

**CITY OF NEWARK
DELAWARE
BOARD OF ADJUSTMENT
MINUTES**

August 21, 2008

**08-BA-7
The Home Depot
1000 Suburban Drive**

Those present at 7:30 p.m.:

Presiding: Jeffrey Bergstrom

Members Present: Michael Harmer
Cathy Johnston

Members Absent: Clayton Foster
Linda Shopland

Staff Members: Roger Akin, City Solicitor
Tom Sciulli, Building Director

1. APPROVAL OF MINUTES FROM MEETING HELD JULY 17, 2008

There being no additions or corrections, the minutes were approved as received.

2. THE APPEAL OF THE HOME DEPOT FOR THE PROPERTY AT 1000 SUBURBAN DRIVE FOR THE FOLLOWING VARIANCES:

A) CH. 32, SEC. 32-60 (a)(2) AN INTERNALLY ILLUMINATED BUSINESS GROUND SIGN 18 FEET IN HEIGHT AND 58.6 SQUARE FEET IN AREA AT THE SUBURBAN ROAD FRONTAGE. A VARIANCE IS NEEDED BECAUSE A GROUND SIGN COMBINED WITH FOUR WALL SIGNS IS NOT PERMITTED. (SIGN "F")

B) CH. 32, SEC. 32-60 (a)(2) AN INTERNALLY ILLUMINATED ADVERTISING GROUND SIGN 18 FEET IN HEIGHT AND 60 SQUARE FEET IN AREA AT THE ELKTON ROAD FRONTAGE. A VARIANCE IS NEEDED FOR: (1) ILLUMINATION, (2) HEIGHT LIMITED TO 10 FEET, AND (3) AREA SQUARE FOOTAGE LIMITED TO 15 SQUARE FEET. (SIGN "E")

Ms. Van Veen read the above appeal and stated that it was advertised in the *Newark Post*, and direct notices were mailed. Two letters were received in objection of the variances.

Robert A. Penza, Esquire, represented Home Depot. He explained that the applicant was seeking a variance for an advertising ground sign and an internal sign. Since the Home Depot store was not located on the site adjacent to Elkton Road, the proposed 18 foot high sign closest to Elkton Road was classified as an advertising ground sign. The second sign proposed was an internal sign which met the dimensional requirements of the Code, but was not permitted in conjunction with the four wall signs on the building which Mr. Penza referred to as “directional” signs. He felt when the Board applied the legal standards for a variance and considered the exceptional practical difficulty and the impact upon the public, that the variances requested would be granted.

Mr. Penza understood the community’s concerns about excess signage. The proposed Elkton Road sign was designed to accommodate advertisements for two businesses: the Home Depot and a future tenant. The shopping center owner was in negotiations with a prospective tenant who was permitted by Code to install a business ground sign of the exact dimensions as the proposed Home Depot sign. If Home Depot was not granted a variance, they would be permitted to install a smaller non-illuminated advertising sign 10 feet high and 15 square feet, meaning there could be two signs at the Elkton Road intersection instead of the one currently proposed.

In addition, the 18 foot high sign with 60 square feet of panel advertising space was much smaller in size dimensionally in comparison to the Suburban Plaza sign. Since the Home Depot store was located on a separate parcel from Suburban Plaza’s tenants, they could not advertise on that sign.

According to Mr. Penza, the owner of the shopping center did not want more than one sign at this location. If the variance was granted to allow Home Depot one sign at Elkton Road which would have a blank area for a future tenant, the owner agreed to restrict the property to one sign. The Board members were provided a letter signed by John Mayer, one of the property owners, stating that he understood he had the ability to install two signs on his property, but if the Home Depot’s proposed sign was approved, he would agree to the condition of one ground sign only at the Elkton Road location. Mr. Penza explained by granting the variance, there would be less signage on the site than was permitted by Code.

Mr. Penza stated that Home Depot’s interest in having an illuminated sign 18 feet high and 60 square feet in area was to provide adequate signage for the store. He explained that a smaller non-illuminated sign would be inadequate for a store operating from 7:00 a.m. to 10:00 p.m. with a number of tractor trailer deliveries after dark. Mr. Penza said when the Board weighed the legal standard of the exceptional practical difficulty in granting a variance, they must weigh the substantial detriment to the public good. He thought inadequate signage would be a detriment to people unfamiliar with the store’s location due to safety issues at the intersection.

In regard to the interior sign, Mr. Penza advised when weighing the exceptional practical difficulty to the owner against any substantial detriment to the public, there would be no negative impact from the sign because the location was strictly commercial/industrial.

Mr. Ted Williams, Project Engineer for Landmark Engineering, was sworn in. Mr. Williams described the 5.7 acre parcel which was zoned BC. The sign would be placed in an easement area near the right-of-way line in accordance with normal set-back requirements for a business ground sign. The placement of the sign was chosen based on safety considerations since various approaches to the site had limited or no visibility of the Home Depot store which might cause last minute, unsafe lane changing. Based on ground elevation, berming and landscaping, a smaller sign would not be seen.

Mr. Williams reported that the second sign would be located near the entrance to the Home Depot store which was about 1,200 feet back on the property. No adjacent residential properties would be impacted by the sign. The sign was similar in size to the Elkton Road sign, although the Home Depot portion would be somewhat smaller to accommodate any potential development on the land located to the east.

The proposed monument at Elkton Road was 18 feet high, the width was between six to eight feet, and the Home Depot advertising panel was 45 square feet. The blank panel was 15 square feet, for a total of 60 square feet of advertising space. Mr. Williams noted the existing Suburban Plaza sign was approximately 80 square feet, with the main tenant, Acme, having an 8 foot by 4 foot panel. The signage area was over 20 square feet larger than the requested Home Depot ground sign. In comparison, Mr. Penza said the Suburban Plaza sign was four times the size of the proposed Home Depot sign. Although the monuments were the same height, the Suburban Plaza sign was located at a higher elevation.

Mr. Penza advised that under Code, the interior business ground sign could not be combined with more than one wall sign. The wall sign identifying the Home Depot store would be permitted, but smaller directional signs for Tool Rental, Lumber, and Garden Center, were not permitted.

Mr. Williams felt the directional signs were no different than entrance and exit signs on buildings. He said with the large parking lot in front of the store, the signs would allow customers to park closer to the distinct areas where they planned to shop.

John Mayer, representing Pauline A. Mayer, Inc., owner of Suburban Plaza, was sworn in. Mr. Mayer stressed that he planned to keep up the appearance of the shopping center and did not want to have a lot of signs on the property. He said the arrangement was made for Home Depot to utilize 75% of the Elkton Road sign, and 25% was reserved

for the future tenant. He noted there were ongoing discussions to develop the remainder of the property. Mr. Mayer hoped the Board would grant Home Depot a variance so there would be only one sign at Elkton Road to cover all the signage in that section of the shopping center. He planned attractive landscaping at the entrance opposite the Suburban Plaza sign.

Mr. Sciulli confirmed if the variance was not granted, Home Depot would be permitted to install a sign 10 feet high at Elkton Road, and the prospective tenant could also erect a business ground sign 18 feet in height and 60 square feet. Mr. Mayer said he preferred just one sign at the Elkton Road frontage similar to the one at Suburban Plaza.

Mr. Akin asked Mr. Mayer if he would be willing to sign a deed restriction limiting the parcel on the western corner of Elkton Road and Christina Parkway Extended to one ground sign 18 feet in height and 60 square feet in area. Mr. Mayer agreed to do so. This agreement was confirmed in his letter to the Board of Adjustment dated August 20, 2008.

The Chair opened the discussion to the public.

Jean White, 103 Radcliffe Drive, was sworn in. Mrs. White asked for clarification on which parcels the two signs would occupy. Mr. Williams explained sign "E" with one blank would be placed on parcel A-1 just to the west of Christina Parkway Extended and to the north side of Elkton Road, about 1,500 feet from the Home Depot store. Mr. Williams said the second sign, sign "F" with two blank panels, would be on parcel B-1-A. Mrs. White asked why there were two blanks on the sign, and Mr. Williams said the agreement between the Mayer family and Home Depot was that future tenants were entitled to 50% of the area of the sign, and 50% was designated for Home Depot. Mrs. White asked about internal illumination of the signs, and Mr. Williams stated they would be internally illuminated and would not have a changeable message sign.

Mrs. White felt since the Home Depot site was not considered part of Suburban Plaza that it made sense to have a separate sign at the Elkton Road/Christina Parkway Extended location. She had no problem with a stationary, internally-illuminated sign, agreed it was important to have signage there but suggested a reduction in the size of the sign.

Regarding the second sign, Mrs. White thought there was no reason for it since a potential customer would know they had gotten to the Home Depot store when they reached that point. She suggested a different location for that sign.

Paul Toomey, 347 Paper Mill Road, was sworn in. He read letters from Patrick and Frances Hart, 257 West Main Street, objecting to the variance. (Secretary's note: Mr. & Mrs. Hart's letters are attached to the minutes.)

Mr. Penza appreciated Mrs. White's comments in regard to decreasing the size of the Elkton Road sign, but said the 18 foot high sign proposed was within the dimensions permitted by Code. In terms of her point that there was no reason for the second sign, he said that was not the legal standard the Board had to apply when considering the variance. They must consider the exceptional practical difficulty to the applicant and weigh that against any substantial detriment to the public. He said the interior sign would help direct people to continue going straight back to the Home Depot store, and there was no substantial detriment to the public if that sign was permitted.

There were no further comments forthcoming, and the Chair returned the discussion to the table.

To assist the Board in their deliberation, Mr. Akin explained under the Definition section of the Zoning Code a sign was "Any letter, work, model, device, or representation intended as an announcement, direction, or advertisement." The definition of sign under Section 32-58 of the Zoning Code was "A symbolic representation intended to direct attention to any place, subject, person, public performance, article, machine or merchandise and which is painted, printed, or constructed and is displayed in any manner outdoors to promote the interest of any person." He explained a directional sign as one that might direct vehicular traffic to enter or exit. Mr. Akin agreed the Building Department's classification of "sign" for the three additional wall signs (Garden Center, Lumber, and Tool Rental), rather than "directional signs" as stated by the applicant, appeared to be proper. The need for variance (a) was not based on the location of the sign "F", but rather was required since the ground sign was permitted only in combination with one wall sign.

Mr. Harmer directed his comments to variances (a) and (b). He felt with all of the students and out-of-town visitors to the City, that good signage was essential. He noted that students were inexperienced drivers and that he was involved in a traffic accident at the Elkton Road/Christina Parkway intersection. Further, he was pleased that Mr. Mayer supported one less sign and planned to beautify the property while keeping safety in mind. He supported both variances and felt there was no problem in passing the Kwik Checks. Mr. Harmer felt the proposed signs would minimize safety issues at the intersection and therefore supported the variances requested.

Ms. Johnston had no problem with sign "E" at the Elkton Road intersection and appreciated Mr. Mayer's efforts to combine signs. However, when comparing the size of the Suburban Plaza sign that advertised 13-15 businesses to the Home Depot sign representing only two businesses, it seemed to be somewhat large in proportion.

Ms. Johnston agreed with Mrs. White that the combination of the second ground sign (sign "F") and wall signs appeared to be excessive and felt the Code was written to

prevent that from happening. She felt once you passed through the intersection, the Home Depot store could not be missed and that sign "F" was unnecessary.

Mr. Bergstrom thought the proposal for the sign on Elkton Road (sign "E") would decrease the amount of signage at the intersection and was in favor of the variance provided it was conditioned based on a deed restriction for one sign.

Mr. Bergstrom felt the second sign at the Suburban Road frontage (sign "F") was somewhat excessive, although he did not think the signs on the building were of any significance as far as visual pollution. He hoped, however, that the sign could be smaller than what was proposed.

MOTION BY MR. HARMER, SECONDED BY MR. BERGSTROM: TO GRANT THE VARIANCE TO PERMIT AN INTERNALLY ILLUMINATED BUSINESS GROUND SIGN (SIGN "F") 18 FEET IN HEIGHT AND 58.6 SQUARE FEET IN AREA AT THE SUBURBAN ROAD FRONTAGE.

MOTION PASSED. VOTE: 2 to 1.

Aye: Bergstrom, Harmer.

Nay: Johnston.

Absent: Foster, Shopland.

MOTION BY MS. JOHNSTON, SECONDED BY MR. HARMER: TO GRANT THE VARIANCE TO PERMIT AN INTERNALLY ILLUMINATED ADVERTISING GROUND SIGN (SIGN "E") 18' IN HEIGHT AND 60 SQUARE FEET IN AREA AT THE ELKTON ROAD FRONTAGE. VARIANCE BASED ON THE CONDITION THAT THE SIGN WILL BE INSTALLED WITHIN SIX MONTHS AND SUBJECT TO THE DECLARATION OF RESTRICTIONS AGREED TO BY MR. MAYER THAT THIS WOULD BE THE ONLY GROUND SIGN ON THE PROPERTY.

MOTION PASSED UNANIMOUSLY. VOTE: 3 to 0.

Aye: Bergstrom, Harmer, Johnston.

Nay: 0.

Absent: Foster, Shopland.

3. Meeting adjourned at 9:00 p.m.

Alice Van Veen
Secretary

Attachment