# TOWN OF ELSMERE BOARD OF ADJUSTMENT MEETING MINUTES January 23, 2018 6:30 P.M.

#### PLEDGE OF ALLEGIANCE:

#### **CALL TO ORDER:**

#### **ROLL CALL:**

CHAIRMAN	JAMES PERSONTI	PRESENT
<b>BOARD MEMBER</b>	JOHN ACTON	PRESENT
<b>BOARD MEMBER</b>	PATRICIA BOYD	PRESENT
<b>BOARD MEMBER</b>	RON RUSSO	PRESENT
<b>BOARD MEMBER</b>	JOHN SMITH	PRESENT

# **PUBLIC COMENT:**

None

# **APPROVAL OF MINUTES:**

Minutes from the September 26, 2017 Board of Adjustment Meeting

**ACTION:** Board Member Smith made a motion to approve the Minutes from the September 26, 2017 Board of Adjustment meeting. The motion was seconded by Board Member Acton.

**VOTE:** 5-0 in favor Motion carried

#### **OLD BUSINESS:**

None

# **NEW BUSINESS:**

Review Petition 17-15 Tax Parcel # 1900-100-033 and 1900-100-309

Code Officer Faedtke read the summary analysis of Petition 17-15, including the following sections from the site analysis: The Request, The Statement of Fact, The Issues, and The Grant of the Petition.

Michael Hoffman, Esquire, Tarabicos Grosso, LLP, spoke on behalf of the applicant, Dewson Construction, Inc. Mr. Hoffman stated that the applicant is a custom home builder that primarily operates within New Castle County and has been operating since 1993. Mr. Hoffman stated that the subject property is known as 9 Jefferson Avenue and is composed of two adjacent parcels, which are zoned R-1 residential. Mr. Hoffman gave a history of the property and stated that the applicant is seeking a non-conforming use permit for a continuing commercial use. Mr. Hoffman further discussed proposed changes to the façade of the building and to the property and stated that the Board is not being asked to approve anything, instead they are being asked to evaluate whether the proposed use is consistent with the current legal non-conforming use.

Mr. Hoffman explained the proposed use of the building and stated that the hours would be 6:00 a.m. to 4:30 p.m. during the week, that customers and employees will utilize the parking lot, that there will be no big trucks or heavy equipment, such as backhoes, and that everything will be stored within the building such as saws and other tools, where any prefabrication or carpentry work will be done. Tim Dewson, the applicant and owner of Dewson Construction Company, in response to a question from the Board, stated that there will be no spray painting.

Board Member Smith asked the applicant whether he will install a sidewalk, that a lot of kids walk down the street and it would be nice to get them off the street. Mr. Dewson stated that he can keep four feet of blacktop along the curb to use as a sidewalk, but that he wants to remove some of the existing blacktop to create a green buffer between the building and the street.

In response to questions from Board Member Acton regarding back up vehicle alarms at 6:00 a.m., Mr. Hoffman stated that a pickup truck is more amenable to the neighborhood than the current tractor trailer traffic, and that in a legal perspective, it is consistent with the legal non-conforming use.

Councilwoman Joann I. Personti, 5th District, stated that she had just learned yesterday that members of the Planning Commission and the Board had been sought out for private meetings and that she was also asked for a meeting and declined and reported it to the town solicitor. Councilwoman Personti stated that she would like hear more about the fabrication and is concerned that we are now hearing different hours than were mentioned at the Planning Commission meeting. As a councilperson, she has concerns about sink holes and road issues in the area and the increase in construction vehicles that could be travelling on those roads.

Town Manager John Giles asked the applicant where impervious surface can be removed in addition to what had already been discussed. Town Manager Giles also asked Town Solicitor Edward McNally whether after issuing the permit the Town could hold the applicant to their testimony. Chairman Personti asked what will happen if the permit is approved and they don't update the building.

Mr. McNally stated that if they apply for a permit that it must be reviewed and approved. If the use is substantially different from what is represented, then the Town will have recourse.

Code Officer Faedtke stated that they have a year to apply for the permit.

Mr. Dewson stated that there will be minor changes to the photo presented in Exhibits 17-15AB and 17-15AC, but it will be very close to the picture.

Board Member Boyd asked about the concerns that residents have about traffic. Mr. Dewson responded that much smaller items will be brought in by pickup truck and that 99% of their work is done on-site.

Mr. Hoffman stated that he did not seek any conversations with the Planning Commission or the Board of Adjustment, but that he contacted the Town and asked for a meeting with the councilwoman to explore any possible issues in an effort to be a good neighbor. Mr. Hoffman stated that the legal question is if the applicant is within the legal non-conforming use and that the Comprehensive Plan is not a part of this decision. Mr. Hoffman discussed the legal standards that should apply.

Councilwoman Personti inquired what is to stop someone from a 24 hour operation or drive through if you can't hold someone to certain hours and that the business hours in which deliveries can occur must be contained.

Mr. Hoffman responded that the hours will typically be from 7:00 a.m. to 5:00 p.m. The hours may change but they will not change to a 24 hour operation. Mr. Dewson stated that he would be there on Saturdays with his business partner and that he may meet customers there on Saturday.

Code Officer Faedtke stated that there have been no letters received either for or against.

Chairman Personti recused himself from the vote due to the fact that he lives across the street.

**ACTION:** Board Member Russo made a motion to approve Petition 17-15 recognizing that it meets the harmonious development intent of Section 225-9 of the Town of Elsmere Code and that the continuing non-conforming use permit can have no significant change to the existing use. The motion was seconded by Board Member Boyd.

Board Member Boyd stated that she believes that the proposed use fits within the current use as long as the hours of operation are normal business hours.

**VOTE:** 4 in favor and 1 abstained Motion carried

Personti – Abstain, Acton – Yes, Boyd – Absent, Russo – Yes, Smith – Yes

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#### Review Petition 17-16 Tax Parcel # 1900-400-373

Code Officer Faedtke read the summary analysis of Petition 17-16, including the following sections from the site analysis: The Request, The Statement of Fact, The Issues, and The Grant of the Petition.

Michael Hewitt, Yesco Signs Inc, spoke on behalf of the applicant, Halakos Properties. Mr. Hewitt stated that they had requested and were granted approval of the electronic sign in June, 2016 in a previous application. Since the time that they received approval of that application, the property owner has obtained approval for redevelopment of the property and there will now be three tenants, instead of one. Mr. Hewitt further stated that changes have been made to the drawings that were submitted in this petition after the Planning Commission requested that he submit reductions to the request. Accordingly, they have removed the Season's header from the electronic sign, which reduces the sign to 72 square feet and for Tenant A, they have reduced the sign from 40 square feet to 36 square feet to bring it into compliance.

Mr. Hewitt presented photos from the location on Concord Pike, which were marked as Exhibits 17-16AC and 17-16AD, to provide an idea of the end result so that the Elsmere location can remain consistent with the other locations. Mr. Hewitt also requested that the illuminated orange architectural pieces not be treated as a sign, as they are a decorative part of the design.

Board Member Smith asked whether the message board will change. Mr. Hewitt stated that in the previous approval that the message was not allowed to change more frequently than once every 12 hours.

Board Member Acton asked what hardship would it cause if the petition is denied. Mr. Hewitt stated that Seasons has worked hard to build a consistent image and also needs to bring in enough business to justify the cost of the redevelopment project.

Code Officer Faedtke stated that the Town has no further concerns and that there have been no letters received either for or against.

**ACTION:** Board Member Smith made a motion to approve the variances requested in Petition 17-16 and listed in Exhibit 17-16F with the condition that the message displayed on the electronic variable message sign cannot change more frequently than once every 12 hours. The motion was seconded by Board Member Boyd.

**VOTE:** 5-0 in favor Motion carried

Town Manager Giles stated that he is working with the Code Office to improve the efficiency of how the meetings are done and asked the Board members to comment if they see something working or not working. He would like to get to the point where the Code Office provides the Board members with a motion sheet they can reference to

approve all the variances and also hopes that the summary being read at the beginning is helpful. Board Member Boyd agreed that the changes sound like they would be helpful.

# ITEMS SUBMITTED BY CHAIRMAN AND BOARD MEMBERS:

Board Member Smith inquired whether Mayor and Council will consider any changes to the Town Code related to electronic sign regulations. Town Manager Giles stated that the Code Office is working on a few changes to the Code, but that he has been unable to find anyone willing to discuss the changes. When the time comes, it may be easiest to use the county's code as a guideline.

PUBLIC COMMENT:		
None		
ADJOURNMENT:		
<b>ACTION:</b> A motion was maseconded by Board Member 1	ade by Board Member Russo to adjourn. The motion was Smith.	
<b>VOTE:</b> $5-0$ in favor	Motion carried	
These minutes summarize the agenda items and other issues discussed at the January 23, 2018 Board of Adjustment meeting. Votes are recorded accurately. The audio tape(s) of this meeting will be available at Town Hall for a period of two years from the date these minutes are approved. The audio tape(s) may be reviewed at Town Hall by appointment and in accordance with the Freedom of Information Act.		
JAMES PERSONTI, CHAIR	RMAN PATTY BOYD, SECRETARY	