CITY OF DOVER
BOARD OF ADJUSTMENT MINUTES
July 20, 2016

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, July 20, 2016 at 9:04 A.M. with Chairman Sheth presiding. Members present were Colonel Ericson, Mr. Senato, Chairman Sheth, Mr. Hufnal and Mr. Keller.

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

APPROVAL OF AGENDA

Mr. Hufnal moved to approve the agenda with the necessary correction, seconded by Mr. Keller and unanimously carried 5-0.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF JUNE 15, 2016

Mr. Keller moved to approve the meeting minutes of June 15, 2016 with the necessary corrections, seconded by Mr. Hufnal and unanimously carried 5-0.

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 5 agenda items: one deferred item under Old Business, and four new items 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.

OLD BUSINESS

Applicant #V-16-06

1310-1324 Forrest Avenue. Margaret H. Johnson has requested a variance from the requirements of *Zoning Ordinance* Article 3 §27.66 pertaining to the maximum allowed height of buildings located with the COZ-1 (Corridor Overlay Zone). Subject property is zoned C-2A (Limited Central Commercial Zone) and subject to the COZ-1. Tax Parcels are ED-05-076.10-01-01.00-000, ED-05-076.10-01-02.00-000, ED-05-076.10-01-03.00-000, ED-05-076.10-01-04.00-000, ED-05-076.10-01-04.01-000. The owner of record is Margaret H. Johnson.

At its meeting of June 15, 2016 the Board of Adjustment conducted a public hearing but deferred action.

Mrs. Townshend stated that there are no updates on application V-16-06 and it will continue to be deferred. City Council is considering a text amendment and this application will ultimately be decided or withdrawn depending on the path of the text amendment. No action will need to be taken today.

Responding to Mr. Hufnal's question whether the application was being discussed by Council, Mrs. Townshend stated that at the current time there is a text amendment to the COZ-1 (Corridor Overlay Zone) that has been proposed before City Council. If the text amendment passes there will be no need for a variance.

Responding to Mr. Keller's question regarding the timeframe, Mrs. Townshend stated that the text amendment is scheduled for first reading on July 25, 2016, afterwards it will go to the Planning Commission on August 15, 2016, with Final Action by Council in September 2016.

Responding to Mr. Senato's question whether the text amendment was being studied prior to the last meeting, Mrs. Townshend replied no. This came up after the meeting.

Colonel Ericson moved to continue to defer variance application V-16-06. The motion was seconded by Mr. Hufnal and unanimously carried 5-0.

NEW BUSINESS

Applicant #V-16-07

423 South DuPont Highway. ERG Properties LLC has requested an area variance from the requirements of Zoning Ordinance Article 4 §4.15 pertaining to the minimum required rear seatback in the C-4 (Highway Commercial Zone). Subject property is zoned C-4 (Highway Commercial Zone). Tax Parcel ED-05-077.10-01-27.00-000. The owner of record is ERG Properties LLC.

Exhibits for the Record: Staff report and plans submitted by the applicant. Legal Notice was published in the DSN – on July 10, 2016. The public was notified in accordance with regulations.

Mr. Cook gave a brief overview of the application.

Representative: Mr. Edward H. Ide III, President of I3a Consulting Engineering.

Mr. Ide affirmed that the site is currently vacant with the exception of a small restroom building that is a remnant of an old gas station.

Exhibits

The restroom face of the building sits on the back of a 11-foot property line on the northeast corner of the site. The owner proposes to place a 2-story, 2,100 SF structure in front of the restroom building which will be demolished. The variance is requested because the setback line is established by the building height. The proposal to construct a 2-story structure would push the building too far toward the center of the property, almost to the DelDOT right-of-way line.

The applicant considers it best to construct the building on the northeast corner of the site and put the two (2) back corners on the rear and north side property lines. This would also allow parking and landscaping around the site. He has worked with DelDOT which has requested closure of the north entrance to the property and tightening up of the southern entrance. DelDOT is allowing removal of the large V-shape island in the front of the lot. The 5-foot sidewalk will remain and be required to be maintained. The proposed building is oriented to be seen from either direction of travel on Route 13. This is a difficult abandoned site and has Exceptional Practical Difficulty for numerous reasons. The angles of the property lines do not allow typical building positioning, and the DelDOT right-of-way precludes building further to the front property line.

Responding to Chairman Sheth's question regarding the entrance, Mr. Ide replied that access is from the northbound side with no left-turn access from the southbound side. All entrances and exits will be off of Route 13 and there is no rear excess from Martin Street.

Responding to Mr. Keller, Mr. Ide clarified that the access would be right-in and right-out access only from northbound Route 13 via a reconfiguration of the existing southernmost entrance.

Responding to Mr. Keller's question regarding the applicant's comfort with the revisions to the curbing island that DelDOT has requested. Mr. Ide replied they are comfortable. They had an initial meeting with DelDOT and they are in the process of submitting for the PDCA (Planning and Development Coordination Application) and they seem very reasonable.

Mr. Keller commented that he would agree with the extreme and unusual shape of the property and the dilemma with configuring a building on the site. With regard to the significant amount of right-of-way, the Exceptional Practical Difficulty has to relate to the dilemmas, problems, and practicalities inherent to the subject property itself as opposed to extraneous properties. He agreed that there is some Exceptional Practical Difficulty with the configuration of the site.

Responding to Mr. Senato's question regarding a rear entrance, and whether the area to the right of the igloo building (409 S DuPont Hwy) and to the left of the proposed building would be closed off, Mr. Ide replied yes, and further confirmed that there would be no blockage of the adjacent businesses addressed to 409 S DuPont Hwy and 324 Martin St.

Chairman Sheth opened the public hearing.

Mr. James Arthur Mathews, owner of Dover Garden Suites located at 520 Martin Luther King Jr. Blvd., and Mr. William Boyles of Serenity Place and representing owner EJB Inc. located at 327 Martin Street were sworn in by Mr. Rodriguez.

Mr. Boyles testified that he was familiar with the subject property lines, which were unusual. They have been before the Board previously regarding their property at 327 Martin Street with similar challenges and they received favorable accommodations. They hate to see the restroom go, but it is time. They fully support the proposed building and would ask that the Board certainly approve the variance for the setback on this property.

Mr. Matthew stated that the project is "win, win" and not to allow this would make no sense whatsoever. He could not think of a downside. It might even help neutralize some of the motorcycle noise.

Chairman Sheth 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.

Colonel Ericson moved to approve variance application V-16-07 based on the testimony given and Staff Report. The motion was seconded by Mr. Hufnal and unanimously carried 5-0.

Responding to Chairman Sheth's question regarding the use of the building, Mr. Ide replied that it would be used as retail and office space.

Applicant #V-16-08

82 Laurel Drive. John W. Warren has requested an area variance from the requirements of Zoning Ordinance Article 4 §4.1 pertaining to the maximum lot coverage permitted in the R-10 (One-Family Residence Zone). Subject property is zoned R-10 (One-Family Residence Zone). Tax Parcel ED-05-077.14-01-35.00-000. The owners of record are John W. & Donna Warren.

Exhibits for the Record: Staff report and plans submitted by the applicant. Legal Notice was published in the DSN – on July 10, 2016. The public was notified in accordance with regulations.

Mr. Diaz gave a brief overview of the application.

Representative: Mr. John W. Warren, Owner.

Mr. Warren testified that he needed additional storage space for his pool and patio furniture. For years he has transported the furniture to and from the basement. He will turn 64 years old in October and transporting the furniture is becoming a harder task. He would like to add on to his existing shed to create more storage.

Responding to Mr. Senato's question whether the shed in Exhibit H was built by the owner, Mr. Warren replied yes.

Responding to Mr. Senato's question whether the addition would be on the existing shed, Mr. Warren replied yes in the back.

Responding to Mr. Hufnal's question whether the addition to the structure would increase the existing nonconformity from 33% to 34.1% lot coverage, and whether the owner ever considered reducing the size of the addition in order to be within the current requirement, Mr. Warren replied

that the current requirement is 30% and he was not sure why the Planning Department approved the Building Permit for the current shed if it put him at 33%.

Mr. Hufnal stated that the figures did not add up because if the existing site is 33% with the shed, and the addition will increase it to 34.1%, then the 1.1% is more than the addition of the shed. Mr. Warren stated that the calculations were done by the Planning Office.

Mr. Diaz clarified that the 1.1% is the 180 S.F. of the lot area which is approximately 18,000 S.F. The current impervious coverage is 33%. There is no amount of impervious surface coverage that he could add that would bring it down to 30%.

Responding to Colonel Ericson's question whether it was currently legally nonconforming, Mr. Diaz replied correct.

Responding to Colonel Ericson's question regarding the basis of the current legal nonconforming status, and whether it came before the Board of Adjustment, Mr. Diaz replied no it had not. The previous Building Permit application was submitted in 1995, 1997, and 2003 and it does not appear that the Planning Department correctly reviewed the Building Permit application for the lot coverage requirements. This is the first time it has been calculated.

Responding to Colonel Ericson's question whether this was the first time that the applicant has been aware, Mr. Diaz replied yes.

Responding to Mr. Keller's question for clarification that the 33% is based upon a legal nonconforming status, Mr. Diaz replied yes.

Responding to Mr. Keller's question whether the variance increase before the Board in essence amounts to an increase and impervious coverage of 1.1% of the total lot area, Mr. Diaz replied yes.

Responding to Chairman Sheth's question regarding Kent Conservation District (KCD) requirements, Mr. Diaz replied that he believed that KCD has a standard residential construction form for construction under 5,000 S.F.

Responding to Mr. Hufnal's question whether the owner of 82 Laurel Drive owned the vacant lot next door, Mr. Warren replied yes.

Mr. Hufnal stated that he could see the point of not wanting to consolidate with a piece of the adjacent vacant lot to bring it within conformance because of cost. The owner is only requesting 1.1% for the addition to the back of the shed that no one will see. Mr. Warren affirmed.

Mr. Warren stated that as mentioned by Mr. Diaz there is a 55-foot by 120-foot section of land that abuts the back of his property which is an easement that belongs to the State that he has maintained for twenty-eight years. He would hope that it would be taken into consideration although he does not own the property.

Responding to Chairman Sheth's question whether the State property was in the Flood Plain, Mr.

Warren replied that beyond the 55 feet it does drop down into a flood plain and the Saint Jones River was to the right of his house. There is a large drainage ditch at the rear of the lot that flows from the Blue Hen Corporate Center into the river.

Mrs. Townshend, referring to the map exhibit, stated that the property may be impacted by the 500-year flood plain but not by the 100-year flood plain. The flood plain regulations do not come into effect on this property.

Responding to Mr. Keller's request for clarification whether the State of Delaware has title to the property as shown on Exhibit G, Mr. Warren replied that he had the same impression. Keller stated that he could appreciate the owner of 82 Laurel Drive keeping the property maintained by mowing and clearing, but that fact cannot have an impact on the Board's deliberation regarding the subject site. Mr. Warren replied that he understood.

Responding to Mr. Keller's request for clarification of Exhibit H and the property line with respect to the fountain shown, Mr. Warren replied that it would run parallel to the rear of the State of Delaware property. After conferring with Mr. Warren and requesting clarification of notes he made on the exhibit, Mr. Keller stated for the record that land shown as woodland, located behind the fountain pictured on the exhibit, is land of the State of Delaware. Mr. Warren acknowledges that even though he is not the owner of the property he has provided some maintenance to the area.

Responding to Chairman Sheth's question regarding what would happen if the property is sold, Mrs. Townshend stated that the owner is looking to increase the lot coverage on his property. The addition would not encroach upon the other properties.

Responding to Colonel Ericson's question whether the land is ever considered when it is an easement, because in this situation it seems to be clear to him that the State of Delaware is not going to develop the area, and the owner is only asking for a 1.1% increase. He is currently legal nonconforming and was not aware of it until now. It seems a very small increase and the condition of his property is immaculate. He did a very good job building the current shed.

Mr. Keller commented that it is a relativity minimal addition to impervious lot coverage. The property line between the two lots, both owned by Mr. Warren, extends 150-feet deep and he is seeking a 180 S.F. of additional impervious coverage. If he came over only 2-feet into the adjoining lot, he would more than make up the additional square footage required to balance out the 180 S.F. of additional impervious lot area.

Responding to Colonel Ericson's request to describe the process and timeline for changing the lot configuration, Mr. Rodriguez replied that the owner would need to have a deed addition to this property from the adjoining lot, and would upset the configuration of the lots as shown on Exhibit G if the Board denied the application. Mr. Rodriguez noted that it would not take much time, but the expense would be the new deed. He would need to look at the requirements of this particular zone to see if it can be done.

Responding to Mr. Hufnal's question whether a survey and deed would be necessary, and if there would be associated cost in time and money, Mr. Rodriguez replied that yes there would be without

a doubt.

Chairman Sheth opened the public hearing.

Mr. James A. Flood Sr., Neighbor was sworn in by Mr. Rodriguez.

Mr. Flood testified that while he understands the idea of having a limit on impervious surface, and understands the issue and the request, but thinks that much time is being spent on a very small issue. Mr. John Warren works hard on his property and is the sort of neighbor that anyone would be proud to have. He not only built the shed, but the entire house as well. He knows the area and is a wonderful neighbor that he has known for years. His wife Donna died a few months ago. Although he knows it is not his decision to make, he could not see an easier question coming before the Board. He is in favor of the project and believes Mr. Warren should be allowed to do the addition.

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

Chairman questioned if there was any additional correspondence for the record.

Mr. Diaz stated that he received via mail a letter of no objection (Exhibit C) from Perry and Karla Boulter located at 90 Laurel Drive. He also received a phone call from neighbor Ruth Malago who wanted to know the location of the shed addition and once she received the information she stated that she had no objection to the addition.

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

Mr. Hufnal moved to approve variance application V-16-08 based on the testimony and support given. The motion was seconded by Mr. Senato and unanimously carried 5-0.

Applicant #V-16-09

33-35 South Bradford Street. Darlene M. Dillard has requested a variance from the requirements of Zoning Ordinance Article 3 §1.15 (e) pertaining to the minimum lot area and requirements related to keeping of chickens in One-Family and General Residence zones. Subject property is zoned RG-1 (General Residence Zone). Tax Parcels ED-05-077.05-04-08.00-000, ED-05-077.05-04-08.01-000, ED-05-077.05-04-22.01-000. The owners of record are Richard T. and Darlene M. Dillard.

Exhibits for the Record: Staff report and plans submitted by the applicant. Legal Notice was published in the DSN – on July 10, 2016. The public was notified in accordance with regulations.

Mr. Cook gave a brief overview of the application.

Responding to Chairman Sheth's question whether there was a grandfather clause, Mr. Cook replied that there was not one. This is a new Ordinance and the requirements of the Ordinance are that any non-complying chickens be removed by June 1, as stated in clause 8.

Responding to Colonel Ericson's question about the reasoning why City Council passed a chicken ordinance, Mrs. Townshend replied that there were a few locations in the City where members of Council had received complaints about houses where chickens were kept and there were complaints by neighbors of odor and noise. There was nothing within the former code to address that. The matter was brought forward by members of Council due to complaints and was not initiated by Staff. Staff only assisted with the drafting of the ordinance. The Ordinance is drafted by size and discernment odor from the property line. There are other measures in place and as Mr. Cook has indicated staff was unaware of the Dillard's keeping of chickens prior to their contact with the Planning Office. They were proactive, seeing that the Ordinance had changed and they wanted to be in compliance.

Responding to Colonel Ericson's question whether approving the application would set a precedent which would cause problems, Mrs. Townshend replied that if there is approval. it should just be clear that a variance is being issued for the lot size requirements and not any of the other criteria and they would still need to maintain requirements related to number of chickens, and distances from adjoining properties. If complaints arose about the other issues other than the keeping of a rooster and the lot size, then we would be able to address them under the other provisions of the Ordinance.

Chairman Sheth commented that he thinks with the international community increasing in Dover, it was in the best interest of safety and the City to have the Ordinance and to set some clear guidelines when there may be many differences among cultures with regard to the issue.

Responding to Mr. Senato's question whether if a lot was greater than 10,890 S.F., a property would be in compliance with the Ordinance to have these types of chickens regardless of location in the city, Mr. Cook replied that he could have five (5) fowls if it is in a one-family residence zone and the lot size met the requirement.

Responding to Mr. Senato's question whether this establishes small chicken areas within the City of Dover if people want to have chickens, Mrs. Townshend stated that prior to the Ordinance amendment the one-family residence zone stated that a residence could have up to twenty-five (25) fowl on a residential property. The new Ordinance reduced the number and put some restrictions on how chickens could be kept.

Mr. Senato understood that the new Ordinance tightens up the fowls from twenty-five (25) to five (5), but it also set a precedent that opens it up to anyone with 11,000 S.F. or more in a single family residence can have chickens and be within their rights within the City of Dover.

Responding to Mr. Senato's question about regulating and monitoring odor, Mrs. Townshend replied that enforcement of the new Ordinance will be complaint-driven. As stated by Chairman Sheth this is a new Ordinance and this is a residence that had chickens before the new Ordinance was adopted. In terms of precedent, if part of the motion is recognizing it as one of the facts that supports the variance it would help to limit the precedent side of it. Mr. Senato stated that he did not agree.

Responding to Mr. Keller's question regarding non-conforming status, whether there is a specific provision required for a continuation of a non-conforming use, or is it a specific obligation to have within the Ordinance itself a provision allowing from that point forward existing non-conforming uses to remain, Mrs. Townshend replied that Article 7 of the Zoning Ordinance addresses non-conforming uses and non-conforming lots. Non-conformity related to area is a more typical issue within the city.

The applicant was permitted to have chickens under the provision of the old ordinance. Typically Article 7 would have that phased out over time, so that if a new ordinance was passed, the use could continue until it ended, but could not be reestablished. In this case, when the new Ordinance was adopted, there was a more restrictive phase out. Mr. Rodriguez replied in agreement because the new Ordinance states one must comply by June 1, 2016 which would eliminate the "grandfather" element.

Chairman Sheth asked whether a conditional approval could be made for the existing number of chickens, but restricted to not allow an increase. Mr. Rodriguez replied that in granting the application the Boards decision could state that.

Mr. Keller noted that five (5) fowls are allowed by the Ordinance. Would we be imposing if we placed a greater restriction on what the owner might otherwise be able to do? Mr. Rodriguez replied that five (5) would not be allowed for this lot size, as explained by Mrs. Townshend. A variance could state that the lot size does not meet the requirements of the Ordinance. Therefore, a variance could grant an exception to allow two (2) fowls on the property.

Mr. Keller asked about the section of the Ordinance requiring registration of chickens with the Delaware Department of Agriculture, and noted no response in the application. He asked why there was no registration, and if the necessity of registration is a matter of public health and safety. Mrs. Townshend replied that she would defer to the applicant on the matter. The Planning Office contacted the Delaware Department of Agriculture when drafting the Ordinance. The purpose of registration is for informational purposes in cases there is some threat of avian flu or disease that the department would need to contact fowl owner(s) about.

Mrs. Darlene M. Dillard was sworn in by Mr. Rodriguez.

Representative: Mrs. Darlene M. Dillard, Owner.

Mrs. Dillard testified that she was not yet registered with the Delaware Department of Agriculture since she was waiting to see what the status of the variance application would be. Since she only had the two (2) little fowls it did not seem like something she needed to do right away. She does not have a big flock and she does not go in and out of big flocks. She did not have the concern of carrying any flu or anything to other flocks. She fully intends to register if the variance application is approved.

Responding to Mr. Senato's question of how many chickens the applicant currently has, Mrs. Dillard replied two (2) as she had previously testified.

Responding to Mr. Senato's question regarding whether there would be an increase in the future, Mrs. Dillard replied that the only reason she would increase to three (3) would be if she needed to get another hen in case one of the bird gets to active for the other (losing feathers or becoming stressful) and she would not want this to happen. This would be the only reason she would increase her flock.

Responding to Mr. Senato's question whether the fowls were roosters, Mrs. Dillard replied that she has one (1) bantam rooster and one (1) hen at the current time. Asked whether the rooster wakes up at 4:30am, Mrs. Dillard replied that she really did not know, because when she gets up at 6:30am the rooster is already awake wondering around in the coop and lets her know it is time to get out.

Responding to Mr. Keller's question whether the rooster crows, Mrs. Dillard replied yes he is learning. The crowing is not very loud somewhat of a funny noise. When asked whether after the learning phase will the crowing be louder, Mrs. Dillard said she did not believe so because he is so tiny.

In response to Colonel Ericson's questions, Mrs. Dillard stated that she has had the chickens since early April, and that they are her pets and not for commercial use.

In response to Mr. Keller's question, Mrs. Dillard said the life expectancy of the birds is up to five (5) years.

Responding to Mr. Keller's question whether the birds are ever allowed to free-range out of the coop, Mrs. Dillard replied yes sir they are. When asked about any trouble with hawks or eagles, Mrs. Dillard replied no. When asked about any trouble with predators, Mrs. Dillard replied just stray cats. Her property has lots of trees, therefore; there is a lot of shade to keep the foxes away so they cannot be seen.

Responding to Mr. Keller's question whether the applicant was aware that perhaps she could be limited to the two (2) chickens that she currently has as opposed to the allowable five (5) maximum, Mrs. Dillard replied no, when she first starting researching she saw that she was allowed twenty-five chickens and no pigs. There were no site restrictions or anything else. After purchasing the chickens and bringing them home she continued to research because she was afraid. Of all the sites visited it informed you to keep checking the Ordinances and stay in compliance. It was at that time that she found out a new Ordinance had been passed in late April.

Responding to Chairman Sheth's question whether she was aware that she was applying for a total of two (2) fowls, Mrs. Dillard replied ok, but that she did not realize that. She thought that once the application was approved because it is a variance on the property she thought that she would be allowed five (5). She apologized for the confusion.

Responding to Chairman Sheth's question whether she was going to have more than (2) fowls, Mrs. Dillard replied as previously stated that the only reason she would increase to three (3) would be if she needed to get another hen in case one of the bird gets to active for the other (losing feathers or becoming stressful) and she would not want this to happen. This would be the only

reason she would increase her flock. If she can only have two (2) then that is what she will have.

Colonel Ericson commented that the applicant only requested two (2), but if she would like to change it to five (5) she could. He could see no reason to restrict the applicant to only two (2) fowls. The applicant applied for two (2) because that is what she currently has, but should have the same right as others to have five (5).

Chairman Sheth commented that the five (5) fowls was allowed if a person had 10,000 S.F., but the applicant does not have 10,980 S.F.

Colonel Ericson questioned what is the difference between having two (2) and having five (5). If everyone else can have five (5) why can't the applicant. Mr. Keller commented that he agreed with Colonel Ericson because the application is to grant a variance for the reduced lot size. Mr. Cook clarified as he referred to Table 1 that was included in the staff report. In the application (from the applicant) itself there was no specific request in regards to the number. The table is the facts of the existing conditions. She now has two (2).

Colonel Ericson questioned if the variance application was changed to two (2) when the applicant wanted five (5), Mrs. Dillard replied no and Mr. Cook replied that there was no quantity request in the variance application.

Colonel Ericson questioned if the applicant was requesting the minimum lot size to be reduced and if it is approved, the applicant would be allowed the five (5) fowls like everyone else unless it was further limited, which would not make any sense to him. Mr. Rodriguez noted that he wanted to ensure (in his notes in preparation of the Notice of Decision) that he was consistent with the Boards decision, and that his questions may have caused some confusion. He noted that what Colonel Ericson said certainly makes sense if you consider the lot area, and grant the variance for the lot area, then the applicant would be entitled to five (5) chickens. He wanted to make sure that this was the Board's decision.

Responding to Colonel Ericson's question whether if the Board makes the decision to approve, it should probably be stated that the applicant can have up to five (5) fowls. Mr. Rodriguez replied that he needed to know just to make sure.

Chairman Sheth commented for clarity that the Board is approving an area variance of 7,761 S.F. to have up to five (5) fowls, but not more than five (5). Mr. Rodriguez replied that is correct. Mr. Keller replied that secondarily, the allowance of a rooster on site as opposed to hens, and absent more restrictive language, if it was the Board's inclination to reduce the number of allowables in relation to waiving the minimum lot size requirement. Mr. Rodriguez replied yes.

Responding to Colonel Ericson's questioning the rooster is prohibition, Mr. Cook replied that his understanding was that the Ordinance was written with concern for noise, and that a full size rooster would presumably wake up neighbors on a daily basis. Mr. Hufnal replied that it would be no worse than a barking dog. He knows for a fact that a bantam roosters and chickens are very small and quiet. The crow is very minimal and you can hardly hear them.

Chairman Sheth and Mr. Hufnal stated that there is a noise ordinance. Mr. Cook concurred.

Responding to Mr. Senato's question whether in this heat if there was any odor spreading over her yard boundary because of free roaming and how is it cleaned, Mrs. Dillard replied that since there are only two (2) there is not a lot of mess. She cleans up behind them wherever they make a mess including the coop. Most of their waste is at night when they sleep inside the coop. There is not a lot of waste and it is cleaned on a daily basis so there is no odor. The chickens wonder around in the heat and mostly stay in three (3) areas.

Responding to Mr. Keller's question regarding the staff response "other permitted and customary animals could be much larger and capable of greater disturbance (i.e. barking dogs) than the bantam chickens as described" is there a specific listing of permitted animals in a single family residence zone, Mrs. Townshend replied that it was not listed specifically.

Mr. Keller noted his position as president of a Homeowner's Association and he hears more about cats and dogs than you could ever imagine, but there are also deed restrictions for what are deemed to be otherwise somewhat barnyard animals. Mrs. Townshend read the Zoning provision accessory to the one-family residential use. Domestic animals are not specified in the Zoning provision, however; it was discussed before the Zoning provision was passed. Unfortunately, discretion has to be used as issues come up.

Chairman Sheth opened the public hearing.

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

Colonel Ericson moved to approve variance application V-16-09 based upon the testimony given and the Staff Report. In this action the Board is changing and allowing the applicant to have chickens on her area of 7,761 S.F. and the applicant can maintain up to the maximum of five (5) chickens and furthermore the bantam rooster is allowed with her animals. Also, primary reason being the fact the animals have been on the property before the Ordinance was passed in 2016 and they are primarily thought of as pets. The motion was seconded by Mr. Hufnal.

Responding to Mr. Keller's question regarding the wording that it would be five (5) chickens and the rooster indicating a total of six (6). Colonel Ericson commented it would be five (5) because the regulations states five and no roosters. The Board will allow the bantam rooster in this case.

Responding to Mr. Keller's question whether it was in addition to the five (5). Chairman Sheth and Colonel Ericson replied no, a total of five (5).

Responding to Chairman Sheth's question regarding if an existing rooster is allowed (for example: if the rooster dies whether or not they can have another rooster), Colonel Ericson replied that from the testimony heard the bantam rooster makes very little noise and will not be a problem. If they do become a problem, then the neighbors can complain and then they can come back again. If the applicant wants to get a new rooster or second one, he sees no reason to restrict her. Chairman Sheth stated that the Ordinance states that no rooster is allowed. He is interpreting the Ordinance and not worried about a complaint. He was just simply saying the applicant could maintain the

existing rooster and that they can satisfy the Ordinance. Colonel Ericson stated in his motion that the bantam rooster would be allowed on their property.

Mr. Senato stated that he agreed with Colonel Ericson if the rooster dies, the applicant can have another rooster and he would make an amendment to the motion in this case only.

Mr. Rodriguez stated that the Ordinance prohibits a rooster but his understanding of Colonel Ericson's motion is five chickens which includes a rooster.

Colonel Ericson stated that a bantam rooster would be allowed. Mr. Cook stated that from his understanding a rooster would be allowed not necessarily this rooster.

Mr. Senato stated as he referred to Table 1 item vii – roosters prohibited – applicant has one (1) bantam rooster, he questioned if the a regular or bantam rooster is prohibited. He is thinking that if the applicant has a bantam rooster right now and one dies he has no problem with the applicant getting another one.

Responding to Chairman Sheth's question if a person has a 10,000 S.F. property and they want to keep a rooster, is the rooster allowed, Mr. Cook replied no.

Chairman Sheth asked for clarification regarding the motion that the applicant can keep the rooster, but if the rooster dies they can get another rooster and from his understanding that is a violation of the Ordinance.

Mr. Senato questioned Table 1 item vii – roosters prohibited – applicant has one (1) bantam rooster, because you have a variety of types of roosters and he is asking for clarification if the bantam rooster is included in the rooster prohibited then in his opinion it should be stated in item vii.

Amendment to the previous motion

Mr. Senato made a motion to amend the previous motion by Colonel Ericson to include that if the applicant bantam rooster passes away she will be allowed to purchase another bantam rooster. The amended motion was seconded by Mr. Hufnal.

Roll Call Vote

Mr. Keller *- no – based upon a failure to adequately respond with any substantive comments regarding Exceptional Practical Difficulty, while he would appreciate that the practical difficulty may be entailed with loss of companionship for the pets and comfort in watching them daily. However, he does not see that as a rise to Exceptional Practical Difficulty. Additionally, he has some concerns for the matter of health and public safety with adequate registration and would like enforcement to be requested that the requirement for registration be enforced.*

Colonel Ericson *– yes – in his opinion these chickens are more pets than anything. The applicant currently has a bantam rooster and if it should die, replacing the bantam rooster with another bantam rooster which makes very little noise should be permitted.*

Mr. Senato *– yes – his comments concur with Colonel Ericson and in his opinion this is an unusual situation and he would like to see the amendment pass.*

Mr. Hufnal *– yes – he agrees with Colonel Ericson and Mr. Senato's comments.*

Chairman Sheth *– no- he agrees with the applicant that it should be kept existing. He is following what the Ordinance states in the future. If something happens to the rooster, they cannot replace otherwise it does not meet the Ordinance.*

Amended motion roll call vote (3 – yes 2- no)

First motion Roll Call Vote to include the long term bantam rooster

Mr. Keller - no

Colonel Ericson – yes

Mr. Senato – yes

Mr. Hufnal – yes

Chairman Sheth – no

Chairman Sheth stated motion carried 3-2, variance application V-16-09 granted.

Applicant #V-16-10

5780 West Denneys Road. Nikolas Dallas on behalf of ENG Properties LLC is requesting a use variance from the requirements of Zoning Ordinance Article 3 §10.1 in order to re-establish the residential use of a property as a single family home in the IO (Institutional and Office Zone). Subject property is zoned IO (Institutional and Office Zone). Tax Parcel ED-05-057.01-01-03.00-000. The owner of record is ENG Properties LLC.

Exhibits for the Record: Staff report and plans submitted by the applicant. Legal Notice was published in the DSN – on July 10, 2016. The public was notified in accordance with regulations.

Mrs. Townshend gave a brief overview of the application and emphasized that this is a Use Variance to allow for a residential structure that has been vacant for more than a year to be reestablished as a residential use in the IO (Institutional and Office) Zone. The standard for a Use Variance is different and more stringent than an Area Variance, but given the condition surrounding this specific property we believe that the conditions have been met.

Representative: Mr. Basil Kullias – Attorney representing ENG Properties LLC.

Mr. Kullias stated that the application for the Use Variance basically states everything he has to say, there is not much he can add to it. Basically the home has been in residential use since it was

built in 1952 until it was foreclosed upon in late June 2013. ENG Properties LLC purchased the property at auction which occurred at the end of September 30, 2015 and the title was transferred on November 17, 2015. Mr. Dallas discovered that the property could no longer be used as a residential home when he went to the City of Dover to apply for a Building Permit in order to renovate the home and bring it back up to code. The house sits on 0.18+- acres. The City shows it as having 832 square feet, two-bedrooms, and one bathroom. The home sits in the middle of five (5) lots (2 on the left and 2 on the right) all of them are non-conforming residential use. Photos were provided showing both sides of the house and the rear. Across the street are two additional residential lots, utility office, and an automobile repair company. Behind the home sits property owned by the State of Delaware which is Delaware Technical and Community College. When Mr. Dallas put in a bid at the auction there were no other bidders and no one else expressing interest in purchasing the home. The home was vacant for about 1 ½ years from the time he received the title. Although the property is Zoned IO it does not meet the minimum lot requirement for IO. The code calls for 10,000 S.F. minimum and this lot is 8,110 S.F. Even if an Area Variance is requested and approved for an IO use, it would be too small for any of the permitted uses in IO. Residential Use is in character and because it is surrounded by residential homes it will not be the only home in the area.

Responding to Mr. Keller's question regarding the relationship of Mr. Dallas to ENG Properties LLC, Mr. Kullias replied that he is the sole member manger.

Responding to Mr. Keller's question for clarification as he referred to the photo that it was the light tan home with the attached one car garage, Mr. Kullias stated yes, the home in the center of the photo. There was also an aerial map included in the packet. There are two (2) houses on each side. Mr. Keller stated that the photos were very helpful.

Chairman Sheth opened the public hearing.

Mr. Ken Smith a neighbor was sworn in by Mr. Rodriguez.

Mr. Smith testified that he is in favor of the application. He stated that he and his wife were looking at a one of the houses on the street, and they live two houses away from this house that is totally being rehabbed and restored by Mr. Dallas. When they saw their house they knew right away this is the house that they wanted. Living close to the college as well having a lot of emotional appeal sold them. It is a nice quiet area and the house has a lot of potential. Like Mr. Dallas, when he moved in he could see the potential of the house and he started to aggressively work on his house. There has been a lot of improvements made to the house. He as well as Mr. Dallas like to preserve old things and make them new again. When he met Mr. Dallas nine (9) months ago he could see what Mr. Dallas was doing to the house. He mentioned to his wife that there was new life coming back to the neighborhood that had become neglected and run down. Mr. Dallas was doing a good thing to the house and the neighborhood, and saw the big picture. He is grateful that he had the opportunity to get to know Mr. Dallas. He has been invited over to tour the house and Mr. Dallas is doing a good thing. He would request that the Board of Adjustment think very carefully about the decision they are going to make and he would absolutely encourage them all to grant the variance for Mr. Dallas to be able to sell this house residentially. When they moved in they were not told anything that their house might be

commercial, they were not aware of that.

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

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

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

Mr. Keller moved to approve use variance application V-16-10 as submitted citing the testimony given and testimony in support of the variance request by existing neighbor and the Staff Report as submitted which fully outlines and demonstrates that the variance request is the minimum variance necessary to provide for reasonable use of the land, and that the applicant has demonstrated that adherence to the requirement of the Ordinance would leave him with no real viable use of the land otherwise. The motion was seconded by Mr. Senato and unanimously carried 5-0.

Question regarding motion for application V-16-09

Responding to Chairman Sheth's question whether the Board had established a precedent if he understood it correctly that the City of Dover does not want to have a rooster, but now anyone who wants a rooster can apply for a variance, Colonel Ericson replied that is not true. The motion made stated that the applicant already had the animals that they considered pets prior to the new Ordinance. The applicant should be allowed to continue with the animals. Chairman Sheth stated that he had no problem with that. His problem was the passing of the rooster and its replacement with another rooster. His concern was also the noise Ordinance because citizens call the police regarding noise and not so much the other City departments.

Mr. Hufnal commented that he did not think a precedent was set. These were pets and most people do not have chickens as pets. Chairman concurred.

Responding to Mr. Hufnal's question whether there was a limit on the number of application per each meeting. This month there was five (5) which took a long time. Is it possible to break up the applications in the future and have two (meetings) if we have that many applications? It took a long time to review and prepare all the information. Mrs. Townshend stated that there was no limit. She could look into seeing what the procedure is to do that if that is the wish of the Board. Mr. Rodriguez stated that if we could do something that would be fine, it depends on the advertisement. Colonel Ericson stated that it depends on the case.

Responding to Chairman Sheth's question regarding the deadlines, Mrs. Townshend stated there are deadlines each month for the Board of Adjustment meeting for the following month. If we were going to do what Mr. Hufnal suggested, then it would need to be changed. There are other places that do this such as Sussex County and there is a multi-month wait for the Board of Adjustment. They receive a lot of complaints because sometimes items come before the Board in order for a property to transfer. Breaking it out over months can affect that so it is a balance of

customer service versus what is reasonable to be able to review in the course of a month. Chairman Sheth stated that in the past there were times there were up to 7 applications.

They also discussed the burden of proof.

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

Meeting adjourned at 11:20 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary