CITY OF DOVER BOARD OF ADJUSTMENT
AGENDA
Wednesday, July 23, 2014 at 9:00 AM

City Hall Council Chambers
15 Loockerman Plaza, Dover, Delaware

ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES OF June 18, 2014 Meeting

OLD BUSINESS

Applicant #V-14-07
547 Pennsylvania Avenue. Nicholas Adams has requested a variance from the requirements of Article 4 §4.1 of the *Zoning Ordinance* to allow the construction of an addition to encroach into the front yard setback. Subject property is zoned R-8 (One Family Residence Zone). The Tax Parcel is ED-05-068.17-01-26.00-000. The owner of record is Nicholas A. Adams. *This application was heard on June 18, 2014 by the Board of Adjustment. At that meeting the public hearing was closed and action deferred.*

NEW BUSINESS

Applicant #V-14-08
1235 South Bay Road. Mark Lillard, Fain Auto Sales, LLC, has appealed the decision of the City Planner to the Board of Adjustment regarding the denial of a Building Permit (#14-623), and the interpretation of *Zoning Ordinance,* Article 6, Section 3.6 regarding parking drainage and surfacing. Subject property is zoned C-4 (Highway Commercial Zone). The Tax Parcel is ED-05-086.00-01-13.00-000. The owners of record are Adolfo Q. & Honorato M. Bengzon.

ADJOURN
29 Del.C. § 10004(e)(2)

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

CITY OF DOVER
BOARD OF ADJUSTMENT MINUTES
June 18, 2014

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, June 18, 2014 at 9:00 A.M. with Chairman Sheth presiding for application V-14-07. Members present were Mr. Hufnal, Colonel Ericson, Mr. Senato, and Mr. Keller was absent.

Staff members present were Mrs. Townshend, Mrs. Purnell, Mr. Cook, Mrs. Harvey, City Solicitor Nicholas Rodriquez and Intern Faith Spady.

APPROVAL OF AGENDA

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

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF MAY 21, 2014

Mr. Senato moved to approve the meeting minutes of May 21, 2014 with the necessary correction, seconded by Mr. Hufnal and unanimously carried 4-0. Mr. Keller was 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 procedures 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 were completed in accordance with code requirements; and the meeting agenda was posted in accordance with the Freedom of Information Act requirements.

NEW BUSINESS

Applicant #V-14-07

547 Pennsylvania Avenue. Nicholas Adams has requested a variance from the requirements of Article 4 §4.1 of the *Zoning Ordinance* to allow the construction of an addition to encroach into the front yard setback. Subject property is zoned R-8 (One Family Residence Zone). The Tax Parcel is ED-05-068.17-01-26.00-000. The owner of record is Nicholas A. Adams.

Mrs. Harvey, Planner I, submitted the following items for the record: staff report, report and plans submitted by the applicant.

The legal notice was published in the Delaware State News on June 8, 2014, and the public was notified in accordance with the regulations.

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

Representative: Mr. Nicholas Adams, Owner.

Mr. Nicholas Adams was sworn in by Mr. Rodriguez.

Mr. Nicholas stated that he and his wife Stephanie is seeking to construct a garage on their property. Because they abut Silver Lake to the rear of their property they do not have the ability to have any rear access. The adjoining garage would be attached to the front of the house. In their request photos were attached for review to show what the structure would potentially look like and where it would attach into the front left corner of the house. They are seeking a variance for two reasons: (1) the garage would encroach into the front yard setback by 11 feet (2) lot coverage with the resulting addition of the garage and with the construction of a new driveway and off street parking they would be at 38% lot coverage which is just above the 35% lot coverage requirement found in the Code. Sherman Townsend owns the property to the right of his property, and Bob Duncan owns the house to left of his property. All the houses mentioned including the one across the street have garages and his house does not. Several years ago before purchasing the house the homeowner converted what was at that time a one car garage into living space which resulted into a third bedroom. Originally, before the conversion it was a two (2) bedroom house which must have been done long before he purchased the house in 2012. Before purchasing the house he owned property directly across the street since 2009. Mr. Townsend his neighbor was present and he was in support of the application. He stated that Mr. Duncan who was not present was also supported the application. His neighbors are also in favor of seeing the property improved. This garage would give them the opportunity to have covered parking. It would also give his elderly family members (grandparents) who had significant trouble moving during the storms and ice last winter. Therefore, covered parking with egress and ingress to the home would allow them to have the ability to come into the house in a covered area house uninhibited and without worrying about slips and falls.

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

Responding to Colonel Ericson's question whether there were any other properties in the area that was extended into the setback area and how much, Mrs. Townshend stated that Staff did not look at all of the surrounding properties. Mr. Duncan who lives north of this property had applied for a variance several years ago that was approved by the Board of Adjustment.

Responding to Colonel Ericson's question whether it was 1 foot, Mrs. Townshend stated yes. In this case Mr. Adams has stated that they do not have the ability to go to the rear of the property because of the setback from Silver Lake. It was also part of the analysis in Mr. Duncan case.
Also responding, Mr. Adams stated that the garage that they propose to construct would not encroach into the setback more than Mr. Duncan's property does. They were careful to note that and Mr. Byler took measurements.

Responding to Colonel Ericson's question that the applicant wanted to encroach 11 feet into the front yard setback and Mr. Duncan was apparently only 1 foot so it is 24 feet instead of 25 feet. The proposed garage seems to go further into the setback than Mr. Duncan. Mr. Adams stated that he did not know if Mr. Duncan garage is out only 1 foot. It may be different than what he suggested.

Responding to Colonel Ericson's question that the house was purchased knowing the fact that it did not have a garage, Mr. Adams stated that he purchased the house understanding that it did not have a garage, but fully intending at some point to make application with the intent to construct a garage.

Responding to Colonel Ericson's question whether there was any reason the applicant could not convert the room back to a garage and if it was feasible, Mr. Adams stated that he and his wife are planning to start a family in Dover. If the bedroom was removed it would not provide them the necessary room for them to begin or have a family and to provide adequate shelter for his family. They would be forced to move and find a larger house away from the current property. They purchased the property because they enjoyed the opportunity to be on Silver Lake. In their eyes, the ability to return that space to a garage would not be something they would want to do given the fact that it would remove a full bedroom and return the property to two (2) bedrooms.

Colonel Ericson stated that most people in that situation buy new property and a bigger house at another location. There are other ways to get around this. He mentioned the hardship of the applicant's parents visiting and questioned if they would live there full time or just visiting, Responding, Mr. Adams stated no, it would be when they are visiting, but he has a grandfather who is 89 years old who lives in Bethany Beach and they have consulted with him about perhaps maybe at some point as he continues to age it may make sense for him to be closer to Dover with them. At the present time they would have space for him in their home. This is something they would certainly consider.

Responding to Colonel Ericson's question whether the applicant would have enough room in the house for a child and his grandfather, Mr. Adams stated that he would be able to have one child and one grandfather as well as he and his wife, which would be the three (3) bedrooms.

Responding to Colonel Ericson's question that at this point the applicant has neither of those facts, Mr. Adams stated correct.

Colonel Ericson stated that the problem is that they are always afraid of establishing precedents and if this application is approved and 11 feet is considered a long way it changes the nature of the neighborhood in his opinion. They do not like to do this unless there is a hardship. He did not understand the applicant's hardship at the current time.

Mr. Adams stated that this application would not change the character of the neighborhood. He would be happy if time permitted to walk the property with Colonel Ericson in order to help him and the other Board of Adjustment to understand what exactly it is that they intend to do. He mentioned the support from his neighbors and the ability to improve the property. Clearly it is important in that it also would considerably help the City of Dover as they continue since the City has budget challenges and is looking for ways to increase revenue. He is looking to improve his property in a meaningful way and to add value to his home. Apparently this would trigger a reassessment which would be helpful to the City and would improve the character and the view of his property.

Colonel Ericson stated in the Staff Report a response was mentioned that he did not understand "There would not be a negative affect on the neighboring properties as the construction of the

garage in the front of the property would be compatible with the other homes in the community which also have garages at the front of the house." He wanted to know how Staff came up with the response since giving testimony there was only one other property into that zone that is only 1 foot into the setback. Mrs. Townshend responded by stating that the issue is that the other properties have garages per the front of the house, not that they encroach into the setback. In terms of the character other properties may not encroach into the front yard, but there are garages that are in front of the house.

Colonel Ericson stated that when there is an encroachment, that is the difference, and that is what they are struggling with. He asked if they were going the same distance as the Duncan's or beyond. In one case it is 1 foot and the other case it is 11 feet. It seems like a significance difference.

Mr. Hufnal stated that he visited the area and the applicant is right next to the Duncan's property and if the applicant came out the same distance as the Duncan's why wouldn't the encroachment be 1 foot instead of 11 feet. Has the applicant considered eliminating the impervious area of the overage of 3.25 percent and a one (1) car garage instead of a two (2) car garage which would probably cover in both areas? Mr. Adams responded by stating that they did consider a one (1) car garage, but they would prefer to make application to construct a two (2) car garage. He stated that he thinks they can get around the 38% by removing some patio impervious surface that is at the rear of the property. He thinks that they can get under the 35% mark. He is asking for the opportunity to construct a two (2) car garage because they have two (2) cars that they would like to have in covered parking. With respect to the question regarding the 1 foot and the 11 feet, he was not sure that the 1 foot variance is correct.

Colonel Ericson stated that it was a real key issue. He stated that if it was the same distance as the Duncan's they should consider, but 11 feet is a whole new matter. Mrs. Townshend concurred.

Mr. Hufnal stated that the properties would be abutting closely. The back of the applicant garage would back up to the Duncan's house. Mr. Adams concurred.

Mr. Hufnal stated that if it came out to the same footage he could see that, but if it extends out 10 feet instead of 1 foot then something is not right.

Responding to Colonel Ericson's question if the application should be deferred until the next meeting until the applicant has time to speak with the Architect; Mrs. Townshend stated that another option would be to table the application until after the next application in order to allow the applicant time to contact his architect and get some of that information. We could in turn have someone go back to the office and pull the building permit to see where things are. Mr. Duncan's house is on a curb so that could potentially distort even if it is only 1 foot because of the curve of the street at that point.

Mr. Hufnal stated that the Duncan house is more of a circular type house and the Adams house would be an L-shape once completed. Mrs. Townshend concurred.

Mr. Hufnal stated that if this was approved, this would be the only house with a perpendicular garage. Everything else on the street is parallel to the house.

Mr. Adams stated that if facing Mr. Duncan's house the garage comes out perpendicular and he pulls in from a side access. If you visually look at Mr. Duncan house you would in essence flip his house over and their house would run horizontally to the street with the garage coming up perpendicularly and we would be pulling in, so they would be identical to the Duncan property next door.

Responding to Colonel Ericson's question whether he could get the Architect to draw on the driveway how far it would come out in comparison with the Duncan's so that they could get a better idea of what they are looking at, Mr. Adams stated yes, he would be happy to do that.

Responding to Mr. Hufnal's question whether the square footage of the garage is 30 feet wide, which he thought was pretty wide, was it going to be shortened any to lessen the impact into the setback, Mr. Adams stated that he would think that it could, this garage provided some storage space above the garage and this was the reason we selected this garage, with the two (2) bays and the steps that go up this would allow that storage space. He can certainly take a look at it.

Mr. Hufnal stated that an 11 foot setback seems like an awful lot even though the comment was that it would not be out of the character of the neighborhood, he thinks it would. If it could be shortened and then reviewed again to make sure the setback line is correct, he would feel more comfortable.

Mr. Adams asked that since his neighbor Mr. Townsend did make himself available to attend the meeting if he could speak.

Colonel Ericson also asked the applicant if he could work on the Exceptional Practical Difficulty as to why this is really necessary; which is a requirement that needs to be met.

Mr. Sherman Townsend was sworn in by Mr. Rodriguez.

Mr. Townshend stated that he lives next door to Mr. Adams. He has lived there since 1982. There are a lot of them that take pride in living in Old Dover and they always want to improve their properties. When he purchased his property in 1982 he came before the Board of Adjustment to get a variance because he wanted to have a two (2) car garage. This required him to have a variance to move closer to the side yard setback of 10 feet and he is around 5-6 feet. It allowed him to have his two (2) car garage. When Mr. Duncan got the property from his mother he went in and did significant improvements to the property. He brought out as stated by Mr. Adams a significant addition which included a two (2) car garage. It is his opinion that the 1 foot variance for Mr. Duncan was not the garage extension towards the street, it was the variance towards Mr. Adams property because his property went out towards the lake and required a variance in order for him to build the patio closer to Mr. Adams property prior to Mr. Adams owning the property. All of them in the neighborhood are very much are in favor of any improvements that people want to make. If you really look at the property Mr. Adams garage will not come out 11 feet past Mr. Duncan, if so; he would be in the street. Mr. Duncan's garage is within a few feet of the street and he thinks Mr. Adams garage would come very close to where the end of Mr. Duncan's garage is located. As previously stated by Mr. Adams it is going to be a mirror image. His garage will back up to Mr. Duncan's house and there will be sufficient space between them. He strongly believes

that the Board of Adjustment should approve the application. As families grow and they are newlyweds and they want very much to stay in the neighborhood. Mr. Adams previously lived in the neighborhood, and when this property became available nearby Mr. Adams purchased it and now he wants to improve the property. He thinks everyone in Old Dover wants younger families to come in so that the neighborhoods do not deteriorate as they have in other parts of the city. We welcome the younger people coming into our neighborhood and we want to allow them to modernize their home. Most every home on their street has a garage (he took a count this morning). There are only three (3) houses on the entire street that do not have a garage. In this day and time all families have two (2) cars and you need to have a place to house your car. As families grow they need a place to store outdoor toys. There are all sorts of needs for garages. We certainly would want Mr. Adams to have the opportunity to do that. He would certainly recommend that the Board of Adjustment consider Mr. Adams application and look at the situation. As you come down Pennsylvania Avenue along the lake the reality is that the street does not parallel to the lake. The further you get towards Mr. Adams and Mr. Duncan property the lots get narrow, and he does not have a lot of space or options. The only option is to do exactly what Mr. Duncan did and that is what he is asking. Basically the precedent has already been set. It would be unfair to Mr. Adams to have allowed Mr. Duncan to do what he did on his property and not to allow Mr. Adams to essentially mere what Mr. Duncan has done. Again, he would recommend approval.

Colonel Ericson stated that Mr. Townsend made some very good points. When they talk about Exceptional Practical Difficulty one thing the Board of Adjustment look at is the shape of the land that was described. The lots getting narrower and narrower, is something that should be brought up at the next meeting.

Mr. Townsend stated that he has plenty of room in front of his house. He stated that when he purchased his property there was a carport. They wanted to turn the one car carport into a two (2) car garage. In order to do that he had to get a side variance; which was allowed. The property next door to him had 100 yards between the street and the lake. They have plenty of space.

Chairman Sheth declared the public hearing open.

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

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

Colonel Ericson moved that application V-14-07 be deferred until next month in order to have the exact footage that is needed to encroach into the front yard setback and a reason for the Exceptional Practical Difficulty. The motion was seconded by Mr. Hufnal and unanimously carried 4-0. Mr. Keller was absent.

OLD BUSINESS

Applicant #V-14-06:

328 North DuPont Highway. Kalpkish, LLC has requested a variance from the requirements of Article 4 §4.14 of the *Zoning Ordinance* pertaining to the front and rear setbacks. The applicant proposes subdividing the property into two parcels, front and rear. The new subdivision line

would run between two existing buildings. Subject property is zoned C-4 (Highway Commercial Zone). The Tax Parcel is ED-05-068.13-01-79.00-000. The owner of record is Kalpkish, LLC c/o Kishor C. Sheth. *This application was heard on May 21, 2014 by the Board of Adjustment. At that meeting the public hearing was closed and action deferred. The applicant has filed case SB-14-04 with the Planning Commission, but the hearing schedule is to be determined.*

Mr. Cook, Planner I, submitted the following items for the record: staff report, site plan, photos, exhibit email, and a letter submitted by the applicant. A revised Site Plan was submitted by the applicant.

The legal notice was published in the Delaware State News on May 11, 2014, and the public was notified in accordance with the regulations.

At the May 21, 2014 Board of Adjustment meeting, the public hearing was closed and action was postponed. Today we resume consideration of this application.

Chairman Sheth is recused from application V-14-06 due to a conflict of interest. Vice Chairman Ericson resumes consideration of this application with Mr. Senato and Mr. Hufnal. Mr. Keller was absent.

Vice Chairman Ericson questioned if there was any member present who had a conflict of interest Mr. Sheth was recused due to a conflict of interest.

Representative: Kishore C. Sheth, Owner, Mr. Gregory Scott, Professional Engineer, Scott Engineering Inc.

Mr. Kishore C. Sheth was sworn in by Mr. Rodriquez.

Mr. Gregory Scott was sworn in by Mr. Rodriquez.

Mr. Scott stated that they were back before the Board of Adjustment to provide additional information and clarification of what is being requested in a way of setback reductions on the property. As noted on the plan that was provided they are proposing a subdivision line that runs between the two buildings one being on lot 1 and the other on a residual lot.

Vice Chairman Ericson asked Mr. Scott if he could point out the lines on the plan and if he could verify the heavy dotted lines.

Mr. Scott stated that the new heavy dash lines represented the new subdivision lines which would create parcel one and the residual parcel.

Responding to Mr. Hufnal's question if the light line was from the edge of the overhang of 1 foot for the roof, Mr. Scott concurred.

Mr. Scott verified the lines on the plan and stated that the building on lot 1 is 1.5 feet from the proposed subdivision line and they are requesting a variance down to l foot so that they are incompliance to the nearest foot for the building on the residual parcel, the closest setback of that

building that constitutes the corner is 10.3 feet from the proposed property line and they are requesting a variance down to 10 feet for that particular setback.

Mr. Hufnal stated that a good job was done with the revision of the plan because it now stated the correct acreage and correct information in the data column. The plan is more easily identifiable than the last one.

Vice Chairman Ericson stated that there was one problem dealing with the variance that was originally submitted.

Mr. Rodriguez asked Mr. Scott if he was requesting a variance of 1 foot for the overhang for lot 1 and 10 feet for the residual parcel which includes the overhang, Mr. Scott responded by stating that it may be more beneficial to state as a requested variance down to 1 foot and 10 feet from the property line.

Mr. Hufnal stated that they also needed to add that even though you have lot 1 and the residual parcel it will need to be identified as a subdivision of the original lot even though it is stated that lot 1 has a rear setback of 1 foot and the Residual has a side setback of 10 feet, it is the subdivision of the original lot.

Mr. Hufnal moved to approve application V-14-06 variance request subdivision of property with lot 1 having a rear setback of 1 foot and the Residual Parcel having a side yard setback of 10 feet on the east side of the two story building, and based on previous testimonies and current engineering submission of revised figures and comments in the Staff Report of May 21, 2014. The motion was seconded by Mr. Senato and unanimously carried 3-0. Mr. Keller was absent and Mr. Sheth was recused due to a conflict of interest.

Mr. Hufnal moved to adjourn the meeting, seconded by Mr. Senato and unanimously carried 3-0. Mr. Keller was absent and Mr. Sheth was recused due to a conflict of interest.

Meeting adjourned at 9:41 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary

V-14-07 547 Pennsylvania Avenue

Nicholas Adams has requested a variance from the requirements of Article 4 §4.1 of the *Zoning Ordinance* to allow the construction of an addition to encroach into the front yard setback. Subject property is zoned R-8 (One Family Residence Zone). The Tax Parcel is ED-05-068.17-01-26.00-000. The owner of record is Nicholas A. Adams. *This application was heard on June 18, 2014 by the Board of Adjustment. At that meeting the public hearing was closed and action deferred.*

- A copy of the staff report and application information was presented for the 6/18/2014 Board of Adjustment meeting. Please refer to the copies previously provided.

- The Board of Adjustment in deferring the Application V-14-07 requested information on the exact footage that is needed to encroach into the front yard setback and a reason for the exceptional practical difficulty. The applicant is to present this additional information at the Board of Adjustment Meeting.

- If you have questions, please contact Planning Staff at 736-7196.

City of Dover

Board of Adjustment

July 23, 2014

V-14-08

Location:	1235 South Bay Road, Dover, Delaware (Also listed as 1235 Bay Road)
Applicant/Tenant:	Mark Lillard, Fain Auto Sales, LLC
Property Owners	Adolfo Q. and Honorato M. Bengzon
Application Date:	Appeal Received June 13, 2014 Request for July 16, 2014 Meeting. Meeting was rescheduled for July 23, 2014.
Present Zoning:	C-4 (Commercial Highway Zone)
Appeal Requested:	Regarding the use of the intended parking area. Appeal of the determination of the City Planner that the proposed gravel area cannot be used for parking as it is not a hard, dust-free surface.

Request for Appeal

The applicant has filed an Appeal of a determination by the City Planner regarding the use of the proposed a gravel area as a parking area on the property at 1235 South Bay Road and the interpretation of *Zoning Ordinance*, Article 6 Section 3.6 regarding parking drainage and surfacing.

Building Permit #14-623 applied for proposed the installation of a 10 feet by 40 feet gravel area located directly in front of building facing Bay Road. Approval of the Building Permit was granted for the installation of the gravel area; however, it was noted that the proposed gravel area cannot be used for parking as it is not a hard, dust-free surface which is required for permanent parking areas. (Note: The Building Permit was not formally issued, but the applicant was made aware of the permit review comments and conditions.)

Property Description

The property located on the east side of Bay Road includes two buildings utilized for commercial uses. These buildings were previously constructed as a 1½ story house and detached garage.

Currently, the property is the location of Fain Auto Sales and J&W Asian Food Store. Access onto the property is from Bay Road and a parking lot exists to the south of the buildings. The adjacent properties to the north and south are zoned C-4 and are commercial uses (a restaurant and a motor vehicle service establishment).

Code Citations

Procedures

The Board of Adjustment procedures for Appeals are outlined in the *Zoning Ordinance* and within *Delaware Code.* See the following code citations.

Dover Code of Ordinances, Appendix B: Zoning, Article 9. Board of Adjustment:
Section 2. Powers and duties:

> The board of adjustment shall have the powers and duties as specified in Delaware Code Annotated (22 Del. C. § 301 et seq.) and as articulated below:
>
> 2.2 *Appeal of administrative order, requirement, decision, or determination*. The board shall have the authority to hear and decide appeals where it is alleged there is any order, requirement, decision or determination made by an administrative official in the enforcement of the zoning ordinance. Appeals to the board may be made by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of an administrative officer.

Zoning Ordinance, Article 9 §3 outlines the procedures for both variances and appeals. Appeals are subject to a Public Hearing which must noticed by publication in the newspaper and by mailed notice to property owners within 200 feet of the subject property.

The Appeal must be filed in writing on prescribed forms and is subject to a filing fee. It is noted that this fee may be returned to the applicant (*Zoning Ordinance,* Article 9 §3.4) under certain provisions:

> Article 9 §3.4 The board of adjustment may, in its discretion, return to the applicant part or all of the fee paid by him in the event that his appeal under section 2.2 Appeal of administrative order, requirement, decision, or determination hereof is partially or wholly successful.

The Appeal (written application and submission items) as filed shall consist of the following per the *Zoning Ordinance*, Article 9 §3.5:

> Article 9 §3.5 Each variance application or appeal shall fully set forth the circumstances of the case. Every variance application or appeal shall refer to the specific provision of the ordinance involved, and shall exactly set forth, as the case may be, the interpretation that is claimed, the details of the variance that is applied for and the grounds on which it is claimed that the same should be granted.

- **A copy of the Appeal as filed by the Applicant is attached as Exhibit 1A. Exhibits 1B and 1C included as these items reference the Appeal.**
  - **Exhibit 1A – Application to Board of Adjustment for Appeal**
  - **Exhibit 1B – Letter from the applicant dated June 13, 2014**

- **Exhibit 1C – Special Notes and Comments on Pages 2 and 3 of the Building Permit #14-623 dated June 6, 2014 outlining the parking requirements for permanent parking spaces and access drives in the *Zoning Ordinance.***

The provisions of *Delaware Code* (22 Del. C. § 301) also note a procedure for Appeals:
22 Del. C. §324 Appeals to board.

Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time as provided by the rules of the board by filing with the officer from whom the appeal is taken and with the board a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

- **Copies of materials from the Determination by the City Planner are attached as Exhibits 2A and 2B.**
  - **Exhibit 2A – Copy of complete application for Building Permit #14-623 for property at 1235 S. Bay Road as submitted (forms, plot drawing).**
  - **Exhibit 2B – Copy of Building Permit #14-623 as reviewed and as prepared for issuance. This Permit has not been issued.**

Action by the Board of Adjustment

It is the responsibility of the Board of Adjustment to hear and decide the Appeal where it has been alleged that the determination of the administrative official was in error. This Appeal is to determine the interpretation of a permanent parking area and if gravel qualifies as an "other hard, paved, dust free surface" for use as a surfacing material for parking areas.

Background Information

C-4 (Highway Commercial Zone) Zoning District

The description of the C-4 (Highway Commercial Zone) and the uses permitted within the zone are given in the *Zoning Ordinance,* Article 3 Section 16. The use as motor vehicle sales is permitted as Article 3 Section 16.11 references the uses in the C-3 (Service Commercial Zone) zoning district as listed in Article 3 Section 15.14 Motor vehicle, boat or farm equipment sales or service. (Note: Ordinance #2014-08 adopted on July 14, 2014 amended the *Zoning Ordinance* and the permitted uses in the C-4 zoning district to now list the use under uses permitted in Article 3 Section 16.1(m) Motor vehicle, boat or farm equipment sales or service.)

Zoning Ordinance Parking Requirements

The parking requirements for the C-4 zoning district are given in *Zoning Ordinance,* Article 4 Section 4.15. The requirement is 1½ parking spaces per 300 S.F. of floor area or one (1) per employee whichever is greater. (Note: Ordinance #2014-08 adopted on July 14, 2014 amended the *Zoning Ordinance* setting the parking requirement as one (1) parking space per 300 S.F. of floor area or one (1) per employee, whichever is greater.)

The requirements for off-street parking spaces are given in *Zoning Ordinance*, Article 6 Section 3. The minimum size of a parking space is nine (9) feet in width and 18 feet in length. The requirements for drainage and surfacing of parking areas are given in the *Zoning Ordinance*, Article 3, Section 3.6. The Code excerpt is as follows:

Article 6 Section 3.6 Drainage and Surfacing

(a) All open permanent parking areas and access drives shall be properly drained and all such areas shall be provided with paved asphalt, concrete or other hard, paved, dust free surfaces.

(b) All permanent parking areas shall be enclosed with upright concrete curbing at least six inches in height. The planning commission may relax this requirement for a portion of a parking area when there is a demonstrated need to convey Stormwater to a proposed or approved Stormwater management area. Curbing shall not be required for loading areas, handicapped access and for parking spaces accessory to a one family or two-family residence (see also article 6, section 5.3).

The current text language in Article 6 Section 3.6 has been part of the *Zoning Ordinance* since its adoption by City Council on September 13, 1999.

Property at 1235 South Bay Road, Dover:

- Business License 13-00012578 for Merchant by Fain Auto Sales LLC. License application listed business as wholesale auto sales. Issued 2/15/2013 for licensing year through 6/30/2013.
    - License renewed as 14-00012578 for license year 7/1/2013 – 6/30/2014.
    - License renewed as 15-00012578 for license year beginning 7/1/2014.

- Business Licenses (three years of licenses) for the other commercial building on property for J&W Asian Food Store as a Merchant.

- Building Permits: Since 2008 various permits have been issued for roof work and siding exterior improvements to the buildings and for a wall sign permit for the Asian Food Store. No Sign Permits in permit records for Fain Auto Sales.

- Code Enforcement Case 14-1607 entered 5/7/2014 – Cars parking on grass. Applied for Building Permit on 5/19/2014 to install gravel area for parking.

Exhibit 1B

Fain Auto Sales LLC
1235 S Bay Road
Dover, DE 19901
(302) 264-9038
Fax: (302) 264-9599
sales@fainauto.com

June 13, 2014

Board of Adjustment Appeal

Fain Auto Sales LLC is appealing the planning and zoning decision on application #14-00000623. The permit application was approved for the improvement but was denied for the intended use. It was cited under article 6 section 3.6 in the city ordinance. We proposed the use to be conditional to only cars under the dealership's inventory. The intended improvement is not going to be a permanent parking area that can be used by either employees or customers. There is already a parking lot on the premises and this would merely be a small extension to that in an effort to make our inventory visible to the public and help the business survive.

We did meet with planning officials regarding the issue in an effort to help understand the process and it became clear that there may be some irregularities in how it can be interpreted. We have researched the code along with the severability of it and feel that there are grounds for approval under conditional use. In addition, we were able to provide officials with dozens of other businesses that reside within city limits that have entire parking lots laid in gravel and of which are used for customers, employees, and storage. Without the conditional use of this small parking area our business will certainly encounter undue hardship. We have started this company in an area of Dover where all others have failed and we would like to see continued success for our business in the City of Dover.

We have researched the city ordinances for enactment dates and researched other businesses in the City that have been approved where we have not. We have compiled pictures and information to support our claim and through the Freedom of Information Act we will continue to gather information in an effort to achieve a favorable resolution. We wish to resolve this matter as soon as possible so that we may progress forward in our day-to-day operations. Thank you for your time and consideration.

Sincerely,

Mark Lillard
Fain Auto Sales, LLC

Exhibit 1C

CITY OF DOVER
PLANNING & INSPECTIONS
15 E LOOCKERMAN STREET
DOVER DE 19901

Application Number 14-00000623

Special Notes and Comments
Occupancy:
Final Electric-Before Building Final (as may be required by Fire Marshal's office)
Final Plumbing- Before Building Final (as may be required for Board of Health)
Final Public Utilities (as may be required by Public Utilities Department)
Fire Marshal (required)
Final Planning and Zoning (required)
Building Final (required)

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of Health after City of Dover Plumbing Final inspection. A Public Occupancy permit may be required for certain occupancies after Fire Marshal approval and before application for C/O. All associated fees must be paid prior to occupancy approval.

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June 6, 2014 1:27:41 PM wtc.
Permit for the installation of 10 x 40 gravel area at 1235 S Bay Road, in the proposed area shown on the site diagram submitted with the application. Property is zoned C-4. Per Art. 6, Sec. 3.6, All open permanent parking areas and access drives shall be properly drained and all such areas shall be provided with paved asphalt, concrete or other hard, paved, dust-free surface . The proposed gravel area cannot be used for parking as it is not a hard, dust-free surface. A final inspection is required upon completion of

CITY OF DOVER
PLANNING & INSPECTIONS
15 E LOOCKERMAN STREET
DOVER DE 19901

Date 6/13/14

Application Number 14-00000623

Special Notes and Comments
the installation of the gravel. Please call 302-736-7010 to schedule a final inspection once the gravel has been installed.

Fee summary	Charged	Paid	Credited	Due
Permit Fee Total	25.00	.00	.00	25.00
Plan Check Total	.00	.00	.00	.00
Grand Total	25.00	.00	.00	25.00

City of Dover - BUILDING PERMIT APPLICATION

15 Loockerman Plaza ♦ Dover, Delaware 19901 ♦ (302) 736-7010 ♦ FAX (302) 736-4217

COA

Project Address/Tax Parcel Identification Number ED-05-086.00-01-130.000-000

1235 S. BAY RD DOVER, DE 19901

Applicant's Name

1ST STATE CONTRACTING LLC

Owner Name and Address
ADOLFO BENAZON Mark 242-7333
Phone # (302) 697-2618
E-mail address:

Contractor Name and Address
1ST STATE CONTRACTING LLC (Mark Lillard)
Phone # (302) 698-7340
242-7333
E-mail address:
Dover Business License #

BUILDING DETAILS

Proposed Occupancy _____

Type of Construction _____

Change in Occupancy or Use? Yes or No

If yes, describe the previous use _____

Type of work: ( ) New ( ) Addition ( ) Demolition
( ) Renovation – Interior ___ Exterior ___
( ) Roof – tear off ___ overlay ___ # of layers_____
( ) Alteration ( ) Siding ( ) Solar panels
( ) Full Building Demolition ( ) Selective Demolition
( ) Fence - Height _____ ( )Pool ( ) Elevator
( ) OTHER _____

Number of Stories _____

Total Height in Feet _____

Total Land Area to be Disturbed (in SF) _____

Proposed Occupant Load _____

Square Footage All Floors _____

Total Work Area (in SF) _____

Description of Work:
GRAVEL IN 10x40 SQ. FT. AREA

Sprinkler System? Yes or No

Fire Alarm System? Yes or No

Estimated Value of Construction: $4,500

Before You Dig! Call Miss Utility 1-800-282-8555 or other authorized locator.

Contractor Attention! Please post your issued permit on site and visible from the street.

6/6 Contractor: No answer, no voicemail. Left v/m for owner. DK
Owner called [illegible]

Office Use Only

Permit Number 14-623

Roll Plans Fold Plans CD

Date Received 5/19/14 DAF

Date Issued _____

Flood Plain Y (N) Taxes Y (N)

Public Works (Y) N KCD Y (N)

C/O Required _____

Review Approvals	
(✓) Building Plan	Date 6/6 Initials TM
(✓) Fire Plan	Date 6/6 Initials [illegible]
C-4 (✓) Zoning / Site Plan	Date 6/6/2014 Initials BC

Total Fee 25.00

Fees Paid ( )

Check # _____ Cash _____

Collected By _____

Certification in Lieu of Oath

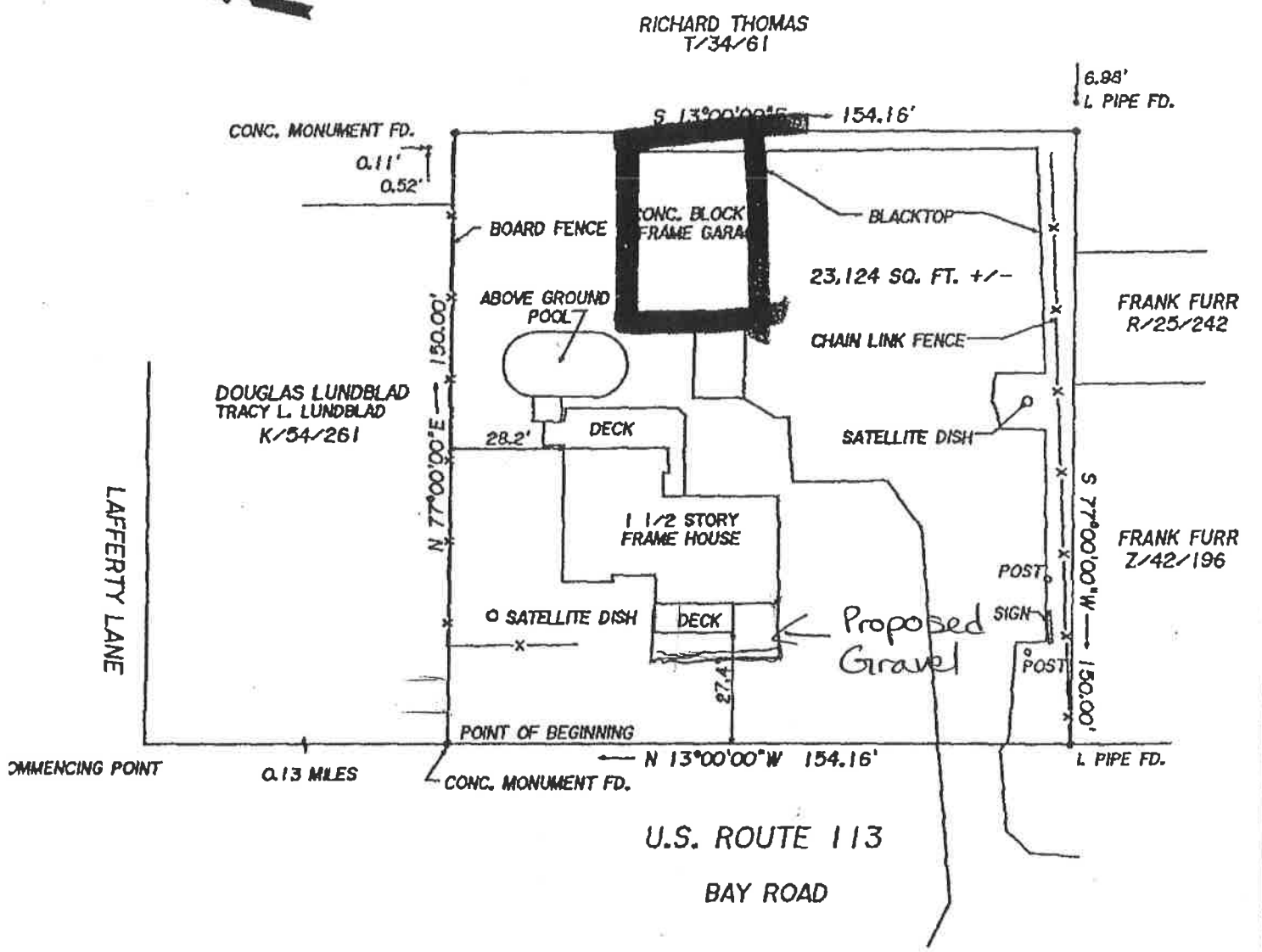
I hereby certify that I am the owner of record or a contractor authorized by the owner of record to make this application, and that all work will be performed in accordance with the applicable Codes and Ordinances.

Signature

5/19/2014
Date

Exhibit 2A

Enlarged to scale 14-623



APPROVED
City of Dover - Dept of Planning
See permit comment

Name B. Coach
Date 6-6-14
Permit # 14-623

THE ACCURACY OF THIS SURVEY EXCEEDS THE MINIMUM STANDARDS FOR A CLASS "B" SURVEY.

I CERTIFY THAT THE IMPROVEMENTS INDICATED HEREON ARE LOCATED AS SHOWN.

ROBERT L. LARIMORE
P.L.S. #392

BUYERS:
ADOLFO Q. BENGZON
HONORATA M. BENGZON

1235 BAY ROAD

JAMES F. WALTON & MARY ANNE WALTON	
CITY OF DOVER	
KENT COUNTY, DELAWARE	
ROBERT L. LARIMORE LAND SURVEYOR	1" = 40' OCTOBER 4, 2001

Brief Description of Work (To Be Completed by Applicant):	To Be Completed By Planning & Inspections Staff
Gravel area 10' x 40'	Building Permit #: 14-623 Plumbing Permit #: C/O Required: Y/(N)

WORK SITE LOCATION	Address: 1235 S. BAY RD DOVER DE 19901
	Parcel ID: ED-05-086.00-01-130.000-000

Applicant (Owner or Contractor)	1ST STATE CONTRACTING LLC
Contact Person	MARK LILLARD
Mailing Address	24 MARSH CREEK LN
City, State, Zip	DOVER DE 19904
Telephone	(302) 698-7340
Fax	
E-mail Address	

RECEIVED
MAY 28 2014
BY:

Does Your Project Propose . . .	Yes	No	If Yes, Describe
an increase or decrease to the quantity of plumbing fixtures at the location?		X	
a change in size of the water line serving the location?		X	
a new water irrigation system?		X	
a change in size of the sanitary sewer line serving the location?		X	
relocation of the water meter?		X	
relocation of the water line serving the location or any associated appurtenances?		X	
relocation of the sanitary sewer line serving the location or any associated appurtenances?			
any work within the right-of-way?		X	
any proposed sidewalk work?		X	
any proposed concrete work?		X	
any alteration to any storm drain infrastructure?		X	
any proposed curb alteration, i.e., new driveway to property?		X	
any proposed scaffolding to renovate building exterior?		X	
any proposed tree or shrub plantings within the right-of-way?		X	
an upgrade in sanitation service?		X	
a relocation of the existing trash pick-up location?		X	

EASEMENT*	Yes	No
Is there any existing easement on this property? (utility, drainage, cross access, etc.)		

**-It is prohibited to build any structure within an existing easement.*

I hereby certify that the information provided above is correct and acknowledge that should any differences be identified throughout the course of the project that all renovation project requirements still apply.

MARK LILLARD
Printed Name of Applicant

Mark Lillard
Signature of Applicant

5/19/14
Date

THIS FORM MUST BE COMPLETED AND TURNED IN WITH PLUMBING PERMIT APPLICATION OR BUILDING PERMIT APPLICATION.

APPROVED VIA HTE 27 MAY 14 JL

Exhibit 2B

CITY OF DOVER
PLANNING & INSPECTIONS
15 E LOOCKERMAN STREET
DOVER DE 19901

Permit Pending COPY

Application Number . . . . . 14-00000623 Date 7/18/14
Property Address . . . . . 1235 BAY RD
Tax Map Number: ED-05-086.00-01-130.000-000
DRS from Location Master:
Tenant nbr, name . . . . . FAIN AUTO
Application type description ADMINISTRATIVE PERMIT
Subdivision Name . . . . . .
Property Use . . . . . .
Property Zoning . . . . . HIGHWAY COMMERCIAL
Application valuation 0

Application desc
Put gravel in a 10x40 area in front

Owner
BENGZON,ADOLFO Q & HONORATO M
114 STUART DR
DOVER DE 19901

Contractor
1ST STATE CONTRACTING
24 MARSH CREEK LN
DOVER DE 19904
(302) 698-7340

Permit . . . . . ADMINISTRATIVE PERMIT
Additional desc . .
Permit Fee . . . . 25.00 Plan Check Fee . . .00
Issue Date . . . . 6/13/14 Valuation 0
Expiration Date . . 12/10/14

Qty	Unit Charge	Per		Extension
			BASE FEE	25.00

Special Notes and Comments

INSPECTIONS REQUIRED:This is a general list which may vary, it is the applicants responsibility to confirm and schedule inspections needed ahead of schedule.

Attention: No Construction does not mean that inspections are not required. As a minimum, inspections will include, and may not be limited to Fire Marshal, Planning and Zoning and Building Final approvals.
Inspections required for Certificate of

CALL(302)736-7010, 736-4457 or 736-7011
for scheduling inspections

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