CITY OF DOVER
BOARD OF ADJUSTMENT MINUTES
March 15, 2017

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, March 15, 2017 at 9:02 A.M. with Chairman Sheth presiding. Members present were Chairman Sheth, Mr. Hufnal, Mr. Keller, Mr. Senato and Colonel Ericson.

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

APPROVAL OF AGENDA

Mr. Hufnal moved to approve the revised agenda with the removal of application V-17-08. The motion was seconded by Mr. Senato and unanimously carried 5-0.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF FEBRUARY 15, 2017

Mr. Keller moved to approve the meeting minutes of February 15, 2017 with the necessary corrections, seconded by Mr. Hufnal and unanimously carried 5-0.

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 three (3) new applications on the agenda 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 applications on this agenda was completed in accordance with code requirements. The meeting agenda was posted in accordance with Freedom of Information Act requirements.

NEW BUSINESS

Applicant #V-17-06

Lakeside Cemetery on east side of North State Street. Wesley United Methodist Church has requested a variance from the requirements of Article 5 §4.7 of the *Zoning Ordinance* pertaining to permitted sign types and maximum permitted sign height, to allow construction of a 13-foot tall archway sign on the grounds of Lakeside Cemetery. Subject property is zoned ROS (Recreation and Open Space Zone). The Tax Parcel is ED-05-068.13-01-02.00-000. The owner of record is Wesley Methodist Church.

Exhibits for the Record: Staff report, zoning exhibit, statements, photos and plans submitted by the applicant. Legal Notice was published in the Delaware State News on March 5, 2017. The public was notified in accordance with regulations.

Mr. Diaz gave a brief overview of the application.

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

Colonel Ericson questioned whether the case was based on the fact that archways have been overlooked and prohibited. It seems if the archways are not in the Code they are prohibited. The Code states what can be done and if the archways are not in the Code and the Planning Office thinks it should be in the Code then there should be an amendment to the Code so that it is covered. Mr. Diaz replied that this is something that could be done in the future with amendments to the sign ordinance.

Colonel Ericson questioned whether there was any reason the Code could not be amended now because it would be the correct way to do it? Mr. Rodriguez replied that it would have to go before the Planning Commission for a recommendation and also before Council.

Colonel Ericson questioned how long it would take (two or three months)? Mr. Rodriguez replied in all probability. Mrs. Townshend replied three to four months.

Mrs. Townshend stated that part of the issue is the use as a cemetery is a unique use and there are not a lot of cemeteries. It is not a sign type that would be used on a commercial property. In terms of the likelihood of the Board seeing additional variances for an archway sign, it is a unique use. Not necessarily because the sign code is broken in that regard, but it's because the use is very different than the other types of uses.

Colonel Ericson stated as he referred to a letter received today that there were very few archways in Dover. He questioned why the applicant could not comply like everyone else and not have an arch? Mrs. Townshend replied that this would be a question for the applicant.

Mr. Keller questioned whether there had ever been a discussion or a question for clarification on maximum height of a permitted sign. As he read through the case he continued to see reference to the height of the sign and the requested 13-foot height elevation for a variance. It jumps out to him as a matter of elevation above grade level as opposed to the height of the sign. He questioned whether the height of the sign in and of itself is approximately 1-foot. Mrs. Townshend replied that sign height based on the *Zoning Ordinance* definition and is measured from grade to the top of the sign. For instance, if you have a pylon sign, the height of the sign face may be 3-feet, but the pylon itself maybe 25-feet. This is how the Zoning Ordinance calculates it.

Mr. Hufnal stated that in the sign ordinance they allow 32 square foot of signage. The figures on this sign even though it is 13-feet off the ground was 25 square feet because of the wording. Mrs. Townshend replied correct, because the "sign area" is simply a geometric figure over the

lettering.

Mr. Hufnal questioned if the sign itself was legal, but the height was just higher than what is normally allowed. Mrs. Townshend replied also the type of sign, because the Ordinance does not permit archways. The issue as it relates to the height is what would the comparable be as you will also notice in the other variances. For example, the roof sign was looked at as if it is more comparable to a wall sign. This sign is more free standing so we would look at it more comparable to the way a post and panel sign is structured.

Mr. Keller questioned if this sign was simply planned to be erected other than across the roadway/ walkway, move it up 50-feet and simply have the archway name identifier sign installed further down, and asked if it would be a perfectly acceptable sign? Mrs. Townshend replied if it was lower to the ground and not 13-feet it would not be an archway; it would be a post and panel.

Mr. Keller questioned whether it was deemed an archway sign by virtue of it being placed above the roadway. Mrs. Townshend replied yes. We could call it a post and panel, but again when you look at the definition of a post and panel it does not entirely lend itself to this sign design. This is a unique type of design. It will pretty much be exclusive to the use of a cemetery.

Mr. Hufnal questioned whether traffic drove under the sign? Mrs. Townshend replied yes.

Mr. Senato questioned if he was correct to say that based on the what was stated by Colonel Ericson, that there is nothing within the City's Zoning Ordinance dealing with these types of signs? Mrs. Townshend replied correct.

Mr. Senato questioned as a point of information even though it is a unique sign, how can one say yeah or nay to a variance when there is no basis of rule for the variance other than the unique type of sign? Mrs. Townshend replied that the Board's role is to consider applications for exceptions from the Code. Since this is not something that is expressly permitted in the Code, it is presumed to be prohibited. It would be the Board's role to determine if something that is otherwise not allowed would be able to be granted.

Mr. Senato questioned whether normally when items come before the Board there is a specific rule in the Code being sought relief from, rather than not, in this case. Mrs. Townshend replied right. The way you read a Zoning Ordinance is that if something is not expressly permitted then it is presumed to be prohibited. Mr. Rodriguez replied that it was a good question. This is a unique case and he could not recall another case that the Board had where it was not covered in the zoning code. He did not think that the Board was setting a precedent because it is an unusual situation and the point is very well taken.

Mr. Senato stated that there may be a low probability that the Board could be setting a precedent because there are other cemeteries within the City and the Board deals with what is already on the books.

Representative: Mr. James Thistlewood, Facility Manager for Wesley United Methodist Church

Mr. Thistlewood was sworn in by Mr. Rodriguez.

Mr. Thistlewood testified that he would defer to any questions the Board might have. He tried to do a good package. They are trying to do several items as far as putting in the archway. They are aesthetically making Dover a better place and a better cemetery entrance. They are trying to cure a long ongoing problem with people not knowing the proper name of the cemetery. The current entrance is very narrow and unsafe. They want to widen and make it safer.

Chairman Sheth stated that it looked good.

Mr. Hufnal questioned whether the applicant already had approval from DelDOT to widen the entrance. Mr. Thistlewood replied yes, they do.

Mr. Hufnal questioned whether the applicant would still widen the entrance if he was not approved for the sign? Mr. Thistlewood replied that they had not gotten that far because he did not think they would be before the Board today. At the current time he is not sure, but it is part of the project and they would have to go back and start again.

Colonel Ericson stated that the criteria that is always a sticking point is would it create an unnecessary hardship or exceptional practical difficulty? He questioned the applicant if there was any reason why he could not use the post and panel sign, and why they needed an archway? Mr. Thistlewood replied that they are trying to stay with traditions of cemeteries throughout the United States that have archways. It is very common amongst cemeteries. They also thought that with the historic value of the area and City of Dover that an archway would be suitable.

Colonel Ericson questioned the percentage of cemeteries that have an archway in the City of Dover. Mr. Thistlewood replied that they own two (2) cemeteries in the City of Dover and neither have an archway. Mrs. Townshend replied that there are probably a little over a dozen cemeteries in the City of Dover: for example, Holy Cross Cemetery, Silver Lake Cemetery, and Presbyterian Cemetery.

Colonel Ericson questioned whether there was a specific timeframe to complete the work right away or if the applicant could wait four months until the Planning Staff requested a change to the code to allow archways. Mr. Thistlewood replied that the DelDOT entrance permit would expire. They need to start the process by June and the contractor is awaiting approval to proceed. If the project is delayed, he is not sure what will happen and the church could lose the DelDOT entrance permit. They were hoping that the application would be approved so that everything could stay within the timeframe of DelDOT entrance permit.

Chairman Sheth questioned the chances of the City amending the ordinance. Mrs. Townshend replied as it relates to Sign Regulations and making amendments there is a Supreme Court case that would require the City to do a total rewrite. The City is aware this needs to happen, but she is concerned about doing a small amendment to the sign code when the City knows there needs to be a large amendment that is going to take months to work on.

Colonel Ericson stated that it was mentioned that this would not set a precedent, but if the Board approved the application or unless the motion included restrictions to cemeteries, he questioned why a restaurant or other property owners would not be able to come in with the same request based upon the Board's decision. Mrs. Townshend replied that they would be subjected to the same criteria. For example, if a restaurant came in they would be asked why they would not be able to use one of the other sign types. Given the proximity of this to State Street and the layout of the cemetery, they have fewer options in terms of other types of signs that they would be able to implement on site than a commercial use on Route 13.

Colonel Ericson commented that he did not have a problem with having an arch sign in this instance. His problem is that there is really no hardship or exceptional practical difficulty that he has seen and that is the criteria that the Board is supposed to use. This is the weakest testimony that he has seen in any case. The City should go back and amend the regulation to allow the arch sign which he feels would be the proper way to do it.

Mr. Rodriguez stated that Colonel Ericson comment was right on point. If the Board decides to grant the variance and it is not limited to cemeteries, it could be wide open for business establishments and things of that nature. However, your point is very well taken.

Mr. Senato commented that based upon the comments made by Colonel Ericson and his comments that continuing on might almost be a moot issue in his opinion. There are a lot of good points and there are a lot of cemeteries that have elegant arches. Based on the circumstances and the comments that were made and his personal feelings that a precedent could possibly be set.

Mr. Keller questioned if the cemetery had more than one entrance. Mr. Thistlewood replied yes.

Mr. Keller questioned the locations of the entrances. Mr. Thistlewood replied one (1) Pennsylvania Avenue and three (3) on State Street. He replied that they are all very narrow.

Mr. Keller questioned if the location under question was generally considered to be the main entrance? Mr. Thistlewood replied that it was considered to be the main entrance and is also the furthest away from any intersecting street so it would not interfere with persons entering or exiting the cemetery.

Mr. Keller questioned if the entrance was gated or closed? Mr. Thistlewood replied that none of the entrances are gated.

Mr. Hufnal questioned if the motion was restricted to cemeteries whether it would set a precedent for other archways, businesses, or organizations. Mr. Rodriguez stated that if the Board decided to grant the variance, the decision would include that it is limited to archway signs for cemeteries.

Colonel Ericson questioned whether the applicant had a chance to read a letter sent to the Board by Mr. Alan George? Mr. Thistlewood replied no. Mrs. Townshend replied that the applicant had not received a copy of the letter. A copy was given to the applicant. The letter was received after the packet had been sent and the letter was not part of the packet.

Mr. Senato questioned whether the letter had to be read into the minutes since it was not part of the packet. Mrs. Townshend replied no. It would be entered into correspondence.

Mr. Keller commented that a hardship and exceptional practical difficulty was one (1) of four (4) criteria that the Board is obligated to give consideration, but not necessarily the sole and most prominent determination to be made as to whether or not there is unusual hardship or exceptional practical difficulty to the owner. Serious consideration is always given.

Mr. Thistlewood asked if the decision could be made today if possible because investments have already been made.

Colonel Ericson questioned whether the applicant had any questions regarding the letter received from Mr. George? Mr. Thistlewood replied no.

Chairman Sheth opened the public hearing.

Mr. Dave Casto was sworn in by Mr. Rodriguez.

In Favor V-17-06

Mr. Casto testified that he was on the Board of Trustees for Wesley Church. One of the things missing and what he has heard is regarding hardship. This is a cemetery that is over 11 acres and has hundreds of plots. There are people who are always asking about the identity to the cemetery. There is no identity to this cemetery and has not been for years. People are unaware of the name of the cemetery. He thinks this may be the biggest cemetery in Dover. When you discuss hardship, the church is trying to erect something and expand the main entrance that is too small. They would like to expand the entrance in a manner that is going to fit in with the neighborhood, look nice, make the City and people who visit the cemetery proud. If you look at cemeteries all over the country, you will see the archway signs. If you take the recommendations provided by Planning Staff, they would agree that when the Zoning Ordinances was created they probably did not even think about these types of signs. He asked the Board to look at the type of structure that is being erected as it will fit in with the neighborhood and the historic nature of the cemetery, and a sign that people would be able to see. The archway will be a very nice addition to the City of Dover. A lot of people come in through State Street and see the beautiful cemetery and there is nothing there to identify it.

Judge Mardi Pyott stated that she was in favor of the application. It is a beautiful historic cemetery that needs to have a name that can be seen by everyone. If you want to look at other cemeteries, you can look at the ones in Camden and Smyrna that are large cemeteries with archways. Nothing else would do it justice, yes; you can change the Ordinance, but the purpose of this hearing is to grant a variance so that the Board does not have to do that. There has been a lot of effort, money, and time expended on this project in order to do this properly. If you want to wait, then you would have to amend the entire code. She asked the Board how long would that take? This would be a beautiful addition. They are not throwing up some cheesy sign that would take away from the history and the beauty of Downtown Dover. This just enhances it.

Against V-17-06

Mr. Glen Hitchens stated that he lives at 630 South State Street directly across from the cemetery and proposed suggested improvement. He would like to point out some of the discrepancies that have already been mentioned. There has been no sign of any type that he recalls seeing for the 30 plus years that he has lived in this area. He is sure that there are permitted signs in the Zoning Ordinance that do not require a variance that would identify the cemetery. The fact that other cemeteries have this type of archway for understanding and identifying the cemetery. There have been ample opportunities to just place a sign that conforms to the existing ordinance on either of the streets that is around the cemetery. The fact is that there has been no sign there for some time. He did not quite understand why there was an issue as the cemetery has been there for many years. He was not sure how many sites are still available in the cemetery. He did not think that the purpose of this sign is an advertisement to identify the fact that there are vacancies in the cemetery. He was still unclear why the sign needed to be placed there. The sign is not in character with the neighborhood and there are no other commercial facilities within the few blocks of this particular area. He did not think the archway sign fits in and for that reason he along with other neighbors would oppose the variance.

Chairman Sheth closed the public hearing after seeing no one else wishing to speak.

Board Members Discussion

Chairman Sheth questioned if there was any additional correspondence for the record. There was a letter dated March 11, 2017 from Mr. Alan George who resides at 616 North State Street directly across from the cemetery.

Mr. Keller asked if the letter could be summarized.

Mrs. Townshend stated that Mr. George opposes the variance. He believes that the variance would create visual clutter that is potentially harmful to vehicular and pedestrian safety, decrease his property value, and diminish the community appearance of North State Street. There are seven (7) points in the letter where he challenges some of the justifications for the variance that was provided by the applicant including the historic nature of the cemetery, if the variance would improve traffic safety and improve the character of the neighborhood. He also indicated that what drew he and his wife to Dover 37 years ago was the look and feel of the City. Their first introduction to Dover was a drive down State Street.

Mr. Keller commented that a relatively short receipt of the letter in the absence of Mr. George puts the Board in a position to be unable to cross examine the letter as oppose to him being personally present.

Mr. Senato commented that Mr. George had a several concerns in his letter, and in his opinion it would be easier for him to obtain more answers from him in person rather than in a letter only because he has some serious questions.

Mrs. Townshend stated that the City has always permitted people to submit concerns in writing

and we cannot require that they attend, is that correct? Mr. Rodriguez replied no, you cannot require them to attend the meeting.

Mr. Keller commented that the short coming in Mr. George not being present is the Board is unable to question or give further consideration to the writing.

Chairman Sheth questioned what the Board thought of Mr. Hufnal's previous comment?

Mr. Hufnal also added that archway signs for cemeteries are common, not only in Delaware, but throughout the country. He also looked online at cemeteries with archway signs and they are very common in stone and concrete as huge entrance signs. This is probably the least impact of any kind of sign that could be used for a cemetery that would be within the code regarding square footage. He would recommend granting the variance on the basis that this archway sign is only for cemeteries use (restricted to cemeteries). It would not set a precedent for other archway signs for a type of business.

Mr. Senato stated that there was no proof of hardship and because it is not in the Code bothers him tremendously that the Board is making a decision (yeah or nay) on something that has no guidance other than the fact it is a cemetery sign that the applicant wants placed on the property.

Colonel Ericson stated looking at the criteria and area variance the Board had a letter sent and one person testify that the immediate vicinity that it would have a negative impact. There has been no explanation of hardship or exceptional practical difficulty. There is another way to get to where they want to go by changing the sign regulations.

Mr. Hufnal moved to approve variance application V-17-06 based upon information provided, recommendations from City Staff, but limited to cemeteries use only. The motion was seconded by Chairman Sheth.

Questions:

Mr. Senato stated that his comments are the same as previously stated, along with the comments of Colonel Ericson.

Mr. Keller stated that with what is proposed by the church cemetery use, while in fact that he has not been convinced either that there is necessarily an exceptional practical difficulty. When giving consideration the difficulty must be inherent in the land and not personal to the owner. With the comment regarding the size of the facility and its existing use, etc. does not necessarily roll over to a distinct need for this type of a sign. The unusual difficulty to an owner or exceptional practical difficulty is one of the criteria for items which the Board is obligated to take under consideration in a variance application. He would agree with Staff Recommendations that the proposed sign is in keeping with the character and nature of the use of the property distinctly as a cemetery. He could not contemplate either that this proposed sign would seriously impact the surrounding area (neighborhood). In the opinion that it is a lesser issue of the sign in and of itself which is a distinct identifier for the cemetery itself as opposed to this issue of the height above with the erection of the sign in an archway fashion over the proposed entrance way.

With the restrictions placed within the motion, if approved the variance would not extend to other commercial or business type of uses, but restricted to a cemetery use only. In his opinion, leads him to a position to be giving more favorable consideration to the motion as proposed.

Chairman Sheth questioned whether Mr. Keller wanted to add to the proposed motion? Mr. Keller replied that he thinks that Mr. Hufnal's motion in citing a limitation to cemeteries uses was adequate enough in and of itself. He thinks by any definition cemetery use is distinctive and it is not a restaurant, movie theater, or business office. As stated by Mr. Hitchens he does not contemplate that sign to represent advertisement for that location because it is most likely just about filled out.

Colonel Ericson commented that the Board really does not know what the sign is going to look like. The Board has a pencil drawing of what the post is going to look like, but we do not see what the archway would look like with the name (Lakeside Cemetery) which would have helped a lot. He would feel more comfortable if the Board would table the application until next month and let Mrs. Townshend see the feasibility of how long it would take to amend the code.

Chairman Sheth stated that there is already a motion on the floor.

Mr. Senato stated that there is no indication of the sign and he was unable to question the letter writer. He felt that he was not given the opportunity to progress with more questions from Mr. George or DelDOT. He agreed with Colonel Ericson that the application should definitely be postponed. He is not necessarily in agreement or disagreement with the sign, but he is in disagreement of the way it is being presented.

Chairman Sheth stated that the Planning Staff will address the concerns regarding the amendment of the code.

Mrs. Townshend stated that after speaking with Mr. Rodriguez about that Mr. Senato had more questions for Mr. George who wrote the letter, if you have questions for the applicant and the maker of the motion wants to withdraw the motion, the motion can be taken off the table to bring the applicant back up to ask questions. The person who wrote the letter is not present.

Mr. Senato stated that he understood.

Roll Call Vote

Mr. Keller – **Yeah** – with regard to the variance application V-17-06 and given consideration to the motion as proposed to permit the sign type which is exhibited as an archway type sign and also to permit the sign height of 13-feet above the 7-foot maximum on the urban collector street. He agrees with the Staff Recommendations that the sign is in keeping with the character and nature of the use of that property exclusively as a cemetery. In his estimation, the sign would not seriously impact surrounding areas and uses. With the motion restricting this application to a property utilized as a cemetery use, he votes in the affirmative on the motion.

Colonel Ericson – **No**- after looking at the case, there is a right way and a wrong way to do this

and the right way is to amend the Code. The Board does not have any pictures or drawing of what the sign would look like, so we do not know whether it is in keeping or not with the neighborhood. There has not been demonstration of a hardship or exceptional practical difficulty, and there is no reason why the Board could not wait three months. Therefore, he votes against.

Mr. Senato – **No** – there is no complete description of the sign regarding the code amendment, hardship proof, questions were not asked of Mr. George who was not present, therefore he strongly vote in the negative.

Mr. Hufnal – **Yes** – made the motion and comments restricting it to the cemetery use and also supports Staff comments.

Chairman Sheth – **Yes** – this is a lasting peace and he votes yes.

Motion carried.

Applicant #V-17-07

1032 South Little Creek Road. Craig Reeves has requested a variance from the requirements of the *Zoning Ordinance*, Article 5 §4.7 pertaining to permitted sign types, and a variance from the requirements of the *Zoning Ordinance*, Article 5 §4.9(A)(2) pertaining to the maximum area of window signs. The requested variances would allow construction of an 18.33 S.F. roof sign and to retroactively allow posting of two window signs each covering approximately 60% of their window area. Subject property is zoned C-1A (Limited Commercial Zone). The Tax Parcel is ED-05-077.12-01-02.00-000. The owner of record is Tudor Enterprises LLC.

Exhibits for the Record: Staff report, zoning exhibit, statements and photos submitted by the applicant and Staff, and diagram submitted with the Sign Permit Application. Legal Notice was published in the Delaware State News on March 5, 2017. The public was notified in accordance with regulations.

Mrs. Townshend gave a brief overview of the application.

Mr. Senato questioned whether the sign was going to be placed on the top of the building? Mrs. Townshend replied yes.

Mr. Senato questioned whether all of the signs were above the door on the flat side of the building? Mrs. Townshend replied no, they are located on the roof. They are comparable if you look at the existing tenant spaces. Mr. Senato stated that this sign is above the roof and the others are along the flat and not on top. Mrs. Townshend replied that it was the factor of the vantage point of the sign that is closer to the building. If you look at the other signs, they are above the roof line. What you are seeing is that they are all roof signs. What the applicant submitted for the sign application is showing it closer so that you are looking up at the sign (so it looks higher).

Mr. Senato stated that it looks like the sign is on top of the roof. Mrs. Townshend replied the sign is on top of the roof as well as the others.

Mr. Senato questioned whether it was an A frame roof? Mrs. Townshend replied yes. The pictures were taken across the street where the diagram shows from a closer vantage point. She can see and understand that the perspective is different.

Mr. Keller stated that with the Staff Report he noted that within the information provided there was a comment made that the owner of the property objected to a certain sign being placed on the side of a building. He did not know whether this was in the past or currently. He asked for clarification as the applicant is listed as Craig Reeves and the owner is listed as Tudor Enterprise LLC. Some of the commentary and exhibits reference Snow Day Snow Cones LLC within the application. Do they have a proper sign off or allowance by Tudor Enterprise LLC to allow this to proceed by Mr. Reeves or Snow Day Snow Cones LLC?

Mrs. Townshend questioned who signed the application? Mr. Reeves replied he signed the application.

Mrs. Townshend stated that she did not realize that the property owner did not sign the application. The application was signed by the business owner. She questioned whether on a sign variance if this was allowed. Mr. Rodriguez replied that the application should be signed by the owner.

Mrs. Townshend questioned whether there was an approval and whether the application should be deferred until the owner can sign the application or should it be conditional upon the signing of the owner. She will make sure that there is improvement in the procedure so that the owner signs. Mr. Rodriguez replied that it would be better to postpone the application until the owner signs. Mr. Reeves stated that there would be no problem of the owner signing the application. Mrs. Townshend stated that as advised by Mr. Rodriguez, no decision can be made until the application is signed by the property owner.

Mr. Keller stated that his concern was the variance runs with the land and is not unique to the current user whoever that may be. Mrs. Townshend concurred.

Mr. Senato questioned whether the owner needed to be present if the application was tabled? He wanted to know the procedures. Mrs. Townshend replied that when there is a variance the owner of the property or a representative of the owner is required to sign the application. She did not realize that the signature did not represent the owner of the property. The owner does not have to be present at the meeting, but the person requesting the variance would need to be present.

Chairman Sheth stated that the variance goes with the property and not the tenant.

Mr. Craig Reeves was sworn in by Mr. Rodriguez.

Representative: Mr. Craig Reeves

Chairman Sheth questioned whether there was anything in the back of the sign? Mr. Reeves replied no. He stated that the way the sign is positioned looks as if it is sitting on a gutter. Mrs.

Townshend replied that the sign will be similar to the others, whereas if you are across the street you will see the background of the roof because of the slope.

Chairman Sheth questioned whether the roof could be seen? Mr. Reeves replied yes.

Mr. Keller questioned the discrepancies in the photos submitted with the Staff Report and asked if the applicant took the photographs? Mr. Reeves replied yes.

Mr. Keller stated there are two (2) photographs taken from within the building facing out and a photograph outside the building looking at the front of the structure. From within the building, there is a fair amount of spacing within between the edge of the ice cream cone and the flavors on each side of the window. He questioned the finished product. Mr. Reeves replied that the inside photo was taken beforehand. The photo gives you an idea what it would look like.

Mr. Keller questioned whether the photo that covered the entire window was the finished product? Mr. Reeves replied no.

Mr. Keller questioned whether the Board had a photograph of the finished product? Mr. Reeves replied yes.

Mr. Hufnal questioned whether the 38% was based on the image presented? Mr. Reeves replied exactly. If you look at the letters, they are all different sizes and mainly the center is standard. You want to be able to see through the lettering at all times. This was also done to keep customers inside the building. If you notice, most establishments of this nature are usually held outside. He figured if customers looked at the menu on the outside and once they entered the building, it would be minimal of how many people would be on the inside because they would have already looked at the menu and would be ready to place their order.

Mr. Keller questioned for clarification whether the window sign was complete? Mr. Reeves replied yes.

Mr. Senato questioned whether the applicant provided calculation that the signage is in accordance with the *Zoning Ordinance*? Mrs. Townshend replied that there was an email from Extreme Graphics that indicates that the sign area is 38% of the window, but it does not include the calculation and she did not believe that the measurement reflects the definitions in the *Zoning Ordinance* that the City uses for measuring "sign area".

Mr. Senato questioned whether based on the above information can a logical decision be made today? Mrs. Townshend replied that Planning Staff measured it at 60% and yes, the decision could be made because the applicant have not properly calculated using the definitions that is included in the ordinances.

Mr. Hufnal questioned whether Planning Staff used the calculation of the *Zoning Ordinance* based on the length and width of the sign and the applicant calculated the coverage by the image of the font of the sign. Mrs. Townshend replied exactly.
Mr. Hufnal questioned whether the sign is probably electronically calculated versus Planning

Staff manual calculation of geometric figures? Mrs. Townshend replied yes.

Mr. Hufnal questioned whether between the letters there is clear vinyl? Mr. Reeves replied that it is not clear vinyl. Only the letters are vinyl.

Mr. Hufnal questioned whether it was peel off type lettering? Mr. Reeves replied yes.

Mr. Hufnal questioned whether the open clear area is glass? Mr. Reeves replied yes, it was done for safety reasons and to stay well below the allowed 50%.

Mr. Hufnal commented that he has seen it done on cars and other items whereas when the lettering is peeled off; it is a coverage and not the remaining portion. Mr. Reeves agreed.

Mr. Senato questioned whether the Board was making a decision on two (2) signs (the roof and window)? Mrs. Townshend replied that it was specified on the front sheet where the information is located on the two (2) variances requested.

Mr. Keller questioned whether Staff was aware of any prior variance approvals on this building? Mrs. Townshend replied that she did not believe it was a variance; she believed it was a nonconforming sign that was removed. In the past, the City has allowed a nonconforming sign to be refaced. In this case, the sign face is down, so there is nothing to reface. Therefore, that would be the reason for a variance.

Mr. Senato questioned whether the window writing and signing was a necessity for the business? Mr. Reeves replied that because the space is limited on the inside and there is no place for the sign inside.

Mr. Senato questioned the wall space? Mr. Reeves replied that because it was not open for patrons. Everything was moved forward; therefore, the amount of space is limited in the front half of the building. The remainder of the space is the kitchen area. There is also a short customer area.

Mr. Senato questioned whether the purpose of the window sign and if the business would be open for twelve months or seasonal? Mr. Reeves replied that starting it would be seasonal (April - December). In the future, they are looking to open year round.

Mr. Keller questioned whether if there was a conflict with the peel off and stick on letters and the square footage of coverage, could it be easily overcome by removing perhaps the snow cones up top and over 100 to just state flavors and come down to the amount percentage of coverage? Mr. Reeves replied that all of the letters are boxed in. This is how they come up with the percentage of how much of the window is actually covered. He took one of the pictures with a man walking by on purpose to show so that you could actually see his facial features. Most of the other businesses you cannot see through the lettering on the window. He thinks that he has less lettering and more presentable and professional lettering than any of the other businesses in the plaza area.

Mr. Keller questioned for clarification whether the City was contending that there is approximately 10% more than the allowable 50% coverage by the City's *Zoning Ordinance*? Mrs. Townshend replied yes.

Mr. Hufnal stated that in that extra amount is just measurement and there is still clear glass that you can see through. Mrs. Townshend replied yes, there is a lot of clear glass within that area. One of the differences between this window sign and others is the amount of little words so there is more white clear space within the text rather than if it was large lettering.

Chairman Sheth opened the public hearing.

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

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

Mr. Diaz added that when he met with Mr. Reeves upon applying for the variance he told him that he did not think that the owner needed to sign the application. This is the reason the application was not signed by the owner.

Mr. Keller moved to table application V-17-07 until the Board is in receipt of acknowledgement and proper authorization by signature of the current property owner. The motion was seconded by Mr. Senato and was unanimously carried 5-0.

The Board discussed the order of application(s) should there be an attorney or engineer present representing the applicant due to cost. Mr. Rodriguez stated that he would recommend if the applicant is represented by an Attorney that it would be a good idea for the Board to consider that application to go first on the agenda.

Mr. Keller questioned how does staff otherwise prepare the agenda? Mrs. Townshend replied that it is done in order of applications received and sometimes if they presume the application is going to be easy then it will be first on the agenda. Staff is not always aware that an attorney will be present, but can determine if an attorney is present which case he is representing.

Mrs. Townshend mentioned that the applicant from application V-17-07 that was tabled has contacted the property owner to come in and sign the application today.

Applicant #V-17-09

1310-1324 Forrest Avenue. Margaret H. Johnson has requested a variance from the requirements of the *Zoning Ordinance,* Article 3 §27.66 pertaining to the maximum allowed number of stories and allowable height of buildings located with the COZ-1 (Corridor Overlay Zone). Subject property is zoned C-2A (Limited Central Commercial Zone) and subject to the COZ-1. Tax Parcels are ED-05-076.10-01-01.00-000, ED-05-076.10-01-02.00-000, ED-05-076.10-01-03.00-000, ED-05-076.10-01-04.00-000, ED-05-076.10-01-04.01-000. The owner of record is Margaret H. Johnson.

This application represents a resubmission of application V-16-06, initially reviewed by the Board of Adjustment on June 15, 2016 and withdrawn on October 19, 2016.

Exhibits for the Record: Staff report, zoning exhibit, and plans and renderings submitted by the applicant. Legal Notice was published in the Delaware State News on March 5, 2017. The public was notified in accordance with regulations.

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

Representative: Mr. Constantine Malmberg, Attorney

Mr. Malmberg stated that the property is located across from Greentree Village Shopping Center, Betsy Ross Pizza is to the east of the subject property, and Ms. June Schamp owns property to the right of the subject property. Ms. Schamp is in support of the project and submitted something in writing to that regard. Owner Margaret Johnson of Betsy Ross Pizza has been a fixture in the City of Dover for over 40 years. A letter supporting the project was submitted.

Mr. Malmberg stated that the property is located in the C-2A and COZ-1 and they are not asking for any variance from the underlying zoning, because it is in the COZ-1 zone that imposes some more requirements on the property absent the variance that brings them before the Board today. There are basically four (4) tests for this application. This is an Area Variance and not a Use Variance. An Area Variance is generally regarded as more favorable because the use is already a permitted use in the underlying zoning district.

Mr. Malmberg stated that the property is zoned commercial with apartments permitted in the zone. The nature of the zone is appropriate for the application. The character of the immediate vicinity and the contained uses therein are basically retail and multi-family. The single-family residences that had previously existed along that corridor are falling by the wayside one by one. There are hardly any left because it is turning into a commercial corridor. He would suggest that this particular application for this property is about as a compatible use as could be for the property. The front portion of the 7,000 square foot retail center is in keeping with the look of both the shopping center and similar properties up and down the corridor. This property backs up to multi-family residential so that you could argue that is a much softer and compatible use then to not have it completely retailed throughout this property, but to have a multi-family that roughly matches what it backs up to. Woodmill Apartments are three story apartment buildings with a gable roof yielding to a roof height of roughly 45 feet. The requested variance for this project is roughly 41 feet. The proposed apartments will be shorter than the Woodmill Apartments. The acid test which asked if the limitation is removed does it cause any pain or suffering or diminishment to the surrounding properties. In this case, the applicant would suggest that this use is probably the most perfect possible use for this piece of property as far as the surrounding properties; it matches the neighbors to the rear and various streetscapes to the front. He did not think a case could be made that it diminishes anyway or otherwise negatively impact the neighboring properties. It probably enhances the other properties in some respect. With regard to the hardship, it is primarily economic and the project will not work unless it can go three stories. The number of units is like the threshold of what works from an economic point of view and from the Engineer's standpoint. Without that

the project would not get built. The property has already been vacant for a number of years. It seems to be a good economic investment in the City. Staff is in agreement with the first three points. They could not spread the remaining twelve (12) units across the rest of the property because the property is subject to DNREC control over bio-infiltration (as he pointed out) and the subterrian infiltration area. To properly treat stormwater which is good for everyone, the area has to be preserved as open space. There is no real way to spread out the additional units. The other point, even if there was a way to do it, this property in this zoning district requires twenty-five open space. This design as presented requires twenty-seven. With the 2% margin, it could not be spread out. Since the Board has been through this application numerous times, he thinks that the Board understands where they are with the significant reduction in the previous request. He hopes the Board will consider the application favorably.

Colonel Ericson questioned whether the new plan dealt with the previous objectives? Mr. Malmberg replied that the only people present today are the supporters of the application. He presumes everyone is happy as he has not spoken directly with Mr. Garfinkel, but he assumed if this was offensive to him, he would have been present at today's meeting.

Mr. Keller questioned whether the Corridor Overlay Zone extends through the full depth of this property? Mrs. Townshend replied yes.

Mr. Keller questioned whether the variance application was approved as submitted and if there was anything to prevent 5-15 years from now that the front retail portion could be demolished redesigned, or reconstructed at the same height of the rear multi-family units proposed. Would there be any objection from the applicant/owner to have a variation of the variance requested to only allow the increase height proposed from a depth of 200 feet to the rear property line or something of that sort? Mr. Malmberg replied yes. He believed the apartments are planned for 234 feet from the front property line, so a 200 feet setback would be fine and welcomed the restriction. Mrs. Townshend agreed.

Mr. Keller stated that he put that forth in consideration that ownership, building design and ideas change as far as construction. It is his understanding that the COZ allows for somewhat of a corridor entrance from the westerly part of the City into Dover, and its purpose was to preclude an upright alleyway of construction. His suggestion would be to continue the original purpose of the COZ, at least with the 200 feet. Mrs. Townshend agreed. Mr. Malmberg welcomed the limitation.

Mr. Senato questioned the location of the entrance? Mr. Malmberg replied that the entrance is on the left as you are facing the site. Mrs. Townshend replied that DelDOT will ultimately tell the applicant where the entrance is going to be. This is where it is planned at this point, but based on their interaction with DelDOT it could move. Mr. Malmberg replied that the entrance does not get designed unless the application is approved by the Board to build. The neighboring properties have had to give up some right-of-way to create right hand turn lanes.

Mr. Keller questioned whether the front retail section exceeded the 35 feet height? Mr. Malmberg replied no.

Mr. Hufnal questioned whether the architecture and site layout is still subject to further review by the Planning Commission? Mr. Malmberg replied yes, at the current time the only request is for the apartments variance to be 6 foot taller in height.

Chairman Sheth stated that the only disagreement that he had was it is not economical to the City. The City has to many apartments.

Mr. Malmberg stated that the smaller apartment buildings are easier to control.

Chairman Sheth questioned the number of units? Mr. Malmberg replied thirty-seven units.

Chairman Sheth opened the public hearing.

Ms. Schamp was sworn in by Mr. Rodriguez.

Ms. Schamp testified that she owns the property at the southwestern corner of Ms. Johnson's property. She did call the City and spoke with Mr. Diaz for clarification regarding the new changes. Mr. Diaz was very helpful. She has stayed informed with the process for roughly a year. She feels that the plan is in harmony with the surrounding environment. She supports the plan.

Chairman Sheth closed the public hearing after seeing no one else wishing to speak.

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

Mr. Diaz stated that his conversation with Ms. Schamp was concerning whether the road that leads to her property (June Lane) would need to be widened in order for her property to be sold and redeveloped in the Commercial and Professional Office zone. If the street were to be widened, it would impact the site and further narrow it. This is the reason it is pertinent to this variance because it is cited with potential Exceptional Practical Difficulty.

Mr. Keller stated that in the Staff Report (guide to attachments) the header relates to application V-16-06 and he would like to make sure it reflects application V-17-09.

Mr. Keller asked for clarification whether" renewal" of the restrictions on the applicant property would in no way negatively affect the surrounding areas and properties, he was in hopes that Mr. Malmberg meant "removal" of the restrictions on the applicant's property. Mr. Malmberg replied yes.

Mr. Senato moved to approve variance application V-17-09 as proposed. The motion was seconded by Mr. Hufnal.

The motion was amended by Mr. Keller to include that existing restrictions within the COZ-1 Corridor Overlay Zone on this property remain in full force and effect to a depth of 200-feet, and the variance requested otherwise hereby extends from that point to the full depth of the property. The amended motion was seconded by Chairman Sheth and was unanimously carried 5-0.

Mr. Senato moved to lift application V-17-07 from the table.

Mrs. Townshend stated that the representative of Tudor Enterprise LLC, Linda Shufelt, Legal Representative came in and signed the application.

Mr. Senato moved to approve application V-17-07 as proposed. The motion was seconded by Mr. Hufnal and was unanimously carried 5-0.

Mr. Senato moved to adjourn the meeting, seconded by Mr. Hufnal and unanimously carried 5-0.

Meeting adjourned at 11:18 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary