CITY OF DOVER
BOARD OF ADJUSTMENT MINUTES
February 19, 2014

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, February 19, 2014 at 9:00 A.M. with Vice Chairman Ericson presiding. Members present were Mr. Hufnal, Colonel Ericson, and Mr. Keller. Chairman Sheth and Mr. Senato were absent.

Staff members present were Mrs. Townshend, Mrs. Purnell, Mrs. Harvey, Bill Cook, and City Solicitor Rodriguez.

APPROVAL OF AGENDA

Mr. Hufnal moved to approve the agenda as submitted, seconded by Keller and unanimously carried 3-0. Chairman Sheth and Mr. Senato were absent.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF JANUARY 15, 2014

Mr. Hufnal moved to approve the meeting minutes of January 15, 2014 with the necessary corrections, seconded by Mr. Keller and unanimously carried 3-0. Chairman Sheth and Mr. Senato were absent.

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATIONS

Mrs. Townshend, Director of Planning and Community Development stated that the meeting would be conducted in accordance with the approved agenda. She reviewed the procedure for the meeting. She noted that approved variances expire after one (1) year if the approved project has not commenced; that all public notice for the application on this agenda was completed in accordance with code requirements; and the meeting agenda was posted in accordance with Freedom of Information Act requirements.

NEW BUSINESS

Applicant #V-14-03:

222 West Reed Street. Union AME Church has applied for a variance from the requirements of Article 4, §4.14 of the *Zoning Ordinance*, pertaining to lot depth, side yards, and rear yard. The subject property is zoned C-2 (Central Commercial Zone). The Tax Parcel is ED-05-077.09-01-36.00-000. The owner of record is Union AME Church.

Mrs. Townshend, Director of Planning and Community Development, submitted the following items for the record: staff report, survey drawing, and applicant response to variance criteria.

The legal notice was published in the Delaware State News on February 9, 2014, and the public was notified in accordance with the regulations.

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

Representative: Rev. Ruth Evans, District Superintendent of Union AME Church.

Rev. Ruth Evans was sworn in by Mr. Rodriquez.

Rev. Evans testified that a variance was applied for because the house is in such order that it cost more than they can afford to renovate. The house would need to be gutted out and redone. Several people have looked at the property and they are interested in purchasing and renovating the house. The variance is to separate the house and the church that is on one parcel. The reason for the separation is to sell the house.

Vice Chairman Ericson stated that there was an advisory comment to the applicant at the end of the Staff Report. He wanted to draw Rev. Evans attention to the comment. He wanted to point out that there are certain limitations that he hoped she understood. The residential use of the floor of the building is not permitted in the C-2 (Central Commercial Zone). The residential use at 222 W. Reed Street had been a legal non-conforming use, but that use has been discontinued for more than one year. The utilities to the house were terminated in January 2013, and the house was registered as vacant in May 2013. While this does not preclude the subdivision of the property into two parcels if the variance is approved, an additional variance or a rezoning application may be necessary in the future in order to restore the residential use.

Responding to Rev. Evans as to what page Vice Chairman Ericson was referring, Vice Chairman Ericson and Mrs. Townshend stated page 4 of the report.

Vice Chairman Ericson stated that he wanted to make sure that Rev. Evans understood that if the Board of Adjustment agreed to the variance to separate the two parcels that there will be limitations on the property for residential use and zoning changes may need to be made as well as other variances in order to use it as a residential use. Approval of zoning changes and variances are not guaranteed.

Responding to Mr. Keller question if she had the comments on page 4, Rev. Evans stated that she did not have a copy of that page sent to her. Mrs. Townshend provided her a copy at the meeting.

To make sure she had a clear understanding Rev. Evans questioned if the variance was approved today she would still need to file for a variance to allow the residence and if it is not approved after the house is completed and no one can live in the house. Responding to Rev. Evans Mrs. Townshend stated that the first issue today is the variance would allow her to subdivide the property and be able to sell it. Because the property has been vacant for more than a year the residential non-conforming use has expired. A variance request to extend the legal non-conforming use could be submitted. If Rev. Evans chose to submit the request it would be better for her to wait until she had someone ready to occupy or renovate the house because the variance is only good for a year. It is something that can be done as part of the agreement of sale. In order to sell the property the lot line needs to be there. The other option would be to come back before the Board of Adjustment for a variance to continue the non-conforming use or potential rezoning. There are different ways to address the use issue. There may also be changes to the zoning text that could change this in the future. The last use was a single family home and it is not allowed in the C-2 zone. The City is looking at some changes to the zone that could potentially allow this in the future and this could become a non-issue.

Mr. Keller stated that it was important that Rev. Evans have a copy of the Advisory Comments because it prompted a number of issues in his mind first of which that it had been, but it is not

now a legal non-conforming use, he was uncertain as to the condition of the property, etc. without photographs being submitted. It sounds as if the property is somewhat in a rundown state. Responding to Mr. Keller, Rev. Evans stated that it is somewhat. Since the time the last tenant was in the house it was vandalized and all items were stolen.

Vice Chairman Ericson stated that the Board of Adjustment cannot speculate what the future use of the property is. The Board of Adjustment needs to concentrate on the variance that separates the two (2) lots. It was explained to the applicant that there may be limitations with the lot on what the new owner can do with it in the future.

Mr. Keller stated that his view is that the requested variance with regard to parcel A would make for all practical purposes the entire lot buildable. It is a rear yard setback of 3/10 of a foot (3-4 inches) the same difference with the extreme side yard. Looking at the Rich Vetter Minor Sub-division Plan, which points out the various dimensions of the previous residential use which was legal non-conforming because it existed apparently prior to zoning. It is no longer legal non-conforming and the house has been vacant for well over a year. There have been no utilities. Their previous use as residential is no longer a non-conforming use and it is not allowed in the C-2 zoning. He had reservations about looking at the various setbacks for an existing structure that does not conform to zoning. It sounds as if it would be some investment to bring it up to a useable even if it is in a C-2 classification to some regard. Once the non-conforming status is lost given the circumstances of the lot and structure he has to weigh in his mind do they revert back to a legal non-conforming status for the structure or move ahead and try to gain more compliance for the existing zoning which is the C-2 usage.

Mrs. Townshend stated that there are a number of characteristics that are existing conditions. For instance, if the current structure was removed and there was reconstruction within a year, the current setback could be used. For the purposes of the subdivision and included in the Staff Report were all of the non-conformities, but the real issues that keep it from being sub-divided without a variance are the lot depth and the side yard. The other items are existing conditions that would for instance what would be the rear yard of .3ft. that exist and is not going to change or be increased by sub-dividing. Because you are looking at a different lot depth because you are looking at it from Reed Street and not New Street and that is the reason it would have a lot depth of 48.2ft. and a side yard with the church property because they are on the same property and there would be a reduced side yard of 1.8ft. In a C-2 Zone you can go to zero, but if you have anything it is supposed to be 10ft. The purpose of that is so that you will not end up with a vacant space between buildings that you do not have enough room to get into to maintain. Therefore, you either abut the property or you go 10ft. back.

Mr. Hufnal stated that he noticed in the staff comments of the report that a requested variance was consistent with the immediate vicinity because this area of the city was developed long before the zoning standards were established. Therefore as long as it is maintained in the footage that is currently there they can redo it anyway. Mrs. Townshend concurred, but they cannot strike a lot line.

Mr. Hufnal stated that the applicant's point today is that unless the variance is approved they would not be able to sell the property and they could not make improvements unless it is approved today, because they did not have the necessary funds; Rev. Evans concurred.

Responding to Mr. Keller's question whether the church is a legal use under C-2, Mrs. Townshend stated that it is a Conditional Use so any expansion of the church would have to go back before the Planning Commission as an expansion of a Conditional Use. A place of worship is a Conditional Use in C-2 Zone.

Responding to Mr. Keller's question of other allowable uses in the C-2 Zone, Mrs. Townshend stated retail services, restaurants, which include the downtown zone.

Responding to Mr. Keller's question whether it consists of any office configuration of any sort such as an office for a church, Mrs. Townshend stated that an office would be permitted. It may require a Conditional Use.

Responding to Mr. Hufnal's question whether the person who purchased the property would need to apply for a rezoning or some type of variance on the property, Mrs. Townshend stated unless they would establish a C-2 Permitted Use. To go back to a residential it would require some type of action either a variance or rezoning or a change to the code which is a potential.

Responding to Mr. Keller's question whether under the City code there is an established regulatory process for subdividing property, Mrs.Townshend stated yes, the subdivision itself will go to the Planning Commission as a Minor Subdivision, but it cannot go through that process unless it meets the bulk standards of the zone. That is the reason the non-conformance needs to be addressed through a variance before it can go before the Planning Commission.

Responding to Mr. Hufnal's question whether that area was a mixed used area because there were other professional type buildings in the area, Mrs. Townshend stated yes, for instance in this block the property immediately east of this property is a residential property zoned C-2, properties to the north across Reed Street are zoned RG-1 and are residential in use, across New Street the properties are RG-1 and are residential in use and about a block from the firehouse. It is a transitional area out of the downtown commercial into the downtown residential.

Responding to Mr. Hufnal's question whether it would be in keeping with other things in the area with the approval of the variance, Mrs. Townshend concurred.

Responding to Mr. Keller's question whether there was any established time period at which time a property established as legal non-conforming use with the pitfalls of no utilities, etc. determined to be registered as vacant, a time period within which thereafter the City would be compelled to require removal of that structure as unsafe and uninhabitable, Mrs. Townshend stated not through the *Zoning Ordinance,* but if it fell into enough disrepair that it became a dangerous building by the City code definition and went forward to City Council, demolition could be required. In terms of the zoning as long as the building remains the City cannot require compliance with newer setbacks. If the building was removed and not rebuilt within a year it would have to meet current standards.

Vice Chairman Ericson declared the public hearing open.

There being no one wishing to speak, Vice Chairman Ericson declared the public hearing closed.

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

Mr. Hufnal moved to approve application V-14-03 requested variance to be in keeping with the character of the zone of the other properties in the area and unless the variance is granted the property would not be able to be subdivided to create the lot as desired and with the understanding that the applicant has to maintain the Advisory Comments. The motion was seconded by Mr. Keller and unanimously carried 3-0. Mr. Sheth and Mr. Senato were absent.

Applicant #V-14-04:
1387 North DuPont Highway. 1387 DuPont Highway LLC has requested a variance from the requirements of Article 4 §4.15 of the *Zoning Ordinance* pertaining to the minimum lot width required for each building on the lot. The subject property is zoned C-4 (Highway Commercial Zone) and subject to the SWPOZ (Source Water Protection Overlay Zone). The Tax Parcel is ED-05-057.00-01-15.00-000. The owner of record is 1387 DuPont Highway LLC.

Mrs. Harvey, Planner, submitted the following items for the record: staff report, site diagram, and written statement.

The legal notice was published in the Delaware State News on February 9, 2014, and the public was notified in accordance with the regulations.

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

Representative: Mr. Gregg Moore, Engineer and Architect, Becker Morgan Group.

Mr. Moore was sworn in by Mr. Rodriquez.

PRESENTATION

Mr. Moore testified that the request is for a variance for frontage of what was formerly known as the Dover Volkswagen site. Referring to the presentation, the aerial of the site and the 400ft. is the actual frontage of the property located along Route 13, and to the left are the State Police Barracks and Troops, and to the right is the Dover Mall entrance, and to the back is the loop road of the mall. There is Subaru and Volkswagen dealership on the property. There was formerly an Audi dealership that is no longer residing at that location. There is a detailing and maintenance building in the rear. The proposal is to add an additional building to the right adjacent to the existing building and the new building would become the new Volkswagen Dealership building. The existing building would be converted to sole location of the Subaru Dealership. Referring to the logos, in the current market place and auto industry the vendor owners are requiring separate buildings so that they have a branded look and separated buildings to handle their sales. This is also being done on other properties (example: Winner Ford and Hyundai). The City Code suggests that in the current zone there can only be one (1) building for every 150ft. of frontage and they have 400ft. of frontage. The property is over five (5) acres and has over 600ft. of depth along the rear. The real frontage is Route 13 because that is where it gains it access and main public facility road. The mall road and the loop road behind it serve as a public road providing

full access to the mall from Route 13 and around. We are providing for a future connection that could be made to the mall exit road which the City of Dover Planning Department and DelDOT have asked for which would provide a link to this property to the adjacent property. DelDOT has a proposal to relocate this roadway right along the border to better serve neighborhoods and traffic in this area and that would then link the property. Overall the roads function as frontage because they are heavily traveled by the public going in and out of the mall, and provide additional frontage at least from an appearance to this property.

Responding to Mr. Keller's question whether with the contemplation of DelDOT and Planning providing a separate entrance from the loop road would that entail removing the entrance from Route 13 northbound, Mr. Moore stated that they are proposing to remove the two entrances that are there now because the City and DelDOT would like to see them consolidated into one point of access which they are agreeable to doing (he referred to the presentation). Once the road is removed there will be a side connection that will allow people not to go on Route 13 and gain access. This is a strategy that the City and DelDOT have been asking landowners to do.

Responding to Mr. Keller's question whether this would not necessarily eliminate the entrance exit from Route 13 north, Mr. Moore concurred. They are doing it voluntarily as part of the redevelopment of the site. With him at the meeting was Mr. Perry who represents the owner of the property. Referring to the presentation this is actually the prototypes from the manufacturers that will be affected. They will recreate the Subaru dealership along with the look of the existing building. It actually fits the perimeter of the length and width. They will need to renovate the façade of the building to make that appearance. The Volkswagen Dealership would reside in a separate building next to the existing building.

Mr. Alan Perry was sworn in by Mr. Rodriquez.

Representative: Mr. Alan Perry, Owner.

Mr. Perry also responding to Mr. Keller's question stated that it is their expectation that if access to the mall road would be an egress only from their site. It will not be an entrance to the mall only an exit. It would only be an egress (to the left) for their customers to leave their site.

Mr. Moore stated that this would give them the ability to get to the mall without going back onto Route 13.

Mr. Moore stated that the adjacent property is the State Police headquarters with 700ft. of frontage, and that the variance would not have high impact on the character of the neighborhood. The State Police actually has twelve (12) different buildings in the complex in the rear that are blocked by the front buildings. The way they plan to develop the site their two (2) buildings in the front will be the very prominent buildings and the buildings in the back will be more hidden.

Responding to Mr. Keller's question for clarity as he referred to the copy of the original and proposed plan the dark line behind the accessory building is not the property line, Mr. Moore concurred. The property line is highlighted in yellow.

Mr. Moore stated that in 2002 the previous owner gained approval to do the same plan and separate the Volkswagen Dealership. When the previous owners sold the property they portrayed to the new owners that they could do this project without any problems because they had already received approval from the Planning Commission, but this expired. The new owners bought the property believing that they could in fact have three (3) separate buildings on the site.

Mr. Moore stated that in summary they do not think that the neighborhood character has changed. It would be very difficult if not impossible to have two (2) different dealerships reside in one building under the terms of how the dealerships are being forced on the current owners. They think the property is peculiar and that they have two public roads, one of which they will connect on the side. The five (5) acre parcel can accommodate the scale and size of building being proposed.

Responding to Mr. Keller's question whether there were any definitions of building under the C-4 zone, Mrs. Townshend stated that no. The rear building is an accessory structure and you are looking at principal buildings.

Responding to Vice Chairman Ericson's question what effect it would have on the variance if they considered the accessory building, Mrs. Townshend stated that it would give justification because you are still looking at two (2) principal buildings with an accessory.

Responding to Mr. Keller's question whether there was a definition of a 10x10 equipment building if it was different than a 200x300 auto dealership building, Mrs. Townshend stated no, it is per building.

Responding to Mr. Hufnal's question whether the display lot for the cars is where the proposed building is located and is it going to go in the back in the future, Mr. Moore stated that they are going to pave more of the site and have display along the sides and in the back.

Responding to Mr. Hufnal's question whether the current layout of the cars there is actually more ground to the right (south) side, Mr. Moore state that currently there is a large area of grass in the back that will be paved and this will allow them to store new products. They will use the frontage as show area as well as some of the side and back.

Responding to Mr. Hufnal's question whether the ground to the right where the cars are parked is the mall property, Mr. Moore concurred. In fact, there was discussion to realign the road on the edge of the property line. He was not sure when it would happen, but DelDOT is pressing for it to happen to correct some of the problems in the area.

Vice Chairman Ericson declared the public hearing open.

There being no one wishing to speak, Vice Chairman Ericson declared the public hearing closed.

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

Mr. Keller moved to approve application V-14-04 requested variance supported by Staff

Recommendations as it is viewed that there are no complications with impact upon the nature of the zoning in which the property lays, no adverse impact on the character of the immediate vicinity as a result of an approval of the variance, additionally supported by the testimony given this morning by Mr. Moore and Mr. Perry and submitted exhibits. He was not totally convinced that the Exceptional Practical Difficulty exist in his mind. The motion was seconded by Mr. Hufnal and unanimously carried 3-0. Chairman Sheth and Mr. Senato were absent.

Mr. Hufnal moved to adjourn the meeting, seconded by Mr. Keller and unanimously carried 3-0. Chairman Sheth and Mr. Senato were absent.

Meeting adjourned at 9:53 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary