CITY OF DOVER BOARD OF ADJUSTMENT
AGENDA
Wednesday, January 13, 2016 at 9:00 AM

City Hall Council Chambers
15 Loockerman Plaza, Dover, Delaware

ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES of December 16, 2015 Meeting

NEW BUSINESS

~~**Applicant #V-16-01**~~
~~420 W. Reed Street, 105 S. Kirkwood Street, 107 S. Kirkwood Street. MauTiste Investment Group c/o Michael Maupin has requested a variance from the requirements of *Zoning Ordinance* Article 4 §4.2 pertaining to the minimum lot dimensions, minimum setbacks, and maximum lot coverage for duplex/one-family semi-detached dwellings in the RG-1 zone. Subject property is zoned RG-1 (General Residence Zone). The Tax Parcels are ED-05-076.12-02-65.00-000, ED-05-076.12-02-64.00-000, ED-05-076.12-02-63.00-000. The owner of record is MauTiste Investment Group.~~

Applicant #V-16-02
104 S. New Street. James Dowd has requested a variance from the requirements of *Zoning Ordinance* Article 3 §2.1 pertaining to permitted dwelling unit types in the RG-1 zone, and *Zoning Ordinance* Article 7 §1.13 related to nonconforming buildings and uses, in order to reestablish the use of the structure as a two-family dwelling unit. Subject property is zoned RG-1 (General Residence Zone). The Tax Parcel is ED-05-067.14-01-70.01-000. The owners of record are James E. and Joann C. Dowd.

ADJOURN
29 Del.C. § 10004(e)(2)

THE AGENDA ITEMS MAY NOT BE CONSIDERED IN SEQUENCE. THIS AGENDA IS SUBJECT TO CHANGE TO INCLUDE THE ADDITION OR THE DELETION OF ITEMS, INCLUDING EXECUTIVE SESSIONS.

CITY OF DOVER
BOARD OF ADJUSTMENT MINUTES
December 16, 2015

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, December 16, 2015 at 9:03 A.M. with Chairman Sheth presiding. Members present were Chairman Sheth, Mr. Senato, Mr. Keller, Mr. Hufnal, and Colonel Ericson.

Staff members present were Mrs. Townshend, Mrs. Purnell, Mr. Cook, Mr. Diaz (new planner) and City Solicitor Nick Rodriguez.

Mrs. Townshend introduced Mr. Eddie Diaz the new planner.

APPROVAL OF AGENDA

Mr.Hufnal moved to approve the agenda as submitted, seconded by Mr. Colonel Ericson and unanimously carried 5-0.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF NOVEMBER 18, 2015

Mr. Keller moved to approve the meeting minutes of November 18, 2015 with the necessary corrections, seconded by Colonel Ericson and unanimously carried 5-0.

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATION

Mrs. Townshend, Director of Planning and Community Development stated that the meeting would be conducted in accordance with the agenda. There is one item (new application) on the agenda under New Business. The application file will be read, and the floor will be opened for questions of the applicant by the Board and for public testimony. If the Board needs to consult the City Solicitor they will adjourn to discuss legal matters. If the applicant must leave, they can contact the Planning Office at 736-7196 to learn of the Board's decision. A formal notice of the decision will be mailed to the applicants. Approved variances expire after one year if the approved project has not commenced.

All public notice for the new application on the agenda today was completed in accordance with code requirements. The meeting agenda was posted in accordance with Freedom of Information Act requirements.

NEW BUSINESS

Applicant #V-15-15

350 McKee Road. Grace Presbyterian Church has requested a variance from the requirements of Article 6 § 3.11 of the *Zoning Ordinance* pertaining to the maximum number of parking spaces permitted. Subject property is zoned IO (Institutional and Office Zone) and subject to the provisions of the COZ-1 (Corridor Overlay Zone). The Tax Parcel is ED-05-067.14-01-70.01-000. The owner of record is Grace Presbyterian Church, Inc.

Mr. Bill Cook Exhibits for the record: Staff Report and plans submitted by the applicant. The legal notice was published in the Delaware State News on December 6, 2015, and the public was

notified in accordance with the regulations.

Mr. Bill Cook gave a brief overview of the application.

Chairman Sheth questioned if there was any member present who had a conflict of interest and there was none.

Representative: Mr. Raymond Harbeson, Chairman of Grace Presbyterian Church Growth Committee

Mr. Raymond Harbeson was sworn in by Mr. Rodriguez.

Mr. Harbeson testified that the project was well described by Mr. Cook. Four years ago the committee was charged to come up with a Master Plan for the site for growth. By working with the City, State, and Kent Conservation District they were able to determine what kind of improvements could be done in the future. They decided to follow the Master Plan approach which allows them to put in the Master Plan and phase the construction projects. Because they are a church and not a developer all of the money will not be available at once because it has to be raised from the congregation. The first phase would be getting the site into compliance with current storm water regulations, landscaping, parking, open space requirements with the City, and access requirements from DelDOT.

Photo Presentation

The parking demand exceeds the required minimums under IO and COZ-1 Zoning. It is very hard to meet the current parking requirements as all of the members arrive at the same time. There are 116 paved parking spaces and on the gravel roughly 180 vehicles can park. There are roughly 172 available parking spaces. This is considered to be a typical Sunday in the fall, winter, and spring. It is less in the summer during vacations and more around Christmas and Easter. They have tried to keep as much green space on the site as possible. For long term planning they first contacted the owners of the office buildings next to them and secured an agreement to utilize their parking spaces for overflow situations. The church currently has 350 attendees on Sunday. They plan to wait on the final phase and keep it green for outdoor activities as long as possible. There are roughly 50 parking spaces on the adjacent office building lot. The owner has also given them permission to do a sidewalk to connect between properties.

Mr. Harbeson stated that there are also difficulties making the left turn onto McKee Road. Making a signalized left turn is much safer. They would also like to relocate the entrance driveway to allow room for building expansion in the future and bring the entire site into compliance with storm water regulations.

Responding to Mr. Keller's question whether the exit onto State College Road was a right exit only, Mr. Harbeson stated yes.

Responding to Mr. Keller's question whether the church had a number of different functions going on at once, Mr. Harbeson stated yes, but the photos were taken at the end of their first

service. Sometimes the service is projected into the gymnasium over flow area. At times there is an adult Sunday school, full Sunday school service and second worship service.

Colonel Ericson stated that it is unusual in most cities to see a maximum limit on parking spaces and asked if Mrs. Townshend could brief the applicant on how the regulation came about. Mrs. Townshend stated that maximum parking requirement was implemented when the city had development applications for shopping centers where retailers would dictate parking in the lease agreement. There were site plans with "big box" stores where the parking shown on the site plan was double than what the code required. For example there were cases with 1,000 spaces when only 500 spaces were required. The Planning Commission was concerned that while the city was required by the State to enact the Source Water Protection ordinance, the large expanses of impervious coverage remained vacant for most of the year. Therefore the maximum parking limit was put in place.

Some of the excess parking was not in line with the goals of the Comprehensive Plan, State Laws and Local Ordinances. It was also creating a situation where the character of any redevelopment along the highway included a lot of black top that would be vacant most of the time. By having a maximum parking requirement in the code, it took the pressure of potentially losing a key tenant off the Planning Commission if the parking requested by the applicant was not approved. It is stated in the code that it is incumbent on the applicant to demonstrate to the Board of Adjustment that it is not just a retailer demand, but an actual problem. As discussed in the past, with some variances on maximum parking there are some specific uses that need to be reevaluated such as restaurants, as well as land uses or sites that have small parking requirements. In the cases with small parking requirements, the maximum parking limit (25% over required parking) is not much. Also parking requirements calculated by seat count could use examination. Using seat count for restaurants and churches is manageable, but a seat count in a church where pews are used instead of chairs becomes challenging. It is not as easy to determine and the result usually calculates a parking requirement that is less than by calculating the floor area of the building.

Colonel Ericson stated that the church has exceeded their parking requirement and it would be worse in the future and their proposal seems like a reasonable request.

Responding to Chairman Sheth's question whether the entrance from College Road was across from the Woodlands of Fox Hall, Mrs. Townshend stated that it is further east than Fox Hall. It lines up with the liquor store and adjacent vacant property.

Mr. Hufnal stated that it opens to the vacant land south of Emerald Pointe.

Chairman Sheth stated that he wanted to be clear on the entrance location.

Mr. Harbeson stated that there is a small house that the church owns that has been incorporated into the site. In the future the driveway to the house will be eliminated and a new driveway for the parking will be constructed.

Responding to Mr. Keller's question whether the exit would come opposite of the shopping center, the Baxter McKee House and open field area, Mr. Harbeson stated not quite that far.

Responding to Mr. Keller's question whether the entrance was a considerable distance from the entrance of the Woodlands of Fox Hall, Mr. Harbeson stated yes.

Mrs. Townshend stated that you still have Hidden Oaks.

Responding to Chairman Sheth whether the entrance would remain open 24/7, Mr. Harbeson stated that it would remain open; the safety question is that it is more of an issue during the week or peak hours when McKee Road is backed up.

Responding to Chairman Sheth whether the entrance would be used as a short cut, Mrs. Townshend stated that it is a pretty long short cut. Mr. Harbeson stated that the entrance is not immediately visible because the building is tall.

Chairman Sheth stated that he raised the question regarding safety (dark area) from illegal activities in the area.

Responding to Mr. Hufnal's question whether the road will be exit only, Mr. Harbeson stated yes.

Responding to Mr. Senato's question whether the road heading east towards McKee Road was going to be eliminated, Mr. Harbeson stated no, it will continue to be the main entrance.

Responding to Mr. Senato's question whether travelers would be making a left and right turn from McKee Road together into the main entrance if there were heading away from Saulsbury Road, in other words the new road would be entrance and the old road would be the exit, Mr. Harbeson stated that it provides movement for the left out.

Responding to Mr. Senato's question that most of the traffic is on Sunday, Mr. Harbeson stated Sunday and Wednesday.

Responding to Mr. Senato's question whether the proposed parking spaces would be enough when the extra buildings and expansions are added in the future, one of the major items would be the building expansion (new sanctuary) with the maximum being 600 people. The applicant is only asking for 245 parking spaces because of current parking.

Responding to Mr. Senato's question whether additional handicap spaces would be added, Mr. Harbeson stated they would meet requirements.

Responding to Mr. Keller's question whether there was an overall anticipated completion date of Phases 1-5 and if it would expand to 1-3 years, Mr. Harbeson stated no. The Master Plan will be good for five (5) years and they will do as many phases as possible that they can afford during that timeframe. They would like to complete all of the site work first. The multipurpose room would most likely be the last phase.

Responding to Mr. Hufnal's question whether the timeframe to complete the work if the variance is granted is one (1) year, Mrs. Townshend stated that the applicant has one (1) year to initiate

the work done for the variance, but not to complete the entire project.

Mr. Hufnal stated that the per the applicant the extra parking needed may not start for a period of time, Mrs. Townshend stated that as long as the applicant starts the project before a year they will be in compliance.

Responding to Mr. Hufnal's question whether the project start was for the parking or building, Mrs. Townshend stated that Phase 1 is expanding some of the parking to 201 spaces and as long as the applicant initiates Phase 1 they are in compliance and it does not sunset.

Mr. Keller's stated that in regards to the overall timing and phasing of the various additions, that in conjunction with the considerations of the Board of Adjustment when any application is reviewed for Exceptional Practical Difficulty, and after seeing the photos and hearing explanations, and hearing the testimony regarding the use by the applicant which would otherwise place limitations on the building expansion by virtue of the necessity for the additional parking. He stands convinced that the Exceptional Practical Difficulty has also been met in this particular case.

Chairman opened the public hearing.

Mr. Jay Pearson was sworn in by Mr. Rodriguez.

Mr. Pearson testified that he was a member of the church. As a member of the church they are trying to do good things for the community in favor of the request as he also spoke on behalf of the other members present from the church.

Chairman closed the public hearing after seeing no one else wishing to speak.

Chairman Sheth questioned if there was any member present who had a conflict of interest and there was none.

Chairman questioned if there was any additional correspondence for the record. There was none.

Mr. Senato moved to approve variance V-15-15 based on the testimony given today and by the applicant in meeting the requirements for Exceptional Practical Difficulty. The approval would also include the increase in parking to be allowed according to the phasing schedule. The spaces and excessive code maximum will vary between 20-86 spaces as construction progresses to an eventual 245 total spaces and also inclusive of the required handicap parking spaces subject to the requirements of the Zoning Ordinance. The motion was seconded by Mr. Keller and unanimously carried 5-0.

Chairman asked if there were any questions.

Chairman stated that the next Board of Adjustment meeting is January 13, 2016.

Mrs. Townshend stated that Applicants will be notified of the meeting date change.

Chairman Sheth informed Mrs. Townshend that he would speak with the Mayor regarding if there is ever an issue of the Chairman and Vice Chairman being absent at the same time during a Board of Adjustment Meeting.

Mr. Senato moved to adjourn the meeting, seconded by Mr. Keller and unanimously carried 5-0.

Meeting adjourned at 9:46 A.M.

Sincerely,
Maretta Savage-Purnell
Secretary

City of Dover

Board of Adjustment

January 13, 2016

V-16-02

Location:	104 South New Street
Applicant:	James Dowd
Owner:	James Dowd
Tax Parcel:	2-05-077.09-01-34.00/000
Application Date:	December 18, 2015
Present Zoning:	RG-1 (General Residence Zone)
Present Use:	Vacant Residential Structure
Reviewed By:	Eddie Diaz
Variance Type:	Use Variance
Variance Requested:	Allow for the reestablishment of a nonconforming use (a two-family dwelling) after one year.

Project Description:
The applicant is requesting a variance from the *Zoning Ordinance* of Article 7, Section 1.13 Nonconforming buildings and uses, and of Article 3, Section 2.11 General residence zones (RG-1 and RG-2), to allow the reestablishment of a nonconforming use after the one year time frame has elapsed, that use being a two-family dwelling.

Adjacent Land Uses
The properties to the north, south, and west are zoned RG-1 (General Residence Zone). The properties to the east are zoned C-2 (Central Commercial Zone). Adjacent uses in the C-2 zone include the Holy Trinity United Methodist Church and the former House of Pride Operations Office. Adjacent uses in the RG-1 zone include residential uses to the north and west and vacant land immediately to the south.

General Information

The property is a one-family dwelling that was converted at some time in the past to a two-family dwelling. The property was condemned on May 13, 2014 due to a dangerous foundation. Tenants occupying the building at this time were required by the City to vacate the property until the foundation could be repaired. The City issued the property owner a building permit on July 1, 2014 to repair the foundation, and a second permit on September 11, 2015 for the same purpose after the first permit expired on January 11, 2015. The property has been vacant for more than a year due to the repair work. As such the previous legal nonconforming use of a two-family dwelling has expired.

The owner claims that the property has been vacant for more than a year because of the extensiveness of the required repairs and because both he and his contractor could only perform the work on weekends. The owner was not informed that the property's nonconforming use would expire if the repair work was not complete and the structure reoccupied within one year. The owner was only informed that the nonconforming use had expired after the expiration date.

Code Citations

Article 7 Section 1 Nonconforming buildings and uses
1.1 Any nonconforming use, except those nonconforming uses specified in [sub]section 1.5, may be continued indefinitely, but:

> 1.11 Shall not be enlarged, extended, reconstructed or placed on a different portion of the lot or parcel of land occupied by such uses on the effective date of this ordinance, nor shall any external evidence of such use such as traffic, noise, vibration, smoke, dust, odor, heat or glare be increased by any means whatsoever; or
>
> 1.12 Shall not be changed to another nonconforming use without a special permit from the board of adjustment, and then only to a use which, in the opinion of said board, is of the same or a more restricted nature; or
>
> 1.13 Shall not be reestablished if such use has been discontinued for any reason for a period of one year or more, or has been changed to, or replaced by, a conforming use. Intent to resume a nonconforming use shall not confer the right to do so.

Article 3 Section 2 General residence zones (RG-1 and RG-2)
2.1 *Uses permitted.* In a general residence zone, no building or premises shall be used, and no building or part of a building shall be erected, which is arranged, intended, or designed to be used, in whole or in part, for any purpose, except the following:

> 2.11 Any use permitted in one-family residence zones.
>
> 2.12 Garden apartments limited to placement within the RG-2 district only.

Review Standard for a Use Variance

The *Zoning Ordinance,* Article 9, §2 dictates the specific powers and duties of the Board of Adjustment with regard to granting variances. Specifically the Board must determine:

2.1 Variance – The board shall have the authority to authorize variances from provisions of the zoning ordinance that are not contrary to public interest where the board determines that a literal interpretation of the zoning ordinance would result in undue hardship or exceptional practical difficulties to the applicant. In granting variances, the board shall determine that the spirit of the zoning ordinance is observed and substantial justice done.

2.12 Use Variance. A variance shall be considered a use variance if it would permit a use of the subject property that would otherwise not be permitted on the subject property. In considering a request for a use variance, the board shall determine that the following criteria exist and document them in their findings of fact:

> (a) That there are physical conditions applying to the land or building for which the variance is sought, which conditions are peculiar to such land or building, and have not resulted from any act of the applicant or any predecessor in title; and
>
> (b) That the aforesaid circumstances or conditions are such that the strict application of the provisions of this ordinance would deprive the applicant of all reasonable use of such land or building and the granting of the variance is necessary for the reasonable use of the land or building, and that the variance as granted by the board is the minimum variance that will accomplish this purpose; and
>
> (c) That the granting of the variance under such conditions as the board may deem necessary or desirable to apply thereto will be in harmony with the general purpose and intent of this ordinance, will not represent a radical departure therefrom, will not be injurious to the neighborhood, will not change the character thereof and will not be otherwise detrimental to the public welfare.

Review of Application
As a part of the application, the applicant was asked to state how the requested variance relates to the above three criteria. The applicant's responses are provided below, along with a staff assessment of the application in accordance with the required criteria.

1. That there are physical conditions applying to the land or building for which the variance is sought, which conditions are peculiar to such land or building, and have not resulted from any act of the applicant or any predecessor in title.

   Applicant Response:
   The scope of dwelling foundation repair was extensive. Scott Engineering provided an assessment that included perimeter wall and interior pier repairs. In addition, some support beams and floor joists required replacement due to age and weakening. This work was tedious and time consuming. Partially into the project, I took it upon myself to make cosmetic changes to the downstairs apartment. I replaced damaged wall board light fixtures, removed old cabinets and replaced all interior doors. I maintained [an] active permit for the structural repairs and required phase inspections.

Staff Response:
The disrepair of the building's foundation is a physical condition peculiar to the building for which the variance is sought. The building has been in continuous use as a rental dwelling since at least 1998. If not for the deterioration of the foundation, the building would not have been vacated, and the nonconforming use would not have had an opportunity to expire. The foundation's deterioration may or may not have resulted from action or inaction by the owner or predecessors in title. The applicant has not provided documentation in this regard.

2. That the aforesaid circumstances or conditions are such that the strict application of the provisions of this ordinance would deprive the applicant of all reasonable use of such land or building and the granting of the variance is necessary for the reasonable use of the land or building, and that the variance as granted by the board is the minimum variance that will accomplish this purpose.

Applicant Response:
I request that the dwelling maintain its current use as a two family home. The foundation repair and other cosmetic requirements were directed by the City of Dover inspection staff. Communication with the inspection staff has been on-going during the project. At no time was I informed of the 1 year nonconforming use Zoning Ordinance article by the inspection staff or other offices within the City Planning and Inspection department.

Staff Response:
The applicant must demonstrate that the use variance is necessary, as the provisions of the ordinance would deprive the applicant of **all reasonable use of such land or building**, and the variance granted must be the **minimum variance that would accomplish this purpose**. While the applicant has demonstrated that he has encountered some practical difficulties in reestablishing the building as fit for habitation, and would encounter further practical difficulties if required to convert the building from its prior use, the applicant has not demonstrated that cumulative difficulties caused by repair and conversion would be so extensive as to render unreasonable the building's use as anything other than a two-family dwelling. Permitted uses in the RG-1 zone include single-family dwellings, and it would be reasonable to use the building for this purpose. No variance would be required for this use.

The City's failure to notify the applicant of the upcoming expiration of the property's nonconforming use during the applicant's repair process does not render the building's potential use as a single-family dwelling unreasonable. If the City for any reason does not notify a building permit holder while they are constructing their project what future restrictions may apply to their project, it is incumbent upon the permit holder to perform due diligence in finding out what such future restrictions may be.

3. That the granting of the variance under such conditions as the board may deem necessary or desirable to apply thereto will be in harmony with the general purpose and intent of this ordinance, will not represent a radical departure therefrom, will not be injurious to the neighborhood, will not change the character thereof and will not be otherwise detrimental to the public welfare.

   Applicant Response:
   Currently, the foundation has been restored to near new condition and inspected by the City of Dover inspection office. I was granted permission to move forward with updating crawl space plumbing and insulation. I expect to have the project completed within 60 days. Upon completion of work the dwelling will be appealing to prospective tenants and offer comfortable cost effective rental space for the community.

   Note: this has been weekend only work solely based on the fact that I work a full time job as does my contractor and we were unaware of the 1 year non-conforming time restraint. At no time did the dwelling project cease and at no time did the property become a home for vagrants or have a dilapidated uncared for appearance.

   Staff Response:
   The granting of the requested variance would not be in harmony with the general purpose and intent of the *Zoning Ordinance*. The RG-1 zone permits single-family detached dwellings as well as single-family semi-detached (duplex) and attached (townhouse) dwellings as conditional uses. The *Zoning Ordinance* is designed to provide for attrition of multi-family dwellings in the RG-1 zone, of which this two-family conversion is an example. The proliferation of such conversions has over the long term been injurious to neighborhoods in and near downtown, leading to changes to the RG-1 zone to disallow them. Granting the requested variance would be a radical departure from the intent of the ordinance because it would slow the attrition of multi-family conversions downtown, which has long-term implications on the character of the area.

   The changes to the RG-1 zone include several amendments the City has adopted since 2001 specifically developed to increase homeownership and reduce multi-family dwellings, student rentals, and other rentals in this zone. The most recent changes were adopted in conjunction with strategies being implemented by Restoring Central Dover and the Downtown Development District to restore homeownership to this area. Approval of the variance would also be counter to these plans.

Variance Recommendation:
Staff notes that the standard for a use variance is different and more stringent than the standard for an area variance, as the applicant must demonstrate that the provisions of the ordinance would deprive the applicant of all reasonable use of the land. Additionally, the variance granted must be the minimum variance that would accomplish this purpose.

Given these factors, staff recommends denial of the use variance to reinstate the two-family dwelling as a non-conforming use for reasons as follows:

- The applicant has not demonstrated that adherence to the requirements of the ordinance deprives him of all reasonable use of the land.

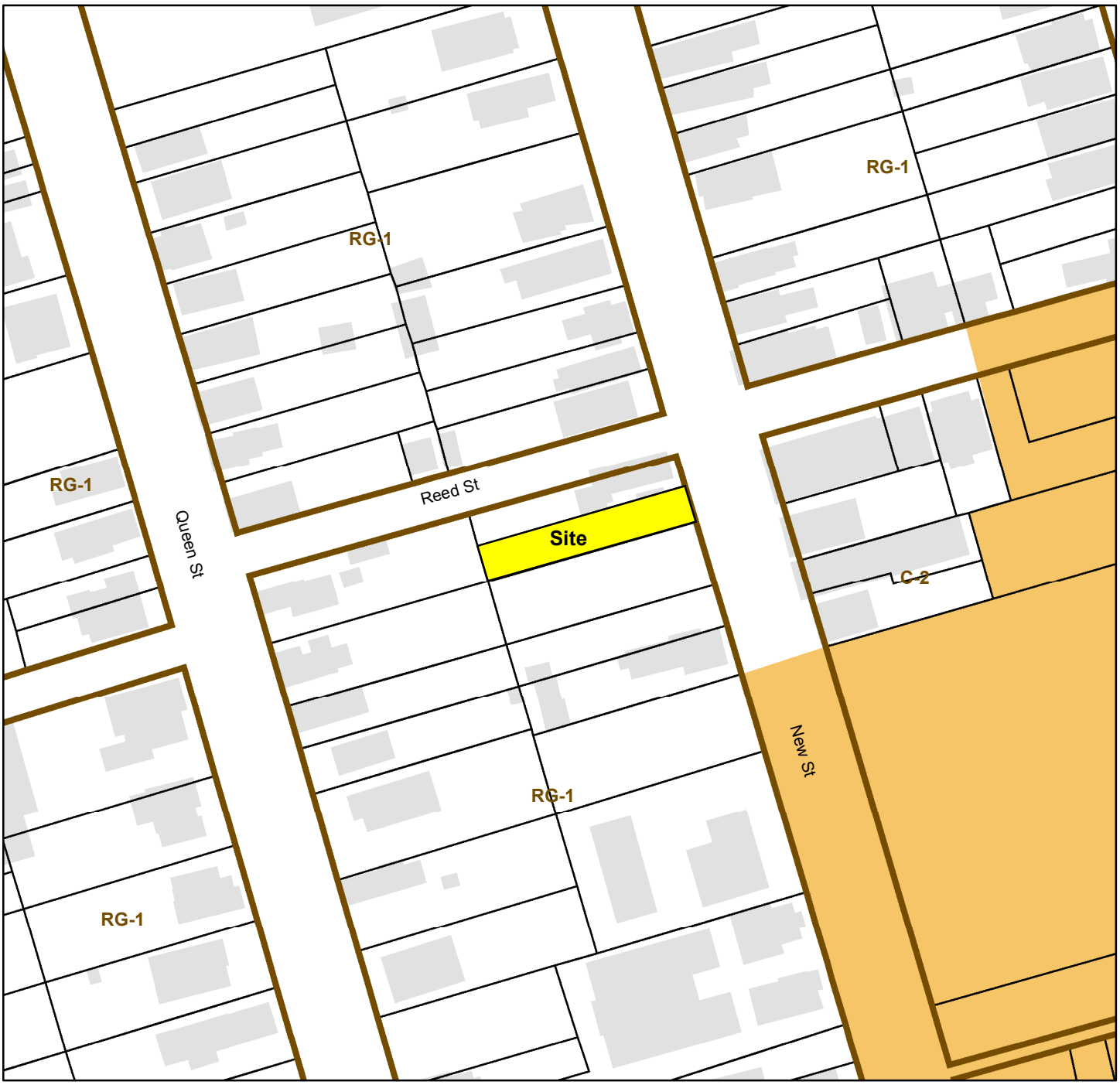
- The variance requested is not the minimum variance necessary to provide for reasonable use of the land. The property was used as a one-family dwelling prior to its conversion and can be restored to this use. No variance is necessary to allow the property's use as a one-family dwelling.

- The requested variance for the restoration of a two-family dwelling represents a radical departure from the requirements of the ordinance, because the RG-1 zone in which the property is located has been amended to prevent and reverse the proliferation of two-family dwellings downtown.

City of Dover

Department of Planning & Inspections

Application No.: V-16-02



Title: Lands of Dowd
Address: 104 S New St
Parcel ID: ED-05-077-09-01-34-.00-000
Zoning: RG-1
Owner: James E. and Joann C. Dowd
Date: 12/29/2015

Legend

- Dover Parcels
- Zoning
- Historic District
- 2012 Buildings

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