HEARINGS**

**Case No. 12008 – Envision Land Use, LLC** - seeks a special use exception to expand and operate an assisted living facility and a special use exception to use a manufactured home type structure as an office (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located at the south side of Lewes-Georgetown Highway (Route 9 / 404) approximately 4,320 feet east of Harbeson Road (Route 5). 911 Address: 26890 & 26900 Lewes-Georgetown Highway, Harbeson. Zoning District: AR-1. Tax Map No.: 2-35-30.00-58.00 & 58.08.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received fifteen (15) letters in support of the Application and received no correspondence in opposition to the Application. Mrs. Walls provided a general summary of the letters of support and they were made available for the Board to review.

Bob Rosenthal and Dave Kuklish were sworn in to testify about the Application. James Fuqua, Esquire, presented the case on behalf of the Applicant and submitted an exhibit with proposed conditions for the Board to review.

Mr. Fuqua stated that the Applicant is requesting a special use exception for an assisted living / convalescent facility for individuals who have suffered traumatic brain injuries and a special use exception to operate manufactured home type structure as a daycare / rehabilitation facility for a limited period of time during the time when the new facility is being constructed; that Parcel 58.00 consists of 3.49 acres and is located on the south side of Route 9; that the Property is zoned AR-1; that the surrounding areas are of mixed use commercial and residential; that the old Donut Connection, a bird farm, an asphalt paving & supply company, and a business park containing six (6) offices are located nearby; that the Classic Auto Service business is located across the street from the Property and a railroad right-of-way is located to the rear of the site; that the existing Peach Tree Acres facility is located on Parcel 58.08, which consists of 4.38 acres; that Peach Tree Acres is a facility for individuals with traumatic brain injuries; that, in 1998, the special use exception for Peach Tree Acres was approved for Parcel 58.00 to operate an assisted living facility for traumatic brain injuries and acquired brain injuries; that, in 1999, Parcel 58.08 was approved for the same use; that the main facility was constructed on Parcel 58.08 and the house located on Parcel 58.00 was converted for use as a daycare and rehabilitation area for Peach Tree Acres; that the facility offers care for 20 full-time residents and 15 daycare / rehabilitation persons; that the facility provides care for persons who have suffered from traumatic brain injuries; that this facility is the only such facility in Delaware; that there is a current waiting list and the last resident to move into the facility moved in 4 years ago; that there is a need for this type of facility; that the average age of the residents is around 50 years of age; that residency at the facility is not generally short-term; that the Property and expansion will be constructed and owned by Envision Land Use and the facility will be operated by Peach Tree Acres; that the proposal still needs site plan approval from the Planning & Zoning Commission; that the

existing building on Parcel 58.00 will be demolished and 2 new buildings will be constructed; that the 2 new buildings will have a traditional residential look; that the larger building will be 3 stories tall and will have 76 residential units, office space, physical therapy space, recreation areas, rehabilitation facilities, and dining areas; that the second building will be 3 stories tall and will have 38 residential units; that the total number of new residential units between the 2 buildings will be 114 units; that there will be 2 types of residential units (studio suites and one bedroom units); that the current facility on Parcel 58.08 would continue to operate with the proposed expansion on Parcel 58.00; that existing building on Parcel 58.00 is used for daycare and rehabilitation facilities and that building will be demolished; that those facilities will be located in one of the new buildings; that the manufactured home type structure will be used for the daycare and rehabilitation facilities while the new buildings are being constructed; that the new buildings will be interconnected with the existing facility and will be landscaped; that the facility will be served by 2, 12 hour shifts of approximately 20 employees; that the entrance off of Route 9 would continue to be used and a storm water management system will be located in the rear of the site; that the Applicant will comply with any traffic improvements required by the Delaware Department of Transportation (“DelDOT”); that traffic from the facility would be related to staff, deliveries, and visitors; that residents do not drive and Peach Tree Acres operates a bus for residents; that there are no sensitive environmental conditions and the use will not have any negative environmental impact; that there will be no additional noise, truck traffic, odors, or heavy activity; that Peach Tree Acres has been on the site for many years without adverse impact on the neighborhood; that the use will not substantially affect adversely adjacent and neighboring properties; that the Applicant has submitted proposed findings of fact and conditions; and that the Brain Injury Association in Delaware supports the Application.

Mr. Rosenthal and Mr. Kuklish, under oath, affirm the statements made by Mr. Fuqua.

Mr. Rosenthal testified that the manufactured home which will be used on the site will be constructed specifically for the Applicant and the structure will be brand new.

Mr. Fuqua stated that, due to the nature of these injuries, the residents are generally permanently disabled and will live in the facility for the rest of their lives; that there will be a total of 134 residential units, old and proposed combined, on the site; that the Applicant intends to only use the manufactured home type structure for a brief period of time until construction is complete; and that the Applicant requests the use of the manufactured home to be up to 5 years or within 3 months of completion of construction of the buildings, whichever comes first.

Kurt Brown was sworn in to testify in support of the Application. Mr. Brown testified that he suffered a brain injury in a car accident; that there are physical problems related to brain injuries, not just mental; that he has friends who are current residents at Peach Tree; and that he is currently on the waiting list to become a resident at Peach Tree.

The Board found that thirteen (13) parties appeared in support of the Application.

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

Mr. Rickard moved to approve Special Use Exception Application No. 12008 for the requested special use exception for a manufactured home type structure for a period of five (5) years

or three (3) months after completion of construction of the proposed assisted living facilities and for the requested special use exception for the assisted living facility based on the record made at the public hearing and because the uses will not substantially adversely affect the uses of the neighboring properties.

Motion by Mr. Rickard, seconded by Ms. Magee, and carried unanimously that **the special use exception for the manufactured home type structure be granted for a period of five (5) years or three (3) months after completed construction of the assisted living facilities and that the special use exception for the assisted living facilities be granted for the reasons stated.** Motion carried 5 – 0.

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

**Case No. 12009 – Lee Thompson & Kristin Thompson** - seek a variance from the rear yard setback requirement (Section 115-25 of the Sussex County Zoning Code). The property is located on the northeast side of Woodland Way approximately 512 feet northwest of Woodland Circle. 911 Address: 33213 Woodland Way, Lewes. Zoning District: AR-1. Tax Map No.: 2-34-12.17-138.00.

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

Lee Thompson was sworn in and testified requesting a variance of 4.8 feet from the twenty (20) feet rear yard setback requirement for a proposed three-season room and submitted exhibits for the Board to review.

Mr. Thompson testified that the Angola by the Bay Homeowners Association has approved the proposal; that the existing deck was approved for a variance in 2015; that the Applicants purchased the Property in 2016; that a previous owners obtained the variance for the deck; that the Property has an unusual shape; and that the dwelling was placed on the Property with a septic system prior to the installment of a central sewer system.

Mr. Robertson advised the Board that, in recent years, Sussex County installed sewer lines servicing Angola by the Bay but, prior to the installation, lots in Angola by the Bay were serviced by septic systems which led to some odd configurations of lots in the community.

Mr. Thompson testified that the area to the rear of the Property is common area owned by the homeowners association; that the dwelling was built in 1982; that the dwelling was originally constructed as a “salt box” home; that any construction to the sides or upward would result in additional variances and removal of mature vegetation which would be very costly; that the difficulty is created by the Property’s small size and unusual shape; that the Applicants did not create the size and shape of the Property; that the existing deck will serve as the foundation for the proposed three-seasons room; that minor encroachments in Angola by the Bay are common; that there are no residential properties which would be adversely affected by the addition; that the proposed three seasons room will be attractive and add value to the existing home; that the variance will not alter the essential character of the neighborhood; that the addition will not extend farther into the rear yard than

the existing deck; that mosquitos are a problem in the community; and that the additional space is needed for the Applicants' growing family.

Ms. Cornwell advised the Board that the lot is small for an AR-1 lot; that the rear yard setbacks for an AR-1 lot are 20 feet; and that the rear yard setbacks for lots zoned MR or GR are only 10 feet.

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

Mr. Mills moved to approve Variance Application No. 12009 for the requested variance based on the records made at the public hearing and for the following reasons:

1. The Property is unique due to the irregular shape;
2. The variance is necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty has not been created by the Applicant;
4. The variance will not alter the essential character of the neighborhood; and
5. The requested variance is the minimum variance necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the reasons stated**. Motion carries 5 – 0.

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

**Case No. 12010 – MacIntyre Clan Trust** - seeks a special use exception use a manufactured home type structure as storage (Sections 115-40 and 115-210 of the Sussex County Zoning Code). The property is located at the east side of Rider Road (SCR 505) approximately 1,275 feet northwest of Columbia Road (SCR 76). 911 Address: 34575 Rider Road, Delmar. Zoning District: GR. Tax Map No.: 5-32-3.00-23.01.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of the Application and one (1) letter in opposition to the Application and read that letter into the record.

John MacIntyre was sworn in and testified requesting a special use exception to use a manufactured home type structure for storage and submitted pictures of manufactured home for the Board to review.

Mr. MacIntyre testified that the manufactured home being proposed is an older model previously used as an office; that the unit is empty; that he intends to paint the exterior of the unit; that he did not obtain a permit prior to placing the unit on the Property but he was unaware that he needed a permit prior to placing the unit; that he does not believe the use will substantially affect adversely adjacent and neighboring properties; that the unit is difficult to see from the road; that trees generally block views of the unit; that he intends to use the unit for his hobbies including the storage of his record collection; that the unit is 6 to 8 feet from the side property line; that he does not think he can place the unit on a foundation; and that he has a shed which he uses for the storage of tools.

Ms. Cornwell advised the Board that this unit is not considered a recreational vehicle.

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

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the special use exception application be **tabled until September 11, 2017**. Motion carried 5 – 0.

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

**Case No. 12011 – Sun Homes** - seeks variances from the separation requirements (Section 115-172 of the Sussex County Zoning Code). The property is located at the north side of Center Avenue approximately 364 feet southwest of Skyview Street. 911 Address: 19942 Center Avenue, Rehoboth Beach. Zoning District: AR-1. Tax Map No.: 3-34-13.00-310.00.

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

Rich Shipley was sworn in and testified requesting a variance of 1.0 feet from the twenty (20) feet separation requirement from the dwelling on Lot 68 and a variance of 5.1 feet from the twenty (20) feet separation requirement from the dwelling on Lot 64 for a proposed dwelling.

Mr. Shipley testified that he is the community manager of Sea Air Village; that the request is for a placement of a new manufactured home; that he is also employed by Sun Homes who will be placing the manufactured home; that the lots in the community were laid out in the 1930s or 1940s; that the lots in the community are too small to accommodate the smallest manufactured homes available on the market; that the Property is unique because it is too narrow to fit the smallest 14 feet wide manufactured home that is available for purchase today; that the variance will not alter the essential character of the neighborhood; that this home is the 15th new home placed in the community over the last three years in Sea Air Village and this request is the first variance request; that the previous dwelling was a 1967 model that measured approximately 11 feet wide; that a 14 feet wide home is the narrowest model available; that the Property cannot be developed in strict conformity without a variance; that the variances are necessary to enable the reasonable use of the Property; that the exceptional practical difficulty has not been created by the Applicant; and that, without the variances, the lot will be rendered useless.

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

Mr. Mills moved to approve Variance Application No. 12011 for the requested variances based on the records made at the public hearing and for the following reasons:

1. A 14 feet wide manufactured home is the narrowest available model;
2. The Property cannot be developed in strict conformity with the Sussex County Zoning Code;
3. The variances are necessary to enable reasonable use of the Property;
4. The exceptional practical difficulty has not been created by the Applicant;
5. The variances will not alter the essential character of the neighborhood; and

6. The requested variances are the minimum variances necessary to afford relief.

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

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

**Case No. 12012 – Randy Nosia & Kathleen J. Nosia** - seek variances from the front yard, side yard, and rear yard setback requirements (Section 115-42 of the Sussex County Zoning Code). The property is located at the north side of Patterson Drive approximately 1,257 feet northwest of Zoar Road (SCR 48). 911 Address: 32 Patterson Drive, Georgetown. Zoning District: GR. Tax Map No.: 2-34-15.00-234.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of the Application and no correspondence in opposition to the Application.

Randy Nosia was sworn in and testified requesting a variance of 5.4 feet from the thirty (30) feet front yard setback requirement for a proposed pole building, a variance of 8.8 feet from the ten (10) feet rear yard setback requirement for a proposed pole building, a variance of 6.1 feet from the ten (10) feet rear yard setback requirement for a proposed pole building, a variance of 8.8 feet from the ten (10) feet side yard setback requirement on the west side for a proposed pole building, a variance of 9.0 from the ten (10) feet side yard setback requirement on the west side for a proposed pole building, a variance of 2.2 feet from the thirty (30) feet front yard setback requirement for the existing dwelling, and a variance of 1.9 feet from the thirty (30) feet front yard setback requirement for the existing dwelling.

Mr. Nosia testified that the Property is located in Patterson Place; that the Property is located off a cul-de-sac; that he is proposing to place a pole building, which measures 26 feet by 40 feet, on the Property for his classic cars and storage; that the two existing sheds on the Property will be removed; that the pole building will be located in the place of where the existing sheds are located; that the location of the septic system in the rear yard limits the placement of the pole building elsewhere on the lot; that the Property is unique because it is located on a cul-de-sac which skews the front property line; that he cannot move the structure closer to the home due to the location of his septic system; that the Applicants purchased the Property in 1999 and plan to move to the location permanently; that the Applicants recently retired; that the proposed pole building will be used for storage of classic cars collected by the Applicants; that approval was received from the homeowners association; that he plans to store at least two (2) of the classic vehicles in the building; that the rear yard is heavily tree lined and wooded; that the closest home to the rear of the Property is approximately 70 yards away; that a variance was previously granted for the dwelling; that he owns six (6) cars – three (3) of which are classic cars; that the location of the septic system has created a problem in locating a building which will house his classic cars; that a neighbor has a larger pole building; that the variances will not affect the character of the neighborhood; and that the variances requested are the minimum variances to afford relief.

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

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

Mr. Mills moved to approve Variance Application No. 12012 for the requested variances based on the records made at the public hearing and for the following reasons:

1. The Property is unique due to the irregular shape, size, and the location of the septic system;
2. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
3. The exceptional practical difficulty has not been created by the Applicants;
4. The variances will not be detrimental to the public welfare;
5. The variances will not alter the essential character of the neighborhood; and
6. The requested variances are the minimum variances necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Workman that the variance be **granted for the reasons stated**. Motion carries 3 – 2.

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

**Case No. 12013 – Melissa Bowen & Anita Kurek** - seek a variance from the front yard setback requirement on a through lot (Sections 115-34 and 115-182 of the Sussex County Zoning Code). The property is located at the west side of Naomi Drive approximately 990 feet southeast of Bridge Lane and at the northeast side of Old Mill Road (SCR 349) approximately 990 feet southeast of Bridge Lane. 911 Address: 123 Naomi Drive, Ocean View. Zoning District: MR. Tax Map No.: 1-34-12.00-1482.00.

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

Melissa Bowen and Anita Kurek were sworn in and testified requesting a variance of 30 feet from the forty (40) feet front yard setback requirement on a through lot for a proposed shed. The variance request is for the Old Mill Road side of the Property.

Ms. Bowen testified that the Applicants purchased the Property in April 2017; that the Property is considered a through lot and narrows to the Old Mill Road side of the lot; that the Property is unique because it is a through lot; that, if the shed was placed in compliance with the Sussex County Zoning Code, the shed would be close to the home and would make it difficult to use the yard to the rear of the dwelling; that the shed is needed for storage of lawn equipment; that the homeowners association does not allow boats or trailers to be visible for more than 24 hours so the Applicants will use their garage for the storage of their small boat; that the need for the variance was not created by the Applicants; that the variance will not alter the essential character of the neighborhood; that there are sheds properties along Naomi Drive that are close to the property line; that there is approximately 10-15 feet from the property line to the edge of Old Mill Road; that the homeowners association requires the structure to be 10 feet from the property line; and that the Applicants are constrained with the placement of the shed due to the location of a mature tree and the sewer lines.

Mr. Robertson said that he did not believe the Applicants could obtain a permit for vehicular access to Old Mill Road.

Ms. Cornwell advised the Board that, if the Property was not a through lot, a shed could be placed 5 feet from the side yard and rear yard property lines.

Ms. Bowen testified that she cannot access Old Mill Road from the Property

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

Ms. Magee moved to approve Variance Application No. 12013 for the requested variance based on the records made at the public hearing and for the following reasons:

1. The Property is unique because it is a through lot;
2. The Property cannot be developed in strict conformity with the Sussex County Zoning Code;
3. The variance will not alter the essential character of the neighborhood; and
4. The requested variance is the minimum variance necessary to afford relief.

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

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

**Case No. 12014 – Horsey Family, LLC** seeks a special use exception to use two (2) manufactured home type structures as offices (Sections 115-23 and 115-210 of the Sussex County Zoning Code). The property is located at the northeast side of Hardscrabble Road (Route 20) and the southeast side of Asbury Road (Route 446). 911 Address: None Available. Zoning District: AR-1. Tax Map No.: 2-31-21.00-22.00.

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

Bobby Horsey and Dan Etnoyer were sworn in and testified requesting a special use exception to place two manufactured home type structures as offices.

Mr. Horsey testified that the proposed manufactured homes measure 14 feet by 60 feet; that one unit will be used for a scale house office; that a second unit will be used as a borrow pit office; that the Property consists of 201 acres; that approximately 150 acres was approved as a conditional use for a borrow pit; that Vulcan Materials Company occupies the site; and that the Applicant will be applying for a revised site plan to move the scales and units closer to where the plant will operate.

Mr. Etnoyer testified that the borrow pit office will be located on the east side of the entrance; and that the scale house office will be located west of the entrance.

Mr. Horsey testified that the units were shown on the original conditional use site plan in a different location; that the site is inspected on a regular basis by Planning & Zoning staff; and that the use will not substantially affect adversely adjacent and neighboring properties.

Mr. Etnoyer testified that there are no plans for a permanent structure.

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

Mr. Mills moved to approve Special Use Exception Application No. 12014 for the requested special use exception for a period of five (5) years on the record made at the public hearing and because the use will not substantially adversely affect the uses of the neighboring properties.

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

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

### **OLD BUSINESS**

**Case No. 12001 – John Floyd Lingo, III** - seeks a variance from the front yard setback requirement (Sections 115-82, 115-83.8, and 115-185 of the Sussex County Zoning Code). The property is located on the southeast corner at the intersection of Harbeson Road (Route 5) and Lewes-Georgetown Highway (Route 9 / 404). 911 Address: 26452, 26454, 26462, 26466, and 26474 Lewes-Georgetown Highway, Harbeson. Zoning District: CR-1. Tax Map Nos.: 2-35-30.00-68.00 & 69.00.

Mrs. Walls presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. Mrs. Walls read a letter submitted from John Lingo regarding the Application.

Mike Riemann, John Lingo, and Harry Bowen were sworn in and testified requesting a variance of 43.9 feet from the sixty (60) feet front yard setback requirement for a proposed fuel tank canopy.

Mr. Riemann testified that the Property consists of approximately 2 acres; that the Property is currently developed with a convenience store, retail space, and a post office; that the Property is located at the corner of Route 9 and Route 5; that an existing gas station is located on the site; that the Property was rezoned in June 2017 to CR-1; that DelDOT has a plan to upgrade the intersection with additional turn lanes; that DelDOT has already acquired a portion of the Property; that the Applicant has a contract to purchase neighboring lands; that DelDOT has requested that the access to the Property be moved farther from the intersection; that the existing canopy is located 6.9 feet from the existing right-of-way and 4.6 feet from the proposed right-of-way; that DelDOT requires a dedication of 10 feet along the front of the Property which increases the size of the variance request by 10 feet; that the Property is a narrow corner lot with double front setback requirements; that DelDOT acquired 0.2 acres of the Property; that the variance is necessary for safe vehicular movement on the site and

for access thereto; that the variance is also necessary for fuel trucks to safely maneuver on the Property; that the Applicant has reduced the size of the drive aisles to minimize the need for the variance; that the fuel canopy is not an enclosed structure; that the right-of-way varies along Route 9; that the fuel canopy will be 73.9 feet from the centerline of the road; that structures on neighboring properties are closer to the centerline of the road; that the redevelopment of the site will be a significant improvement to the site and the DelDOT improvements will improve the intersection; that the proposed fuel canopy will be farther from the road than the existing canopy; that a graveyard is located across the street so the DelDOT improvements will be made on the Property; that the Property is unique because it is a corner lot and subject to DelDOT requirements and acquisitions; that the Property cannot be developed without a variance; that the need for the variance was not created by the Applicant; that the variance will not alter the essential character of the Property; that the Property is already used as a gas station; that the variance requested is the minimum variance to afford relief; that the Applicant has designed the site to minimize the need for a variance; that access along Route 9 will be a “right-in / right-out” access and access along Route 5 will be full access; that the speed limit along Route 5 is 25 miles per hour; and that it would be very difficult to develop the Property for a different commercial use due to the size of the Property while meeting parking requirements of other commercial uses.

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

Motion by Ms. Magee, seconded by Mr. Rickard, and carried unanimously that the Application be **tabled until September 11, 2017**. Motion carried 5 – 0.

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

**Meeting Adjourned 9:27 p.m.**