CITY OF DOVER
BOARD OF ADJUSTMENT MINUTES
January 21, 2015

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, January 21, 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 NOVEMBER 19, 2014

Mr. Hufnal moved to approve the meeting minutes of December 17, 2014 with the necessary corrections, seconded by Mr. Keller and unanimously carried 3-0. Mr. Senato and Chairman Sheth were absent.

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. An update on correspondence received will be provided. 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 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-14-14

800 North State Street. S & R, LLC has requested a variance from the requirements of Article 5 §4.7 of the *Zoning Ordinance* related to the height and area of signage, and Article 5 §11 related to construction in the Flood Hazard Zone. Subject property is zoned C-2A (Limited Central Commercial Zone). The Tax Parcel is ED-05-067.12-01-08.00-000. The owner of record is S & R, 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 January 11, 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: Kim Diehl, Kent Signs and Sandra Kubiak, H&H Property Management

Kim Diehl and Sandra Kubiak were sworn in by Mr. Rodriguez.

Mrs. Diehl stated that they are requesting a variance from the allowable 32 S.F., 7ft. tall sign to a sign that is 48 S.F. and 10ft. tall. They are asking for an increase in the signage because there are multiple tenants in the building. A 32 S.F. sign is not enough area to include all tenants. The extra height request is due to the fence, which they would like to keep. They would like to put the sign so that it rises above the height of the fence. They are adhering to the required 5ft. set back and flood zone area.

Exhibit 2A

Responding to Mr. Hufnal's question whether the flood zone is coming from the lake back towards the entrance and if the sign was allowed to be in the flood zone, the sign would be positioned based on the driveway. If the sign was not allowed here the sign would have to be moved further north towards the restaurant. Mrs. Townshend stated that the entire property is in the flood plain.

Responding to Vice Chairman Ericson's question about the location of the fence, Mrs. Diehl stated that the brick fence is to the left of the sign. If a section was torn down then the sign could be lowered. As she referred to in other exhibits there are signs on the same road that are taller. There are pylon signs that have been grandfathered in the area that exceed the allowable 7ft.overall height.

Mr. Keller referred to the report and asked for clarification of the height of the sign. Technically the sign is 6ft. tall and the base is 4ft. tall. He wanted to clarify that within the regulations that the base is not calculated as part of the sign area. Mr. Cook stated that it is correct. Mrs. Townshend stated that the sign height is measured from finish grade (at grade ground level). Mr. Cook stated that there is no consideration for the base as he received the definition of "sign height."

Responding to Mr. Keller's question whether there were any restrictions noted as to the height of the base utilized, Mr. Cook stated no.

Responding to Mr. Keller's question whether there could be an 8ft. base and 6ft. sign, Mr. Cook stated that there is a definition of a pylon sign and a monument sign. A pylon sign is typically taller than wide and a monument sign is typically lower. In consideration of the report the definitions were thought to not have a bearing on this case. The sign height definition includes

the base.
Responding to Mr. Keller's question whether there was a giant 800 denoting the street address of the building, Ms. Kubiak stated yes.

Responding to Mr. Keller's question whether the sign was currently in place or to be constructed, Mrs. Diehl stated that there is currently a 4ft. x 5ft. temporary plywood sign until a permanent sign is approved.

Exhibit 2C

Mr. Hufnal stated that exhibit 2C shows the base and the actual sign of the neighboring properties.

Mr. Cook stated that it is noted in the report that the signs referred to in exhibit 2C such as the Silver Lake Center pylon sign property had a *Comprehensive Sign Plan* approved by the Planning Commission. That process allows for additional height. However; that was approved at a point in time when the sign regulations were different. He was not certain if the sign at that time deviated from the current sign ordinance. The sign for Country Eatery has been in place for quite some time and is most certainly a legal non-conforming sign which has been allowed to continue.

Responding to Mr. Hufnal's question whether the sign still conformed to the character of the other signs in the area, Mr. Cook stated that he did not believe that it deviates from the character of the signs in the area. The key distinction is the presence of the residentially zoned property directly across State Street. It determines the lower limits on the allowable signage.

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-14-14 be approved that the proposed variance for the sign area and height be in keeping with the character and zoning of the existing signs found in neighboring commercial properties and the applicant be allowed to construct in the flood hazard area and place the sign at the location at the entrance which is the most functionally and logically for the property based on the circular drive and building location that exist, and also based on the testimony heard today. The motion was seconded by Mr. Keller and unanimously carried 3-0. Mr. Senato and Chairman Sheth were absent.

Applicant #V-15-01
200 Garrison Oak Drive. (Lot 12 Garrison Oak Technical Park). Uzin Utz Manufacturing North America, Inc., has requested a variance from the requirements of Article 5 §4.7 of the *Zoning Ordinance* related to the number and area of signage. Subject property is zoned IPM-2 (Industrial Park Manufacturing Zone – Technology Center). The Tax Parcel is LC-05-068.00-02-12.00-000. The owner of record is Uzin Utz Manufacturing North America, Inc.

Mrs. Ann Marie Townshend, Director, submitted the following items for the record: Staff Report and plans submitted by the applicant of elevations showing what the sign would look like.

The legal notice was published in the Delaware State News on January 11, 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: Rex Jensen, Production Manager

Mr. Rex Jensen was sworn in by Mr. Rodriguez.

Mr. Jensen stated that the company would not be building any new structures. The company would like to add signage to the building and they are asking for the variance for the square footage allowance. Each side of the building wall square footage is 5,731.75. They are looking to put signage on each side at 277.25 S.F. that is less than 4% of the wall area.

Responding to Vice Chairman Ericson's whether each sign was 277.25 S.F. and not 211.25 S.F. Mr. Jensen stated yes.

Mrs. Townshend stated that it was the calculation of the dimensions that were given to come up with 211.25 S.F. but 277.25 S.F. is correct based on the applicant's testimony.

Mr. Keller stated that he agreed with the dimensions given 7.04ft. x 30ft. = 211.2 S.F, not the 277.25 S.F. Better dimensions are needed if the Board of Adjustment is going to rely on the 277.25 S.F.

Responding to Mr. Keller's question of the placement of the three (3) wall signs, Mr. Jensen stated that the photo only show two sides and the other side cannot be seen on the photo but would face Route 1.

Responding to Mr. Hufnal's question whether one of the signs would face south, one would north, and the other would face directly onto Route 1, Mr. Jensen concurred.

Responding to Mr. Hufnal's question, if you look at the sign based on the permitted area of 32 S.F. allowed for this type of signage the proposed sign is larger, however; if you look at the wall

area of the sign which will allow up to less than 15% and it fits well within that category. As he look at other signs on other manufacturing buildings such as Kraft and Proctor and Gamble, it seems that this is very fitting for the manufacturing category. He did not think we have in the codes a restriction or allowance for manufacturing signs, as what was being presented by the applicant today. He questioned if there was another category this could come under. Mrs. Townshend stated that the sign regulations, sign area regulated by whether it is adjacent to residential or not, and the road classification. In the case of Kraft, which is probably legal non-conforming, it is also on a minor arterial. Garrison Oak Drive is considered a local collector. On a principal arterial such as Route 13 there is no square footage maximum on wall signage, it is simply driven by the 15%. Currently, the way the sign ordinance is structured it is driven primarily by the road classification not the zoning classification unless you are getting into residential. Garrison Oak Drive is a local collector. It could be looked into because we have the Sun Park and the Energy Center whom have not gotten to the signage point. However we treat this will probably set the tone for what happens in that industrial park. It is worth discussing, if this signage is absolutely acceptable, except for the fact that it does not comply with the *Zoning Ordinance,* then that would be an indication that perhaps the *Zoning Ordinance* would need to be looked at.

Mr. Hufnal stated that he thinks that should be the case for the City to evaluate the *Zoning Ordinance*. This is sort of the first in this industrial park that they have a request of this type. It does not mean it will be the last one in the City of Dover. He could foresee other properties that could build along Route 1 or be annexed into the City of Dover, and we would have the same problem in the future. This would be the time to look at the code. In his estimation the sign does not look out of character. It is well within the 15% of the wall area.

Vice Chairman Colonel Ericson stated that as a board member he did not mind approving minor variations to the code when there is a cause. It seems that going from 32 S.F. to 277.25 S.F. for three (3) signs should be done by the Planning Commission as part of their review of the sign codes. If this was delayed or deferred for a month after the completion of the Board of Adjustment would the Planning Commission have a chance to reconsider?

Mrs. Townshend stated that the process for developing an amendment to the sign regulations is a change to the *Zoning Ordinance*. It would need to be drafted and go before the committee in early February and then it would go before the Planning Commission in March, and then ultimately be decided by Council in April. It would be delayed for several months.

Responding to Vice Chairman Ericson's question if the decision was delayed until April, would it affect the project, Mr. Jensen stated that it would delay them quite a bit by opening, simply because they would like to do the signage in the construction phase. They anticipate the construction phase to be completed by the end of March, no later than April. With the expense of the equipment they would not want to have to call the contractor back at a later date to put up the sign.

Responding to Vice Chairman Ericson's question whether it would cost a significant amount of money to wait that long, Mr. Jensen stated that giving the size of the crane and the equipment needed there would be a very significant increase in the construction cost.

Responding to Vice Chairman Ericson's question whether the signage was going to be determined at the Planning Commission, Mrs. Townshend stated that the piece that can be determined at the Planning Commission is the height. There was a point in the regulation where there could not be a wall sign higher than 30ft. The regulation was taken out and it is driven by the architecture. The square footage was not changed in that same way.

Vice Chairman Ericson stated that if the case was approved today then for the other two (2) properties who have not submitted the sign package, it would be almost impossible to say no to them if they wanted a similar sign. Mrs. Townshend stated yes, but it is not uncommon to grant a variance if you believe the ordinance is preventing something desirable as long as you note that Staff should look to bring forward an amendment to the ordinance, which is ultimately the purview of City Council.

Responding to Mr. Hufnal's question whether the wall area percentage was still in the code, Mrs. Townshend stated yes.

Responding to Mr. Hufnal's question if someone was to come in and it was excessive, it would not be granted and this case is still within the percentage of the wall space area that the Board of Adjustment can deal with, Mrs. Townshend stated yes.

Vice Chairman Ericson stated that the concern is if a variance is made and it sets a precedent then down the road everyone will look at it that we gave the variance to one person and why it cannot be given to another person. It would be hard to explain why not.

Responding to Vice Chairman Ericson's question whether there was a way to make this unique to this property so that it is not governed by a precedent in the future, Mr. Rodriguez stated that you could base upon the size of the building and the wall area discussed. It would be unique to this particular building and would not necessarily apply to any other applications that were granted in the industrial park. If the Board of Adjustment decided to grant the variances it could be done to that effect. The Board of Adjustment would not be setting a precedent for the park or any other industrial parks.

Responding to Mr. Hufnal's question if the variance was granted it would be granted based on the wall area size which is currently there and is well under the 15%, Mr. Rodriguez concurred.

Mrs. Townshend stated this discussion would be justification for the sign area portion of the variance. You also have the issue of three (3) signs verses two (2). All justifications for approvals are needed.

Responding to Mr. Hufnal's question if all three (3) signs are approved the Board of Adjustment would need to specify that the board allowed the three (3) signs or restricted it to two (2) signs, Mrs. Townshend concurred.

Mr. Rodriguez stated that as pointed out by Mrs. Townshend, Exceptional Practical Difficulty would need to be found from the applicant.

Mrs. Townshend stated that currently there is testimony and discussion on the record that supports to approve the area, there is nothing on the record that justifies the number.

Responding to Mr. Keller's question regarding the rear property line whether it was bounded by Route 1, Mrs. Townshend stated that it is bounded by DelDOT owned property that is adjacent to Route 1. DelDOT owns a wedge shaped piece of property that is adjacent to Route 1 that is a wooded parcel. It serves as a buffer to Route 1, but it is not the actual right-of-way.

Responding to Mr. Keller's question whether it has any public access, Mrs. Townshend stated that it does not. She added that the *Zoning Ordinance* specifically stated that Route 1 shall not be used as frontage for calculating signs.

Responding to Mr. Keller's question whether Route 1 was controlled access, Mrs. Townshend concurred. There has been an issue when Route 1 was constructed there was a concern that everyone would want their signage to be viewed from Route 1, therefore; it was specified in the sign regulations at the time and has not changed that Route 1 is not frontage in that regard.

Responding to Mr. Keller's question whether any consideration was given to meeting only the number of signs and not the three (3) signs that is being requested, but two (2) for a different arrangement or configuration of two (2) approved signs. Mr. Jensen stated that they have considered just the two (2) signs. The third sign was actually a last minute add-on by the owner. The owner wanted to add a sign on the side so that it could be seen from Route 1 for more advertising of the company. This is the company's first location in the United States. They plan to build more facilities in the United States. They have a high name/logo standard and want everyone to be aware. There was discussion of four (4) signs within their company, but since the Sun Park is on the back side they felt it was not necessary.

Vice Chairman Ericson stated that somehow the Board of Adjustment needs to get over the issue that was mentioned previously regarding how is this a hardship.

Responding to Vice Chairman Ericson's question what the company produces, Mr. Jensen stated that the company produces very high quality flooring products. It is sold exclusively to people who do flooring projects. Given that they are new into the United States market and if they could not have the signage to advertise who and where they are, it would hinder their future growth in economic development.

Responding to Vice Chairman Ericson's question that as a homeowner, he would not be able to go to the company to make a purchase, but the products would be sold to other people who would be selling the products, Mr. Jensen concurred.

Responding to Mr. Keller's question referring to the depiction (the tall tower) provided as an exhibit provided by the applicant, if the large sign would be facing the interior roadway access to the plant facility and if the reverse side of the tower faces Route 1. Mr. Jensen stated that it would be located over top of the warehouse area because of the angle.

Responding to Mr. Keller's question if the applicant was only allowed the two (2) signs as

prescribed by the code, Mr. Jensen stated that the signs would be done as shown on the photo submitted.

Vice Chairman Ericson stated that the applicant's hardship is the facility would be hard to locate, transportation cost and potential loss of customers, but since the company is not dealing with the general public, the products would be sold in stores, then after one visit they would know exactly where the facility is located and the three (3) larger signs on each side would not be necessary. Vice Chairman Ericson was having a hard time justifying the hardship.

Mr. Jensen stated that it would be for their future growth. As people see the signage they would be more apt to look up the products. It would bring on more commercial flooring companies that would see them and get a feel of their products they make and eventually increase the customer base.

Responding to Vice Chairman Ericson's question whether the company would be motivated since they are trying to sell the best wood flooring products they can find and seek the company out and not be dependent upon the sign. Mr. Jensen stated that the company could offer that, but the signage would help their future growth.

Mr. Keller stated that he was inclined to agree with Vice Chairman Ericson regarding the manufacturing plant. Mr. Keller did not envision relying principally upon drive-by traffic as supporting direct purchases. The company is not a walk-in customer facility. He did not find this necessarily as an Exceptional Practical Difficulty, not that it, in and of itself precludes an approval otherwise the request for a variance. With regard to Mr. Hufnal's comments he sensed that the size of the signs, since they fall well within the percentage of the total wall area, does not seem to be a request for approval that would exclude him from agreeing with Mr. Hufnal's rationale. There are practical difficulties with many applications for variances. The practicality of the exception is what lends most applicants to come before the Board of Adjustment for an exception to the perhaps otherwise rigid constraints of the code itself. Given the consideration to an Exceptional Practical Difficulty is one of the criteria that is evaluated, but is one of several.

Responding to Vice Chairman Ericson's question if the signs were not put up and was disapproved, what would the company do? Mr. Jensen stated that they would probably have to go for a smaller square footage sign. They want to make sure the facility is visible and easy to locate and not necessarily by GPS.

Responding to Vice Chairman Ericson's question if the Board of Adjustment disapproved and put up the signs at a later date and if the criteria were changed by the Planning Commission, Mr. Jensen stated that he would not say that the company would not put up the signs at a later date. The biggest issue is the cost factor and putting signs up in a construction phase when the equipment is on-site would save money over doing it later. Responding to Vice Chairman Ericson's request for an estimate of the cost difference, Mr. Jensen stated that he would expect an increase of $20,000-$30,000 to have the signs installed at a later date.

Responding to Mr. Hufnal's question if the cost was associated with bringing in the crane to put the chrome in place, Mr. Jensen stated yes, they would also need to have accessibility for the workers to attach the signs.

Responding to Mr. Hufnal's question if whether it would be cheaper to do everything at one time, Mr. Jensen concurred.

Mr. Keller stated that with regard to the discussion of the precedent setting actions, we should be mindful that every property is different (geography, location, and lay of the land).

Vice Chairman Ericson stated that what bothers him is the large increase. He asked if the case could be deferred and ask the Planning Commission their thoughts.

Mr. Hufnal stated that this will not be the only application that will come before the Board of Adjustment. We will have more signs like this and it is important that there is a plan that deals with these types of signs for other applicants in the future.

Vice Chairman Ericson stated that he would be uncomfortable approving this sign application today because of the large increase. In the future, someone may want the entire 15% of the wall area.

Responding to Mr. Hufnal's question of the latest time the company could go without making a decision on the sign; Mr. Jensen stated that the siding on the tower should be completed by the end of January. The company wanted to erect the sign immediately afterwards to be completed by the end of February.

Responding to Vice Chairman Ericson's question of the next Planning Commission meeting, Mrs. Townshend stated that the next meeting is February 17, 2015.

Vice Chairman Ericson suggested referring the sign application to the Planning Commission for their thoughts and opinions.

Mrs. Townshend stated that it could be taken to the February meeting of the Planning Commission and the Parks Recreation and Community Enhancement Committee who would also provide input if an amendment they were proposing, but to Council.

Vice Chairman Ericson stated again, that Exceptional Practical Difficulty had not been shown.

Mr. Jensen stated that the company is only looking at less than 4% of the actual building face, and the code stated that you can go up to 15% minus the 32 S.F. He stated that in his opinion if you had someone who wanted to go with the 15% coverage of a building that would be excess, not the 4% that they are asking for at this time.

Mr. Keller asked for clarification (as he referred to the exhibit) of the two (2) wall signs for frontage that are allowed, with a maximum of sign area of 32 S.F. per sign, just in front of the 15% there is a less than sign, but under a straight dash, is it intended or not to read equal to or

less than 15% of the wall area, Mrs. Townshend stated that it is less than or equal to 15% of the wall area and 32 S.F. There could be an example where you have a very small building where a 32 S.F. could be an excess of the 15%. It needs to be both.

Mr. Keller stated that in his mind he was trying to envision a 4x8 whether from Route 1 or entrance road as he looked at the depiction (if it was in fact to scale) looking at the size of the tower and wondered if he could see or even read a 4x8 sign.

Mrs. Townshend stated that if the application is deferred or tabled until next month, it may be helpful if the applicant could provide a rendering that would show an elevation of what that building would look like at 32 S.F. The Board of Adjustment may be able to make the determination that the 32 S.F. does not identify the building and that from a character standpoint it does not help.

Vice Chairman Ericson stated that the Planning Commission might like to have the signage that a person can see driving by, and not necessarily seeing it from a long or far distance. He would like to have advice from the Planning Commission before voting.

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 to approve application V-15-01based on the wall area of no more than 4% and only place the signs on two (2) sides of the building rather than the three (3) signs as proposed, based on the presentation of the wall area and not the square footage, also to include that City Staff review the requirements of manufacturing buildings in areas of this type. Mr. Keller seconded the motion based on the consideration to the testimony given as well as the rationale of the basis of the motion. The motion carried 2-1 with Mr. Hufnal-yes, Mr. Keller-yes, and Vice Chairman – nay. Chairman Sheth and Mr. Senato were absent.

Mrs. Townshend stated for clarification that the motion approved the increase in sign area, but did not approve the increase of three (3) signs.

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

Meeting adjourned at 10:01 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary