CITY OF DOVER
BOARD OF ADJUSTMENT MINUTES
February 15, 2017

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, February 15, 2017 at 9:02 A.M. with Chairman Sheth presiding. Members present were Chairman Sheth, Mr. Hufnal, Mr. Keller and Colonel Ericson. Mr. Senato was absent.

Staff members present were Mrs. Townshend, Mrs. Purnell, Mr. Diaz, Mrs. Harvey, and City Solicitor Mr. Nick Rodriguez.

APPROVAL OF AGENDA

Mr. Hufnal moved to approve the agenda as submitted. The motion was seconded by Colonel Ericson and unanimously carried 4-0. Mr. Senato was absent.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF JANUARY 18, 2017

Mr. Keller moved to approve the meeting minutes of January 18, 2017 with the necessary corrections, seconded by Colonel Ericson and unanimously carried 4-0. Mr. Senato was absent.

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATION

Mrs. Townshend, Director of Planning and Community Development stated that the meeting today will be conducted in accordance with the agenda. There are three (3) new applications 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 recess 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 applications on this agenda was completed in accordance with code requirements. The meeting agenda was posted in accordance with Freedom of Information Act requirements.

NEW BUSINESS

Applicant #V-17-03

1218 Harrison Drive. Thornton and Lisa Spellman have requested a variance from the requirements of Article 4 §4.1 of the *Zoning Ordinance* pertaining to the maximum permitted lot coverage to retroactively allow construction of a 15-foot by 52-foot driveway. Subject property is zoned R-8 (One Family Residence Zone). The Tax Parcel is ED05-068.14-03-49.00-000. The owners of record are Thornton L Spellman Sr. and Lisa Spellman.

Exhibits for the Record: Staff report, zoning exhibit, statements and plans submitted by the

applicant. Legal Notice was published in the Delaware State News on February 5, 2017. The public was notified in accordance with regulations.

Mr. Diaz gave a brief overview of the application.

Mr. Keller questioned whether there had been subsequent inspections of the driveway as constructed? Mr. Diaz replied no, it is typically done after the building permit is approved.

Mr. Keller questioned whether a Building Inspection personnel had viewed the driveway; does it appear that it has been constructed to some standard which is acceptable to the City. Mrs. Townshend replied that the City does not actually have standards that regulate the construction of driveways. When a permit is issued for a driveway the City is looking at lot coverage. The code requirement for a parking surface is that it be a hard paved dust free surface. It is not like a City street where there is a specific standard and a specific detail in terms of the subsurface and surface.

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

Colonel Ericson commented as he referred to Staff Response "construction work subject to a variance application already being completed is not guaranteed grounds for the granting of a variance, though the Board may consider this situation as a factor." He did not think that the sentence should be included in the response because it is not accurate. If someone builds something on their property without a building permit, shame on them. The Board does not consider it as part of the factor because they did not get the proper permission.

Mr. Keller commented that he knew after the circumstance requests such as this it is classified as a self-imposed hardship. Typically, self-imposed hardships are not looked favorably upon but is not necessarily an action in and of itself to warrant a denial of a variance request after the fact. He looks at the information submitted as a relatively minor increase in the impervious area coverage.

Mr. Diaz stated that Mr. Keller's comments would be the correct terminology.

Mr. Hufnal commented that he would believe that the self-imposed hardship originated because of the summons that was given because of the deterioration of the driveway by the Code Enforcement Office. Mrs. Townshend replied that this was correct.

Colonel Ericson commented that there have been cases where people put additions on their houses and then came before the Board, the Board did not approve it and the addition had to be removed. Therefore, he would not put that statement in any future report. Mr. Diaz replied that he would take that information under advisement.

Representative: Mr. Thornton L. Spellman Sr. & Ms. Lisa Spellman, Owners.

Mr. Thornton L. Spellman Sr. & Ms. Lisa Spellman was sworn in by Mr. Rodriguez.

Mr. Spellman testified as stated they received a citation for their driveway being decayed and they gathered from the citation that the driveway needed to be replaced. They currently had an extension on the side of the house where they parked their trailer. Upon reading the citation he did not actually see where they needed a permit for the replacement of the driveway. They later found that the back portion of the driveway was also cracked. Instead of waiting for that portion to decay and crack even more, they replaced the entire driveway. In doing so, the driveway was widened by 1-foot (52 feet to the walk way). Previously it was an angle, now it is straight and they have exceeded what has already been replaced. The Code Enforcement Officer came out to inspect after work was completed and upon inspection he was asked where was the permit for doing the work. In return they had to backfill everything that they were trying to do. They made a mistake by not getting a permit at the beginning.

Mr. Keller questioned whether the house fronts on Harrison Drive? Mr. Spellman replied yes.

Mr. Keller questioned whether White Oak Road is at the rear of the property? Mr. Spellman replied yes.

Mr. Keller questioned whether there was a sidewalk to the rear of the property? Mr. Spellman replied yes. There is a walkway and a ditch that comes down to the area.

Mr. Keller questioned whether there was vehicular access from White Oak Road? Mr. Spellman replied no.

Mr. Keller questioned whether the Code Enforcement Officer and Building Inspector made an appearance at the property after the construction and that is when Mr. Spellman found out that the needed a permit. Mr. Spellman replied yes and at that time he was informed that he needed a permit and printed information was shown to him in the letter when a permit is needed. He informed the Code Enforcement Officer that he was unaware that he needed a permit.

Mr. Hufnal questioned whether the reason for the extension to the width of the driveway was because owner has a trailer for lawn equipment and it is wider than a normal trailer type facility? Mr. Spellman replied yes, he has a 20-foot trailer with a cab pickup truck. Before this was done almost 15-years ago the trailer would be parked on the street and again because of the decay everything was replaced.

Mrs. Townshend added that as mentioned by Colonel Ericson and Mr. Keller one of the issues whether the work was done without a permit is a self-imposed Exceptional Practical Difficulty or hardship. However, the reason for expanding the driveway by a foot was to protect the area around it from being rutted by riding on it. Again, from the community character and Code Enforcement standpoint it is an issue in the City where people are parking partially on the driveway and it does start to degrade the character of the neighborhood. The intent with the expansion of the driveway was certainly not to violate the code, but to be stewards.

Mr. Keller stated that from all the information heard it sounds as though it is an oversight as opposed to some sort of a blatant disregard for what is otherwise required of the City Permitting

process.
Mr. Hufnal stated that it was already a non-conforming lot that was allowed 35%, but took up 38.5%, therefore; the additional from the increase in the size made it 39.8% which is really only 1.3% variance.

Mr. Hufnal questioned whether it would be a 1.3% non-conforming variance? Mrs. Townshend replied correct.

Chairman Sheth opened the public hearing.

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

Mr. Diaz stated that he received a call from a neighbor questioning whether the property backed up to their property. He replied to the call by saying that it did not.

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

Colonel Ericson moved to approve application V-17-03 based upon the evidence presented today in written form and the testimony. The motion was seconded by Mr. Hufnal and was unanimously carried 4-0. Mr. Senato was absent.

Applicant #V-17-04
218 West Reed Street. Marion Lott Sr. and Renora H. Lott have requested a variance from the requirements of the *Zoning Ordinance*, Article 3 §13.1 pertaining to permitted uses in the C-2 Zone and Article 7 §1.11 and 1.21 pertaining to expansion of nonconforming uses in order to allow construction of a 30-foot by 16-foot addition to a one-family dwelling. Subject property is zoned C-2 (Central Commercial Zone). The Tax Parcel is ED05-077.09-01-38.00-000. The owners of record are Marion L. Lott and Renora H. Lott.

Exhibits for the Record: Staff report, zoning exhibit, and statements and photos submitted by the applicant. Legal Notice was published in the Delaware State News on February 5, 2017. The public was notified in accordance with regulations.

Mrs. Harvey 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.

Mr. Marion Lott and Mrs. Renora Lott were sworn in by Mr. Rodriguez.

Representative: Mr. Marion Lott and Mrs. Renora Lott, Owners.

Mr. Lott stated that he agreed with Staff Response and Recommendations. He testified that he moved into the home in 1988. The home was originally a crack house before it was purchased by them. They purchased the house with the intent of refurbishing as well as making improvements

to accommodate their family gatherings. He puts a lot of emphasis on family gatherings especially for certain occasions and holidays. Since moving to area in 1988 his family has expanded. He purchased the property in 1993 and other than his immediate family he has other family members that have moved into the area. They would like to do the addition because there are expert cooks in the family and everyone wants to display their favorite dish when they all come together. Obtaining the addition would add more space to have more fun during our family gatherings. At the current time the kitchen is extremely small and they cannot update it with more modernized kitchen utilities. They also do foster care and would like to maintain a nice family setting for meals.

Mr. Hufnal questioned whether the addition would accommodate a larger kitchen and dining and den area? Mr. Lott replied kitchen and dining area (open space).

Mr. Keller questioned Mrs. Harvey whether the Building Permit was applied for on November 21, 2016 and if the Building Permit was issued. Mrs. Harvey replied yes a Building Permit was submitted and no the Building Permit was not issued. It was determined that it was a legal non-conforming use. The applicant was then informed that they needed to apply for a Use Variance to the Board of Adjustment.

Mr. Keller stated that he noticed in the information submitted and the photos (exhibits 3 and 4) that construction has commenced at the rear of the house. Mr. Lott replied that he was unaware the property was zoned C-2. He thought the property was still zoned residential. He realized that when the work commenced that he did not have the Permit and the individual that was doing the work knew the codes and they went above and beyond the codes. He was under the impression that things were being done in alignment with what the City required for that area that the Permit would be approved. Therefore, he assumed the Permit would be approved in at the end of November or beginning of December and therefore started the work. At the same time photos were taken of everything that was done. He was notified regarding the zoning of the property.

Mr. Hufnal mentioned that when the property was purchased 1993 it was originally zoned RG-1 and it was changed in the 1970's to C-2. He questioned whether Mr. Lott if he was aware of the change in the zoning at the time of purchase? Mr. Lott replied no, he was under the impression it was still residential.

Colonel Ericson questioned and asked for clarification of Mrs. Harvey comments in the Staff Response "it would deprive the applicant of a reasonable use of the building by not allowing the expansion of the dwelling to accommodate modern aspects of a kitchen and dining area." Mrs. Harvey replied that the applicant is very limited at the current time with what he can do as far as having family gatherings.

Colonel Ericson stated that it is adequate to live in the house, so he does not see how the applicant can say that reasonable use because the building is currently being used. It is a desire to expand, but it is not really depriving him the reasonable use of the building. Mrs. Harvey replied that the applicant mentioned in his report that he was limited with certain appliances and with things that he could do in that area, so therefore he is limited to what can be done in that area.

Mr. Keller stated that he agreed with Colonel Ericson the conditions are not peculiar to the building as opposed to the desires of the applicant necessarily to accommodate a greater number of people and family members at the family gatherings.

Mr. Lott stated that the current size restricts the use. His den is also their dining room. Photos were taken and submitted to show that the dining room itself consumes all the space that is in the den.

Colonel Ericson questioned how many people are currently living in the house? Mr. Lott replied on average four people.

Colonel Ericson questioned how many bedrooms are in the house? Mr. Lott replied four and they are all on the upper level.

Mr. Hufnal stated that in the Staff Report he noticed that the property lies with the Restoring Central Dover area and the Downtown Development District and emphasis was on improving the housing in this area and the applicant request to expand met the goals of the 2008 Comprehensive Plan and also the City 2015-2019 Consolidated Plan by supporting revitalization.

Mrs. Townshend replied that Mr. Hufnal was absolutely correct. When you look at some of the standards for variances consistency with the Comprehensive Plan is important and restoring Central Dover focuses on homeownership. In this case you have a homeowner and there is a focus on maintaining and improving existing housing stock. The other observation is that in the review it was reviewed as a Use Variance, but really it is an expansion of a non-conforming use which probably should be reviewed under an Area Variance standards which is not the deprivation of all reasonable use. It is the Exceptional Practical Difficulty standard. She thinks when you look at the criteria that relates to the character of the community and that the improvement of this property improves the character of the community and it is consistent with the character of the zone. From the standard of Exceptional Practical Difficulty again you are in an area that is very land constrained by virtue of being in the downtown and this allows that the Exceptional Practical Difficulty is that it makes it very difficult to have some of the modern conveniences and not expand the building. It was discussed whether this would be a candidate for rezoning rather than a variance, but even with a rezoning it would need a variance because of the size of the lot.

Colonel Ericson stated that he had no objection of what the applicant was trying to do and it makes sense to him, but the Board always get concerned about setting precedent. He looked at the Use Variance and asked why did they put a Use Variance. He asked if they wanted to amend the report to an Area Variance.

Mrs. Townshend recommended applying the Area Variance standard because it is an existing use and you are not allowing a use that isn't allowed. You are allowing expansion of the existing use which is non-conforming.

Mr. Hufnal stated that when you look at the addition on the back the expansion to the rear does not change the physical appearance or the character of the street and neighborhood, and certainly not detrimental to public welfare. It is an improvement that is in line with the standards that have been set in the Comprehensive Plan and Consolidated Plan.

Mr. Keller stated that his only hesitation with the application being submitted as a Use Variance there is a bit more rigid criteria that the Board must address and apply. The Use Variance criteria obligates the Board to determine that three separate criteria in fact exist. The first of which follows with comments by Colonel Ericson with which he agrees. Every application only appears before the Board because they have some peculiar interest in bringing about a variance into the existing Codes and Ordinances of the City regarding to building, etc. He is not necessarily convinced that that the desire to have additional family members with gatherings, dinners, etc. The photos represent with regard to improved or modern appliances it appears that the applicant has a smooth top stove microwave. He did not see a photo of refrigerator, but presumes there was a refrigerator in the kitchen. Mr. Lott replied that there was a refrigerator in the kitchen.

Colonel Ericson stated that if the Board is going with an Area Variance as opposed to a Use Variance he asked that the Planning Office provide an amended staff report.

Colonel Ericson moved to table application V-17-04 for additional criteria information. The motion was seconded by Mr. Keller and unanimously carried 4-0. Mr. Senato was absent.

Applicant #V-17-05

53 Roosevelt Avenue. JCD Investments LLC has requested a variance from the requirements of Article 6 §3.11 of the *Zoning Ordinance* pertaining to the maximum number of parking spaces to allow construction of three (3) parking spaces beyond the maximum eleven (11) permitted for a total of fourteen (14) spaces. Subject property is zoned C-4 (Highway Commercial Zone). The Tax Parcel is ED05-077.17-05-73.00-000. The owner of record is JCD Investments LLC.

Exhibits for the Record: Staff report, zoning exhibit, and statements and plans submitted by the applicant. Legal Notice was published in the Delaware State News on February 5, 2017. The public was notified in accordance with regulations.

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

Mr. Gregory Fusco and Mr. James Medved were sworn in by Mr. Rodriguez.

Representative: Mr. Gregory Fusco P.E, Key Engineers and Mr. James Medved, JCD Investments, LLC.

Mr. Fusco stated that the application before the Board today was for an Area Variance. Mr. Medved wishes to develop a medical office building at 53 Roosevelt Avenue. The property is just located off Route 13 South. Mr. Medved proposes to construct in the C-4 zone an approximately 2,520 S.F., one-story pediatric medical office. Together with the medical office Mr. Medved would like to construct 14 parking spaces on a bituminous surface associated with those site improvements will be stormwater management requirements that must be met, and lighting landscape buffing. The C-4 commercial district is also associated with the site adjoining towards Route 13, and directly behind the property is a residential district that is zoned R-8. There are also medical office buildings in the C-4 zone across the street on the opposite side of the property. Directly adjoining the property to the west is a salon in a residential dwelling. Directly behind the

salon is a large parking area. In accordance with the Municipal Code there is one (1) parking space required for every 300 S.F. of building area and this would translate into nine (9) parking spaces for the development. Mr. Medved wishes to propose fourteen (14) parking spaces. This proposal violates Article 6 §3.11 of the Municipal Code. You are not permitted to create any more than 25 percent additional parking that is required in the City. The 25 percent would be three (3) parking spaces. Mr. Medved is proposing five (5) parking spaces which is 55 percent beyond the required code. Mr. Medved office will have a total of seven (7) employees (two physicians and five staff members). They want to make sure that each employee has a parking space on site. This would leave seven (7) parking spaces for patients.

Colonel Ericson stated that the Board has covered this type of problem several times in the past and as he understands the rule of having a number of maximum parking spaces is an unusual requirement and it was really intended for the big boxes retail stores to cut down the area that the parking lots take were not needed. It is really not applicable to the smaller offices such as this, he asked if this was true? Mr. Diaz replied correct, revising the maximum parking standards has been on their work plan for a long time, but they are still working through a number of other needed changes to the Zoning Ordinance including those in the residential zone and in Article 5 the supplemental regulations. Possible changes to Article 6 are still down the line.

Mr. Keller stated that he would like to add that he believes in at least two (2) cases to his recollection, if not more, the Board has had several circumstances and the comments have been favorable to the City Staff as to readdressing and increasing that allowable number of parking places in situations very much alike, if not exactly like this circumstance as well.

Mr. Keller questioned whether either of the representative's present were managing members of the JCD Investments, LLC. Mr. Medved replied yes.

Mr. Hufnal questioned whether the parking was located in the rear and backs up to the parking for the hair salon? Mr. Fusco replied yes.

Mr. Keller questioned the plans for adequate fencing between the two properties, Mr. Fusco replied that they will be submitting a formal site plan after this step and it is the intent of the applicant to conform as best to the ordinance and provide solid opaque fencing with landscape buffering.

Mr. Hufnal commented that he was in favor of allowing the increase, because by not allowing the increase would force customers to park on the street and it is very dangerous near the intersection. It would very difficult to find ample parking without approving this increase. Mr. Fusco agreed with Mr. Hufnal's comments and stated that it was the testimony that he was going to provide.

Mr. Fusco stated that the City of Dover parking ordinance is great. The fact that you are minimizing the amount of impervious coverage is very rarely seen or done this way. He thinks the City is doing the right thing because we cannot handle the storm water and environmental aspects.

Chairman Sheth opened the public hearing.

Mr. John Russum was sworn in by Mr. Rodriquez.

Mr. Russum owner of the beauty shop inquired about how all of the parking spaces would fit the lot. When the property was purchased in the past the City would not allow the trees to be cut down. However, the trees do need to be cut down. He has to trim the trees frequently because they hanging over onto his property causing a parking problem. He wanted to know how this would work?

Mr. Keller questioned whether there were any restrictions on cutting the trees? Mr. Diaz replied that there are regulations on the clearing of woodlands. Upon his understanding this property was not considered woodlands.

Mr. Hufnal questioned whether the trees would fall under the Site Plan application? Mr. Rodriquez replied yes, it has nothing to do with the Board of Adjustment. This would be addressed by the Planning Commission.

Colonel Ericson questioned whether they are not allowed to cut down the trees they will not be able to get the number of parking places that they would like to have then it would be up to them whether or not they would like to continue construction of the building. The Board should not be involved in the decision regarding the trees.

Chairman Sheth informed Mr. Russum to express his concerns at the Planning Commission meeting.

Mr. Russum stated that he did not have anything asking the applicant having the medical center.

Colonel Ericson questioned the applicant about whether he was aware of the tree restrictions? Mr. Fusco replied it was discussed with the Planning Office and they were not informed that it was an issue.

Mr. Keller noted that in the Staff Report under Advisory Comments it states that "Improvements to the property are subject to Site Development Plan approval processes through the Planning Commission, and appropriate permits from the City of Dover Department of Planning & Inspections and other agencies." Consideration for the removal of the trees or allowing them to remain will subsequently be addressed and must be adhered to even after the variance considerations.

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

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

Mr. Diaz stated that he received a call from Mrs. Russum.

Mr. Hufnal moved to approve variance application V-17-05 based on the testimony given today and also to include the Advisory Comments to the applicant. The motion was seconded by

Colonel Ericson and was unanimously carried 4-0. Mr. Senato was absent.

Colonel Ericson moved to remove application V-17-04 from the table and finish discussion. The motion was seconded by Mr. Keller and unanimously carried 4-0. Mr. Senato was absent.

Mrs. Townshend stated that she provided responses to the criteria for an Area Variance. The nature of the zone that the property lies. The C-2 zone is a mixed use downtown zone. One-family dwellings are not permitted; however, existing one-family dwellings are permitted to continue. The character of the immediate vicinity and the contained uses therein. The immediate vicinity includes primarily residential uses. The property to the west is a church. The residential use is consistent with the immediate vicinity. To the east there are houses that have been converted to apartments. There is certainly a residential component to the neighborhood. Having spent a lot of time on the downtown redevelopment issues, if restrictions were removed, it may actually benefit the neighboring area through the investment in improving existing housing stock and keeping the homeowner in the area. The goal is to retain existing homeowners and to bring new homeowners into the area. Her response regarding a hardship: Failure to remove the restriction would result in an exceptional practical difficulty in that it would inhibit the improvement of the property to meet modern-day conveniences. It is an older house and if you are familiar with older houses you know that the kitchens are not quite what they are today and it affects the ability to retain homeownership and continue the improvement of the housing stock, which both of those are recognized goals in the 2008 Comprehensive Plan and the 2015-2019 Consolidated Plan, and the Restoring Central Dover Plan which is part of the City's Downtown Redevelopment District. While the property is zoned C-2 it is in a transitional area between the C-2 and RG-1 zones and therefore this variance would help to allow that property to maintain a viable homeownership use and be improved.

Colonel Ericson stated that was "well done" and other Board members agreed.

Chairman Sheth questioned the decline in homeownership? Mrs. Townshend replied that there has been a decline in the Downtown Development District which is the area which is the 225 acres in the downtown. We have an 86 percent rental rate and this is based on 2010 census. In the Restoring Central Dover study area which is a little larger there is a 75 percent rental rate. In this area in particular we have seen a loss of home ownership and it has been a priority through a number of identified plans to restore the level of homeownership.

Colonel Ericson stated that improving the housing stock is a worthwhile goal.

Mr. Keller commented that he hopes that the applicant can understand and respect the different types of criteria the Board is obligated to consider in the two different types of variance applications submitted, whether it is a Use Variance or an Area Variance. The Area Variance allows us to apply a bit of a lesser standard in the criteria that the Board has to evaluate. It is beneficial to the applicants in their case if there are any questions as to what was addressed and that we would afford the applicants to be able to speak.

Chairman Sheth thanked the applicants for their patience and informed them that the Board wanted to make sure they are making the decision. Mr. Lott replied that they respected that.

Mrs. Townshend stated that she wanted to clarify that the determination is that this application is an Area Variance because the Board is not deciding whether or not the property can be used as a residence. The Board is looking at whether that footprint as a residence can expand. Therefore, the Board is looking at the area and not the use.

Chairman Sheth opened the public hearing.

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

Chairman Sheth questioned if there was any additional correspondence for the record. There was none. Mrs. Townshend stated that she received a call from the church asking for the details.

Colonel Ericson moved to approve that the Use Variance application V-17-04 be changed to an Area Variance and the Staff Reponses under the current report on pages 3-5 be replaced by the Staff Report submitted to the Board during this meeting. Mr. Hufnal seconded the motion and unanimously carried 4-0. Mr. Senato was absent.

There was a brief discussion regarding applications and work being done without a permit.

Colonel Ericson moved to adjourn the meeting, seconded by Mr. Hufnal and unanimously carried 4-0. Mr. Senato was absent.

Meeting adjourned at 10:07 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary