CITY OF DOVER
BOARD OF ADJUSTMENT MINUTES
February 18, 2015

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

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

APPROVAL OF AGENDA

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

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF JANUARY 21, 2015

Mr. Keller moved to approve the meeting minutes of January 21, 2015 with the necessary corrections, seconded by Mr. Hufnal 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 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-15-03

20, 28, 30, 32, 40, and 48 South Kirkwood Street. Central Delaware Habitat for Humanity has requested a variance from the requirements of Article 4 §4.2 of the *Zoning Ordinance* pertaining to minimum lot width in the RG-1 zoning district for one-family detached dwellings. Subject properties are zoned RG-1 (General Residence Zone). The Tax Parcels are: ED-05-076.08-06-11.00-000, ED-05-076.08-06-12.00-000, ED-05-076.08-06-13.00-000, ED-05-076.08-06-14.00-000, ED-05-076.08-06-15.00-000, and ED-05-076.08-06-16.00-000. The owners of record are Central Delaware Habitat for Humanity and Bibleway Temple Church of God in Christ.
Mrs. Ann Marie Townshend, Director: Exhibits for the record: Staff Report and plans submitted

by the applicant to include three (3) diagrams.

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

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

Representative: Jocelyn Tice, Executive Director, Central Delaware Habitat for Humanity; Don Grower, Surveyor; John Baldwin, Chairman of the Trustee Board for Bibleway Temple Church of God in Christ.

Jocelyn Tice, Don Grower, John Baldwin were sworn in by Mr. Rodriguez.

Exhibits: Maps

Mrs. Tice stated that the applicant was requesting a lot size variance from 60 feet to 50 feet. Central Delaware Habitat for Humanity currently owns four (4) lots and the church owns the lot in the center. There are a total of five (5) lots and the intent is to swap the parcels so that the church has one full lot and Habitat for Humanity has five (5) contiguous lots. The variance would allow for fifty (50) foot of five (5) equal parcels.

Habitat for Humanity could build on the existing lots which vary in size from 100 feet to 37.1 feet. This would cause some difficulty in providing off-street parking as required per code as well as meeting the setbacks required by the City. They could build on these four (4) lots if not approved; however, the approval of the requested variance would allow for five (5) new homeownership opportunities, and such homes would be consistent with the residential nature of the surrounding. Across the street there are lots varying from 15 feet to 65 feet in width. The 50 foot lot width variance would be consistent with the remaining homes currently there and the Restoring Central Dover Plan released by NCALL and the Consolidated Plan in increasing homeownership to low income residents in the City of Dover. Even though Central Delaware Habitat for Humanity's mission is to target low income residents, all of their homeowners are stable and able to provide and maintain a mortgage.

Mr. Baldwin stated that the church agrees with the project for several reasons. It will consolidate the properties to be utilized better in the summer for outdoor activities. It will also bring neighbors closer to the church. Instead of having vacant lots that collect trash, there will be neighbors maintaining the properties. He thinks this is a great opportunity.

Bishop Holsey was sworn in by Mr. Rodriguez.

Bishop Holsey stated that he felt it was a winning situation of everyone involved (Central Delaware Habitat for Humanity and the church). There is currently nothing happening on the vacant lots. Once houses are built the lots will be maintained and it will be a nice area for all downtown. It is all about bringing in people and having a place to live. He will do whatever he can to make it happen.

Mr. Hufnal stated that he thought it was a very worthwhile project. If the Board did not allow this to happen there would be some houses without parking availability due to the lot size. By approving the variance to allow 51.1 feet the applicant would have everything that is required including off street parking and you would get some standardization of what they are trying to build in the location.

Responding to Mr. Keller's question regarding the requirements for off street parking, whether on-street parking was allowed, Mrs. Townshend stated that two (2) off-street parking spaces are required.

Responding to Mr. Keller's question whether there was an agreement enforced whereby upon variance approval there was a transfer of ownership, Mrs. Tice stated yes, many grant applications have been written that have received funding for these projects. The church and Mr. Baldwin have given their full support from numerous letters. There is no formal Memorandum of Understanding between the church and Central Delaware Habitat for Humanity, but there has been documented support on numerous occasions of their intent. They are ready to schedule settlement to make that happen. It is their intent upon approval to start construction June 7, 2015. They are anxious to get the project started for new homeownership.

Responding to Mr. Keller's question with the hopscotch ownership and no actual contract enforced as to the intent, Mrs. Tice stated no, it is not a legal binding contract that has been signed. Mrs. Townshend stated that both property owners are party to the Board of Adjustment application. Both have signed the application as property owners, because both owners lot will be affected ultimately.

Responding to Mr. Keller's question whether all five lots were ever in joint ownership which is not the case, Mrs. Townshend stated no.

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

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

Mr. Hufnal moved that Application V-15-03 be approved and commented that the application was in conformance with Dover's 2008 Comprehensive Plan, the Restoring Central Dover Plan, the City's Consolidated Plan for Community Development, and the newly created Downtown Development District. All support redevelopment, and the proposal supported these goals as articulated in City plans and policies. The motion was seconded by Mr. Keller and unanimously carried 3-0. Mr. Senato and Chairman Sheth were absent.

Applicant #V-15-04
747 North DuPont Highway. Bankshares Realty LLC c/o Charles Owensby has requested a variance from the requirements of Article 6 §3.1 and §3.11 of the *Zoning Ordinance* for parking as related to the maximum allowed parking for the proposed use. Subject property is zoned SC-2 (Community Shopping Center) and a portion is subject to the SWPOZ (Source Water Protection Overlay Zone – Tier 3 Excellent Recharge Area). The Tax Parcel is ED-05-068.05-01-15.00-000. The owner of record is Bankshares Realty LLC.

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

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

Mr. Cook stated that the site is 747 North DuPont Highway commonly known to most people as the former Berry Van Lines site. As an overview map the appropriate exhibit is 1.2 which has an aerial photo of the existing site as well as the proposed location of the restaurant which is in the southwest corner of the parcel adjacent to DuPont Highway. The total property is 25 acres. The variance for parking is related to Article 6§3.11. There is a cap on parking such that the maximum number of spaces for a proposed use may not be greater than 125% of the minimum requirements in the *Zoning Ordinance*. Mr. Cook noted that the property is zoned SC-2 (Community Shopping Center) and not C-4 as stated in the application. The parking regulations for eating and drinking places are in Article 6§3.1. They require at least one (1) parking space for each four (4) seats and one space for each three (3) bar spaces. The applicant is requesting 170 parking spaces.

Mrs. Townshend stated that this is an application where she had a lot of discussion with the applicant. She also has had discussions with other restaurant chains that were looking to open in Dover, and believes that the City needs to reevaluate the parking standards for restaurants. She thanked the applicant for providing some examples of other ordinances in Delaware to review that have more realistic parking requirements. The parking maximum was added in 2009 to address the concerns that the Planning Commission had regarding large expanses of asphalt that were never used. There was a variance request several months ago for a dental practice that needed to exceed the maximum. There may need to be a revised parking maximum on some type of sliding scale. For example, if the parking requirements are less than a certain total number, an applicant would be able to provide 150% of the minimum parking spaces. When you have a small parking requirement it does not take much to exceed the 25% over the minimum. The City is likely to bring forward a text amendment to the City Council and Planning Commission in the near future to address this matter.

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

Representative: Dev Sitaram, Karins and Associates, President and Engineer for the Project; Larry Weiland, Golden Corral Buffet & Grill, Real Estate Director.

Dev Sitaram and Larry Weiland were sworn in by Mr. Rodriguez.

Presentation

Mr. Sitaram stated that Mr. Cook explained the location and condition of the project. As he referred to the exhibits he mentioned the location of the frontage on North DuPont Highway and Leipsic Road. The property is part of a larger parcel and redevelopment of the Berry Van Line property. This is the first piece of the redevelopment of the larger parcel. Most of the property is currently paved. It is in the excellent recharge area and as it is taken through the Site Development process they will address the recharge issues that are currently not taking place on the property. Pizza Hut is located at the north of the parcel and Ichiban is located to the south of the property, which has gone through several use changes. Dover Downs is located to the east of the property. There is "right in and out" access to Route 13, and it is also connected to an existing roadway that provides access to Leipsic Road to the north. The proposed restaurant is 11,097 SF with 400 seats. The parking code requires the one (1) parking space for every four (4) seats; therefore, the minimum requirement is 100 parking spaces. However, he stated that Dover's code maximum is not usual for most municipalities or jurisdictions. A establishment normally has issues meeting the minimum requirements and not the maximum requirements. He has worked on several site plans for national as well as local restaurant chains and the maximum requirement for the City of Dover is a concern. The applicant has a resulting hardship for the public requirements for parking not being met, and situation could pose an undue hardship on the neighboring parcels that have parking.

Mr. Weiland stated that the company had a brainstorming session six (6) months ago to identify markets that they wanted to go back to. They went through their list of places where they were and where they wanted to go. Dover was one of the markets where they wanted to come back to with a new prototype building. Mr. Weiland has been in the business with Golden Corral for 36 years. He said that this is the first site he has encountered where the desired parking is more than what a City allows. The business cannot be successful in their restaurants without the correct amount of parking. He stated that the concern about concrete with empty parking lots really plays in effect with only retail. Retailers like Walmart and the Mall worry about one thing and that is Christmas. Restaurants worry about parking on a daily basis. In the past, they looked at property in Houston that was owned by a big developer and the property had a massive parking lot and they wanted to ground lease two (2) acres, but was told that they could only ground lease it for eleven (11) months of the year. The developer did not want to lease it for the month of December because they needed the parking for retail uses. He understands the concrete issue, but again in restaurants use their parking all the time. He hopes that the Board will consider their request. Their thirty (30) year motto for the Golden Corral is "Making Pleasurable Dining Affordable". The restaurant does not serve alcohol, is not open late at night, and they are all about feeding families in Dover. As he referred to the demographic numbers there are many potential guests in Dover. They will do whatever it takes if the variance is approved to make Dover proud for the community and look good on the vacant property.

Responding to Colonel Ericson's question of how the applicant arrived at the number of a 170 parking spaces, Mr. Weiland stated that they took the total number of Golden Corral restaurants

(600) and cultivated the ones that had the following: amount of parking needed, under parking, and under parked and underperforming. Because of the buffet concept and the lack of a bar, customers sit longer than in other types of restaurants. In order to be in the buffet business you have to do volume. Based on the criteria that were sent, it listed every restaurant that had more than 170 parking spaces. When you look at restaurants such as Olive Garden, Cheddars, and others, they have other parking to go to. Golden Corral is self-contained. By not allowing the necessary parking needed, it could affect other businesses and this is not what Golden Corral wants to do. He stated that 170 parking spaces was the minimum, he would prefer to see 190 parking spaces, but was not trying to push the candle further. The more parking, investment, and property they have to buy, they do not mind doing.

Responding to Mr. Hufnal's question whether there was an entrance to the right and behind the Café. Mr. Sitaram stated he had met with DelDOT regarding the regional transportation requirement and DelDOT has the connection of parcels along DuPont Highway so that traffic does not have to get back onto the highway to go from one property to another. The entrance is a future interconnection to Jefferic Blvd. Mr. Weiland stated that it is also important to the applicant. The entrance is needed and they do not want to cause any issues with traffic. All issues that have been proposed need to be approved in order for them to close on the property.

Responding to Mr. Hufnal's question whether the exit off the back of the property goes around to the hotel, Mr. Sitaram stated yes. Again, this is part of DelDOT's Regional Transportation Master Plan.

Responding to Mr. Keller's question whether they were aware of the contacts to date with the other owners regarding the cross easements, Mr. Sitaram stated that Mr. Owensby and Mr. Lee has tried to contact the property owner, but he was not sure if there was any contact regarding Cash Point. At one point, they were proposing to have the property integrated into the Site Plan, but it fell by the wayside. Currently, they are independently providing a connection to DuPont Highway without impacting the neighbors.

Responding to Mr. Keller's question whether the applicant would anticipate in the failure to gain the cross access easement, regarding contemplating any problems with the right in and right out onto Route 13, Mr. Sitaram stated no, this site plan is not solely based on that access. It is just a convenience to provide access to the other four (4) uses. (Hotel, Popeyes, Cash Point, Café). The connection is not mandatory.

Mr. Hufnal stated that he liked the applicant's comment regarding the variance allowing additional parking so that it would reduce the likelihood of the patrons coming in and seeking parking spaces on adjacent properties.

Mr. Sitaram stated that this was the true hardship with the situation of the code requirements on the number of parking spaces that this is going to be self-sufficient. He has worked on projects where parking has become a major issue on neighboring properties that also required police to enforce parking.

Responding to Mr. Hufnal's question whether there was a major parking problem at the Golden Corral facility in the past, Mr. Weiland stated that there were 146 parking spaces.
Responding to Mr. Hufanl's question whether it was over crowded with the 146 parking spaces, Mr. Weiland stated yes, this may be a company store, but the operator for this restaurant owns all the locations in Baltimore and Washington, DC and he is the most successful operator in this company.

Responding to Mr. Keller's question if Mr. Sitaram was the Engineer working for Golden Corral, Mr. Sitaram stated yes and he has been working on the site for the Equitable Owner Mr. Owensby. Mr. Weiland is working with Mr. Owensby and Mr. Sitaram to get this done. Mr. Weiland stated that they try to keep everything in the same family without any conflicts.

Mr. Weiland stated that when he took this back to Golden Corral and stated that there was a parking issue because he has never had this situation before, it was kind of different going backwards.

Mr. Hufnal commented that he was glad to see that the City was looking at the *Zoning Ordinance* provision that sets a maximum number for parking. It was indicated that it is a feature in other jurisdictions in Delaware that is larger than what we have.

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

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

Mr. Keller moved to approve application V-15-04 as submitted based upon the City's report and findings of February 18, 2015 with clarification as to the existing zoning, insightful testimony of the engineer and representative of Golden Corral, project as outlined in the report would not be out of character for the zone and surrounding uses, the proposed parking is considered quite reasonable with the demands of the industry as reported by the supplemental material provided with the City's report as well as the expressed statements of the City wherein there is being consideration to reevaluation of parking changes on this type of usage and perhaps text amendments, and motion would carry the recommendation also that the City would follow through with such address of those concerns. Mr. Hufnal seconded the motion and unanimously carried 3-0. Mr. Senato and Chairman Sheth were absent.

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

Meeting adjourned at 9:49 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary