CITY OF DOVER
BOARD OF ADJUSTMENT MINUTES
December 20, 2017

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, December 20, 2017 at 9:00 A.M. with Chairman Sheth presiding. Members present were Chairman Sheth, Mr. Keller, Colonel Ericson, Mr. Hufnal and Mr. Senato.

Staff members present were Mrs. Purnell, Mr. Diaz, and City Solicitor Mr. Rodriguez. Mr. Hugg was not present due to a Department Head meeting.

APPROVAL OF AGENDA

Mr. Senato moved to approve agenda as revised whereas Application V-17-17 would be heard first and V-17-16 would follow afterwards. The motion was seconded by Mr. Hufnal and unanimously carried 5-0.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF NOVEMBER 15, 2017

There was no approval of the meeting minutes of November 15, 2017 as they were still being prepared. Adoption of the meeting minutes will be considered at the January 17, 2018 meeting of the Board of Adjustment.

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATION

Mr. Eddie Diaz, Planner with the Department of Planning and Inspections stated that the meeting today will be conducted in accordance with the motion of the Revised Agenda. There is one (1) application on the agenda under Old Business and one (1) application 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 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 applications 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-17-17

299 College Road. Stephen E. Lumor has requested a variance from the requirements of the *Zoning Ordinance,* Article 4 §4.8 pertaining to maximum lot coverage for multiplex dwellings in the RM-2 (Medium Density Residence) Zone. Specifically, the applicant seeks to increase the maximum lot coverage on the site from 35% to 40%. The site is located on the north side of College Road west of Mishoe Street, and adjacent to Conwell Street. It is 0.42 acres +/- in size

and zoned RM-2 (Medium Density Residence Zone). Tax Parcel: ED-05-067.00-02-26.00-000. The owner of record is Stephen E. Lumor.

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 December 10, 2017. The public was notified in accordance with regulations.

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

Representative: Mr. Mark Strickland PE, Century Engineering

Mr. Strickland was sworn in by Mr. Rodriguez.

Mr. Strickland testified that he was present on behalf of his client Mr. Steven Lumor who was a former professor at Delaware State University. He purchased the parcel on College Road not far from Delaware State University and he is looking to develop it into a what will look like a townhouse. It will be a three (3) dwelling unit rental property for college students not far from the campus. Mr. Lumor purchased the property because of the close proximity to the university as well as a walkable corridor to Route 13 and all the businesses there for any students or anyone that lives there, but it is primarily geared toward the students. The site (a small parcel only 0.42 acres in size) was originally designed and they did everything they could to adhere to the 35% maximum impervious coverage. The entire site was designed to be under 35% impervious just by a hair. It was down to the square feet and parking area in order to do so. They went through the DAC process with the Planning Commission and had a few comments with DelDOT and the Fire Marshal. Just to improve the safety of the site the entrance was widened and the parking area increased for Fire Marshal accessibility. Those adjustments to the site have bumped up the impervious coverage to exceed the 35% threshold. The variance they are looking to request is to allow an increase in the maximum allowable lot coverage from 35% to 40%. The parcel with all the recommendations by Planning Commission, Fire Marshal, and DelDOT now has the impervious coverage at 39.05 %, just a little under 40%. The 40% would allow for any minor future modifications. The primary reasons why they feel this is an acceptable variance according to the four criterias. The four (4) reasons this variance would be an acceptable adjustment: (1) The nature of the zone in which the property lies: This is intended to be a residential structure and is surrounded by primarily residential zoned buildings along College Road. Across the street to the east is a large apartment complex owned by the university as well as to the north of the parcel there is another small apartment complex. There are various types of residential land uses surrounding the project area. This would be in the nature of the zone that the property lies. (2) The character of the immediate vicinity and the contained uses therein: They think this would enhance the character and the uses surrounding the area because they would be providing additional residential space and a new entrance that will hopefully keep some of the parking off of Conwell Street. Conwell Street is largely an unmaintained road. There has been a lot of debate regarding the ownership and at the current time it is still not clear. We do know that it is a public right-of-way. We will have a new entrance and keep parking off the street. They think they will be improving the immediate vicinity because they will be bringing the sidewalks up to ADA compliance and meeting code requirements in front of the site. (3) Whether, if the restriction

upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses: They do not see any impact on neighboring properties, or if so, it would be insignificant. The total going from 35% to 40% increase the impervious coverage is roughly 829 square feet (±0.02 acre) that would be largely unnoticed by any neighbor. (4) Whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in his efforts to make normal improvements in the character of that use of the property that is a permitted use under the provisions of the *Zoning Ordinance*: Failure to remove the 35% maximum lot coverage limit and not increasing it to 40% would mean changes as they have continued to adhere to DelDOT, City, and State Fire Marshal requirements. The only other option in order to develop the site would be to shrink the footprint of the building or cut off one of the rental units of the building. In the long run, it would hurt the rental prosperity of the property. They do not feel that it is going to be economically viable to continue pursuing the development of the site if there are only two parcels or two rental units on the property. That will incur significant financial hardship for the client. Just to put it into perspective, the building was roughly reduced by 25% to meet the impervious coverage limit and to meet the unit coverage or perhaps taking out a whole unit which would reduce it by 33%. Again, they do not think it is economically viable to reduce the footprint of the building. For comparison, the site itself is being classified as a multiplex through the Planning Commission, but the Fire Marshal codes do not have a multiplex definition so it is being considered an apartment for those zoning purposes. If you look at it from the street, it is going to look like a townhouse. Comparatively, the impervious coverage specification is 35% for multiplex and 50% for townhouses. If we were able to consider a townhouse, which we cannot because then we would have to subdivide the parcel and the parcel is simply not big enough, the townhouse is already at 50%. That is really what the building is going to look like. With all that in mind, they are requesting to increase the impervious coverage from 35% to 40%.

Mr. Keller questioned Mr. Strickland's representation of the owner. Mr. Strickland replied that he is with Century Engineering and he is the Engineer for the project.

Colonel Ericson questioned the definition of a townhouse/multiplex. Mr. Diaz replied that it is defined as a "multiplex" under the *Zoning Ordinance*. It is currently being defined as an Apartment under the Building & Fire Code. It looks like townhouses. Mr. Strickland replied that there is no clear definition that well defines this property. Between the different agencies that is the best way to describe it because it is confusing.

Chairman Sheth questioned if the term "townhouse" is used where would you go wrong. Mr. Strickland replied that the parcel is not wide enough in order to subdivide and provide the required lot width. In order to be considered a townhouse, they would have to subdivide the parcel and there is simply just not enough width on the property to divide it into three (3) individual units. According to the *Zoning Ordinance,* it fits a multiplex building the best. A multiplex consists of 2-5 dwelling units and have all of their own entry points. It fits the definition of a "multiple dwelling" as a building containing more than two dwelling units. The standards applying to "multiple dwellings" apply. We are not able to

subdivide the parcel without requesting more code variances for the lot widths on the subdivided parcels.

Colonel Ericson asked Mr. Rodriguez if he was comfortable with this determination. Mr. Rodriguez replied yes. The Planning Commission has recommended if it is passed that it be specifically designated as "multiplex".

Chairman Sheth questioned if there is no wording describing the ordinance and the Board have to legally vote for a multiplex that has no definition anywhere. How would the Board pass it as a multiplex or should the Board state as proposed none as a multiplex with the subject of the conditions? If City Council approved the word, would the Board be legally okay? Mr. Rodriguez replied yes the Board would be fine if they decided to pass it. He would write the decision to that affect so it will be limited to multiplex and use the definition that Mr. Strickland has referred to which was given to the Board by the Planning Staff.

Mr. Diaz gave a brief overview of the application.

Chairman Sheth questioned without any description of the multiplex and if it is passed this time and anyone comes in without any description of the multiplex and the Board has no idea of any restrictions or something else that restricts them one against another (apartment complex or townhouse) some will call it a multiplex. It is approved, but the Board has no idea of a multiplex, because this is his first time hearing the word "multiplex". If you want to get through the public, you would have to come up with some legal term and Mr. Diaz will need to give the Board some guidance as to "what is a multiplex". He does not want to vote for something and not know what he is voting for.

Colonel Ericson stated that he totally agreed with Chairman Sheth that the Board needed a definition of "multiplex" because some people will take advantage of the Board's decision if approved.

Mr. Diaz stated that the definition of a "multiplex" under the *Zoning Ordinance* is "a detached structure containing three to five attached dwelling units, with each unit having independent outside access and at least two exposures." The difference between a multiplex and townhouses under the code is that townhouses are supposed to each have their own independent lot, whereas multiplexes cannot. Townhouses are generally set up for one family ownership while a multiplex could be a condo unit or apartments. This is the reason they could not give this building a townhouse definition to allow a 50% lot coverage. It is not set up for a one family ownership with independent lots for each unit.

Mr. Keller questioned whether there was anything to preclude a subsequent sale of these individual units much like a townhouse development and subsequent sale would otherwise be. Mr. Diaz replied if so, they would have to sell them as condo units, because the property as is cannot be subdivided.

Mr. Keller asked if the Board would concur to encourage Mr. Diaz to carry this message to Mr. Hugg and undertake a review of the code as it relates to multiplexes and attempt to formalize if you will a more satisfactory definition, usage, etc. in the rewrites and reviews of the ordinances in the future. Mr. Diaz replied he could certainly do that. Mr. Keller stated that it would be helpful because there was a lot of doubt in his mind as to exactly what the ramifications of subsequent use and/or sale of that property would entail. He knows that the owner has indicated in his submission that he intends to rent, but that does not preclude tomorrow him perhaps desiring to sell the property or units. He did not know how subsequent unit sale would take place.

Chairman Sheth questioned if this could be sold as a separate unit or as one title. Mr. Strickland replied that the unit will remain as one parcel under one title. Upon speaking with the owner he has never once indicated any intention on selling the building. If he did so he is not 100% sure how that process would go, but he is assuming you would have to sell the building as one entire unit.

Mr. Hufnal stated that as working in Real Estate for many years unless you can subdivide it and get a separate deed, you cannot sell that property individually, it has to be sold as one unit. He asked Mr. Rodriguez if that was correct. Mr. Rodriguez concurred.

Mr. Keller questioned the status of the owner being listed as a dual status, he wanted to clarify if the current fee holder of that property is Mr. Lumor because the paperwork reveals that there is also an Enyam LLC. Is the property held title wise by Enyam LLC or Mr. Lumor as a single individual? Mr. Strickland replied that he believed it was under Enyam LLC ownership but Mr. Lumor is Enyam LLC. It's not like it is a large corporation, it is just Mr. Lumor.

Chairman Sheth questioned if Mr. Strickland was sure. Mr. Strickland replied that he was not 100% sure. The property was purchased and owned under Enyam LLC with Mr. Lumor taking all ownership and rights to the property.

Colonel Ericson questioned whether Mr. Rodriguez could contact the owner to confirm that he is the owner. Mr. Rodriguez replied that he would ask Mr. Strickland to give him that information and perhaps a deed reference. When he writes the final decision, if the Board decides to pass it, he will include the legal owner.

Mr. Rodriguez questioned if Mr. Strickland could find this information out pretty quickly. Mr. Strickland replied yes, right after the meeting or he could call him now.

Mr. Hufnal stated that Mr. Lumor was listed as the property owner on the application.

Mr. Keller stated that he checked the County property records and they listed the owner as Stephen E. Lumor of 314 Topaz Circle, Dover, Delaware 19904. The property was listed as Lots 145-146 of College settlement subdivision. He asked Mr. Strickland if he had any familiarity with this? Mr. Strickland replied he had never heard of either one of those.

Mr. Keller questioned if any title work or title search, etc. was done before embarking on a commission to do the engineering work for an owner. Mr. Strickland replied he personally did not.

Mr. Keller stated that the property is otherwise referred to as a 0.46 of an acre lot and he saw this in the property records of the County. He also heard Mr. Strickland comment about the uncertainty of the width of Conwell Street. Part of it still appears to be a paper street and half is fully paved on the southerly side. When he saw the reference to settlement lots 145-146 being in Mr. Lumor ownership, it raised a question in his mind if it was in fact a record subdivision and if there were any restrictions on the settlement for development, any conditions, or prohibitions with regard to that subdivision plan.

Mr. Rodriguez mentioned that he could check it out for Mr. Keller.

Mr. Rodriguez asked Mr. Strickland if he knew the attorney that was representing the owner. Mr. Strickland replied that he was not aware. They had a boundary survey provided to them by another engineering company (Mountain Consulting) and that is what they have been using for all of their right-of-way references. All of the plans have been diverting any kind of right-of-way responsibility or boundary determinations towards the Mountain Consulting survey. They never performed a boundary survey or did the right-of-way or deed research beyond what was provided by the owner and provided on the boundary survey. Mr. Rodriguez stated that it would have had to be presented to the Planning Commission, if not, it would not have come before the Board of Adjustment. Mr. Strickland concurred.

Mr. Strickland mentioned for clarification on the 0.46 of an acre lot compared to what he mentioned 0.42 of an acre lot, the right-of-way was dedicated along College Road in the mid 80's. Therefore, it reduced the lot size to 0.42 of an acre lot.

Mr. Senato stated that in order to make a wise decision on a motion and for point of information there are a lot of questions and doubts going back and forth. He asked if it would be advisable at this point to defer this to the next meeting and present the questions that Board members and have them answered for the next meeting so that a decision can be made with all of the information. Chairman Sheth replied that it was up to the Board members. He also asked if the Board felt that there were a lot of unanswered questions.

Mr. Diaz stated that City records has the property as one (1) parcel. It is possible that it may have been two (2) parcels in the past and there was a parcel consolidation. But at this point, unless there was a subdivision under no circumstances would they be treating it as two (2) lots.

Chairman Sheth suggested that the hearing could continue and then when the motion comes the Board can suggest to table it or not, or freeze the hearing. Mr. Senato replied that was fine.

Chairman Sheth also suggested to Mr. Diaz to please provide as much information as possible in the future so the Board can make the right decision. For example, the question that came about regarding the definition of a multiplex. Mr. Diaz replied that he could not give a definition of multiplex that is different from the one he gave that is in the *Zoning Ordinance.* Chairman Sheth stated that Mr. Diaz did his best, but in the future give the Board the writing to follow. Mr. Diaz replied that the definition of multiplex was in the Report given to the Board members.

Mr. Senato stated that what the Chairman was referring to was not for this meeting because Mr. Diaz had given the explanation as to what the definition is, but in the future reevaluate what is a multiplex? What is a townhouse in reference to what is being discussed today so that this problem does not rise again. We will have more of a definitive definition as to what a townhouse and a multiplex is in the future. He asked Mr. Diaz if he understood.

Mr. Diaz reiterated that he could not give a definition of multiplex that is different from the one he gave that is in the *Zoning Ordinance*. He could not give another definition of something that is not in the code. Mr. Senato replied he understood, but reiterated that he was not talking about this meeting.

Mr. Hufnal stated that he was satisfied with what was discussed because under the circumstances of the way the lot is set up and the way it was recorded; it cannot be subdivided anyway. If it were to be sold or everything burnt down it would have to be reconstructed the same way.

Chairman Sheth questioned whether someone could apply for a multiplex on the next lot (Lot 145). Mr. Hufnal replied that it would be up to the applicant as to how they wanted to procede with building.

Mr. Keller stated that he had uncertainty as to the reference to a subdivision and the specific lot numbers assigned to this property. He was not certain how or what would be the best path for tabling for a 30-day period to undertake some sort of look into the actual fee holding and if there is in fact a subdivision of record, etc.

Chairman Sheth stated as he referred to Mr. Keller's comments that Mr. Rodriguez had already mentioned that he would take care of it so the Board would not have to worry about it.

Mr. Hufnal asked Mr. Rodriguez if he was right on if this was two (2) lots that was combined into one (1) then it cannot be reversed and go back to two (2) lots. Mr. Rodriguez replied that he thinks Mr. Hufnal is right on that. He did not think this could be done. He would believe that the restrictions or development that were in question by Mr. Keller would have been ironed out by the Planning Commission. If you are really concerned about that he would suggest the Board asking the owner to submit some title information showing who the owner is and are there building restrictions for this development that would affect the Board's decision in anyway.

Mr. Keller stated that although they are fair questions to be asked, he did not want to delay any progress with subsequent actions that are necessarily actions of the owner to forward his project. But at the same time could those questions or requests be made of the owner to provide that information in advance of a motion for approval or denial. He did not want to have a motion potentially for approval to be dependent upon the submission of that information and then have it only perhaps come to light. The action taken would have been precluded by the information the Board found from the title work.

Mr. Rodriguez stated that they are fair questions and no question about it, the Board should have the answers. He would feel a lot more comfortable postponing it to a later date when the Board meets on January 17th and have that information submitted so that the Board would know. The public hearing could be held today and then the application could be tabled if it is the Board's desire.

Mr. Strickland stated for clarification that for the entire time since they were handed the boundary survey it has been declared as one parcel. Until today he never had any indication that it was ever previously subdivided at least under this current ownership.

Chairman Sheth commented that it would have been much easier if the owner was present. Mr. Strickland replied that the owner was in Chicago.

Chairman Sheth questioned if the owner was aware of the meeting. Mr. Strickland replied yes.

Mr. Keller stated that he was not finding any fault with Century Engineering. At the same time, he hopes that the way it was stated that the survey was not received carte blanche without a review or subsequent step of clarification for what the Board is talking about, namely the true ownership. There is a distinction between a corporate ownership and/or individual that has to be clarified as well as some title representation whether or not there is in fact an established subdivision known as College Settlement there and whether or not Lots 145/146 as indicated in the ownership records of the County are in fact in existence and whether or not they have been combined or not. Those are the various questions that should be clarified. Mr. Strickland replied that he understood and they should have had that information. He did not want to say for certainty with the ownership. He knows that they billed Enyam LLC. They are paying us to produce a site plan for it and it was under his assumption that he was also the owner. Again, he did not want to say without 100% certainty.

Chairman Sheth recommended that the owner be present at the next meeting if this application is tabled. Mr. Strickland replied okay.

Mr. Keller recommended that the information be provided in total prior to the scheduling of the next appearance by Mr. Lumor or his representative. Chairman Sheth concurred, and at the same time asked for the necessary information from the people who are helping.

Mr. Diaz asked to be certain that the information that the Board is asking for is: who owns the property (Stephen E. Lumor or Enyam LLC), who owns Enyam LLC and whether there is only one (1) fee hold for the property or multiple fee holds.

Mr. Diaz asked if there was anything else. Mr. Rodriguez replied, also if there were any deed restrictions for the recorded block that would affect the Board's decision.

Mr. Keller stated to clarify the recordation of that subdivision plan and its record source should be recorded by deed record book page and if there are any associated restrictions of whatever nature. He knew some years back with his previous employment at DelDOT with the widening of College Road, he can recall one other paper streets on the extreme easterly end of this area before you get to a river crossing at the bottom of College Road. He is aware that there was in fact a subdivision of record and that may very well also be why Conwell Street on this westerly end is still partially a paper street as it proceeds northerly from College Road. With that recollection in his mind, he thinks that there is possibly a record plan of that settlement that is supported by the indication that this ownership constitutes lot numbers 145 and 146, so it is worthy of looking at Mr. Diaz.

Mr. Diaz asked if it was Lots 145 and 146. Mr. Keller replied yes, it indicates that this property ownership consists of Lots 145 and 146 of "College Settlement".

Mr. Diaz asked of the specific source that was being looked at. Mr. Keller replied by saying you tell me because he did not go into a property search last night. They should be looking in subdivision records to see if there is a record plan of that subdivision. It would also be nice to see the present day deed record as to how the current ownership acquired title.

Chairman Sheth suggested that Mr. Diaz ask Mr. Hugg or Mr. Rodriguez to well define the definition of a multiplex and the requirements so the Board will have clarity.

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

Chairman Sheth opened the public hearing.

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

Colonel Ericson moved to table variance application V-17-17 until the January 17, 2018 meeting. The motion was seconded by Mr. Senato.

Mr. Keller commented that the tabling would be supported by the intention of the owner submitting the required information as the Board discussed regarding the subdivision plan, current ownership, and title sources (deed or subdivision plan).

Colonel Ericson commented that he would suspect if the required information is not provided the Board would vote against the application. Mr. Strickland replied that he was satisfied with that.

Chairman Sheth reiterated that Mr. Diaz understood Mr. Keller's request and that it is provided at the next meeting.

Motion passed 4-1 to table the application until the January 17, 2018 meeting. Mr. Hufnal was not in favor of the motion because he believed there was sufficient information in his mind.

OLD BUSINESS

Applicant #V-17-16

545 North DuPont Highway. Item of clarification: on November 15, 2017, the Board of Adjustment approved a third wall sign for this property (over a code maximum of two) with an area of 35.67 SF. The actual area of the sign the applicant requested was 47.27 SF. TLM Realty originally requested a variance from the requirements of the *Zoning Ordinance,* Article 5 §4.7 pertaining to permitted signs. The site is located on the east side of North DuPont Highway north of Townsend Boulevard. It is 0.86 acres +/- in size and is currently occupied by a Panera Bread Restaurant. Subject property is zoned C-4 (Highway Commercial Zone) and subject to the SWPOZ (Source Water Protection Overlay Zone). Tax Parcel: ED-05-068.09-01-34.01-000. The owner of record is Dover DE Retail, LLC and the applicant is TLM Realty Corp.

Exhibits for the Record: Staff Memo and plans submitted by the applicant. Legal Notice was published in the Delaware State News on December 10, 2017. The public was notified in accordance with regulations.

Mr. Diaz gave a brief overview of the application. Mr. Diaz stated that had Staff known about the change from the beginning Staff recommendations would still have been the same. Today he recommends that the Board approve revisions to the original granted variance in order to allow a 47.27 square foot sign.

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

Representative: Mr. Raymond Thomas, Construction Manager

Mr. Ray Thomas was sworn in by Mr. Rodriguez.

Mr. Thomas testified that Mr. Diaz pretty much said everything. They initially wanted the drive-thru portion of the sign to be approved along with the Panera Bread and for whatever reason he was not sure why it did not get included in the packet or brought to anyone's attention.

Chairman Sheth mentioned that in past presentations the Board found out that new building was constructed and within 1-8 months asked for a variance. New building signage could have been questioned by the Planning Commission or they should tell them how many they are going to have. If you have questions, then don't apply to the Planning Commission, start building and then ask for a variance. Chances are you will get approved. For example, that's what happened, there was a Wawa building, a housing development, Grottos Pizza, and now Panera Bread. They exactly knew how many signs were needed. The engineers, marketing, and Planning Commission know the code and regulation information. There were questions with Wawa asking what will happen

if they did not get a big sign. Are you going to stop building; and the answer was no we are going to continue building. Same with the others as previously mentioned. It is now becoming easier to get a variance afterwards. He mentioned the Walgreens on Route 8 and Saulsbury Road where he informed the Planning Commission to send them the variance before approving to avoid being turned down before the Board of Adjustment. Chairman would suggest that any new building (ask questions) regarding whether or not they will need a variance and if so, go before the Planning Commission first before building. There are other businesses coming into town. There will be questions regarding the signs and ordinances and whether they are existing or come back stating they have a hardship. Chairman stated that the Board should respect the creditability of Staff Recommendations because they have more knowledge because they deal with it on a daily basis. There have been cases where there has not been enough information.

Mr. Hufnal stated that this application was discussed thoroughly at the last meeting for the sign of 35.67 square feet. If the Board did that and the sign said Panera Bread, why the applicant did not make comments to the Board that this was not what he presented. Mr. Thomas replied that he did not pick up on it, that was his fault. Mr. Hufnal stated that it was the Board's fault as well because he sees the "drive-thru" on the drawing, but they only picked up the part with the Panera Bread at 35.67 square feet. Mr. Thomas replied right.

Mr. Hufnal also commented that on the drawing the drive-thru is 6.77 square feet, but yet if you add the two (2), it only totals 42.44 SF, where did we get 47 SF? Mr. Diaz replied that it comes from the space in between the two lines. Mr. Hufnal said so, it is not two separate signs. Mr. Diaz replied right. The area of the sign is the addition of the two (2) geometric figures that can fully hold all of the text and be continuous. If we were to just add the two figures there, the drive-thru letters would have to be bumping up against the bottom of the Panera Bread letters. The extra space counts for about half letters with space between them.

Mr. Hufnal asked if it is the blank space between the two (2). Mr. Diaz replied yes.

Colonel Ericson asked if it would be considered two (2) separate signs. Mr. Diaz replied it can be subjective, but in this case they are close enough together that it can be considered one (1) sign.

Mr. Hufnal said you have a sign that faces Route 13 that is Panera Bread drive-thru, but the drive-thru is on the northern side where you want this sign. He asked why the sign on the front could not be placed on the side, and the one the Board approved be put on the front. Mr. Thomas replied they had never thought about it that way. They would probably like to have drive-thru everywhere only because it brings that attention to the restaurant. Mr. Hufnal stated that the drive-thru is specifically on the north side and apparently that is what you wanted this sign up there to indicate. Yet, the previously one the Board approved with the drive-thru is on the front. It seemed to him it would be better if that sign was on the side and the one the Board approved would be put on the front. Mr. Thomas said he could not disagree with that. However, now you are talking about taking down the old drive-thru sign and the additional work and expense involved in doing that. It would be cheaper for them to just put up a whole new sign (Panera Bread drive-thru) on the one side.

Chairman Sheth stated that the question really comes when people ask for the variance and it is granted by the Board. They do not have to take much, but get as much as they can. If you have

only two (2) then ask what is the best way to get the sign to draw the attention. That was the whole idea of the forefathers or the City Ordinance that make it very efficient to use the Sign Ordinance. What we are using is (35-foot-tall gas station pole, etc.). There were sign issues with the Dover Mall whereas they wanted to have a running sign and the Board said no.

Mr. Keller commented he agreed with some of Mr. Hufnal's remarks as well as the Chairman's. The Board took under considerable consideration the request made a month ago. He still has his plans from that meeting and reviewed them as well for today's meeting. They clearly had two (2) separate signs Panera Bread and Drive-thru indicated on those plans. We proceeded last month with the variance approved to allow an additional sign and he recalls that some of the contention was regarding the visibility of south bound traffic approaching that building. He believes absent the meeting minutes yet in hand that he made comments regarding that visibility as you are proceeding south below Lepore Road. That building comes into view and within 1-2 tenths of a mile of that building you can see that sign that is on the westerly face (the one that laterally faces Route 13 northbound; the present day sign in place). He took some issue and still has doubts about the necessity of this sign face on the northerly side. He recalls that the votes were not unanimous in either request. The Board did in fact approve the additional sign. He recalls at the time the motion was made there was some pause and clarification made he believes by Mr. Hufnal as to the square footage involved. The same representative is here today representing that ownership and there was not an issue taken with the footage. He did not believe the matter of discussion with which the various elements of the sign or the addition or deletion or whether or not the drive -thru portion on that corner was included. He likes the mindset that the Board of Adjustment last month made a sound decision that they allowed one additional sign. The restaurant appears to be a gun-ho business. You cannot get near the lot and find a parking place so perhaps the signage even as it exists today is doing its job. He is hesitant to support a further revision to the item as passed and decided at the last meeting.

Chairman Sheth agreed with Mr. Keller. Think about the ones that are building the Longhorn Steakhouse and they will have the same issue. There will also be three (3) other restaurants coming into the area that will all have the same issue.

Mr. Keller stated that he respects and admires Mr. Diaz's resubmission of the information which was apparently inadvertently omitted. In review of the packet for this month and last month, it would not have altered his position one iota.

Chairman Sheth asked Mr. Diaz about the answering the question of Mr. Keller's about one or two signs regarding the drive-thru wording of Panera Bread. Mr. Diaz replied that this again goes back to the definition of the sign in the Sign Ordinance. Basically, if it reads as one sign then it can be considered as one sign. It does allow the applicant some flexibility. In some cases, they might be permitted more signs that are smaller and in other cases they might be permitted fewer that are larger. They can and they might state that they want it to be considered one sign or two signs to make it fit with the *Zoning Ordinance*. In this case for "Panera Bread drive-thru" we can consider it as one sign. If you were to say no, we want that to be two (2) signs, then you would have to grant a variance for an additional sign.

Colonel Ericson stated that he personally sees it as two (2) signs. If you say that the spacing between the two letterings is not part of the sign, then to him is two signs. If you wanted it to be one sign, then you should be asking for more than 47 SF so the whole thing would be covered. Mr. Diaz replied that it could be considered as one sign that is 35.67 SF and the second sign that is 6.77 SF. That would be two (2) signs that would add up to about 42 SF or you could consider them one sign that is about 47 SF based on the small amount of space between them. One sign with two lines of text. Considering them as one sign would the lesser variance.

Mr. Hufnal commented that the blank space in between is 4.83; the difference of 11.60 SF between what the Board approved and what was requested. Mr. Diaz replied that any sign is going to have some blank space on it. Any sign that has multiple lines of text is going to have blank space; it is pretty common.

Mr. Senato commented if you are dealing with so much square footage for a sign and when you are talking about two (2) and you are adding both of them together, the ordinance does not seem clear in dealing with this type of situation. He thinks that you are setting a precedent for the future.

Mr. Hufnal commented that at the last meeting the additional sign was approved. Since the Board technically overlooked the drive-thru portion, he would be in favor of just amending that you add the additional language which the Board omitted the last time.

Chairman Sheth asked Mr. Diaz what would he suggest. Mr. Diaz replied he did not want to set a precedent where any sign that has multiple lines of text would then have to consider each line of text a separate sign. This would increase by a great amount for every sign. Each time someone would apply to put up a sign we would have to consider it multiple signs if it is two or more lines of text. In cases where they are only allowed a limited number of signs (which is most cases) then that will severely limit the amount of signage they put up.

Mr. Senato questioned if the code stated the square footage of a sign or does it say lines of a sign. Mr. Diaz replied that the code limits are based on the number of signs and the square footage of signs.

Mr. Hufnal commented that he would rather see it be kept at the one sign because we are already over the limit. If we keep it at the one sign and just add the additional language it would seem to be less of an impact and also keep the Board better within the limits of what is allowed.

Mr. Keller commented that he would add an air of caution because you don't want to be flooded with having approved variances for (x) number of signs only then to have subsequent requests periodically or routinely for amendments to our final decision making. It is easy to perhaps gain that first variance, but this to him is almost like now I will get my fourth sign. I am allowed two. I got a variance for one more, so I will just go in and ask for one more. It still troubles me a bit Mr. Chairman.

Mr. Chairman agreed and commented that is the reason he suggested that Planning Commission should ask that the applicant should submit a sign packet along with applying for a new building

so we don't come into the picture and then decide the variance. He would still like to see no more than two (2) signs and stick with it (he again referred to Grotto Pizza).

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

Chairman Sheth opened the public hearing.

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

Mr. Keller stated that before making his motion he would like to point out in the decision rendered on this case a month ago dated November 15, 2017 with regard to case V-17-16, page 2, paragraph number 2: "The board considered that the smaller sign where the variance was granted would be consistent in style and size of similar restaurants in the area, the design of this sign would be identical to the major part of an existing sign already installed on the walls. South bound traffic on Route 13 would not readily recognize the business. The Board felt that granting the smaller wall sign would overcome this problem and that the denial of the larger wall sign variance would not be needed to cure the visibility argument for south bound traffic on Route 13".

Mr. Keller moved to deny the request for administrative alteration to the Board of Adjustment decision for case # V-17-16 as was stated in the statement of facts regarding that decision dated November 15, 2017. Colonel Ericson seconded the motion.

Mr. Diaz stated that Mr. Hufnal made a suggestion that the drive-thru letters on the west face of the building be moved to the north face. Looking over the decision, it looks like it says that a 35.67 SF sign was approved for the north face of the building. He would suggest to make that strategy possible if it pleases the Board would be to revise the variance so that it says that a 35.67 SF sign is approved for the west face of the building. Then they would be able under regular code requirements to have the second sign be on the north face of the building and have the square footage needed.

Chairman Sheth stated that the Board did not have to adhere to any of the suggestions, but can if you like.

Mr. Keller commented that as a matter of discussion, the representative present today has already stated that in any event it's costly for them and probably is not something they would elect to do.

Chairman Sheth stated that we can respect Staff's suggestion, but it is up to the Board to accept it or not.

Mr. Keller moved to deny the request for administrative alteration to the Board of Adjustment decision for case # V-17-16 as was stated in the statement of facts regarding that decision dated November 15, 2017. No further action is to be taken regarding an additional sign or drive-thru sign or nothing to exceed the one Panera Bread sign of 35.67 SF as initially proposed and approved as a variance a month ago. Colonel Ericson seconded the motion.

Colonel Ericson commented that Mr. Diaz brought up a very good point and recommended allowing for a change of position of the signs and sizes that would take an amendment to the motion.

Mr. Rodriguez commented that it would almost need another application because you have already approved the 35.67 SF, and the only application today is to increase it to 47.27 SF. Mr. Keller's motion is to deny.

Mr. Hufnal commented that his original idea was that the Board had already approved all the signage for the building and to make the move from the front to the north building or to the west side to the north building and to put this sign on the west side. The Board has approved the signage; it is just a matter of where the signs needs to be located.

Mr. Diaz commented that his concern is that the written decision restricts the north face specifically to 35.67 SF. If you want to remove that restriction and place it on the west side instead the motion would need to reflect that.

Mr. Keller commented that we have heard already this morning in the public hearing portion by the representative of Panera Bread that it would pull them into additional cost (expense). The individual did not air that it was necessarily something that they would like to do. With what stands now of the record and the decision rendered a month ago half of the signage that you are now perhaps talking about shifting is already in place.

Roll Call Vote for variance request to be denied.

Mr. Keller – yes for denial
Colonel Ericson – yes for denial
Mr. Senato – yes for denial
Mr. Hufnal – no for denial
Chairman Sheth – yes for denial

Vote 4-1 in favor of the denial. Motion carries. Mr. Hufnal was not in favor of the denial.

Mr. Senato commented that the Planning Office has to be more specific as to some of the transactions that the Board is going to have in the future and particularly with what the Board had today. Chairman Sheth agreed and Mr. Diaz was complimented. We also have new Staff in the Planning Office as well as the new Director other than Mrs. Melson-Williams who does not normally attend the Board of Adjustment meetings. The Board of Adjustment always requires past long experience and he hopes that Mr. Diaz takes the suggestions positively.

Mr. Diaz commented by saying he would do his best. They make the reports as detailed as possible, but they cannot anticipate in advance what the Board is going to ask. For example, Mr. Keller did his own research into the deed history of this project. Planning Staff does not do that for anything that comes before the Board. How are they supposed to anticipate that as their problem? We have staff come to the meeting so that they can answer the Board questions. If the Board is not satisfied with those answers, then he does not know what else they can do.

Chairman Sheth suggested to Mr. Diaz that he would just say to that you would try your best to satisfy the Board.

Meeting adjourned at 10:33 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary