

MINUTES OF AUGUST 7, 2017

The regular meeting of the Sussex County Board of Adjustment was held on Monday, August 7, 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. James Sharp – Assistant County Attorney, Mr. Vince Robertson – Assistant County Attorney, and staff members Ms. Janelle Cornwell – Director of Planning and Zoning 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 to the end of the agenda, to move Case No. 12001 to the beginning of the public hearings, to move Case No. 12003 to the end of the public hearings, and approve the Revised Agenda as Amended. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously to approve the Minutes and Finding of Facts for June 5, 2017. 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. 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 No.: 2-35-30.00-68.00 & 69.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. Ms. Cornwell advised the Board that the Applicant has requested a continuance of the case until the Board meeting.

Mr. Sharp advised the Board that he has a potential conflict of interest and that Mr. Robertson was present to represent the Board during the hearing. Mr. Sharp left the chambers and Mr. Robertson was present to advise the Board.

Mr. Robertson advised the Board that the Applicant has advised staff that the Applicant is not ready to proceed with the Application this evening.

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

Mike Riemann, who was present on behalf of the Applicant, advised the Board that the continuance request for the case was emailed to the Planning & Zoning Office four (4) days ago on Thursday, August 3, 2017.

Motion by Mr. Mills, seconded by Mr. Workman that Variance Application No. 12001 be **continued and left open until August 21, 2017**. Motion carried 4 – 1.

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

Mr. Robertson stated that for clarification purposes, there was an error made by the Applicant by assuming the continuance request would be granted; that a request of this type is not a regular occurrence; and that it is ultimately the Board's decision to grant the continuance, not the decision of staff or the County Attorneys.

Mr. Robertson left the Council Chambers and Mr. Sharp returned to advise the Board.

Case No. 12000 – George Cole Jr. - seeks a variance from the front yard setback requirement (Section 115-42 of the Sussex County Zoning Code). The property is located at the south side of Birch Street approximately 294 feet west of Parker House Road. 911 Address: 37648 Birch Street, Ocean View. Zoning District: GR. Tax Map No.: 1-34-16.00-462.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received two (2) letters in support of the Application and read the letters into the record, and no correspondence in opposition to the Application.

George Cole Jr. was sworn in and testified requesting a variance of 2.4 feet from the thirty (30) feet front yard setback requirement for an existing dwelling.

Mr. Cole testified that the Property is irregularly shaped; that a portion of the dwelling was placed in the front yard setback area; that the Applicant received a Certificate of Compliance from Sussex County and believed that the home was placed in compliance with the Sussex County Zoning Code; that he put the home for sale and obtained a survey which showed the encroachment; that on June 6, 2017, he converted the existing dwelling into a "C" grade home; that the home cannot be moved and has been on the Property for over a year; that there is no opposition from neighbors; that he owns the neighboring property that would be most affected by the encroachment; that, when the home was initially inspected by Sussex County officials, he was told that the home complied with the Zoning Code; that a contractor helped but the dwelling was placed by Mr. Cole himself; that a survey pin is off from one corner of the Property; that Birch Street is paved up to the front property line; and that he has received no complaints from neighbors about the location of the home.

Daniel Ray was sworn in to testify with questions about the Application. Mr. Ray testified that he lives in the community; that the community is an old community with a lot of new development; that he had to remodel his home to meet the setback requirements; that he questions how a certificate of occupancy was issued; that he is okay with the dwelling being there; and that he

is not in opposition to the Application.

The Board found that two (2) parties appeared in support of the Application.

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

Mr. Rickard moved to approve Variance Application No. 12000 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to the irregular shape;
2. The variance will not alter the essential character of the neighborhood;
3. No one appeared in opposition to the Application; and
4. The requested variance is the minimum necessary to afford relief.

Motion by Mr. Rickard, seconded by Ms. Magee, 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. 12002 – Little Einstein’s Pre-School LLC - seeks a special use exception to expand operations of a daycare facility (Sections 115-80 and 115-210 of the Sussex County Zoning Code). The property is located at the east side of Sand Hill Road (Route 319) approximately 2,000 feet north of Route 18. 911 Address: None Available. Zoning District: C-1. Tax Map No.: 1-35-15.00-38.00.

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

Mark Davidson and Lindsay Cannon were sworn in and testified requesting a special use exception to extend the operation of a day care facility. Mr. Davidson submitted a booklet of exhibits to the Board to review.

Mr. Davidson testified that he is a land planner and represents the Applicant; that Lindsay Cannon is the owner of Little Einstein’s Pre-School; that the Property consists of two parcels (Parcel 38.00 and 38.01); that Little Einstein’s has operated on Parcel 38.01 for approximately eight (8) years; that, in 2016, the Applicant acquired Parcel 38.00; that the parcels are zoned C-1 Commercial; that Parcel 38.00 consists of approximately four (4) acres; that the Applicant intends to expand the existing child care facility; that the proposed building consists of approximately 7,200 square feet; that the use will not substantially effect adversely adjacent and neighboring properties; that the Property has been used commercially for some time; that the new entrance is permitted through the Delaware Department of Transportation (“DelDOT”); that the proposed plan includes an outdoor multi-purpose field and baseball field; that the proposed plan includes an outdoor science activity area; and that the proposed building will be as a new learning center.

Ms. Cannon testified that she opened Little Einstein’s in 2008 at a nearby church; that she initially provided care for twelve (12) children; that the Applicant expanded to different properties

because there was a demand for additional pre-school; that the current day care provides care to children ages two (2) to five (5); that the Applicant works with Delaware Technical & Community College and employ their early childhood education students; that the expansion will allow space for up to ten (10) one-year old children; that the Applicant was unable to expand the facility until she purchased Parcel 38.00; that the Applicant won the Delaware Small Business Award in 2017; that the Applicant is looking to expand; and that Applicant will care for approximately 100 children.

Mr. Davidson testified that the existing buildings will remain on the Property.

Ms. Cannon testified that there will be two (2) entrances available for the facility; that between six (6) and eight (8) full time positions will open due to the expansion; and that there have been no complaints from neighbors.

Mr. Davidson testified that the Property is surrounded by an old horse track on two (2) sides; that the CHEER Center is nearby; and that the area also has residential and agricultural uses.

The Board found that two (2) parties appeared in support of the Application.

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

Mr. Mills moved to approve Special Use Exception Application No. 12002 for the requested special use exception based 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 the reasons stated**. Motion carried 5 – 0.

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

Case No. 12004 – Seritage KMT Finance, LLC - seeks a special use exception to have an outdoor display for retail sales (Sections 115-80 and 115-210 of the Sussex County Zoning Code). The property is located at the northeast side of Coastal Highway (Route 1) approximately 1,800 feet northwest of Holland Glade Road (Route 271). 911 Address: 19563 Coastal Highway, Rehoboth Beach. Zoning District: C-1. Tax Map No.: 3-34-13.00-325.33.

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

Laszlo Csatay was sworn in and testified requesting a special use exception to place a tent for outdoor retail sales.

Mr. Csatay testified that a new store is in the process of being built on the Property; that the store will be called “And That”; that the new store is owned by Bed Bath & Beyond; that the store is currently under construction and the store plans to open the fall; that all of their locations have outside sidewalk sales and the Applicant seeks permission to have such sales at this location; that the sales

will be left outside but will be chained and secure during non-business hours; that the use will not substantially affect adversely the uses of neighboring and adjacent properties; that the sales will be contained to an area close to the building; that the store will be located in the old Kmart which is being subdivided; that the sales area will be contained within the sidewalk area and will not be located in the parking lot; that the sales area will not affect any handicap spaces or present any issues with fire protection; that the Applicant has not discussed this application with its neighbors; that the Applicant seeks permission for this use for a period of five (5) years; that the request is for sales every day of the year; that the sales will consist of only merchandise on the sidewalks and on carts on the sidewalks; and that an associate will control the merchandise outside and to make sure that access ways are not blocked.

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. 12004 for the requested special use exception for a period of five (5) years based 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 Mr. Workman, 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; Ms. Magee – yea, Mr. Rickard – yea, Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 12005 – Jose Sanchez & Lisa Niedzielski - seek variances from the separation requirements and side yard setback requirements (Sections 115-25 and 115-172 of the Sussex County Zoning Code). The property is located at the north side of Atlantic Avenue approximately 50 feet east of Tanglewood Avenue. 911 Address: 20088 Atlantic Avenue, Rehoboth Beach. Zoning District: AR-1. Tax Map No.: 3-34-13.00-310.00-3060.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received three (3) letters in support of the Application and read the letters into the record, and no correspondence in opposition to the Application.

Jose Sanchez, Sheri Bigelow, and Lisa Niedzielski were sworn in and testified requesting a variance of 4.7 feet from the twenty (20) feet separation requirement from a dwelling on Lot #100 for a porch, a variance of 4.5 feet from the twenty (20) feet separation requirement from a dwelling on Lot #100 for a porch, a variance of 0.9 feet from the twenty (20) feet separation requirement from a dwelling on Lot #96 for a dwelling, a variance of 6.5 feet from the twenty (20) feet separation requirement from a shed on Lot #96 for a dwelling, a variance of 1.1 feet from the twenty (20) feet separation requirement from a dwelling on Lot #99 for an existing dwelling, and a variance of 2.9 feet from the five (5) feet side yard setback requirement on the northeast side of the Property for a dwelling and HVAC system.

Ms. Niedzielski testified that the Applicants purchased the Property in 2015; that, in 2016, a contractor was hired to enclose the existing porch due to mosquito issues; and that an inspection was

completed and a violation notice was issued a month after completion of the inspection.

Ms. Bigelow testified that the Property is unique because it is 42 feet wide; that there are no property markers in the community; that no survey was completed prior to enclosing the porch; that the enclosed porch was built over the existing deck; that the porch is 12 feet wide; that there are several steps to the porch from the dwelling; that the previous owner built the deck and it was approved by Sussex County; that the porch does not extend any farther than the deck; that other lots in the community violate the separation distance requirement; that four months after the screen porch was completed, a violation letter was issued; and that she never had indication that the porch needed a variance at any point during the construction phase.

Mr. Mills stated that the building permit does not state that there is a twenty (20) feet separation requirement.

Ms. Bigelow testified that she has done work in mobile home parks previously but was unaware of the separation distance requirement; that she built over the existing deck; and that, when she applied for the building permit, she showed pictures and drawings of what was proposed to be constructed.

Ms. Magee stated that stating that even if other properties are in violation of the Sussex County Zoning Code, that does not mean the variance request is automatically permissible.

Ms. Bigelow testified that she showed the plans to the park manager as well and was never told of the separation distance issues; that many other lots in the community are in violation; and that there are no clear property markers.

Mr. Rickard stated issues with Sea Air Village are common.

Ms. Cornwell stated that typically a survey of the Property must be submitted prior to any permits being issued or any construction taking place in Sea Air Village.

Ms. Bigelow testified that she had difficulty dealing with the park manager when trying to find information regarding property markers.

Ms. Niedzelski testified that she rents the Property; that she asked where the property line was when she purchased the home; that she was told the light pole that determined the property line had been moved so they were unsure of the location; that the home was on the Property when she purchased the home; that the home is a 1974 model; that the Applicants have only been on the Property for two (2) years; that the neighboring structures have been on those lots since they moved to the Property; and that she relied on her builder to build the porch in compliance with the Sussex County Zoning Code.

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

Mr. Mills moved to approve Variance Application No. 12005 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Applicants relied on their builder;
2. The Property is unique;
3. The variances are necessary to enable reasonable use of the Property;
4. The exceptional practical difficulty has not been created by the Applicants;
5. The variances will not alter the essential character of the neighborhood; and
6. The requested variances are the minimum variances necessary to will afford relief.

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

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

Case No. 12006 – J.G. Townsend Jr. & Co. - seeks a special use exception to use a manufactured home type structure as an office (Sections 115-25 and 115-210 of the Sussex County Zoning Code). The property is located 1,400 feet east of Kings Highway (Route 9) on Gills Neck Road. 911 Address: None Available. Zoning District: AR-1. Tax Map No.: 3-35-12.00-3.11.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application. The Office did receive a letter from the Applicant to clarify that the Applicant is actually Schell Brothers, who is under contract to purchase the Property.

Tim Green was sworn in and testified requesting a special use exception to use a manufactured home type structure as a temporary sales office.

Mr. Green testified that Governors is a new subdivision for 423 home sites located on Gills Neck Road; that the manufactured home will be used in the subdivision; that the project is currently underway; that homes are expected to be built in March or April of 2018; that sales of the homes will begin in February 2018; that the request is for a temporary manufactured home to be placed for a period of two (2) years until the model home is completed; that the manufactured home-type structure will not substantially affect adversely the uses of neighboring and adjacent properties; that the structure will be located in a residential setting in the interior of the community; that the structure will be a significant distance from existing structures on neighboring lands; that the area surrounding the unit will be landscaped and will be inviting and natural; that wastewater will be collected in a holding tank underneath the unit and will be pumped out on an as-needed basis; that lights will be provided to illuminate the parking lot; that the temporary sales center will be removed when the model home is completed in June or July of 2018; that the hours of operation of the sales center will be Monday through Saturday from 10:00 AM to 5:00 PM, and Sunday from 11:00 AM to 5:00 PM; that there will be adequate parking for employees and customers; that the proposed manufactured home is an older manufactured home that is being completely rebuilt and remodeled to look similar to other manufactured home used in the past by the Applicant; and that the unit will have an attractive appearance.

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. 12006 for the requested special use exception for a period of two (2) 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 two (2) years and for the reasons stated**. Motion carried 5 – 0.

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

Case No. 12007 – Geraldine Albano - seeks variances from the front yard and side yard setback requirements (Sections 115-42 and 115-182 of the Sussex County Zoning Code). The property is located at the west side of Topher Drive approximately 200 feet south of Blackstone Drive. 911 Address: 31588 Topher Drive, Millville. Zoning District: GR. Tax Map No.: 1-34-12.00-1975.00.

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

Carl Albano was sworn in and testified requesting a variance of 8.4 feet from the thirty (30) feet front yard setback requirement for an existing deck, a variance of 0.7 feet from the ten (10) feet side yard setback requirement on the south side for an existing dwelling, and a variance of 0.6 feet from the ten (10) feet side yard setback requirement on the south side for an existing dwelling.

Mr. Albano testified that the Property is unique because it is 75 feet wide; that the dwelling has consumed all usable building space; that the dwelling would have to be removed or a portion of the dwelling would have to be removed to bring the dwelling into compliance with the Sussex County Zoning Code; that neither of these options are feasible because they would cost a significant amount of money; that the exceptional practical difficulty was not created by the Applicant; that the Property was purchased in 1991; that stakes were placed on the Property prior to the placement of the home and the stakes and the home were placed by a third-party contractor; that the encroachments were not discovered until January 2017; that the variances will not alter the essential character of the neighborhood; that the requests will not affect neighboring properties; that there have been no complaints of the encroachments; that the variances requested represent the minimum variances necessary to afford relief; that his mother and father purchased the Property and had the home built 25 years ago; that he believes a Certificate of Compliance was issued for the home; that his father passed away and the survey was obtained as part of the process to sell the Property; that his parents relied on a contractor to place the home on the Property; that the difficulty was created by the contractor who placed the home; that there is probably a couple of feet from the front property line to the edge of paving of Topher Drive; that the dwelling utilizes town water and county sewer; that the septic system was previously located in the rear thereby creating a less buildable area; that the home previously could not be turned to fit on the lot due to the septic system; and that no additions have been made to the existing home.

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

Ms. Magee moved to approve Variance Application No. 12007 for the requested variances based on the records made at the public hearing and for the following reasons:

1. The situation is unique;
2. The Applicant relied on her builder to place the home in compliance with the Sussex County Zoning Code;
3. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
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 Ms. Magee, seconded by Mr. Mills, 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, Mr. Mills – yea, Ms. Magee – yea, and Mr. Callaway – yea.

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 variances 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.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received eighty-six (86) letters in opposition to the Application, one (1) letter of concern, one (1) letter from the Delaware Department of Transportation (“DelDOT”), and no letters in support of the Application. Ms. Cornwell read a letter from John Still, which was submitted in opposition to the Application and as was referenced in other letters regarding the Application. Ms. Cornwell advised the Board that copies of the correspondence are available for the Board to review.

Mike Riemann and Christopher Duke were sworn in to testify about the Application. John Tracey, Esquire, presented the case on behalf of the Applicant and submitted exhibits for the Board to review.

Mr. Tracey stated that the Applicant is requesting a variance from the building length requirement for a multi-family dwelling and a special use exception for multi-family and mixed use in a split zone C-1 and CR-1 district.

Mr. Tracey stated that the Property is approximately 10.2 acres and is located east of Route 1 and south of Holland Glade Road; that the Property is split-zoned with the front portion being zoned C-1 and the rear portion is zoned CR-1; that the C-1 zone consists of approximately 75% of the Property; that the Property is being developed in two (2) phases; that the first phase pertains to the front portion of the Property which is approved for a Royal Farms gas station and an Iron Hill

brew pub; that the Property will be accessed from Route 1 and two accesses on Holland Glade Road; that the Royal Farms and the Iron Hill brew pub should be opened in 2018; that the second phase of the development pertains to the rear portion of the Property and is a mixed use development which is the subject of the Application; that the development will consist of approximately 36,000 square feet of commercial space and 96 residential units; that the Property is in the Level 2 Investment Area where DelDOT anticipates growth; that the area is designated in the Sussex County Comprehensive Plan as an area for more intensive development; that the mixed use project allows for reduction of vehicular trips and for improved pedestrian pathways between residential and commercial uses; that there is an increased demand for smaller units; that the first floor will be a mixed use and the second and third floors will be used for residential uses; that the development will incorporate pedestrian sky bridges; that the development will include a plaza area; that the development will include parking underneath the building for approximately 110 vehicles; that mixed use is a permitted use in the C-1 zoning district; that no special use exception is needed for the C-1 portion of the Property; that the rear portion of the building needs the special use exception permit since it is zoned CR-1; that the use will not substantially adversely affect the uses of neighboring and adjacent properties; that Tanger Outlets is located to the north of the Property and mixed residential and commercial use is located nearby; that the State of Delaware owns lands nearby which are not available for development; that there is dense development nearby; that the Junction & Breakwater Trail is located nearby; that the Applicant is open to connecting to the trail; that DelDOT constructed a "Hawk signal" along Route 1 to allow for pedestrians to cross Route 1 near the Property; that the Applicant supports the installation of a traffic signal at the intersection of Holland Glade Road and Route 1; that DelDOT conducted a traffic study in 2012 for a prior proposal on the Property; that the Applicant proposes that a double, left-hand turn signal from Route 1 onto Holland Glade Road would be beneficial; that the traffic signal would include a protected right-hand turn from Holland Glade Road onto Route 1; that the number of vehicular trips generated by a mixed use proposal is less than the number of vehicular trips generated by commercial uses otherwise permitted by the existing zoning classification; and that the figures for vehicular trips come from the International Traffic Engineers Manual used by DelDOT and traffic engineers.

Mr. Duke testified that the Applicant's traffic counts have been submitted to DelDOT for review and comment; that the traffic signal will provide vehicles along Holland Glade Road better access to northbound Route 1 and vehicles along southbound Route 1 with better access to Holland Glade Road; and that DelDOT pushed for the traffic signal to reduce U-turns along Route 1.

Mr. Tracey stated that the proposed traffic signal will reduce the need for unnecessary U-turns along Route 1; that the traffic signal will improve the area; that the only underground storage tanks on the Property are related to the Royal Farms which is already under development and has been approved; that the development is consistent with the development along Route 1; that mixed use developments have been encouraged in the comprehensive plan process; that the Applicant is not convinced that the variance is even needed for mixed-used buildings but the Planning & Zoning Department has a different interpretation; that the building length limit was designed as an anti-monotony statute to avoid barrack-style buildings; that the size of the variance is exaggerated because of the pedestrian skywalks which connect the three buildings; that the Applicant is not seeking a variance as a result of density; that the Applicant is not seeking variances from the height, setback, buffer, or parking requirements; that the proposed design allows the Applicant to keep the

bulk of the development in the center of the Property and to provide better screening of the parking areas; that the many of the commercial buildings on nearby properties are larger buildings – some of which are over 600 feet long; that the character of the community calls for larger buildings; that the Property is a corner lot which larger setback areas; that the Property is narrow; that commercial buildings can be greater than 165 feet long; and that the Applicant believes a traffic signal will be required for the development as proposed and the Applicant will advocate for the signal.

Mr. Reimann testified that the Applicant proposes to construct a multi-modal path along Holland Glade Road measuring ten (10) feet wide; that the Applicant is open to constructing a pedestrian pathway connecting the multi-modal path to the Junction & Breakwater trail on nearby state lands; and that the Applicant has reached out to the State about connecting to the trail.

Mr. Duke testified that the Applicant's engineers conducted the traffic study and submitted the figures to DelDOT for its review and comment; that there are approved developments in the neighborhood which have not yet been constructed but the Applicant has included those developments in their traffic counts; and that DelDOT determines the traffic study area.

Mr. Tracey stated that DelDOT reviews all traffic counts and studies; that the ITE manual has certain traffic counts for certain uses and the Applicant must then take into account traffic related to existing uses in the neighborhood; that DelDOT has certain "warrants" that are "tripped" by traffic counts and the Applicant is confident that, with the proposed development, the warrant will be tripped; that the Applicant has incorporated in its design traffic improvements which will likely be required by the DelDOT warrant; that the Applicant would be required to pay for the traffic signal; that DelDOT requires developers to enter into traffic signal agreements which obligates the developers to pay their fair share of the cost of traffic signals; that he is unaware if other developers along Holland Glade Road have entered into traffic signal agreements but, regardless, the Applicant will likely be the lead party in any traffic signal agreement; and that the Applicant anticipates that it will have to bear the cost of the traffic signal.

Mr. Reimann testified that the traffic signal will also improve the safety of the pedestrian crossing along Route 1; that the commercial space consists of approximately 36,000 square feet; that the Applicant will have to take the project to the Planning & Zoning Commission and regulatory agencies for site plan review; that the storm water management will be handled through an underground system; that the Property has an excellent recharge; that the soils in the area are suitable for such a system and other nearby commercial businesses have similar systems; and that the storm water management system is subject to DNREC review.

Mr. Tracey stated that the rear of the Property was zoned CR-1 in 2004; that the C-1 zoning district was closed prior to the rezoning of CR-1; that, if the entire property was zoned C-1, no special use exception would be necessary; and that the commercial space could be used for offices.

Ms. Cornwell advised the Board that the variances from the building length are for 250 feet and 195 feet.

Mr. Tracey stated that the special use exception is only needed as it pertains to the portion of Building C which is east of the C-1 / CR-1 zoning line; and that if the buildings were used solely

for uses otherwise permitted in a CR-1 district – and not for multi-family use – the building length restriction would not apply.

Mr. Reimann testified that nearby commercial buildings and the church exceed 165 feet in building length.

Mr. Duke and Mr. Reimann affirmed the statements made by Mr. Tracey as true and correct.

John Still, Rev. Victoria Starnes, Rita Dascenzo, Kathy Pizzadili, Michael Polovina, and James Robert Powers were sworn in to testify in opposition to the Application.

Mr. Still testified that he served on Dover's Planning & Zoning Commission; that he spent 20 years in the General Assembly; that he is concerned about the density in the area; that he rides his bike in the area and is concerned about the bike travel on Holland Glade Road; that the intersection of Route 1 and Holland Glade Road is a poor intersection; that the traffic along Route 1 will only get worse; that there are wellheads in the area; that he believes a better solution to the traffic problems is the creation of a road along the rear of the nearby outlets and K-Mart; that nearby developments are high density projects; that the Applicant is legally entitled to develop the Property; and that he questions whether mixed-use is appropriate.

Rev. Starnes testified that she is the reverend at Epworth United Methodist Church which is located along Holland Glade Road and is near the site; that the church has a community skate park, a boys & girls club, a daycare, a soup kitchen, and a concert venue; that the church is a busy place and has 500 worshippers each week; that the church has vehicles in and out of the parking lot frequently; that traffic along Holland Glade Road is a problem; that traffic in Rehoboth has worsened greatly; and that the density is a problem.

Ms. Cornwell advised the Board that DelDOT has jurisdiction over the installation of a traffic signal and would determine if a signal is necessary and when it would be installed; that the previous traffic study conducted in 2012 indicated that a signal was warranted for a previously considered development on site; and that, typically, DelDOT requires the installation of a traffic signal by the completion of the development process.

Ms. Dascenzo testified that she lives in Canal Point and has lived in Rehoboth since 1995; that she is concerned about the overdevelopment of the Rehoboth Beach area; that there are traffic problems and crime has increased; that the area is already busy and congested without this development; that Holland Glade Road is already used by numerous developments, the church, the outlets, a ball park, and the Seaside Jewish Community; that a senior center is also proposed to be constructed in the area; that Holland Glade Road is the only road in and out of the area; and that traffic is becoming a year-round problem; that the area does not need another gas station and brewery. Ms. Dascenzo submitted a letter to the Board.

Ms. Pizzadili testified that residents of the proposed development will want to go to Rehoboth and will increase traffic to Rehoboth; and that traffic into Rehoboth is a problem and she is concerned about the traffic.

Mr. Polovina testified that the nearby roads other than Route 1 are two lane roads and he is concerned about the traffic.

Mr. Powers testified that he opposes the Application and that traffic in the area is horrendous.

Mr. Reimann testified that Phase 1 of the project will include an access to Holland Glade Road.

Mr. Tracey stated that the 2012 traffic impact study was conducted for a development proposed by a prior owner; that the Applicant is in the traffic impact study process and additional reports will be prepared as part of that process; and that the traffic impact study is not required for a special use exception.

Mr. Duke testified that, in traffic engineering, a traffic grade of an “F” means that the intersection failed; that the installation of the signal will significantly improve traffic conditions at that intersection; that the traffic numbers are preliminary at this time and the Applicant is waiting for feedback from DelDOT; that he is confident that a traffic signal with two left-hand turn lanes will be warranted at this site; and that the other permitted uses on the Property will generate much more traffic than the traffic generated by the proposed use.

Mr. Tracey stated that the traffic signal would provide a solution to the traffic problems; and that the Property could be used for a hotel, grocery store, or other uses.

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

The Board found that sixteen (16) parties appeared in opposition to the Application.

Motion by Mr. Mills, seconded by Ms. Magee, and carried unanimously that the Application be **tabled until August 21, 2017**. 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. 11992 – Tevy Schalfman & Linda W. Schlafman - seek a variance from the rear yard setback requirement (Section 115-34 of the Sussex County Zoning Code). The property is located at the west side of Tivoli Court approximately 119 feet off Bella Via Way. 911 Address: 32880 Tivoli Court, Ocean View. Zoning District: MR. Tax Map No.: 1-34-12.00-2463.00.

Ms. Cornwell presented the case which has been tabled since July 24, 2017.

The Board discussed the case.

Mr. Mills stated that NV Homes informed the Applicants of the restriction and that the difficulty is being created by the Applicants.

Ms. Magee stated the Applicants had the option to choose a different lot and that the difficulty was being created by the Applicants.

Mr. Rickard stated that the difficulty is being created by the Applicants.

Mr. Workman stated that the difficulty is being created by the Applicants.

The Board was then ready to take a vote.

Motion by Ms. Magee, seconded by Mr. Mills, and carried unanimously that **the variance be denied** because the Applicants are creating the exceptional practical difficulty, the variance requested is not the minimum variance necessary to afford relief, and the variance requested is not necessary to enable reasonable use of the Property. Motion carried 5 – 0.

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

Case No. 11995 – KLEM, LLC - seeks variances from the height requirement (Sections 115-82 and 115-179 of the Sussex County Zoning Code). The property is located at the southwest corner of Coastal Highway (Route 1) at the intersection with South Street. 911 Address: 19178 Coastal Highway, Rehoboth Beach. Zoning District: C-1. Tax Map No.: 3-34-13.00-157.00 & 158.00.

Ms. Cornwell presented the case which has been tabled since July 24, 2017.

Mr. Sharp advised the Board that he received a letter regarding the Application and that the letter is considered outside the public record since the record was closed at the previous hearing.

The Board discussed the case.

Mr. Mills stated that the opposition provided a strong case; that the Property is already developed since there is a restaurant there; that the variances are not necessary to enable reasonable use of the Property; that the variance request is the result of the Applicant's desire to place a hotel there; that the variances would alter the essential character of the neighborhood; that there will be parking issues; that there is nothing physically unique about the Property; that the difficulty is being created by the Applicant; and that the Property can otherwise be developed.

Ms. Magee stated that she agrees with Mr. Mills' statement; that the difficulty is being created by the Applicant; that she is not convinced the request is a need; and that the Property can otherwise be developed.

Mr. Rickard stated that he agrees with both Mr. Mills and Ms. Magee.

Mr. Workman stated that the Applicant failed to demonstrate the uniqueness of the Property;

that the proposed hotel could be redesigned; and that the difficulty is being created by the Applicant.

The Board was then ready to take a vote.

Mr. Mills moved that the variances from the height requirement for a hotel and HVAC system should be denied because the Applicant has failed to meet the standards for granting a variance for the following reasons:

1. The Applicant failed to demonstrate that there are unique physical circumstances or conditions, or exceptional topographical or other physical conditions peculiar to the Property, and that an exceptional practical difficulty is due to such conditions.
2. The variances are not necessary to enable reasonable use of the Property.
3. The Property can otherwise be developed in strict conformity with the Sussex County Zoning Code.
4. The variances would alter the essential character of the neighborhood.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the variance be **denied for the reasons stated**. Motion carried 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. 11997 – Windstone, LLC - seeks variances from the front yard setback requirement (Section 115-25 of the Sussex County Zoning Code). The property is located at the south side of Riverstone Road approximately 110 feet east of Brookstone Drive. 911 Address: 29649 Riverstone, Drive, Milton. Zoning District: AR-1. Tax Map No.: 2-35-22.00-1102.00.

Ms. Cornwell presented the case which has been tabled since July 24, 2017.

The Board discussed the case.

Mr. Mills stated that the Property is irregularly shaped; that a small dwelling on the lot would be out of character with the neighborhood; that the Applicant is proposing to stay within the visual setbacks; and that the proposed dwelling is more esthetically pleasing.

The Board was then ready to take a vote.

Ms. Magee moved to approve Variance Application No. 11997 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique;
2. The exception practical difficulty has not been created by the Applicant;
3. The variances will not alter the essential character of the neighborhood; and
4. The requested variances are the minimum variances necessary to afford relief.

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

variances be **approved for the reasons stated**. Motion carried 5 – 0.

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

Meeting Adjourned 10:33 p.m.