CITY OF DOVER
BOARD OF ADJUSTMENT MINUTES
September 19, 2018

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, September 19, 2018 at 9:00 A.M. with Chairman Sheth presiding. Members present were Chairman Sheth, Mr. Keller, Mr. Hufnal, Colonel Ericson and Mr. Senato.

Staff members present were Mrs. Savage-Purnell, Mr. Diaz, Mr. Swierczek, Mr. Hugg, and City Solicitor Mr. Rodriguez.

APPROVAL OF AGENDA

Mr. Senato moved to approve the amended agenda to withdraw application V-18-07 per the applicant's request. The motion was seconded by Mr. Hufnal and unanimously carried 5-0.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF JULY 18, 2018

Mr. Keller moved to approve the meeting minutes of July 18, 2018 with minor corrections. The motion was seconded by Colonel Ericson and unanimously carried 5-0.

OPENING REMARKS CONCERNING APPLICATIONS

Mr. Dave Hugg, Planning Director stated that the meeting today will be conducted in accordance with the motion of the amended Agenda. There is one (1) application on the agenda under New Business. Each 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 recess 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 new 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-18-06.
100 Enterprise Place. Silver Lake Realty, LLC has requested a variance from the requirements of the *Zoning Ordinance,* Article 3 §20.54 and Article 4 §4.16 pertaining to the maximum lot coverage of parcels in the IPM (Industrial Park Manufacturing) Zone. Specifically, the applicant proposes to add 24 parking spaces, increasing the impervious lot coverage on the site from 64.44% to 66.03%. The maximum lot coverage for the IPM zone is 65%. Subject property is zoned IPM (Industrial Park Manufacturing) Zone. Tax Parcel is ED-05-076.15-01-01.00-000. The owner of record is Silver Lake Realty, LLC.

Exhibits for the Record: Staff Report, zoning exhibit, and statement and plans submitted by the applicant. Legal Notice was published in the Delaware State News on September 9, 2018. The public was notified in accordance with regulations.

Mr. Swierczek gave a summary presentation of the Variance Application Request.

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

Representative: Mr. Troy Adams, Mountain Consulting Inc., Mr. Scott Henning, SLDE Management LLC/Silver Lake Realty LLC Property Manager

Mr. Troy Adams was sworn in by Mr. Rodriguez.

Mr. Adams testified that he was present today with Mr. Henning who is responsible of taking care of the facilities at 100 Enterprise Place. As stated by Mr. Swierczek, there are major tenants at this location such as Easter Seals, Government Support Services, General Floor and the Board of Elections. It was a warehouse at some point but was converted to office space. The tenants have a strong pull meaning between clients and employees there is a lot of traffic going in and out daily. There are special days where Easter Seals brings in by DART Paratransit their clients to the office. As you refer to the exhibits on a typical day as it occurs there are several buses that take up several parking spaces which then prohibit other clients and other tenants from parking and creates a shortage of parking. With Government Support Services, there are some conference rooms in their building that are used as a training center for state agencies. You may have a day where Easter Seals may bus in their clients and Government Support Services is having training sessions which would create a high volume of vehicles. The buses park as such where twenty (20) plus spaces are not available. There is enough space on the north end grassy area along Commerce Way that would be perfect for an additional estimated twenty-four (24) parking spaces. In no way do we see that the spaces will be out of character or anything. We obviously must go through the normal process with Planning and Zoning to get the spaces officially constructed. Besides that, this appears to be a reasonable request so that Mr. Henning can satisfy his tenants that have been there for a while and have settled in and we do not want to see them go away. The nature of our request is to be able to create the additional twenty-four (24) spaces which equates to about 1.03% variance beyond the 65% maximum impervious coverage that is required for the IPM (Industrial Park Manufacturing: Planned Industrial Park) zone.

Mr. Senato asked if the buses were parked in the 10 spaces all day? Mr. Adams replied that he would let Mr. Henning answer the question.

Mr. Scott Henning was sworn in by Mr. Rodriguez. Mr. Henning replied that the buses come every single day. We have somewhere in the neighborhood of 12-15, sometimes plus buses that park in the front of the Easter Seals location to off load and load throughout the day. We have corner off that section of the parking lot specifically for Easter Seals to take people in and out throughout the day.

Mr. Senato asked how many of the spaces are occupied that has signage for loading and unloading. Mr. Henning replied there are approximately 20 parking spaces. They are not filled all day long, but they are opened so that the buses come in and out of the area all day. In the morning they open around 8:00 a.m. and the buses start to come in. Most of the time there are around 12-15 plus buses that circulate through the parking lot. Roughly for 40-minutes the buses are unloading their customers to the premises and then they leave. You then have a period of time (could be a couple of hours) then another bus will show up and drop off some more customers. There is not always a bus parked there if that is what you are looking for. We have to leave those spaces open throughout the day so that the buses do have the access to come in and out and park because they are dealing with people that are in wheelchairs or cannot walk. They park the buses crooked to make the loading and unloading as easy as possible.

Mr. Senato asked what the probability of the land across the street was for being opened for an additional 24 vehicles. Mr. Henning replied that he was not sure he followed what Mr. Senato was asking. Mr. Hugg replied that the property across the street is now the Enterprise Park Office of First State Ortho and that property is occupied fully for existing use.

Mr. Henning mentioned that it was part of the issue where First State Ortho has moved in and they have asked their employees to park on the street which has now pushed the Government Support and the other tenants' employees to have no place to park. We have this strain of street parking that is no longer available for his tenants.

Mr. Senato asked if the tenant was close to the parking spaces or on the opposite side of the building. Mr. Henning asked if Mr. Senato was referring to the proposed area. Mr. Senato replied yes. Mr. Henning replied they are close to it. The Department of Elections and GSS (Government Support Services) would share because they are both within normal walking distance for the parking spaces.

Mr. Senato mentioned as he referred to the exhibits that across the street is an empty lot. He asked Mr. Hugg if there was a proposed building for the lot. Mr. Hugg replied yes, there is a major office building occupied on the green space with parking for the First State Ortho's new Dover office. There is also 20,000 SF of total floor space. That site is fully developed.

Mr. Henning mentioned as he referred to the exhibit that next to the last page shows the new building across the street.

Mr. Keller asked for clarification if Mr. Henning was a principal under the LLC for Silver Lake Realty. Mr. Henning replied that he is the property manager for the company which is out of Northern New Jersey and New York. He was asked to bring the application forward. The principal that would normally sign the documentation was out of the country at the time. He was asked by his boss to sign the application and meet with the Board of Adjustment.

Mr. Keller asked Mr. Henning if he was in fact with SLDE Management LLC. Mr. Henning replied yes.

Mr. Keller asked Mr. Henning if he was the contracted property manager. Mr. Henning replied yes.

Chairman Sheth stated that Mr. Rodriguez stated that it was ok for Mr. Henning to sign the document.

Mr. Keller mentioned that he agreed with the responses regarding the criteria which the Board of Adjustment always undertakes in review and to give some evaluation as to whether there is an Exceptional Practical Difficulty. So in looking at that kind of a circumstance he did not find that there is an Exceptional Practical Difficulty with the applicant requests or findings; however, within that evaluation the Board can give consideration whether it is an Exceptional Practical Difficulty or an unnecessary hardship. He would make the statement that he would deem it an unnecessary hardship as opposed to an Exceptional Practical Difficulty in the circumstance for the need of additional parking spaces.

Mr. Hufnal stated that he would agree with Mr. Keller's statement because in fact it states in the Staff Responses that the Staff considered the applicant having the variance approved to be for an unnecessary hardship rather than an Exceptional Practical Difficulty.

Colonel Ericson stated that he would disagree because looking at this they have already proved that there is a lack of parking spaces for the people that use the facility. In fact, one of the agencies may be forced to leave because they do not have enough parking. The applicant is asking for 1.03% increase in area which is very small. Twenty-four more parking spaces does not seem unreasonable to him at all.

Mr. Keller mentioned that what he was saying from the tenant's perspective and the landlord's management and ownership perspective they are considering that their need for additional parking represents to them an unnecessary hardship if they were unable to achieve through a variance application for additional spaces. This somewhat stems from apparently by the information submitted that some tenants have expressed that unless there is additional parking provided, they may seek other properties or other locations to conduct their respective businesses.

Mr. Hufnal agreed with Mr. Keller because it was his understanding if they could not get the approved parking spaces, they would need to look to find another facility to move to in order to get the proper parking that they need rather than use other facilities' parking. This was their need for having the additional parking needed.

Chairman Sheth asked if there was a language issue or there was a disagreement.

Mr. Keller stated that quite frankly he agreed with Staff Response that if the variance was not approved that it would represent somewhat of an unnecessary hardship to the ownership of the property because of the result and lack of having additional parking spaces approved. Again, he is in agreement with Staff Response to the due the consideration that the Board has to give as an Exceptional Practical Difficulty or unnecessary hardship. Some of his thought when giving some evaluation of that was that its not an Exceptional Practical Difficulty because there is always the possibility if a tenant leaves that building you may have another tenant to move in that does not

require as much parking spaces. He thinks at least two (2) or more tenants by virtue of the information provided have expressed some concerns about the lack of parking. It seems to him to be a reasonable view.

Mr. Senato mentioned that in the current photograph on the front of the building it shows an empty lot across the street dated August 20, 2018.

Mr. Adams stated that it is an older aerial that is publicly available. It is an oversight on his part. In the stated aerial, the building is not captured yet in what is publicly available.

Mr. Senato mentioned regarding the photograph whereas he has to make a decision for the betterment for the City. When the client comes in front of the Board of Adjustment, his decision is based upon the information given to him by the City and the client. Therefore, he is looking at a lot that is empty. So, in his mind he is saying there is an empty lot and if there was a possibility that you would consider (if the lot did not have a building on it) putting 30-40 parking spaces there. In his opinion the aerial photo is misleading; therefore, he would have to base his decision on that.

Mr. Swierczek further added that this happens quite a lot for exhibits that they have to pull from Goggle maps. This is the quickest way to be able to provide a satellite image. It does not necessarily update weekly or monthly. When we pull an image, we have to provide the date when the image was pulled, but it would not necessarily be current to the date (of the photo) if that makes sense. The applicant provided in Exhibit D the Photo (#7) that does show the building on the lot that appears empty in the satellite image.

Mr. Senato asked if Photo #7 was showing the building across the street from the complex. Mr. Swierczek replied correct. The top photo on page 4 of Exhibit D (the newer looking building with the water tower at the rear) that is the building that is at the current location that appears to be an empty lot in the satellite photo. Mr. Senato replied, thank you.

Mr. Senato mentioned as a point of information when the aerial photos are obtained from satellite that might not be accurate and is being used to determine decisions that are made by the Board of Adjustment, would it better if the City provided more accurate photos and perhaps compare before and after photos. This is just his opinion. When he looks at something and he looks at the paperwork in front of him, that is how he makes his decision. And if that being the case and is happening on a regular basis when the clients or the City come before the Board with the information, he could be making a decision and reality, he should be voting another way (either yea, nay, or abstaining). He would prefer to be 100% accurate; and, in this case, about that lot so that he knows exactly what is going on. This is not a criticism.

Chairman Sheth stated that Mr. Senato's statement was right, but it was already corrected by Mr. Hugg as to what is going on in the area. The applicant suggested that it was the most recent available by Goggle maps and as mentioned by Mr. Swierczek. Chairman Sheth mentioned that he agreed with Mr. Senato but at the same time it was corrected as much as it could be. Mr. Senato mentioned that he understood, but this is just the way his mind works.

Chairman Sheth opened the public hearing.

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

Chairman Sheth questioned if there was any additional correspondence for the record. There was no other correspondence.

Mr. Keller moved to approve variance application V-18-06 as submitted and based upon the report by the City lending substantial support for approval of the variance as requested, supplemented by the information and testimony given by representative of the ownership. The motion was seconded by Mr. Hufnal. The motion unanimously carried 5-0.

Mr. Senato mentioned for the record that he will not be able to attend the October meeting as he will be out of town.

Mr. Hufnal stated that he attended a meeting yesterday and Mr. Hugg was also present at the meeting on the Kent County Economic Development. For three (3) years he has been mentioning that we need to do something with our Sign Ordinance in the City because it seems like these companies come in and are denied because of the signage and regulations that the City has that he thinks is outdated. At the meeting, they talked about the reengineering of some of the City's regulations because we are losing business. They also mentioned the Permitting regulatory process takes too long. He really thinks we need to look at this; for example, the McDonald's case that came before the Board in July. You can go to Milford or Smyrna and they have those buildings up and they have the standards that are set up by the corporation for signs and their regulations. The signs are premade because that is the company decision; they are not made to suit the property. He asked why Smyrna can have a regulation for signs that is different, and they can allow things to happen and we deny them. He thinks in some respect that drives people away that want to consider coming to Dover because of our severe regulations. He is not saying to loosen them up, but he thinks they need to be looked at and revised to bring more people to Dover.

Chairman Sheth mentioned that we had horrible signs until the Board of Adjustment decided to take action and we now have a much better sign area on Route 13 than in the past. Large corporations can spend hundreds of thousands of dollars on signs, small businesses cannot compete with them and they we have to approve it. People do not spend enough money for architectural signs because they go by the size not how it looks. He stated that he understood what Mr. Hufnal was saying, but what they decided, and it was up to the City Council. A lot of questions can be solved during the Planning Commission meeting and when they apply so they do not have to come before the Board of Adjustment. Mr. Hugg and Mr. Rodriguez can make the suggestion to the City Council because the Board of Adjustment follows the Sign Ordinance. The Board of Adjustment does a lot of good things for the City by getting rid of the certain signs. For example, there was a 200ft pole that anybody could see and it is gone. Colonel Ericson agreed with Chairman Sheth as he would hate to see the point where corporations determine what our standards are. Mr. Senato mentioned Home Depot who was very adamant and wanted a tall sign. The Board of Adjustment restricted them according to the Sign Ordinance and they were not happy. He sees a lot of different cities and in small towns where the signs are ridiculous especially if they do not have a Sign Ordinance. He thinks the City of Dover has a good control on the signs. Perhaps there were one or two instances where you would hope things would

change. He stated that he is personally satisfied with the ordinances. In fact, everything is uniform when you go up Route 13 whether it is north or south.

Chairman Sheth mentioned that Mr. Hufnal's concern was not to chase away businesses because of signs. He stated that he has not seen any businesses leave because of signs.

Mr. Hufnal commented that there were two companies that came to Dover and one of them decided not to build in Dover because they had legal problems with the lease. This property was located next to Pizza Hut and the Board of Adjustment approved them with a big parking lot. The other company that did not stay due to restrictions by the City was Cracker Barrel who was looking at the property near the Route 1 exit. He stated that they are just comments that the Board of Adjustment and City should think about when we are looking at these ordinances.

Colonel Ericson asked whether if Cracker Barrel issue was the expensive cost for building at that location; it was not because of the signs. Mr. Hufnal replied no it was not because of signs; it was other factors within the City such as the cost of the Permit. Mr. Senato agreed with Mr. Hufnal that when he looked at the $82,000 fee and if he was a businessman, he would be afraid of what else would come up because that price is ridiculous. He thinks that the cost should also be looked at because that will keep businesses away.

Chairman Sheth stated that he did not think it was the Board's responsibility, but they should let City Council know. If you really look at the history, anyone who came before the Board of Adjustment came after the building was built, no one has come before. Walgreens on Route 8/Saulsbury Road and Wawa on Route 13/Court Street came before the Board of Adjustment and they did not leave. The Wawa wanted a larger sign but was denied and they did not leave. He is not avoiding Mr. Hufnal's question or concerns.

Chairman Sheth asked Mr. Hugg and Mr. Rodriguez whether the City passes the ordinances and the Board of Adjustment follows the ordinances that have been approved.

Colonel Ericson agreed with Chairman Sheth. We have wondered way off from as far as what the Board of Adjustment responsibilities are; therefore, he moves to adjourn the meeting.

Mr. Keller commented to Colonel Ericson that the Board of Adjustment is not the legislative body; that is the responsibility of the Planning and Inspections Department and subsequently City Council.

The meeting was adjourned by Colonel Ericson and seconded by Mr. Senato at 9:53 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary