

**CITY OF NEWARK
DELAWARE
BOARD OF ADJUSTMENT
MINUTES
October 17, 2019**

Those present at 7:00 p.m.:

Members:	Jeff Bergstrom, Chair Mark Morehead Bill Moore Chris Rogers
Absent:	Kevin Hudson
Staff:	Geena George, Deputy City Solicitor Mike Fortner, Planner II Tara Schiano, Administrative Professional I

Mr. Bergstrom called the meeting to order at 7:00 p.m.

1. APPROVAL OF MINUTES FROM MEETING HELD JUNE 20, 2019:

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

MOTION PASSED. VOTE: 4 to 0.

Aye: Bergstrom, Morehead, Moore, Rogers.

Nay: 0.

Absent: Hudson.

2. APPROVAL OF MINUTES FROM MEETING HELD SEPTEMBER 19, 2019:

Mr. Moore corrected the roll call as he was listed in both. He informed Ms. Schiano that he was not present.

MOTION BY MR. MOREHEAD, SECONDED BY MR. BERGSTROM: TO APPROVE THE MINUTES WITH ATTENDANCE CORRECTION.

MOTION PASSED. VOTE: 4 to 0.

Aye: Bergstrom, Morehead, Moore, Rogers.

Nay: 0.

Absent: Hudson.

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

3. The appeal of Dental Associates of Delaware, property address 301 South Chapel Street, for the following variances:

- **Sec. 32-60(a)(2) – Schedule of Sign Regulations.** – The maximum number of ground signs is one per parcel. The applicant's plan indicates two ground signs. This requires a variance of one ground sign.
- **Sec. 32-60(a)(2) – Schedule of Sign Regulations.** – Ground signs must be a minimum of 100 feet from residential zoning areas. Since the parcel is only 100 feet wide and is bordered by residentially zoned properties, this requires a variance to be able to place a ground sign on the property.

Ms. Schiano noted there was a letter of opposition from Jean White which was forwarded to the Board and asked if it should be read into the record. Mr. Bergstrom wanted to hear the testimony from the applicant first.

Mr. Bergstrom asked if anyone wanted to speak in favor of the case. Mike Hewitt, 459 Old Airport Road, New Castle, Delaware, and Sherry Reese, 19 Riverview Avenue, Chesapeake City, Maryland, were sworn in.

Mr. Hewitt stated the application was for two ground signs and, after conversations with the Code Official, he thought the application was for the main advertising sign because the second signs were directional and they would be minimized to meet code and required no permit. He reiterated the discussion would be for one sign in the front yard. Mr. Bergstrom asked if the sign exceeded the maximum requirements. Mr. Hewitt replied that the problem was the sign was not greater than 100 feet from residential properties. Mr. Bergstrom asked if the size of the sign complied and Mr. Fortner confirmed the sign complied.

Mr. Bergstrom clarified that the appeal was reduced to request a variance to the existing requirement to be 100 feet away from residential properties and Mr. Hewitt confirmed same. Mr. Bergstrom asked how many feet away from residential properties the sign would be, and Mr. Hewitt said the property was at the intersection of Chapel Street and Park Place. He explained if a person was on Chapel Street and Park Place was to the right, the sign in the front yard of the proposed property would be 38 feet away from the residential property on Park Place. He explained the residential property on Chapel Street would be approximately 40 feet away. He further explained if a person went down Chapel Street, they would almost be 100 feet away to the next property. Mr. Bergstrom asked if Mr. Hewitt if he was describing the original diagram and Mr. Hewitt confirmed.

Mr. Bergstrom asked if the sign would be illuminated. Mr. Hewitt replied that the intent was to have the sign illuminated and on a timer that would shut off at 9:30 pm. When the applicants looked at the property, they considered that cars would be shining headlights at night and felt that having the sign turn off at 9:30 pm would not be offensive. Mr. Bergstrom asked if Mr. Hewitt objected to having the sign shutting off as a condition and Mr. Hewitt confirmed that would not be a problem. Ms. Reese explained that they were a new business and a sign was necessary. She noted that the property was previously a business that the applicants took over and the sign was necessary to help people locate the business.

Mr. Bergstrom thought the application was straightforward and asked if the Planning Department had any comments about the presented application. Mr. Fortner had no comments. Mr. Bergstrom suggested Ms. White's letter be read into the record. Ms. Schiano read:

October 15, 2019

To: Newark Board of Adjustment for its meeting on October 17, 2019

From: Jean S. White

Regarding: Appeal of Dental Associates of Delaware for two standing identification signs at 301 South Chapel Street and East Park Place and for permission to have signs within 100 feet of residentially zoned area.

Ms. White stated in her first paragraph that she was unable to attend due to a conflict but wanted the matters to be before the Board. Ms. Schiano read:

I and my family have come to this dental office of Jerome Kayatta, DDS, for many, many years, until the practice closed in May of this 2019 year. Thus, I am extremely familiar with this location. Plus, as a longtime resident of Newark, I often drive on East Park Place or South Chapel Street for other reasons, and also since the notice of this Board of Adjustment meeting was publicized.

I am strongly opposed to allowing two standing identification signs for Dental Associates of Delaware on this property. Instead of the very large standing identification sign proposed for the east side/corner (back side) of the "dental property" to be seen by those coming south on South Chapel Street (where one then turns right onto East Park Place), the applicant should put a wall sign on the north side of the building (which faces oncoming traffic from South Chapel Street) identifying "Dental Associates of Delaware". A wall sign is allowed, and does not count as a "second" sign. That would be sufficient to inform interested persons of the dental practice on this site from this direction.

The other proposed smaller 7-square-foot sign, a two-sided standing sign identifying "Dental Associates of Delaware" with an arrow below pointing to "patient parking", is appropriate to put on East Park Place on the property, where dental patients enter the parking lot. Dental office visitors enter the building on its west side, from the parking lot.

As to allowing this business sign less than 100 feet from a residentially zoned area, it seems reasonable to allow this one standing identification sign for the new dental practice within 100 feet of the residential area. (But note my following related comments.)

However, I am strongly opposed to this proposed two-sided 7-square-foot standing sign being a lighted sign. (as well as the much larger proposed lighted two-sided standing sign on the east side/corner that I hope the Board of Adjustment will not approve.) The hours of this dental office will (eventually, later) be Monday to Friday, 8 am to 5 pm. It will not be open before 8 am or after 5 pm, nor on weekends. There is no need for a lighted sign. And considering that the applicant already needs approval for any ground sign located less than 100 feet away from a residential district, a lighted sign would be a further negative intrusion into the neighborhood's residential character. A non-lighted sign would be entirely sufficient to identify the site as a dental office, for patients and prospective patients.

If the new dental practice is allowed the two-sided 7-square-foot standing identification sign in spite of the sign being within 100 feet of residentially zoned area, the Dental Associates of Delaware should voluntarily agree to have a non-lighted sign, even if City of Newark Code would allow a lighted sign, thus showing the new dental office's consideration and respect for the nearby residential neighborhood.

Thank you to the Board of Adjustment for careful consideration of these comments.

Mr. Bergstrom noted that there was no one else in attendance other than the applicants and asked if the Board had questions Mr. Morehead referred to Mrs. White's comments about a sign on the building and Mr. Fortner confirmed it was allowed. Mr. Morehead said that a sign on the Park Place side of the building would have a similar announcement that it was a business without being in the yard and asked the applicants if they would be willing to do a wall sign instead. Ms. Reese feared when people came down the street, unless they turned, they would not see the sign. Mr. Morehead understood it was a dead-end street and Ms. Reese said it was not a dead-end street. Mr. Morehead thought people coming down South Chapel were either coming to see the applicants or were going around the corner onto Park Place. He asked if the applicants had a sign on that side of the building on the wall, would they be willing to do that believing it would be effective advertising. Mr. Hewitt explained he was the sign contractor and advised the customer that a wall sign was not sufficient, and a ground sign was a better choice for return on investment. He stated a driver would arrive at the stop sign and look to the right to see a monument or ground sign from Park Place. He explained when a driver drove down Chapel Street, the sign was legible and easy to read as opposed to looking up on the building. He did not think it was as challenging coming down Chapel Street but stated a wall sign was not effective coming down East Park Place. Mr. Hewitt explained that the applicants were trying to find a one-shot solution.

Mr. Morehead asked if the offer was to have a single-sided sign lit part of the time. Mr. Hewitt replied that it was double-sided as there was a face on the backside. Mr. Morehead thought that was why it was considered two signs. Mr. Hewitt explained there was a second sign that the applicants originally considered on East Park Place by the driveway because the applicants thought customers would need a secondary sign to indicate parking. He explained they had abandoned those plans and indicated it was the seven-foot square sign.

Mr. Moore asked if the applicants were only asking for one sign and Mr. Hewitt confirmed. Mr. Moore asked if it was an advertising sign and not an identification sign and Mr. Hewitt confirmed. Mr. Moore asked if the applicants wanted an advertising sign and were putting in an identification sign on directions where to park and he asked if it was two signs. Mr. Hewitt explained they were requesting one sign allowed by permit which would be the advertising sign. Per his conversation with the Code Official, Mr. Hewitt was told that a directional sign, not necessarily with the business name, was allowed with parking and an arrow. Mr. Hewitt explained if it was allowed, they would do it and, if it was not allowed, they would not do it. Mr. Moore asked if it was allowed per code and that it did not count as two signs. Mr. Fortner confirmed and said it was a simple wayfinding sign and the applicants were dropping it. Mr. Hewitt said it was the equivalent of a stop sign. Mr. Fortner noted the original proposal called for an advertisement and the applicants were now seeking one ground sign and the big issue was being in 100 feet of a residential zoned district.

Mr. Hewitt clarified that the second sign that the applicants were requesting was now just an arrow with parking and did not require a permit per Code Enforcement and that was why it was not included on the application. Ms. Schiano interjected that Brian Daring was the code official being referenced. Mr. Moore asked if what was on the record was correct. Ms. Schiano replied that she was not part of the conversation but was mentioning Mr. Daring's name for the record. Mr. Moore stated for an area variance, the Board had to go through the *Kwik Check Factors* and the key was understanding what the economic difficulties were or what the exceptional practical difficulty was as to why the variance should be granted. He had not yet heard what the practical difficulties were or why it was needed, and if the variance was denied, what the result would be and why it would be an economic hardship.

Ms. Reese explained that Dr. Kayatta's practice was extremely small and the applicants wanted to grow the practice. They were taking it over as Dental Associates of Delaware and residents were not yet familiar with their business. She explained the sign would tell residents they were there. Ms. Reese explained that customers needed to be able to locate them. Mr. Fortner explained the applicants were surrounded by a

residential district and the lot was less than 100 feet so there was no way for applicants to get out of the 100 feet restriction for the ground sign. Mr. Hewitt noted when they first walked the property, there was a business three lots down towards the dead end with a 32-square foot sign. Mr. Hewitt felt that a sign within the front yard was within character of the three properties away which was 32-square feet and the applicants' sign was 24-square feet. He further explained that catty-corner from the property was a UD facility of some sort. He did not want to discount that it was an obviously residential area but wanted to note that there were businesses in the area three lots down and two lots catty-cornered. He agreed that Park Place was 100% residential but Chapel was mixed and that was why the property was allowed to be business.

Ms. Reese offered to show pictures of how the applicants cleaned up the area. Mr. Bergstrom asked if the proposed lighted or semi-lighted sign was visible from Park Place as it would be in front of the building facing up and down Chapel. Mr. Hewitt indicated a small section of Park Place could view the sign. Mr. Bergstrom asked if the sign would be shining in the windows or porches of the homes and Mr. Hewitt said no more than when a car pulled up and said it was the nature of the location.

Mr. Rogers understood there was not much south of the property but noted there would be some traffic coming from that direction. He asked if the site distance would be checked to make sure there was still good sight lines. Mr. Fortner replied that the sign should meet code and stated there was also a utility box which was probably more intrusive than the sign. He stated it needed to be 20 feet from the corner. Mr. Rogers asked if it would be reviewed in-house and Mr. Fortner confirmed. Mr. Rogers stated there was literally no way for the applicants to have a sign on the property and be in compliance with the zoning ordinance given its width. Mr. Hewitt and Ms. Reese confirmed. Mr. Rogers asked what the maximum square footage was for a ground sign in the business limited zone. Mr. Bergstrom thought it was the same for all businesses and thought it was 60 square feet and a maximum height of 18 feet. Mr. Fortner confirmed. Mr. Rogers asked if 60 square feet was the maximum within 100 feet of a residentially zone property in the BL zone and stated the proposed sign was 24 square feet. Mr. Hewitt confirmed it was three by eight. Mr. Rogers asked if the applicants agreed to have a time the sign would go off at night. Mr. Hewitt and Ms. Reese confirmed.

Mr. Moore asked if the timer would go until 9:30 pm and Mr. Hewitt confirmed. Mr. Moore asked if there would be a problem if it was earlier than 9:30 pm and Ms. Reese did not understand why Ms. White gave those times in her letter because the business had not yet posted working hours. She explained their other offices were open until 8:00 pm and then the employees had to clean up and estimated they would leave by 9:00 pm. Mr. Rogers asked if there was technology that was based on sunlight like a street lamp. Mr. Hewitt replied yes but then explained that would leave the sign on all night.

Mr. Moore referred to the comments of Mr. Morehead and Ms. White which indicated a wall sign and asked the applicants to repeat why a wall sign would not meet the criteria. Mr. Moore assumed a wall sign could be lit as well. Ms. Reese felt that drivers coming down Park Place would not see the sign. Mr. Moore asked if the location was the corner of South Chapel and Park Place and Ms. Reese confirmed. Mr. Moore asked why they would not be able to see the sign if it was on the side of East Park Place. Mr. Hewitt explained that the location of the stop sign, and the building were not suitable to a wall sign. He explained that a person would have to be looking up at the building to see the sign. Mr. Hewitt explained that wall signs are more suited for far distances on highways where the signs can be 300 feet away and that when drivers are ten feet away, it is not helpful. He explained they were searching for the most ideal situation to make the sign effective. Mr. Moore did not understand what the exceptional practical difficulty was with doing a wall sign versus a monument sign and from a commissioner's standpoint, the Board had to go through the checks carefully and follow the code. He noted that the Board should not granting variances to the code unless it was an exceptional practical difficulty or an economic hardship. The code was in place and the Board should not be making changes to the code to allow variances. He understood that the property was within 100 feet and no

matter where the applicants went, they were within 100 feet and he was willing to consider the application but did not understand why a lighted monument sign was necessary.

Mr. Hewitt explained that if the applicants spent the money on a wall sign and customers could not see it, then there would be no return on investment. He stated it was an advertising sign to let people know they arrived at the right location, but it also served to bring in new customers. He explained for the business to be successful, it required a sign that was properly done and placed so the applicants could get a good return on investment. Mr. Hewitt said how the sign would be viewed was a difficulty as was the fact that the property was only 100 feet and there was no way to achieve the 100 feet.

Mr. Morehead asked Mr. Fortner if the 100 feet applied to a wall sign. Mr. Fortner did not think it did and referred to Section 32-60(a)(ii). Mr. Morehead assumed a wall sign would solve the issues and Mr. Bergstrom thought a wall sign could be illuminated. He asked the applicants to explain the negatives of a wall sign to their business. Mr. Hewitt answered they would want to make it as big as possible and would need to make sure it fit the building architecturally. He noted a wall sign would be impossible to view from one of the roads and reiterated the earlier discussion of why it was an inappropriate choice. Mr. Hewitt acknowledged that although wall signs were allowed, the net difference was ten feet meaning the wall was ten feet further back than where the applicants wanted the monument sign.

Mr. Fortner interjected that a ground sign could be illuminated but illuminated wall signs were not permitted. Mr. Hewitt asked if there was only one wall sign allowed per property and Mr. Fortner confirmed. Ms. Reese noted if illumination was not allowed, the customers would have difficulty finding the location in the winter and evening hours and Mr. Rogers commented that a wall sign would be distracting to drivers. Mr. Hewitt acknowledged the easiest route was a wall sign but asserted it was not the solution for the location. Mr. Moore asked if the applicants would be before the Board if the zoning was a business district and Mr. Fortner answered the residents were present because of the variance requirements.

Mr. Moore asked if the zone was Business Limited and Mr. Fortner confirmed it was a limited business zoning and was usually found embedded in residential areas. Mr. Moore asked if other businesses in the same zone were granted signs if they were within 100 feet of a residential area and Mr. Fortner confirmed that they were granted if they met the code.

Mr. Bergstrom summarized the Board reduced the request for the variance to simple area variance asking for a minor adjustment to the maximum distance to the residential area. He reiterated the applicants' willingness to limit the hours of illumination so it would not be obtrusive to the residential community. He felt the applicants demonstrated practical difficulty and a safety issue.

Mr. Rogers reminded all that the variances had to meet certain criteria and reviewed the Kwik Check Factors:

1. *The nature of the zone in which the property is located* – Mr. Rogers explained the parcel was business limited and surrounded by residentially zoned property except for two parcels south of the property that were zoned business limited.
2. *The character of the immediate vicinity of the subject property and the uses of the property within that immediate vicinity* – Mr. Rogers claimed it was generally residential with commercial nearby.
3. *Whether, if the relevant restrictions upon the applicant's property were removed, such removal would seriously affect the neighboring properties and uses* - Mr. Rogers pointed there was no testimony

from surrounding neighbors and noted the letter of opposition did not appear to be based on a negative impact on the person's 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*— Mr. Rogers believed a new business with no signage would be a practical difficulty. He did not think the wall sign was a practical alternative given the visibility issue as stated by the applicant and based on the concern of safety at the intersection. Mr. Rogers was in favor of the applicants' request.

Mr. Morehead agreed with the first two *Kwik Check Factors* but thought the third was open to interpretation and a wall sign could work for the fourth. He remarked the Board could not work with potentials and would not support the application based on reason four of the *Kwik Check Factors*.

Mr. Moore concurred with the first two *Kwik Check Factors* but for the third, he was concerned that since the sign would be lit, there could be issues with neighbors and it appeared there were other options. He noted it was a new business and based on the records presented, the applicants were attempting to advertise. He acknowledged the applicants agreed to limit the illumination for their advertising sign. He was not sure if the evidence presented proved an exceptional practical difficulty or economic hardship considering there were alternatives such as a wall sign. He was concerned that a wall sign could not be illuminated. He commented that the Board should not be granting variances liberally. He was willing to listen to other arguments due to the 100-foot status of the property, but he was currently leaning towards not granting the appeal.

Mr. Bergstrom thought the Board had to narrowly define the request for a variance to the absolute limit of where a monument sign could be placed. He understood it was impossible to place a monument sign on the property because of the sign of the lot and did not see the sign as a major impact if it did not stand during the night hours. He believed the ground sign was an improvement to the neighborhood as opposed to a wall sign and believed the applicants had made a case for a practical difficulty and economic hardship. He was inclined to vote in favor of the application.

MOTION BY MR. ROGERS, SECONDED BY MR. MOORE: TO APPROVE THE VARIANCE TO ALLOW A GROUND SIGN WITHIN 100 FEET OF RESIDENTIALLY ZONED PROPERTY WITH THE CONDITION THAT IT ONLY BE ILLUMINATED UNTIL 9 PM.

Mr. Moore explained he was seconding the motion because there could be a practical difficulty with a new business.

MOTION PASSED. VOTE: 3 to 1.

Aye: Bergstrom, Moore, Rogers.

Nay: Morehead.

Absent: Hudson.

The meeting was adjourned at 7:45 p.m.

Nichol Scheld
Administrative Professional I

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