CITY OF DOVER
BOARD OF ADJUSTMENT MINUTES
August 17, 2016

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, August 17, 2016 at 9:04 A.M. with Chairman Sheth presiding. Members present were Chairman Sheth, Mr. Hufnal and Mr. Keller. Colonel Ericson and Mr. Senato were absent.

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

APPROVAL OF AGENDA

Mr. Hufnal moved to approve the agenda with the removal of the Old Business Item V-16-06 due to no updates, seconded by Mr. Keller and unanimously carried 3-0. Colonel Ericson and Mr. Senato were absent.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF JULY 20, 2016

Mr. Keller moved to approve the meeting minutes of July 20, 2016 with the necessary corrections, seconded by Mr. Hufnal and unanimously carried 3-0. Colonel Ericson and Mr. Senato were 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 is now one (1) agenda 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.

NEW BUSINESS

Applicant #V-16-11

409 South DuPont Highway and 324 Martin Street. Lance Moffa has requested an area variance from the requirements of *Zoning Ordinance* Article 5 §4.7 pertaining to the number of signs permitted on the property in order to retain an abandoned non-conforming pylon sign, and the requirements of *Zoning Ordinance* Article 5 §7.4 pertaining to outdoor storage trailers. Subject property is zoned C-4 (Highway Commercial Zone). Tax Parcel ED-05-077.10-01-41.00-000. The owner of record is S & C Enterprises Inc.

Exhibits for the Record: Staff Report and plans submitted by the applicant. Legal Notice was published in the Delaware State News – on August 4, 2016. The public was notified in accordance with regulations.

Mr. Diaz gave a brief overview of the application.

Mr. Keller questioned whether there were any storage buildings, standalone moveable buildings, and if there were none there today is there a process through the City by which they would be obligated to make application for a temporary placement. Mr. Diaz replied by stating that there is a permit application to place storage trailers on a site and it is available in the office.

Responding to Mr. Hufnal's question even if they applied for a storage permit, the permit is only allowed for up to 18 months, Mr. Diaz replied that is correct.

Responding to Mr. Hufnal's question that the applicant would either have to build something to take care of the storage trailer or remove the trailer. Mr. Diaz concurred. Mrs. Townshend added that there is a permit application for the storage trailers in the office, but it cannot be approved because it does not comply with the Zoning requirements which is why it is part of the variance request. It exceeds the 2% of the floor area and it is not screened.

Responding to Mr. Hufnal's question if the applicant was to build a storage building they would be allowed to have a construction trailer for a period of time until the storage building is built, Mr. Diaz concurred.

Mr. Hufnal questioned whether there is a time limit on that trailer or as soon as the building is complete and the applicant has received Certificate of Occupancy of the building then they would need to remove the construction trailer. Mrs. Townshend stated that usually it is required to be removed when they issue the Certificate of Occupancy.

Responding to Chairman Sheth's question whether there is any history of the signs, Mrs. Townshend stated that there have been a number of Sign Permit applications on this property over the years. There was a Code Enforcement case related to the changeable copy sign that was put up without a permit and the timing did not comply. There has been a little bit of history in terms of the signs and which signs was going to be used has changed over time as the business has evolved on the site.

Responding to Chairman Sheth's question whether the permit had expired, Mrs. Townshend stated that the permit was not issued because it did not meet the Zoning requirements. With a changeable copy sign, you cannot be more than 70% of the sign face.

Responding to Mr. Keller's question whether there had been any inspections of the storage trailers in the past 18 months by the City Code Enforcement Officers, Mrs. Townshend replied no, just the observation that the storage trailers are there, but no formal inspection that she was aware of.

Representative: Mr. Charles Rayborn, Representative for the Owner of Capital Pawn

Mr. Charles Rayborn was sworn in by Mr. Rodriguez.

Mr. Rayborn testified that the first issue that he had was there are two businesses not one business. They are trying to obtain the permit and business license for the second business.

Responding to Mr. Diaz's question whether it was correct that the business was under common ownership, Mr. Rayborn replied that is correct.

Exhibits

Mr. Rayborn referred to other businesses in the City of Dover that had two (2) pylon signs.

Mr. Rayborn stated that the main issue is on the dome building which if permitted will be the Car Pawn. It is a separate business and they are currently waiting to receive the Business License. Personally, he does not understand how other businesses in the area can do what they are trying to do.

Chairman Sheth reminded the applicant that one illegal item does not legalize another item. Mr. Rayborn replied that he understood.

Mrs. Townshend stated that she wanted to address the issue of the number of businesses. Again, the Sign Ordinance does not permit one pylon per business. If that was the case, then every shopping center could have ten (10) pylons. What we typically see with the locations up and down the highway that have multiple businesses is one pylon with multiple faces on it. There may be one (the car wash on Rt. 13) shown in the packet is a nonconforming sign. The way the Ordinance is structured is that over time through dealing with abandoned signs it phases out the nonconformity. This is the way the Ordinance is set up, but there are many examples of multiple businesses with one pylon sign with multiple sign faces. As it relates to the storage trailers, that is something that we can certainly make a priority and have Code Enforcement focus more heavily on. She is sure there are more violations out there. When violations come up, they are addressed.

Mr. Rayborn commented that they are losing money daily by not having a Business License for the Car Pawn. Does that mean that they are being singled out by not complying when other people are not complying? Chairman Sheth replied no, there is no unfair practice and he reiterated what Mrs. Townshend stated earlier regarding other violators.

Mr. Rayborn stated that he felt like it was some type of selective enforcement. Mrs. Townshend stated that the office has five (5) Code Enforcement Officers for the entire City. It is obvious that they do not catch every violation.

Mr. Hufnal commented that both signs were abandoned and on April 6, 2015 someone made an application to reface Sign # 1 which at that time was (Vapor Dome) and the Planning Office approved the Sign Permit under the condition that Sign # 2 would be removed. Vapor Dome then went out of business and their sign was removed, but on June 10, 2015 another application was received to reface Sign # 2 and that Sign Permit was denied because that sign was supposed to

have been removed and it never was, but instead got refaced anyway. Mr. Hufnal asked what happened? Mr. Rayborn replied that he would need to check because he was not quite sure. He stated that at the last meeting that he attended he was told that if they tore down the sign at the dome, have a meeting and the Board of Adjustment may or may not approve it and then after the meeting put the sign back up and everything will be ok. Now does that make sense, again; does that make sense?

Responding to Mrs. Townshend's question on whether he was told to put it up after the meeting, Mr. Rayborn replied he was told to take it down and even had someone from the City to state they would come and take it down for you. Have this meeting take it down, then put it back up, you will be ok. Were we at the same meeting? Mrs. Townshend stated that she was unware of that and any indication that the City would remove the sign for you. Mr. Rayborn asked Dr. Warfield if she attended the meeting? Dr. Warfield replied yes.

Mr. Keller stated that Mr. Diaz has pointed out that there are other alternatives types of signs that could legally be put around, near, or on the dome building portion of the property, is that correct? Mr. Diaz replied yes sir. The property would be allowed two (2) wall signs per frontage, one (1) monument sign per entrance or one (1) post and panel sign per entrance in addition to the pylon sign.

Mr. Keller stated that he was not aware of what Mr. Rayborn just stated to Mrs. Townshend, but could it possibly be that the pylon sign has to come down, but there are other provisions for alternatives types of signs that could be legally put up. Mr. Rayborn stated that the uniqueness of the shape of the dome prohibits a professional sign to be there. There is electricity running through the sign and they are paying a bill every month and they are not able to use it.

Responding to Mr. Keller's question whether the sign was currently displaying anything, Mr. Rayborn replied that it is not doing anything. They are just getting a bill.

Responding to Mr. Hufnal's question whether it was Sign # 1, Mr. Rayborn replied, yes sir. Mr. Hufnal stated that the Board of Adjustment approved Sign # 1 to be there and Sign # 2 to be removed and it never was, it was refaced.

Mrs. Townshend stated that on the Exhibit Map it shows the location of Sign # 1 and Sign # 2, and asked if that was what he was referring to. Mr. Hufnal questioned if Sign # 1 was the legal sign, Mrs. Townshend replied that technically either one could be a legal sign, but they cannot both stay without a variance.

Responding to Mr. Hufnal's question whether Sign # 2 would be on Martin Street, Mr. Rayborn replied that it was two different addresses and that would be correct. (however, Mr. Rayborn said this is correct, but this is incorrect because both signs are on Route 13). Mrs. Townshend replied that Martin Street is not a principal arterial street. Mr. Hufnal stated that you could have the sign on Route 13, but you cannot have it on Martin Street.

Responding to Mr. Rayborn' s question how could they have the sign previously, Mrs. Townshend stated that it was nonconforming and probably existed prior to the zoning regulations.

Mr. Keller commented that he would presume that the applicant's potential customers would be up and down Route 13 as opposed to Martin Street, Mr. Rayborn replied both ways.

Mr. Keller stated that as he looked at the photographs he noticed 20-30 cars on northbound US 13 and there was not a vehicle on Martin Street. Mr. Rayborn replied that it could be the time of the day. It would benefit our business if they could have a sign at the dome and it is a separate business.

Mr. Keller questioned whether with an application if a monument sign could be placed on the dome?

Mr. Diaz emphasized that neither a monument signs or nor a post and panel sign would actually be placed on the building; it would be placed in the ground. It is difficult to put a wall sign on the building, but they have other options.

Responding to Mr. Keller's question regarding the submitted photos for February 2015 which depicts the storage trailer that has exceeded the 18-months that were allowed for the storage trailers for the one by the larger building which is now the Pawn business. Mr. Rayborn replied correct.

Responding to Mr. Keller's question regarding what is being stored in the storage trailer, Mr. Rayborn replied tools and items used for collateral for a loan.

Responding to Mr. Keller's question whether the storage trailers are owned by the owner of Capital Pawn, Mr. Rayborn replied no; they are rented.

Responding to Mr. Keller's question whether with that type of usage would the applicant contemplate a need for that type of usage storage, Mr. Rayborn replied that it is imperative that they have the storage trailers.

Mr. Keller stated that he has seen, heard, and read all kinds of uses imaginable for some of these storage containers even that they occasionally have been used as housing. Mr. Rayborn stated that his storage trailers are open for inspection 24/7, 365 days of the year. The storage trailers contain tools.

Mr. Keller questioned if regarding the construction of any accessory building, etc. whether the City has requirements for dimensional, fire code requirements, electrical service, sanitary conditions, etc. Mrs. Townshend replied that for accessory storage there are requirements but the requirements are not as high as they would be for an occupyable building. If it is just storage it is not required to have electricity. They could have a shed or storage building as an accessory structure. There are a number of businesses that have sheds similar to what you would have at a residence and that is permitted by Code.

Mr. Keller stated that it was noted in the City's Staff Report that there are certainly options if the storage trailers have to be removed that an accessory building could be provided by the applicant of likable dimensions or whatever fashion.

Mr. Rayborn questioned who would provide the accessory building, Mr. Keller replied the owner and/or tenant.

Mr. Keller stated that in any event he was not aware of an abundance of these types of shipping storage units within the City of Dover providing for accessory building usage. There is a time limitation for a reason on the storage trailers.

Responding to Mr. Rayborn's question that at the end of 18-months he would need to reapply for a permit, Mrs. Townshend replied that if a variance is granted to allow them to stay permanently then the 18-months would not apply, but if a variance is not granted at the end of 18-months if it is in accordance with the Code requirements they would be removed. They are permitted to be on the property on a temporary basis. Kmart and Walmart used to have the temporary storage trailers. They use to bring them in around Christmas time or the fall months when they would be having more stock than normal and then after that season they would remove them. That is the way the Code is set up to have the storage trailers for a temporary storage use and not a permanent storage use. If it is to be permanent that would need to be a part of a variance.

Chairman Sheth commented that he understood that this was during the construction up to 18-months. Mrs. Townshend replied that construction is separate. The 18-month limitation means after the 18-month the storage trailers are removed, not that you reapply because at that point they are no longer temporary.

Mr. Keller stated that typically with business expansion or a growth in inventory sales those types of business or structural expansions are handled by virtue of building another building, adding on to another building or adding on to the original structure as a natural part of your growth of the business. It is not starting to place storage trailers all over the site to accommodate your increase in business in his estimation. Those temporary seasonal types of increased of sale stocks as pointed out by Mrs. Townshend he fully understands, but the Code reads to him is that it addresses those needs for temporary usage. The Code is restrictive in that manner for that reason. As pointed out by Mr. Rayborn, if the storage trailer was removed today and if he came in to the office to put up another storage trailer tomorrow he thinks it is somewhat of a circumvention of the intent and purpose of the Code in his estimation. He was not aware of how much cost would be involved with an accessory building that would be a permanent type structure to accommodate the applicant's security for the items that are currently there as collateral for a loan. He hesitates to say that the temporary storage buildings are not an appropriate use for a continual ongoing need of that sort.

Mr. Rayborn asked for clarification if Mr. Keller said "appropriate" or "inappropriate", Mr. Keller replied not appropriate.

Mr. Rayborn stated that there will be a point where it will level off and he thinks that it is getting to that point. They have been growing, but now they are leveling off. He does not think that they are going to need additional storage beyond what they have now

Responding to Mr. Keller's question whether he would continually need the additional storage trailer, Mr. Rayborn replied yes sir, to keep the median (what they have now).

Responding to Mr. Hufnal's question whether he had any plans of adding a building to take care of the storage, Mr. Rayborn replied that they are not the owners of the property and they have not had that discussion with the owner.

Responding to Mr. Keller's question whether there was any inclination to use the dome building as secured storage, Mr. Rayborn replied that the structure would not allow that. It would not be secured. They are trying to obtain a Business License to conduct business out of the dome, that is all they are trying to do which is pretty simple.

Responding to Mr. Keller's statement that the one (1) storage unit as of February 2015 has currently grown to two (2) storage units and question of when the second unit was placed on the site, Mr. Rayborn replied that both storage units were placed on the site at the same time. Mr. Keller stated that there was no such evidence of it in the second photo and that was his reason for asking. Mr. Rayborn commented that by him being from out of town he was not quite sure; he asked Dr. Warfield were they put there at the same time. He then stated that they were staged in.

Dr. Kim Warfield was sworn in by Mr. Rodriguez.

Responding to Mr. Keller's question of the length of time the second storage unit has been on the property, Dr. Warfield replied that the storage unit has not been on the property for 18-months. It has been on the property approximately 12-14 months. The storage units were put on the property after the business started.

Mr. Hufnal asked for clarification that in the past the dome building used to be the Vapor Dome and they went out of business and the building is currently vacant. Dr. Warfield replied that Vapor Dome went out of business. Mr. Rayborn replied that they are currently using the dome building on the weekend to display tools outside of the building. The building again is not vacant, but it is not a viable business at the current time.

Responding to Mr. Hufnal's question whether he was renting the entire parcel, Mr. Rayborn replied yes. He was renting the entire parcel.

Responding to Mr. Hufnal's question regarding how long the Pawn Shop business has been at the location on Martin Street, Mr. Rayborn replied 16-17 months.

Responding to Mr. Hufnal's question whether the storage trailers have been utilized the entire 16-17 months or just in the past 12-months, Mr. Rayborn replied in the past 12-months. They have some storage inside the main building, but they have outgrown that storage. That is the reason for the need of the storage trailers.

Responding to Mr. Hufnal's question whether in his lease if there was an addition for storage to eliminate the trailers and would it be your responsibility or the owner, Mr. Rayborn replied that he was not sure because this issue has never been discussed.

Responding to Mr. Hufnal's question whether his lease covered the use of the dome building, Mr. Rayborn replied that is correct.

Mr. Keller pointed out for the basis of his statement that Mr. Rayborn's submission of his exhibits dated February 2015 shows a storage trailer by the Pawn Shop, that would equate to 18-months presently. Mr. Rayborn stated that he understood.
Responding to Mr. Hufnal's question regarding if the application is not approved and the storage trailers are on the property do they get 18-months from today or from the time they were placed on the property to have them removed, Mrs. Townshend replied no. The office cannot issue a permit even for the 18-months because of the square footage (the 2% of the floor area), but they would take it from today forward; they would not go back. Mr. Hufnal stated that is correct regarding the 2% of the floor area.

Chairman Sheth stated that the same storage trailer is not allowed if they were to submit a permit. Mrs. Townshend replied that is correct.

Mr. Rayborn stated that it is a unique situation by it being two (2) different addresses on the same parcel and wanted to know why they could not use the entire parcel. Mrs. Townshend replied that there are a lot of places in the City that have multiple addresses on one parcel. The uniqueness of this is perhaps that one of the street frontage is urban principle arterial where the other is not. It happens on corner lots and the difference with this is that it is more of triangle.

Responding to Mr. Keller's statement that there is no prohibition against advertising two (2) businesses on that entire property of ownership and no prohibition against advertising two (2) different businesses on one (1) pylon sign, Mrs. Townshend replied not at all.

Mr. Keller questioned as he referred to the handout of a photo on page 4 reflecting a pylon sign for 324 Martin Street, whether the view of the sign was facing south along Route 13. Mr. Rayborn replied that is correct.

Responding to Mr. Keller's question whether there was another sign above the Capital Pawn Sign, Mr. Rayborn replied it was an LED sign for promotions. The LED sign is strictly the Pawn side of it.

Mr. Hufnal stated that he recalls approval for the parcel in the front and when something is built there the sign will not be visible on Route 13. Mr. Rayborn replied that is correct. Mrs. Townshend replied that last month the Board of Adjustment approved a variance for the setback of a building on the adjacent property. That very well could block the sign.

Responding to Mr. Keller's question whether the sign was currently at its maximum allowable height, Mrs. Townshend replied that she did not believe that you can have 30-feet in height and she does not believe that those signs are 30-feet in height.

Responding to Chairman Sheth's question of the issue, Mr. Hufnal replied that the second sign on Martin Street was the one that was supposed to be removed and it should be removed. The one on South DuPont Highway is a good tall visible sign that could advertise two (2) properties if needed. It is a pylon sign that the Board of Adjustment approved a long time ago and that one should remain. The sign on Martin Street will be blocked anyway once the new building goes up

in the front.

Responding to Mr. Rayborn's question regarding what new building, Mrs. Townshend replied the new building on the adjacent property.
Responding to Mr. Keller's question whether the option was still available to the owner or tenant of which sign they would like to remove unless a variance is granted. Mrs. Townshend replied yes.

Mr. Keller also agreed with Mr. Hufnal's previous comments and stated that given the history and the expression that the storage trailers would be used in effect in perpetuity expires today. To remove today and replace tomorrow is a circumvention of the intent of the provision of the statue allowing an accommodation otherwise for some temporary storage and usage.

Chairman Sheth stated that City ordinance does not allow permanent storage trailers. Mr. Keller stated no, but as stated by Mr. Rayborn if the storage trailer is removed today, then he would come in tomorrow and get a temporary storage permit. A variance runs with the land and is not to a particular tenant on any particular given time which is another important aspect that the Board of Adjustment has to give consideration to in the granting of a variance. If it was granted today, then 6-months from now the business closes and moves then the next tenant would have the availability of the variance granted.

Mr. Keller also stated that during the discussion of these kinds of matters it's a self-imposed hardship when a sign was required to be removed and it was not, but instead refaced. The time, effort, and expense was contrary to what was issued by the City and also those types of activities are not to be rewarded. They are not necessarily an instance which it creates a penalty, but not something that is taken lightly. If the City states to do one thing and the owner or applicant does something contrary to that, they oppose upon themselves the subsequent hardship involved with the violation of the direction of the City.

Chairman Sheth reiterated if the applicant applied for a permit for the same storage trailer for 18-months it cannot be approved by the City. They will need to meet the code requirements.

Mr. Keller stated that given the situation that Chairman Sheth relates, there would be nothing to preclude that same person, given notice of a denial, to say I would like to apply for a variance.

Mr. Keller commented that there appears to be alternatives to the signage. One or the other whichever is most advantageous to the tenant or owner could be utilized, but it requires the removal of the other sign. If the business has leveled off to an amount of business where the applicant is somewhat stabilized in the need for extra storage, it appears as though it may be the time to give consideration to the construction of an accessory building to a degree to accommodate your leveled off security and storage needs and to avoid a continuing need for these independent storage trailers.

Responding to Mr. Keller's question whether a painting on the dome building that would read "Car Pawn" be allowed and considered a building face sign, Mrs. Townshend replied yes. It would be a wall sign.

The photo Mr. Rayborn submitted shows the blue and yellow stripe around the dome building as being attractive in addition to possibly having the advertising co-located on one Pylon Sign for a Car Pawn as well as the Pawn Shop sign. The applicant could still have a sign on either side of the dome building and still have an adequate identification that the second business is there.

Mr. Rayborn stated that it would have to be small lettering because you would not want the lettering to bend at the top of the dome building. Also, you would not be able to see it.

Responding to Chairman Sheth's question whether the big letters the applicant wanted was "PAWN", Mr. Rayborn replied no, he needs both "CAR PAWN". Chairman Sheth stated that the Board of Adjustment was not trying to make the decision on what was the best thing; they were only giving options. Mr. Rayborn stated that he understood. Mr. Keller also stated that it was just a thought; it was not an imposition of anything. Chairman Sheth stated that a pylon sign could have both of the signs.

Mr. Hufnal questioned that instead of putting the sign on the building if they could have a free standing monument sign. Mrs. Townshend replied yes. A Monument Sign can be 10-feet in height.

Mr. Rayborn questioned how he could get a Business License and utilize the dome building.

Mrs. Townshend stated that the zoning violations need to be resolved before an additional Business License can be issued.

Mr. Rayborn questioned whether the City would provide him with the list of issues that are deemed in violation that need to be corrected so that they can obtain the Business License for the dome building. Mrs. Townshend replied that the current issues are the sign and storage that need to be resolved before another Business License can be issued.

Responding to Mr. Keller's question that whatever is required will the City work with the applicant to meet the requirements of the issuance of the second Business License, Mrs. Townshend replied yes.

Responding to Chairman Sheth's question whether there was any business at the dome building at the current time, Mr. Rayborn replied that they were not using the building. It is locked. They are paying for the sign and to lease the building.

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

Chairman Sheth opened the public hearing.

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

Chairman questioned if there was any additional correspondence for the record. There was

none.

Mr. Hufnal moved to confirm Staff recommendations of the denial of variance application V-16-11 to allow the second pylon sign. Sign # 1 is to remain on the property and the other sign be removed. The motion was seconded by Mr. Keller and unanimously carried 3-0. Colonel Ericson and Mr. Senato were absent.

Mr. Keller moved to deny variance application V-16-11 pertaining to the outdoor storage trailers in conjunction with the additional exhibits submitted today, Staff Report, and testimony of the representative of the owner in today's meeting. The applicant or tenant can decide which pylon sign to remove based on their need. The motion was seconded by Mr. Hufnal and unanimously carried 3-0. Colonel Ericson and Mr. Senato were absent.

Mr. Diaz stated for clarification that both signs are on Route 13. There are no pylon signs on Martin Street. Because the Sign Permit was originally issued for Vapor Dome that went out of business so he is not certain that the Sign Permit is still active. At this point, he would consider both signs to be equal.

Mr. Keller moved to adjourn the meeting, seconded by Mr. Hufnal and unanimously carried 3-0. Colonel Ericson and Mr. Senato were absent.

Meeting adjourned at 10:11 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary