CITY OF DOVER
BOARD OF ADJUSTMENT MINUTES
October 15, 2014

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, October 15, 2014 at 9:00 A.M. with Chairman Sheth presiding. Members present were Mr. Hufnal, Colonel Ericson, and Mr. Keller. Mr. Senato was absent.

Staff members present were Mrs. Townshend, Mrs. Purnell, Mr. Cook, Mrs. Melson-Williams, and City Solicitor Nicholas Rodriguez.

APPROVAL OF AGENDA

Mr. Hufnal moved to approve the agenda to defer application V-14-10 until the next meeting as a written request from Mr. John Paradee, and a better synopsis and time table that the Board of Adjustment members can better relate to (to include color photos or actual photos), seconded by Mr. Ericson and unanimously carried 4-0. Mr. Senato was absent.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF AUGUST 20, 2014

Mr. Keller moved to approve the meeting minutes of July 23, 2014 with the necessary corrections, seconded by Mr. Hufnal and unanimously carried 4-0. Mr. Senato was absent.

APPROVAL OF THE EXECUTIVE SESSION MEETING MINUTES OF JULY 23, 2014

Mr. Keller moved to approve the meeting minutes of July 23, 2014 with the necessary corrections, seconded by Mr. Ericson and unanimously carried 4-0. Mr. Senato was 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 approved agenda. There are two items 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 notices for the applications on this agenda were completed in accordance with code requirements. The meeting agenda was posted in accordance with Freedom of Information Act requirements.

NEW BUSINESS

Applicant #V-14-11:

1084-1086 South State Street. Dover Family Properties, LLC 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 C-2A (Limited

Central Commercial Zone). The Tax Parcels are ED-05-077.17-07-19.00-000 and ED-05-086.05-02-21.00-000. The owner of record is Dover Family Properties, LLC. *In its meeting of August 6, 2014 the Planning Commission approved a Site Development Plan (S-14-16) which includes a Minor Lot Line Adjustment Plan.*

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 October 5, 2014, and the public was notified in accordance with the regulations.

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

Representative: Troy Adams, Mountain Consulting Inc.

Mr. Adams stated that the owner is looking to build a new facility at 1084-1086 South State Street. The building is 2,730 S.F. and the combined parcel would be 0.53 acres in size. They would like to maximize the building size, but more importantly is the parking. Under the current zoning and parking calculations they satisfy the regulations with 10 parking spaces and they are able to increase by 25% for a total of 13 spaces. On the Site Plan they are proposing 23 parking spaces stating that this is the minimum amount of parking spaces that would allow this business to function successfully. There will be twelve (12) employees and seven (7) operatories in the building for a total requirement of 23 parking spaces to be exact. This is the request and he hoped that it would be found worthy to be approved so that the owner can have a successful business in the City of Dover.

Responding to Chairman Sheth's question whether the number of employees would increase in the future, Mr. Adams stated that given the size of the building and the number of operatories it is pretty much maxed out at 12.

Responding to Mr. Hufnal's question of the determination of the figure 1.5 multiplied by the number of treatment rooms, whether this was an engineering standard, Mr. Adams stated that the recommended calculation came from research on how to design a dental facility.

Responding to Mr. Keller's question whether the application was approved the number of parking spaces would partially extend into the building setback line even though it is parking only and paved surface area and curbing, would it present any type of problem within the building setback line, Mrs. Townsend stated that it was not a problem it is not an above ground structure. Parking is permitted within setbacks.

Responding to Mr. Keller's question whether the dumpster was a permitted structure that extends into the building setback line on the Site Plan, Mrs. Townshend stated that it was not a problem. They were required to have an enclosure, but it is not the principal structure, therefore it can be within 5 feet of the property line.

Responding to Colonel Ericson's question the reason for capping at the 25%, Mrs. Townshend stated that the reason for capping the parking related to the number of years ago when they were seeing a high volume of applications to the Planning Commission, they saw a lot of sites, particularly on Route 13 coming in with two (2) or three (3) times the amount of parking that is required and there was a concern expressed by the Planning Commission of having all of the paved parking lots that most of the year are not used. The challenge that they had was that the large retailers would demand them, but if the code stated that differently, then they would comply with the code. This was the only way to push back on the over parking and paving.

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

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

Colonel Ericson moved to approve variance V-14-11 for parking as related to the maximum allowed parking for the proposed use based on the information provided and the testimony given, seconded by Mr. Hufnal and unanimously carried 4-0. Mr. Senato was absent.

Applicant #V-14-12

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 §7.5 of the *Zoning Ordinance* related to the height of fencing in the required front yard. 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.

The legal notice was published in the Delaware State News on October 5, 2014, and the public was notified in accordance with the regulations.

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

Representative: Mr. Jagals Jiselva from Germany on behalf of Mr. Utz.

Mr. Jiselva testified that for an industry area it is better to have a 6ft. fence rather than a 4ft. fence.

Responding to Chairman Sheth's question the type of industry, Mr. Jiselva stated that is flooring industry.

Mr. Jiselva provided background on the company and their products.

Responding to Mr. Keller's question whether the product is produced or shipped here, Mr. Jiselva stated that it is produced here.

Responding to Chairman Sheth's question the number of employees, Mr. Jiselva stated roughly 35, but it is a growing company.

Mrs. Townshend stated that the Industrial Park Manufacturing zone (IPM 2) requires that it have a 60 foot front yard requirement which is a very deep front yard setback. The *Zoning Ordinance* restricts a fence height within the front yard to 4ft. The original plan had placed the fence at the setback line, but when they looked at the turning templates for the trucks they determined that the trucks would not be able to make the turning movements that they needed to with the fence in the permitted location. The application is for a variance to move the fence into the front yard. The request from the applicant states approximately 15 feet, but the number is not precise. As mentioned in the Staff Report we need to determine how far into the setback it can go.

Responding to Mr. Hufnal's question if the applicant's request consisted of two (2) parts, one (1) being to increase the height of the front fence from 4ft to 6ft., and to allow 15ft. into the front yard setback, allowing them to have a 6ft. fence at a 45ft. setback, Mrs. Townshend concurred.

Responding to Mr. Hufnal's question whether the 15ft. was adequate for the trucks to be able to turn around, Mr. Jiselva stated yes. Mrs. Townshend also responded by stating that the text says at least 15ft. in size.

Mrs. Townshend stated that this is only the third lot to be developed. There are not a lot of active neighbors.

Responding to Mr. Keller's question relating to the distance from the established building restriction line and Mrs. Townshend comments, would it be not advisable to simply have wording if the variance request is approved to allow the fence to be installed with the building restriction line up to 15ft., Mrs. Townshend stated that there could be a little cushion. Because of the very large setbacks in the zone, it is not like a residential lot or smaller commercial lot that being in the setback is near the road.

Responding to Colonel Ericson's question whether the applicant was given authorization for a 20ft. setback and 40ft. from the property line as this would give more room for the fence, but would it be beneficial, Mr. Jiselva stated yes.

Responding to Mr. Keller's question and concern regarding the applicant's letter to Inspections and Planning that states "the applicant had already contacted Public Works, as the front yard is designated as a 60' wide utility and drainage easement area. An application for a variance to build a structure inside a utility easement had been filed with Public Works already." Have we any concerns and is it in fact a utility and drainage easement, Mrs. Townshend stated that it is an easement and she discussed it with the City Manager on October 14, 2014. The City Manager has the letter granting the waiver from the requirement ready to be signed pending action of the Board of Adjustment. He did not want to sign the letter stating that the fence could be placed in the easement unless he knew the Board of Adjustment had granted the variance on the setback.

Responding to Mr. Keller's question whether there may be permission granted, would the owner do so at his own peril if in fact there was some need to subsequently relocate utilities or perform drainage work in the area or reset the fence, Mrs. Townshend stated that the Public Works department reviewed the request and was comfortable that it would not inhibit any of the use of the easement.

Responding to Mr. Hufnal's question if the setbacks were 20ft. and the 40ft. would it be enough for the applicant to work with, Mrs. Townshend stated yes.

Chairman Sheth stated that it would make sense because you do not want to have a conflict with the decision of the City Manager.

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

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

Colonel Ericson moved to approve variance V-14-12 to specifically allow a 6ft. fence to be built in the front yard of the property and that the variance also include, that the fence can be located up to including 20ft. in the setback or 40ft. from the property line based upon the testimony given and the information provided, seconded by Mr. Hufnal and unanimously carried 4-0. Mr. Senato was absent.

Chairman Sheth questioned if there was any questions.

Responding to Mr. Keller's question whether there was another qualifier on Mr. Paradee's request for deferring the other appeal, Mrs. Townshend read the letter that was submitted.

Responding to Colonel Ericson's question regarding the discussion of the key issues and visit of the site, Mr. Rodriguez stated no key issues could be discussed, he stated that there was a lot of material to review and he wanted to compliment Staff on an excellent job in a very difficult area. He could not see the photos as Mr. Hufnal had already mentioned which is very critical. The site cannot be visited. Also, Mrs. Townshend stated that Mr. Pepper is representing the City Staff on the appeal and Mr. Mandalas will represent the Board of Adjustment to eliminate any conflict.

Mr. Hufnal moved to adjourn the meeting, seconded by Mr. Ericson and unanimously carried 4-0. Mr. Senato was absent.

Meeting adjourned at 9:51 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary