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 curve 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