

**TOWN OF ELSMERE  
BOARD OF ADJUSTMENT  
MEETING MINUTES  
October 30, 2018  
6:30 P.M.**

**PLEDGE OF ALLEGIANCE:**

**CALL TO ORDER:**

**ROLL CALL:**

CHAIRMAN	JAMES PERSONTI	PRESENT
BOARD MEMBER	JOHN ACTON	PRESENT
BOARD MEMBER	PATRICIA BOYD	PRESENT
BOARD MEMBER	RON RUSSO	PRESENT
BOARD MEMBER	JOHN SMITH	PRESENT

**PUBLIC COMMENT:**

None

**APPROVAL OF MINUTES:**

Minutes from the September 25, 2018 Board of Adjustment meeting

**ACTION:** Board Member Smith made a motion to approve the minutes from the September 25, 2018 Board of Adjustment meeting. The motion was seconded by Board Member Russo.

**VOTE:** All in Favor Motion carried

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

**OLD BUSINESS:**

None

**NEW BUSINESS:**

Review Petition 18-26 Tax Parcel # 1900-500-104

City Solicitor Edward McNally made an opening statement explaining the background of the appeal and advised the Board regarding the procedures and the order of the appeal hearing. Mr. McNally spoke about the revised plan that had been submitted prior to the appeal hearing and stated that the applicant for Petition 18-17, of which the approval by the Planning

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Commission is being appealed, has the right to address some of the issues raised by the appellant; that he does not believe it is out of order for the applicant to make a modification to the original plan due to the issues raised by the appellant.

The appellant, Mr. Robert Anderson, 107 Northern Avenue, asked whether he is wasting his time if the applicant is submitting a new plan. Mr. McNally assured Mr. Anderson that within the orders of things he will get the last word during the hearing. Mr. Anderson made an opening statement that he is trying to protect his property values. He pointed out, that based on his interpretation, the Planning Commission does not have the authority to approve variances and grant the petition. Mr. Anderson pointed out that the Planning Commission's motion required a traffic study to be done if traffic becomes an issue and he feels that the traffic study should be done before the plan is approved. In his statement, Mr. Anderson referenced each of the issues noted in the appeal application.

Steve Burg, 108 Northern Avenue, made a statement noting that he isn't against new businesses coming into town but that there have been questions raised related to previous variances issued to the property and whether they still apply. Mr. Burg referred to a previous traffic study and said that it showed 330 cars travelling on the street and he is concerned about an increase in this traffic. Mr. Burg said that he feels that the Town should have worked with the residents and there has not been any effort to do this. He also stated that he is all for the business but that the residents who live in the area need to be considered.

Fred Carlson, 104 Western Avenue, made a statement that he has been concerned with the required buffer zone between the commercial and residential zone. He is concerned that the plan shows trees on the inside of the fence and feels that the trees should be on the residential side of the fence.

Frederick Mitsdarfer, council for the applicant, stated that they have an updated plan to present to the Board. Mr. Mitsdarfer further stated that he objects to the venue for the appeal. He explained that the appeal includes issues such as deed restrictions that are outside of the purview of the municipality.

Mr. Mitsdarfer stated that in an effort to address the objections of members of the community, they have provided an alternative configuration for the parking. He explained that the changes include parking that has been removed from the rear buffer area and that the width of the Northern Avenue exit has been reduced.

Mr. McNally questioned whether the plan has also removed the parking from the front setback area of the Kirkwood Highway side of the property. Ron Sutton, speaking on behalf of the applicant, stated that the parking has not been moved from this area, that it has been used for this purpose for many years, and that they have a letter from DelDOT approving the continued use of this area.

Mr. McNally addressed the issue that Mr. Burg raised about a previous variance issued to the property and whether it is still valid. Mr. McNally stated that the plan related to the parking variance was not put in place and therefore the approval has expired. Mr. McNally also stated that, due to the fact that the use of the right of way has ceased for some time, the use is no

longer grandfathered. He further stated that, despite the DeLDOT letter of no objection, the town code must still be followed. A short discussion followed related to the required number of parking spaces.

Mr. Mitsdarfer stated that the Planning Commission approved the plan with the parking in the front setback area and the DeLDOT right of way area and objected that he feels it is the wrong venue in which to take back an approval that was already granted.

Mr. McNally spoke about options for the Board of Adjustment to proceed with consideration of the petition. Board member Russo inquired whether it would be best for the revised plan to be reviewed by the Planning Commission first. Mr. McNally stated that it is the same plan that the Planning Commission has already reviewed with the exception of the updated parking. Mr McNally noted that the Board must consider all of the issues raised by the appellant in response to a question from Board Member Russo.

Mr. Mitsdarfer requested a moment to confer with his client. Chairman Personti agreed and called a recess at 7:20 p.m.

Chairman Personti called the meeting back to order at 7:35 p.m.

Mr. Mitsdarfer stated that he had conferred with the appellant during the break and they have agreed to further angle the Northern Avenue entrance.

Mr. Anderson stated that he would like to withdraw the appeal.

Mr. McNally stated that the remaining issue is a minor intrusion over the line, that no one is objecting to it; therefore, it should be handled as a variance should the Board choose to grant it.

Mr. Mitsdarfer asked the Board to approve the new plan so they can move forward.

**ACTION:** Board Member Russo made a motion to accept the revised plan with the altered exit.

Board Member Smith asked whether the document presented should be marked as an exhibit. The six pages that were submitted were subsequently marked as Exhibits 18-26AZ through 18-26BE and the updated plan was marked as Exhibit 18-26BF.

The motion was seconded by Board Member Boyd.

**VOTE:** All in Favor Motion carried

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

**ITEMS SUBMITTED BY CHAIRMAN AND BOARD MEMBERS:**

None

**PUBLIC COMMENT:**

None

**ADJOURNMENT:**

**ACTION:** A motion was made by Board Member Russo to adjourn. The motion was seconded by Board Member Smith.

**VOTE:** All in Favor Motion carried

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

These minutes summarize the agenda items and other issues discussed at the October 30, 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.

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**JAMES PERSONTI, CHAIRMAN**

**PATTY BOYD, SECRETARY**