

CITY OF DOVER
BOARD OF ADJUSTMENT MINUTES
October 18, 2023

A Regular/Hybrid Meeting of the City of Dover Board of Adjustment was held on Wednesday, October 18, 2023, at 9:00 A.M. in person in the City Council Chambers and using the phone/videoconferencing system WebEx. Member's present were Chairman Sheth, Mr. Keller and new member Mr. Wagner. Mr. Senato and Ms. Warren were absent.

Staff members present were City Solicitor Mr. Rodriguez, Mrs. Savage-Purnell, Mrs. Melson-Williams, and Ms. Katherine Oehmke. Assistant City Manager Mrs. Sharon Duca observed the meeting.

Welcome

Mr. Clarence Cobaugh Wagner II is the new Board of Adjustment member as appointed October 9, 2023, for a Three-Year Term to expire July 2026.

Chairman Sheth briefly mentioned the discussion of the last meeting regarding no longer providing a hybrid meeting/video conference and people attending in person and those who cannot attend in person. He mentioned that it was post-pandemic. He mentioned that Sussex County no longer has the hybrid format. He also mentioned removing Virtual Meetings/video conference from the agenda.

Chairman Sheth asked members in attendance of their thoughts. Mr. Keller stated that he agreed as well as Mr. Wagner.

APPROVAL OF AGENDA

Chairman Sheth made a motion to adopt the agenda without or dropping or omitting the video conference for public hearing. All were in favor by acclamation to accept the omitting of a video conference for public hearing.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF SEPTEMBER 20, 2023

Mr. Keller moved to approve the meeting minutes of September 20, 2023, with the necessary corrections. The motion was seconded by Mr. Wagner unanimously carried 3-0. Mr. Senato and Ms. Warren were absent.

Chairman Sheth asked if there was a meeting next month.

COMMUNICATIONS & REPORTS

Mrs. Melson-Williams mentioned the regularly scheduled meeting for the Board of Adjustment is November 15, 2023, with a 9:00 am start time in the City Council Chambers and with a virtual format. I don't believe at this point that we have any applications that have been filed unless the

filing deadline is Friday of this week. We'll confirm that for you as to whether you will be meeting in November, but at this point please keep it as a tentative date on your calendar.

Chairman Sheth asked Mr. Rodriguez a question regarding the position of the Vice Chairman. He mentioned that Colonel Ericson had resigned and has been replaced by Mr. Wagner. He wanted to know if they should elect a Vice Chairman today because it is very likely that he (Mr. Sheth) will be out of country next month and in any case if we have a meeting in November, we like to decide the chair. Can we have an election now or do we have to wait until the meeting adjourns?

Mr. Rodriguez replied to Mr. Chairman, I think you may have an election now if the Board so desires.

Chairman Sheth mentioned since we have all three members present: myself, Mr. Keller, and Mr. Wagner, I have a proposal from the floor and logically make sense of it that I would suggest Mr. Keller's name and asked Mr. Wagner if he had any questions. Mr. Wagner did not have any questions.

Chairman Sheth made a motion to elect Mr. Keller as the Vice Chairman in absence of the Chairman. All were in favor by acclamation to accept Mr. Keller as the Vice Chairman.

OPENING REMARKS CONCERNING APPLICATION

Mrs. Dawn Melson-Williams, Principal Planner stated that the meeting today will be conducted in accordance with the agenda. There is one Variance application on the agenda under New Business. The Variance application file will be read, and the floor will be opened for questions of the applicant by the Board and for public testimony. The Board may consult with the City Solicitor 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 moved forward or commenced.

All public notice for the new application on this agenda was completed in accordance with Code requirements. The meeting agenda was posted in accordance with the Freedom of Information Act requirements. The advertisement was placed in the local newspaper.

Mr. Keller asked regarding this upcoming case of V-23-05, there were several questions that he had. One generated initially from the lack of an application form within the packet. That form requires the owner submitting and on that application form affirming that in fact whoever signs that form is in fact the owner, affirming its ownership. With that not being packaged and noting clearly that the owner is cited as City of Dover, I understand that fully, but there is also listed an equitable owner of SLS Equity Partners. Within the public records a look at the PRIDE system clearly shows the City of Dover is the owner. The ownership is by deed transfer. Also, there is a recorded plot. The question comes up as to what extent is this equitable ownership as opposed to the ownership by the City of Dover. There's no indication as to whether it's by a contract of sale or some City/equitable owner agreement of some sort. That is what has raised the question because I can only in my recollection within the last 12-15 years, we had an occasion where a property tenant in fact filed a variance. The subject of that case pursued came to a variance hearing only to

find out that the variance was requested with absolutely no knowledge of the owner. It's my recollection that the Code Enforcement officers found the owner and he was totally unaware whatsoever of any variance being filed on his behalf even though he had properly been listed as an owner. So again, just for clarification, I would like to see at the outset of this as to the interest or ownership position of this equitable owner as opposed to the cited City of Dover fee holder.

Chairman Sheth stated that this is his thirty second year with the Board of Adjustment.

With the Garrison Farm we had only one case and we did not have to act on it because there was a mistake presenting the back door and the front door for Delaware State News. There was another case where we had the same question that you raised, and we had to call the equitable owner or a legal owner to sign the application. Mr. Rodriguez replied yes, I think the request is certainly appropriate. As he was reading the September 15, 2023 letter from Becker Morgan who's representing the applicant, I see the equitable owner there is mentioned. I think that what has just been handed to me well identifies the equitable owner, but we normally have that all the time and certainly we should have it. Maybe that will be brought out by the applicant when the applicant testifies today.

Mr. Dave Hugg, City Manager, stated for clarification the City is the owner of Garrison Oak Business Park. City is in the process of selling ten (10) Lots that have not been previously sold. In this case, I believe we have an agreement or maybe a Letter of Intent, but I think it's an agreement of sale. We are in the process of selling this property to this applicant. They are not going to be tenants or anything of that nature. They're simply moving forward, kind of a parallel track going through the variance process while we go through the settlement process. I believe we are going go to settlement here in the next month or so to transfer the property.

Chairman Sheth mentioned that by selling the Post Office and land he hopes that city taxes will go down. Mr. Hugg replied let's just say they may not go up. Chairman Sheth said that's a good consolation.

Mr. Keller asked just for clarification as Mr. Hugg said technically the City of Dover is the applicant on behalf of a pending sale.

Chairman Sheth said Mr. Wagner this is your first lesson on the Board of Adjustment meeting because nobody had this experience than you are having today, right Mr. Keller. Mr. Keller replied not that he recalls. As you can see without the application signed, we would not be able to hear of the hearing. Thank you very much.

NEW BUSINESS

Application V-23-05

Lot 8 of the Garrison Oak Business and Technology Center at 451 Garrison Oak Drive. A request has been made for a variance from the requirements of Article 4 §4.16 of the *Zoning Ordinance*. The first Variance request is to reduce the setbacks as it relates to building height allowing a portion of the building to be up to 100 feet in height when only setback 88 feet (front yard) or 60 feet (side yard) from the property lines. The second Variance request is to allow an increase in the

maximum lot coverage from 65% to 71%. Subject property is zoned IPM-2 (Industrial Park Manufacturing- Business and Technology Center) and partially subject to the SWPOZ (Source Water Protection Overlay Zone). Property Address: 451 Garrison Oak Drive. The Tax Parcel ID is LC-05-068.00-02-08.00-000. The owner of the record is the City of Dover, and the equitable owner is SLS Equity Partners.

Ms. Oehmke gave a summary presentation along with the required criteria of the Application request for a variance from the requirements of Article 4 §4.16 of the *Zoning Ordinance* to reduce the setbacks as it relates to building height allowing a portion of the building to be up to 100 feet in height when only setback 88 feet (front yard) or 60 feet (side yard) from the property lines and secondly, to allow an increase in the maximum lot coverage from 65% to 71%. The owner of the record is the City of Dover, and the equitable owner is SLS Equity Partners.

Presentation

Mrs. Melson-Williams noted that the Board of Adjustment received a Staff Review Report. Attached to that is a series of Exhibits numbered A through F which consists of a Zoning Location Map Exhibit to locate the property within the Garrison Oak Business Park.

Exhibit B is the Applicant's written request letter and the responses to the four criteria you need to consider. There are two Site Plan exhibits. Exhibits C and D present information about the building restriction lines that are affected and then the impervious coverage. Exhibits E and F are two warehouse photo examples: first, an aerial view and then a close-up of the building to give a sense of how these cold storage facilities likely could be designed. It is noted that the legal notice for this application was published in the Delaware State News on October 6, 2023. The property owners within 200 feet of the subject site were notified by letter and the single property owner was the City of Dover. So that notification letter went to the City Manager's Office as all properties in that 200 feet are currently owned by the City of Dover. Some of them are in a tenant lease situation. In accordance with the established procedures, public notice was met. The applicant is not the property owner as we've noted there is an equitable owner that's in play here. The City of Dover is the current owner of the subject site.

Representative: Mr. Jonathan Street, Becker Morgan Group.

Mr. Jonathan Street was sworn in by City Solicitor Mr. Rodriguez.

Chairman Sheth stated that the Board takes the case on exceptional hardship. So, if you focus on that when presenting for the Board members; what really the hardship is and if not able to approve then what would be different or what would be the impact. The second thing is the height. You must also have requirements for the Air Force Base for only so much height. You cannot have more because of being next to the Air Force Base or not; is it true? Mr. Street asked do you mean for aircraft clearance? Chairman Sheth mentioned for the height of the building. Mr. Street mentioned that there is a separate process with the Site Development Plan process where when you have buildings of a certain height then you have to go through the FAA (Federal Aviation Administration) and that kind of ties all of that with the Air Force Base.

Chairman Sheth asked so I don't need to worry about it because you have to go through the Air

Force Base. Mr. Street replied yes, that will be handled by Staff through the Site Development Plan process. Chairman Sheth asked so if they don't approve you cannot do it, am I right? Mr. Street replied correct, this is for the variance to build the building. Staff and the Site Development Plan process will approve the Site Development Plan for building the building and everything associated with it. Chairman Sheth mentioned he understood, but we used to have a rule. When the old Sheraton Inn was built, there was a special permit that you had to be within 200-feet and then FAA approval and then after that things changed.

Chairman Sheth asked Mrs. Melson-Williams if this was right. Mrs. Melson-Williams mentioned what Mr. Street shared is there likely is a process related to dealing with the FAA perhaps during construction for use of any type of cranes or the actual build out of the building. There's consideration given to the proximity of such a structure to active airports in the area. One of those perhaps is the Dover Air Force Base. There was also in the vicinity a private airport but there is a separate regulatory process for that. That would be part of any Site Development Review process. Today we are here for the Board of Adjustment for the variance request.

Chairman Sheth mentioned that he asked the question because no matter if the Board approves or disapproves the variance regarding the height because the final say so in the case is the Air Force Base or the FAA according to Mrs. Melson-Williams. Mr. Street said correct.

Chairman Sheth said we don't want to do so much digging in. Mr. Street mentioned that this just gives us the ability to propose the building that we want to propose.

Chairman Sheth mentioned that he agreed with Mr. Street, but he was just saying that because we have two variances: one is for the height and the other is for the Area Variance. Before you decided to purchase this land, I'm sure you were aware of the size of the lot and the size of your building and whatever you want to do with it. You thought it was absolutely necessary and that's what Board members like to know of what is really absolutely needed. Mr. Street mentioned that he plans on going through all of that. Chairman Sheth mentioned thank you very much.

Mr. Keller commented that the paperwork involved notes that the Planning Staff does remind the applicant of compliance needs with Federal Aviation Administration, State and other associated aeronautics related height restrictions, obstruction marking, and lighting standards for during construction and for the actual building. So, the Planning Staff has in fact reminded the applicant of that.

Mr. Street stated that all of this happens in Step 2; this is Step one. Step 2 is when we go through a months' worth of back and forth with Mrs. Melson-Williams and other agencies and we come together and formalize that plan. That's Step 2; this is step one. That will all happen, I promise you that.

Presentation

Mr. Street (using a Power Point Presentation) stated that Garrison Oak Technical Park is on the east side of Route 1. This is kind of an aerial showing you exactly where it is. The Garrison Oak, I think it's called the Calpine gas fired power plant, is directly across the street from us (the little star on the map there). Solar Sun Park is out there as well as Uzin Utz. And Advantech now

operates their facility out of there. So, that's where the site is. Here is an aerial view showing you exactly where the property is. You can see the Sun Park to the left and directly across the street is the Energy Center which is a gas fired power plant. They have been operating now for roughly 10 years. The first variance that we are requesting today stipulates the parcels with an IPM-2 (Industrial Park Manufacturing-Business and Technology Center) Zoning doesn't contain a physical building setback or a maximum height on the building. They set the height of the building. What they say is that the setbacks from the side or rear property line minimum is 40 feet, but the maximum setback is set by the building height itself. The building can't be any closer to the property lines than the building is tall.

This is a Site Plan of what we've got planned thus far. Again, we are in the preliminary stages but that large box in the center is the proposed building itself and the red areas around the outside are where the 100 feet can't be met. So, that building in that box for the most part in general will be straight up 100 feet tall and those red areas are where we don't meet it currently. The City, County, and State all set basically 4 criteria for requesting variances. The first two, the nature of the zone and the character of uses in the immediate vicinity are the same for both variances. The subject site is located in the IPM-2 zone and it is a technology center business park; it is appropriately zoned. For the character and uses in the immediate vicinity, what we're proposing is a cold storage basic regional distribution center. It's in keeping with the neighborhood itself. It is a more industrial use compared to its neighbors. We've got a solar farm and gas fired power plant, Uniz Utz who is a flooring manufacturer, and Advantech is operating an office at the business park itself. The last two (criteria) are really what we are going to focus on and that's whether the removal of the restriction would adversely affect the neighboring parcels and for this one we're talking about height. We would submit if the height was granted and we're able to build the 100-foot box let's just say, we would not have an adverse effect on the directly adjacent Lot 9. The building set back currently we are asking for I believe is 60-feet from that property line. The City itself owns Lot 9. Lot 9 is further encumbered by both City of Dover sewer easements and that green line that you see there was actually floodplain. They cannot build within that floodplain. So, even if Lot 9 is purchased and someone wants to build a building on it, those buildings will still be roughly almost 270 feet or almost 300 feet apart from each other.

Building a taller structure on our property isn't going to adversely affect Lot 9. Similarly, Lot 3 has the same setbacks, but they've got the same problems as well. They've got a flood line and water towers there. We would not adversely impact the two direct neighbors. Similarly across the street, the Garrison Energy Center currently has roughly a 100-foot stack on it as well. It's not like this hasn't been built out there before. We have a 100-foot stack across the street.

The fourth criteria is whether failure to remove the restriction would adversely impact us or what the hardship is on our property. What we're saying today is that these cold storage facilities use this 100-foot clear space for more automatized operations for cold storage. They have found the most efficient way for these "packing facilities" if you will. Everything is delivered to them, they store it, and then they distribute it out to the region itself. I believe it's a 76 or 78 foot clear for all their racks that they have and some of it is automated. They have some lower regular 40–50-foot storage area, but this 100-foot is a magic number for the industry. This happens all across the country. They're looking to build one here which would be great for the Peninsula itself because it acts almost like a hub for everything to then be distributed down south throughout the Peninsula itself. If this was removed and if we were encumbered by the 100-feet or if we were

not able to build 100-feet, it would primarily prevent the building from being constructed. They need these large facilities for their use. This is an example of a Dole cold storage facility down in Georgia. This is just kind of an example of almost like a massing example of the buildings themselves. They are large buildings and then this is one that was retrofitted with this 100-foot clear storage that you can see in the center. There is an office component and there is a distribution component for the trucking and the docking facilities, and then the larger component is the 100-foot cold storage area.

The second variance that we are requesting is a maximum lot impervious variance. The IPM-2 zone restricts it to 65%. I think we're asking for 71%, an increase of 6%. Garrison Oak was developed where as the stormwater management is essentially managed for all the parcels up to 65%, which means we could come in, buy a parcel, and put 65% worth of parking lots, buildings, and any other impervious area on the facility. The only thing that from a development standpoint we have to manage is the small quality storm. All the volume of the larger storms is already managed and was developed in the original layout and construction of the Park itself. Again, going through the four criteria: the nature of the zone, it's an IPM-2 zone, and it's appropriately zoned. The character in the vicinity again this is more of an industrial use and it's in keeping with the neighborhood.

The last two we're going to focus on is whether the removal of the restriction would seriously affect any of the neighboring properties. As previously explained, the 6% increase on the impervious wouldn't adversely impact the neighboring properties because if we go above the 65% on impervious, we have to manage the stormwater on site. That's already known and accounted for. We'll have to manage that extra volume anyway. Again, that approval will not only go through the City but that will be handled by the Kent Conservation District as well which will hold us to it. We are not going to adversely impact the neighbors because we'll have to manage that on site anyway.

The fourth one is failure to remove the restriction is basically what's the impact on us and what's the impact on the lot itself. We are talking about 6%, it's a couple thousand square feet and what we're trying to balance right now is the primary use of these facilities is for large interstate trucks. These large interstate trucks need a lot of room to turn and maneuver and part of it is parking. Here is also the Kraft factory. The large parking lot in the south part is used for nothing but trailer storage for their trucks. That is what we're trying to balance right now with the site. We have an application to the City of Dover Planning Commission where we're requesting a 50% parking waiver because we don't need as much as the City code requires for normal car parking for office staff and warehouse. We don't need that much, what we need is trailer storage. We need trailer storage and the ability for the trucks to be able to maneuver on the site itself. So, that's just a good example of how much trailer storage these facilities take up. Again, this is the Dole facility in Georgia. If you look down to the bottom picture itself, you've got a large concrete parking area that is just for trailer storage. Whether it is used all the time or not, it's what they need for the facility to operate itself. This is a new cold facility that is out of Washington. You can see the kind of massing that these buildings have. It's a 100-foot clear storage in that large box followed by the lower story that is trucking and shipping and packing with some small office space in there as well.

The next slide is an actual rendering of the building that we are proposing. You can obviously see that we got loading docks, car storage, and trailer storage. The difficulty with the 6% coverage on the impervious is really for truck maneuverability and trailer storage. If we're not able to get that 6% we're impacted because we are further reducing the trailer storage and/or we have to make changes to the truck maneuvering which is not what we'd like because we'd like to have the room for the truck and safety to allow them their proper maneuvering. There's a little bit more difficulty on our site as well. We are not able to put as much trailer storage in a more efficient manner because remember we are encumbered by that floodplain as well. So, we can't build anything on the floodplain itself. We are kind of pinched in somewhat of an odd, shaped parcel itself. We can't quite design some of these things as efficiently as we like. If you saw some of the trailer storage, it is angled so that we can maximize the trailers on the property itself.

Mr. Street also mentioned that one of the difficulties that we do have on the site is that it is a pie-shaped or double frontage lot. We have the difficulties that we've got the double front setbacks on the property. We also got City sewer and stormwater encumbering the front of our property. It restricts us as to what we can do and how we can put the building and all the site improvements on the site in a more efficient manner. We are encumbered by a lot of utilities and easements up front.

Mr. Street asked if there were any questions.

Chairman Sheth asked if this was a Georgia based company? Mr. Street replied no, those were just other examples of cold storage facilities located throughout the country. The one here in Dover is not a Georgia based company, though the images were.

Chairman Sheth asked Mr. Street where his company was from and if they were local? Mr. Street replied the company was out of New Jersey.

Chairman Sheth mentioned that Becker Morgan is heavily involved in all this kind of work and it is greater demographic change. For example, say you are applying today for a variance and in the future more and more industry will come that way or you see a change like in the example of Scarborough Road.

Chairman Sheth mentioned, I'm just asking to input if this Board will probably face this kind of situation. Many times, we have to recommend to the City because there are a possibility of some ordinances we may have to change for future industry so they don't have to face hard challenges.

Mr. Keller mentioned after overcoming the first hurdle of who owns the property and who are you, the presentation and I think your position is well taken with the various things. Regarding the 65 to 71 percent, you will be obligated and will as you say be controlling and maintaining your overflow of surface drainage. Additionally, there's a very good comment about the impact of the height of the building. By not expanding out you do increase the vertical height in a far less damaging way than otherwise taking up more ground coverage. One thing that is important to us is to note that there are subsequent obligations on your part if there's an approval today with the follow-through with the Planning Commission, etc.

Again, the notations regarding any obligations of the Federal Aviation Administration, etc. regarding the height and clearances.

Mr. Wagner mentioned that he had read the reports. I have to say that the input Staff made was impressive. The presentation that your company made is impressive. I'm impressed. One thing that I want to reiterate is the variance only begins the process, does it not correct? Mr. Street replied correct.

Mr. Wagner mentioned in other words, if we run into issues with building heights and the FAA, these will all be taken care of by a separate agency. Mr. Street replied certainly, 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.

Mr. Zachary Prebula was sworn in by City Solicitor Mr. Rodriguez.

Mr. Zachary Prebula, Business Developer, Kent Economic Partnership/Economic Development Organization for Kent County.

Mr. Prebula stated we (KEP) recently commissioned the Rockport 2.0 study which identified the target industries for Kent County in Dover. Among these industries the study highlights the critical role that warehousing and logistics plays in the Dover economy. Through our office, we have seen numerous requests for these large warehousing logistics centers and unfortunately right now our inventory does not meet these demands. By approving these variance requests, this will allow Dover to attract and accommodate these large essential projects. We firmly believe these requests are instrumental in positioning Dover to thrive in the warehousing and logistics sector. We respectfully urge the Board to approve these two variances. Thank you for your time and consideration.

Chairman Sheth asked if this project will encourage highly paid employment. Mr. Prebula replied the employment would be all based on what company comes in and uses the space.

Chairman Sheth asked what the average would be. Mr. Prebula replied I can't speak to that.

Chairman Sheth asked if there was anyone else who would like to speak in favor of the project. There was no one else wishing to speak. He asked if there was anyone who would like to speak against the project and there was no one wishing to speak.

Chairman Sheth closed the public hearing after seeing no one else wishing to speak (online or in the meeting room).

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

Mrs. Melson-Williams noted that a representative of the potential equitable owner did join us online. We have Ms. Shira Weisz who has joined us if you had any questions as part of the applicant's presentation today. I'm sure she would be available to make comments.

Ms. Shira Weisz was sworn in by City Solicitor Mr. Rodriguez.

Ms. Shira Weisz stated that I think that Jon did a fabulous job of presenting the project and our position on it. We are excited about this location, and we would look forward to bringing industrial development and attracting a large logistics center to Dover. We think it's well situated, and the approval of these variances would certainly widen the scope of the potential end users for the project. The pool of potential end users would become much larger, and this project would become attractive to much larger logistics companies such as New Cold, Americold, Lineage Logistics, etc. which as Jon has presented operate very large facilities with numerous pallet positions that become that much larger because of the extended height. The ability to be able to place those trailer parking spaces really is imperative to maximizing the site and designing it as efficiently and as attractively as possible.

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

Mr. Keller moved to approve variance application V-23-05 to reduce the setbacks as it relates to the building height allowing a portion of the building to be up to 100 feet in height when only set back 88 feet (front yard) or 60 feet (side yard) from the property lines. I move for acceptance of that initial variance request. The motion was seconded by Mr. Wagner and unanimously carried 3-0. Mr. Senato and Ms. Warren were absent.

Mr. Keller moved to approve variance application V-23-05 of the second variance requested regarding the allowance of an increase in the maximum lot coverage from 65% to percent to 71%. The motion was seconded by Mr. Wagner and unanimously carried 3-0. Mr. Senato and Ms. Warren were absent.

Mr. Keller made a motion to adjourn the meeting. It was seconded by Mr. Wagner at 10:00 A.M. and approved by consensus.

Sincerely,

Maretta Savage-Purnell
Secretary