



Board of Adjustment
Agendas & Minutes

MINUTES OF JUNE 20, 2005

The regular meeting of the Sussex County Board of Adjustment was held on Monday evening June 20, 2005, 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. Callaway, Mr. McCabe, Mr. Mills, Mr. Workman and Mr. Hudson, with Mr. Berl – Assistant County Attorney, Ms. Hudson – Zoning Inspector, II and Mrs. Norwood – Recording Secretary.

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of June 6, 2005 as circulated. Vote carried 5 – 0.

Case No. 9096 – Hamlet At Dirickson Pond LLC – east of Road 384, east of Jahnigen Drive, being Lot 1 within The Hamlet At Dirickson Pond development.

A special use exception to place a manufactured home type structure as a sales office.

Ms. Hudson presented the case. Brent Fannin was sworn in and testified requesting a special use exception to place a manufactured home type structure as a sales office; that the unit will measure 12' x 56'; that the unit will be remodeled to suit the developments needs; that there will be landscaping and adequate parking; that there will be a 14' x 20' deck; and that the use will be needed for approximately 1-year.

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

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the special use exception be **granted for a period of one (1) year with the stipulation that the unit will be a 12'x 56' office trailer with landscaping and since it will have no substantial adverse effect to the neighborhood.** Vote carried 5 – 0.

Case No. 9097 – Bay Rose Homes LLC – northeast of Road 279, 1,120 feet east of Cypress Drive.

A special use exception to place a manufactured home type structure as a sales office.

Ms. Hudson presented the case. Brent Fannin was sworn in and testified requesting a special use exception to place a manufactured home type structure as a sales office; that the unit will measure 12' x 56'; that there will be a 14' x 20' deck; that the

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unit will have landscaping and adequate parking; that the unit will meet the standards for a sales trailer; and that the use will be needed for 1-year.

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

Motion by Mr. McCabe, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted for a period of one (1) year and that the area around the unit be landscaped.** Vote carried 5 – 0.

Case No. 9098 – Robert W. Lukowski, Sr. – south of Route 54, west of Monroe Avenue, being Lot 16 within Edgewater Acres development.

A variance from the front yard, side yard and rear yard setback requirements.

Ms. Hudson presented the case. Robert Lukowski, Jr. was sworn in and testified requesting a 2-foot variance from the required 30-foot front yard setback requirement for a deck, a 5-foot variance from the required 10-foot side yard setback requirement the proposed dwelling and steps and a 13-foot variance from the required 20-foot rear yard setback requirement for a deck; that the proposed dwelling and decks are in character with the neighborhood; that there are numerous decks within the development; and that he submitted pictures.

Ms. Hudson stated that the office received 2 letters in support of the application.

By a show of hands, 3 parties appeared in opposition to the application.

Jackie Wright was sworn in and testified in opposition to the application and stated that she owns the property next to a dwelling that was granted variances on all sides; that she feels like she lives under a bridge; that she lives in Georgia for part of the year; that she did not realize the impact the variances would have on her property; that she feels by granting these variances it is taking away from the ambience of the neighborhood; that she feels the Applicant should build within the setback requirements;

and that she submitted pictures of the dwelling that the Board denied variances for and to show the impact the dwelling has on the neighbors without any variances.

Marion Gordon was sworn in and testified in opposition to the application and stated that he wants the variances denied and that he appreciates the Board's decision to deny other variances in the development.

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In rebuttal, Robert Lukowski, stated that his adjacent neighbors are in support of the application; that there will be garages underneath the dwelling; and that the proposed dwelling is the same height as the neighboring dwellings.

Ms. Hudson stated that the property is in a flood zone and that the first floor decks can encroach 5-foot into the setback and that the rear property line extends into the lagoon.

In rebuttal, Jackie Wright stated that she wants to know who will be living in the proposed dwelling and that they have built a dwelling on another lot in the development.

In rebuttal, Robert Lukowski, stated that the proposed dwelling is for him; and that his sister lives in the other dwelling.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the case be **left open to allow the staff to report back to the Board in reference to the location of the rear property line.** Vote carried 5 – 0.

Case No. 9099 – Herbert A. Tunis, Jr. – northeast of Road 518, 490 feet southeast of Route 9.

A special use exception to place a manufactured home that exceeds maximum age requirement.

Ms. Hudson presented the case. Herbert Tunis, Jr. was sworn in and testified requesting a special use exception to place a manufactured home that exceeds maximum age requirement; that he currently lives in a mobile home park; that his father has given him a 1-acre parcel; that the unit is a 1989- 24'x 40'; that the unit is in good condition; that they plan to build a 20'x 20' addition to the rear of the unit; that the unit will be on a block foundation; that the entire structure will have siding, new windows and doors; that they cannot afford a new manufactured home at this time; that his father owns a double-wide manufactured home on the adjacent property; and that he wants to improve the quality of life for his children.

By a show of hands 3 parties appeared in support of the application.

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

Motion by Mr. McCabe, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted with the stipulation that there will be a 20'x20' addition and that the entire structure will have siding, new windows and doors.** Vote carried 5 – 0.

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Case No. 9100 – Pulte Homes of MD – northwest of Route 24, south of Tanglewood Drive, within Hart's Landing development.

A special use exception to place a manufactured home as a sales office.

Ms. Hudson presented the case. Brian McMannis was sworn in and testified requesting a special use exception to place a manufactured home as a sales office; that the unit will measure 12'x 60'; that the unit will have landscaping and adequate parking; that the unit will be re-painted; and that the use will be needed for one year.

By a show of hands 1 party appeared in support of the application.

James Gasco was sworn in and testified in support of the application and stated that the unit has been on the lot for 2-weeks; and that he would like to see the use only approved for six months.

In rebuttal, Brian McMannis, stated that the unit was delivered from an out of state company; and that the unit was just sitting on the lot waiting for the hearing.

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

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the case be taken under advisement. Vote carried 5 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the special use exception be **granted for a period of six (6) months with the stipulation that the unit be painted and that landscaping be provided.** Vote carried 5 – 0.

Case No. 9101 – Cingular Pennsylvania, LLC – west side of intersection of Road 365 and Road 363.

A special use exception to place a telecommunications tower.

Ms. Hudson presented the case. Allen Corpus, Andrew Peterson, and Brian Laslo were sworn in with Pamela Scott, Attorney, on behalf of the application and testified requesting a special use exception to place a telecommunications tower; that the tower will be 150-foot tall; that the proposed property is 13-acres and zoned AR-1; that the tower will meet all the County requirements; that there will be a 60' x 60' fenced in area around the tower; that there will be a six-foot tall fence; that there will be a 12' x 20' equipment shelter; that 50% of all 911 emergency calls come in from cellular phones;

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that there are no other locations to co-locate antennas on in the area; and that the proposed location is the best location to allow the landlord to still have the best use of his property.

By a show of hands 2 parties appeared in support of the application.

Ms. Hudson stated that the office received 1 letter in support of the application.

By a show of hands 11 parties appeared in opposition to the application.

Dave Just was sworn in and testified in opposition to the application and stated that there are no towers in the area; that the tower will have an adverse effect to the neighborhood; that the proposed location is at a very dangerous intersection; that there have been numerous accidents at the intersection; that the fenced in compound area will block the view of on-coming traffic; and that he submitted a packet of information and read a petition he submitted.

Bill Gaines was sworn in and testified in opposition to the application and stated that he is a Real Estate agent; that the proposed tower may effect property values; that people move to this area for the country setting; and that the tower may cause health issues and create visual obstruction.

Dave Just, stated that he feels the Applicant does not keep the neighborhood in mind when searching for a site; that the proposed site is not in the development district and is a low density area; that if the tower was to ever fall it would fall on the road; that he wants to know who manages the site; and that he read from his submitted packet.

Kevin Brennan was sworn in and testified in opposition to the application and stated that he has lived in the area for 40-years; that the area will soon be heavily developed residentially; that if the tower were to ever fall it would land on nearby houses; and that if the tower is set further back on the property it would be closer to his property.

Sarah Druckenmiller was sworn in and testified in opposition to the application and stated that she is concerned about the impact on property values; and that the compound and tower will create a safety hazard at the intersection.

Sally Ford was sworn in and testified in opposition to the application and stated that she has lived in the area for 23-years; that the neighbor has a telescope they enjoy and the lights from the tower will interfere with the view from the telescope; and that the road is on a scenic bike trail.

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Mark McLaughlin was sworn in and testified in opposition to the application and stated that he lives ¼ mile from the proposed site; that he has been a resident to the area for 30-years; that he recently built an addition on his dwelling; that the lights on the tower will be seen from this addition; that this is a close knit and very pristine neighborhood; and that the tower will create a driving hazard.

Pat Worthen was sworn in and testified in opposition to the application and stated that she is also a real estate agent and that she will see the tower from her front porch.

Tom Ford was sworn in and testified in opposition to the application and stated that he has lived in the area for 23-years; that he feels the site should have to comply with the County Ordinance; that the tower should be placed further back on the property; that this is strictly a residential area; that the road numbers on the public notices were not correct; and that the posting was not on the property.

Kevin Brennan, stated that his girlfriend has no problem with service for her cellular phone and she uses it for her job.

In rebuttal, Pam Scott, submitted to the Board copies of a health study done for the FCC; that she also submitted a study that shows property values are not effected by a tower; that the tower meets all the County requirements; that the ordinance permits towers in residential areas; that to restrict towers to commercial properties only would increase gaps in coverage; that the opposition had not substantial evidence that property values would be effected; that the State of Delaware has a program for land that is in the Farmland Preservation Act to permit towers and not effect the preservation; and that the towers are needed every 2 to 3 miles to work effectively.

In rebuttal, Dave Just, stated that the Applicant has shown no substantial evidence that a tower cannot be built elsewhere and that the Applicant has not addressed who monitors the tower site.

In rebuttal, Brian Laslo, stated that Cingular has a hotline for the towers; that the towers are monitored 24-hours, 7-days a week; that if so much as a light bulb burns out a signal is sent to Cingular; and that they do hire a management firm to maintain the site.

Sarah Druckenmiller, stated that the danger of the access road has not been addressed and that the proposed entrance is right on the curve in the road.

The Board stated that the Applicant must seek approval from DelDOT for the access road.

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Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case be taken under advisement. Vote carried 5 – 0.

At the conclusion of the public hearings, the Chairman referred back to this case. Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case **be left open to allow the Applicant to confer with the property owner on a possible new location for the tower on the proposed parcel in written form.** Vote carried 5 – 0.

The Board recessed for 10-minutes.

Case No. 9102 – Karen Wothers – east of U.S. Route 13A, 150 feet northeast of Francis Street.

A special use exception to operate a commercial dog kennel.

Ms. Hudson presented the case. Karen Wothers was sworn in and testified requesting a special use exception to operate a commercial dog kennel; that she plans to use an existing 135'x 54' pole building for the kennel; that the building is on a 62-acre parcel her grandparents own; that she owns the adjacent 9-acre parcel; that her parents own an adjacent 4-acre parcel; that there will be 33 to 36 indoor/outdoor runs; that the facility will be used strictly for boarding; that she plans to have some training courses to help educate the public and hopefully reduce the number of stray dogs and cats in the county; that there will be a veterinarian on staff; that she has been a certified trainer for 8-years; that there will be someone on site 24-hours a day; that there will be no breeding; that the property is wooded; that the adjacent neighbors consist of the Delmar Speedway, a mobile home park and the Delmar School District; that there will be no adverse effect to the neighborhood; and that she plans to provide boarding, shot clinics, training classes and veterinarian services by appointment only.

By a show of hands 3 parties appeared in support of the application.

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

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted for a period of five (5) years since it will have no adverse effect to the neighborhood.** Vote carried 5 – 0.

Case No. 9013 – Iris Downing – northwest of Road 213, southeast of Cherry Street, being Lot 33 within Walker Acres development.

A special use exception to operate a day care facility.

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Ms. Hudson presented the case. Iris Downing was sworn in and testified requesting a special use exception to operate a day care facility; that she currently operates a large family day care; that she wants to increase the number of children from 14-children to 30-children; that the ages will still be from infant to school age children; that the hours will remain 6:30 a.m. to 6:00 p.m., Monday through Friday; and that she has adequate parking.

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

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the special use exception be **granted since it will not have substantial adverse effect to the neighborhood.** Vote carried 5 – 0.

Case No. 9104 – Dagsboro American Legion – north of Route 26, 200 feet west of U.S. Route 113.

A variance from the minimum parking space and paving requirements.

Ms. Hudson presented the case. Wayne Garson, Peter Lowenstein and Ken Christenbury were sworn in and testified requesting a 34-parking space variance from the required 105-parking space requirement and a variance from the paving requirements; that the existing building is in disrepair; that the proposed building will be 7200-square-foot; that the building will have a banquet hall, social hall, kitchen and office space; that the septic system needed will take up the parking area; that they plan to connect to central sewer as soon as it becomes available; that they want to use gravel for the parking area until the sewer comes through; that once they connect to central sewer the septic system will be removed and they will pave the entire parking lot; that this request is for temporary relief only; that the building will have a 200-people capacity; that they will not use the building to its full capacity until the parking lot is completed; that they will limit

the capacity for any functions to match the parking spaces until the parking lot is improved; and that they submitted a plan of the building.

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

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the variances be **granted with the condition that there will be limited people capacity to match the available parking until the parking lot paving can be completed.**
Vote carried 5 – 0.

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Case No. 9105 – Peninsula Community Church – northeast of Road 377, 4,125 feet northwest of Road 379.

A special use exception to operate a day care facility.

Ms. Hudson presented the case. Rich Warfield and Laura Hafford were sworn in and testified requesting a special use exception to operate a day care facility; that they plan to move into their new facility in September; that they want to offer a child development center for the young families in the community; that they will use the same classrooms for the day care that are used for Sunday school classes; that they did apply for a special use exception in December 2001; that they did not get to start the center due to the fact the building was not completed; and that they have updated their approvals through the State agencies.

By a show of hands 2 parties appeared in support of the application.

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

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted since it will be an asset to the community.**
Vote carried 5 – 0.

Case No. 9106 – Jacqueline Rosemary – south of Road 277, south of Bridgeway Drive West, being Lot 22, Block W, Section 5 within Angola By The Bay development.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. John Kalomeris was sworn in with William Wright, Attorney, on behalf of the application, and testified requesting a 2.2-foot variance from the required 10-foot side yard setback requirement for an existing dwelling; that the

dwelling was built in 1983; that a Certificate of Compliance was issued on the dwelling; that the encroachment was discovered with a survey done for settlement; that they have obtained the building permit for the outside shower; that the builder made the error and is no longer in business; and that this is a minimum variance to afford relief.

By a show of hands 1 party appeared in support of the application.

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

Motion by Mr. McCabe, seconded by Mr. Workman, and carried unanimously that the variance be **granted since it has been on the property for 23-years, and since**

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a Certificate of Compliance was issued, and since it will not alter the character of the neighborhood. Vote carried 5 – 0.

Case No. 9107 – Patricia Johns and Margaret Kozan – north of Route 54, west of Blue Teal Road, being Lot 10, Block C within Swann Keys development.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. Patricia Johns was sworn in and testified requesting a 5-foot variance from the required 10-foot side yard setback requirement for a screen porch; that the porch will measure 8'x 32'; that she replaced the existing unit with a new manufactured home; that the previous unit had a similar porch; and that the Homeowner's Association has no objection to the application.

By a show of hands 1 party appeared in support of the application.

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

Motion by Mr. McCabe, seconded by Mr. Workman, and carried unanimously that the variance be **granted since it will not alter the character of the neighborhood.** Vote carried 5 – 0.

Case No. 9108 – Christopher Brown, III – south of Road 277, east of Linden lane, being Lot 13, Block P, Section 3 within Angola By The Bay development.

A variance from the rear yard setback requirement.

Ms. Hudson presented the case. Christopher Brown, III was sworn in and testified requesting a 6-foot variance from the required 20-foot rear yard setback requirement; that there is an existing 10'x 20' deck; that he wants to extend the deck and enclose a portion

of the deck; that there is a common area to the rear of his property; that there have been numerous variances granted in the development; and that he has been a resident for 18-years.

By a show of hands 2 parties appeared in support of the application.

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

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the variance be **granted since it will not alter the character of the neighborhood**.
Vote carried 5 – 0.

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Case No. 9109 – Nathaniel Frazier – east of Route One, east of Central Avenue, being Lot 38, Block 3 within Shockley Subdivision.

A special use exception to replace a non-conforming manufactured home.

Ms. Hudson presented the case. Nathaniel Frazier was sworn in and testified requesting a special use exception to replace a non-conforming manufactured home; that he owns the property; that the existing unit is in poor condition; that the unit has been on the lot since the early 70's; that they want to provide a newer unit for the tenant; that the tenant is a single mother with 5-children; that the local church, West Side New Beginnings and the Association of Churches are involved with the replacement of the unit; that the unit will be in character with the neighborhood; that there are two mobile home parks nearby; and that they are trying to upgrade this family's standard of living.

By a show of hands 3 parties appeared in support of the application.

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

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the special use exception be **granted since it will have no adverse effect to the neighborhood**. Vote carried 5 – 0.

Case No. 9110 – William and Debora Willard – east of Road 299, southeast of William Drive, being Lot 59, Section 3 within William Ritter Manor development.

A variance from the side yard setback requirement.

Ms. Hudson presented the case. Debora Willard was sworn in and testified requesting a 1-foot variance from the required 10-foot side yard setback requirement for an existing detached garage; that they built the dwelling 8-years ago; that they hired a

contractor to install the driveway 10-foot from their property line; that when they hired the contractor to build the detached garage they advised him to line the garage up with the existing driveway; and that they had no idea the driveway was wrong until they applied for the Certificate of Compliance for the detached garage.

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

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the variance be **since it will not alter the character of the neighborhood and it is the minimum variance to afford relief, and that a letter be sent to the builder.**

Vote carried 5 – 0.

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OLD BUSINESS

Case No. 8758 – Robert and Barbara O’Neill – north of Route 22, east of Oyster Road, being Lot 17 within Malones Bayside Mobile Home Park.

A variance from the separation requirement between units in a mobile home park and a variance from the side yard and rear yard setback requirements.

The Board discussed the case which has been tabled since September 13, 2004.

Ms. Hudson stated that the office has received the requested survey.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variances be **granted due to the uniqueness of the lot, since it will not alter the character of the neighborhood, and since it is the minimum variance to afford relief.**
Vote carried 5 – 0.

Case No. 9039 – Rose Littleton – west of Road 453, 5,271 feet north of Route 54.

A variance from the minimum lot width requirement for a parcel.

The Board discussed the case which has been tabled since May 2, 2005.

Ms. Hudson advised the Board that DeIDOT told the Applicant that it is unlikely she would be turned down for an entrance approval; that the Applicant did not want to go through the expense of a survey if the Board was not going to grant the request.

Motion by Mr. Hudson, seconded by Mr. McCabe, and carried unanimously that the variance be **granted since it will not alter the character of the neighborhood.**
Vote carried 5 – 0.

Case No. 9074 – Cingular Wireless – east of Road 562, 1,850 feet south of Road 563.

A special use exception to place a communication tower and a variance from the maximum allowable height requirement.

The Board discussed the case which has been tabled since May 23, 2005.

Ms. Hudson read a letter to the Board from the Applicant stating the property owner has agreed to locate the tower further back on his property.

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Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception and variance be **granted with the stipulation that the communication tower be setback 285-foot from the property line and since it will have no adverse effect to the neighborhood.** Vote carried 5 – 0.

Case No. 9082 – Andrew Oudheusden – east of Louisiana Avenue, north of Bay Shore Drive, being Lot K-C within North Shore development.

A variance from the side yard setback requirement.

The Board discussed the case which has been tabled since June 6, 2005.

Motion by Mr. McCabe, seconded by Mr. Hudson, and carried unanimously that the variance be **granted since it will not alter the character of the neighborhood and since it will enable reasonable use of the property.** Vote carried 5 – 0.

Case No. 9084 – Thomas O. Morley – northwest of Road 258, southwest of Hudson Street, being Lot 25 within Creek Falls Farm Extended.

A variance from the rear yard and side yard setback requirements.

The Board discussed the case which has been tabled since June 6, 2005.

Motion by Mr. McCabe, seconded by Mr. Workman, and carried unanimously that the variances be **granted since it will not alter the character of the neighborhood.** Vote carried 5 – 0.

Case No. 9088 – Evalene Wright – north of Road 232B, east of Penn Central Drive.

A variance from the front yard setback requirement.

The Board discussed the case which has been tabled since June 6, 2005.

Ms. Hudson advised the Board that the single-wide manufactured home on the parcel must be removed.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the variance be **granted for the existing double-wide manufactured home only and once that double-wide is moved the variance is no longer valid**. Vote carried 5 – 0.

Case No. 9090 – Robino-Cottagedale, LLC – northeast of Route 275, 1,100 feet southwest of Road 276, within Arbors At Cottagedale development.

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A special use exception to place a manufactured home type structure as a sales office.

The Board discussed the case which has been tabled since June 6, 2005.

Ms. Hudson read a letter from the Applicant advising the Board of the proposed improvements to the unit and site.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted for a period of one (1) year with the stipulations that they maintain the driveway, that they move the sign, that a unit be placed with indoor restroom facilities, that the unit must be painted, that the area around the unit be landscaped, meet the setback requirements and allow ample room for traffic to get in and out of the drive**. Vote carried 5 – 0.

OTHER BUSINESS

Case No. 8147 – Lawrence A. Brown – intersection of Route One and Road 272B.

A variance from the front yard setback requirement for a through lot and a variance from the minimum parking space requirement.

Ms. Hudson read a letter from the Applicant requesting a second time extension on his variance request.

Motion by Mr. Mills, seconded by Mr. McCabe, and carried unanimously that the second request for the time extension be **denied and that the Applicant shall be advised that he may re-apply to the Board**. Vote carried 5 – 0.

Meeting Adjourned 10:45 p.m.