CITY OF DOVER
BOARD OF ADJUSTMENT MINUTES
March 18, 2015

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, March 18, 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. Keller and unanimously carried 5-0.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF FEBRUARY 18, 2015

Mr. Hufnal moved to approve the meeting minutes of February 18, 2015 with the necessary correction, seconded by Mr. Keller and unanimously carried 3-0. Chairman Sheth and Mr. Senato abstained.

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 are two items (new applications) on the agenda under New Business. The application file will be read, and the floor will be opened for questions of the applicant by the Board and for public testimony. If the Board needs to consult the City Solicitor they will 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 applications 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-15-05

1387 North DuPont Highway. 1387 DuPont Highway LLC, c/o Michael Hyansky has requested a variance from the requirements of Article 5 §4.7 of the *Zoning Ordinance* pertaining to the number allowed and setback requirements for signage. Subject property is zoned C-4 (Highway Commercial Zone) with a portion subject to the SWPOZ (Source Water Protection Overlay Zone – Tier 3 Excellent Recharge Area). The Tax Parcel is: ED-05-057.00-01-15.00-000. The owner of record is 1387 DuPont Highway LLC.

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 March 8, 2015, and the public was notified in accordance with the regulations.

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

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

Representative: Dale McCalister, First State Signs; Vince Alessia, Winner Subaru and Winner Volkswagen, General Manager.

Mr. Dale McCalister and Mr. Vince Alessia were sworn in by Mr. Rodriguez.

Mr. McCalister began the discussion regarding the pylon sign. Winner Volkswagen/Subaru is constructing a new building. As part of that project, the existing north entrance to the site will be closed. Currently there are two (2) freestanding signs in the front of the existing building (one Subaru and one Volkswagen). The current configuration of the signs means that vehicles cannot pass from one part of the property to the other. The existing signs block access. To purchase a vehicle you need to use the south entrance, to get to vehicle service you use the north entrance. One of the two existing entrances is planned to be closed, and a fire lane is planned where the existing Subaru sign is located. The Subaru sign currently is the sign closest to the building. A new Subaru sign would be sited near where the existing Volkswagen sign exists, and a new Volkswagen sign is planned at the far south end of the property near Dover Mall. The older existing building is being remodeled to include the new façade for Subaru. The only place a new sign for Subaru could go is where the existing Volkswagen sign is located.

The plans for the site are to install a new Subaru sign where the Volkswagen sign is located, and install a new Volkswagen sign farther south. Mr. McCalister reminded the Board of a past decision at the Home2 Suites property, which requested variances for the sign setback and exclusion zone. That property had a Comprehensive Sign Plan approved by the Planning Commission. All pylon signs require a 50 foot exclusion zone separating them.

The current signs on the property do not meet the setback or exclusion zone requirements. Therefore, what is being requested will be more compliant, will separate the signs, and also separate the dealership buildings. The new Volkswagen building is currently under construction. Normally, a Comprehensive Sign Plan is completed and approved first, then an applicant applies to the Board of Adjustment if necessary.

Mr. McCalister stated that the Volkswagen building has just started site work and obtained building permits, but that one of the existing entrances to the site will close as part of the site work. They need to do this part of the equation first to separate the signs in order to put the new pylon signs in. They are also asking for a variance for wall signs. They need the wall sign variance now, because Volkswagen building construction just started and they have a

Comprehensive Sign Plan ready to submit for the entire site. He estimates the submission and approval timeline to be about two (2) to three (3) months. Without the variance, the Subaru building under construction (and near completion) will not have any signage on the front other than one.

When they close the entrance they feel that it is critical to get the "Service" sign up as directional signage. The service sign is approximately 7 SF. There are very few signs on Route 13 on the front of the building that are 7 SF; they are normally less than 7 SF. This is critical. McCalister brought attention to the architectural elevation of the building, referring to the stone tower feature. If this design element did not exist, the sign area calculation method would be different. If the wall face was all one solid piece they could draw a rectangle around the entire sign, call it one sign, then the building would be big enough to support a 135 SF sign. The location of the stone design element makes the building look better in his opinion, but then the proposed sign arrangement becomes three (3) signs because of the three (3) different and separated surfaces. They are asking for the help for the variance because of a timing issue. They are asking for the most minimal variance. This is not the only sign for this building.

Exhibits

Mr. McCalister stated that the signs presented in the exhibit will be the signs presented to the Planning Commission. These were done by Philadelphia Sign Company. The exhibits are the size of the building that Subaru wants to put signs on. Subaru hires a national company informing them where to put the signs. They will also be asking for the signage around the Volkswagen building. There is a third pylon sign that they will be asking for if the ring road was ever built. All those things including the additional signage will go before Planning Commission. McCalister stated they have a positive Staff recommendation for the pylon sign. He referred to the exhibits as he discussed what the building would look like with two (2) signs (Service and Subaru). Mr. Alessia, General Manager of Subaru was recently informed by Subaru that he had to put the signs up together. The building looks complete and a lot better if it could be finished now. He understood that they could get relief from someplace else, but do not feel the relief would be timely in a manner that would help them. It is a huge improvement of what was currently there. The building is more user-friendly as well as offering drive-thru service.

Chairman Sheth questioned if there was a constraint from the franchiser? Mr. McCalister responded that a letter was received from the franchiser, but was not fond of the idea that a franchiser dictates to a City. The minimum relief is needed by the owner.

Chairman Sheth questioned the reason why the entire case should not just go before the Board of Adjustment or the Planning Commission? Responding, Mrs. Townshend stated that the Planning Commission is not able to waive the requirements as they relate to sign setbacks or exclusion zones. The only way the applicant can receive relief on the issue of a pylon sign setback is to come before the Board of Adjustment. Under the Unified Comprehensive Sign Plan, the Planning Commission does have discretion over the issues of sign area and number of signs. They would also be able to consider the issue of the wall signs. Staff concern is that the role of the Board of Adjustment is to grant relief where there is no other ability within the Code to otherwise grant relief. The issue of the number of signs and sign area can be addressed through

the Planning Commission. Today the question before the Board of Adjustment is whether the timing factor is enough of a justification to grant a variance when there is another recourse available to the applicant to achieve their request.

Responding to Chairman Sheth's question whether Mrs. Townshend felt comfortable that the applicant would not have to reappear before the Board of Adjustment, Mrs. Townshend stated correct. The Planning Commission will not be involved with the setback variance issue.

Responding to Colonel Ericson's question whether the exclusion zone would be a factor, Mrs. Townshend stated no, based on plans from the Applicant the proposal should meet the exclusion zone requirement.

Referring to Exhibit B-6, Mr. Hufnal questioned the sign on the extreme right. Responding, Mr. Cook stated that the sign was fine and was not a part of what is being considered by the Board.

Responding to Mr. Hufnal's question regarding the entrance that is being closed off, Mr. Cook stated that Exhibit B-6 is also the same as the Site Plan sheet. The Exhibit B-6 shows the proposed entrance realignment. The image in Exhibit B-6 is after construction. It shows a single entrance.

Responding to Mr. Senato's question whether the entrance will be to the north of FS-1, Mr. McCalister stated no, it will be to the south between the two (2) buildings. It will be a shared entrance between the two (2) dealerships.

Responding to Mr. Hufnal's question regarding the 7 S.F. service sign would not be totally visible to traffic going by, Mr. McCalister concurred. It will also be below the canopy and the projection. It does not meet the criteria of a directional sign because it is too large. Mrs. Townshend stated that the main issue on the directional sign is that it exceeds the height limit to qualify as a directional sign according to code. Mr. McCalister stated that typically a directional sign is small, low to the ground, and near the road. If the service center entrance was on the side and the sign was not visible they would not need a permit.

Responding to Mr. Hufnal's question whether the service entrance door was glass, Mr. McCalister stated yes.

Responding to Mr. Hufnal's question if rather than the service sign being installed on the building, could it be put on the glass, Mr. McCalister stated that the glass is further back from the building face, but could probably be done temporarily. Normally eye level signs are put on glass. Mr. Hufnal stated his observation that there was a lot of lettering on the glass on the existing building. Mr. Cook stated that there are separate provisions related to window signs. For example, "please pull forward" would characterize as a directional sign and would not consider needing a sign permit. The issue with the service sign is the height; it is too far off the ground to qualify as a directional sign.

Responding to Mr. Senato's question regarding the size of the squares of the glass, Mr. McCalister stated that he was not sure, but could contact the contractor.

Responding to Mr. Senato why the sign would not suffice if the service sign was on the top row and "move forward" was on the bottom as a directional sign. Mr. McCalister questioned what would happen when the door is up, then there is no signage. Mr. Senato stated that perhaps you could open and close the door.

Responding to Chairman Sheth's question whether the same company owned Hyundai, Mrs. Townshend replied yes.

Responding to Chairman Sheth's question whether any member of the Board of Adjustment has a conflict of interest with this company, the response was no.

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

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

Colonel Ericson moved that Application V-15-05 be approved based on the material presented and testimony given. The motion was seconded by Mr. Hufnal and carried 4-1.

Chairman Sheth asked if there were any questions.

Mr. Senato asked for clarification of the procedure regarding the submission of the Unified Comprehensive Sign Plan for review and approval by the Planning Commission. He proposed offering an amendment to the existing motion in order to separate staff's recommendation that the Applicant go before the Planning Commission to obtain the additional wall signs. There was discussion regarding separating the two issues in the variance request: the request for variance from the sign setback requirements, and the request for additional signage on the new Subaru building.

Mr. Keller stated that he wanted to be assured that Colonel Ericson's initial motion refers to the additional wall signage specific to the renovated Subaru building, and has no ramifications with regard to the Volkswagen building to be constructed.

Vote on existing motion

Colonel Ericson – Yea
Mr. Hufnal – Yea
Mr. Keller – Yea
Chairman Sheth – Yea
Mr. Senato - Nay

Applicant #V-15-06
623 Fulton Street. AVA Commercial LLC c/o Michael H. Harrington, Jr. has requested a variance from the requirements of Article 6 §3.6 of the *Zoning Ordinance* related to surfacing of

parking areas and access drives. Subject property is zoned IPM (Industrial Park Manufacturing Zone). The Tax Parcel is ED-05-076.08-01-13.00-000. The owner of record is AVA Commercial LLC.

Mr. Bill Cook, Planner, submitted the following items for the record: Staff Report and Plans submitted by the applicant.

The legal notice was published in the Delaware State News on March 8, 2015, and the public was notified in accordance with the regulations.

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

Representative: Troy L. Adams, P.E., Mountain Consulting; Michael Harrington Jr., Vice President Harrington Commercial LLC.

Troy L. Adams and Michael Harrington Jr. were sworn in by Mr. Rodriguez.
Mr. Adams testified that a parking lot surfaced in stone has been created at 623 Fulton Street. Regulations require dust-free surfaces for parking lots. The applicant was not aware of this regulation. The purpose of the stone area is solely for parking for the surrounding businesses such as Primecare Medical Transport, Gede Insulation, and a mechanical workshop. There are several vehicles parked on the street daily. Primecare needs quick access to Division Street to serve the community thus the stone parking lot was created to help provide parking and alleviates congestion of the street. There are roughly 20-25 cars parked on the lot daily. If the parking lot was not there it would mean 20-25 more vehicles parked on Ridgley and Fulton Street. Ava Commercial plans to develop the area in the future. This is a temporary and transitional area until the company ultimately figures out how they would like to make improvements, in the future additional permanent parking would be done to meet Code requirements. From a technical and cost standpoint asphalt is more expensive and permanent. The company is also considering purchasing the vacant dwelling for sale located on the corner of Ridgley and Fulton Street. The Applicant is asking for an area variance to maintain the gravel parking lot until the future improvements are more solidified.

Responding to Colonel Ericson's question about the length of the transitional phase, Mr. Harrington stated that due to negotiations with the corner property they are in a growth phase. Primecare is running out of space. The plan is to redevelop the entire area. He was not able to give a timeframe. He cited a City of Dover property where a gravel area for parking was while the property was in transition and later developed. It is a similar temporary dilemma. Mr. Harrington said safety is a main concern, and he referenced a recent accident involving a Wesley College student as well as shootings in the area which create ambulances taking off and moving quickly in many directions. He would hate to see Primecare being obstructed by vehicles on the street because those vehicles couldn't park off-street. The gravel parking lot is a temporary fix.

Colonel Ericson stated that there have been times when issues are intended to be temporary and they turn out to last forever. They would like to conform to the Code as much as possible. If the parking is in transition then it would make sense to leave it there, but it should have a time limit

to encourage completion of the development. If the time limit cannot be met then the applicant would have to build a proper parking lot which would consist of paving with curbing.

Colonel Ericson asked if the applicant would have a problem with a five (5) year timeframe? Mr. Harrington stated that he agreed 100% with Colonel Ericson's comments and his concern is for the existing tenant Primecare providing proper parking and a facility that they would continue to lease. He does not have a problem with the five (5) year timeframe. If it is not done they could potentially lose a valuable tenant in that area. It is in the applicant's best interest to be proactive and not look at it as a temporary solution.

Mr. Hufnal stated that he was in the area on yesterday and he noticed that there were 22 cars in the parking lot and Primecare was in and out. He thinks that this is a good project because if you moved the 22 cars to the street there would not be enough room to park and it would be very congested and possibly prevent the emergency vehicles from moving freely. He could see the applicant in the future possibly expanding Primecare due to the need for having quick access in and out for emergency calls. The older commercial and industrial buildings in the area are not up to code standards with regard to parking. This is a good transition for what currently exists. It is a worthwhile project to keep the cars off the street and to lessen the danger in the area.

Chairman Sheth referred to Colonel Ericson's comment regarding the five year timeframe and stated the company has a five year lease, therefore; the five year timeframe sounded fine.

Mr. Keller stated that he agreed with Colonel Ericson's comments. Staff has noted there are a number of nonconforming matters throughout the City, but such issues should not restrict consideration of this application. He outlined a scenario where one property owner is allowed to surface in gravel, but another property owner questions why they are required to use hot mix or concrete. Such issues seem to pop up frequently. He agreed to place some type of time limit on the approval for the temporary parking. Referring to the picture, the lot gives the appearance that it is at least fairly well constructed.

Mr. Keller questioned why Exhibit A is labeled Harrington Commercial LLC as opposed to AVA Commercial LLC, and if there were two separate ownerships because the report referred to AVA Commercial LLC. Mr. Adams responded that the entity changed names from Harrington Commercial LLC to AVA Commercial LLC.

Responding to Mr. Keller's question if AVA Commercial LLC had any relationship (are they a tenant) with Gede Insulation, Mr. Adams stated that they are tenants of AVA Commercial LLC.

Mr. Keller asked if there was an issue with placing a time limitation on the application, and whether this impacted decisions regarding the Bennie Smith property to the west. Was this property being considered within the scope of the overall redevelopment plans?

Mr. Adams stated that the Bennie Smith corner property on Fulton is currently in negotiation. The property really has very little use for someone else as it is.

Mr. Senato questioned whether the gravel area will be maintained, Mr. Adam stated yes.

Chairman Sheth posed a question to Mrs. Townshend regarding Kent County Code Regulations for gravel parking lots. She stated that after the Board of Adjustment has made a decision the applicant will need to go before the Planning Commission, and part of that process the project will need to be reviewed through the Development Advisory Committee, which includes the Kent Conservation District, who will ultimately determine if the storm water regulations apply.

Mr. Keller stated that this may be deemed a self-imposed hardship by virtue of the proceedings without permit and the proper construction elements required otherwise by the Code for hot mix concrete, paving, etc. A violation was issued and regardless of today's Board of Adjustment action that would remain in place he presumed.

Mrs. Townshend stated that the violation was issued, but there was no fine issued because they responded after the first notice. The path forward for compliance was to first go before the Board of Adjustment. Then if a variance is granted the applicant would go before the Planning Commission because the project involves an addition of semi-impervious cover which is subject to Planning Commission approval. The applicant will need to meet whatever conditions are placed on the project before closing out the case.

Responding to Mr. Keller's question whether there is notification to the owner that they are obligated to go before the Planning Commission regardless of the Board of Adjustment decision today, Mrs. Townshend stated that if the variance is not granted then they will either have to remove the parking area or go before the Planning Commission to get the approval to fully pave the area. If the variance is approved they will need to go before the Planning Commission for approval of the gravel lot due to its size. The Planning Commission would not be able to approve the request without a variance because the Planning Commission would need to otherwise require it to be paved.

Mr. Hufnal stated that this lot is situated in an area where it cannot be seen from Division Street. It is a non-public lot that is used only by surrounding industrial and commercial businesses. It is not a hazard to anyone other than those using the lots.

Mrs. Townshend concurred with Mr. Hufnal's statement. From a Staff standpoint they recommend that this feature be identified in any motion to approve the variance because they do not want something like this to be deemed appropriate on Division Street, Rt. 13, or other more highly visible areas in the City.

Colonel Ericson added that it would not make economic sense to the applicant or offer any advantage to the City for the applicant to meet such standards when they might decide in the next few years to build and use the property for something entirely different. Mrs. Townshend concurred.

Colonel Ericson stated that it has been that way for so long he saw no reason to immediately make the applicant meet the standards when they have tentative plans to change.

Mrs. Townshend stated that the gravel was new; it has not always been there.

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

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

Colonel Ericson moved to approve application V-15-06 based upon the testimony given and the information presented for a maximum of five (5) years. After the five (5) year period the property must meet City standards. This is unique to the property because it is a temporary parking lot that has a good chance of being changed in the near future. Because the property is in an area of very low visibility and it does not detract from the character of the area. Mr. Hufnal seconded the motion and unanimously carried 5-0.

Vote
Mr. Keller – Yes
Colonel Ericson – Yes
Mr. Senato – Yes
Mr. Hufnal – Yes
Chairman Sheth – Yes

Mr. Hufnal questioned the reasons why application V-15-05 (the sign application) could not be separated before coming to the Board of Adjustment. He thought it was a lot of work for the Board of Adjustment when they really did not have to make a decision on the section that was to go before the Planning Commission. Responding, Mrs. Townshend stated that it is a Due Process issue. Staff recommended that they take forward a Comprehensive Sign Plan to the Planning Commission and the applicant chose to include it in the variance. If it is submitted with the variance application it cannot be taken out and has to come to the Board of Adjustment for consideration.

Mr. Hufnal stated that he understood after Mrs. Townshend's response because the applicant wanted something immediately done rather than wait three months later. The Board of Adjustment has approved excessive signage as the Board did on the Industrial Park and Friendly. The Board has approved additional signage without it going before the Planning Commission. This was probably a different circumstance.

Mrs. Townshend stated that in the other cases the applicant did not qualify for the Comprehensive Sign Plan. The qualifications for a Comprehensive Sign Plan relate to the linear frontage of a property, how many buildings are under common management, or if it is a shopping center. Certain properties can do a Comprehensive Sign Plan because they meet the criteria. Friendly's and Uzin Utz did not meet the criteria.

Mr. Hufnal questioned if the language (criteria) should be included in the report and the reason why it is included on some reports and not others. Responding, Mrs. Townshend stated yes.

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

Meeting adjourned at 10:04 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary