CITY OF DOVER
BOARD OF ADJUSTMENT MINUTES
September 21, 2016

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, September 21, 2016 at 9:10 A.M. with Chairman Sheth presiding. Members present were Chairman Sheth, Mr. Hufnal, Mr. Keller and Colonel Ericson. Mr. Senato was absent.

Staff members present were Mrs. Townshend, Mrs. Purnell, Mr. Diaz, Mr. Cook and City Solicitor Nick Rodriguez.

APPROVAL OF AGENDA

Mrs. Townshend stated that application V-16-06 could be removed from the agenda because there is no action at this point that needs to be taken by the Board.

Responding to Colonel Ericson's question whether the removal of the application was requested by the applicant. Mrs. Townshend replied that the application was deferred because the City was going to pursue an ordinance amendment. At the current time the ordinance amendment is stalled. It will remain deferred until it is resolved.

Responding to Colonel Ericson's question whether it was for the COZ zoning, Mrs. Townshend replied yes.

Mr. Keller moved to approve the agenda as submitted with the continuation to defer the Old Business Item V-16-06 due to no updates, seconded by Mr. Hufnal and unanimously carried 4-0. Mr. Senato was absent.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF AUGUST 21, 2016

Mr. Hufnal moved to approve the meeting minutes of August 21, 2016 with the necessary corrections, seconded by Mr. Keller and unanimously carried 4-0. Mr. Senato was absent.

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATION

Mrs. Townshend, Director of Planning and Community Development stated that the meeting today will be conducted in accordance with the agenda. There are two (2) agenda items: One (1) deferred item under Old Business, and one (1) new item under New Business. The application file will be read, and the floor will be opened for questions of the applicant by the Board and for public testimony. If the Board needs to consult the City Solicitor, they will recess to discuss legal matters. If the applicant must leave, they can contact the Planning Office at 736-7196 to learn of the Board's decision. A formal notice of the decision will be mailed to the applicants. Approved variances expire after one year if the approved project has not commenced.

All public notice for the new application on this agenda was completed in accordance with code requirements. The meeting agenda was posted in accordance with Freedom of Information Act requirements.

Mrs. Townshend stated that as it relates to application V-16-06 that was deferred on June 15, 2016 by the Board of Adjustment, there was some concern by the Board that the applicant did not necessarily demonstrate that the criteria for the variance was met. The applicant was going to come back with either a revised request or additional information. Ultimately, an ordinance was brought forward sponsored by two (2) members of City Council that would have negated the need for a variance. It has gone through the final reading and public hearing process. City Council tabled the ordinance and there was no action. She does not know if there are plans to have it as an agenda item in the near future. She would recommend continuing to defer any action on the application and removing it from the agenda.

Responding to Mr. Hufnal' s question if the application was removed from the agenda would the applicant need to resubmit a new application, Mrs. Townshend replied no, because it is still deferred. It was not deferred to a specific date.

Responding to Colonel Ericson's question whether the applicant was aware that the application was on the agenda for today, Mrs. Townshend replied that they were not notified because given the status of the ordinance, action would not be taken. In response to Mr. Keller's question regarding public notice, Mrs. Townshend stated that there was no mailed notice, it was only the published agenda.

Chairman Sheth suggested keeping application V-16-06 on the agenda until further notice.

Colonel Ericson stated that a complete hearing was conducted on application V-16-06 and the applicant was asked to return with better justification. He asked if the Board could vote to complete the process. Mrs. Townshend stated that the Board should give the applicant until next month to do so since they were awaiting the outcome of the ordinance. She will notify the applicant to inform them that the Board will take final action on the agenda item at the October 2016 meeting. Therefore, if the applicant has supplemental information it can be provided at that time.

Colonel Ericson stated his understanding that City Council is opposed to the ordinance change. Mrs. Townshend concurred and replied that there were a number of statements by residents in opposition to the ordinance amendment.

City Solicitor stated that he did not think it would be a good idea to act on the application since it is before City Council, there was opposition, and City Council did not take action on the ordinance. He agreed with giving the applicant notice that final action would be taken at the October 2016 meeting.

Mrs. Townshend stated that her concerns would be acting where we have not notified the applicant that there is an intent to act on the application.

Mr. Hufnal commented that he had reservations that the Board application should be tabled today, but to vote on an item that pertains to an ordinance that the City Council is reviewing would not be good on behalf of the Board until City Council has made a final decision.

Responding to Mr. Keller's question whether the applicant's options were to appear, gain an approval of the variance request, denial, or if the applicant could request removal of the application, thereby avoiding denial that would set them back to a year before they could resubmit. Mrs. Townshend and Mr. Sheth noted this was correct.

Mr. Keller moved to continue deferment on application V-16-06 lands of Margaret H. Johnson until further notice based on the comments made today, information provided by Mrs. Townshend and additionally the knowledge that the City Council is currently addressing a proposed ordinance which is in some suspense by virtue of a tabling. The motion was seconded by Mr. Hufnal and was unanimously carried 4-0. Mr. Senato was absent.

NEW BUSINESS

100 North DuPont Highway. Wells Fargo Bank has requested an area variance from the requirements of *Zoning Ordinance* Article 6 Sections 3.4, 3.6, and 3.11 pertaining to minimum parking space size, requirement for curbing, and the maximum number of parking spaces in order to perform site improvements relating to parking and traffic circulation on the subject property. Subject property is zoned C-4 (Highway Commercial Zone). Tax Parcels ED-05-068.18-01-26.00-000, ED-05-068.18-01-27.00-000, ED-05-068.18-01-24-00-000. The owners of record are Paul & Justine Davis Revocable Trust Agreement and Kings Highway Land Partners LLC.

Exhibits for the Record: Staff Report and plans submitted by the applicant. Legal Notice was published in the Delaware State News – on September 11, 2016. The public was notified in accordance with regulations.

Chairman Sheth asked for clarity regarding him being in partnership (vested interest) with the joint property at Kings Highway. He wanted to make sure there was no conflict of interest. Mrs. Townshend stated that it is subject to the application because it is the location where the proposed parking would be located. Chairman Sheth will not vote on the application.

Mr. Cook gave a brief overview of the application.

Exhibits

Maps & Site Plan A, B & C (existing condition and proposed)

Responding to Colonel Ericson's question whether there was a safety issue or concern in and near the drive thru area, Mr. Cook replied he would let the applicant respond to the question, but what is being proposed in terms of the depth is no different from what is currently existing. Mrs. Townshend replied that she did not believe it was different from what is currently there now, because there is the ability to overhang a front bumper which gains some length that can be

utilized in front of parking spaces. The drive aisle is wide enough that if there is a little bit of overhang it does not create a safety problem. There is 18 feet that is likely related to fire access. The parking code only requires 10 feet which is not practical and does not provide for access for emergency vehicles. There is enough room so it does not create any real obstructions.

Responding to Colonel Ericson's question about the width of the driveway, Mrs. Townshend replied that it is 16 feet.

Representative: Mr. Thomas Pugsley Jr., Civil Engineer for North Star Design.

Mr. Thomas Pugsley Jr. was sworn in by Mr. Rodriguez.

Responding to Colonel Ericson's question regarding which angle parking space is going to be 16.65 feet, Mr. Cook replied the ones along the DuPont Highway frontage.

Responding to Mr. Keller's question regarding the angled parking spaces near US13 if there was any sort of barrier at the property line between the end of the parking space and US13, Mr. Cook replied that other than the concrete parking barrier, no. He does not believe that there is a curb. The parking lot is flush with the sidewalk and this is one of the reasons for the variance so that vehicles are not overhanging into the sidewalk. They have the concrete bumpers set back from the property line a fair amount.

Responding to Mr. Keller's question that there is currently a sidewalk along US13 in the right-of-way, Mr. Cook replied yes, but it is narrow.

Mr. Keller responded to Mrs. Townshend's comment that by moving a vehicle fully forward until the wheels touch the bumper, you will have 2-3 feet of vehicle over the bumper so it could help overcome the shorter depth of the angle parking space of 16.65 feet. Mr. Cook concurred and stated that they recommend and require the parking bumpers in situations where there is a Planning Commission application most of the time, particularly if the Planning Commission decides to waive curbing. There is no technical standard in terms of how far back from the front of the space that concrete bumper has to be. It is a good concrete point as to what is the functional area of the space verses what is the actual dimension. From a Staff perspective they recommend approval of the variance for the reduction in the minimum parking space size to permit the parking spaces along North DuPont to measure 16.65 feet in length measured from the proposed locations of the concrete bumpers. The available depth of the parking spaces is limited by the existing conditions on the property including the existing building's location as well as the requirements related to the width of the drive aisle.

Mr. Keller asked for clarification of the dimension of the drive thru lane, Mr. Pugsley replied that the width is 16 feet.

Mr. Keller commented and questioned again regarding his previous comments and Colonel Ericson's point, that there was a potential for bumpers or trailers to extend into the drive aisle, and if this was reasonable, Mr. Cook replied that they feel that in terms of that concern there is not really a change from the existing condition. There are larger and deeper spaces available on Maple

Parkway. Mrs. Townshend suggested that some of the spaces could be assigned for compact vehicles.

Mr. Pugsley stated that due to the angle of the parking in front of the bumper (wheel stop), there is a large triangular area and the right side of the parking space gets close property line, so there may be a little over hang. If a vehicle parks counter clockwise then they will probably lean more to the left side of the parking space. There will not be that much of an encroachment into the right-of-way. Technically they are only about 1.3/5 feet short of what is required by the ordinance. The majority of the parking space is in compliance. It is the one side that is a little less than the 18 feet and this is the reason for the variance request. He feels that it will not be an issue. Since they are building cars lower so they could put in lower wheel stops, 4-inch instead of a 6-inch so that it would allow for a vehicle to drive overhang the wheel stops. He would like to have a larger wheel stop so that it is clearly visible and does not become a tripping hazard just in case there is no vehicle. We could also look at a lower profile that would allow vehicles to overhang so that the front end is not damaged.

Responding to Mr. Keller's questions whether there were any intentions to stripe at the rear of the solid lines delineating the parking space, Mr. Pugsley replied that it had not been proposed, but it certainly something that could be done. They could put one line going across the whole back designating where the isle begins.

Mr. Keller suggested if the lines were stripped yellow it could be cautionary so that people would not stop just for a minute to run in the bank to make a deposit in the through lane. Mr. Pugsley replied that they could do that.

Mr. Cook continued with the overview of the application. There is a provision that the Planning Commission can waive the requirement for curbing if there is a portion of the parking area where there is a demonstrated need to convey stormwater.

Mr. Cook asked for verbal clarification from the applicant whether the new construction on lot 24 in the rear had curbing shown, Mr. Pugsley replied correct.

Responding to Mr. Cook's clarification that the applicant was not requesting any curb waiver pertaining to the new construction. Mr. Pugsley replied no, at this time they are still working with the adjacent team regarding stormwater. If they had anything it would be a small (3 or 4 foot) curb cut to allow stormwater to go through in two (2) locations, but he thinks they are going with inlets.

Chairman Sheth excused himself from the meeting.

Mr. Cook stated that if something changes and there needs to be a curb waiver for the new construction on the portion of lot 24, there is the Planning Commission mechanism to do this.

Responding to Mr. Keller's question whether the variance request for reduction of parking space size is only for the angled parking spaces along North DuPont Highway and not the ones along Maple Parkway, Mr. Cook replied correct.

Mr. Cook stated that the shared parking agreement with lot 24 is a reasonable solution to accommodate the parking for Wells Fargo.

Mr. Pugsley stated that he read the letter and he concurred with Staff Findings and request that the relief be granted.

Responding to Vice Chairman Ericson's question whether Wells Fargo envisioned the number of employees increasing to more than 24 over time, Mr. Pugsley replied that it may increase by 1 or 2 employees if things are shifted, but the building is packed at the current time, at its limit and well built-out.

Representative: Mr. Charles T. Hall, Representative for Wells Fargo.

Mr. Charles T. Hall was sworn in by Mr. Rodriguez.

Responding to Mr. Keller's question whether the shared parking agreement was currently in forced for proposed lot 24. Mr. Hall replied that the shared parking agreement will formally be in forced. He is the project manager overseeing the construction. The lease negotiator is also working through it with Lidl (the supermarket). Mr. Pugsley replied that there is an informal agreement that will be implemented, but it will not be in forced until all the approvals take place.

Responding to Mr. Hufnal's question whether all the land was leased by Wells Fargo, Mr. Hall replied yes, it is all leased land.

Mr. Keller commented regarding the proposed grocery store and if there was any idea of the timing of improvements. Mrs. Townshend replied that it has gone before the Planning Commission and is currently in the post Planning Commission phase. It also depends on how quickly the applicant moves forward.

Mr. Keller commented that he was glad to see raised curbing around lot 24 and 25 spaces of parking. This will keep some definition to the parking area, especially if you ultimately have joint users to the grocery stores, bank, and employees. You don't have edges of pavement being worn away or violated with just driving across the grass as well as the drainage concerns.

Responding to Mr. Keller's question whether the drive thru lane 16-foot width meets the requirements with the fire zone. Mrs. Townshend replied that based on the size of the building it does not require a formal fire lane, but in the case where a fire lane is required 16-feet is considered a secondary fire lane. Therefore, it does provide for adequate access.

Mr. Hufnal commented that the plan for lot 24 with the revised entrance off of Maple Parkway and the additional parking at the bank is a great improvement for that area. The angled parking has been there for over ten (10) years. It has provided adequate service, but new improvement with the parking in the back is going to be a big benefit.

Vice Chairman Ericson opened the public hearing.

Vice Chairman Ericson closed the public hearing after seeing no one wishing to speak.

Vice Chairman Ericson questioned if there was any additional correspondence for the record. There was none.

Mr. Keller commented that although Chairman Sheth decided to remove himself from hearing or participating in the comments should we ask if there are any members present who had a conflict of interest.

Vice Chairman Ericson questioned if there was any member present who had a conflict of interest and there was none.

Mr. Keller moved to approve the area variance application V-16-12 pertaining to minimum parking space size, requirement of curbing, and the maximum number of off-street parking spaces in order to perform site improvements relating to parking and traffic circulation on the subject property, Staff recommendations, and information at hand based upon the presentation, and the supplemental testimony by the Civil Engineering firm and Representative of Wells Fargo. The motion was amended by Mr. Hufnal to include the maximum number of parking spaces to 43. The amended motion was seconded by Mr. Keller and unanimously carried 3-0. Chairman Sheth was recused from the meeting and Mr. Senato was absent.

Mr. Hufnal moved to adjourn the meeting, seconded by Mr. Keller and unanimously carried 3-0. Mr. Senato was absent and Chairman Sheth was recused.

Meeting adjourned at 10:08 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary