

CITY OF DOVER
BOARD OF ADJUSTMENT MINUTES
July 18, 2018

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, July 18, 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. Hufnal moved to approve the agenda as submitted. The motion was seconded by Mr. Senato and unanimously carried 5-0.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF JUNE 20, 2018

Mr. Keller moved to approve the meeting minutes of June 20, 2018 with minor corrections. The motion was seconded by Mr. Senato 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 Agenda. There are two (2) applications 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 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-18-04.

550 Bay Road. Bay Road One, LLC has requested a variance from the requirements of the *Zoning Ordinance*, Article 4 §4.15 pertaining to the minimum lot width of parcels in the C-4 (Highway Commercial) Zone. Specifically, the applicant proposes to subdivide the parcels with an overall lot width of 335 feet into three (3) lots of 54.34 feet, 130.24 feet, and 150.34 feet width, as measured at the street frontage of Bay Road (and 54.34 feet, 132.05 feet, and 148.62 feet as measured at the setback line). 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, and statement and plans submitted by the applicant. Legal Notice was published in the Delaware State News on July 8, 2018. The public was notified in accordance with regulations.

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

Colonel Ericson asked Mr. Swierczek if he could explain as previously mentioned the restrictions that would create a hardship or exceptional practical difficulties. Mr. Swierczek replied that the applicant stated in their application that the intent was to maintain control of the entrance drive because they are developing the office building at the rear of the site while being able to sell the front two parcels. They wanted to sell to another developer because they would not be developing the sites themselves. They did not want to leave the entrance drive to the office building off Bay Road to be up to any potential future development especially since none is lined up at the moment.

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

Mr. Schmidt was sworn in by Mr. Rodriguez.

Mr. Schmidt testified that he is present today to ask for a variance on the lot width requirements for three (3) Lots on the 550 Bay Road subdivision. The site will be the future home of Century Engineering. The first building of three (3) potential buildings on the site is currently under construction. That is the building that Century Engineering will be moving into. Century Engineering has been in the Dover area for over 30 years. He also mentioned that Mr. Swierczek added an excellent summary and he would just add a few more things. He stated that Century Engineering sees themselves as the anchor tenant. The entrance drive that comes into the site is what Century Engineering wants to keep in their possession as part of their parcel where their building is located. They want to make sure that the trees, sidewalk and lights are maintained. Their biggest concern is if they are not able to receive the variance that the owner of the property can move forward from an economical standpoint by subdividing and placing the property line down the middle of the boulevard. Half of the boulevard will belong to one front parcel owner and the other half will belong to the other front parcel owner. We can put easements in place to make sure we continue to have access, but their concern is depending on how robust the easements are and how good their lawyers are. Potentially, you could have another developer come in and buy one of the front parcel sites, chop up the entrance boulevard, turn it into a drive isle through a parking lot and as long as they meet the conditions of the easements that would be allowable. Century Engineering would like to keep the entrance as a boulevard. They designed it to have more of a high-end office park feel. Century Engineering wants to make sure it keeps that atmosphere. The best way to do that is by maintaining ownership of that entrance boulevard, be able to tell other developers where their entrances go, what part of the sidewalk can be taken out, what lights can be moved, etc. That is the primary reason for their request today.

Mr. Hufnal questioned whether the applicant had considered dedicating the street. By keeping

the street, the applicant would need to maintain it with snow removal and repairs. Also, by keeping the street and if the building was sold within 10 years from now it is going to be very difficult in his opinion (because he used to be a realtor) to sell the property to someone who is going to have to maintain over 350-feet of road to get to the highway. Why did you consider retaining that instead of dedicating it and have the City or State take care of the property? Mr. Schmidt replied that the concern with dedicating it is having setbacks from the rights-of-way that would be set back further than where they are proposing to put the property lines. That would decrease the amount of developable area in the front two (2) parcels. As far as the concern of selling the building in 10-years, their hope is that they will be there for another 30 plus years and beyond.

Mr. Hufnal mentioned if the street was dedicated the setbacks looks fine and there is plenty of frontage that the applicant would not have to come to the Board of Adjustment for a variance. Mr. Schmidt replied that he understood that the front yard would be on the street. He asked if the Planner would confirm. Let's say that the street was turned over to DelDOT, they would consider it a local street and require a 40-foot right-of-way. The property line would then have to be 40-feet off back off the center line and the setbacks would be determined from there. The way Century Engineering is doing it, they set the property line right behind the curb on the one side and the setbacks start from that point. The discussion came up, but not a lot of thought was given to it just because in their mentality Century Engineering is not going anywhere, so they did not want to turn over the road. Mr. Swierczek added that the application that went before the Planning Commission for the entrance drive as approved, that road would not meet standards if it was to be a City or DelDOT maintained road. It would have to be improved or enlarged. As it currently stands, the project does not have that in its scope.

Mr. Keller asked for clarification if Mr. Schmidt was an employee of Century Engineering? Mr. Schmidt replied that is correct.

Mr. Keller asked if Mr. Schmidt had any relations with Bay Road One, LLC? Mr. Schmidt replied that Francis X. Smyth who owns Century Engineering is also the owner of Bay Road One, LLC. Mr. Schmidt stated that he did not have any personal or contractual relationship with Bay Road One, LLC, but he works for the same person who owns Bay Road One, LLC.

Mr. Keller stated that he wanted to be clear that Mr. Schmidt was not technically a managing member or officer of Bay Road One, LLC. Mr. Schmidt replied that is correct. Bay Road One, LLC contracted them to do the design, so they have a relationship that way.

Mr. Keller mentioned for the record that he recalled a similar question a year ago when Mr. Schmidt first appeared before the Board of Adjustment. Perhaps as a technicality, but the intention of Bay Road One, LLC to lease to Century Engineering the site that is currently under construction. Mr. Schmidt replied yes.

Mr. Keller expressed some interest regarding Mr. Hufnal's question about the dedication. It would be a 54-foot right-of-way if you held the 54 width all the way from Bay Road back to the development site. The exhibits indicated a 30-foot travel way as proposed for the boulevard entrance. Mr. Schmidt replied that he believed it was reduced to 28-foot. It is wider than the

typical which is correct.

Mr. Keller mentioned that he was not for sure in his mind if this request rises to an exceptional practical difficulty, but is an unnecessary hardship perhaps to the degree by which that you might otherwise have to consider a street design that would accommodate the requirements of the City and/or State for a dedicated right-of-way.

Mr. Keller asked about the two (2) proposed sites that are currently being planned out or rough graded. Mr. Schmidt replied that the sites are currently being rough graded. They do not have anyone contractually signed. They have had some interest and most of the people who have expressed interest mentioned that they would rather own than lease. Therefore, they are now trying to subdivide the sites so that they can sell them.

Mr. Keller asked the applicant if Bay Road One, LLC would contemplate a sale of each of the sites and/or leasing of the sites. Mr. Schmidt replied that the goal is to sell both sites.

Mr. Hufnal questioned the intent to sell both sites and if there would be a problem selling the sites with people driving onto a private road rather than a dedicated street. Mr. Schmidt replied that they would place easements for anyone that purchases the side lots and give them access. It is not uncommon for a business park. For example, there is a business center that used to contain Value City, Buffalo Wild Wings and Golds Gym. He was not sure if each of those entities owns their own building, but none of them own the right to the parking lot. The rights to the parking lot is owned by the development corporation. All of them are operating through easements for access. They will have a similar structure on their site as well.

Chairman Sheth asked if he understood that by not dedicating is helping financially. Mr. Schmidt replied that he did not know if it was more of a financial cost to the owner not to dedicate. As it was mentioned, the owner is responsible snow removal, maintenance and the upkeep of the entrance boulevard. The potential cost may be for example if they wanted to dedicate it to DelDOT, they would then ask for shoulders which they don't have full width shoulders on the street. This would require enlarging and increasing the cost of the initial construction. To answer the question, it may be a wash.

Chairman Sheth asked if that was the reason they do not wish to dedicate. Mr. Schmidt replied that they would rather not dedicate the street. They would rather retain control of the street themselves.

Mr. Hufnal asked if the site was going to be kept private and if he was going to use public utilities on the properties? Mr. Schmidt replied that they have public utilities coming to the site. There will be easements for certain utilities as required by the City, but others will be private once they get into a site.

Mr. Hufnal asked if you have a watermain that breaks you will be responsible for the repairs since it is a private road. Mr. Schmidt replied he understood that the City owned the waterline up to the meter (each building will have its own meter) so depending on where it breaks, they may be responsible, or the City may be responsible. If he is incorrect about that, please correct him.

Mr. Hugg commented for clarity that this arrangement is not uncommon for commercial and industrial facilities. The road that leads into the Dover Mall for example is a private road. It is not necessarily mandated (if you will) or traditional that in every situation an entrance road be dedicated or maintained by the City or the State. What the applicant is proposing is not precedent. It has been done for other numerous developments. There is no hard guideline. To answer the utility question, it is pretty much a site by site decision. The applicant is correct in saying the utility lines are typically owned. Once completed whether it is a private street or not it is dedicated to the City and becomes the City's responsibility for maintenance and obviously for any repair. There is no hard-fast rule that says that any street created like this has to be dedicated to public use. If you were not subdividing these properties, this would not be an issue. Mr. Schmidt stated correct. Mr. Hugg went on to say that it would strictly be by a virtual decision to create saleable Lots that the ownership of the road and the width of the Lots themselves becomes an issue. He asked the applicant if this was correct? Mr. Schmidt replied correct.

Mr. Keller stated that he presumed that still with the utilities serving that even Century Engineering current site building under construction, any of those public utilities would require easements to access the site. That stands as a given. Mr. Hugg replied that any utility services would exist if they are not in a public right-of-way. This would exist by permanent easement and be set aside for that purpose. Mr. Keller stated correct.

Mr. Keller stated that he is aware of Mr. Hugg relating to the Dover Mall etc., those feeder roads if you will (entrance road) that is not uncommon at all. He would presume that whether by a lease or sale, the two (2) Lots in the front would have to be coupled with a maintenance or cross easement usage for utilizing the private boulevard road. Whether leased or sold there would have to be some agreement enforced coupled with the deed transfer or lease to allow them. Mr. Schmidt replied correct. There is already a cross access easement in place over the entrance boulevard that was required by DelDOT to allow for future connections to the site to the south of them in case it would ever get developed; that kind of added to the complexity. If they then have to break the entrance boulevard and ownership over two (2) Lots and then that cross access easement needs to be redone and recorded over those two (2) Lots and they would have to record a maintenance easement for themselves over those two (2) Lots. They would also have to record restrictions on those two (2) Lots as to where they can place entrances which can become bit of a pain as you can imagine.

As Mr. Keller referred to the advisory comments "In order to create the series of three (3) Lots, an application for a Minor Subdivision Plan for review by the Planning Commission is required," he asked if there was any timetable or anticipated problems with the filing or complexity which the Board should be made aware of? Mr. Swierczek replied not to his knowledge. It was his understanding that the applicant was waiting for the decision from the Board of Adjustment before filing an application for the Minor Subdivision. Pending the Board's decision, they could proceed normally with that application.

Mr. Keller asked Mr. Swierczek if he had any idea how the Minor Subdivision Plan may look. He states that in thinking that there has been perhaps some discussion with the applicant regarding the Minor Subdivision Plan requirement. Mr. Swierczek replied that the format of the

Minor Subdivision would be along the lines of the application submitted to the Board. As it stands right now there are two parcels on the site. What we see is Lot 1 and there is a Lot 2 at the rear of the building which is the stormwater management area. The applicant in the Minor Subdivision would combine that stormwater management area into the main Lot that would contain the entrance drive and the office for Century Engineering. Lots 2 and 3 will be the two (2) parcels along Bay Road for the separate parcels. Mr. Schmidt added that he had a meeting with Mr. Swierczek and Mrs. Melson-Williams prior to filing the Board of Adjustment application. In the meeting, the two (2) alternatives were discussed for doing the subdivision. It was agreed that it is worth their time to ask the Board for the variance so that they may retain control of that boulevard. If they are not granted a variance, they could still subdivide but they would lose control of the boulevard and they would have to go through the process of establishing easements and maintenance agreements, etc. Mr. Hugg mentioned to clarify that Staff could not recommend approval of a subdivision that created nonconforming lots that did not have a variance associated with them. It is a little bit of a catch 22 and the proper process is what is being done today by coming before the Board of Adjustment to seek a variance for the Lots. Following this Board's action, if desired to go forth with the subdivision, it would be creating Lots that had variances already approved to go with them.

Mr. Keller asked if it would not necessarily impede a leasing of the two (2) sites as opposed to a sale. A sale of the site would require a separate distinctive Lot layout, description and deed transfer, but the leasing of the site would not require a change in the title. Mr. Hugg replied that the conformity of the Lot from a legal standpoint would not necessarily be a factor in a lease. It would be leasing a piece of property subject to whatever restrictions and requirements that are involved. There will still probably be a lease document that would have the meets and bounds description of the areas being leased and how it is going to be used, etc. Those are matters that are above and beyond the involvement of the City. A sale would obviously involve a survey, deed and all the requisite requirements.

Chairman Sheth asked by dedicating the streets if it would avoid all issues raised by Mr. Keller. Mr. Hugg replied that he was not sure that he would necessarily agree that it would avoid all the issues. He thinks the bigger question would then become the request to dedicate the street that does not meet the current City standards. While you may solve one issue he is not sure that you would not end up with a development that was very much different, perhaps less developable, and certainly not as easily brought into the basic standards of the *Zoning Ordinance*. You would go from a private cartway to a public street. The public streets standards are much more stringent or have a much higher level of requirements. Mr. Schmidt replied that is correct. He also mentioned that just thinking about what would occur if that was done, then the entrance boulevard would then become the entry road. It would change the setbacks because the front yard setback would then be based off the boulevard and not Route 113. As a developer, he would make the argument that he no longer needs the arterial street buffer because he does not have a front yard on Route 113. It does have an impact on how the site gets laid out. He honestly did not think it would be a benefit to do that.

Chairman Sheth mentioned that it looks like all the problems are the owners. The granting or not granting a variance is the only problem for the Board of Adjustment.

Mr. Keller mentioned that the applicant is fully aware of their obligations after the fact whether the Board grants a variance or not. In the ongoing care control, maintenance upkeep, snow removal, pot hole repair, etc. as pointed out by Mr. Hufnal will be upon the obligation of the owner, Bay Road One LLC. Why there is some advantage to be gained by the variance is because it sets the stage for a more probable sale of the Lot as opposed to simply a leasing. In his mind, as mentioned by Mr. Hugg, it is not uncommon for a number of cross easements across the City to facilitate one entrance area from a public street up and down Route 13. There are a number of situations such as that. He knows from old DelDOT experience they were always trying to get as many cross easements as possible so as to minimize the number of direct access points to US 13, for example.

Mr. Senato mentioned that his concern with private roads (Blue Hen Mall, Dover Mall, other private residential areas) over the years it then eventually lacks the care that was promised initially. This seems to worry him coming from experience in driving to the different areas when they were brand new as compared to 10-20 years later. If anything happens such as pot holes, he just does not have the belief that these roads will be maintained including this one as time goes on.

Mr. Schmidt responded by stating that all he could offer is that they intend to, but anything can happen as mentioned by Mr. Hufnal. To not receive the variance then that maintenance burden would lie with the two other property owners whom we do not know at this time. They could be owned by entities out-of-state, at least with them, they are here in the area. If there is a problem, you can come to them or call them and tell them about the complaint.

Mr. Senato mentioned that his concern was immediate, not when all of this is completed. That is the reason he mentioned that there is no guarantee these roads will be maintained.

Colonel Ericson mentioned that this may be true, but it is not the Board's job to speculate about the future. That is for the City to manage with these people. It seems to him that this is a common solution, this is what they want, and the applicant has given the Board a lot of reasons why it is best to maintain in their control. The system looks like it will work for the City and the developer. Unless he hears something else, it seems like a reasonable request.

Mr. Keller added the Board is referring to this as a public road, nonetheless, it is the applicant's driveway to the Century Engineering site. He would imagine during the course of the applicant's tenancy the driveway would be maintained in a state-of-the-art fashion.

Mr. Keller asked a question regarding the rear Lot. On the exhibit, there is a vacant Lot behind the proposed office building (Century Engineering). He thought a year ago that it was laid out as a contemplated warehouse site; he wanted to know if that had changed? Mr. Schmidt replied yes, it has. They initially did the concept layout (which included the warehouse) then they had received the geotechnical results back that indicated they had good soil that was suitable for infiltration. Further on in the process, they found out that was not the case and that Lot was then turned into a stormwater pond. One of the other parts of this is that they are going to include the stormwater pond into their building Lot. Again, all of that falls under the same ownership.

Mr. Keller asked if it would be for water retention. Mr. Schmidt replied yes.

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

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.

Colonel Ericson moved to approve variance application V-18-04 based upon the report by the City and the testimony given and that this is a common solution and should be approved. The motion was seconded by Mr. Keller. The motion unanimously carried 5-0.

Applicant #V-18-05

1424 Forrest Avenue. Jonathan M. Baske on behalf of McDonald's has requested a variance from the requirements of the *Zoning Ordinance*, Article 5 §4.7 pertaining to the maximum number and size of permitted signs. Specifically, the applicant seeks to permit a total of four (4) wall signs in lieu of the allowed quantity of (2), and to permit a wall sign at 32.8 SF in lieu of the maximum 32 SF permitted. Subject property is zoned C-2A (Limited Central Commercial Zone) and subject to the COZ-1 (Corridor Overlay Zone). Tax Parcel is ED-05-076.10-02-53.00-000. The owner of record is McDonalds Real Estate Company.

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 July 8, 2018. The public was notified in accordance with regulations.

Mr. Diaz 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. Chris Mondoro, Bohler Engineering and Mr. William Stout, Owner Operator at McDonald's.

Mr. Mondoro and Mr. Stout were sworn in by Mr. Rodriguez

Mr. Mondoro testified that the store has been in the community for 30 plus years. The store has been on Forrest Avenue site for a number of years with the fixture and red mansard roof with white striping.

Mr. Stout testified as mentioned by Mr. Mondoro that the store has been in the area for 30 plus years. They are the local owner and operator franchise of McDonald's. We operate twelve (12) locations throughout Delaware. We have a need to reinvest in this particular store to make it look

very nice. The plans show where modernizing the facility not only for the customers, but for the folks that work for McDonald's.

Mr. Mondoro mentioned that he spoke with Mr. Diaz before the meeting and he handed out one additional exhibit. The exhibit shows a more comprehensive comparison of the existing and proposed conditions. Mr. Diaz did not have the exhibit upon his review, but upon the receipt of his letter we wanted to investigate further to provide additional information for the Board of Adjustment. At the top of the exhibit, you will notice the proposed conditions. They have a number of signage packages and the national company wanted to develop a consistent look across the board. The signs have architectural feature walls where the ends are located, something that was designed in concert with each other to create a more modern feel and provide a unified look to the building. Besides getting an update, the existing conditions on the lower pictures you will notice the red mansard roof with white striping iconic of the McDonald's of the past. It's something that his client is going to reinvest in and modernize. This is very much a fix in the community, something that the City and everyone else in the community is used to seeing for a number of years. The purpose here is that they have shown two (2) views: one southeast from Forrest Avenue and one southwest from the Dairy Queen entrance. As mentioned by Mr. Diaz, there are two (2) variances being requested today: one for the size of the sign for the McDonald's (red McDonald's word) and two (2) for the quantity of signs. As mentioned by Mr. Diaz in the current zone based upon the residential located across the street, it is a 32-square foot maximum. We are proposing a small sign that McDonald's offers. It is one that they have designed in concert with this architectural to be a certain scale proportioning between the lettering and that comes in suddenly over 32.8-square foot based on a square rectangle around the building. The existing sign is more than double of what they are proposing today. The existing sign is 67-square feet and they are proposing to reduce the sign greater than 50% to 32.8-square feet. It is a great improvement than what is out there today as far as the actual sign that you are seeing from the road. Overall, they looked at the existing sign and wanted to make it better than what is currently there today. They are also proposing four (4) wall signs total which include (3 "M" signs). There is one "M" located on the front of the building, one on the eastern frontage, and one located on the western elevation. Looking at the front of the building that "M" is 14-square feet and the McDonald's is 32.8-square feet. Both of the signs combined are 46.8-square feet which is well below the 67-square feet that is currently on the face of the building. The other two (2) "M's" are located on the eastern side of the building, the "M" is 14-square feet as well, whereas the existing is 25-square feet, which is also a reduction in the size along that side of the building. Today, you will notice that there are also three (3) window signs that are being proposed in lieu of wall signs. This is something McDonald's have not opted for because they feel that the design of this building with the architectural feature walls benefits more from a wall mount to a window sign. The last sign is proposed on the drive-thru side at the end facing in that direction.

Mr. Hugg asked if the applicant was going to continue to use the window signs, would they be a part of the Final Plan? Mr. Mondoro replied that the window signs were not going to be a part of the Final Plan and the square footages were not considered.

Mr. Mondoro stated that overall, if you look at the existing building that is currently there and knowing that the window signs are separate, but the overall building package includes the wall signs and the window mounted signs that is 167-square feet total. They are proposing 92-square

feet which is a large reduction in the number of current existing signs.

Mr. Hufnal questioned if the three “M’s” were the new signs that were 14-square feet each? He asked what was the fourth sign? Mr. Mondoro replied that the fourth sign is the written McDonald’s on the front of the building.

Mr. Hufnal questioned if those buildings were exactly like the ones that were currently built in Smyrna and Dover on Route 13? Mr. Mondoro replied that he was not sure if they are exactly the same. This McDonald’s is a proposed remodel. Mr. Stout replied that the restaurant in Smyrna is an early iteration of this. Now, we are actually going with less signage than what they have in Smyrna, but it flows with the style and architecture of the restaurant.

Mr. Hufnal mentioned that he looked at both McDonald’s and although he did not measure them, the format and the site looked the same as the proposed McDonald’s. Mr. Stout replied yes, very similar. We have some stone architectural elements in Smyrna and some tile and different colors on the outside of the proposed McDonald’s.

Colonel Ericson mentioned that the Smyrna McDonald’s really does not apply to us because it is not in the City of Dover limits. He asked how the applicant got permission for the four (4) signs at the other McDonald’s in Dover City Limits. Mr. Stout replied that they have two (2) restaurants in Dover. Scarborough Road and North DuPont Highway are a different owner operator; therefore, he would not be able speak to them.

Mr. Keller asked if the one that Colonel Ericson was referring was located near the St. Jones River Bridge crossing on U.S. 13 South DuPont Highway. Mr. Stout stated that they are responsible for the one on Forrest Avenue and on Route 10 near the Dover Air Force Base. The restaurant on Route 10 near the Dover Air Force Base has not been upgraded.

Mr. Hufnal asked if the applicant owned the restaurant by the St. Jones River. Mr. Stout replied no.

Mr. Keller asked Mr. Hufnal if he was relating to that location and if it was a more modern configuration currently. Mr. Hufnal replied that it looks just like the formation of the one on the exhibit as well as the one in Smyrna except for the fact that he cannot measure the signs, but it looks like the same format that is being presented today. The building in Smyrna has been remodeled.

Colonel Ericson asked Mr. Diaz if he had any information on the restaurants that are built with the sign configuration and who approved it? Mr. Diaz replied yes. There is one McDonald’s that is near Scarborough Road on Route 13 that is part of a Unified Comprehensive Sign Plan that went before the Planning Commission with some of the neighboring buildings to get approval for a different size standard and they were able to get more signs that way. Another restaurant is located at 910 South DuPont Highway near the St. Jones River. This restaurant went before the Board of Adjustment in 2012 and they asked for a total of three (3) wall signs. The variance was recommended for a denial by Staff at that time and the variance application was withdrawn before they received a hearing. They ended up with two (2) wall signs, but it does have very

similar architecture to the one being proposed.

Colonel Ericson asked if it was correct that the restaurant at 910 South DuPont Highway requested three wall signs and it was disapproved and they remained with the City requirements and stayed with two (2) wall signs. Mr. Diaz replied that Staff recommendation was for a denial and the applicant withdrew the variance application before the Board of Adjustment could make a formal decision.

Colonel Ericson stated that the Board of Adjustment tends not to approve additional signs and stay with the Sign Code as written unless a hardship is shown. How would the applicant respond that this is a hardship by not having four (4) signs? Mr. Mondoro replied that they reduced what was originally approved and constructed on the building. They are looking to continue with lesser signage than what was previously approved and constructed out there today. This has been on the site for a number of years and they are proposing a reduction (coming closer to Code conformance). That is the goal based on the approval of the existing signage out there today. They would like to maintain it as much as possible. He understands that they are trying to work with the City to provide something that is more suiting.

Chairman Sheth mentioned that everyone knows where the McDonald's is located when they see the arch. Mr. Mondoro replied yes, everyone does know where the McDonald's is located.

Chairman Sheth asked if it was the initial corporation protocol regarding the sign wherever you go. Mr. Mondoro replied there are a number of different sign packages that you can go with. This is the smallest one that they can propose and what they are looking for out here today. Again, two (2) variances are being requested, one being the size of the sign and the second being the number of signs.

Mr. Senato mentioned that all the McDonald's that he has seen for the most part have the separate standing street sign (outside). He asked if it was going to be eliminated. He asked if the existing road sign was going to remain. Mr. Mondoro replied yes. This is on the eastern side of the building where the drive-thru is today. This is something that they are willing to consider, and it is a good point. There is a potential for elimination of that "M" located on the drive-thru side, given that the free-standing sign is there. It is okay if they end up leaving it there. They spoke to McDonald's and they are acceptable of that and the reduction (going from 4 signs to 3 signs). This is something that he is willing to do today and is prepared to do. One of the other things is that looking at the front of the building the "M" and the "McDonalds" are two (2) separate signs. One of the things that Mr. Diaz mentioned was if the signs were closer together they could be considered one (1) sign. The problem is, it is still above the 32 square feet. Still a great reduction from what is existing out there today at the 67 square feet. On the western elevation the existing sign is 25 square feet and they are proposing 14 square feet which is a larger reduction to the existing sign. They are trying to reduce the impact along each of the elevations especially when you consider the window signs that are no longer there.

Mr. Hufnal asked if they were lighted signs? Mr. Mondoro replied yes. Mr. Hufnal asked even the "M's"? Mr. Mondoro replied correct.

Colonel Ericson asked why the two signs on the front weren't sufficient (the written word "McDonalds" and the "M")? Why do you need more and why is it a hardship? Mr. Mondoro replied as you are traveling east bound on Forrest Avenue that is the first elevation that you see in that direction. The free-standing sign is located past the McDonald's and past the entrance, so by providing that sign on that western elevation you are able to see the sign quicker and alert travelers that there is a McDonald's in that location.

Mr. Senato the road as you come down Forrest Avenue in either direction, he asked how tall was the sign? Mr. Mondoro replied 30 feet (in compliance with the ordinance today). Mr. Senato mentioned that conceivably it can be seen pretty good because there are no obstructions heading in or out of Dover on that sign. He thinks that the sign is pretty visible.

Mr. Hufnal asked the applicant if he was willing to reduce one of the "M's"? Mr. Mondoro replied yes. Mr. Hufnal asked which one? Mr. Mondoro replied the one on the drive-thru side as the one located close to the free-standing sign. Mr. Mondoro mentioned that he could look at the upper right picture over the window on the exhibit.

Mr. Hufnal mentioned that the only other identification would be on the front and the western side of the building because there is nothing on the back except for the drive-thru. Mr. Mondoro replied that is correct. Both of those will be a reduction from the existing conditions that are out there today.

Chairman Sheth stated that honestly by removing the "M" from the left side upper right it will look much more attractive with the black and gold (free-standing). Mr. Mondoro replied okay.

Mr. Hufnal asked if the sign which is 32.8 square feet, was a standard size sign and if it was not reducible in size. In other words, the size or sign is already premade and that is how they come? Mr. Mondoro replied that is correct and standard letter spacing which gets you to the 32.8 square feet.

Chairman Sheth asked if it was the new national logo? Mr. Mondoro replied that is correct. They do have larger signs, but we did not propose that here.

Colonel Ericson mentioned if the Board approved three (3) or four (4) signs the board would set a precedent and that could pretty much validate the City Code for signs because they would have changed it. He did not see the hardship involved. Just looking at it from the front you would immediately know that it is McDonalds. The golden "M" is known throughout the country. He personally did not see the need for the third sign.

Mr. Keller asked if window signs were not allowed or were they not included in the sign area computations? Mr. Diaz replied that the total allowed window signage is computed separately from the total allowed wall signage. They would be allowed up to three (3) window signs and each would be allowed a maximum of half the size of the window that it is on.

Mr. Keller asked if he was correct in thinking that if two of the proposed "M" logo signs were not approved today then there is still a possibly of an alternative should the applicant wish to

place an “M” sign on a window configuration that would not require a subsequent approval. Mr. Diaz replied that is correct. It would still be a Sign Permit application, but it would not require a variance.

Mr. Keller asked if the current thinking with the renovation and upgrading coming in with what is vogue today are window signs not something that is being continued. Mr. Mondoro replied that is correct, they are no longer pursued by McDonald’s. One of the reasons being is they design their building to upgrade the wall mounted signs and exclude the window signs.

Mr. Keller mentioned that we currently had another sign application variance which was denied on US 13. Their request was for somewhat of an abundance of additional signage around the building. But he thinks the view expressed was much like in this case whether you are traveling east from Maryland coming in onto Forrest Avenue or west leaving the City, the building is still readily visible as is that front signage absent the additional “M’s” around the building with the two (2) additional signs that are being requested. As mentioned by one of the Board members, the yellow lighted “M” against the darker backdrop certainly stands out much more clearly as well. As shown in the handout is the façade to be a dark color tile? Mr. Mondoro replied that is correct. Mr. Stout replied they have done a few of these projects in some of the other restaurants. When they take away the iconic red mansard roof, they see some of their customers respond that they are not sure what the facility is even with all the arches, McDonalds and the road signs. They are losing somewhat of an iconic statement if you will.

Mr. Keller questioned whether that was corporates decision or Mr. Stout’s? Mr. Stout replied it was corporates.

Mr. Mondoro mentioned that part of it is McDonald’s recognizing that they need to reinvest in these properties and change some of the things that were done back in the day to keep things modern and continue to be relevant in the industry.

Chairman Sheth questioned whether they had any more arch signage free-standing like what McDonalds is known for? Mr. Mondoro replied that the existing free-standing sign will remain.

Mr. Hufnal mentioned that one of the suggestions in the data the Board received is that they could construct a monument sign out front. He stated that in lieu of the monument sign, and in reduction of all the signage that they currently have, and, in his view, especially with the removal of the one “M,” it would be better to grant the other signage than to have something else built there.

Mr. Hufnal stated that the monument sign would be hard to locate because of the access (where you are next to the Wawa) it would really be tough to put a monument sign there that would not block that entrance.

Colonel Ericson mentioned that again, you would be setting a precedent and the Board has already ruled against several businesses from exceeding the number of signs.

Mr. Hufnal stated that we may be exceeding the number of signs, but we are reducing the

number of square footage signage on the building itself.
Colonel Ericson stated that it is against City Code.

Mr. Mandoro mentioned if there were no more questions from the Board, he would like to thank you again and he appreciates the Board time today.

Colonel Ericson mentioned that one thing that interested him is when Mr. Mondoro mentioned that the public said they are having trouble identifying McDonald's with the new sign schemes. How wide spread? Was that a study or comments by a few customers? Mr. Stout replied it was comments by a few customers. We recently completed one in Jennersville Pennsylvania. It looks different.

Mr. Senato asked if all the McDonald's still have the free-standing signs near the road with the "M". Mr. Stout replied correct.

Mr. Senato mentioned even if the building was not there they would see the McDonald's emblem and know what was there. Mr. Stout replied correct.

Mr. Keller asked if someone would be so kind as to help him visualize in his mind this free-standing sign that will remain because he did not see it in the exhibit. Mr. Hufnal replied as he referred to the exhibit (the white car in the bottom left) the pole that is going up that has a little sign and a big pole that is going up is the McDonald's free-standing sign.

Mr. Keller asked if at the top of the pole is a large McDonald's sign? Mr. Hufnal replied yes, that is right.

Mr. Keller asked if that sign would remain? Mr. Stout replied yes. Mr. Mondoro showed Mr. Keller the location of the sign on the exhibit.

Mr. Keller asked the square footage of the sign? Mr. Mondoro replied the existing free-standing sign is 39.2 square feet.

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 additional correspondence.

Mr. Senato moved to disapprove variance application V-18-05 as there was no hardship provided with the familiarity of McDonald's. He takes the recommendation of the Planning Staff in hand and mainly here again a precedent will be set.

Mr. Keller commented that the variance request entails two (2) separate requests, one to permit a total of four (4) wall signs in lieu of the allowed two (2), and additionally to permit a wall sign at 32.8 square feet in lieu of the maximum of 32 square feet. He asked Mr. Senato if the motion

was for denial in total. Mr. Senato replied yes.

The motion was seconded by Colonel Ericson.

Mr. Keller proposed an amendment to the motion to deny the variance for a total of four (4) wall signs in lieu of the allowed quantity of two (2), but allow to permit the wall sign at 32.8 square feet in lieu of the 32 square foot permitted in that it is a minimal increase and in view of the testimony given as to the reduction in the overall sign coverage, etc. and the City's report. The amendment was seconded by Colonel Ericson.

Vote for amended motion:

Mr. Keller – Aye

Colonel Ericson – Aye

Mr. Hufnal – Nay

Mr. Senato – Nay (after he received the understanding of the motion by Mr. Rodriguez)

Chairman Sheth – Aye

The amended motion was approved to deny the variance for a total of four (4) wall signs in lieu of the allowed quantity of two (2), but allow to permit the wall sign at 32.8 square feet in view of the 32 square foot permitted in that it is a minimal increase and in lieu of the testimony given as to the reduction in the overall sign coverage, etc. and the City's report.

The amended motion carried 3 (aye) and 2 (nay).

The meeting was adjourned by Mr. Hufnal and seconded by Mr. Keller at 10:35 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary