**CITY OF DOVER BOARD OF ADJUSTMENT**
**AGENDA**
**Wednesday, December 17, 2014 at 9:00 AM**

**City Hall Council Chambers**
**15 Loockerman Plaza, Dover, Delaware**

ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES of November 19, 2014 Meeting

**OLD BUSINESS**

1. Update on Appeal Applicant #V-14-10 Lands of Mitten (and Request for Reconsideration) concerning certain real property located at the South side of Lafferty Lane, Dover, Delaware (Tax Parcel ED-05-077.00-01-26.00-000 and ED-05-077.00-01-27.00-000).

**NEW BUSINESS**

**Applicant #V-14-13**
185 Saulsbury Road. Energizer Personal Care Division – Playtex Products has requested a variance from the requirements of Article 4 §4.16 of the *Zoning Ordinance* for parking. Subject property is zoned IPM (Industrial Park Manufacturing Zone) and is subject to the COZ-1 (Corridor Overlay Zone). The Tax Parcel is ED-05-067.19-02-11.01-000.The owner of record is Playtex Manufacturing Inc.

**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. 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.

ADJOURN
29 Del.C. § 10004(e)(2)

THE AGENDA ITEMS MAY NOT BE CONSIDERED IN SEQUENCE. THIS AGENDA IS SUBJECT TO CHANGE TO INCLUDE THE ADDITION OR THE DELETION OF ITEMS, INCLUDING EXECUTIVE SESSIONS.

**CITY OF DOVER**
**BOARD OF ADJUSTMENT MINUTES**
**November 19, 2014**

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, November 19, 2014 at 9:07 A.M. with Chairman Sheth presiding. Members present were Mr. Hufnal, Colonel Ericson, Mr. Keller and Mr. Senato.

Staff members present were Mrs. Townshend, Mrs. Purnell, Mr. Cook, Mrs. Melson-Williams, and City Solicitor Bill Pepper, Mrs. Harvey, Mr. Brown, and Mr. Glen Mandalas.

**APPROVAL OF AGENDA**

*Colonel Ericson moved to approve the agenda, seconded by Mr. Hufnal and unanimously carried 5-0.*

**APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF OCTOBER 15, 2014**

*Mr. Senato moved to approve the meeting minutes of October 15, 2014 with the necessary corrections, seconded by Mr. Hufnal and unanimously carried 4-0. Mr. Senato abstained because he was not present at the last meeting.*

**OLD BUSINESS**
**Applicant #V-14-10**

Responding to Chairman Sheth's question how to proceed with the application, Mr. Mandalas stated that there was only one case on the agenda today which is an Appeal. Unfortunately, the appellant is not present so there are a couple of options: (1) confirm that the appellant was aware that the meeting was today and at this time, or (2) defer the case.

Mrs. Townshend stated that she spoke with Mr. Paradee today in regards to the meeting. He stated that he was unaware that the meeting was today. He requested that the Board of Adjustment show mercy and defer to the December meeting.

Mr. Pepper stated that he was aware that Mr. Paradee requested last month that the Appeal be deferred until the November meeting. The Board of Adjustment has been meeting on the third Wednesday of each month since he began the position of Deputy City Solicitor in 1989. Everyone is aware when the Board of Adjustment meetings occur. Mr. Paradee asked that the Appeal be deferred until November, and he is not present.

Responding to Chairman Sheth's question of the legal implications, Mr. Mandalas stated that the Board of Adjustment needs to know if Mr. Pepper is requesting that the case be dismissed based upon the non-appearance of the appellant. Mr. Pepper stated yes. Mr. Mandalas went on to state that a practical legal implication is that the Appeal needs to be taken 30-days from the time that the person becomes aggrieved under the statue. If the case is dismissed today, the 30-days will have expired and he was not sure if there will be an opportunity for them to request an Appeal

again. Mr. Pepper stated that they could appeal again only if the next time they are fined. Mr. Mandalas stated that the next time they are fined they would have the same argument over whether it was an appropriate fine or not to make an Appeal at that time.

Colonel Ericson stated that he would like for someone to establish for the record that they were properly notified. If the case is dismissed then the applicant would have to pay more fees. Were they notified by telephone or in writing?

Mrs. Melson-Williams stated that for the October meeting the Applicant/Attorney requested via email that was provided to the Board of Adjustment an extension of time to pass the agenda item on to the next available meeting of the Board of Adjustment in November. The Board of Adjustment took action on October 15, 2014 meeting to defer as requested. When information is prepared for the Board of Adjustment and the agenda is properly published and posted. Typically the application package is sent to the applicant(s) and that she cannot confirm.

Responding to Colonel Ericson's question if it was the normal procedure, Mrs. Melson-Williams stated yes. It is not sent certified it would be sent regular mail. The Board of Adjustment agenda and packet is also posted on the City's website. There are certainly public postings of the agenda.

Responding to Colonel Ericson's question whether they have justly provided notification to the applicant that they would have reasonably shown up to the meeting today, considering what has already been stated, Mr. Mandalas stated that it is not uncommon for Boards to not make specific mailings to applicants. If there is some expectation especially when represented by counsel then an applicant or their attorney will be following the postings and the publications to ensure that their client is present. Mr. Mandalas stated that they should have known.

Responding to Colonel Ericson's question from a legal standpoint whether the case can be either dismissed or postponed, Mr. Mandalas stated yes.

Mr. Mandalas stated that Mr. Pepper on behalf of the Director of Planning is requesting that the case be dismissed based upon the failure of Mr. Paradee and his client to show up at the October meeting and today's meeting.

Colonel Ericson stated that the dismissal by Mr. Pepper does not mean that the Board of Adjustment has to approve it. The dismissal in his mind could cause the applicant financial burden. He wanted to make sure the Board of Adjustment is on good legal ground before making a decision.

Chairman Sheth stated that if the Board of Adjustment follows procedure then they can move forward, Mr. Mandalas stated that the applicant was not present so the Board can move forward with the proceedings and there are no other cases for an opening or closing of a public hearing.

Mr. Mandalas stated that the Board of Adjustment is purely deciding now whether to defer and allow the appellant some accommodations for them to be at the next month meeting without having any additional fees or to dismiss.

Responding to Mr. Keller's question the implications of a dismissal, what is the next step for the appellant to appeal the Board of Adjustment decision to dismiss, would it be Superior Court? Mr. Mandalas stated that it would be Superior Court if it was the decision to appeal the Board of Adjustment decision to dismiss.

Responding to Mr. Keller's question about the ramifications of simply deferring action today, postponing until the next meeting, ensuring that there is due notification to the appellant, would the standing fines and penalties continue to accrue simply for that additional possible 30-day period as opposed to a dismissal today the fines would still run would they not in any event.

Chairman Sheth stated that whatever is done will have a precedent.

Mrs. Townshend stated that when something is under an Appeal the department does not continue to issue fines. The fines that have been issued still sit there, but no additional fines are issued during the appeal process.

Responding to Colonel Ericson's question whether the case is dismissed the applicant would have to reapply and pay the fees, Mrs. Townshend stated only if there are additional fines, then they would have to appeal those fines. At this point, if the Board of Adjustment dismiss, the applicant cannot re-appeal unless there is another violation issued.

Responding to Colonel Ericson's question whether the case would then go to Superior Court, Mr. Mandalas stated that it is possible it could go to Superior Court. It is also possible that the Board of Adjustment dismissal would have the effect of affirming the City's decision. If no additional fines were issued the appeal is now dismissed. The only way to challenge the City's determination is to go on to Superior Court, but they would first have to challenge the City's dismissal.

Mrs. Townshend stated that there is currently one (1) $500 fine which is doubled because it is more than 14-days. It was more than 14-days between the issuance of the fine and the Appeal. The role of the Board of Adjustment is to determine if in fact if the Inspections and Planning Department was correct in the application of the code.

Responding to Mr. Mandalas's question whether there were other items on the agenda for next month, Mrs. Townshend stated yes, there are two other items.

Mr. Mandalas stated that the Board of Adjustment members came out today for this sole hearing and if the Board of Adjustment was thinking about deferring the item, they would not want to come out again for just this single agenda item. But, since there are other items on the agenda for next month and there was question whether if the applicant would appeal to Superior Court or where it might go, it may make the best sense to defer and allow it to be on the agenda for next month.

Mr. Senato stated that it is rare that the Board of Adjustment has a meeting once a month and people are not aware, but the point is that in his personal opinion there is no concrete proof that the attorney was notified, although standard procedure is to do mailing and mailing is not 100%.

He believed that the item should be deferred until the next meeting because there is a percentage of a loophole that there was no notification to the person(s).

Mrs. Townshend stated that if the Board of Adjustment votes to defer the matter, she would suggest that there be cost applied because just for having five of the Board of Adjustment member's present and legal counsel the City is incurring hundreds of dollars.

Responding to Mr. Senato's question of the cost to whom, Mrs. Townshend stated the City. The appellant should have to pay since they deferred voluntary once in which they indicated November and then they did not show up today. Maretta actually handles the mailing.

Mr. Senato stated that there is a reasonable doubt as to whether or not notification was given regardless of what the appellant or attorney states and whether the Board of Adjustment meets once a month or not. The appellant should not be penalized because of the question of notification. If the case is not deferred then the appellant has the right to go to the Superior Court. He is giving the appellant the benefit of the doubt because no one in the City is giving him 100% proof that the mailing was done. In this case registered mailing to the appellant should be given with deferral until the next meeting.

Mrs. Townshend stated that Maretta does not have a voice due to laryngitis, but she did indicate by nodding that the mailing was done. Notices are never sent to the applicant by certified mail. Her concern that in the middle of something you change procedure and then there is the expectation every time that certified mail goes to the applicant. Again, whatever the Board of Adjustment decides is fine, but if the mailing was sent, the property owner requested last month to defer and specifically mentioned November, and if the Board of Adjustment choose to defer, she would simply request that some of the cost that the City incurred by being here today get passed on to the appellant.

Mr. Senato questioned under the code there is a section that the Board of Adjustment has the right to refer all cost.

Mrs. Townshend stated that the code specifies on an Appeal the Board of Adjustment can if they find it in favor of the appellant have the option of returning the $200 Appeal fee to the appellant.

Chairman Sheth stated that he has been an applicant for a variance before the Board of Adjustment five (5) times; he stated that he is the applicant and he was informed each time when the meeting was going to be held. This year he came before the Board of Adjustment twice and it is his responsibility as the applicant to not assume when the meeting is going to be held, therefore, the Planning office informs the applicant and attorney when the application is submitted. Mr. Paradee was aware of the meeting last month when he requested to have the meeting tabled until the November meeting and he would be ready because he had some engineering issues. If the applicant or attorney does not show up will the Board of Adjustment do this for everyone next time? He stated that the cost that was mention by Mrs. Townshend has to be factored in and should it be paid by the appellant.

Responding to Chairman Sheth's question whether the violation of the code could be discussed,

Mr. Mandalas stated that Board of Adjustment should not discuss the merit of the Appeal without the appellant being available to make their case.

Colonel Ericson stated the reason for the original question is that there were a lot of reasons the appellant should have known about the meeting and it seems that it is the Attorney's job to check the exact date of the meeting. He was not comfortable with assigning a fee because it has not been done in the past and he would not know how to measure what that fee should be. This case started in 2006 and has gone through the Planning Commission numerous times and extensions have been given. It seems that the behavior for this case is to delay, delay, delay, and never follow through. Looking at that, he does not see any reason to reward them for not showing up. He stated that dismissing the case is probably the right answer.

Mr. Keller stated that he had a bit of reservation about a dismissal only in that Mrs. Townshend speaks in term of standard procedures. He would be more inclined to a deferring of the action given no true assurance that there has been due notice under FOIA (Freedom of Information Act). One can or cannot look at the city's website or any direct mailing to the appellant. Every established Board of Adjustment meeting requires due notice to the public if he is not mistaken. Typically that standard procedure is by public notification via newspaper. To his understanding it was not done in this case, there was reliance on the previous deferring of this particular action to today's meeting. The applicant has a direct interest naturally and the Board of Adjustment does not know if there were members of the general public or neighbors, etc. that may have had some interest in hearing the Appeal, contributing testimony, which they would of otherwise been afforded virtue of a public notice had they seen it in the newspaper. He stated that he would not like to see a dismissal and then to have a subsequent Appeal to Superior Court wherein it comes to light that there was not public notice and perhaps have a reversal based upon that lack of due public notice via the standard operating procedure of running a newspaper publication.

Chairman Sheth's questioned Mr. Keller whether the case was tabled in October, Mr. Keller stated that there was a motion to defer.

Chairman Sheth stated that the case was tabled and in twenty-three (23) years this is the first time the question has come before the Board of Adjustment that an applicant states they have never been notified. He stated that he was not talking about other people; he is referring to the applicant. He stated that the applicant is the one who has come and asked to come before the Board of Adjustment. The applicant is given all necessary information. You are asking the Board of Adjustment to take responsibility for the applicant that they may have forgotten.

Colonel Ericson stated that public notice and mailing was done. It is standard knowledge that the Board of Adjustment meets once a month at the same time. The Attorney requested they and he has a responsibility to follow through and it is posted on the website. The Board of Adjustment has given ample cause for this appellant to show up. Most people who do not show up or call in and ask for it to be deferred do not even know about it. In his mind to dismiss is the proper way to go.

Responding to Mr. Hufnal's question whether the case has been deferred twice in the past two months, if the case is deferred and it goes to the next meeting in a letter to the applicant/attorney

could it state the position that the case has already been deferred twice and at the next meeting there could be a possibility of dismissal, Mr. Mandalas stated yes.

Responding to Colonel Ericson's question whether the Attorney would know that the case could be dismissed today, it is his job to know that, Mr. Hufnal stated that it should be his job to know.

Chairman Sheth suggested that if a letter needed to be done, it could state that this is your final notice, why would you need a pre-judgmental dismissal.

Mr. Mandalas stated that as a matter of notice there has been ample notice in this case. Certainly under the FOIA (Freedom of Information Act) those notices have been done and it is general acceptable practice that if you are going to defer an item as it was done last month to this month it is announced publicly during that meeting that it will be on next month that is sufficient for FOIA notice purposes. The state statue also requires notice under the Board of Adjustment section for these and that notice was done last month and the mailing went out to the neighbors. So it is a matter did the City comply with the FOIA and Title 22 requirements for notices of Board of Adjustment. He stated that the City has complied with all that. There is no specific requirement under the State Code or under the City's Code requiring that individual notice even be sent to the applicant. Although it was sent to the applicant/attorney based upon the testimony.

Mr. Senato stated that he agreed with Colonel Ericson that at this point the Board of Adjustment could be setting some form of precedent and may be not, but there are two issues to consider.

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

Mr. Senato moved that Appeal V-14-10 be dismissed based upon the testimony of City Staff, that neither the Appellant nor the Appellant's legal representative appeared at the November 19, 2014 hearing after requesting that the Appeal hearing be deferred from its originally scheduled date, October 15, 2014, to "the next available meeting of the Board of Adjustment (in November)", seconded by Colonel Ericson.

Decision/Roll Call Vote on Motion

Mr. Keller stated that based upon the clarification of the above information mentioned by Mr. Mandalas regarding FOIA, and particularly in light of the unusually long/prolonged duration of the 2006 case which has been eight (8) years of action, delays, and notifications, he would be more inclined to go with a dismissal than deferring this action once again.

Mr. Keller stated that due to primarily the absence of the appellant and party of interest to appear after awareness of the appellant and parties involved as to the meeting being held today which stems from a unduly long/prolonged activities regarding this property, multiple violations of established code by Code Enforcement and City Administration, repeated attempts at corrections of violations have gone unheeded, current violation still stand, otherwise in the absent of testimony today by the appellant he votes (aye) in favor of the dismissal.

Colonel Ericson voted (aye) based upon the testimony given in the fact that proper notification was given and of the past behavior of the applicant.

Mr. Senato voted (aye) the applicant did not appear for the meeting, standard procedures from City Staff was completed regarding notifications, based on City Solicitor comments regarding notifications and the long jeopardy of the case.

Mr. Hufnal voted (nay) because he understood all of the significance of what the Board of Adjustment tried to accomplish in the past couple of months, but he would like to hear the issues before the Board of Adjustment instead of going before Superior Court.

Chairman Sheth voted (aye) because the City requested a dismissal for the case, the case was tabled last month (October), and the applicant did not show up this month (November), they were given enough time to address their complaints and issues.

*Motion carried four (4) aye, and one (1) nay.*

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

Meeting adjourned at 9:49 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary

**V-14-10 Lands of Mitten on Lafferty Lane: Appeal**

Update on Appeal Application #V-14-10 Lands of Mitten (and Request for Reconsideration) concerning certain real property located at the South side of Lafferty Lane, Dover, Delaware (Tax Parcel ED-05-077.00-01-26.00-000 and ED-05-077.00-01-27.00-000).

The following items of correspondence are provided to the Board of Adjustment in reference to V-14-10. These items have been received by the City of Dover Planning Office since the Board of Adjustment Meeting of December 19, 2014.

- **Item C1:** Letter of 11/19/2014 Paradee to Townshend (Request to reschedule Appeal V-14-10)

- **Item C2:** Cover Letter of 11/19/2014 from Planning Office with attachment Notice of Board of Adjustment Decision for V-14-10

- **Item C3:** Letter of 11/20/2014 Paradee to Sheth & Townshend (Request to reschedule Appeal V-14-10)

- **Item C4:** Letter of 12/4/2014 Mandalas to Paradee (Status of Appeal) with Item C5: Letter of 12/2/2014 Townshend to Mitten (Dismissal of fine)

- **Item C6:** Letter of 12/10/2014 Paradee to Sheth & Townshend (Response to 12/2/2014 and 12/4/2014 Letters and Request to reconsider Dismissal of Appeal) with Letter attachments of Item C4 and Item C5

Item C1

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NICOLE M. FARIES

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Writer's E-Mail Address: jwparadee@prickett.com

RECEIVED
NOV 19 2014
CITY OF DOVER
PLANNING & INSPECTIONS

November 19, 2014

**VIA HAND DELIVERY**
Ann Marie Townshend, AICP
Director of Planning and Inspections
City of Dover
City Hall/The Plaza
Dover, Delaware 19901

RE: Mathew E. Mitten
Property: 4.9 acres on the south side of Lafferty Lane, Dover, Delaware
Tax Parcel Number ED-05-077.00-01-260.000-000
Board of Adjustment Appeal #V-14-10

Dear Ann Marie:

Please accept my deepest apologies that my client and I did not appear for this morning's Board of Adjustment hearing in the above-referenced matter. Unfortunately, not having received any notice of the date and time for the rescheduled hearing, my client and I were not aware that the hearing had been scheduled for this morning. Additionally, based upon a recent conversation with the Chairman of the Board, I was under the impression that this matter might not be scheduled for the month of November. In any event, I was expecting to receive some notice of the date and time for the rescheduled hearing in advance of same, but did not. I therefore beg the indulgence of the Board to reschedule this matter for the next available hearing date, and I humbly request that you advise me of the date and time once the hearing is rescheduled.

Again, please accept my apologies for any miscommunication or misunderstanding on my end, and thank you for your courtesy and consideration in this matter.

Very truly yours,

John W. Paradee

JWP/lwr
Cc: Mr. Mathew E. Mitten

Item C2

# City of Dover

November 19, 2014

Mr. John W. Paradee
Prickett, Jones & Elliott, P.A.
11 North State Street
Dover, DE 19901

RE: Lands of Mathew Mitten
Property on South Side of Lafferty Lane, Dover, Delaware
Tax Parcels: ED-05-077.00-01-26.00-000 and ED-05-077.00-01-27.00-000
Board of Adjustment Appeal #V-14-10

Dear Mr. Paradee:

The Planning Department received your correspondence today (November 19, 2014 – received via hand delivery at 12:59pm) concerning the above-referenced appeal #V-14-10 and your request that the hearing be rescheduled. However, as the attached document indicates, during today's (November 19, 2014) morning meeting of the Board of Adjustment, the Board dismissed the appeal. Accordingly, the matter is no longer pending before the Board of Adjustment.

Sincerely,

Dawn Melson-Williams, AICP
Principal Planner
Department of Planning & Inspections

Attachment: Notice of Decision V-14-10

CC: Mathew Mitten
David C. Braun, P.E., Braun Engineering, LLC
Glenn Mandalas, Baird Mandalas Brockstedt, LLC
Ann Marie Townshend, AICP, Planning Director
William Pepper, Deputy City Solicitor

*Note: An Email consisting of the same content as this letter and attachment was sent on 11/19/2014 at 4:38pm to the Project Contacts listed on Project Contact List submitted with Appeal Application V-14-10; to Glenn Mandalas serving as legal counsel to the Board of Adjustment; and to City Department representatives of Ann Marie Townshend, Planning Director and William Pepper, Deputy City Solicitor.*

**Date of Decision:** November 19, 2014
**Date of Filing of Decision:** 11/19/2014

**BEFORE THE BOARD OF ADJUSTMENT**
**OF THE CITY OF DOVER**

| | |
|---|---|
| **IN RE:**<br><br>**APPLICATION #V-14-10**<br><br>**Mathew E. Mitten, Appellant** | **DISMISSAL** |

The Board of Adjustment of the City of Dover (the "Board") convened at 9:00 a.m. on the morning of Wednesday, November 19, 2014 at the Dover City Hall Council Chambers, 15 Loockerman Plaza, Dover, Kent County, Delaware. Present for the Board of Adjustment were Chairperson K.C. Sheth, and members Arthur Ericson, William Hufnal, James N. Keller, and Richard Senato.

The Board convened to hear the appeal of Mr. Mathew E. Mitten (the "Appellant"), concerning certain real property located at the South side of Lafferty Lane, Dover, Delaware (Tax Parcel ED-05-077.00-01-26.00-000 and ED-05-077.00-01-27.00-000). On May 22, 2014, the City of Dover, through its Code Enforcement Officer, Mr. Matthew Brown, issued a citation to the Appellant for the alleged failure of the Appellant to obtain an approved Site Development Plan as required by the City's Zoning Ordinance at Article 3, Section 20.6 and Article 10, Section 2. The Appellant appealed the decision that the activity at the site is a use requiring an approved Site Development Plan.

## CONCLUSIONS

The Board concludes:

(1) ***The Appellant requested that the Appeal hearing be deferred from its originally scheduled date, October 15, 2014, to "the next available meeting of the Board of Adjustment (in November)."***[1]

(2) ***The City sent notice of the rescheduled hearing date to the Appellant and the Appellant's legal representative, and posted notice of the hearing in City Hall and on the City's website.*** In reaching this conclusion, the Board relied upon the testimony of

[1] *See* October 10, 2014 correspondence from John W. Paradee, Esquire to Ann Marie Townshend, attached hereto as Exhibit A.

City staff, indicating that the mailings were made in the normal course of business, and in accordance with past practices.

(3) ***The Board convened the November 19, 2014 hearing to hear the subject appeal, and had no other cases for consideration.***

(4) ***Neither the Appellant nor the Appellant's legal representative appeared at the November 19, 2014 hearing.***

**DECISION**

Based upon the foregoing conclusions, and the evidence presented to the Board of Adjustment, and for the reasons stated herein, and those stated on the official recording of the proceeding, the Board voted to dismiss the subject appeal (Sheth (aye), Ericson (aye), Keller (aye), Senato (aye), Hufnal (nay)).

The appeal is **DISMISSED.**

BOARD OF ADJUSTMENT
OF THE CITY OF DOVER

BY: K Sheth
K.C. SHETH, Chairperson

Dated: 11-19-14

# EXHIBIT A

PRICKETT, JONES & ELLIOTT
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Writer's E-Mail Address: jwparadee@prickett.com

October 10, 2014

HAND DELIVERY

Ann Marie Townshend, AICP
Director of Planning and Inspections
City of Dover
City Hall/The Plaza
Dover, Delaware 19901

RE: Mathew E. Mitten
Property: 4.9 acres on the south side of Lafferty Lane, Dover, Delaware
Tax Parcel Number ED-05-077.00-01-260.000-000
Board of Adjustment Appeal #V-14-10

Dear Ann Marie:

This letter is intended to formally request an extension of the appeal hearing scheduled for 9:00 a.m. on October 15, 2014. Please pass this agenda item to the next available meeting of the Board of Adjustment (in November). My client's engineer needs another thirty (30) days to get this matter back on track.

Thank you for your assistance and cooperation. If you have any questions, please do not hesitate to contact me.

Very truly yours,

John W. Paradee

JWP:lmw
Cc Mr. Mathew E. Mitten

20122.2/570823v1

Item C3

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FAX: (302) 658-8111

Writer's E-Mail Address: JWParadee@prickett.com

November 20, 2014

RECEIVED
NOV 20 2014
CITY OF DOVER
PLANNING & INSPECTIONS

**VIA HAND DELIVERY**

K.C. Sheth
Chairman, City of Dover Board of Adjustment
City of Dover
City Hall/The Plaza
Dover, Delaware 19901

Ann Marie Townshend, AICP
Director of Planning and Inspections
City of Dover
City Hall/The Plaza
Dover, Delaware 19901

RE: Mathew E. Mitten
Property: 4.9 acres on the south side of Lafferty Lane, Dover, Delaware
Tax Parcel Number ED-05-077.00-01-260.000-000
Board of Adjustment Appeal #V-14-10

Dear Chairman Sheth and Ms. Townshend:

Late yesterday afternoon, I received a copy of the Board's written determination to dismiss the above-referenced appeal (the "Board's Decision"). Frankly, my client and I are utterly shocked and deeply disturbed by this development.

Contrary to the suggestions set forth in the Board's Decision, ***neither my client nor I ever received any notice whatsoever that the Board would be conducting a hearing upon my client's appeal on the morning of November 19, 2014***. Typically – indeed, for every single land use application I have ever handled before the City during my 26 years of practice – the applicant receives both a hearing notice and a copy of the agenda for the hearing. That simply did not happen in this case.

The Board's Decision indicates that "[t]he City sent notice of the rescheduled hearing date to the Appellant and the Appellant's legal representative, and posted notice of the hearing in City Hall and on the City's website." This statement is factually flawed, however, and ultimately unavailing, for the following reasons:

(1) If the City sent a notice of the rescheduled hearing date to me and/or my client, we never received it. For this reason, I dispute that any such notice was ever sent to me and/or my client. If such notices were sent, I respectfully request that you immediately produce copies of the notices, as well as proof (if any) that the notices were received.

(2) The law is clear that property owners are entitled to notice and an opportunity to be heard before their constitutionally-protected property rights may be impaired. Taking action to impair property rights without notice and an opportunity to be heard is a violation of the property owner's constitutional right to procedural due process.[1]

(3) The posting of notice at City Hall and on the City's website is not sufficient to satisfy due process requirements. Actual notice delivered to the property owner is required.[2]

For all of the above reasons, the Board's Decision is erroneous as a matter of both fact and law. The Appellant in this matter never received notice of the Board's November 19, 2014 hearing, as required by law, and therefore, the Board's denial of the Appeal violates the Appellant's constitutional right to procedural due process. Accordingly, I respectfully request that the Board promptly reschedule this matter for another hearing, with proper notice to the Appellant.

Please let me have your response to this letter as soon as possible and, in any event, no later than November 24, 2014. Thank you in advance for your prompt attention and continuing courtesy.

Very truly yours,

John W. Paradee

JWP/lwr
cc: Mr. Mathew E. Mitten

[1] *See* Dusenbery v. U.S., 534 U.S. 161, 167 (2002); Salem Church (Delaware) Assoc. v. New Castle County, 2006 WL 2873745, at *16 (Del. Ch.) (noting that Delaware follows federal law with regard to procedural due process).

[2] *See, e.g.*, Bohemia Mill Pond v. New Castle County Planning Board, 2001 WL 1221685, at *2 (Del.) (finding a procedural due process violation when New Castle County relied on newspaper notification rather than personal notice).

Item C4

BAIRD MANDALAS BROCKSTEDT LLC

Glenn C. Mandalas
Dover Office
www.bmbde.com
glenn@bmbde.com

RECEIVED
DEC X5 2014
CITY OF DOVER
PLANNING & INSPECTIONS

December 4, 2014

John W. Paradee, Esq.
Prickett, Jones & Elliott
11 North State Street
Dover, DE 19901

**RE: Appeal Application #V-14-10**
**Mathew E. Mitten, Appellant**

Dear Mr. Paradee –

On November 19, 2014, the Dover Board of Adjustment dismissed the above-referenced appeal. Thereafter, you requested that the Board of Adjustment reconsider the dismissal and your client's appeal. The Board Chairman has considered including your request on the meeting agenda for the Board's regular meeting on December 17, 2015. However, I was provided a copy of the enclosed letter from Ms. Townshend to Mr. Mitten, in which the City dismisses the pending fine, and concludes that the appeal is moot. Unless your view is different than Ms. Townshend's view, I will advise the Board that it need not take up your client's request for reconsideration.

So that the Board may comply with open meeting laws governing the posting of the meeting agenda, I would appreciate your response by Monday, December 8, 2014.

Sincerely,

Glenn C. Mandalas

GCM/tly
Enc.
pc: Ms. Dawn Melson-Williams, AICP
Ms. Ann Marie Townshend, AICP
Mr. William W. Pepper, Esquire

Item C5

# City of Dover

December 2, 2014

Mathew E. Mitten
PO Box 1192
Dover DE 19903

Dear Mr. Mitten:

On May 22, 2014, the City of Dover Department of Planning and Inspections issued a $500 citation for failure to obtain an approved site plan. As the fine was not paid within 14 days, it has now doubled. This fine (Citation #06-2574) is hereby dismissed. As the citation was the basis of your appeal to the Board of Adjustment, the appeal is now moot.

Please let me know if you have any questions.

Sincerely,

Ann Marie Townshend

Ann Marie Townshend, AICP
Director, Planning & Inspections

cc: John W. Paradee, attorney for Mathew Mitten
William W. Pepper, attorney for the Department of Planning and Inpsections
Glenn Mandalas, attorney for the Board of Adjustment

Item C6

PRICKETT, JONES & ELLIOTT
A PROFESSIONAL ASSOCIATION
11 NORTH STATE STREET
DOVER, DELAWARE 19901
TEL: (302) 674-3841
FAX: (302) 674-5864
http://www.prickett.com

JOHN W. PARADEE
NICOLE M. FARIES

WILMINGTON OFFICE
1310 KING STREET, P.O. 1328
WILMINGTON, DE 19899
TEL: (302) 888-6500
FAX: (302) 658-8111

Writer's E-Mail Address: JWParadee@prickett.com

RECEIVED
DEC 10 2014
CITY OF DOVER
PLANNING & INSPECTIONS

December 10, 2014

**VIA HAND DELIVERY**

K.C. Sheth
Chairman, City of Dover Board of Adjustment
City of Dover
City Hall/The Plaza
Dover, Delaware 19901

Ann Marie Townshend, AICP
Director of Planning and Inspections
City of Dover
City Hall/The Plaza
Dover, Delaware 19901

RE: Mathew E. Mitten
Property: 4.9 acres on the south side of Lafferty Lane, Dover, Delaware
Tax Parcel Number ED-05-077.00-01-260.000-000
Board of Adjustment Appeal #V-14-10

Dear Chairman Sheth and Ms. Townshend:

I have received a copy of Ms. Townshend's December 2, 2014 letter to my client, Mathew E. Mitten, the Appellant in the above-referenced matter, as well as December 4, 2014 correspondence from Glenn C. Mandalas, Esquire on behalf of the Board of Adjustment (see copies enclosed). I write to propose what I believe to be a fair and reasonable resolution of this matter for all concerned.

First, while my client and I genuinely appreciate Ms. Townshend's dismissal of the citation which first gave rise to the Appeal (Citation #06-2574), I am not certain that dismissal of the citation necessarily "moots" the Appeal, for the reason that the initial administrative determination underlying the citation – i.e., that my client is required to obtain site plan approval for the activity being conducted on his property, something my client and I contest – presumably stands.

Second, as you are likely aware, the City has recently filed suit against my client in the Delaware Court of Chancery, seeking to enjoin my client from conducting the activity at issue unless and until such time as my client obtains site plan approval from the City. Thus, the City is actively pursuing enforcement action against my client in the venue which the City deems most

appropriate, in an effort to bring resolution to this matter. Accordingly, there is no longer any need for the Board of Adjustment to take any action adverse to my client here.

Third, notwithstanding my client's position that no site plan approval is required for the activity being conducted on his property, and without prejudice to that position, my client is nevertheless attempting to achieve compliance (as he has previously) by filing and pursuing an application for site plan approval. Indeed, my client's latest site plan application is expected to be filed very soon.

In light of all the foregoing, I would like to make the following proposal: In the interests of judicial economy, I respectfully request that the Board of Adjustment move to reconsider its dismissal of my client's Appeal, during its upcoming December 17, 2014 meeting. Thereafter, at the Board's January 2015 meeting, I would ask that the Board move to stay the Appeal, pending the disposition of the aforementioned Court of Chancery action. This outcome would allow all parties to preserve their respective positions, without prejudice to any party, and would still allow the City to proceed with whatever enforcement action the City ultimately determines to pursue.

I have discussed the foregoing proposal with Mr. Mandalas, counsel for the Board, and we agree that this proposal seems to make sense for all concerned. I therefore humbly request that the Board of Adjustment give this proposal favorable consideration and proceed accordingly on December 17, 2014.

Thank your time, attention, courtesy, and consideration.

Very truly yours,

John W. Paradee

JWP/lwr
Enclosures
cc: Mr. Mathew E. Mitten (w/copies of enclosures)
Glenn C. Mandalas, Esquire
William W. Pepper, Esquire
Dev Sitarim, P.E.

Item C4

BAIRD
MANDALAS
BROCKSTEDT LLC

Glenn C. Mandalas
Dover Office
www.bmbde.com
glenn@bmbde.com

RECEIVED
DEC - 4 2014
Per

December 4, 2014

John W. Paradee, Esq.
Prickett, Jones & Elliott
11 North State Street
Dover, DE 19901

**RE: Appeal Application #V-14-10**
**Mathew E. Mitten, Appellant**

Dear Mr. Paradee –

On November 19, 2014, the Dover Board of Adjustment dismissed the above-referenced appeal. Thereafter, you requested that the Board of Adjustment reconsider the dismissal and your client's appeal. The Board Chairman has considered including your request on the meeting agenda for the Board's regular meeting on December 17, 2015. However, I was provided a copy of the enclosed letter from Ms. Townshend to Mr. Mitten, in which the City dismisses the pending fine, and concludes that the appeal is moot. Unless your view is different than Ms. Townshend's view, I will advise the Board that it need not take up your client's request for reconsideration.

So that the Board may comply with open meeting laws governing the posting of the meeting agenda, I would appreciate your response by Monday, December 8, 2014.

Sincerely,

Glenn C. Mandalas

GCM/tly
Enc.
pc: Ms. Dawn Melson-Williams, AICP
Ms. Ann Marie Townshend, AICP
Mr. William W. Pepper, Esquire

Item C5

# City of Dover

December 2, 2014

Mathew E. Mitten
PO Box 1192
Dover DE 19903

Dear Mr. Mitten:

On May 22, 2014, the City of Dover Department of Planning and Inspections issued a $500 citation for failure to obtain an approved site plan. As the fine was not paid within 14 days, it has now doubled. This fine (Citation #06-2574) is hereby dismissed. As the citation was the basis of your appeal to the Board of Adjustment, the appeal is now moot.

Please let me know if you have any questions.

Sincerely,

Ann Marie Townshend

Ann Marie Townshend, AICP
Director, Planning & Inspections

cc: John W. Paradee, attorney for Mathew Mitten
William W. Pepper, attorney for the Department of Planning and Inpsections
Glenn Mandalas, attorney for the Board of Adjustment

City of Dover

Board of Adjustment

December 17, 2014

V-14-13

| | |
|---|---|
| Location: | 185 Saulsbury Road |
| Applicants/Owners: | Energizer Personal Care Division – Playtex Prodcuts |
| Tax Parcel: | ED-05-067.19-02-11.01-000 |
| Application Date: | November 11, 2014 |
| Present Zoning: | IPM (Industrial Park Manufacturing Zone)<br>COZ-1 (Corridor Overlay Zone) |
| Present Use: | Manufacturing |
| Proposed Use: | Manufacturing |
| Reviewed By: | Ann Marie Townshend, AICP |
| Variance Type: | Area Variance |
| Variances Requested: | Allow for the reduction in the required number of parking spaces. |

**Project Description:**
The applicant is requesting variances from Article 4 §4.16 of the *Zoning Ordinance* pertaining to required number of parking spaces. Specifically the applicant is requested a reduction in the overall number of parking spaces from 710 to 648. In addition, the site includes 20 motorcycle parking spaces. Staff notes that the 648 parking spaces accounts for passenger vehicles and does not include the truck and trailer parking.

| Parking based on | Required by Code | Currently Provided | Proposed |
|---|---|---|---|
| Square Footage (1 space/800 SF) | 710 | 666 | 648 (accounts for reduction due to stormwater management and ADA spaces) |
| Employee Count (1 per employee on the largest shift) | 200 | | |

## Adjacent Land Uses

The adjacent properties to the south include property owned by Capital School District, which includes the Kent County Community School and William Henry Middle School (zoned IO (Institution and Office) and C-2A (Limited Central Commercial)); and an industrial building which houses several warehousing tenants and the PEAK alternative school (zoned IPM). The property southwest of the subject property along Saulsbury Road includes the Blood Bank of Delmarva and the Dover Federal Credit Union. Both of these properties are zoned C-PO (Commercial and Professional Office). The property to the north is zoned RG-1 (General Residence Zone) and is the Whatcoat Apartments. All properties that front Saulsbury Road are also subject to the COZ-1 (Corridor Overlay Zone).

## Code Citation

Section 4.16. [IPM zones].
Bulk and parking regulations for industrial zone (IPM) [are as follows]:

| Minimum parking required: | IPM (Conventional Planned) |
|---|---|
| Per 800 SF of floor area | 1 |
| Per employee, per largest working shift (if greater than the requirement under the floor area calculation) | 1 |

## Exceptional Practical Difficulties Tests

Article 9, §2 dictates the specific powers and duties of the Board of Adjustment with regard to granting variances. Specifically the Board must determine:

2.1 Variance – The board shall have the authority to authorize variances from provisions of the zoning ordinance that are not contrary to public interest where the board determines that a literal interpretation of the zoning ordinance would result in undue hardship or exceptional practical difficulties to the applicant. In granting variances, the board shall determine that the spirit of the zoning ordinance is observed and substantial justice done.

2.11 Area Variance. A variance shall be considered an area variance if it relates to bulk standards, signage regulations, and other provisions of the zoning ordinance that address lot layout, buffers, and dimensions. In considering a request for an area variance, the board shall evaluate the following criteria and document them in their findings of fact:

(a) the nature of the zone in which the property lies;
(b) the character of the immediate vicinity and the contained uses therein;
(c) whether, if the restriction upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses; and
(d) whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in his efforts to make normal improvements in the character of that use of the property that is a permitted use under the provisions of the zoning ordinance.

1. The nature of the zone in which the property lies.

**Applicant Responses:**

- Energizer Personal Care Division – Playtex Products' property is +/-33.57-acres and zoned IPM. The owner's facility is 528,396-ft$^2$ and has adequate employee parking for all existing shifts (686-parking spaces, 20 being motorcycle spaces). The owner is relocating a product line from Canada into the existing facility. After some internal facility rework, the owner also intends to add 39,050-ft$^2$ of additional building area, bringing the proposed total facility square footage to 567,446-ft$^2$. Per Section 4.16, IPM Zones of Article 4. – Zoning Bulk & Parking Regulations, 710-parking spaces are mandated at a rate of (1) parking space per 800-ft$^2$ of floor area, and require an additional 44-parking spaces.
- Energizer Personal Care Division also requests that the requirement be further reduced to accommodate the stormwater best management practices required by the Kent Conservation District. Kent Conservation is requiring the inclusion of bioretention within the north employee parking lot at the location detailed on Design Sheets CE-1.0, 1.2, 2.0 & 2.2. The installation of this bioretention will dictate the removal of 15-existing parking spaces.
- To bring Energizer Personal Care's site into ADA compliance, 6-ADA-compliant spaces are required. By doing this, 3-existing parking spaces will be eliminated by the addition of the adjacent loading zones.
- Following the expansion and reassignment of the product lines, the existing parking spaces will still meet the parking requirements of all shifts. It is not in the best interest of the owner, neighbors or the City of Dover to add an additional, unnecessary 44-parking spaces. Additionally, without removing 15-additional, existing parking spaces for the addition of the bioretention in the north parking lot, the project will not meet the requirements of the Delaware Department of Natural Resources and Environmental Control, and will therefore not obtain plan approval from the Kent Conservation District. This would prevent the owner from expanding their facility, moving the product line from Canada, and ultimately prevent them from hiring what will be necessary, additional staffing needs.
- Energizer Personal Care Division respectfully requests that they be permitted to maintain 648-employee parking spaces for their facility use.

**Staff Response:**
The manufacturing use is consistent with the nature of the zone the property is within, as the property is zoned IPM (Industrial Park Manufacturing). The variance request is also consistent with the nature of the zone, as the proposed parking would serve the employees at the manufacturing plant.

2. The character of the immediate vicinity and the contained uses therein.

**Applicant Responses:**
Energizer Personal Care Division – Playtex Products is a Class-2 medical manufacturing facility. The property is bound by manufacturing and industrial on the south and east, and commercial and residential on the north and west.

**Staff Response:**
The nature of the immediate vicinity is principally industrial to the southeast, institutional (school) to the south, commercial to the southwest, and residential to the north. The proposed parking variance would not affect the character of these uses or the general vicinity.

3. Whether, if the restriction upon the applicant**'**s property were removed, such removal would seriously affect neighboring properties and uses.

**Applicant Responses:**

- Removing the requirement to construct an additional, unnecessary 44-parking spaces will not have an adverse effect on the owner, the neighboring properties, or the City of Dover. In fact, adding unnecessary, impervious surfaces of approximately 20,000-$ft^2$, would remove an equal amount of existing green space, contribute to added heat gain to the neighborhood, further limit groundwater recharge, contribute to a greater volume of stormwater runoff, and be a basis for additional stormwater drainage challenges on-site and downstream.
- Removing 15-existing parking spaces to accommodate the bioretention requirement will also not adversely affect the owner, the neighboring properties, or the City of Dover. In fact, removing 2,749- $ft^2$ of existing, impervious asphalt surface will add an equal amount of landscaped area, reduce heat gain to the neighborhood from the existing asphalt, further aid groundwater recharge, reduce the volume of stormwater runoff, and aid in treatment of stormwater runoff from the existing parking lot.
- Removing 3-existing parking spaces to accommodate loading zones for 6-ADA-compliant spaces will bring Energizer Personal Care's site into ADA compliance.
- Removing the restriction will be an asset to the owner, the neighboring properties, and the City of Dover.

**Staff Response:**
Granting of the variance would not seriously affect neighboring properties and uses. Based on the information presented, once the expansion is fully operational, the largest shift will include 200 employees. The 648 vehicle spaces provided will provide sufficient parking for employees on the largest shift and the overlap associated with shift change. In addition, the site includes 20 motorcycle parking spaces and 36 bicycle parking spaces. The variance to relax the parking requirement would not create parking demand that would affect adjacent properties.

Conversely, the surrounding area has experienced drainage problems. With the parking configuration as proposed, including the variance, the stormwater management on the site would improve through the construction of a bioretention area and reduce the potential impact of stormwater from the site on other properties in the vicinity.

4. Whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in his efforts to make normal improvements in the character of that use of the property that is a permitted use under the provisions of the zoning ordinance.

**Applicant Responses:**

If the restriction is not removed, the existing positives in criteria (3) will be lost, and unnecessarily remove green space, contribute to neighborhood heat gain, further limit groundwater recharge, contribute to a greater volume of stormwater runoff, and be a basis for additional stormwater drainage challenges on-site and downstream. Furthermore it will be an unwarranted and unnecessary expense to the owner.

**Staff Response:**

If the restriction is not removed, the applicant would be required to provide additional parking on a constrained site, when the parking is not necessary to support the use. It would create additional challenges with managing the stormwater from the site and complying with State Sediment and Stormwater Regulations.

**Variance Recommendation:**

Staff recommends approval of the variances to allow for the reduction in the overall number of parking spaces to 648 (as shown on the plan) for reasons as follows:

- The applicant has demonstrated exceptional practical difficulty as meeting the parking requirement would require additional paved surface that far exceeds what is necessary for the number of employees at the plant. This would cause additional challenges in meeting stormwater requirements for the site.
- The applicant has demonstrated that the proposed number of parking spaces is sufficient to meet the needs of the site, as the largest shift for the facility when the expansion is operational will include 200 employees.
- The parcels would not negatively impact the surrounding neighborhood as the proposed parking spaces are sufficient for the largest shift.
- The benefit of the added stormwater management gained by adding a bioretention area in place of what is now 15 parking spaces would be an improvement to the area.
- Staff notes that it may be beneficial to evaluate a potential change to the *Zoning Ordinance* as it relates to the minimum parking requirement for manufacturing facilities. The calculation based on square footage yields a parking requirement that may exceed the practical need for a manufacturing site. Tying the parking requirement to the employee count may be a more appropriate calculation.

Architects/Engineers, Inc.

December 5, 2014

Mrs. Ann Marie Townshend
Director of Planning & Community Development
Planning and Inspections/Parks and Recreation
City of Dover
15 Loockerman Plaza
Dover, Delaware 19901

**RE: Board of Adjustment Area Variance Request – REVISED**
**Energizer Personal Care Division - Playtex Products**
**185 Saulsbury Road, Dover, DE 19904**
**HMAE PROJECT NO.: 14044**

Dear Mrs. Townshend,

Please accept this letter and the included documents as a formal request for an area variance hearing before the Board of Adjustment on December 17, 2014 regarding the proposed building expansion for Energizer Personal Care Division – Playtex Products in Dover, DE. Thank you for advising us to email this package versus sending another overnight shipment.

This letter is a revision of the previous revision request sent on November 26, 2014. You are aware that Kent Conservation is requiring the installation of a bioretention within the existing, north employee parking lot. This will require the elimination of 15-parking spaces. Energizer Personal Care's site is also short 6-ADA-compliant parking spaces. Adding the loading areas for these spaces will further reduce the existing parking spaces by 3. Together these revisions will reduce the existing parking lot spaces to 648.

An area variance is requested for the off-street parking requirements of Section 4.16, IPM Zones of Article 4. – Zoning Bulk & Parking Regulations of (1) parking space per 800-ft$^2$ of floor area.

Please find:
1. 1-electronic version (PDF) of the Area Variance Responses to Criteria
2. 1-electronic version (PDF) of the project design document, CE-1.0
3. 1-electronic version of the response to questions (Word Document), emailed to you at atownshend@dover.de.us

Should you have any questions regarding this package of information submitted for your approval, I will be glad to assist you, and thank you for your effort regarding this project. We look forward to continuing this project with you.

Best regards,
H+M ARCHITECTS/ENGINEERS, INC.

*JEFF FUGATE*

Jeff Fugate, PE, LEED AP BD+C

Enclosures

c: Wayne Rossi (email)
Allen Brown (email)
Richard Archie (email)
Nick Shah (email)
Robert Burns (email)

PLAN
DESIGN
BUILD

50 Security Drive Jackson, TN 38305 731.664.6300 731.664.6339 fax www.hmcompany.com

**Board of Adjustment Area Variance Request**
**Energizer Personal Care Division - Playtex Products**
**185 Saulsbury Road, Dover, DE 19904**
**HMAE PROJECT NO.: 14044**

The following details how our request meets each of the four (4) criteria for a Board of Adjustment Area Variance approval.

1. The nature of the zone in which the property lies;
   - *Energizer Personal Care Division – Playtex Products' property is +/-33.57-acres and zoned IPM. The owner's facility is 528,396-ft$^2$ and has adequate employee parking for all existing shifts (686-parking spaces, 20 being motorcycle spaces). The owner is relocating a product line from Canada into the existing facility. After some internal facility rework, the owner also intends to add 39,050-ft$^2$ of additional building area, bringing the proposed total facility square footage to 567,446-ft$^2$. Per Section 4.16, IPM Zones of Article 4. – Zoning Bulk & Parking Regulations, 710-parking spaces are mandated at a rate of (1) parking space per 800-ft$^2$ of floor area, and require an additional 44-parking spaces.*
   - *Energizer Personal Care Division also requests that the requirement be further reduced to accommodate the stormwater best management practices required by the Kent Conservation District. Kent Conservation is requiring the inclusion of bioretention within the north employee parking lot at the location detailed on Design Sheets CE-1.0, 1.2, 2.0 & 2.2. The installation of this bioretention will dictate the removal of 15-existing parking spaces.*
   - *To bring Energizer Personal Care's site into ADA compliance, 6-ADA-compliant spaces are required. By doing this, 3-existing parking spaces will be eliminated by the addition of the adjacent loading zones.*
   - *Following the expansion and reassignment of the product lines, the existing parking spaces will still meet the parking requirements of all shifts. It is not in the best interest of the owner, neighbors or the City of Dover to add an additional, unnecessary 44-parking spaces. Additionally, without removing 15-additional, existing parking spaces for the addition of the bioretention in the north parking lot, the project will not meet the requirements of the Delaware Department of Natural Resources and Environmental Control, and will therefore not obtain plan approval from the Kent Conservation District. This would prevent the owner from expanding their facility, moving the product line from Canada, and ultimately prevent them from hiring what will be necessary, additional staffing needs.*
   - *Energizer Personal Care Division respectfully requests that they be permitted to maintain 648-employee parking spaces for their facility use.*

2. The character of the immediate vicinity and the contained uses therein;
   - *Energizer Personal Care Division – Playtex Products is a Class-2 medical manufacturing facility. The property is bound by manufacturing and industrial on the south and east, and commercial and residential on the north and west.*

3. Whether, if the restriction upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses; and
   - *Removing the requirement to construct an additional, unnecessary 44-parking spaces will not have an adverse effect on the owner, the neighboring properties, or the City of Dover. In fact, adding unnecessary, impervious surfaces of approximately 20,000-ft$^2$, would remove an equal amount of existing green space, contribute to added heat gain to the neighborhood, further limit groundwater recharge, contribute to a greater volume of stormwater runoff, and be a basis for additional stormwater drainage challenges on-site and downstream.*
   - *Removing 15-existing parking spaces to accommodate the bioretention requirement will also not adversely affect the owner, the neighboring properties, or the City of Dover. In fact, removing 2,749- ft$^2$ of existing, impervious asphalt surface will add an equal amount of landscaped area, reduce heat gain to the neighborhood from the existing asphalt, further aid groundwater recharge, reduce the volume of stormwater runoff, and aid in treatment of stormwater runoff from the existing parking lot.*
   - *Removing 3-existing parking spaces to accommodate loading zones for 6-ADA-compliant spaces will bring Energizer Personal Care's site into ADA compliance.*
   - *Removing the restriction will be an asset to the owner, the neighboring properties, and the City of Dover.*

4. Whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in his efforts to make normal improvements in the character of that use of the property that is permitted uses under the provisions of the zoning ordinance.
   - *If the restriction is not removed, the existing positives in criteria (3) will be lost, and unnecessarily remove green space, contribute to neighborhood heat gain, further limit groundwater recharge, contribute to a greater volume of stormwater runoff, and be a basis for additional stormwater drainage challenges on-site and downstream. Furthermore it will be an unwarranted and unnecessary expense to the owner.*