

**CITY OF NEWARK
DELAWARE
BOARD OF ADJUSTMENT
MINUTES
JULY 19, 2018**

Those present at 7:00 p.m.:

Members: Jeff Bergstrom, Chairman
Chris Rogers
Dave Levandoski
Bill Moore

Absent: Kevin Hudson

Staff: Paul Bilodeau, City Solicitor
Mike Fortner, Planner
Renee Bensley, City Secretary

The chairman called the meeting to order at 7:00 p.m.

1. APPROVAL OF MINUTES FROM MEETING HELD JUNE 21, 2018:

MOTION BY MR. MOORE, SECONDED BY MR. ROGERS: TO APPROVE THE MINUTES AS PRESENTED.

MOTION PASSED. VOTE: 4 to 0.

Aye: Bergstrom, Moore, Levandoski, Rogers.

Nay: 0.

Absent: Hudson.

Ms. Bensley read the facts of the case into the record.

2. The appeal of Shri Swami Narayan, LLC, property address 1119 S. College Avenue, for the following variances:

- **Sec. 32-46(a)(2) – Area Regulations.** – *Loading Spaces.* For office buildings, high rise apartments, and hotels the number of berths based on the gross floor area devoted to such uses shall be as follows: 8,000-20,000 square feet of floor area equals one berth. Each additional 50,000 square feet or major fraction thereof up to a maximum of 120,000 square feet of floor area needs one additional berth. The proposed plan includes no loading berths requiring a variance of three loading berths.

The City Secretary asked the City Solicitor for permission to offer the correction for the record. The City Solicitor agreed, and Ms. Bensley offered same. The Planning Department advised that there was one loading berth on the proposed plan. Accordingly, the required variance would be for two loading berths, not three.

- **Sec. 32-19(d)(8)(e)– Area Requirements.** *Minimum Distance Between any access driveway and any residence district shall be 50 feet.* The proposed plan has an access driveway 35 feet from the residential property to the southeast requiring a variance of 15 feet.

Ms. Bensley noted that this was published in the Newark Post on July 6, 2018 and direct notices were sent to the surrounding properties within 500 feet on the same date.

Mr. Bergstrom asked if anyone was there to speak in favor of the application.

John Tracey, appeared on behalf of the applicant, his clients Shri Swami Narayan, LLC. Please be advised that Mr. Tracey referred to Shri Swami Narayan, LLC as "SSN" for the record. The following individuals appeared with Mr. Tracey: Steve Gorsky from Duffield Associates, the project engineer, Lynn Hopkins with SSN, and Peter Bai & Pinky Bai who are the principals and property owners. Mr. Tracey stated that these individuals would offer commentary as necessary.

Mr. Tracey stated that the property in question was a 3.13-acre parcel situated east of 896 and north of I-95. Mr. Tracey stated that this area is known to most as the site of the Red Roof Inn. Adjacent to same and to the left is the Candlewood Suites. The Candlewood Suites were originally part of this site but is now its own parcel. Both properties are owned and operated by SSN. The front of the property now contains a Jersey Mike's sub shop. Friendly's restaurant is next to the Jersey Mike's sub shop. Mr. Tracey stated that SSN did not own those properties, but there were shared parking arrangements and cross access for all properties with the Friendly's. Mr. Tracey stated that this information discloses that SSN has a very small amount of frontage on route 896 as well as frontage along Welsh Tract Road in the back.

He stated that the Red Roof Inn, previously a Howard Johnson hotel, has been at the current location for some time. He stated that it has been known as a transient hotel in the sense that it is a stop-and-go location. For example, patrons often spend one night at the hotel as they are travelling to another location or visiting the University of Delaware. The clientele consists of truck drivers and workers who are "passing through" the area.

Mr. Tracey mentioned that they are in the process of trying to transform and change the character of the property by bringing some higher end uses into play. The Candlewood Suites was the first step in this transformative process. Additionally, a proposal for a Hilton Hotel and a convenience with a gas station is forthcoming. Mr. Tracey mentioned that they are in the first step of this process other than having filed the plans, and that they will need to go get special use permits in front of the Planning Commission and Council. He said he was sure with Councilman Clifton's help they would be organizing conversations with the community before they get to that point.

Mr. Tracey stated that for the purposes of tonight's meeting was to address the two design variances.

Mr. Tracey stated that the proposal would result in the removal of the Red Roof Inn, which would be replaced by a Hilton Tru Hotel and convenience store. He noted that both uses are familiar to the area and permissible to special use permit from Council. He stated that the existing Red Roof will be gone that is currently in a 2-3 story building with 136,400 square feet. He noted that the newly proposed Hilton Tru Hotel is a 4 story, 46, 400 square foot hotel that would replace it. He stated that the new hotel would decrease in capacity from 130 rooms to 98 rooms. Additionally, there would be a 5,600 square foot commercial convenience store on the right-hand side with gas pumps located at the front of the structure adjacent to Route 896. The hotel would be concentrated at the center of the property where the largest part of the Red Roof Inn is currently. The convenience store and gas pumps would be in the area where the "perpendicular" building is in relation to 896. The gas pumps are located at the front of the property consistent with what was seen in the example provided and to avoid that being further back into the property.

Mr. Tracey stated that the parking requirements for this site are met, and they were not seeking a

reduction of the required parking. He stated that the proposal would create a few more spaces on the overall site than what would otherwise be required. He stated that they would not seek any variances from what he called the bulk requirements of the code – setbacks, lot size, height, buffers, landscaping, parking, etc. He stated that they were seeking the two design variances proposed above.

Mr. Tracey stated that the first design variance was the request to eliminate the need for loading spaces. He noted that it was advertised as a requirement that they have three, and then referenced the corrected requirement of two loading spaces. He noted that the Code requires two loading spaces and stated that the request is a reduction of one from the requirement. He stated that it is the same requirement that applies to high-rise and office buildings. Mr. Tracey stated that the reason for the variance request is that there is no need for loading spaces regarding hotels. He noted that hotel parking lots are largely unoccupied between the hours of 9:00 a.m. and 4:00 p.m., since it is before or after the times that people would check in or out. He stated that the parking lot has ample room for the existing parking to serve as loading. Additionally, he stated that once the hotel was up and running, there would be no need for loading in the sense that the Code is talking about. Mr. Tracey stated that there are not tractor trailer deliveries that come to the hotel and all deliveries are usually no larger than a UPS-sized vehicle. He stated that since these deliveries occur during the day, there is ample room for this to take place without delineating a loading space. There are no loading berths proposed and a lot of hotels do not have them. Hotels may have areas striped out as loading spaces, but he did not think they would find a lot of people in there. Mr. Tracey stated that they did not want to reduce the parking spaces for unnecessary loading spaces, so instead they wanted to come to the Board and ask for a variance so as not to have to include those loading spaces, recognizing that there are ample opportunities for loading to occur. He noted that there would be a designated area in front of the hotel for people to drive up and check in before parking. The Red Roof Inn was a much more compact building, so they were not talking about a very spread out building where they would get into their car and drive to a different portion for purposes of going to their rooms. This hotel would have all internal accessways and the like.

Mr. Tracey stated that the second variance relates to right hand exit at the bottom of the property. He mentioned that the current entrance is a full entrance in the sense that it has right access in and out and left access in. He stated that is approximately 27 feet away from residential property. Mr. Tracey noted that since the convenience store will be added and will be considered a “new-use” for the property, there is a requirement that there be a 50-foot separation between the access drive and the residential property line. He stated that the current proposal has been directed and approved by DelDOT in the initial review process. He noted that the proposal eliminates the access from being a right in and right out, as well as prohibiting left turn access to the property. There will only be right turn access to the property. Mr. Tracey noted that this shifted the location further to the north, so they were going from 27 feet to 35 or 37 feet away from what currently exists depending on how it is measured. This was complicated by the very limited amount of frontage that they had. He stated that even though SSN did not control Jersey Mike’s or Friendly’s, he thought they had done some things to make access better on Route 896. They had taken the existing Friendly’s access and combined it with theirs, which would become the new rights in, rights out location on Route 896. They had also closed off the left turn that he referred to earlier off Route 896 into the site, which would still be available for U-turns, but DelDOT wanted the direct left turn removed, so that will be done. Mr. Tracey noted that they are proposing to keep the right in access point for better traffic flow of the property.

If right access is removed, Mr. Tracey stated that everyone coming to the site (from the North or South) would all be using the same access point. He stated that keeping the one single right in access point would allow the people coming from I-95 and travelling northbound on Route 896 to avoid the conflict with people coming in and out of the property from the new combined entrance with Friendly’s and allows for a safer movement in the area to avoid having a cluster of people at that location. He noted that keeping the right in access point

facilitates deliveries to the proposed convenience store or otherwise from using the same access as others who are going to and from the property. They would be mitigating the impact as they were shifting the entrance further north than what it was by a minimum of 8 feet. He advised that fencing would be included along the property line, creating buffers in that area. He noted that traffic flow would be reduced by eliminating the three movements and just having one movement.

Mr. Tracey reiterated that those were the only two design variances that they were seeking. He noted they fell under the Kwik Check standard as area variances, not use variances as the uses are permitted under the Code in this zoning district. He reviewed the Kwik Checks:

- Nature of the zone where the property is located – Mr. Tracey pointed out that the property was zoned BC and this use is permissible with a special use permit, which has to be pursued from the City, but they have to come to the Board first before they can move forward because they have to have a Code-compliant plan.
- Character of the immediate vicinity and the uses of neighboring property – This area of Route 896 is commercial adjacent to Route 896 in both directions northbound and southbound. This site is already fully developed with hotels, Friendly's and Jersey Mike's with a strip center across the street, so the uses being introduced are not out of character as there are other gas stations, hotels, retail stores and the like on this property.
- If the restriction is lifted, would such removal seriously impact the use of internal property – Mr. Tracey noted the answer to that was no, that these were both variances that are solely limited to the operation of this property. They do not impact folks beyond the four corners of the property. Whether or not there are loading berths did not impact anybody as people were not going to be pushed out on to the street for the purpose of making the deliveries. The maintenance of that right turn into the property allows for better traffic flow. It was really a safety issue. It allows people to get off the road into the site without coming in conflict with those who are exiting just past it.
- Harm to the applicant – The loading variance issue is the harm of cordoning off areas for loading that will never be used. They would prefer to keep the parking spaces and have them available at the site knowing that those will double comfortably as loading spaces during the day when the deliveries to the site would occur. With regard to the separation distance, if they do not have that right turn access point, it compels everybody to come in and out on 896 at the one location, so people making right-turns and left-turns as well as the folks making U-turns to get to the Friendly's as well as other portions of the property. They think they have mitigated this with the proposed fencing, the pushing of the entrance further to the north and with the eliminating of two of the three movements that were previously available at the location.

Mr. Tracey reiterated that they felt they had satisfied the requirements of the Kwik Checks with this design. They think the design is a better, safer and more practical design.

Mr. Rogers stated that there would be no restaurant in this hotel, which Mr. Tracey said was correct. Mr. Rogers asked what the nature of the new hotel was. Mr. Tracey said it was a Hilton Tru concept. Mr. Rogers clarified that he was asking about the Candlewood Suites. Mr. Tracey said that the Candlewood did not have a restaurant, as it is a Suites hotel. Mr. Rogers asked if the Candlewood had loading docks. Mr. Tracey stated that he did not see any on the plan for the Candlewood. He also looked at the approval for the new Marriott that was constructed and there was one loading dock that was shown, but it doubled as the access to the trash dumpster and, given its location one could argue it was more for the restaurant pad site than it is for the hotel. They did have the loading that was required for the convenience store there, so they were not asking for any relief in that instance. The plan for the Candlewood Suites did not show any loading docks. There were striped areas in

different portions of the property, but every time he had been at the Red Roof Inn property, he had not seen anyone in there. Mr. Fortner concurred with that and noted it was not shown on the plan as marked. He thought during the Code Enforcement review they were able to look at areas and say they would be able to serve as loading area. Mr. Tracey said if the Board wanted it as a middle ground, that they could certainly put up signs in a particular area that said "Loading Zone from 10:00 a.m. to 4:00 p.m." because that was when the parking lot was empty. He stated that most deliveries that arrive are not any bigger or smaller than a car and can fit in a normal 9'x18' parking spot. Since there will be no restaurant with a lot of food turnover in the proposed hotel, the need for tractor trailer deliveries will not occur. It is more of things like W.B. Mason delivering office supplies, not tractor trailers.

Mr. Rogers asked Mr. Tracey to confirm the crossover would remain for left turns off Route 896. Mr. Tracey confirmed that per DelDOT, the crossover for U-turns will remain, but not for left turns into the property.

Mr. Rogers asked staff if the movement of the access point farther from the residential property counts for making the non-conformity better. Mr. Fortner stated that it is a good point that they are making the non-conformity better. He stated that since it is a redevelopment and an additional use on this site, it will be considered a fresh new plan.

Mr. Rogers referenced the fourth component of Kwik Check, asking if the parking requirement can be met if loading berths were required. Mr. Tracey stated that it would close – if they had to do all the loading berths, they might fall under. He noted that the Marriott had come to the Board for parking reductions with the argument being with people taking Uber, shuttles, buses, cabs, etc. they did not have the parking demand. Mr. Tracey said the issue there was when they did not have the demand for the loading spots in the normal sense that an office building might, which was the other thing hotels were grouped with. Accordingly, Mr. Tracey noted that it would not make sense to stripe out or eliminate parking in favor of something that is not needed. He mentioned that Ms. Hopkins would testify regarding this matter.

Lynn Hopkins, 211 South Avon Drive, Claymont, was sworn in. Mr. Rogers asked to the extent that deliveries are necessary, what kind of deliveries would they be and where would they be delivered. Ms. Hopkins testified that in a normal operation of their hotels, especially a Hilton hotel, it would be office supplies, paper supplies and things of that nature, which come in a van or larger, UPS-sized truck. Ms. Hopkins stated that maintenance supplies would come in through HG Supply through UPS. There may be deliveries from corporate or Hilton itself through Federal Express or any item that the guests may have delivered and have waiting for them at the hotel when they arrive, which would probably be UPS or FedEx. That would be the largest. Mr. Bergstrom asked about linen deliveries. Ms. Hopkins noted that linen would be delivered through UPS. Mr. Rogers asked if they would just pull up to the front. Ms. Hopkins said they usually pull up to the front and come in to the front desk. An employee would sign for the boxes and take them from there.

Mr. Moore asked what the procedure would be if a tractor trailer needed to deliver items. Ms. Hopkins stated that if a large delivery was expected after the opening, that they would let them know in advance. She stated that parking spots would be blocked off in preparation, and that the delivery would not be unexpected and would be planned for in advance.

Mr. Moore asked if a compromise could be blocking tractor trailers from coming into the facility and if that was a possibility. Ms. Hopkins could not provide the answer to this question, and Mr. Moore stated that he would ask his Counsel. Mr. Bilodeau said they could probably put a sign out there that said, "No tractor trailers", but he reminded them that there was a gas station in there too, and they might need a cup of coffee in the convenience store. Mr. Levandoski said that a compromise could be that tractor trailer trucks could be requested

to have lift gates if they did not have a loading berth to be able to lower the load onto the ground and move it into the facility as needed.

Mr. Moore asked Mr. Tracey to clarify the “exceptional practical difficulty” regarding the two loading spaces as he was not hearing what that was. He also asked Mr. Tracey to address the economics of the issue. Mr. Tracey stated that from an economic standpoint, he was not making an argument on the cost of delineating those areas. What they were trying to avoid was removing parking spaces that otherwise might be more useful for people on the property for either visiting the hotels, restaurants, or convenience store. Mr. Tracey stated that the other hotels in the area (i.e. the Marriott, which was a restaurant and a hotel) use one area designated as loading that backs up to the dumpster. Beyond that, there is nothing on the plan designated as loading and that was a site that had less parking than the Code required. Mr. Tracey stated that the issue at hand is one of practicality and requiring something on a property that is not otherwise needed in the general day to day operations of the facility. He referenced Ms. Hopkins’ testimony that most of the vehicles coming up would be either pulling up right under the atrium because they are UPS, FedEx, etc. or pulling right into a parking spot in front of the hotel since they are the same sizes. He did not think they wanted to prohibit tractor trailers, because they did not know what was going to happen but referenced that tractor trailer deliveries would be planned for in advance as Ms. Hopkins stated. Accordingly, areas could be blocked off and made available for the truck to unload same and depart. He noted that this is not the normal method for deliveries, and that most deliveries come through on two axle vehicles.

Mr. Bilodeau stated that one of the areas of practical difficulty is if the harm to the applicant by denying the variance is greater than the effect on the neighboring properties if it is granted. Mr. Moore thanked Mr. Bilodeau. Mr. Tracey stated that internal loading spaces or a lack thereof will not harm surrounding properties.

Mr. Rogers asked staff if site plans were reviewed in some fashion by emergency services agencies for circulation and emergency access. That was a concern that he would have in not providing a specified location for loading is that if there is some sort of loading happening that is not in a designated area, it could block emergency access in a worst-case scenario. Mr. Fortner said that internal staff, including the Fire Marshal, have the certification to review these plans for emergency services. Mr. Rogers asked if this was at the site plan level. Mr. Tracey stated that the emergency certification and access points would be part of the site plan and special permit approval.

Mr. Bergstrom asked if the engineer who prepared the plan could speak briefly to that. Steve Gorsky, 5400 Limestone Road, Duffield Associates was sworn in. He stated that the plans would be sent as part of the site plan process to be reviewed by the City’s Fire Marshal. He stated that the site is currently designed to accommodate emergency services access. Mr. Bergstrom said it appeared to him that it circled the building and that there are 24-foot fire lanes. Mr. Gorsky confirmed the presence of 24-foot fire lanes surrounding the hotel, including all required fire access and lanes with the typical width that is required.

Mr. Bergstrom asked if he anticipated compromises to the fire lane access by tractor trailers making deliveries and if he had thought about that. Mr. Gorsky stated they really were not considering tractor trailers being there. Because it was so infrequent, the chance of a fire truck entering with a tractor trailer there would be infinitesimal to coexist at the same time.

Mr. Levandoski asked how many nozzles would be at each gas pump for the convenience store as he assumed it would be four nozzles per pump. Mr. Gorsky stated that there would be two nozzles per pump, with a total of 12 nozzles. Mr. Levandoski asked if the DelDOT study indicated there was going to be an increase of traffic as a result of the convenience store with the gas pumps and, if so, what was the estimated increase.

Mr. Gorsky stated that the DelDot study predicted an increase of traffic with the gas pumps, but that potential issues involving motor vehicle accidents would be mitigated by the aforementioned reduction of access points. He stated the details were still under the review process and estimated that traffic would increase through this area by approximately 1,000 cars per day. The end result was the traffic flow having a right turn in on the south side of the property to accommodate the amount of traffic entering the site from I-95 because of all that conditional cutting off a left turn in to prevent accidents for cars making a left versus a conflicting right turn. He noted this was all accounted for the design and DelDOT approved the traffic study and also approved the layout in principal as they are still in the review process for details.

Mr. Levandoski said the applicant does not know if it is going to increase by 200 cars per day or 400 per day.

Mr. Gorsky said it will be more than that and approximated it could reach 1,000 per day.

Mr. Moore said he assumes residents in the area have been approached about this project. He asked Mr. Gorsky to elaborate on the barrier between the convenience store and residential property was considered. Mr. Gorsky stated that a solid screen, PVC privacy fence approximately 6 feet high to run from the back of the convenience store through to the front parking space of store adjacent to the canopy. He stated that the fence would be in two sections, improving the view and distance for the area residences. He stated that a retaining wall is proposed to help the grades and mitigate potential issues.

Mr. Moore asked if this already exists or would be added.

Mr. Gorsky said it will be added.

Mr. Levandoski asked if the convenience store would be open 24 hour.

Mr. Gorsky said it would be open 24 hours as they normally are for traveler convenience.

Mr. Moore asked the name of the convenience store.

Mr. Gorsky stated that the name of the convenience store had not been named yet.

Mr. Tracey said for the benefit of staff and asked Mr. Gorsky if the continued maintenance of the fence would become a part of the City's code responsibilities if the owner failed to maintain same.

Mr. Fortner said this was correct.

Mr. Levandoski confirmed if the fence came into disrepair, it would be cited for the City's code enforcement division.

Mr. Fortner said if it is on the site plan that is what is approved, and the fence goes into disrepair it would get cited by the Code Enforcement Division.

Mr. Rogers asked if there was a space for loading. He sees loading space and berth noted on the plans. He asked for clarification between the two terms.

Mr. Fortner said they are called loading space in the Code. Mr. Fortner said the terms are used interchangeably as noted in the Code in Se. 32-46. The City Solicitor clarified that the City Code uses the terms loading berth and loading spaces interchangeably. See sec. 32-46(a)(2).

Mr. Tracey used the example of the Marriott located in the City. It is a space and is in front of a dumpster and is not a berth. They do not have large deliveries. He noted there would not be large scale deliveries at this proposed hotel either. But rather would be FedEx type deliveries on a much smaller scale.

The City Solicitor said the applicant is seeking less of a variance than was requested in the notice. If it was the other way around, a re-notice would have been required.

The Chair opened the discussion to public comment.

Mr. Richard Ramsey, Jr. testified against the proposed project. He is the property owner located at 1204 Old Cooch's Bridge Road, adjacent to the hotel. He stated that he would be adversely affected by a 24-hour convenience store. He mentioned that there are enough issues with traffic as it is, and that safety is a major concern. He stated that he noticed a recently posted digital traffic speed sign placed on Old Cooch's Bridge Road, which indicates how fast people are driving. He stated that the sign has not helped people drive safely, as cars fly down the road and surrounding areas all the time. He noted that the yield sign that is on 896 as people travel into town from 1-95 is not is an ideal location. He stated that cars are coming from 1-95 at speeds of approximately 60 miles an hour during the day, when the posted speed limit is 35 miles per hour. He stated that the new access point to the hotels and convenience store as proposed will make traffic even more dangerous than it already is. He also expressed concern there had been no mention of this project several years ago when the applicant built the nearby Candlewood Suites. He is unsure they want to take this structure down and put something else new up. He wanted to know the reasoning.

Mr. Ramsey mentioned that tearing the Red Roof Inn down will cause asbestos dust and various environmental hazards that are potentially detrimental to the health or residents. He stated that the Red Roof Inn was built in the 1960's, and that the products used during that time frame are not safe. He stated that he does not believe that the contaminants and dust can be safely contained during the demolition process. He stated that an additional gas station is unnecessary, as there are already four gas stations within a block from the area. He also expressed concern about the frequency about gas tractor trailers as he believes they will be delivering every few days due to demand.

Mr. Bergstrom thanked Mr. Ramsey for his comments but noted the only topic before the board are the variance requests.

Mr. Bilodeau reiterated this and stated there are two variance requests. The variance for the loading berths or spaces just has to do with the Hilton Hotel, which is independent of the convenience store or the gas station. The other variance has to do with the access road coming in. He stated that this variance does not correspond with the concern for the 24-hour gas station. He stated that the other concern regarding the gas station and access road would be answered by Mr. Tracey. He stated that the Board of Adjustment would be focusing on the access road and drop off/loading area for the proposed Hilton. He stated that the convenience store and gas station are separate issues that would be addressed at subsequent meetings. It was stated that the gas pumps and hotel would both require special use permits.

Mr. Fortner said this project will come before the Planning Commission and Council to consider a special use permit for the gas pumps and the hotel. During that process, they will evaluate the impact of the surrounding

area and Mr. Ramsey may reiterate his concerns at that time.

The Chair opened the discussion to public comment.

Mr. Donald Gaines, a resident residing at 1125 Old Coochs' Bridge Road spoke in opposition of the proposal. He stated that his property is right behind the proposed area. He said he believes the applicant must show that it is causing a hardship of some kind to have the request granted. Mr. Bilodeau explained that the exceptional practical difficulty must be shown for an area variance request. Mr. Gaines asked if the area resident would be able to use the argument to show whether that request is granted would causes a hardship to them.

Mr. Bilodeau said that is true as one of the tests is who has the worst hardship; the resident if the variance request(s) is granted or the applicant if the request is denied.

Mr. Gaines stated that he originally was told that the original variance was 50 feet from the driveway.

Mr. Bergstrom said that was the requirement.

Mr. Gaines said it never mentioned whose driveway or property is being affected. He asked if anyone verified the distances. Mr. Bergstrom said he did not believe the proposal has a driveway near Mr. Gaines' property. He believes there is no access next to his property. Mr. Gaines said he understood but thought the notice could have been better worded. Mr. Gaines stated that the Red Roof Inn is in his direct line of vision from his property. He just learned there may not be any berths needed at all. He believes that if a restriction not allowing tractor trailers which was referenced at some point would be added, this would help assure the residents that there would not be a problem with tractor trailers and emergency vehicles. He said if this variance is granted without this stipulation that could be a problem and affect him.

Mr. Bergstrom said if the loading berths were included, they could not be in that 24-foot wide fire lane that encircles the building. He added, there proposal denotes if a truck was occasionally parked in designated car spots and they infrequent chance they would have a truck parking there. Mr. Gaines said the infrequent chance would most likely create a problem. Mr. Bergstrom said they would not be able to park in a fire lane no matter how infrequently.

Mr. Gaines said he is not in favor of granting any variance of any kind as that puts the applicant one step closer to construction. He asked the Board to remember and consider the area residents lived through the building of the Candlewood Suites with promises that some things were supposed to occur that did not, such as installing a fence and some sidewalk improvements and some lighting. He asked for confirmation the applicant could be fined because of not following the rules.

Mr. Fortner said it would not apply to the variance but the site plan. He added the residents could work with the Code Enforcement Supervisor to review the plan for Candlewood Suites to see if there was approved in the subdivision plan that did not get done.

Mrs. Denise Gaines, wife of Mr. Robert Gaines, also residing at 1125 Old Coochs' Bridge Road thanked everyone including Mr. Rodgers for his pertinent questions. She said she was in opposition of the proposal. She stated that the proposal would take away the land and air space of her property. She stated that the example of the Marriott hotel does not apply to the current proposal, as the Marriott hotel is not by residential property. Mrs. Gaines states that the right-hand turn area from I-95 needs to be safer and must be addressed as part of the variance and she confirmed that the merge issue was part of the DelDot concern.

Mr. Tracey stated that most of the issues brought by the residents are best addressed in different forums or in community meetings with the help of Councilman Clifton or with the Planning Commission or Council. He stated that the entrance on the right-hand side of the residential property line and the beginning of the pavement is 27 feet. He noted that the revised proposal shifts the entrance between 10 to 15 feet away from the original property. Accordingly, the entrance would be at least 35 to 37 feet under the revised proposal. He believes after hearing the conversation illuminated why the right-hand turn lane needs to be maintained in the area. Because if it is not there it would mean that everybody coming off 1-95 is going to have to merge into Route 896 before getting over into the turn lane that would take the driver into the combined entrance that shows in and out. In addition to directing the commercial traffic in that location it would also provide the alternative for people coming off the highway to not have to get onto Route 896 before entering the turn lane and running into conflict with people that may be making U-turns, etc. Mr. Tracey stated that the issue of the loading dock was one of practicality and does not affect the surrounding properties. He stated that a compromise would be to take several parking spaces on the property and put signs there specifying that they are for loading purposes only between certain hours (i.e. 10am to 4pm).

Mr. Bergstrom returned the discussion to the table for further discussion.

Mr. Rogers said given the fact that DelDOT is dictating the nature of the entrance and the fact that it is being moved farther away from the residential property line compared to the existing entrance, he does not have a concern about this. The fact the applicant has testified the nature of the deliveries are small in nature and do not require large trucks and stand-alone berths and/or separate areas for said deliveries; he does not have an issue with the lack of defined loading spaces, given the proposed use.

Mr. Levandoski said he agrees with Mr. Rogers and understands the concerns of the residents. However, based upon the variances before the Board, he agrees that in design the entrance way adjacent to the residential area is being improved and is being moved further to the north or away from the residential area by 8 to 10 feet and is right turn in only. Whereas today he understands it to be a right and left turn. He believes DelDOT has addressed the safety concerns for people exiting from 1-95 or Route 896 north. He also agrees with Mr. Rogers interpretation of the loading berth discussion. He said it would be his recommendation if a larger truck or a tractor trailer were to enter to make deliveries there should be marked spots as indicated by the attorney to accommodate so the truck does not need to park in the fire lane and impede any potential emergency response. He said based upon the testimony provided he would tend to agree and would approve the variances.

Mr. Bergstrom agreed that a compromise would be to take several parking spaces on the property and put signs there specifying that they are for loading purposes only between certain hours (i.e. 10am to 4pm). He agreed that this would alleviate any potential impediment of emergency response crews.

Mr. Moore believes at the end of the day the variances are justified. He wanted to encourage the residents to attend the Planning Commission meeting when the site plan comes before them as well as City Council as it is his opinion the residents in attendance have made some very valid points and he believes they need to be heard. He agrees with his colleagues and that the issue is a little troubling but believes because parking spaces are being addressed that can be limited to non-tractor trailer trucks, that practical difficulty is in his opinion, is met because it does allow more parking for the hotel. If the Board were to require designated loading spaces for delivery that would take away parking spaces and would create a practical difficulty in his opinion. He believes the compromise is acceptable with designated hours. The practical difficulty for parking access is they cannot go any further without cutting into other land. He believes the existing parking access was grandfathered and that is the only reason that it is not 50 feet. He would vote to approve the variances with the compromise to designate parking spaces as identified earlier.

Mr. Bergstrom asked if there were any letters received concerning this application and were the neighboring property owners notified.

Ms. Bensley reiterated there were no letters in favor of or in opposition and all properties within 500 feet were notified by mail.

Mr. Bergstrom said he believes there has been a valid case for granting these variances and believes it will be interesting to see what the Planning Commission and Council thinks about the special use permit.

Mr. Rogers reviewed the Kwik Checks:

1. *The nature of the zone in which the property is located* – The nature of the zone in which the property lies is all commercial in nature. The proposed development and the variances requested do not change the nature of the zone.
2. *The character of the immediate vicinity of the subject property and the uses of the property within that immediate vicinity* – The proposed use is not out of character. (There are other gas stations, hotels, etc. in the area). The restrictions as requested in the variance would not seriously affect the neighboring properties or uses.
3. *Whether, if the relevant restrictions upon the applicant's property were removed, such removal would seriously affect the neighboring properties and uses.* Mr. Tracey stated that the proposed use does not affect people beyond the four corners of the property.
4. *Whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in relation to efforts to make normal improvements in the character of that use of the property.* An exceptional practical difficulty is indicated by if loading areas or berths are required, there would be a loss of parking spaces for the customers of the hotel.

Mr. Bergstrom stated that an acceptable compromise would be to designate several parking spaces on the property and place signs specifying that they are for loading purposes only between certain hours (i.e. 10am to 4pm). He agreed that this would alleviate any potential impediment of emergency response crews.

Mr. Levandoski said he agrees with Mr. Rogers Kwik Check discussion points. However, he would like to point out if the variances are approved, that a designated area of parking spaces be made for tractor trailer type loading with designated hours. He suggested the hours of 9:00 a.m. – 4:00 p.m.

Mr. Moore agreed with Mr. Rogers and Mr. Levandoski. The area is zoned BC. In addition, he believes the applicants position and their arguments regarding the loading space issue as it relates to the reduction to the parking spaces to the hotel in general, he finds the argument compelling. He believes it does create the exceptional practical difficulty that needs to be met. The driveway access has been addressed by DelDOT and what has been done to the general area in total also justifies approval in his area. He would vote to approve the variances as well.

Mr. Bergstrom found all the arguments compelling, and that he voted to approve the variances.

MOTION BY MR. ROGERS SECONDED BY MR. MOORE: TO APPROVE THE TWO VARIANCE REQUESTS WITH A CONDITION THAT ONE LOADING SPACE OF A DIMENSION OF 12X50 FEET BE PROVIDED IN THE FRONT OF THE HOTEL BUILDING BETWEEN THE HOURS OF 9AM AND 4PM. (THE DESIGNATED LOADING SPACE WOULD DOUBLE AS CUSTOMER PARKING)

MOTION PASSED UNANIMOUSLY. VOTE: 4 to 0.

Aye: Bergstrom, Levandoski, Moore, Rogers.

Nay: 0.

Absent: Hudson

- 3. The meeting was adjourned at 7:24 p.m.**

Renee K. Bensley, CMC
City Secretary

/wp