CITY OF DOVER
BOARD OF ADJUSTMENT
November 14, 2012

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, November 14, 2012 at 9:00 A.M. with Chairman Sheth presiding. Members present were Mr. Senato, Col. Ericson, and Mr. Keller. Mr. Hufnal was absent.

Staff members present were Mrs. Townshend, Ms. Cornwell, Mrs. Harvey, Mrs. Purnell, and City Solicitor Rodriguez.

APPROVAL OF AGENDA

Mr. Keller moved to approve the agenda with the necessary change of the following applications: V-12-13 to be removed due to letter received to withdraw application, V-12-14 to be first on the agenda, and V-12-12 to be second on the agenda, seconded by Mr. Senato and unanimously carried (Hufnal absent).

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF September 19, 2012

Mr. Keller moved to table approval of the regular Board of Adjustment meeting minutes of September 19, 2012 until next meeting, seconded by Col. Ericson and unanimously carried (Hufnal absent).

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATIONS

Mrs. Townshend, Director of Planning and Community Development, reviewed the procedure for the meeting. She noted that approved variances expire after one (1) year if the approved project has not commenced; that all public notice for the applications on this agenda was completed in accordance with code requirements; and the meeting agenda was posted in accordance with Freedom of Information Act requirements.

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

NEW BUSINESS

Applicant #V-12-14:

1275 South State Street, Bayhealth Medical Center Inc. has requested a variance from the requirements of Article 5 §4.7 of the *Zoning Ordinance* pertaining to setback of a monument sign.

Subject property is zoned C-4 (Highway Commercial Zone). The Tax Parcel # is ED-05-086.05-02-13.00-000. The owner of record is Bayhealth Medical Center Inc.

Mrs. Tracey Harvey, Planner I, submitted the following items for the record: staff report, site plan, photographs and diagram. Mrs. Townshend stated that legal notice was published in the Delaware State News on November 4, 2012, and that the public was notified in accordance with regulations.

Representatives:

Mrs. Kim Diehl, of Kent Sign Company, and Pam Marecki, Assistant Vice President of Marketing for Bayhealth, were sworn in by Mr. Rodriguez, to testify on behalf of Bayhealth.

Mrs. Diehl testified that there is a 100-square-foot sign that is twelve feet tall at the location. Bayhealth is looking to make the signage at this location consistent in appearance with other locations. The new sign would be 60 square feet and seven feet tall. Bayhealth is requesting a variance to place the sign at the property line, which is the location of the current sign, as there is not sufficient space to meet the setback.

Responding to a question from Col. Ericson regarding the exceptional practical difficulty should the variance be denied, Mrs. Diehl stated that the larger sign would stay, and the sign would not be consistent. She added that the current sign is too big for the location. She added that there is nowhere to place the sign at the location, as it would be in the parking lot if it were moved to comply with the setback. The property line is at the pavement around the building, except for the grassy area where the sign is located.

Responding to a question from Col. Ericson regarding the estimated distance from the road to the sign, Mrs. Diehl responded that there were 38 feet from the sign to Route 13 and 68 feet from the sign to State Street.

Responding to a question from Col. Ericson regarding the legal non-conforming status of the current sign, Ms. Cornwell confirmed that the sign is legal non-conforming.

Responding to a request by Mr. Keller to explain the code requirements regarding replacement of a non-conforming sign such as the subject sign, Ms. Cornwell stated that the sign could be refaced on the existing structure; however, the current proposal is to replace the sign structure, which is not permitted by code.

Responding to Mr. Keller's question regarding whether the problem with moving the sign back would be the loss of a parking space, Mrs. Diehl stated that movement of the sign would result in the loss of one or two parking spaces and drive access around the building. She added that the spots lost would be parallel parking spots, not pull in spots.

Responding to a question from Mr. Keller regarding the distance from the back of the existing sign to the face of the building, Mrs. Diehl stated that she did not know.

Responding to Mr. Keller's question of whether there was a parking space and travel lane to the rear of the existing sign, Mrs. Diehl stated that there is a parking spot.

Pointing to the photograph showing the existing sign and the photograph showing the proposed sign, Mr. Keller questioned whether it was all travel way behind the existing sign in the photo. Mrs. Diehl responded that she believed that it was all travel lane and that the parking was to the side.

Mrs. Townshend stated that if the sign were to be moved into the drive aisle, the Fire Marshal's Office would need to review to ensure that the sign would not interfere with a required fire lane.

Col. Ericson noted that the proposed sign is considerably smaller than the existing sign.

Responding to Mr. Senato's question about the length and width of the proposed sign, Mrs. Diehl stated that it is proposed to be 72 inches tall and 120 inches long.

Responding to Mr. Keller's question regarding whether the sign encroaches into the right-of-way, Mrs. Diehl stated that the sign is just inside Bayhealth's property line and that there would be no encroachment with the new sign.

Responding to Mr. Keller's question about a prior variance for the building encroachment beyond the building restriction line (note on plan submitted); Mrs. Townshend responded that staff had not looked into prior variances.

Chairman Sheth declared the public hearing open.

There being no one present wishing to speak, Chairman Sheth declared the public hearing closed.

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

Col.Ericson moved for approval of V-12-14, based on testimony given and information from staff. Mr. Keller seconded the motion. The motion was carried unanimously.

Applicant #V-12-12:
800 North State Street, S&R, LLC has requested variances from the requirements of Article 6 §3.4 and Article 6 §3.9 of the *Zoning Ordinance* pertaining to the size of parking spaces and a reduction in the overall number of parking spaces.

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.

Ms. Janelle Cornwell, Planner II, submitted the following items for the record: staff report, and site plan. The legal notice was published in the Delaware State News on November 4, 2012, and that the public was notified in accordance with regulations.

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

Representatives:

Mr. Conny Malmberg of Young, Malmberg, & Howard. Mr. Doug Liberman of Larson Engineering Group Inc., was sworn in by Mr. Rodriguez. Mr. Leberman and Mr. Malmberg were in attendance to testify on behalf of the Onix Group.

Mr. Malmberg testified that the Compass Pointe project that includes the McGlynn Restaurant on the first floor, office space used by Mid Atlantic Fisheries, Chesapeake Utilities Corporate Office and possibly Trans America Continental Life Associates on the second, third, and part of the fourth floor. He stated that 2800-square foot of the fourth floor was planned for residential use. The proposed plan is to convert this space to office space. There is a difference in parking space requirements for residential as opposed to office. All of the offices do not require a lot of parking. The site does not permit them to add additional parking spaces along the lake due to the configuration of the 75-foot setback that is required for environmental reasons. The request is for six (6) undersized spaces. The trend is towards a mix of smaller vehicles. The Exceptional Practical Difficulty would be that there would be unusable building space if the variance is not granted. His client is the owner of the property. McGlynn's has the ability to have their employees park off-site if necessary in the Big Lots parking area. An exhibit was provided.

Responding to a question from Chairman Sheth regarding whether there would be any more residential area in the building, Mr. Malmberg replied that there would no longer be any residential area in the building.

Responding to a request for clarification from Mr. Keller regarding whether there was currently any usage on the fourth floor, Mr. Malmberg replied that the building is completely full other than the 2800 –square foot residential space which has a pending lease for office space.

Responding to a question from Mr. Keller regarding the occupancy hours for the second and third floor; Mr. Malmberg replied that the offices would have 9am to 5pm hours and there are very few employees with the Mid Atlantic Fisheries Company.

Responding to a question from Col. Ericson regarding the distance of parking spaces between the Countrie Eatery and McGlynn's and if there was still a fence located on the property; Mrs. Townshend replied that there is a fence.

Responding to a question from Col. Ericson regarding the use of the garage; Mr. Malmberg replied that the garage is in transition, as Ownership of the property recently changed.

Responding to a question from Col. Ericson regarding whether six (6) of the 114 parking spaces were in the garage area and whether they are used; Mr. Malmberg replied that the six (6) spaces are included and that they were being used. He was not sure if they were being used on a daily basis by patrons of McGlynn's.

Responding to a question from Col. Ericson asking if demolishing the garage would solve the problem; Mr. Malmberg replied that it would not change the need for a variance.

Responding to a question from Col. Ericson regarding the use of stacked spaces, Mr. Malmberg replied that there are lifts in the garage that consist of three (3) spaces at entry with three (3) spaces above for vehicles.

Responding to a question from Mr. Keller in regard to the lift being hydraulic, Mr. Liberman replied yes it is electric.

Responding to a question from Col. Ericson as to who uses the lift, Mr. Malmberg replied the plan was for resident parking. He added that demolishing the building would not add to the available parking on-site.

Responding to a question from Col. Ericson as to the count of the six (6) spaces when the spaces are not being used by the general public, Mr. Malmberg replied that there was no current plan for their use, but the spaces are counted in the code requirements. He stated that the variance being requested included the parking spaces. Also responding, Mrs. Townshend replied when the garage was part of the plan the fourth floor was to be residential, therefore; the six (6) spaces have always been counted as six (6) spaces. Staff does share the concern that they are not six (6) practical spaces.

Responding to a question from Mr. Keller if there would be a parking lift attendant, Mr. Malmberg replied no.

Mr. Malmberg stated that if parking became more constrained on-site it would only affect his client as owner of the facility. The parking spaces could be for employees instead of the general public since part of the calculation for parking spaces is for employees.

Responding to Col. Ericson regarding the use of the compass on the road for parking spaces; Mr. Liberman replied that the compass is part of the twenty-four (24) foot wide fire lane. There is no additional space that could be added. When the site was developed all the impervious area available was used for the parking layout which is the current layout of the site.

Responding to Col. Ericson regarding the size of compact vehicles; Mr. Liberman replied that the top ten (10) selling compact cars are less than the 196 inch length for a 16ft. long parking space. Also responding, Mr. Malmberg stated that the City does not have a large parking problem at the current time. Therefore; there has not been a need to create sub-compact parking spaces in downtown.

Mrs. Townshend stated that staff looked at other locations that have compact car parking standards and the size of the compact parking space requested is consistent with other locations that were found.

Mr. Senato stated that there should be a definite conclusion whether or not the six (6) spaces should be included.

Mr. Senato questioned the percentage change of handicap parking due to the additional spaces, if the spaces would be marked compact, and where the off-site parking would be located for the employees.

Responding to Chairman Sheth's question regarding the approval process of the Planning Commission for parking spaces when changing from residential to office; Mrs. Townshend replied that when the construction of the building came before the Planning Commission in 2006 they reviewed the fourth floor as residential which required two (2) parking spaces. For the remainder of the building the parking was calculated based on square footage. At that time there was a possibility that there would be a restaurant on the first floor which is now McGlynn's.

Planning Staff assured the Planning Commission that the restaurant parking requirements would be met. During the opening of McGlynn's the parking requirements were met for the restaurant, second and third floor office space, and fourth floor residential. Since that time the parking standards for restaurants have changed. The parking space for a restaurant at the current time is higher than in 2006. Noted in the Staff Report that you received on page four (4) of six (6) it specifies restaurants with bar and patio area and notes that the thirty-eight (38) parking spaces for the restaurant was based on the 2007 calculations at the time the restaurant was opened, but to date that is not the current code standard. In the past a portion of the fourth floor was converted which maxed out the parking spaces in terms of code requirements. Therefore; you have the remaining 2,800 square feet and there are two (2) spaces that can be allocated.

Responding to Mr. Sheth question as to whether needed parking could be made up if the garage were demolished, Mr. Malmberg replied that if the garage, which is counted as six (6) spaces, was demolished there would be a loss of parking.

Responding to Chairman Sheth's question regarding changing of the building and who would benefit financially; Mr. Malmberg replied that the owner would benefit financially. There is currently a tenant who is interested in finalizing a lease, and if the request is not approved there would be unused residential space.

Responding to Chairman Sheth regarding the proposed application for off-street parking waiver and not the six (6) parking spaces; Ms. Cornwell replied that the application is to allow for a reduction of three (3) off-street parking spaces and the garage is considered a part of the overall number. It could be increased to nine (9) if the garage was not counted, making it an increase from what was originally requested. The other variance requested is to allow for compact parking spaces all on the same application.

Responding to Mr. Senato regarding any changes to handicap parking spaces; Ms. Cornwell replied that they have more than the required number of handicap parking spaces. If they wanted to add another handicap parking space it would not be a problem. Handicap spaces count towards the overall number of parking spaces on-site.

Responding to Mr. Senato regarding compact spaces being marked as such if approved; Mr. Malmberg replied yes, they would be marked for compact vehicles only.

Responding to Col. Ericson regarding the first floor parking spaces parking standard requirements year; Mrs. Townsend replied that the parking standard being followed was the 2007 standard. It is not the current parking standard which would include more parking spaces.

Col. Ericson stated that it would not be a good idea to tear down a garage for three (3) parking spaces.

Mr. Senato stated that there is a parking problem and asked if the spaces were in existence at the current time would be counted down or added as compact spaces or would they be added as regular spaces rather than compact; Mr. Malmberg replied all new spaces would be compact as they are too small to be regular spaces.

Responding to Mr. Keller regarding whether there could be a lease with new tenants to use the six (6) spaces for employee parking; Mr. Malmberg stated that there are employees throughout the building and the employees are being taken into consideration when reviewing the parking calculations. He has discussed remote options with McGlynn's for their employee parking. Mr. Malmberg further stated that in the past year there has not been a parking issue even during the busiest hours.

Responding to Chairman Sheth's suggestion to demolish the garage; Mr. Malmberg replied that the garage is roughly a $200,000 building that would cost roughly $75,000 to demolish. Mr. Malmberg stated that it is not worth demolishing the garage to gain four (4) parking spaces. He stated that his client can look at trying to make the building more usable for employees of one or more of the businesses. He stated that also demolishing the garage and redesigning the site loses two (2) spaces from a legal perspective and the six (6) spaces will then be four (4) spaces.

Mr. Malmberg stated that the newly converted office space would have three (3) employees.

Mr. Senato suggested making arrangements to have off-street site parking at Big Lots.

Responding to Mr. Keller regarding why one or two full-size parallel parking spaces could not be added on the right side of the fire lane radius near the bike rack; Mr. Liberman replied that there is not sufficient space.

Responding to Mr. Senato regarding why the spaces to the left of the handicap spaces that are 12x40 loading space be used as added spaces; Ms. Cornwell replied that it is a required loading space. She stated that legally loading or unloading in the fire lane is prohibited. She also stated that regarding the other side no more impervious area for parking towards the fire lane. Parking spaces are either concrete or asphalt. The code does not recognize pavers for parking. She stated that the entire loading space cannot be used for parking because it does not have the necessary width or depth.

Mr. Malmberg stated that his clients and realtor spoke with McGlynn's, Big Lots, and the owner of the shopping center, and agreed that there could be reserved parking available for McGlynn's employees if necessary in the future.

Responding to Mr. Senato's suggestion of making the six (6) spaces of the garage building part of the lease agreement, Mr. Malmberg replied that it may be more economical to have a contractual relationship with the owner Mr. Silicato, who owns the shopping center with Big Lots.

Col. Ericson suggested that the owners find a solution for their parking issues if they arise in the future. At the current time they have the solution of using Big Lots parking lot if necessary. The variance request is only for three spaces, which is not a lot.

Responding to Mr. Keller regarding if there were any configuration from the plan to come up with the spaces near the fire lanes; Mr. Liberman replied that the one area was the three (3) head-in compact spaces, but it would cover up the loading spaces. He stated that it is very difficult to create parking in the impervious area.

Responding to Mr. Keller regarding modifying fire lanes to add parking; Ms. Cornwell replied that Staff would note that it is the required fire lane and the Fire Marshal would need to review any proposed change to the fire lane.

Responding to Col. Ericson regarding whether the Big Lots parking lot was used; would the applicant still need a variance; Ms. Cornwell stated that they would still be required to have a variance because they would still be short three off-street parking spaces on-site.

Responding to Col. Ericson if the application was delayed would it have a negative impact on the lease agreement; Mr. Malmberg stated that he did not know. He stated that delaying the application for a month would not change the proposal. A lot of time was spent on this proposal and with the Engineer and Planning Staff. This is a three (3) parking space waiver issue with a parking lot that has over 110 parking spaces. It is a 3% waiver which is a fairly minimum variance. Mr. Malmberg stated that this is a unique piece of property with historic footprints, and that the minimal variance would not set a precedent.

Responding to Mr. Keller in regard to his suggesting the designated six (6) spaces in the garage be tied to a lease arrangement; Ms. Cornwell replied that the parking would still be considered to be generally available for parking for people that utilize the building.

Chairman Sheth declared the public hearing open.

There being no one present wishing to speak, Chairman Sheth declared the public hearing closed.

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

Mr. Senato moved to deny the parking variance pertaining to the size of parking spaces and a reduction in the overall number of parking spaces for application #V-12-12, located at 800 North State Street, as there were several suggestions made as to possible solutions and postponement of the application that were not taken. There was no second and the motion failed due to the lack of a second. (Hufnal absent)

Col. Ericson moved to approve the parking variance pertaining to the size of parking spaces and a reduction in the overall number of parking spaces for application #V-12-12 based upon the testimony given and the information provided, staff report, requirements of Article 6 §3.4 and Article 6 §3.9 of the Zoning Ordinance, seconded by Mr. Keller and the motion carried 3-1.
(Senato denied and Hufnal absent).

Mr. Senato moved to adjourn the meeting, seconded by Col. Ericson and unanimously carried (Hufnal absent).

Meeting adjourned at 10:32 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary