**CITY OF DOVER**
**BOARD OF ADJUSTMENT MINUTES**
**July 15, 2015**

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, July 15, 2015 at 9:00 A.M. with Chairman Sheth presiding. Members present were Mr. Hufnal, Colonel Ericson, Mr. Keller, Mr. Senato, and Chairman Sheth.

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

**APPROVAL OF AGENDA**

*Mr. Hufnal moved to approve the agenda as submitted, seconded by Mr. Senato and unanimously carried 5-0.*

**APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF JUNE 17, 2015**

*Mr. Keller moved to approve the meeting minutes of June 15, 2015 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 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-15-10**

1121 Forrest Avenue. Modern Maturity Center Inc. has applied to the Board of Adjustment for a variance from the requirements of Article 5 § 4.7 of the *Zoning Ordinance* pertaining to the maximum permitted sign area for a monument sign in order to allow construction of a 59 SF monument sign. Subject property is zoned IO (Institutional and Office Zone) and subject to the COZ-1 (Corridor Overlay Zone). The Tax Parcel is ED-05-076.07-01-25.00-000. The owner of record is Modern Maturity Center Inc.

Mr. William Cook Exhibits for the record: Staff Report and plans submitted by the applicant. The legal notice was published in the Delaware State News on July 5, 2015, and the public was

notified in accordance with the regulations.

Mr. Cook gave a brief overview of the application.

Mr. Cook stated that if the residential property is within 200 feet and fronting on the same street as the subject property, that is the qualification for "adjacent to residential."

Responding to Colonel Ericson's question if the property was not that close to residential, what would be the limitation on the site, Mr. Cook stated that a non-residential property located on an Urban Minor Arterial would be allowed 64 S.F.

Mr. Cook stated that there are limitations regarding changeable signs such as electronic display or changeable letters. The changeable sign area can only be 70% of the maximum sign area. This information was not included in the report, but does not affect this application.

Responding to Mr. Senato's question regarding the 70% maximum sign area of the changeable letters and if it was really in place, Mr. Cook stated that maybe it should not have been mentioned because it is just a part of the sign regulations.

Responding to Mr. Senato's question whether it would be a factor in this application, Mr. Cook stated no. A sign cannot be just an LED display and must have accompanying fixed signage.

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

*Chairman Sheth stated that he was notified as a property owner, but did not see any issues.*

Representative: Ms. Carolyn Fredericks, Executive Director Modern Maturity Center

Ms. Carolyn Fredericks was sworn in by Mr. Rodriguez.

Exhibits distributed.

Ms. Fredericks thanked the Board of Adjustment for the opportunity to come before the Board to request an approval of the variance. She presented a picture tour of Route 8. She realized that there were all different kinds of areas and zoning requirements on Route 8. She began with the Modern Maturity Center as the road frontage is approximately 674 feet. There were other pictures taken of signs that appear on Route 8 including many commercial signs (referring to photos 2, 3, 4, and 5). She stated the realization that shopping centers are different from the Modern Maturity Center and all have different Zoning. She would like to add an additional response to question #3 that talks about the property adjacent to the Modern Maturity Center. She referred to pictures (6, 7, and 8) showing the property adjacent to the Modern Maturity Center and the condos/apartments next door. Picture #6 shows the location of the sign (view of the sign looking west), and behind the trees shown would be the apartments. Picture #7 is from the Modern Maturity property going out to the traffic light, and Fredericks noted the apartments cannot be seen due to the vegetation on the right of the photo. Picture #8 is the apartment

property and the sign cannot be seen from there due to the trees and vegetation.

Responding to Mr. Keller's question whether the property was Presidential Court townhouses, Ms. Fredericks was not sure if they were townhouses. It was clarified by the Board of Adjustment members that they were townhouses.

Ms. Fredericks also referred to staff comments regarding the cluttered and confusing appearance to put multiple tenants on the sign. She referred to page 9 and 10 of signs in the area that show multiple tenants where the road frontage is much less than the Modern Maturity road frontage. The Medical Arts Building is totally obscured from Route 8. The building cannot be seen while driving by and is located behind the Modern Maturity Center. Therefore there is no indication from the road that indicates that there is a Medical Arts Building that provides physical therapy, physicians, adult education, and other services. Unless a driver actually turns onto the property to find the other signs suggested they would have no idea the building is located behind the Modern Maturity Center. The requested variance will help the tenants inform the public that are driving down Route 8 that there are businesses located behind the Modern Maturity Center that are not visible. She was not in agreement with Staff Recommendation to move the sign over because they currently have electric service at the current sign location. It would be a financial hardship for them to move the electrical service. She was not sure of the exact cost. The traffic light was installed for safety of daily clients. If the sign was relocated to the middle of the property, people traveling from west to east on Route 8 would not see the sign until they got past the traffic light. They would then need to make an illegal left turn into TD Bank to turn around or go to the traffic light at Saulsbury Road and make a U-turn. This is a very dangerous intersection where there have been many accidents. This would not be safe for the clients that visit the Modern Maturity Center daily. The signs shown on page 11 and 12 are fairly close to the Modern Maturity Center, but Fredericks was not sure if they fell within the same City Zoning regulations. Sign #11 (Subway) is approximately 68 S.F. which is larger than what the Modern Maturity is requesting. If you look above at the sign to the left there is a residential house that is occupied and is less than 200 feet away. Sign #12 (Arby's) is 85.5 S.F. and is directly across the street from Old Oak Condominiums and is also less than 200 feet. She thanked the Board again for allowing her to present their feelings on the increased signage. She thinks it is a beautiful sign and would be a great addition. Some of the signs on Route 8 could use some improvement. She thanked the Board for the consideration of their request.

Chairman Sheth agreed with Ms. Fredericks regarding Subway, but clarified that they are commercially zoned and are grandfathered.

Responding to Chairman Sheth's question whether the people were tenants or working for the Modern Maturity Center, Ms. Fredericks stated that they were tenants.

Responding to Colonel Ericson's question regarding the exhibits and if numbers 11 and 12 signs were built before the unified sign regulations, Mrs. Townshend stated that all of the signs that are referenced were built prior to the current sign regulations which were enacted in 2012.

Responding to Colonel Ericson's question if the signs were changed Subway and Arby's would have to comply with the new sign regulations, Mrs. Townshend stated that if they added new

signage or refaced it would be permitted to stay the same size. They would not be able to change, move or increase the signage.

Responding to Colonel Ericson's question whether the entire movement was to put the entire city under the same signage regulation and ultimately meet the same standards, Mrs. Townshend stated that the regulations treat things that are adjacent to residential differently from those that are not. An exception to the adjacent to residential status exists on principal arterial roads such as Route 13 and Bay Road. If a property is adjacent to a residential property on Route 13 or Bay Road the property is not bound to the smaller sign standard. The code does not treat minor arterials in the same way. Travelling along Route 8 you will notice many signs that are larger than what permitted on the Modern Maturity Center property, and those signs are conforming with the sign regulations because they are not adjacent to residential. This application is challenging because the property is adjacent to residential. Meaning; that there is residential property (townhouses on the other side of the trees and across from Route 8) within 200 feet of the frontage of the Modern Maturity Center.

Responding to Mr. Hufnal's question if the signage was moved 200 feet from the residential area they could have up to 64 S.F. and this one is 59 S.F., Mrs. Townshend stated that it relates to property lines and not the sign location.

Mr. Hufnal questioned whether the approval would be to allow the sign to be closer to the residential zone rather than a variance of the size, since if the sign was moved 200 feet they could have up to a 64 S.F. sign. Mrs. Townshend clarified that the code stated "adjacent to residential" meant that property lines situated within 200 feet and fronting on the same street as a parcel or group of parcels containing residential uses, or that are zoned for residential uses, excluding residential uses in districts fronting on principal arterials.

Responding to Colonel Ericson's question whether the application were approved would it be setting a precedent for others to use the same argument to demand larger signs, Mrs. Townshend stated that potentially on minor arterials, but since the last update of sign regulations the city has not touched this definition. There is a valid question as to whether the minor arterials that would include North Street, State Street, Route 8, Hazlettville Road and Governors Avenue should be exempt from the requirements of adjacent to residential. There is a potential to change the code if it is determined that it is too difficult for the businesses that are on the minor arterials.

Responding to Mr. Keller's question regarding the photos submitted by Ms. Fredericks was on commercial sites and not institutional office, Mrs. Townshend concurred.

Responding to Mr. Keller's question whether there was a difference between commercial and institutional office regarding the sign regulations, Mrs. Townshend stated no, not in the sign regulations, the sign area is governed by the road classification and whether it is adjacent or not to residential. Many years ago it was governed by zoning classification.

Responding to Chairman Sheth's question whether signage was approved for the Capital School District on South State Street, Mr. Hufnal stated yes the one on South State Street and Walker Road, but he was not sure of the zoning, but next to it is residential.

Mr. Hufnal commented on Staff response "the desire to provide sign area for each individual tenant is not always practical, can give a cluttered and confusing appearance, and may detract from the ability of the sign to serve as a wayfinding device," he would rather see just as proposed with all of the items than to have a bunch individual signs directing to the areas in the back of the Modern Maturity Center. The proposal looks less confusing and more distinct to the point. You cannot see those particular offices from the road itself unless you went behind the building unless you knew they were there you would not have access.

Colonel Ericson disagreed with Mr. Hufnal's comment and stated that when there is an LED (Light Emitting Diode) sign everyone looks at it and ignores everything else. By having a LED sign with moving letters and everything else you really obscure what you are trying to advertise above. He actually thought that you are really going to detract from the ability to find these places.

Mrs. Townshend explained the example of medical offices (for example Eden Hill), where if there are many tenants it is difficult and could be confusing based on the scale of that type of use to have every tenant on a sign. Again, this facility is smaller and has fewer tenants and may be more comparable to offices on Beiser Boulevard that signage for dentist, physical therapy, and other medical offices on their monument signs.

Mr. Senato stated that on the South Dover School and the old Dover High School signage, when they came before the Board of Adjustment they were primarily going to electronic or LED signage and there was nothing else on it. He agreed with his colleagues that all of the signs seen throughout the City (for example: White Oak Road and Route 8) are not LED, but are a certain size. Most times people know where they are going. The same goes for the Modern Maturity Center and putting both the sign and the LED is self-defeating. Most people patronizing the tenants within Modern Maturity Center already know where they are going.

Mrs. Fredericks stated in regards to the LED sign there are multiple events held on the property that require temporary sign permits in order to place a sign in front of the facility so that they can advertise different functions. There is a limit on the number of temporary sign permits you can obtain per year. The Modern Maturity Center is not allowed to advertise their special events due to the limitation on temporary sign permits. Not only would the LED component of the sign allow the Modern Maturity to advertise their events, they could also make arrangements with the tenants for shared use of the LED sign.

Mr. Cook commented that temporary signs are limited to 90-days in a calendar year.

Mr. Senato stated that this is a unique situation because when thinking of all the signs he sees throughout Dover, there is either a LED sign or an advertising sign with the tenants. He did not recall any sign in Dover that has a double LED and advertising signs for the tenants. He understood that the Modern Maturity has a lot of activities, but he felt that it was counterproductive.

Responding to Chairman Sheth's question whether this was an Institutional Sign, Mrs.

Townshend stated that it is an Institutional zoned; sign regulations do not specify Institutional verses other uses. Mr. Cook stated that if there was a shopping center on the property it would be the same.

Responding to Mr. Keller's question regarding the approval of the current sign in 2006 and April of 2015 there was a request submitted and subsequently denied. With the denial was there any consideration given to go up to the maximum 32 S.F. which would represent approximately 33% increase in the current sign area and still staying within the allowable sign face coverage according with the code. The current request represents a 145% increase in the current sign area which is pretty excessive with the other matters presented by the City. Ms. Fredericks stated that it was considered and Modern Maturity Center has another tenant that would like to be advertised on the sign, therefore; the tenant space would be very small and the 32 S.F. would be too small for the road frontage sign.

Responding to Mr. Keller's question of the additional tenant, Ms. Fredericks stated University of Delaware Continuing Education which is shown on the proposed sign and not the current sign.

Responding to Mr. Keller's question whether the Modern Maturity Center had any additional standalone facilities on the site, Ms. Fredericks stated that there is a medical arts building in the back where most of the tenants are located. The address is 1125 Forrest Avenue and is totally obscured from Route 8. The building has been expanded and is double the size. As Ms. Fredericks referred to the screen photo she stated that the grassy area to the right now has another facility which is now one big facility.

Responding to Mr. Keller's question whether it was the existing building with just an extension, Ms. Fredericks concurred.

Responding to Colonel Ericson's question whether there was other space in the building that the Modern Maturity Center might be adding more tenants, Ms. Fredericks stated no, they are maxed.

Responding to Colonel Ericson's question regarding the request for two (2) lines of LED display, would the applicant be willing to decrease to one (1) line and making the sign smaller, Ms. Fredericks stated that she assumed she could live with anything the Board of Adjustment tells her she have to live with, what she has proposed is her wish and what is needed for the facility.

Colonel Ericson stated that the Board of Adjustment is struggling with Exceptional Practical Difficulty or Hardship and setting a precedent.

Mrs. Townshend stated to be clear; the standard is Exceptional Practical Difficulty.

Colonel Ericson stated that if the application was approved for the Modern Maturity Center than there are many other streets and businesses that could use this case as an argument to give them the same legal aid from the signage code.

Ms. Fredericks stated that if you go around Dover you will see that LED signs are becoming very

popular and there are many in the Dover area including Dr. Schwartz. She has not looked at his LED sign to see if he advertises other tenants that are in his facility, but he has a large LED sign on Saulsbury Road.

Responding to Colonel Ericson's question whether the Modern Maturity Center eliminated five (5) individual signs and put everything on LED could that work and still stay in within the 32 S.F., Ms. Fredericks stated that she likes the permanent advertisement of the tenant so that people will always see it as they are going by.

Mrs. Townshend reiterated the point already stated by Ms. Fredericks that they are currently getting temporary sign permits, and there is the 90-day limitation per calendar year. With LED signs you would not see as many temporary signs and it could reduce some of the sign clutter that you would normally see with non-permanent banners. Especially when the Modern Maturity Center does a lot of special events that makes sense for this type of facility.

Responding to Mr. Senato's question whether there will be three (3) lines on the LED sign, whether there was a possibility of a fourth line as a suggestion. Instead of the permanent Dynamic (physical therapy tenant, as an example) tenant sign area, there could be space for changing tenant sign areas on top for a specified number of seconds, while other portions of the sign could be used to advertise upcoming events. Fredericks stated that it could be taken into consideration, but the permanent placement of the tenant sign area is what they are looking for to advertise their business since they are obscured from the view of Route 8.

Mr. Senato stated that the tenant is obscured from Route 8 because they chose to rent in the back of the Modern Maturity Center which is not the only place in the area that could be rented.

Mr. Keller commented that the proposal shows allowing 29 inches for the three (3) lines of LED which would be 8 to 9 inches high per line.

Mrs. Townshend stated that the LED shows three (3) lines of text, but an LED sign may be one (1) large line of text or six (6) lines of text. She wanted to clarify this to ensure that board members did not focus on the number of lines of text on the LED sign panel. It depends on how the LED sign is programmed.

Chairman Sheth stated that Route 8 will become a benchmark for everything done before the Board of Adjustment. Route 8 is the first expanded road after Route 13. He used the back of a hardware store on Route 8 as an example when it went before the Planning Commission and the Board of Adjustment did not agree or like the sign. This benchmark was used for H&H Gregg when they applied for a sign and were forced to plant trees making it look less like a warehouse area upon entering the City. There were signs and building problems consistently coming before the Board of Adjustment. He also mentioned Block Buster who wanted to have a slanted sign and was denied. The Board of Adjustment has consistently improved the City's image. Presently a new building is built they will not come before the Board of Adjustment for a variance approval because the Planning Commission will make the decision.

Mrs. Townshend stated that there are a number of things that can be done to tweak the sign

regulations. There is 674 feet of frontage and the adjacent to residential definition deals with the property line. Maybe the adjacent to residential definition should be changed to relate to the sign location not the property line. You could be 600 feet from a residential zone depending on the location. This could be looked at as a sign code amendment.

Responding to Colonel Ericson's question of the length of time it would take to amend the code, Mrs. Townshend stated that she did not totally agree that the sign regulations needs to be re-written because it has been done twice in the past six (6) years. If it needed to be done it would probably be November. Typically if the Board of Adjustment is granting variances because they make sense, and the code does not, then that is the time to look at changing the code. There have been a number of items that were discussed in the past such as the Industrial Park zoning and it would probably be the end of the year before the city can get something done. If it is the view of the Board of Adjustment that the request makes sense, and you can find where it meets the criteria for a variance, then the city can subsequently address the issues. She stated she believed that future issues could come up on Route 8, and the city wants to see more development on Route 8 because there are non-utilized commercial properties. The city could also look at the Unified Comprehensive Sign Plan which kicks in if you have three (3) buildings or if you have 400 or 450 feet of frontage on a principal arterial. Maybe it should be on a principal or minor arterial. If you have 674 feet of frontage you clearly have a large facility and the sign needs are different. She thinks there are things that can be done in the code that can address this in the future. She would not want to push this application off until then. If the concern is precedent and feel that the four (4) criteria are met the city could elevate the code amendments that would fix this for future cases.

Mr. Hufnal stated that the Board of Adjustment has done other applications where the buffer was required, but this property already has a natural buffer. Technically if it was moved 200 feet it could go up to 64 S.F. Could this be temporarily accepted until the code is reviewed? Mrs. Townshend stated that it certainly addresses the issue of the character of the area, proximity to residential, and whether there would be any impact to adjacent properties. She noted board members previous statements regarding the large frontage, and the location of the office space at the rear of the property that lacks visibility. These conditions can be considered practical difficulties for the Board to consider with regard to this case, and staff may subsequently consider such conditions as future code amendments are crafted and considered.

Chairman Sheth stated that the Board of Adjustment has a lot of impact on what is currently seen compared to years ago (such as large pole signs). He also spoke regarding Pennsylvania Avenue for an easement request of 33 S.F. and the Board of Adjustment suggested 23 S.F. He recalled comments by former governor Castle some years ago advising for careful planning around Route 13, and to use zoning properly, since the infrastructure is expensive and difficult to change. Sheth said that today's Route 8 should be of similar focus.

Chairman Sheth stated that the Board of Adjustment is the only avenue to get work done if it does not fall within the realm of ordinance and code. Therefore, Board of Adjustment decisions have serious impact on the City of Dover. Referring to his previous anecdote about a hardware store, currently all that is seen is a blank wall on Route 13. He referred to a building on Saulsbury Road where changes were made after Board suggestions of a window or door as

architectural features to improve the look and character.

Responding to Mr. Keller's question as he referred to exhibit page 1, whether Ms. Fredericks had given any consideration to not displaying Modern Maturity Center on the sign itself and display the tenant's information as opposed to taking up 8-12 feet of the sign explaining the Modern Maturity Center. Due to the large signage on the building face, he thought it was clear to all where the facility was and what it was. Ms. Fredericks stated that Modern Maturity Center needs to be on the monument sign. If you go by any other facility that lists multiple tenants you will notice at the top the name of the shopping center. It is the Modern Maturity Center facility and they should be allowed to advertise on their sign.

Chairman Sheth stated that what could be proposed as a code amendment is 200 feet from the sign not from the property line. In any event if it is approved by the Board of Adjustment and the precedent is established it will be 200 feet from the sign not from the property line and it would be legal.

Mr. Senato stated that he agreed with Mr. Keller. He would presume that the Modern Maturity Center on the sign may be a third larger than the other signs and as you are driving up and down Route 8 on any given day (at least for him) he knows what and where the building is located because the existing sign really stands out. He thinks that everyone knows where the Modern Maturity Center is located. He suggested making the tenant sign larger and more visible.

Mrs. Townshend stated that under the *Zoning Ordinance* and a Variance the Board of Adjustment can set the size of the sign not the content.

Mr. Senato agreed to yield to the correction.

Mr. Keller commented that when the Board of Adjustment undertakes consideration of the Exceptional Practical Difficulty test, the difficulty must be inherent to the property, not a routine difficulty. He stated that he remained unconvinced that there is an Exceptional Practical Difficulty. This may be deemed routine difficulty in considering the size of the sign, maybe primarily due to the number of tenants that have been added to the usage of the site. Nonetheless, even to give consideration to additional tenants is a personal undertaking by the corporation or entity. It is not an inherent problem in the property itself. The property is not generating the Exceptional Practical Difficulty.

Mrs. Townshend responded that in the case of a Use Variance where the standard is hardship, the condition is something that has to relate specifically to the property. The Exceptional Practical Difficulty does not necessarily have to relate specifically to something inherent in the property. The difficulty should be something that's an *Exceptional* Practical Difficulty not just a practical or routine difficulty. Again, that is a subjective measure for the Board to decide. Any decision must be clear in the motion the reasons why the Board determined there to be an Exceptional Practical Difficulty (if approved) or a routine difficulty (if denied).

Colonel Ericson stated that he could see where this could be an Exceptional Practical Difficulty because it is a unique property as well as a large building with a large frontage in front of the

Medical Arts Center which cannot be seen from the street. The only way you will know the center is there is from the sign. As mentioned earlier, there is a buffer zone and it looks like the code will be proposed (amended) to make it based upon the distance measured 200 feet from the location size and not the property line, which would solve the problem.

Mrs. Townshend stated for clarification that the current sign location is not 200 feet from the residential properties. On the Adams Court properties there is significant buffering which is 170 feet.

Mr. Cook stated that he noted in the Staff response (question 3) he gave some approximate measurement of the proposed sign from the adjacent properties. He came up with the nearest part of the property address (17 Adams Court) was 125 feet from the sign location. Mrs. Townshend added that this was the area where there was significant vegetative buffering, and noted that the properties across the avenue were approximately 170 feet from the proposed sign location.

Responding to Mr. Hufnal's question whether the dimensions will be reviewed when looking at the code revision, Mrs. Townshend affirmed.

Responding to Colonel Ericson's question whether the proposed sign location would be more than 200 feet from the nearest residential property, Mrs. Townshend concurred and stated that it would not unless it was relocated. There are other factors that can be considered if the Board of Adjustment would like to grant approval of the application at the current location.

Responding to Colonel Ericson's question whether the proposal was going to be 200 feet from the sign to the residential properties, Mrs. Townshend stated again that it is 200 feet from the property line now in the code. The City can review the numbers. When previous changes to the sign regulations were made, they were altered. For example, there was a 150 feet exclusion zone between pylon signs on the principal arterial that was reduced to 50 feet. The city would need to review why the number is 200 feet and make a justification that it is an appropriate distance.

Mr. Senato commented that the majority of the discussion today was a proposed change in the future by Council. Hypothetically, he did not think the Board of Adjustment should vote a certain way because Council possibly could make a change in November, but the Board of Adjustment is not sure. This would be the wrong avenue to take at this point. The Board of Adjustment would need to evaluate what is currently in front of them and not what might happen.

Chairman Sheth recalled his prior comments regarding Route 8, whereby many years ago he noted that there would be many technical problems related to development on Route 8. Travelling from Loockerman Street and continue to Byler's you will notice on the right and left many residential neighborhoods. He reiterated Governor Castle's comment that a lot of money has been invested in infrastructure, and if the infrastructure is not used properly, it would be detrimental to the City. Any new development on Route 8 would be near residential and that is why it is important to consider decisions carefully so that the same cases do not keep appearing before the Board in the future.

Mrs. Townshend suggested that if we realize that there is something in the code that needs to be addressed and documented she did not know that the Board of Adjustment needs to worry about the specifics in terms of 200 feet verses 100 feet. Instead note that the request meets the criteria of the *Zoning Ordinance* as it relates to an Area Variance. This is something that is likely to come up in other cases and staff should look at a code change similar to how they did with the parking for restaurants. Staff will do whatever research is needed to take to Council. She did not know if they needed to debate the details of whatever code change there is, but to identify that there is something in the code that should be changed to keep similar cases from coming to the Board of Adjustment rather than just being able to be permitted. If it is something that is in the interest of the community and make sense, then it should be allowed versus not allowed. She advised the Board to document their action on the applicant, the reasons, how the variance complies with criteria, and not that this is an area that needs future evaluation in the code.

Chairman Sheth noted that because of the Ordinance and the State Highway Department problems, we struggle and stopped a hundred million dollars of construction in the past three (3) years on Route 13 where things could not be done, including five (5) restaurants, a drugstore, a supermarket and other institutions coming to Dover and they were stranded. This causes people to move businesses elsewhere.

Colonel Ericson stated that this is a very complex matter and it is not as easy as one might think.

Responding to Colonel Ericson's question if the application was tabled until there was action from Council would it cause any problems, Ms. Fredericks stated it would not cause hardship, no, but she would like to get the signage up as soon as possible to advertise their events and tenants. She believes it would bring in more businesses to the people that are renting from them. She would hope that the application would not be tabled.

*Chairman Sheth opened a public hearing.*

***In Favor of Application***

Mr. John Welgan of 1082 Forrest Avenue was sworn in by Mr. Rodriguez.

Mr. Welgan stated that he had no objection to the Modern Maturity Center Sign. They have significant frontage to have a bigger sign.

*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.*

Responding to Mr. Hufnal's question whether there were any objections from the neighbors on Presidential Court, Chairman Sheth stated that he was one of the neighbors and he has no objections. Mr. Cook stated that he did not receive any correspondence.

Mr. Keller commented that he would caution himself that the decision is not based upon

proposals or possibilities of zoning changes, because the Board of Adjustment is called upon in his estimation to address a specific variance request submitted by a petitioner. While the Board may give consideration under the basic four provisions that the Board evaluates, the body should be cautious about not lending too broad of support to future code changes that could completely change zoning requirements.

Chairman Sheth understood and appreciated his comment.

Mr. Hufnal noted that he considers this a unique situation as the Board of Adjustment has approved signage proposals in the Industrial Park (Uzin Utz). That was with the hope that the City would look at the zoning because we are going to get more and more construction in the Industrial Zone. This is a unique situation because it is a long time establishment in Dover and they certainly have ample frontage to provide for a bigger sign. If it was moved they could certainly have the sign, but due to the hardship with electricity it is in a certain spot which gives direction into the facility from a traffic light and he thinks the benefits outweigh the negatives and the fact that there is an existing buffer that would take care of any complaints. He sees the sign as being a plus for the community and for the Modern Maturity Center.

*Mr. Hufnal moved to approve application V-15-10 based upon the testimony and comments given today, based upon the testimony he gave including the reference to the buffer zone, the Medical Arts Building is behind the main building and not visible from the road and any signage would not be visible from Route 8, Chairman Sheth seconded the motion.*

*Colonel Ericson amended the motion to include the recommendation that the Planning Commission review signage regulations as discussed.*

Colonel Ericson added that this is a unique property, the fact that the Modern Maturity Center has a very large frontage, behind it is a Medical Arts Building which cannot be seen from the road, therefore; signage is critical to directing people to the tenants. Temporary signs are being used now to advertise special events and other activities. This sign would solve that problem. Staff stated that this is one area that signage code should be looked at and possibly amended with the intent for it to be done in the future so that there can be larger signs that will not be based on the distance from the residential properties to the non-residential property lines, but rather the distance between the residential property and the sign. The motion should be passed for V-15-10.

Chairman Sheth concurred with the amendment.

Mrs. Townshend restated the motion for clarity. The motion including all of the other information that has been added, is to approve the variance based on the details of the public testimony, the existing buffer between the location of the sign and the adjacent properties on the north side of Route 8, because of the significant frontage of 674 feet that the Modern Maturity Center has, and the fact that the Medical Arts Building is located behind the main building and has no visibility from the road which presents an Exceptional Practical Difficulty, and because temporary signage is frequently used and with the change in the sign it would reduce the need for temporary signage. Staff will evaluate potential changes to the *Zoning Ordinance* to prevent similar cases from coming before the Board of Adjustment in the future.

Chairman Sheth concurred and seconded the reinstatement of the motion.

**Questions/Discussion/Comments**

Mr. Keller stated that he still remained unconvinced as to the Exceptional Practical Difficulty even with the statement made about the remote location of the one facility to the rear of the property. In his estimation it is not unlike any of the other tenants which cannot be seen or do not have visible frontage on Route 8. They are no more visible by being on the interior of the large building. It still fails in his mind to meet the Exceptional Practical Difficulty standard. He was also disappointed in the display that no effort has been made to create a structure that would be within the limitations of the Code which could be done by an increase in the existing sign of 33 plus percent. A 145% increase in sign area represents a substantial increase in the sign area regulations. Additionally, he finds that the vegetated buffer as it exists has no assurance that it could not be removed, and therefore may not be a permanent condition.

Mr. Senato concurred with Mr. Keller's previous comments. He added that between Staff recommendations and what he heard today he did not see any demonstration of Exceptional Practical Difficulty, and there was no lead way given by the Modern Maturity Center to make any changes. He strongly thinks that until there is a code change the priorities are going to be set particularly for larger signs and he was not comfortable with that.

**Roll Call Vote**

**Mr. Keller** – No, after giving due consideration to comments just made during the opening comment period regarding lack of a substantial finding for Exceptional Practical Difficulty, as well as concerns with residential property matters associated with the application, and due to the excessive request over and above the limitations of the existing square footage for the sign.

**Mr. Senato** – No, because a precedent will be set and there was no real Exceptional Practical Difficulty proven.

**Colonel Ericson** – Yes, it is a unique situation, and the sign code needs to be reviewed and changed. It would be in the best interest not only of the party making the request, but the City to use common sense.

**Mr. Hufnal** – Yes, based on his comments made in his motion and also concurring with Colonel Ericson comments.

**Chairman Sheth –** Yes, it is an outstanding institution, they increase the population of senior citizens in this area, it is a well-run institution. No one has any personal agenda about any profit motive, but it does require exposure of the services that they are providing.

*Motion passed and application granted with three (3) yes and two (2) no.*

**Discussion regarding motions to be presented to the Planning Commission**

Colonel Ericson stated that everyone needs to gather as a group and make out specific proposals in specific areas.

Mrs. Townshend stated that the Planning Commission has very informal Quarterly Workshops and suggested that the Board of Adjustment attend the lunch meeting. The next Quarterly Workshop is scheduled for August 2015.

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

Meeting adjourned at 10:45 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary