CITY OF DOVER
BOARD OF ADJUSTMENT
February 16, 2011

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, February 16, 2011 at 9:00 AM with Chairman Sheth presiding. Members present were, Mr. Sheth, Mr. Keller, Colonel Ericson and Mr. Hufnal. Mr. Senato was absent.

Staff members present were Ms. Cornwell, Mrs. Townshend, Mr. Albert, Ms. Metsch and Mr. Pepper. Also present was Mr. Noel Rodriguez.

APPROVAL OF AGENDA

Mr. Hufnal moved to approve the agenda as submitted, seconded by Colonel Ericson and the motion was unanimously carried 4-0 with Mr. Senato absent.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF NOVEMBER 3, 2010

Mr. Keller stated that he had three notations for changes to the minutes of November 3, 2010. The first word change would be on Page #6, third paragraph from the bottom of the page that begins with "Colonel Ericson," fourth line down, the second word in should read "their" and not "there." The second word change would be on Page 11, second paragraph from the bottom of the page in the last sentence that begins "Mr. Cornwell", should be "Ms. Cornwell" and change the wording of "provide and" to "provided an." The third word change would be on Page 13, second paragraph from the bottom of the page that begins with "Mr. Zachary Carter", fifth line down, "at that point, Staff "new", change the word new to "knew."

Mr. Keller moved to approve the minutes as amended of November 3, 2010, seconded by Colonel Ericson and the motion was unanimously carried 4-0 with Mr. Senato absent.

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATIONS

Mrs. Townshend presented to the audience the policies and procedures that would be followed during these hearings.

Applicant #V-11-01:

104 Saulsbury Road, Dover ED, LLC has requested a variance from the requirements of Article 5 §4.7 of the *Zoning Ordinance* pertaining to the type and placement of monument signs.

Subject property is zoned IO (Institutional/Office Zone) and COZ-1 (Corridor Overlay Zone) the Tax Parcel ID # is ED05-076.07-01-27.00. The owner of record is Dover ED, LLC.

Representatives: Mr. Noel Rodriguez, Applicant.

Ms. Cornwell provided an overview of the application.

Mrs. Townshend stated that legal notice was published in the Delaware State News on February 6, 2011 and the public was notified in accordance with the regulations.

Mr. Sheth stated that he received a notice as a property owner within 20 feet; however, he did not have a conflict of interest.

Mr. Rodriguez stated that the Academy of Dover Charter School is located on Saulsbury Road. The school has been in existence for eight (8) years. He took over the school two and a half years ago. One of the issues that was presented to the institution as a whole was enrollment. What came to his attention when he interviewed parent's who had applied to have their children come to the academy as students, was that they were unaware that we were at this location. Even though they do have a sign, it does not adequately meet their needs to draw applicants. We are a charter school and have to solicit for applicants to come to the school and recruit.

Mr. Rodriguez further stated that another issue that concerned him is that they provide a lot of community activities at the facility. We have no way to communicate with the families even though in this modern age as internet seems to be the mode of communication. There are still those families, especially in our demographic that do not have access to that venue. By being able to publicize any changes in school status or other community events that are taking place in the facility by having this type of communication via a sign. This would greatly enhance our ability to communicate with the community as a whole that they exist where they are located and what they can offer.

Mr. Rodriguez further stated that unfortunately, the way that the facility is laid out by having a fire lane directly in front of the school, greatly limits our ability to put a digital sign of that nature anywhere else on the property. If we were to attempt to place it against the building itself, it would obstruct windows and would take the sign out of the line of site from traffic. The current sign is approximately ten (10) degrees from the line of traffic and if we were to attempt to move it anywhere else, it would pose a safety hazard. All of the other signs in the community are in direct alignment. The sign that they are requesting to put in place would be in the same exact location of the existing sign with the same dimensions.

Mr. Keller stated that the information provided relates to replacing the existing sign. He is curious as to the status of the existing sign. Responding to Mr. Keller, Ms. Cornwell stated that the existing sign is considered legal non-conforming with regards to setback. The sign has been grandfathered in as the code has since changed since the original placement of the sign. At the time the sign was originally installed, it could be within five (5) feet of the setback. Code requirement now is ten (10) feet.

Mr. Hufnal questioned if this was partially because of where the fire lane is located? Responding to Mr. Hufnal, Ms. Cornwell stated that the fire lane has always been there and the sign has been there since originally installed. When the sign was installed, it met all code requirements; however, the code has since changed for the setback requirement which use to be five (5) feet and is now ten (10) feet. They cannot replace a legal non-conforming sign with a different sign because it is a different sign type. Legal non-conforming status in the sign regulations does not give us that ability. It states to install any new type of sign the sign needs to come into compliance with the sign regulations. Staff could not issue a permit to allow the sign, even though it is just replacing the sign as is, in the same location and could not allow it to encroach into the setback as it currently does exist.

Mr. Keller questioned the setback that is referred to is the setback from the existing right-of-way line and not relating to the building setback? Responding to Mr. Keller, Ms. Cornwell stated yes they are two separate setback issues.

Mr. Keller questioned if they knew the size of the existing panel? Responding to Mr. Keller, Ms. Cornwell stated that the existing size of the sign is not changing and it is thirty-two (32) square feet.

Mr. Keller further stated that there was some mention of information provided regarding the classification of the roadway. There was some indication that something was alluded to referring to a certain distance to the edge of the roadway. The edge of the roadway differs considerably from the edge of the right-of-way, the legal property line of the roadway. Responding to Mr. Keller, Ms. Cornwell stated yes the sidewalk and the grass area are within the right-of-way. If you go from the edge of the curb back to where the sign begins, there would be ten (10) feet; however, where the property line is from where the right-of-way starts they only have five (5) feet. There is some distance between the right-of-way and where the road starts.

Mr. Keller further stated that all other signs appear, up and down the roadway, in alignment is this correct? Responding to Mr. Keller, Mr. Rodriguez stated that this is correct. When he took the photographs that were submitted as part of their packet, he took the liberty of looking down the road to see what it would look like. They are pretty much in alignment. If you stand directly behind one there are some signs that are obstructed because they are in alignment. Aesthetically speaking, it appears that many of my neighbors have moved over to digital types of signs and this sign would greatly enhance the aesthetics of the community and the facility itself. There are no signs that he is aware of that are against the building on this roadway.

Colonel Ericson asked the applicant to address what hardship would be caused if you placed this sign in position that would meet the code. Responding to Colonel Ericson, Mr. Rodriguez stated that the biggest hardship would be that a charter school depends heavily on the ability to recruit students to meet our requirements of Title 14 which requires them to have eighty (80) percent of their enrollment as chartered. The Academy of Dover has a 300 student charter enrollment. Recruiting is important to our function. Most of the people who have enrolled children recently stumbled upon us because the sign happened to be there. The sign would have a direct impact on our ability to enroll students in the school and in essence, if we were to fail to meet the eighty (80) percent as required by Title 14, it would have an impact on the schools ability to function.

Mr. Sheth questioned if the school district considers them competition? Responding to Mr. Sheth, Mr. Rodriguez stated that they are currently housed within the Capital School District and depending on who you speak to, some consider them competition and others have verbally thanked them for being there; because if they were to close, they would have to absorb 300 students. It also gives the community an option which is critical at this current time when you speak about education especially in the demographic that we are in because these are people who would not be able to afford private schools. We provide a quality education in a safe environment. The environment alone is like a private school.

Mr. Keller stated that the Board members were provided a site plan by the original owner and/or developer that gives the appearance that there would be other possibilities for placement of this

sign that would be in conformance with the established setback. Responding to Mr. Keller, Mr. Rodriguez stated not to his understanding. The fire lane covers the whole front of the property. There are no other roads behind the building or to the sides of the building. The front of the building is entirely a fire lane. The only other place would be up against the building which would not be feasible for safety reasons, aesthetically, and would obstruct windows and classrooms. The way the building is physically laid out there is no other options because of the fire lane.

Mr. Keller further stated in looking over the plan, there is a red line denoting an existing sign that is eight (8) feet by four (4) feet. It is showing the sign of a wooden structure in place as it is today. Could that sign simply be rotated on its axis and be in compliance? The fire lane swings to the southerly side of the property and there seems to be ample location on the southerly end of the property line even at a perpendicular placement as you otherwise intend. Are these viable options whether or not they are the ones that you prefer?

Responding to Mr. Keller, Mr. Rodriguez stated that if they turn the sign on its axis it creates a safety issue because the sign would not be in the line of site of traffic. If someone was driving down the road and wanted to read the sign they would literally have to look at a forty-five (45) degree angle and either slow down to read what is on the sign or it would just be a blur and would not be conducive to safety of the community and people driving along Saulsbury Road. The area that you are talking about, there is a small space; however, this is where the electrical distribution system is and some poles so there would not be enough space to locate the sign there of its size.

Mr. Keller further stated that when you mention safety, he has a concern regarding the sign placement in relation to the walkway and bikeway path. There is a ten (10) foot requirement from the right-of-way that in the interest of safety and recovery areas that are part of the rational in establishing a clear and open space beyond the existing right-of-way. When you mentioned that all the other signs appear to be in compliance and pretty well in alignment, it gives him some pause as to having a sign that would then protrude over half of its overall width into that designated area.

Responding to Mr. Keller, Mr. Rodriguez stated that he understands your concerns and by no means is he an expert on why they laid out the fire lane the way that they did. None of the other facilities in the vicinity of Saulsbury Road have the same requirement for fire lane. They were not forced to have a fire lane right in front of their facility which has created the issue. As far as the alignment again, he could understand if there were no signs there; however, a sign currently exists. The sign fits very well aesthetically and safety wise and there is still a clearance between where the end of the sign is and the beginning of the sidewalk if you are looking at the facility east that provides a safety zone.

Colonel Ericson questioned would you still have ten feet from the edge of the road? Responding to Colonel Ericson, Mr. Rodriguez stated yes.

Mr. Keller further questioned if they had given any consideration to a sign of a lesser size as thirty-two (32) feet is the maximum allowable size? Any consideration whereby you might still provide adequate display area and still perhaps be closer to and/or in fact in conformance if not a

perpendicular placement of the new sign? Responding to Mr. Keller, Mr. Rodriguez stated that yes, he has researched signs that may fit with the current zoning regulations and it is not feasible because they would not be able to display any messages because the sign would be vertical. They would really be restricted on the space between the fire lane and where they could begin putting the sign. The structure would have to be more vertical in nature which for a digital display, it would not be feasible as the print would be so small that it would defeat the purpose of the sign to begin with because it would not be visible for people driving up and down Saulsbury Road. He did discuss this with several manufacturers of signs and presented the issue that they have and they gave him some options; however, all the options they provided would still present this issue. It would not be feasible to go vertically with the type of sign they are trying to use.

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

Mr. Sheth questioned if there was any correspondence received for this application and there was none.

Colonel Ericson moved to approve Application #V-11-01 located at104 Saulsbury Road, Dover ED, LLC based upon testimony and upon Staff recommendation, seconded by Mr. Hufnal and the motion carried 3-1 with Mr. Keller in opposition.

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

Mr. Sheth stated that there would be a quorum of the Board of Adjustment members at lunch today; however, no business would be conducted.

Meeting adjourned at 9:34 AM

Sincerely,

Diane Metsch
Secretary