CITY OF DOVER
BOARD OF ADJUSTMENT MINUTES
November 18, 2015

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, November 18, 2015 at 9:00 A.M. with Vice Chairman Ericson presiding. Members present were Mr. Senato, Mr. Keller, and Vice Chairman Ericson. Chairman Sheth and Mr. Hufnal were absent.

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

APPROVAL OF AGENDA

Mr. Keller moved to approve the agenda as submitted, seconded by Mr. Senato and unanimously carried 3-0. Chairman Sheth and Mr. Hufnal were absent.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF SEPTEMBER 16, 2015

Mr. Keller moved to approve the meeting minutes of September 16, 2015, seconded by Mr. Senato and unanimously carried 3-0.

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATION

Mrs. Townshend, Director of Planning and Community Development stated that the meeting would be conducted in accordance with the agenda. There is one item (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 adjourn 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 the agenda today was completed in accordance with code requirements. The meeting agenda was posted in accordance with Freedom of Information Act requirements.

NEW BUSINESS

Applicant #V-15-14

1159 North DuPont Highway. Grotto Pizza has requested a variance from the requirements of Article 5 § 4.7 of the *Zoning Ordinance* pertaining to the number of permitted wall signs for property located on an Urban Principal Arterial in order to allow the installation of a wall sign on the north side of the building. Subject property is zoned C-4 (Highway Commercial Zone). The Tax Parcel is ED-05-057.00-01-30.02-000. The owner of record is Northeast Dover Properties, LLC.

Mr. Bill Cook Exhibits for the record: Staff Report, photos, and plans submitted by the applicant. The legal notice was published in the Delaware State News on November 8, 2015, and the public was notified in accordance with the regulations.

Mr. Bill Cook gave a brief overview of the application.

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

Representative: Mr. Lynn Rogers, President of Rogers Signs, Ms. Darlene Matthes, Administrator for Rogers Signs.

Mr. Lynn Rogers and Ms. Darlene Matthes were sworn in by Mr. Rodriguez.

Mr. Rogers began by clarifying that the small sign that faces the trees currently at the rear of the building is the proposed sign that they would like to relocate to the north wall of the building facing the parking area. There would be no additional square footage. They had forgotten to take down the existing non-conforming sign at the rear of the building. The rear sign cannot be seen more than 8 feet. Again, their proposal is to relocate the existing non-conforming 24 SF sign to the north side of the building.

Sign Presentation

Mr. Rogers referred to photo #6. He stated that Rogers Sign Company fully understands the City of Dover Sign Ordinance. There are no two (2) buildings the same except for strip centers because the setback varies. There are some establishments that they like to refer to as stores "out of the box" such as the Boston Market.

Mr. Rogers stated that the attempt for the sign on the north side of the building is to capture the view of potential customers when shopping from the parking lot located to the north. It is not meant to be viewed by highway travelers. He referred to signs #3 and #4 which show the view while sitting in the parking lot looking south. The view of Grotto's building is a large 20 foot tall by 100 foot blank wall which is 2200 SF and the proposal measures 1% less of that total area. As he referred to sign #4 they agreed with Staff that Grotto's pizza has and existing 92 SF freestanding pylon sign with electronic message center located at the north corner of the property adjacent to the right of way. The sign is blocked from the trees and therefore there is no visibility. There is no identification of Grotto's from that viewpoint.

The two (2) signs on the front of the building cannot be seen from that position. The view from photo #4 is permanent and there is no identification of Grotto's Pizza establishment. The 12 SF monument sign at the entrance on the southwest corner cannot be seen at all from this position because it is blocked by vehicles. The blocked view from photo #4 is a permanent view from the parking lot. He stated that the building is a little out of character compared to others nearby, because the building to the north have their signs on the side of the building, and when you look south (towards Grotto) you only see a big blank wall from that position. In closing, they would appreciate the Board of Adjustment's consideration of this unique situation. With visibility from a nearby shopping center parking lot they could obtain more customers from the approval of this sign request that is less than 1% of the total wall area. They are not making a new sign; they are relocating the rear non-conforming sign to the north side of the building. He thanked everyone

for their time and asked if anyone had any questions.

Responding to Mr. Senato's question if there were a total of five (5) signs to be located on the building, Mrs. Townshend stated that they are permitted to have two (2) wall signs, so the pylon sign is separate.

Responding to Mr. Senato's question that the applicant wanted to remove the rear sign facing Dover Downs and placed it on the north side of the building, Mr. Rogers stated yes.

Responding to Mr. Senato's question that there are three (3) signs on the building and per code are they allowed three (3) signs on the building, Mrs. Townshend replied that they are allowed two (2) signs on the building.

Responding to Mr. Senato's question whether the monument sign and pylon sign was irrelevant as far as the grievance was concerned and the signs are not counted as extra signs, but they are allowed two (2) signs on the building, Mrs. Townshend concurred.

Mr. Keller stated that upon visiting the location several times and the initial review of the packet the sign on the rear of the building was a self-imposed violation by virtue that it was placed and perhaps overlooked. His first consideration would be to enforce removal of the sign in any event as in fact it is illegal. He stated that the oval pylon sign was pretty evident to north bound or south bound travelers. The north bound travelers on Route 13 would enter the Best Buy parking lot would have driven right in front of Grotto's pizza and could not help but notice it. There seems to adequate visibility southbound from the pylon sign. With regard to some of the criteria the board utilizes in determining Exceptional Practical Difficulty being realized by the owner if this application for a variance was perhaps denied, he did not see any Exceptional Practical Difficulty associated with this request for the placement of the sign on the north side of the building. He felt that a denial of this variance request would not bring about Exceptional Practical Difficulties for the owner to otherwise make normal improvements to that property. As noted by the applicant, the sign on the north side is estimated to make up less than 1% of the wall area. In his estimation that would somewhat play in the applicant's favor because it is rather a small consideration on the part of the Board of Adjustment to allow the additional sign over and above the code restrictions.

Responding to Mr. Keller's question whether Rogers Signs was the original contractor involved with the initial sign placement on the building, Mr. Rogers stated yes.

Responding to Mr. Keller's question should the variance be granted, would Rogers Sign be fully confirming that the sign on the rear of the building will be removed, and that such same sign will be moved the north side of the building, Mr. Rogers stated yes, and the same sign that is removed from the rear would be placed on the north side of the building if granted approval.

Mr. Rogers stated that he understood and respected Mr. Keller's comments about the scenario of going north or south, but that the issue was about basically sitting in the parking lot and seeing a blank wall and not being able to see any other signs from that vantage point. This is the only reason that the owner wanted to come before the Board of Adjustment was because of the huge

blank wall, and there is a sign that needs to come down, so why not utilize it so that others can see it from the parking lot. A lot of the people from Delaware State University or from out of state that enter the parking lot to shop at the other stores could promote more business for Grotto's Pizza.

Responding to Mr. Keller's question whether there was a cross easement between Grotto's and the Best Buy parking lot, Mr. Lynn and Mrs. Townshend stated yes there is.

Responding to Mr. Senato's question that it is understood that rear sign needs to come down, Mr. Rogers stated yes.

Mr. Senato's commented that the wall sign to the north will give you three (3) signs on the building which is not permitted by code.

Responding to Mr. Senato's question as he referred to exhibit D, whether the sign on the south side facing the building was removable and whether the sign on the south side of the building could be moved to the north wall which would stay in compliance with two (2) signs on the building, Mr. Rogers stated that the Sports Bar sign is sort of separate from Grotto's Pizza because it is a bar. Physically the sign could be removed, but it is not the applicant or owner's desire to do so. The owner is trying to utilize a nonconforming sign and the Board of Adjustment has the right to grant such permission for the small sign.

Mr. Senato stated that his responsibility to the City is to stay in compliance with the code. The Board of Adjustment would like to perhaps come up with a solution that can be agreed upon to keep in compliance with the two (2) signs on the building. Although, sign one (1) is the huge main sign which is very visible from the street approaching from the north and south. If a person was to enter the sports bar on the right (sign #3) it is very visible to see the Grotto's Pizza sign. In his opinion, he did not see why the bar sign could not be moved to the north side to keep in compliance. He understood what the owner wants, but at the same time he is looking for an Exceptional Practical Difficulty where it would inhibit the business.

Vice Chairman Ericson commented on the purpose of the Board of Adjustment. The City gets together and enacts regulations. They decide on how they would like for the City to look. There are some cities that have signs everywhere and it looks bad after a while. Therefore, the procedure that was put in place as to what they wanted to see regarding signs and all of the other businesses in the area are conforming to the code by having one (1) or two (2) signs. In order to approve the request there has to be some compelling reason why it should be done. The only reason that has been presented is the desire of the owner and that really does not count.

In keeping with the rest of the area, if the other businesses meet the code, and Grotto Pizza wants to do something more and exceed the code, if the Board approved the request for no unique reason, then in essence we are telling all the other businesses that they can do what they want. The Board of Adjustment does not do this. The Board has to have a specific reason why it is necessary. If one of the conforming signs can be taken down and moved to the north side that would be fine. He did not see where the other sign was needed and it would establish a precedent that the Board could not live with.

Mr. Rogers stated that they thought it was an Exceptional Practical Difficulty because it is a large blank wall and if you look at any direction in the parking lot of Best Buy you see a sign for the other establishments, but there is no identification of the Grotto's Pizza building from that position.

Vice Chairman Ericson stated that when you drive in front of the building you can see the sign at all times. He suggested that one of the signs already located on the front of the building can be moved to the north side of the building.

Responding to Vice Chairman Ericson's question if the Board said no, what would they do, and if they had another solution, Mr. Rogers stated that he did not think that there was another solution. If the Grotto's Sport Bar sign was relocated to the north side then people would be misled in thinking the building was a Sports Bar and not a family restaurant.

Vice Chairman Ericson stated that the current signs would meet applicant's needs. He did not see a reason for the third sign.

Mr. Rogers stated again that the third sign is to make it visible for the people in the Best Buy, Ashley Furniture, and Michael's parking lot. If you are in the parking lot in any position you cannot see any identification of Grotto's Pizza.

Vice Chairman Ericson stated that every other business out there could make some kind of reason and the same request.

Mr. Rogers stated that after attending a meeting in Dover last night he drove Route 13 quite extensively to see how many situations where people could have this unique situation. He did not find anywhere with the way the strip centers were done and the older growth with additions. He was sure there were some out there, but didn't see any. This is such a small sign he did not see where anyone near here could apply for a third sign. He looked at areas such as Petco, H & H Gregg, Lowes as well as other parking lots. Most of the strip centers only have 15 or 20 foot frontage. Dover Downs has one situation where there is a sign in the back. They would not have applied for the third sign if they did not think that putting a sign on the blank wall of less than 1% to say the name to the parking lot next door did not show some kind of degree of practicality.

Mr. Senato stated that the Board understood where he was coming from, but he had a two-fold purpose in his mind to help the people that come before the Board in any way that they can and yet the Board has an obligation as far as the code is concerned. Grotto's Pizza is very well known in the area throughout the state. He does not like to set precedent where the Board agrees with something on one end and open it up to all the other businesses in the area. He has to look at the entire picture and not just one business. He does sympathize with the applicant regarding the north wall, but there is a solution that he thought was reasonable in his mind that he mentioned previously.

Responding to Vice Chairman Ericson's question of what would be in the applicant's best interest to keep the Sport's Bar Sign or take it off and put the other sign on the north side of the

building and you would still have the large Grotto's Pizza Sign on the front. There is a solution. Mr. Rogers restated that the applicant (owner) felt that it was very important that the Sport's bar have a separate entrance.

Vice Chairman Ericson stated that the owner has a choice to either keep the signage as is or take one of the signs down and put up the new one if he wants to meet the current code.

Mr. Rogers stated that he could not speak for the owner; he was there to present what the owner had requested. Vice Chairman Ericson stated that he understood.

Mr. Rogers stated that he looked at everything as individual cases and reiterated what was previously stated.

Vice Chairman Ericson opened the public hearing.

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

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

Mr. Keller stated that he would like to give for clarification for the applicant regarding the Exceptional Practical Difficulty from the code Section 2.11 (d). He did not feel that the lack of a sign on the north face demonstrates Exceptional Practical Difficulty whereby the owner could not make other improvements to the property that are permitted uses. The permitted uses are not basically signage; but a retail food establishment. It can continue and improve in that regard even in the absence of an approval for a variance for replacement of that sign. That is his basis for stating whether there is an Exceptional Practical Difficulty existing in this application. With regard to the nature of the zone, the use of the property is in conformance with the nature of the zone. Various retail stores and restaurant are recognized that the character of the immediate vicinity and the uses therein are in conformance with the zoning along that strip corridor. He reiterated the comments regarding the effect of neighboring properties and uses, and the Board's obligation to enforce the code and give due consideration for any variance request. Even with the photographs represented with regard to the property to the north; he noted that each of them only have one sign on the face of each building. He only viewed one sign on the building of the farthest end of the parking lot to the north. There is not an abundance of signage that he sees by virtue of the exhibits presented that demonstrates that there is an abundance of variances in the sign code in that area.

Mr. Senato stated that he was in concurrence with his colleague and he believed that there is a solution as previously stated that might not be accepted by the owner of Grotto's Pizza. He did not feel that there was a demonstration of Exceptional Practical Difficulty.

Mr. Rogers stated that he was trying to think things through for a solution by staying in conformance with the code by removing the rear sign that is nonconforming and leaving the two (2) building signs.

Responding to Mr. Rogers's question whether an entrance sign for the connecting road between the parking lot was allowed; Mr. Cook stated that there are provisions for directional signage under a certain limit that would not require a permit. For example, a directional sign at a fast food restaurant that directs you to the drive thru or it states "in" or "out". He stated as previously noted, that the monument sign to the south , and the existing pylon sign had met the limits of the code.

Mrs. Townshend stated that directional signs were limited to no more than 5 SF per sign plus 1 SF for each additional tenant. A permit is required for directional signs identifying an entrance or exit if it is over 5 SF. Directional Signs shall not exceed 8 SF and shall not be over 4 feet in height.

Mr. Rogers stated that therefore looking from the parking lot across to the building you will be able to see the directional sign because it is very dark in the corner.

Responding to Vice Chairman Ericson's question of what corner, Mr. Rogers stated the corner facing the parking towards Best Buy where the connector is located. This would give the owner some type of legal identification of the property.

Mr. Keller stated that the directional sign could give clarity to customers in the Best Buy parking lot entering and exiting.

Responding to Mr. Keller's request for clarification about permitting for an allowable directional sign, Mrs. Townshend stated that a directional sign could not to exceed 8 SF and shall not be over 4 feet in height. It would require a permit if it is more than 5 SF, but would not if it was less.

Responding to Mr. Senato's question that the sign to the rear facing Dover Downs is going to be removed, Mrs. Townshend stated it would be removed.

Mr. Senato stated that therefore the building would have two (2) signs that would be within code and a permit for the north side directional sign.

Responding to Mr. Senato's question of how the directional sign would affect the current variance, Mrs. Townshend stated that it is independent of the variance.

Mr. Senato moved to deny variance V-15-14 based on the testimony given today the applicant did not demonstrate Exceptional Practical Difficulty and the extra sign would be out of character for the area and possibly setting a precedent within that area. The motion was seconded by Mr. Keller and unanimously carried 3-0. Chairman Sheth and Mr. Hufnal were absent.

Vice Chairman Ericson stated that he hoped the solution of a directional signage works out well.

Vice Chairman Ericson asked if there were any questions.

Mr. Cook announced that the City is holding a GIS Day event today that is done by the Public Works Department and is being held in the City Hall Conference Room. This is a demonstration of some of the mapping software and electronic mapping resources that the City uses to conduct our daily operations. One of the events consists of Ariel Golf Tournament; all are welcome to stop by.

Vice Chairman Ericson stated that the next Board of Adjustment meeting is December 16, 2015.

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

Meeting adjourned at 10:10 A.M.

Sincerely,
Maretta Savage-Purnell
Secretary