CITY OF DOVER
BOARD OF ADJUSTMENT MINUTES
August 20, 2014

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, August 20, 2014 at 9:00 A.M. with Chairman Sheth presiding. Members present were Mr. Hufnal, Colonel Ericson, Mr. Senato, and Mr. Keller.

Staff members present were Mrs. Townshend, Mrs. Purnell, Mr. Cook, Mrs. Harvey, and City Solicitor William Pepper.

APPROVAL OF AGENDA

Mr. Hufnal moved to approve the agenda as submitted, seconded by Mr. Senato and unanimously carried 5-0.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT 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. Hufnal and unanimously carried 5-0.

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATION

Mrs. Townshend, Director of Planning and Community Development stated that the meeting would be conducted in accordance with the approved agenda. There is one item on the agenda; one item 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 application on this agenda was completed in accordance with code requirements. The meeting agenda was posted in accordance with Freedom of Information Act requirements.

NEW BUSINESS

Applicant #V-14-09:

10 Maggies Way. Ferguson Enterprises, Inc., has requested a variance from the requirements of Article 4 §4.15 of the *Zoning Ordinance* for parking as related to the definition of "floor area" in Article 12 of the *Zoning Ordinance*. Subject property is zoned C-3 (Service Commercial Zone). The Tax Parcel is ED-05-078.00-01-10.01-000. The owner of record is Chung Sing, LLC, to be conveyed to Ferguson Enterprises, Inc.

Mr. Bill Cook, Planner, submitted the following items for the record: staff report, application and plans submitted by the applicant.

The legal notice was published in the Delaware State News on August 10, 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. John Paradee, Attorney at Prickett Jones & Elliott PA.

Mr. Paradee apologized that his client's principal engineer was not able to be present today due to a scheduling conflict, but he is available via telephone for any questions. Mr. Paradee explained before you today is a fairly simple and straight forward application for an Area Variance as indicated by Mr. Cook. The applicant is seeking an Area Variance from the requirements of Article 4 §4.15 of the *Zoning Ordinance* for parking. In this particular instance the code creates a bit of an anomaly because of the unusual configuration of the property. Adding outdoor storage space under the code would require the addition of one parking space per 300 feet of additional outdoor storage space because the code includes the outdoor storage space in the definition of floor area. In order to use the outdoor space for outdoor storage, the business would have to compete with parking. Therefore, they are competing for storage and parking at the same time. The property is simply not large enough. The staff report indicates under the code that the parking requirement would be 90 spaces. Given the nature of this business, a wholesale plumbing supply distribution facility,the business does not have a lot of traffic or customers. There is really no need for that many parking spaces nor is there any need for the 14 parking spaces. If you review the application and the staff report it lays out why this application meets the criteria for an Area Variance very nicely. First, the requested variance is consistent with the nature of the zone in which the property lies. It is zoned C-3. Second, the requested variance does not change the character of the immediate vicinity. Third, granting the Area Variance would not seriously affect neighboring properties and uses in any manner. Fourth, if the literal parking restrictions here were enforced it would create an Exceptional Practical Difficulty for the owner in its efforts to make normal improvements in the character of that use of the property which is in fact a permitted use under the code. He would submit respectfully that this is a classic case that cries out for an Area Variance and it is an Exceptional Practical Difficulty, and would therefore be a geographical or dimensional requirement of the code that technically cannot be met.

Responding to Mr. Hufnal's question the total number of employees, Mr. Paradee stated that there would be 3-5 employees with a minimum of three (3) and a maximum of five (5). The business also anticipates no more than 5-6 wholesale customers at any given time. So there would be a total of 8-12 people on the property at any given time.

Responding to Mr. Hufnal's comment that the Zoning Ordinance indicates that it gives the option of one (1) parking space per 300 S.F. floor area or one (1) parking space per employee, Mrs. Townshend stated that whichever is greater.

Mr. Paradee stated that the wording is strange in the code, because if you want to use the outdoor storage space for every 300 S.F. you would need to add a parking space and in this case it does

not make any sense. He could imagine where there are instances it would make sense, but not in this case.

Mrs. Townshend stated that in the staff report it was indicated that the same use would be permitted in the IPM Zone where the parking requirement is one (1) per 800 S.F. of floor area. The issue is the parking in the zone and not the parking for the use. It would not diminish the character of the area because it could be done with less parking in another zone.

Responding to Colonel Ericson's question if the 14 spaces were exceeded where would the overflow park; Mr. Paradee stated the applicant indicated that any overflow parking could be accommodated in the outdoor storage space which would not be completely covered. The area would be fenced in and there would have to be some area to allow for inventory to be moved.

Responding to Colonel Ericson's question whether they were going to establish parking spaces in the storage area for employees which would free up more space out front and is it the intent to amend the request to make it twenty (20) parking spaces since there will be designated storage area for employees, Mr. Paradee stated that he did not know the answer to that question because he was not sure that they were able to calculate exactly how many spaces there would be in the overflow area. They would need to get into a fairly specific site plan.

Colonel Ericson commented as he referred to the staff response that states "the applicant has indicated that the enclosed outdoor sales and storage area will continue to be used for employee parking, thus further reducing demand on the fourteen (14) spaces that they propose providing on the site" therefore; this would indicate if you take the five (5) employees it would then be nineteen (19) spaces. If there are going to be nineteen (19) spaces then it should be designated. Responding to Colonel Ericson, Mr. Paradee stated that he did not think it would be a huge problem if what is being suggested that there would need to be a minimum of five (5) spaces available for employees in the overflow area. He thought that would be fine.

Responding to Colonel Ericson's question of how they came up with customers due to the wholesale business though he was not very familiar with the wholesale business process, but from the few visits with wholesale that he had majority of the time wholesale business has a maximum of six (6) customers at any given time, Mr. Paradee stated that he could do a conference call to the applicant.

Conference Call

Andrae Vian was sworn in by Mr. Pepper.

Mr. Paradee reiterated the questions by the Board of Adjustment

Question: How many parking spaces will be designated for employees parking in the overflow in the outdoor storage area and can you accommodate five (5) overflow parking spaces for employees only; Mr. Vian stated yes, the outdoor storage space is reserved by parking space, it will be a revolving area.

Mr. Paradee stated that Colonel Ericson suggested that a minimum of five (5) parking spaces be designated to be available at all times for employees.
Responding to Mr. Paradee if the above statement was a fair characterization, Colonel Ericson concurred.

Mr. Paradee stated that the question below was critical to the application because there is not going to be a huge demand for parking because you have a low number of employees and a low number of customers.

Question: How can you determine and commit to a number of 5-6 wholesale customers on site at any given time that would be the maximum; Mr. Vain stated that it is based on the character of their plumbing wholesale business as well as other similar properties they have around the nation. Generally, on average they only have 5-6 customers at any given time. They are not a Home Depot or Lowes type of retailer. They do not have homeowners coming in to buy plumbing products. It is contractors and others who are engaged in very large projects.

Question: the way the parking spaces would play out is that there would be fourteen (14) spaces dedicated for customers and five (5) spaces for employees and if that would be more than sufficient, Mr. Vain concurred.

Responding to Colonel Ericson's question whether the number exceeded to twenty (20) where would the other five (5) vehicles park; Mr. Vain stated that normally an outdoor storage yard is created and if that was the case this would be opened for the additional parking.

Responding to Mr. Paradee's question if this would be foreseen as a likely prospect, Mr. Vian stated absolutely not.

Responding to Mr. Paradee's question that it was comforting for the Board of Adjustment to understand that there will be sufficient space within the outdoor storage area to accommodate any overflow parking that you would foreseeably experience, Mr. Vian concurred.

Responding to Colonel Ericson's question whether there was a copy (drawing) of the site, Mrs. Townshend stated that it was included in the packet.

Responding to Mr. Keller's question whether the operation is intended to be clearly a wholesale operation with no retail customers coming to the site, Mr. Paradee and Mr. Vian concurred.

Responding to Mr. Keller's question whether in the event of a year-end sale public parking is permitted on Maggies Way, Mrs. Townshend stated that Maggies Way is not a city street, but it is the Bryan Business Park and there are other tenant spaces in the area that would have parking if there was some type of mass rush on plumbing wholesale.

Responding to Mr. Keller's question whether they were aware of any condition that would prohibit someone stopping and walking into the wholesale business for questions, etc. to prohibit parking on Maggies Way, Mrs. Townshend stated that she has seen parking throughout the

business park for events that happened at Fordham Brewery Company. There seems to be some precedent that people park wherever parking is available if the businesses are not open.

Responding to Mr. Keller's question in response to the question regarding any serious affect to neighboring properties and the statement made by staff if "the majority of properties on Maggies Way have less parking provided than the one (1) space per 300 S.F. of floor area required in the C-3 zone" how did this come about and is it legal non-conforming, in violation of zoning or have they otherwise been permitted, Mrs. Townshend stated that the assumption would be that perhaps that overtime the zoning changed, either the requirements within the *Zoning Ordinance* or the zoning of the property could have changed. It could predate the current requirements and in that case it would be legal non-conforming. It was all constructed within the site plan, but the site plan probably goes back twenty (20) or more years.

Responding to Mr. Keller's question that you don't necessarily know for a fact that "the parking provided at surrounding properties appears more than adequate for their uses" gleaming from comments and testimonies this property would have without a doubt more than adequate for their intended use and as well would be fair to say, Mrs. Townshend concurred.

Responding to Mr. Senato's question that the business would be strictly plumbing wholesale with no retail, but there are other wholesale plumbing businesses within the City of Dover and occasionally the general public (retail traffic) will walk in knowing that the business is there. It was mentioned by Mr. Vian that this would not happen, but if it does happen there would be a parking issue, he could not understand or believe that there would not be any general public buying an item on a retail basis, what assurances can be offered to the Board of Adjustment that it will not become a significant problem, Mr. Vian stated the nature of the products sold are wholesale and not the type of products that you would fine at Lowes or Home Depot. While there may be retail customers who wander in from time to time it is not the type of products that retail customers would be looking for.

Chairman Sheth stated that normally average business would require parking that is needed. If there was a big sale on plumbing it would only happen one or two days in a year. It does not happen every day as he compared it to other big events that only happen once or twice a year.

Mr. Paradee stated that if you appreciate the type of customers that this business would appeal too it would take quite a mad rush indeed for all of the contractors in Kent County to show up at this business at the same and this is just not going too happen. The audience for this particular business is very limited.

Chairman Sheth stated that even if it did happen it would be a good sign for the business. Generally, most of the contractors come before regular hours.

Responding to Mr. Keller's question that the applicant and owner are listed as Chung Sing LLC to be conveyed to Ferguson Enterprises Inc., and the application was signed by a Mr. Kirk D. Wall, Senior Director of Facilities; is this for Chung Sing LLC or is he the Senior Director of Facilities for Ferguson Enterprises Inc., Mr. Paradee stated that the applicant is Ferguson Enterprises Inc., Equitable Owner and they are purchasing the property, the current title owners

are Chung Sing LLC who is present today. They can be asked if consent is given for this application.

Ms. Kam –Yin Yeung was sworn in by Mr. Pepper.

Ms. Kam –Yin Yeung principal of the LLC, owner of the property, gave consent to the application.

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.

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

Mr. Keller moved that Application V-14-09 be approved as submitted based on the testimony heard today and staff recommendations for approval with regards to all of the expectable responses with regard to the character of the zone and the surrounding areas, the similar types and uses in the business park noted, acceptable response to questions regarding parking and comments made regarding very similar circumstances within IPM (Industrial Park Manufacturing) zone uses. The motion was seconded by Mr. Hufnal. Colonel Ericson moved to amend the current motion to include that the additional five (5) spaces will be reserved within the outdoor storage area for employee parking. The original motion as amended was seconded by Mr. Senato and unanimously carried 5-0.

Responding to Mr. Senato's question whether the discussion that happened over a year ago regarding applicants coming before the Board of Adjustment with mistakes or oversight on plan review, engineering, or site plans, for example the library, that was occurring rather frequently that some form of an additional fee would be added and he wanted to know the status, Mrs. Townshend stated that she has been working on a fee review and at one point it was taken to Council Committee and it was sent back to staff. She cannot levy any fees administratively. Part of the fee proposal that she put together was deferrals or reoccurrence. At this point it is in a proposal that is in limbo. The Legislative, Finance, and Administration Committee sent it back to staff to work with the business community. She has been in discussions with the Chamber since it has been in limbo.

Mr. Keller stated that he wanted to raise a question with regard to the reasoning for his questioning of the fee holder today and the applicant making the application, etc. He thought that one (1) to two (2) years ago there was an incident or two (2) where the applicant was not the fee owner, Responding, Mrs. Townshend stated that the application specifically states that "I (name) do affirm that I am the property owner on which the variance is sought and that the information provided in this application is accurate to the best of my knowledge and belief." So, with an LLC the office does not know who the principals are who are permitted to sign, so they have to accept it. The owner should be signing and not the equity owner. She stated that she

would speak with Mr. Paradee in regards to that because she wants the owner signature on the application.

Mr. Keller stated that from a staff perspective to keep this in mind because once a variance is approved it attaches to the property and not an individual and sometimes sale agreements fall apart. Mrs. Townshend concurred and stated that she had the same observation as it was being discussed.

Mrs. Townshed stated that there have been times where items were being held up because they were waiting on the owner signature.

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

Meeting adjourned at 9:42 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary