CITY OF DOVER
BOARD OF ADJUSTMENT MINUTES
May 17, 2017

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, May 17, 2017 at 9:14 A.M. with Vice Chairman Colonel Ericson presiding. Members present were Vice Chairman Colonel Ericson, Mr. Hufnal, Mr. Keller, and Mr. Senato. Chairman Sheth was absent.

Staff members present were Mr. Dave Hugg, Mrs. Purnell, Mr. Diaz, Mrs. Harvey, and City Solicitor Mr. Rodriguez.

APPROVAL OF AGENDA

Mr. Hufnal moved to approve agenda as submitted. The motion was seconded by Mr. Senato and unanimously carried 4-0. Chairman Sheth was absent.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF APRIL 19, 2017

Mr. Senato moved to approve the meeting minutes of April 19, 2017 with the necessary corrections, seconded by Mr. Hufnal and unanimously carried 4-0. Chairman Sheth was absent.

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATION

Mr. Dave Hugg, Interim Planning Director of Planning and Inspections stated that the meeting today will be conducted in accordance with the agenda. There is one (1) new application 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-17-08 Revised Day Care Center at 868 South State Street: Shell's Early Learning Center

868 South State Street. 868 State Street LLC has requested a variance from the requirements of the *Zoning Ordinance*, Article 5 §14.31 pertaining to maximum number of children in a day care center in a residential zone; and Article 3§1.14(a)(v) pertaining to maximum building coverage of a conditional use in a residential zone. The requested variances are to allow the number of children in the day care center to increase from a maximum of 70 children to 83 children, and to allow the permitted total building coverage of the lot to increase from a maximum of 20% to 24%. Subject property is zoned R-8 (One-Family Residence Zone). The Tax Parcel is ED-05-

077.17-03-49.00-000. The owner of record is 868 State Street LLC. The current day care center tenant is Shell's Early Learning Center. *This application was originally scheduled to be heard at the March 15, 2017 meeting of the Board of Adjustment but was withdrawn before the meeting.*

Exhibits for the Record: Staff report, zoning exhibit, statements and plans submitted by the applicant. Legal Notice was published in the Delaware State News on May 7, 2017. The public was notified in accordance with regulations.

Mrs. Harvey gave a brief overview of the application.

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

Correspondence Distributed
Correspondence was distributed and reviewed by all members present including the Applicant. The correspondence was from the Fire Marshal in regards to the occupant load for the daycare.

Representative: Mr. Wilfred Martin, Agent, 868 State Street LLC

Mr. Martin was sworn in by Mr. Rodriguez.

Mr. Martin stated that he realizes the sole purpose is to determine whether or not the variance is necessary to prevent harm. He feels that the application was adequately presented regarding the harm both to the tenant and to the landlord. This is one of those unexpected consequences where a profitable operation as a daycare facility has been going since 1980. Everything was working sufficiently to take a tenant into the middle class status that they deserve by virtue of running their own business. It would keep the minimum wage and living financial situations, Therefore, they applied for an increase to 70 children which put them back into a small business category whereas, the middle class could make a living and prepare themselves financially for the future. Then there was an unfortunate circumstance from their standpoint where the square footage requirement per child was raised from 25 to 35 S.F. which then dropped them down to the point of a survival type of business. Since 1983 they have had five (5) tenants, which is an average 4.7 years per tenant. These are the small business people that put their whole life savings into their dream that they are going to get this business and it is going to be a success. The applicant is asking to move forward with the variance for the increase in children. He is happy and has no problem with the Fire Marshal's restrictions. The facility on State Street is a home facility that has no change to the appearance. All of the land usage is in the rear and it is a fenced area. The building to the north is also a daycare (Mom's House) and the building to the south has been rented. It is not the type of business that their operation is going to influence because the nature of the community is becoming more commercial. In 1968, he opened and owned a General Business Public Accountant Service where he specialized in business consulting for small family owned businesses. He is aware of what the people are putting up with. On a win-win situation, they are asking for the following sideline considerations: the people that they are trying to get stabilized into the building are in fact the stability of the community. As a small business, and they are the last ones to suffer from the effects of the recession and the first ones to recover and they do 65% of the employment nationwide. Fifty percent of employees are hired by small businesses such as this out of the private

employment agency. In this particular situation, this is absolutely necessary because the people we deal with are primarily single parents and low income person(s). The nature of their community and building up just does not have any daycare facilities close enough for those person(s) that are already struggling and trying to make a living. They are trying to put their contribution in this particular community and to have a facility nearby that takes care of their children. Also, the employees of this particular facility fall into the same category as mentioned above. The impact on the community and by them making it a sustaining business is really great. He would like to have the sideline to be considered. If there are any doubts about the validity of the variances that these sidelines impact on the City and would impact the community and the people, they are taking care of. These people if not in their position very probably would be living on some kind of tax payer assistance support. He thinks that it is a win-win situation for himself, the City as a whole, tenants, and the types of people they are dealing with both as employees and the people we serve.

Colonel Ericson commented that the applicant had a chance to read the handout from the Fire Marshal and the applicant is in agreement with the 87 occupant load. However, you would have to subtract the number of staff. Colonel Ericson questioned whether he employed 12 people. Mr. Wilfred replied that the tenant has the ability to stay with the kids. She has the capacity to control the input whereas she can control the number of teachers needed. He figured with the 87 occupant load they would probably have ten (10) staff, which would give them 77 spaces for the children. That is only an increase of 7 from the City standpoint, but what the building does with the additional space is give a whole group 35 S.F. blocks for additional children in order to raise the income level from this particular facility to where it becomes a sustainable, attractive situation for when it is occupied by the small business people.

Colonel Ericson questioned when does it become profitable. Mr. Wilfred replied it is a profitable business. The problem is that so many small business people put their love, attention, finances, and time into something they love. The chances are that most of the small businesses that they have dealt with do not have the step up position of moving into the higher middle class income level where they can in fact do the things for their children, schooling, and retirement, along with everything else. Yes, he would much rather have more than 77 spaces in order to make it a more viable small business opportunity. If the number decreased, he would not know at what point this incentive will produce enough to keep the income level for a particular tenant appropriate. At the current time, it is a standard of living for the person(s) he is referencing.

Mr. Keller questioned for clarity the maximum number of children permitted for a daycare as he referenced the Code is limited to 50 children and there is an increase proposal by the applicant to increase the number of children from 57 to 83. Mrs. Harvey replied that they were approved by Child Care Licensing to have 57 children. The original approval in 1991 was for 70 children. In 1990 they were approved by Child Care Licensing for 50 children. Since then with the addition they had a previous increase to 57 children which again was approved by Child Care Licensing.

Mr. Keller questioned whether it was approved by virtue of a City oversight or variance increase or a simple licensing matter. Mrs. Harvey replied it was simply a licensing matter. They were in operation in 1990. They were approved by the Planning Commission for 70 children. However, as previously mentioned, Child Care Licensing at that time approved them for 50 children. Since then when the addition was added, they were allowed by Child Care Licensing to increase by

square footage to allow for 57 children. The handout that Mrs. Harvey received from the Fire Marshal states that they are approved by Child Care Licensing for 57 children.

Mr. Hufnal commented that he had the same question as mentioned above, but also questioned whether they approved the addition to the 57 or it was done by Child Care Licensing. Mrs. Harvey replied it was done by Child Care Licensing. Upon research the only thing she could find was from 2013 when the daycare was temporarily closed and when they reopened it was noted that they were approved for 57 children. She was not sure if there was any formal process at that time.

Mr. Hufnal questioned if the request today was from the 57 children to 83 children. Mrs. Harvey replied that is correct.

Mr. Keller questioned whether there was a Code or Statutory allowable increase from 50 to 57 by virtue of the City Ordinance. Mrs. Harvey replied not that she was aware of.

Mr. Hufnal questioned whether the approval today was from 50 to 83 children.

Mr. Keller stated that it would address a shortcoming in the allowance as a matter of adhering to the Code. Mrs. Harvey agreed and replied that upon research she did not find anything in the file of there being any approval from the City of the increase from 50 children to 57 children.

Mr. Hufnal questioned the Planning Commission approval in 1990 to allow 70 children. He questioned if the Board of Adjustment need to take it from the 70 to 83 or does it have to go back to the 50 from the Code. Mrs. Harvey replied it should be based on the Code.

Colonel Ericson stated that there are three different agencies that work together to determine the maximum number of children. Upon his understanding it is still 57 children per Child Care Licensing. No matter what the Board does they do not have authority over Child Care Licensing. He also referred to the letter received from the Fire Marshal states that the maximum is 87 occupants. This number would consist of staff and children.

Mr. Hufnal questioned whether the number approved today should include Staff. Mrs. Harvey applied that it is true, but it can also change as previously stated by Child Care Licensing or the Fire Marshal's Office.

Mr. Martin stated that they have done a lot of study on this project. From a City standpoint, they were told that they could have 50, then it was changed to 70, and now we are asking the City to go to 83. They have the capacity in the building to go to more than that, but the second element is that the State Licensing testified that they must have at the time 25 S.F. per child, then it was changed to 35 S.F. per child. Literally, keeping within the City allowance they went from 50 to 70. Then they changed the criteria and the daycare had to decrease according to the State to 57, but the City authorization still remained at 70. The numbers conflict because there are two different agencies. He is asking to go to the 83 because the Fire Marshal now has the same set of restrictions. He intends to meet with the Fire Marshal regarding the conditions. There have been a lot of improvements that have been made regarding safety exits. He does not feel that the daycare is

efficient as it could be. He would like the daycare to become efficient especially with the teacher(s) and student ratio.

Mr. Hufnal questioned whether the Board should be looking at the maximum number. Colonel Ericson replied that he gathered from the applicant they would like to stick with the 83.

Mr. Senato questioned whether the parking was a separate issue. Mrs. Harvey replied that the parking already meets the requirement.

Mr. Hufnal stated that the two items today are the proposal to increase the number of children allowed in a Day Care from 57 to 83 and to approve the variance to increase the building coverage on the lot from 20% to 23.7% (2,576 S.F. to 3,614 S.F.) for the land use and the elimination of the garage in the rear. Mrs. Harvey replied that is correct, but the proposal is for the parking and not the garage. The garage removal will help with the parking.

Mr. Martin stated that the new rules and regulations could change at any time. They could work with the 83 either way.

Mr. Keller commented that he still had concerns by not having had previously, according to testimony, any increase in the allowable number of children from 50 children as he referred to the *Zoning Ordinance*. If there is any consideration, he would hope that the Board would overcome that void to increase that number from 50 to whatever number may be considered. Per Mrs. Harvey, during her due diligence she was unable to determine whether there was ever a Code variance approved to increase from the original 50. He questioned if this was correct. Mrs. Harvey replied yes. The only thing that she saw in her research was a Zoning Verification Letter and a Business License which did not have the increase from 50 to 57.

Mr. Keller stated that Child Care Licensing cannot change City Ordinances nor can the City change the Fire Protection Services or Child Service License requirements. Mrs. Harvey replied that is correct.

Mr. Martin stated that he had the Planning document from 1993 that changed the 50 to 70 which is permanent and in effect at the current time. Therefore, his request is an increase from 70 to 83.

Mrs. Harvey stated that she was not aware if they were approved for 70 by the Planning Commission in 1990 and if Child Care Licensing approved them for 50 whether or not the applicant would need to come back if the applicant increased the number to 57 based on Child Care Licensing.

Mr. Keller and Mr. Hufnal questioned whether the authorization by the Planning Commission increasing children occupancy to a limit of 70, constituted a Code change. Colonel Ericson replied no. The Code still stands at 50. The Planning Commission looked at this one specific property and made a decision that they wanted to increase the number to 70 and they were legally authorized to do so. It did not change the Code, but the Code needs to be changed.

Mr. Keller questioned whether the Planning Commission actions addressed this particular property and not a general Code overview. Colonel Ericson replied correct.

Mrs. Harvey reiterated what she found in the file and what was previously stated.

Colonel Ericson read "New Business from the Planning Commission dated September 17, 1990 states that Conditional Use approval to permit the construction of a 673 S.F. addition, existing 1,754 S.F. child care center with 50 children to permit the enlargement of the facility to provide childcare for 70 children on the property located at 868 South State Street."

Colonel Ericson stated that there is no change to the Code. Only City Council can ultimately approve a Code change. However, there are different agencies with different rules. All of us rule over the number of capacity for this facility.

Mr. Hufnal questioned when the change is made today even though the Planning Commission made their statement in 1990, the Board still has to go by the Code to change the Code to allow for the extra area. Mr. Rodriguez replied that is exactly right. The Board would go by the Code and if you grant the entry the Board would change it to 83.

Mr. Senato questioned what precedent would it set based on all of the information presented today and what would it produce in the future. Mr. Rodriguez replied that he did not believe it would set a precedent because it is kind of unique to this particular home. The Code is 50 and the Board has to go by the Code. If the Board wishes to increase the number to 83 then it is up to the other agencies to do whatever they need to do.

Vice Chairman Colonel Ericson opened the public hearing.

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

Vice Chairman Colonel Ericson questioned if there was any additional correspondence for the record. The Fire Marshal correspondence was distributed to all members present. There was no correspondence from the public.

Mr. Keller asked for a point of clarification whether the Board could accept the correspondence submission by Fire Marshal Jason Osika. Colonel Ericson replied that the correspondence will be a part of the record.

Mr. Hufnal moved to approve application V-17-08 variance request based on the testimony today, to increase the number of children allowed in the Day Care Facility from 50 to 83, and to increase the building coverage on the lot from 20% to 23.7% (3,614 S.F.)

Mr. Keller amended the motion to include the advisory comments and the regulatory bodies approval and/or licensing requirements. The amendment was seconded by Mr. Hufnal and the motion as amended was unanimously carried 4-0. Chairman Sheth was absent.

There was a brief discussion regarding the 83 number and if it should be included in the motion.

Mr. Hufnal moved to adjourn the meeting, seconded by Mr. Senato and unanimously carried 4-0. Chairman Sheth was absent.

Meeting adjourned at 10:05 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary