

CITY OF DOVER
BOARD OF ADJUSTMENT MINUTES
July 19, 2017

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, July 19, 2017 at 9:04 A.M. with Chairman Sheth presiding. Members present were Chairman Sheth, Mr. Keller, Colonel Ericson and Mr. Senato. Mr. Hufnal was absent.

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

APPROVAL OF AGENDA

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

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF MAY 17, 2017

Mr. Keller moved to approve the meeting minutes of May 17, 2017 with any necessary corrections. The motion was seconded by Mr. Senato and unanimously carried 4-0. Mr. Hufnal was absent.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF JUNE 21, 2017

Mr. Keller moved to approve the meeting minutes of June 21, 2017 with any necessary corrections. The motion was seconded by Colonel Ericson and unanimously carried 4-0. Mr. Hufnal was absent.

Chairman Sheth introduced and welcomed the new Planner Mr. Julian Swierczek.

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATION

Mr. Dave Hugg, Interim Planning Director of Planning and Inspections stated that the meeting today will be conducted in accordance with the agenda. There are two (2) applications on the agenda 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-17-12

550 Bay Road. Bay Road One, LLC has requested a variance from the requirements of the *Zoning Ordinance*, Article 6 §3.11 pertaining to the maximum number of parking spaces permitted, and a variance from the requirements of the *Zoning Ordinance*, Article 5 §7.22 pertaining to the landscape component of the opaque barrier requirement. Specifically, for the first variance request the applicant proposes 119 parking spaces, 14 over the 105 permitted for Phase 1 of the project; in future phases the project will no longer require this variance. For the second variance request, the applicant proposes to eliminate the landscape component of the opaque barrier required along the northern edge of the properties. Subject property is zoned C-4 (Highway Commercial Zone). Tax Parcels are ED-05-077.00-01-10.01-000 and ED-05-077.00-01-11.00-000. The owner of record is Bay Road One LLC.

Exhibits for the Record: Staff report, zoning exhibit, statements and plans submitted by the applicant. Legal Notice was published in the Delaware State News on July 9, 2017. The public was notified in accordance with regulations.

Mr. Diaz gave a brief overview of the application.

Mr. Senato questioned the landscape option as to whether it had to go before the Planning Commission before the Board of Adjustment could make a decision and if the application needed to be tabled. Mr. Hugg replied that the application went before the Planning Commission on Monday, July 17, 2017 and was approved with the requests that were related to the Site Plan, recognizing that these two (2) items had to come before the Board of Adjustment for consideration. The overall Site Plan of the project and phase development which includes the parking layout is subject to the Board of Adjustment's decision on the waiver of the parking and variance requirements. All issues were addressed at the Planning Commission meeting.

Chairman Sheth mentioned the procedure regarding the Planning Commission decision and the Board of Adjustment decision on the application and that the Board of Adjustment decision could not be superseded by the Planning Commission decision. The Board decision is only overruled by Superior Court.

Colonel Ericson questioned if the Board would disapprove the application could it go back to the Planning Commission and they overrule the Board of Adjustment decision. He asked which agency should be considered: The Planning Commission or the Board of Adjustment. Mr. Rodriguez replied that is before the Board of Adjustment to make a decision now, and depending upon the Board's decision it might have to go before the Planning Commission again.

Colonel Ericson questioned if the Planning Commission could overrule the Board of Adjustment decision. Mr. Rodriguez replied that he did not think that the Planning Commission could overrule the Board of Adjustment decision. The Planning Commission would have to adjust their thinking about the decision.

Mr. Diaz stated that Staff recommendation was that the Board approve the variance for the parking and deny the variance for the opaque barrier. Staff does not believe that the addition of

the 14 parking spaces would cause a problem for any of the neighboring properties in the long run. There does seem to be an exceptional practical difficulty with regard not being able to have enough parking spaces for the number of employees in the future. There were concerns with the opaque barriers. If they eliminated the landscape component as requested, it would be detrimental to residential property owners that are joining the properties to the north. There is currently vegetation in the area, but we are not sure if it will be kept by the applicant or neighboring property owners.

Chairman Sheth questioned whether this was a variance for the entire project and not just a particular building and he questioned the amount of parking. Mr. Diaz replied that the first variance is to increase the parking on site for Phase 1 of the project above the maximum number of spaces permitted by *Zoning Ordinance*. Mr. Hugg replied that based on the Site Plan they would be under the threshold and have more than adequate parking for the entire site as it develops, but because of the phasing of the project and the needed construction of the parking lot for Phase 1 it technically results in over parking.

Chairman Sheth questioned what would happen in the future if the project is not completed and/or it is sold to someone else as a separate entity. Mr. Hugg replied that all of the conditions proposed would go to the successor or heirs. In an unlikely event if nothing else would be done, this would be the only building on the site. The applicant testified at the Planning Commission meeting that their plans were to grow the business and the firm. Perhaps if you look at the Site Plan, the number one building would be offset from the center line with the idea of there being an addition to the building. The 14 spaces would get absorbed in the future growth no matter what happened. Regarding the landscaping, he mentioned that the site layout is tight on one edge and there is an existing row of trees that adequately screens the residential neighborhood to the north. The trees are on private property.

Mr. Keller questioned whether there was any contemplation of a subdivision of the property or subsequent sale of those lots to the southwest. Mr. Hugg replied that nothing has been presented.

Mr. Keller questioned whether it is a firm that is currently within one ownership. Mr. Hugg replied right.

Mr. Keller stated that he at one point he wondered why the parking space allowance was not looked at against the entire property as opposed to that one building site proposed as building number one, but he understands why.

Mr. Keller questioned whether or not the building for Century Engineering is to be occupied and leased and not sold as a singular portion of the overall property. Mr. Hugg replied that to his knowledge there is no subdividing or condominium ownership proposed for the property.

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

Representative: Mr. Alex Schmidt, Century Engineering Inc.

Mr. Alex Schmidt was sworn in by Mr. Rodriguez.

Mr. Schmidt testified that this is the future home of Century Engineering. They have been in Delaware for 30 years. They are excited about coming back to Dover and being a part of the community in the future. The person who owns Bay Road One LLC is the same person who owns Century Engineering, so the intent is that this will be our future home for the next 30 years and beyond. There has been some discussion about subdividing the property, but the intent at the current time is not to do that. If they had a tenant that came along and expressed some interest in purchasing the property in the future, they might need to come back before the Planning Commission. What they currently submitted to the Planning Commission was a massive plan for four (4) basic constructions (4 buildings). The building in the rear is on its own separate parcel and could be sold now. Each building will need to come back as an Administrative application to Planning Staff. If the application was denied today, they would go back and make changes as they are able in order to address those projections of the application. He did not think that there was anything significant that needed to go back before the Planning Commission. The applicant is asking to be allowed more than the maximum amount of parking for Phase 1 only for their building. Once the second building is constructed they will come back in compliance with the parking requirements. The applicant is asking because at the current time there is 10,000 S.F. and they have 38 parking spaces and people are parking on the street and double parked in the lots. He figured at 25,000S.F. they would need at least 110 spaces based on what they use now. This does not account for when they have large meetings and they need to park. There have been issues with person(s) parking on Route 13 and behind the office. They want to make sure they have enough parking at their new office so that persons are not parking on the street. This is really from a safety standpoint of persons that come to their building and that they do not have to walk from off-street parking to their site. It is also for the people who live in the area so that they are not using residential parking spaces. He stated that regarding the landscape and the fence, the site layout is established by their entrance. They want their entrance to line up with the front of their new building in the center of the site. This is what they used to establish the parking lot around the building. Unfortunately, it only leaves roughly 4-feet on the edge of the property dividing it from the residential property. They will need to put up some type of fencing along with the landscaping outside the fence; however, it will not be very well maintained. It will not be easy for them to maintain because there is not going to be much space. They are thinking that it will be maintained by the residents although that is not their intent. They are offering to put a 6-foot privacy fence and that would provide the required screening. There is currently a mobile home sales office and 40 old mobile homes along the property line. He noted that Staff made a recommendation regarding the trees, but he expressed if the residents choose to take the trees down, that would be their decision. He did not think that it was fair to say to them to assume that they will keep the trees there or we have to plant trees because they may cut the other ones down. He asked if the Board would keep that in mind.

Colonel Ericson questioned the distance of the 6-foot privacy fence. Mr. Schmidt replied the fence would go the full length of the property at Building 4 and the length of Building 3 near the residential properties.

Colonel Ericson questioned the area near Building 1. Mr. Schmidt replied that Building 1 is not a requirement at the current time because it abuts commercial property.

Chairman Sheth questioned whether a fence was currently there. Mr. Schmidt replied that there was a chain-link fence along the entire property. They would like to take it down and replace it with a nicer fence.

Colonel Ericson questioned whether you would be able to see through the privacy fence. Mr. Schmidt replied no. They would like to install a white vinyl privacy fence.

Colonel Ericson questioned whether the privacy fence that you cannot see through met the requirements of something blocking the view and would be an adequate replacement for the plants. Mr. Diaz replied that the purpose for the opaque barrier is to provide both visual and sound screening. The fence alone would be an adequate visual barrier. Considering the warehouse use and potential of loading and unloading activities, Staff felt it was important to have the vegetation also because it is more effective as the sound screening.

Colonel Ericson questioned whether there were any plans on how wide or tall the opaque barrier is to be. Mr. Diaz replied that there are two ways to do the landscaping. One way is a row of evergreen trees which can grow 20-30 feet tall, and the other is a hedge that typically grows to the height of the fence.

Colonel Ericson questioned whether either would fit on a 4-foot wide piece of property. Mr. Diaz replied that he did think the hedge would fit.

Mr. Senato mentioned that normally evergreen trees bottom (up to 6-feet) becomes bad after 10 years, so he did not think it would be a very good barrier for long term.

Mr. Senato questioned if the area was the south side for the barrier of trees. Mr. Diaz replied it is the north side. Mr. Schmidt replied that they are only required to install a 4-foot fence at the flex (Warehouse Building 4) space portion. Mr. Diaz replied that the 4-foot fencing would be in the front yard areas, but it could not be 4-feet because the property does not have any street frontage. Since it does not have a front yard the fence would have to be 6-feet high. Mr. Schmidt stated that the Planning Commission stated that the front yard only needed a 4-foot fence, but if the Board of Adjustment would grant the variance it would allow the 6-foot fence.

Chairman Sheth mentioned other businesses in the area with the same issues regarding the fence and vegetation.

Mr. Diaz stated that if it was a 4-foot fence for this project, the requirement for the opaque barrier would supersede and become 6-feet because 4-feet would not be adequate because it has to be above eye level.

Mr. Schmidt stated that they do not know what the flex space (building) is going to be and it is not necessarily going to be warehousing. His concern was that they did not feel that any vegetation will provide any additional buffer. They would just like to put a fence in and not have to worry

about maintaining the other side. If the Board feels that the 6-feet is not sufficient then they could go to 8-feet if that would help alleviate some of the concerns.

Mr. Keller asked for clarification regarding Exhibit C regarding the 6-foot fence as opposed to the 4-foot fence and the locations. Mr. Schmidt stated that the fence would be 6-feet from Martin Street toward the middle of the site, back to the end of Cowgill Street; in the side yard 6ft. is allowed. He did not necessarily agree with Mr. Diaz's statement that the Code requires a higher fence with an opaque barrier. He was not sure that the Code specifically states any height whatsoever. The Code does only allow a 4-foot fence in the front yard.

Mr. Hugg asked if you would concur with one of the observations that there are places where there may be sufficient room to get some additional landscaping so that you are minimizing the amount of fence. He realizes that there are some tight spaces. Mr. Schmidt replied that there is, but to his understanding regardless if there is landscaping placed or not, there still has to be fencing. He agrees that there are areas where landscaping could be placed in addition to the fence.

Mr. Hugg questioned whether the applicant was willing to look at those other areas. Mr. Schmidt replied that they were willing to do that.

Mr. Senato questioned whether shrubs and trees would need to be removed/eliminated in order to put up the fencing. Mr. Schmidt replied on his side of the property, yes. He was not sure if they would impact anything on the north side on the private property.

Mr. Senato questioned the percentage of parking spaces that will be full at all times. Mr. Schmidt replied that at any given time they will probably have between 60-80 spaces full with regular full-time employees. They currently have six (6) fleet vehicles that is included in the number as well as 10 survey crew vehicles that will be there in the morning, but will leave throughout most of the day.

Mr. Senato questioned whether 20%-30% of the parking spaces will be vacant throughout the day one time or another and he was asking for fourteen (14) more spaces. Mr. Schmidt replied yes. There will also be forty (40) construction inspection staff on site periodically for training.

Chairman Sheth questioned whether the applicant would build the plan according to the Planning Commission requirements. Mr. Schmidt replied that upon his understanding if the Board of Adjustment would deny the application and this would eliminate some of the parking and would require some redesign.

Mr. Keller stated that he did not have any concerns with the parking variance request. It seems reasonable and rationale to him to have it go in at Phase 1 as long as the plan appears to be the fact of subsequent development expansion, etc. The additional spaces would be absorbed within the future and growth development of the overall site. However, with the second part of the variance request he was concerned with a couple of items regarding the fencing and necessity for the vegetation because he did not have anything presented to him which truly exhibits how much vegetation, screening, or plantings is on the residential properties. Exhibit B was submitted as an aerial view, but it is not enough to show anything of what truly exists along those residential

properties in his estimation. He was troubled that the burden of landscaping and the zoning requirements is incumbent upon the applicant to do what is required as opposed to throwing that burden if you will upon the residential abutters. Whether the trees on the property are in good shape or coming down tomorrow, we don't really know. He thinks a reliance on the abutting residential property owners is somewhat dodging a responsibility we have upon the developer and you the applicant to fulfill as best as possible per the requirements of the planning section. He could not think of anyone better suited either than Century Engineering as opposed to one of the residential owners to make some minor changes in the design plan to afford a greater width for the planting area. He did not know the individuals involved or the residential owner's livelihood, but he knows that Century Engineering does a super job at designing or perhaps redesigning in this case. It seems to him that it would be somewhat minimal to bring about a greater width in those areas where the distance may be only 4-feet from the edge of the applicant's proposed travel way to the property line. It appears upon looking at the plans that there were some minor areas where adjustment in the travel way could afford a little space whether the City Planning Department would agree to trees as opposed to shrubs, anything he would think for Century Engineering's perspective would lend to the aesthetics of the property as well as opposed to straight 6-foot or 8-foot fencing.

Mr. Hugg stated that the second matter before the Board of Adjustment only gets to whether or not this variance is approved or not. If it is approved that is one thing, if it is denied then how it gets figured out with the applicant is with Planning Staff and Planning Commission. In this particular case because it is a Master Plan those adjustments would be made as an Administrative Site Plan approved correction. The Board only needs to be comfortable with the question of whether or not they believe that the proposed solution is a fence in those areas limited in terms of space and if it is an adequate barrier or buffer and does not require vegetation as well.

Mr. Senato stated that it looks as if there has to be some type of barrier to protect the homes in the area.

Colonel Ericson questioned the applicant if the variance was denied regarding the fence what impact would it have on his design. Mr. Hugg replied that the Board is not disapproving the fence because the fence is not before the Board. What is before the Board is the vegetation.

Colonel Ericson questioned the applicant if the variance was denied regarding the vegetation what impact would it have on his design. Mr. Schmidt replied if this was not Century Engineering and the variance was disapproved what would likely happen is there would be a 6-foot chain-link fence with slats and a 4-foot chain-link fence with slats in front of the warehouse area and 4-foot hedges. As he understands that would meet the requirements of the Code. There is not specific height written in the Code. Mr. Diaz replied that the height is written in the Code as 6-feet. Mr. Schmidt stated that he thinks in his case a privacy fence would look nice. If they do not get the variance to remove the landscaping, they would probably put up a 6-foot hedge.

Mr. Keller questioned for a screening portion if some of the trees could be interspersed with it being some trees and some hedges of various plantings. Mr. Diaz replied correct.

Mr. Keller questioned whether it had to be solid throughout with any one particular variety of planting a tree. Mr. Diaz replied no.

Mr. Keller referred to the City's Staff recommendations which stated "The practical difficulty of planting the landscape component does not appear to be exceptional, as there are a number of solutions that would allow planting in a confined space." He stated that he agreed with the statement and with the information that a variety of plantings could go along there does not necessarily mean that it is a difficult matter for providing the screening in conjunction with the fencing. Would that kind of a rationale eliminate the need for any redesign even of the roadway that is currently being shown. He questioned if it had to be solid. Mr. Diaz replied yes. He questioned if there were plants in different locations would you anticipate all of it as a closing in of the area. Mr. Diaz replied that the landscaping has to be continuous. Mr. Keller stated that even with tree plantings there is always spacing to anticipate growth of the trees.

Chairman Sheth questioned whether it would make a difference regarding the fence versus footing space because a variance asks for parking spaces. Colonel Ericson stated that he did not have an objection to the parking spaces. Mr. Rodriguez stated that the only issue is the vegetation beyond the fence.

Chairman Sheth questioned how the applicant could assure the Board of what will be done. Mr. Schmidt replied that it is a difficult answer because he could not state that he could install exactly this number of trees or hedges. He would state that everywhere they have space they would pull the fence in as far as they could and plant what they thought would grow successfully on the other side of the fence.

The Board continued to discuss the height of the fence, vegetation, and landscaping as they compared the same situation with other businesses in the area and options if the application was denied.

Mr. Schmidt stated that he was not sure if the Board would be able to amend the application, but he would be willing to commit to providing landscape in all areas where there is more than 5 feet of space per the current design from the property line. There would be two (2) areas where there would be no landscaping provided.

Mr. Keller questioned whether the applicant had any idea of a linear run. Mr. Schmidt replied it would be less than 30 feet.

Mr. Keller questioned whether there was a minimum height requirement on the vegetation that is proposed. Mr. Diaz replied that the shrubs are supposed to grow to a minimum of 6 feet and the trees are supposed to be planted at a minimum of 6 feet.

Colonel Ericson commented that the Board would like to go back to the basics which is the area variance requirements. The Board needs to consider the nature of the zone in which the property lies which he did not see any problems; the character of the immediate vicinity and the contained uses therein where there is commercial property against residential property which is a problem; and whether, if the restriction upon the applicant's property were removed, such removal would

seriously affect neighboring properties and uses. If he was to buy a house on one of those three (3) properties and if he did not have some type of buffer, it would bother him. 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*. The question is whether the applicant has met all of the requirements. Colonel Ericson stated that he would like to see the code followed.

Mr. Keller commented that he had not yet been convinced that there is a supportable position for a variance of the vegetation landscape.

Chairman Sheth opened the public hearing.

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

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

Mr. Keller moved to approve application V-17-12 the requested Variance Item #1 to increase the parking on site for Phase I of the project above the maximum number of spaces permitted by Zoning Ordinance, based upon Staff Report, testimony given today and the well laid out reports submitted by City Staff. He moved to deny requested Variance Item #2 which is a request to eliminate the landscape component of the Opaque Barrier requirement along the northern edge of the property in question. The denial is based upon the City's Report and while meeting aspects under the Board's consideration for nature and use of the general area but for failure to demonstrate Exceptional Practical Difficulty associated with the request to eliminate the landscape component. The motion was seconded by Colonel Ericson.

Chairman Sheth asked if there were any questions. Mr. Senato commented that he disagreed with the motion being combined and would like to amend that the motion to be voted on separately because of the two separate issues.

Mr. Senato moved to amend the motion so that the two (2) separate issues would be voted on separately. The amended motion was seconded by Chairman Sheth.

Roll Call Vote in favor of amendment

Chairman Sheth – yes

Mr. Keller – yes

Mr. Senato – yes

Colonel Ericson – yes

Roll Call Vote for requested Item #1: Parking Increase in Phase I as mentioned previously for approval.

All in favor of approval (vote 4-0 of the members present) Mr. Hufnal was absent.

Roll Call Vote for requested Item #2: Elimination of Landscape component as mentioned previously to be denied.

Chairman Sheth – yes for denial

Mr. Keller – yes for denial

Mr. Senato – yes for denial

Colonel Ericson – yes for denial

All in favor of denial. (vote 4-0 of the members present) Mr. Hufnal was absent.

Applicant #V-17-13

20 and 28 Spruance Road. Matthew L. Smith has requested a variance from the requirements of the *Zoning Ordinance*, Article 3 §2.1 pertaining to permitted uses in the RG-1 Zone, and Article 7 §1.5 pertaining to nonconforming uses in residential zones. Specifically, the applicant seeks to permit continued operation of the school bus vehicle storage lot currently on the properties. The use of the properties was determined to be a nonconforming use in a residential zone by the Planning Office, and in accordance with Article 7 §1.5 and Council action the property must come into compliance with the *Zoning Ordinance* either by discontinuing the existing use or using a sanctioned method of permitting the existing use. Subject property is zoned RG-1 (General Residence Zone). Tax Parcels are ED-05-068.18-04-48.00-000 and ED-05-068.18-04-47.00-000. The owners of record are Matthew L. and Rosa L. Smith.

Exhibits for the Record: Staff Report, zoning exhibit, and statements submitted by the applicant. Legal Notice was published in the Delaware State News on July 9, 2017. The public was notified in accordance with regulations.

Mr. Diaz gave a brief overview of the application.

Representative: Mr. Matthew L. Smith, Owner.

Mr. Matthew L. Smith was sworn in by Mr. Rodriguez.

Mr. Smith testified that he needed and wanted approval of the variance to remain on the property. He was informed that a letter was sent, but he did not receive a letter. The property has been a bus service for over 60 years. He has owned it for 20 years. This is the first time he has ever had an issue. Children are in need of the bus service and some would not be able to go to school without the service. The buses cannot be parked just anywhere. The neighbors in the area do not have a problem with the buses being parked in that area. He also owns the house next door to the bus parking lot. Improvements such as black top have been made to the lot because it was previously dirt and it is a fenced area. He asked the Board to consider his testimony in granting the variance so that he can continue to stay in business. He would appreciate whatever the Board could do.

Mr. Senato questioned whether he was before the Board for a variance due to a change in the Planning & Zoning Ordinance within the City. Mr. Smith replied that he was before the Board to come into compliance. Mr. Hugg replied that the property was rezoned RG-1 as part of the 2008

Comprehensive Plan which designates an underlying Land Use Classification for all properties in the City. Planning records indicate that prior to 2009, the property was split-zoned, with 20 Spruance Road being zoned C-3 and 28 Spruance Road being zoned R-7. Both parcels on the property were rezoned to RG-1 as part of the 2009 Comprehensive Rezoning.

Mr. Keller questioned whether there was any period of time that the applicant had any plans to discontinue the bus operation in the future. Mr. Smith replied no sir, it is his livelihood and bread and butter.

Mr. Keller stated that he can appreciate very much the time period that the business has been expended and been used and the issue as a result of the rezoning in the City's Comprehensive Plan change. At the same time, he has to respect the City's effort to bring about the discontinuance of nonconforming uses. He applauds the applicant in the appearance by the virtue of the photographs given as he referenced Exhibit B which is very well maintained property and not a trash deposit site.

Mr. Keller questioned whereas when variances run with the land once approved would it be possible to have an approval whereby this nonconforming use would continue for a period of years then extinguished as opposed to run with the land forever and a day if it was approved. Colonel Ericson replied it might depend on the applicant's ability to have family members or someone else to purchase later on thus making it more difficult. It is understood that if something else is built for some other purpose they would have to come before the Board for another variance. As long as it remains in this capacity, it could go from now on. Mr. Hugg replied that this is a Use Variance and as long as this use continues as is, then it will be allowed to remain. Nonconforming Uses cannot be extended or enlarged, the applicant would be prohibited from demolishing a house next door or buying a house across the street to store more buses. Otherwise, unless there was some type of restrictions on the time period to revisit then the use still remains the same. It appears that everything that we have seen is perfectly acceptable although a nonconforming use of the property that is in no way fault or brought about by an action of the applicant.

Mr. Keller questioned Mr. Hugg's statement regarding absent the action by City Council was he wrong in thinking that this was a traditional nonconforming use and without the need to bring about this sunseting of nonconforming uses this use could have remained forever and a day for the existing use as a traditional nonconforming use as long as the degree of nonconforming is not increased. Mr. Hugg replied correct. This became a nonconforming use by a series of government actions and rezoning from the City's Comprehensive Plan.

Mr. Keller asked that if 50 years from now the applicant intends to stop the school bus nonconforming use at that point would it become a conforming use. Mr. Hugg replied yes, it would become a conforming use. If the applicant sells the business and it is no longer a bus operation, it would cease that operation.

Colonel Ericson questioned what happens if the business was sold to someone else and the new owner wanted to keep the school bus operation. Mr. Rodriguez and Mr. Hugg replied it could remain a school bus operation. Mr. Rodriguez replied that the only difference would be if Mr.

Smith the applicant intended to change the business in any way. The applicant cannot change the business and make it more nonconforming than it is at the present time. You would have to find exceptional practical difficulty because it is a use variance as opposed to an area variance.

Chairman Sheth stated that all daycare centers and funeral services are nonconforming. When a daycare is sold, it stills remain nonconforming.

Mr. Hugg stated that he was not sure of the maximum parking capacity of the site, but the thing that would most likely change is if the applicant decided to build a maintenance shop, but what he currently has as well as the parking capacity is allowed.

Mr. Keller questioned if the applicant wanted to build a maintenance shop to service the buses, etc. Mr. Hugg replied that the applicant would have to come to the City to change the zoning because of the Comprehensive Plan as it would not be a permitted use.

Mr. Hugg commended the applicant on a very neat and well maintained site and he has not received any complaints.

Chairman Sheth opened the public hearing.

Mr. E. Vernon Ingram Jr. of 402 Greenhill Road, Dover Delaware and also owner of Delaware Auto Center was sworn in by Mr. Rodriguez.

Mr. Ingram stated that he wished he could be just as half as good as the applicant Mr. Smith who has renovated over 14 homes in the area. He has been also given the pleasure of continuing his business. It is hard to find a place to put a school bus.

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

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

Colonel Ericson moved to approve application V-17-13 variance request based on the Staff Report and testimony today, to exempt the properties from the requirement that nonconforming uses in residential zones sunset after the specified time. The motion was seconded by Mr. Senato and unanimously carried 4-0. Mr. Hufnal was absent.

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

Meeting adjourned at 10:35 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary