CITY OF DOVER BOARD OF ADJUSTMENT
AGENDA
Wednesday, March 19, 2014 at 9:00 AM

City Hall Council Chambers
15 Loockerman Plaza, Dover, Delaware

ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES OF February 19, 2014 Meeting

NEW BUSINESS

Applicant #V-14-01
128 South Queen Street. Joe W. Burden has appealed the decision of the City Planner to the Board of Adjustment regarding the use of the subject property as a rooming house. Subject property is zoned RG-1 (General Residence Zone). The Tax Parcel is ED-05-076.12-70.00-000. The owner of record is Joe W. Burden. *The hearing of this appeal was postponed from the January 15, 2014 meeting at the request of the applicant.*

Applicant #V-14-05
74 Laurel Drive. Thomas Bugbee and Sherrill Brekke have applied to the Board of Adjustment for a variance from the requirements of Article 5 § 11.211 (c) of the *Zoning Ordinance* pertaining to new residential construction within the flood hazard area. They have specifically requested to build to six (6) foot contour. Subject property is zoned R-10 (One Family Residence Zone). The Tax Parcel is ED-05-077.14-01-32.00-000. The owners of record are Thomas J. Bugbee and Sherrill L. Brekke.

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
February 19, 2014

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

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

APPROVAL OF AGENDA

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

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

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

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATIONS

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

NEW BUSINESS

Applicant #V-14-03:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Vice Chairman Ericson declared the public hearing open.

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

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

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

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

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

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

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

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

Mr. Moore was sworn in by Mr. Rodriquez.

PRESENTATION

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

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

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

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

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

Representative: Mr. Alan Perry, Owner.

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

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

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

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

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

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

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

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

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

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

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

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

Vice Chairman Ericson declared the public hearing open.

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

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

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

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

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

Meeting adjourned at 9:53 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary

City of Dover

Board of Adjustment

March 19, 2014

V-14-01

Location:	128 South Queen Street
Applicant/Owner:	Joseph W. Burden Sr.
Application Date:	Received December 13, 2013 Request Scheduled for January 15, 2014 Meeting was deferred until the March 19, 2014 meeting
Present Zoning:	RG-1 (General Residence Zone)
Appeal Requested:	Regarding the use of the property as a rooming house. Appeal of the determination of the City Planner that property cannot be utilized as a rooming house.

Request for Appeal

The applicant has filed an Appeal of a determination by the City Planner regarding the use of the property at 128 South Queen Street as a rooming house.

Property Description

The property includes a two story residential building and is located on the west side of South Queen Street in the block between Reed Street and West Loockerman Street. The adjacent properties to the north and south are zoned RG-1 and are residential uses. Historic maps dating to the late nineteenth century show a dwelling on this property.[1]

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.

[1] Sanborn Fire Insurance Map of 1885 shows a two story dwelling with a detached shed on the property at 128 South Queen Street.

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 Property Owner dated November 21, 2013**
    - **Exhibit IC – Letter from Planning Director dated November 21, 2013 providing information appeal processes.**

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 the materials from the Determination by the City Planner are attached as Exhibits 2A and 2B.**
    - **Exhibit 2A – Letter of Suspension of Rental Permit dated November 15, 2013 from Planning Director: Unlawful Use as Rooming House**
    - **Exhibit 2B – Letter of Code Violations from Code Enforcement Officer dated November 18, 2013 with Pages 1 and 2 (of 11 pages) listing violations associated with this Appeal Request on Rooming House**

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 limited to the Determination of the Use of the Building as a Rooming House. (The condition of the building and other Building Code violations are not the subject of this Appeal.)

Background Information on Uses in RG-1

RG-1 (General Residence Zone) Zoning District

The description of the RG-1 (General Residence Zone) and the uses permitted within the zone are given in the *Zoning Ordinance*, Article 3, Section 2 – General residence zones (RG-1 and RG-2). The Code excerpt is as follows:

Article 3 Section 2. General residence zones (RG-1 and RG-2).

2.1 *Uses permitted.* In a general residence zone, no building or premises shall be used, and no building or part of a building shall be erected, which is arranged, intended or designed to be used, in whole or in part, for any purpose, except the following:

2.11 Any use permitted in one-family residence zones, except that:

Not more than one professional office or studio, other than accessory to a use otherwise permitted, shall be permitted for each 25 dwelling units or major fraction thereof on the lot. Such office or studio shall be only on the street floor of any building and on the floor immediately above the street floor only if there [shall] be direct access to such office or studio from outside the building.

2.12 Garden apartments limited to placement within the RG-2 district only.

2.13 Off-street parking accessory to uses located within the central commercial C-2 zone, provided that:

(a) Such parking is situated not more than 150 feet from the C-2 zone.
(b) Parking areas are screened by landscaping from adjoining properties used for residence.
(c) Illumination of parking areas is shielded from the view of adjoining properties used for residence.

2.14 Reserved.

2.2 *Performance standards.* All uses are subject to performance standards as set forth in article 5, section 8.1.

2.3 *Site development plan approval.* Site development plan approval in accordance with article 10, section 2 hereof shall be required prior to the issuance of building permits for the erection or enlargement of all structures and related accessory structures. Such approval shall also be required prior to the issuance of certificates of occupancy for a change of use.

2.4 *[Conditional uses.]* Conditional uses permitted upon the approval of the planning commission in accordance with the procedures and general conditions set forth in article 10, section 1 of this ordinance:

(a) Bed and breakfast inns in the RG-1 district only, subject to the following:

i. A bed and breakfast inn may only be established within a primary residential structure or an associated accessory structure.

ii. The owner of the property shall reside on the premises of the bed and breakfast inn or in an adjacent premises. However, if ownership of the property is in the name of a corporation, partnership, trust, etc., a full-time resident manager/operator/inn-keeper shall reside in the principal structure on the subject property or adjacent property.

iii. The principal structure shall contain at least one full bathroom for the exclusive use of the owner or resident manager and other members of the immediate household. In addition, one full bathroom shall be provided for each two guestrooms. Each full bathroom shall contain a minimum of one water closet (toilet), one lavatory (sink) and one bathtub or shower stall and shall comply with all applicable building and plumbing codes.

iv. The number of guestrooms requested shall be set forth in the application for conditional use. The planning commission shall expressly establish the maximum number of guestrooms permitted for any application for which approval is granted. In no case shall a bed and breakfast inn contain more than ten guestrooms.

v. Off-street parking shall be provided at a minimum of two spaces, plus one space per guestroom. Off-street parking shall be prohibited in the front yard, except that such parking which may be customarily accommodated on a single width driveway may be permitted. Required parking may be provided on the premises or off the premises, provided that such off-premises parking is located within 150 feet walking distance of the bed and breakfast property.

vi. Lot coverage for a bed and breakfast inn shall not exceed 60 percent of the lot.

vii. Signage is limited to one sign not to exceed six square feet in area. Signs may be illuminated, provided that internally illuminated signs shall be prohibited.

viii. Meals may be served to residents and overnight guests only. No cooking appliances or kitchenettes shall be permitted within the guestrooms, except small refrigerators and microwave ovens.

ix. The stay of overnight guests shall be limited to 30 consecutive days.

x. The owner/operator of a bed and breakfast inn shall maintain a current City of Dover business license, and the establishment shall be inspected by the City of Dover fire marshal and the City of Dover health inspector for compliance with all applicable life safety and health and sanitation codes.

(b) Student homes subject to the following siting and bulk criteria:

i. No student home shall be located closer than 500 feet from any other student home.

ii. The maximum allowable occupancy shall be four persons or the occupancy limit as determined by the building and fire codes adopted by the City of Dover, whichever is less.
iii. Two off-street parking spaces shall be provided per dwelling unit.
iv. A student home shall not be permitted to be established within any semi-detached dwelling, duplex dwelling, group dwelling, or townhouse dwelling unit.
v. Buildings or groups of buildings on the same lot with 15 or more units on the lot shall not be subject to the student home regulations.
vi. Student homes shall be licensed under chapter 10, Housing Code [chapter 22, Buildings and Building Regulations], article V [X], Rental Dwellings, of the Code of Ordinances.
vii. Student homes shall be subject to the provisions of chapter 10, Housing Code [chapter 22, Buildings and Building Regulations], article III [VIII], Leases, of the Code of Ordinances.

(c) Multiple dwellings subject to the following restrictions:
i. Conversions of single-family dwellings to multi-family residential dwellings shall be limited to the RG-2 district.

(d) In order to stimulate limited commercial activity in the RG-1 and RG-2 zones within the city's historic district zone and/or where a historic district property or a property listed on the National Register of Historic Places exists, and to make this area of historic Dover more attractive to tourists and residents, antique shops, art galleries, gift and card shops, book stores, specialty hobby stores, and restaurants with no alcoholic beverages may be permitted as accessory uses incidental to the principal residence, subject to the conditional use approval of the planning commission in accordance with Article 10—Planning Commission, Section 1—Approval of conditional uses, and subject to the following :
i. Total floor area of any nonresidential accessory use shall not exceed 2,000 square feet.
ii. A minimum of two off-street parking spaces shall be required to serve the residence and the accessory use.
iii. Signage for the accessory use is limited to one sign not to exceed six square feet in area. Signs may be illuminated, provided that internally illuminated signs shall be prohibited.

2.5 *[Signs.]* Signs shall meet the regulations found in article 5, section 4, supplementary sign regulations.

2.6 *Administrative waivers:* The city planner shall have the authority to waive the bulk standards and parking requirements of article 4, section 4.2 for all non-conforming lots that existed in the RG-1 zone prior to January 1, 2007, when deemed necessary for redevelopment. The applicant must request such waivers in writing, stating the reasons that such waivers are necessary for development or redevelopment of the subject parcel.

For the General Residence Zones (RG-1 and RG-2), the *Zoning Ordinance* previously allowed for other permitted uses. The Ordinance, effective as of November 27, 1961, included "Rooming House accommodating not more than five (5) roomers" as a permitted use in the RG-1 zoning district. However, the "Rooming House" as a permitted uses was deleted by an Ordinance Text

Amendment in January 2003. A summary of these amendments to the RG-1 zoning district regulations since 1993 is provided in the chart below.

Ordinance Amendment to RG-1 zone	**Type of Amendment**
Ord. of 7-12-1993, §14	Adds Item 2.4 (b) to allow for Bed & Breakfasts as a Conditional Use.
Ord. of 4-22-1996	Removed language about regulating buildings by ownership. Replaced with uses based on defined types of buildings (multiple dwellings, garden apartments).
Ord. of 2-12-2001	Update to Sign Regulations creating new Article 5 §4 and removes signage statements from zoning districts and refers to Article 5 §4.
Ord. of 1-13-2003	Prohibits multi-family dwellings in RG-1 as a permitted use. Deletes Item 2.14 Rooming House from permitted uses listing. Establishes Student Homes and multi-family dwellings as a Conditional Use.
Ord. of 9-11-2006	Delete Item 2.4 (c). Replaced with prohibition on the conversion of single family residences to multi-family residences in the RG-1. Only allows conversion of single family residences to multi-family residences in the RG-2 zone as a Conditional Use.
Ord. of 5-29-2007	Adds new Section 2.6 to allow for administrative waivers of the bulk standards.
Ord. No. 2011-29, 1-9-2012	Adds Item 2.4 (d) to allow for limited commercial uses accessory to principal residential uses in the RG-1 and in the Historic District or National Register property.

Rental Dwelling Permits

The *City of Dover Code of Ordinances* includes provisions for the licensing of Rental Dwellings (Chapter 22, Building Regulations, Article X. Rental Dwellings). Review of the available Rental Dwelling License (Permit) history for the property is provided below. This Rental Licensing program also includes provisions for Annual Housing Inspections by the Code Enforcement Division of the Department of Planning & Inspections.

Property at 128 South Queen Street:

- License 98-233 for Apartment House. Application date 4/17/1997. License renewed 2/3/1998. (Owner: June E. Thomas)
    - Annual Housing Inspection conducted 3/18/1999

- Annual Housing Inspection conducted 7/17/2001 (property noted as for sale 10/31/2001)

- Annual Housing Inspection conducted 11/14/2007

- Annual Housing Inspection conducted 2/16/2011
    - Noted that prior to renting that a Rental Dwelling License is required
    - Noted that unit can't be used as rooming house without Conditional Use approval

- Code Enforcement Case 12-1114 entered 4/23/2012 – No Valid Rental Permit. Case closed when License 13-21705 obtained on 4/25/2012.

- License 13-21705 for Single Family Dwelling. Application date and issued date 4/25/2012 with Expiration date of 1/31/2013. (Owner: Joe W. Burden)

- License 14-21705 for Single Family Dwelling. Application date and issued date 3/1/2013 with Expiration date of 1/31/2014. (Owner: Joe W. Burden)
    - This Rental Dwelling License is currently suspended as of November 15, 2013

City of Dover,
Department of Planning and Inspectic
P.O. Box 475, Dover, Delaware 19903
(302) 736-7010 Fax: (302) 736-4217
www.cityofdover.com

Exhibit 1A

___ Area Variance
___ Use Variance
___ Appeal
___ Pre-App Date

Board of Adjustment Application

RECEIVED
DEC 13 2013
OFFICE OF THE CITY CLERK

Application Information

Property Address: 128 South Queen Street

Tax Parcel Number: ED-05-076.12-02-70.00-000

Owner Name: Joe Burden Sr.

Property Zoning: RG-1

Variance (s) Requested: Appeal of Determination that property is an illegal rooming home also Sound Structer. And for legal (repsentation)

*Provide eight (8) copies of any survey, drawings, photos, site plan, etc. that may help support your application, and your response to the criteria. The criteria for a use variance and appeal are on the back of the form.

14-700001

X **Area Variance**

An area variance shall be evaluated on the following criteria: **Please state how your request meets each of these four (4) criteria.**

1. The nature of the zone in which the property lies;
2. The character of the immediate vicinity and the contained uses therein;
3. Whether, if the restriction upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses; and
4. Whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in his efforts to make normal improvements in the character of that use of the property that is permitted uses under the provisions of the zoning ordinance.

Signature

I Joe Burden do affirm that I am the property owner on which the variance is sought and that all the information provided in this application is accurate to the best of my knowledge and belief.

Joe Burden | Home owner | 12-13-13

Signature | Title | Date

City of Dover, DE
Department of Planning and Inspections
P.O. Box 475, Dover, Delaware 19903
(302) 736-7010 Fax: (302) 736-4217
www.cityofdover.com

Board of Adjustment Application- cont.

X **Use Variance**

A use variance shall be evaluated on the following criteria. **Please state how your request meets each of these criteria.**

1. That there are physical conditions applying to the land or building for which the variance is sought, which conditions are peculiar to such land or buildings, and have not resulted from any act of the applicant or any predecessor in title; and

2. That the aforesaid circumstances or conditions are such that the strict application of the provisions of this ordinance would deprive the applicant of all reasonable use of such land or building and the granting of the variance is necessary of the reasonable use of the land or building, and that the variance as granted by the board is the minimum variance that will accomplish this purpose;

3. That granting of the variance under such conditions as the board may deem necessary or desirable to apply thereto will be in harmony with the general purpose and intent of this ordinance, will not represent a radical departure therefrom, will not be injurious to the neighborhood, will not change the character thereof and will not be otherwise detrimental to the public welfare.

→ **Appeal**

Please state the administrative order, requirement, decision, or determination that you are appealing. (Provide a copy of the original decision that is being appealed)

8

Exhibit 1B

NOV. 21, 2013

(1)

To: Annie Marie Townsend
Director of Planning & Comm Dev.

This request is not to disconnect the electric at 128 S. Queen St. and the front of the building can be inspected when ever requested. I am also appealing that all my Tenants have seven days to move after a November 15 inspection They have no place to move or stay.

I am also appealing the idea that this is not a rooming house when I purchased the house it was a rooming house to help homeless people. I know where other houses are being used as rooming houses also.

The person I have to represent me is requesting a print out of all rental properties permits

(2)

On Queen street, Division St, New street and Kirkwood St. We just want to make sure all these properties are being inspected the way my properties are be inspected.

I do the same things on other properties that I have to repair but is not being seen on other properties. I am documenting the information the same way you all are doing on my properties.

128 S. Queen was recently inspected and passed now all of a sudden everything is Wrong with the building. This is proof I am being harrassed and being descriminated against.

I would appreciate it if the City of Dover would work with me better since I am Trying to house

Homeless people and keeping them off the street.

If all my properties get Condemned, the city has not seen any crime in the city of Dover because there will be a lot of people out doors.

I Try to help people because I know the economy is bad without them having Jobs. That is the reason I have 20-25 electric in my name because when they go to turn the utilities in ~~their~~ name they can not afford the deposit.

God put me into the business to help people that is why I get Mistreated every day and I get blessed every days by God.

(4)

I just want to inform you that I am sending this letter to different people that will address and investigate this issue and take it to the next level and help me solve this matter

Thank you for your Support.

J. L. Brudie
P.O. Box 1977
Dover, Del, 19903

City of Dover

Exhibit 1C

November 21, 2013

Joe Burden, Jr.
P.O. Box 1977
Dover, DE 19903

RE: Appeal of Action - 128 S. Queen Street

Dear Mr. Burden:

I have received your letter of appeal with regard to the City's action to condemn and suspend the rental permit for 128 South Queen Street. In order for the City to process your appeal, we need clarification on specifically what you wish to appeal.

If you wish to appeal the determination that the rooming house use of the property is not permitted per the *Zoning Ordinance*, this appeal would be heard by the Board of Adjustment, in accordance with the provision Article 9 of the *Zoning Ordinance*. This appeal would require a pre-application meeting with a member of the Planning Staff, the completion of the application form for the appeal, and a $200 fee. The Board of Adjustment does not have the authority to overturn the condemnation or suspension of the rental permit. If you wish to appeal in this regard, please contact the Planning Office at 736-7196 to schedule a pre-application meeting with Dawn Melson-Williams.

If you wish to appeal the condemnation, suspension of the rental permit, and/or the violations documented by the Code Enforcement Officers during the inspection of the property, this appeal would be heard by the Property Maintenance Code Board of Appeals in accordance with Dover Code, Chapter 22, Sections 22-225 and 22-352. This appeal is made in writing to the City Clerk. If an appeal is made in writing to the City Clerk with regard to the suspension, the suspension shall be stayed until such time that the appeal is heard. The Property Maintenance Code Board of Appeals does not have the authority to address whether the rooming house is permitted in this location. Questions regarding the appeal to the Property Maintenance Code Board of Appeals process should be directed to the City Clerk's Office at 736-7008.

Based on the information that you provided, I believe that one of these would be the proper route of appeal. The requirement of the tenants to vacate the property is extended until Tuesday, December 3, 2013 to give you time to evaluate the proper appeal process.

Sincerely,

Ann Marie Townshend

Ann Marie Townshend, AICP
Director, Planning & Community Development

cc: Dawn Melson-Williams, AICP, Principal Planner
Traci McDowell, CMC, City Clerk
Tim Taraila, Code Enforcement Supervisor
Dave Truax, Fire Marshal

Division of
Code Enforcement
15 The Plaza
Dover, DE 19901

City of Dover

Exhibit 2A

Phone: (302) 736-4457
Fax: (302) 736-4217

November 15, 2013

Joe W Burden
1422 McKee Rd
Dover, DE 19904

RE: SUSPENSION OF RENTAL PERMIT

Dear Mr. Burden;

In accordance with Dover Code, Chapter 22 Building and Building Regulation, Article X Rental Dwellings, Section 22-352 Suspension, the City of Dover has suspended your rental permit for 128 S Queen Street, Dover Delaware 19904.

The dwelling is also being condemned for unlawful use (rooming house) and structural integrity concerns with the dwelling. Several property maintenance violations were noted and a separate report will be forthcoming. **The dwelling must be vacated no later than November 22, 2013.**

According to this section of the Dover Code:

Sec. 22-352. Suspension.

(a) *Grounds; duration.* The building inspector shall suspend the permit issued or withhold the permit paid for, pursuant to this division, when he determines that any dwelling or the premises surrounding the dwelling fails to meet the requirements of this chapter or any rule or regulation issued pursuant thereto. Suspension shall last until the violations have been corrected to the satisfaction of the building inspector, or the suspension shall have been reversed or appealed.

(b) *Notice of violations.* Upon suspending any permit under this section or withholding the permit paid for, the building inspector shall notify the owner of the violations of the applicable code and shall prescribe a period in which the violation shall be corrected.

(c) *Appeal.* Any owner or operator of any dwelling, whose permit to operate the structure is suspended by the building inspector pursuant to the procedures of this section, shall have the right to appeal and notice as provided in section 22-225.

(d) *Effect of appeal.* Upon suspension of a permit, or withholding of a permit ordered by the building inspector and upon the permittee serving the city clerk with a notice of appeal pursuant to section 22-225, the permit suspension shall be stayed and an existing permit shall remain in force until the appeal is decided.

The City Code Enforcement Division had sent notice to you on two occasions to a schedule rental dwelling inspection; this department received no response and therefore a notice was posted on the dwelling that an inspection of the dwelling was to occur November 15, 2013 at 1:30 p.m. During today's inspection it was noted that the rear section of the dwelling is being used as rooming house with four individual rental rooms. There was no one available to allow access to the front section of the dwelling; therefore this has not been inspected as required by City Code.

The dwelling must be converted back to a single family residence; all code violations must be corrected, a structural engineer report must be submitted, all violations that may be noted in the report corrected. A $100 reinstatement fee is required in order to reinstate the rental permit. Until such time, the City will not allow the utilities associated with the unit to be transferred to a new tenant or into the owner's name.

You have the right to appeal these suspensions. Such appeals must be made in writing to the City Clerk's Office for referral to the Property Maintenance Code Board of Appeals.

If you have any questions, please contact Tim Taraila, Chief Code Enforcement Officer, at (302) 736-7010.

Sincerely,

Ann Marie Townshend

Ann Marie Townshend, AICP
Director, Planning & Community Development
atownshend@dover.de.us
(302) 736-7010

cc: Timothy M. Taraila, Chief Code Enforcement Officer
File

Exhibit 2B

Division of
Code Enforcement
15 Loockerman Plaza
Dover, DE 19901

City of Dover

Phone: (302) 736-7011
Fax: (302) 736-4217

November 18, 2013

JOE W BURDEN
1422 MCKEE RD
DOVER DE 19904

RE: Property address: 128 S QUEEN ST
Tax Parcel Number: ED-05-076.12-02-700.000-000
Case Number: 13-00003574

Dear Mr. Burden:

On October 10, 2013, the City of Dover, Department of Inspections conducted an inspection at 128 S QUEEN ST.

Attached are the Code violations found during the inspection.

A follow up inspection must be conducted by December 18, 2013, to ensure compliance.

Please contact this office with a date and time convenient for you to conduct the re-inspection. You are not required to contact this office if the re-inspection is for an exterior violation. If you have any questions or would like to schedule your inspection or appeal this notice, please contact me at (302) 736-7011.

Sincerely,

MATTHEW BROWN
Code Enforcement Officer

cc: File

CASE NUMBER 13-00003[illegible]4
PROPERTY ADDRESS 128 S QUEEN ST

VIOLATION: 001 QUANTITY: 1
DESCRIPTION: 001 WORKMANSHIP DATE: 11/18/13
LOCATION: PROPERTY

NARRATIVE :
All work shall be done in a good workmanship type manner.

ORDINANCE DESCRIPTION :
SECTION PM 102.5 ALL REPAIRS AND MAINTENANCE WORK IS TO BE DONE IN A WORKMANLIKE MANNER AND INSTALLED IN ACCORDANCE WITH THE MANUFACTURER'S INSTALLATION INSTRUCTIONS. TO BE WORKMANLIKE THE REPAIR MUST BE PERFORMED IN A MANNER CONSISTENT WITH WORK DONE BY A SKILLED CRAFTSMAN.

CORRECTIVE ACTION REQUIRED :
MAKE ALL REPAIRS IN A WORKMANLIKE MANNER.

VIOLATION: 000 QUANTITY: 1
DESCRIPTION: 000 HSG/BLDG CONDEMNATION DATE: 11/18/13
LOCATION: BUILDING

NARRATIVE :
Building was condemned due to illegal use under the zoning ordnance. The rear portion of the building was found to be used as a rooming house. The building is only zoned as a single family residence.

ORDINANCE DESCRIPTION :
NOTICE
THIS BUILDING IS HEREBY "CONDEMNED" AS
"UNFIT FOR HUMAN OCCUPANCY", AND MUST BE
VACATED IMMEDIATELY AND/OR ALL CODE VIOLATIONS
CAUSING THIS ACTION CORRECTED IMMEDIATELY
SECTION PM 108.1 UNSAFE STRUCTURES AND EQUIPMENT GENERAL

CORRECTIVE ACTION REQUIRED :
BUILDING/DWELLING IS TO BE VACATED AND REMAIN VACATED UNTIL SUCH TIME THAT ALL VIOLATIONS HAVE BEEN CORRECTED AND APPROVAL OF OCCUPANCY HAS BEEN OBTAINED BY THE CODE OFFICIAL

VIOLATION: 004 QUANTITY: 1
DESCRIPTION: 004 STRUCTURAL REPORT NEEDED DATE: 11/18/13
LOCATION: BUILDING

NARRATIVE :
There were several areas of concern that the building may have structural issues with the foundation and settlement along the rear addition. Report is do be done by a licensed professional engineer or architect.

ORDINANCE DESCRIPTION :

CASE NUMBER 13-00003. 4
PROPERTY ADDRESS 128 S QUEEN ST

ORDINANCE DESCRIPTION :
A full structural engineering inspection is to be performed on the structure. This inspection needs to be performed by a state licensed structural engineering firm. 105.3 Required Testing.

CORRECTIVE ACTION REQUIRED :
A certified copy of the inspection results must be forwarded to this department. All inspection deficiencies must be corrected to the structural engineering report recommendations.

VIOLATION: 733 QUANTITY: 1
DESCRIPTION: 733 ZONING VIOLATION DATE: 11/18/13
LOCATION: BUILDING

NARRATIVE :
Dwelling is not zoned as a rooming house. The dwelling is only zoned as a single family dwelling. The rental license is only issued as a single family dwelling.

ORDINANCE DESCRIPTION :
City of Dover Zoning violation

CORRECTIVE ACTION REQUIRED :
Correct zoning violation as directed in the time frame provided.

VIOLATION: 999 QUANTITY: 1
DESCRIPTION: 999 SCHEDULE INTERIOR INSPECT DATE: 11/18/13
LOCATION: FRONT PORTION

NARRATIVE :
Schedule a complete inspection for all remaining units in the front portion of the building.

ORDINANCE DESCRIPTION :
DCO SECTION 22-332 INSPECTIONS STANDARDS

CORRECTIVE ACTION REQUIRED :
SCHEDULE INTERIOR INSPECTION

VIOLATION: 221 QUANTITY: 1
DESCRIPTION: 221 REPAIR FLOOR COVERING DATE: 11/18/13
LOCATION: BUILDING

NARRATIVE :
Repair or replace all flooring. Flooring shall be free of any defects and installed in a good workmanship type manner.

ORDINANCE DESCRIPTION :

Received

JAN 13 2014

Planning & Inspections

January 10, 2014

To whom it may concern,

I receeied a letter from the City of Dover Concerning a rooming house at 128 South Queen Street, that belong to Joe Burton. I opposed for the rooming house be reopen. due to the facts of heavy traffic flow all hours of the night, Alocholics, drug addicts, Prositiction trask all over the Place. I have seen drug dealers Selling in front of this house. Alocholic drinking and using the bathroom in Public, drug addicts using and Smoking crack in front of my house. Prositiutes flagging down Cars in front of this rooming house. You never know who stays there its always someone different after there. Police Was always over there for fights. etc.

The weekend was always the worst the traffic flow would double from Friday to Sunday. Never a dull moment over there. My Grands could not go out and play upon never knew what they might see, it was not safe for my family after dark because of what was going on over there. One tenant was complaining of Roaches mice, bedbugs she showed me where she was biten (bite marks all over her arms.) Since the home as been closed its been Peaceful, quiet, traffic flow is no more. Positive gone. its been the best sleep ever. Don't have to worry about my family while I am at work Please keep the rooming home closed.

Thank You
123 South Queen Street.

City of Dover

Board of Adjustment

March 19, 2014

V-14-05

Location:	74 Laurel Drive
Applicant/Owner:	Thomas Bugbee & Sherrill Brekke
Tax Parcel:	ED-05-077.14-01-32.00-000
Application Date:	February 11, 2014
Present Zoning:	R-10 (One Family Residence Zone)
Present Use:	Vacant Parcel
Proposed Use:	Single Family Residence
Reviewed By:	Ann Marie Townshend, AICP
Variance Type:	Area Variance
Variance Requested:	Allow for the construction of a new single family residence within the floodplain to the 6-foot contour line.

Project Description:
The applicant is requesting a variance from the *Zoning Ordinance* of Article 5 §11.211 (c) of the *Zoning Ordinance* pertaining to new residential construction within the flood hazard area. Specifically the applicant is requesting to allow a new single family residence within the floodplain to the 6-foot contour line.

Previous Variances
There have been two (2) previous variance applications to the Board of Adjustment to allow for construction of a single family residence within the floodplain. (#8-01 and V-05-07)

Regarding this property, a variance was granted to allow construction within the floodplain to the 7-foot contour line in May 2013. This variance was amended on December 18, 2013 to allow construction to the 6-foot contour line. This amendment was granted based on testimony that the homeowners association's deed restrictions for the property require a 35-foot front yard.

Following the Board of Adjustment's decision, the applicant became aware that the homeowners association agreed to allow a 25-foot setback. When laid out on a recent survey performed by Scott Engineering at the request of the applicant, the house foot print does would extend beyond the 7-foot contour. Because the granting of the variance to allow construction to the 6-foot contour was based on information that was determined by the applicant to be incorrect following the meeting, the Planning Office and the applicant agreed that a new application to the Board of Adjustment would create a clear record on the facts specific to the case and avoid confusion at a later date.

Adjacent Land Uses

The adjacent properties are residential and institutional uses. The properties to the north, east and west are zoned R-10 (One Family Residence Zone). The property to the south is zoned IO (Institutional/Office Zone). The property is bounded on the south by the St. Jones River.

Code Citation

Article 5 Section 11.211(c)

> 11.211 *Redevelopment.* Existing uses or buildings located within a flood hazard area are considered to be nonconforming structures and are subject to the following requirements if redevelopment occurs on properties within the flood hazard area.
>
> > a) Nonresidential uses existing in a flood hazard area seeking to redevelop a property under the requirements of Article 10 are required to reduce impervious surfaces for the lot by 15 percent from the preredevelopment conditions.
> >
> > b) For nonresidential uses where less than 33 percent of the total lot area is located within a flood hazard area, the planning commission may waive or reduce the amount of required reduction in impervious surfaces. For projects being reviewed under administrative site plan review, the city planner may waive or reduce the amount of required reduction in impervious surface for projects where less than 33 percent of the total lot area is located within a flood hazard area.
> >
> > c) New residential building construction or additions of impervious surface are not permitted in pervious areas of the flood hazard area.

Exceptional Practical Difficulties Tests

Article 9, §2 dictates the specific powers and duties of the Board of Adjustment with regard to granting variances. Specifically the Board must determine:

2.1 Variance – The board shall have the authority to authorize variances from provisions of the zoning ordinance that are not contrary to public interest where the board determines that a literal interpretation of the zoning ordinance would result in undue hardship or exceptional practical difficulties to the applicant. In granting variances, the board shall determine that the spirit of the zoning ordinance is observed and substantial justice done.

2.11 Area Variance. A variance shall be considered an area variance if it relates to bulk standards, signage regulations, and other provisions of the zoning ordinance that address lot layout, buffers, and dimensions. In considering a request for an area variance, the board shall evaluate the following criteria and document them in their findings of fact:

(a) the nature of the zone in which the property lies;
(b) the character of the immediate vicinity and the contained uses therein;

(c) whether, if the restriction upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses; and
(d) whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in his efforts to make normal improvements in the character of that use of the property that is a permitted use under the provisions of the zoning ordinance.

1. The nature of the zone in which the property lies.

   Applicant Responses:
   - The property is located in R-10 single family residential zone.
   - The neighborhood is single family residential

   Staff Response:
   The property is located within the R-10 (One Family Residence Zone) zone and the use as a single family residence is a permitted use.

2. The character of the immediate vicinity and the contained uses therein.

   Applicant Responses:
   - Exclusively single family residential.

   Staff Response:
   The character of the properties located within the area are single family residences or vacant parcels of land.

   The use as a single family residence is consistent with the other residential uses that are in the area.

3. Whether, if the restriction upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses.

   Applicant Responses:
   - All properties located on south side of street are in flood plain.
   - All setbacks can be maintained.
   - Storm drainage exists between all neighboring properties.

   Staff Response:
   The construction of a new single family residence would not negatively impact the neighborhood as the other uses are single family residences or vacant lots, many of which lie within the flood plain.

4. Whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in his efforts to make normal improvements in the character of that use of the property that is a permitted use under the provisions of the zoning ordinance.

Applicant Responses:

- Article 5, Section 11.211 (c), prohibits building in the flood plain.
- The subject property is a recorded lot.
- The six neighboring properties similarly located in the flood plain are improved.
- Sewer lateral has previously been installed.
- Sufficient lot area exists to support a single family residential improvement.
- The flood plain is three dimensional and if the finished first floor is above elevations 9.0 feet then the improvement is out of the flood plain.

Staff Response:

Based on review of the information submitted with this and the previous application for this property, exceptional practical difficulty has been demonstrated as there is no other use that would be permitted on the property, and prohibiting construction in the flood plain would render the lot unbuildable. The house itself would be constructed at an elevation that would be above the flood plain elevation. The subdivision was developed to allow for all of the lots within the subdivision to be used as single family residences prior to current restrictions on development within the floodplain.

Variance Recommendation:

Staff recommends approval of the variance to allow for the building to be constructed within the floodplain to the 6-foot contour for reasons as follows:

- The applicant has demonstrated exceptional practical difficulty as there is no other use that would be permitted on the property and not allowing the construction renders the lot unbuildable.
- The building of a single family house would be in keeping with the character of the neighborhood.
- The house would be built above the base flood elevation.
- The lot was created prior to current restrictions on building in the floodplain.

Advisory Comments to the Applicant:

- Compliance with the requirements of all codes related to construction within the floodplain (Dover Code, Chapter 50, and the 2009 International Residential Code) is required, and a flood elevation certificate will be required for any construction within the floodplain.
- Staff notes that the 100 foot setback from the top of bank of wetlands and water bodies may be reduced to 75 feet for single family residential uses.

8 COPIES

THE FOUR CRITERIA

1. The nature of the zone in which the property lies:
    - The property is located in R-10 single family residential zone
    - The neighborhood is single family residential

2. The character of the vicinity and the contained uses therein:
    - Exclusively single family residential

3. Whether, if the restriction upon the applicant's property were removed, as such removal would seriously affect neighboring properties and uses;
    - All properties located on south side of street are in flood plain
    - All setbacks can be maintained
    - Storm drainage exists between all neighboring properties

4. What is the exceptional practical difficulty?
    - Article 5, section 11.211 (c), prohibits building in the flood plain
    - The subject property is a recorded lot
    - The six neighboring properties similarly located in the flood plain are improved
    - Sewer lateral has previously been installed
    - Sufficient lot area exists to support a single family residential improvement
    - The flood plain is three dimensional and if finished first floor is above elevation 9.0 feet then the improvement is out of the flood plain

VARIANCE APPLICATION

- ARTICLE 5, SECTION 11.211 (c)
  - BUILDING WITHIN THE FLOOD PLAIN
    - CONFORMS WITH OTHER DWELLINGS EXISTING IN NEIGHBORHOOD
    - FINISHED FIRST FLOOR WILL BE ABOVE THE FLOOD PLAIN
- REDUCE 25 – FOOT FRONT YARD SETBACK

THE FOUR CRITERIA

- THE NATURE OF THE ZONE IN WHICH THE PROPERTY LIES :
  - THE PROPERTY IS LOCATED IN R-10 SINGLE FAMILY RESIDENTIAL ZONE
  - THE NEIGHBORHOOD IS SINGLE FAMILY RESIDENTIAL
- THE CHARACTER OF THE VICINITY AND THE CONTAINED USES THEREIN :
  - EXCLUSIVELY SINGLE FAMILY RESIDENTIAL
    - CONTINUED

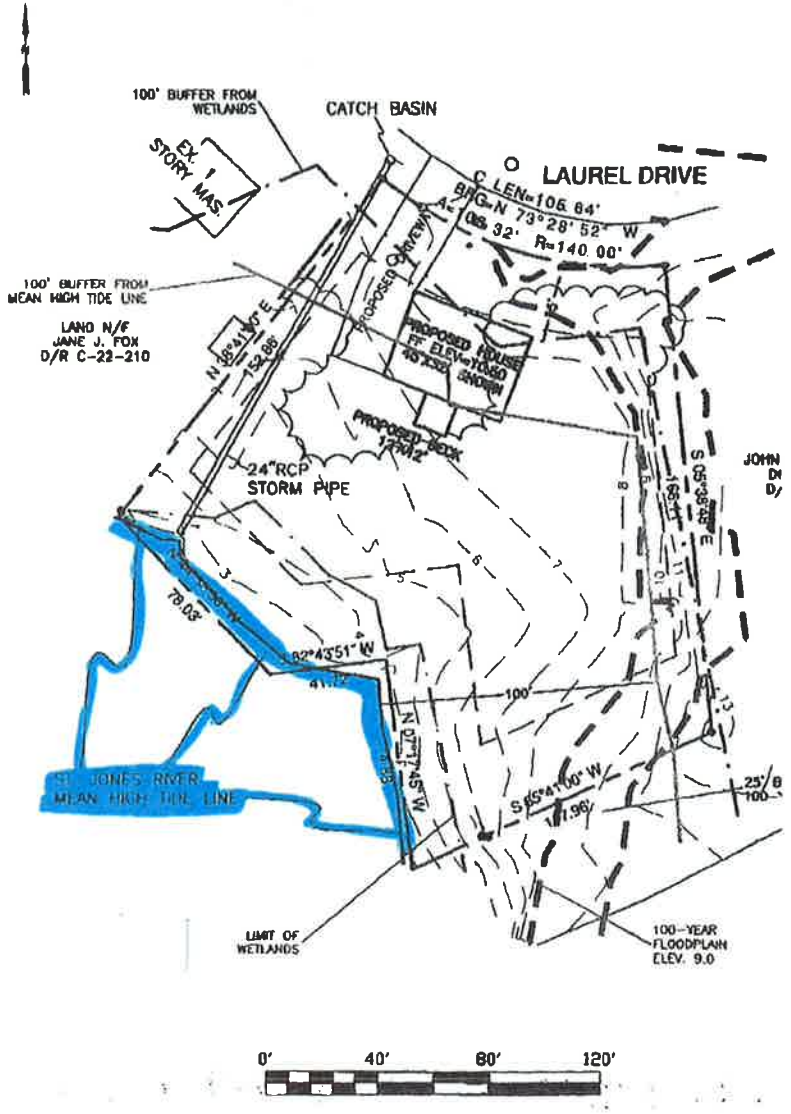
THE FOUR CRITERIA

- WOULD REMOVAL OF THE APPLICANT'S HARDSHIP SERIOUSLY AFFECT THE NEIGHBORING PROPERTY USES?
  - ALL PROPERTIES LOCATED ON SOUTH SIDE OF STREET ARE IN FLOOD PLAIN
  - ALL SETBACKS CAN BE MAINTAINED
  - STORM DRAINAGE EXISTS BETWEEN ALL NEIGHBORING PROPERTIES
    - CONTINUED

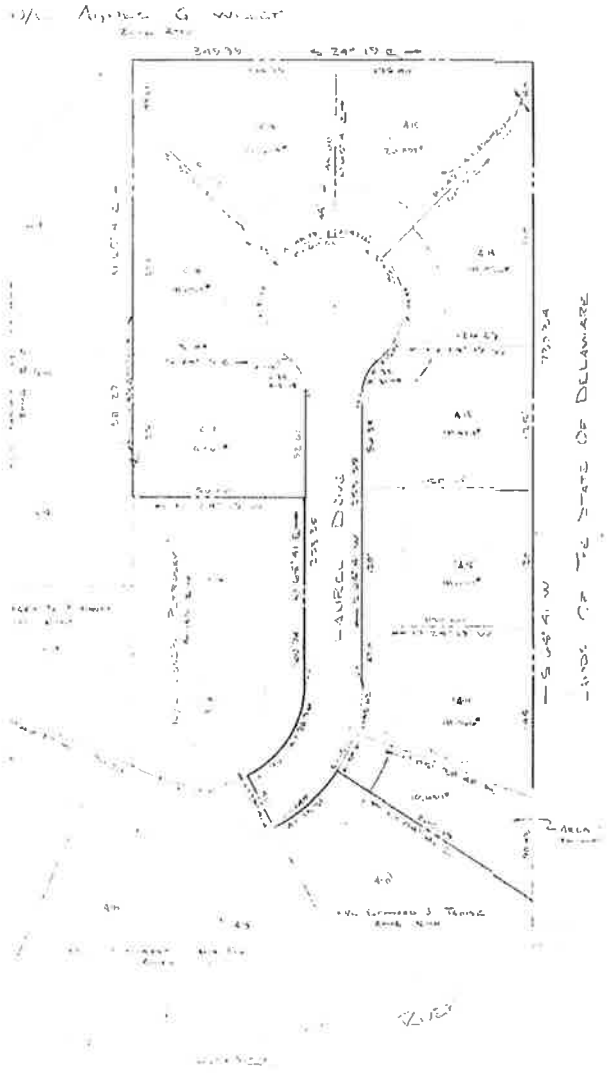
THE FOUR CRITERIA

- WHAT IS THE EXCEPTIONAL PRACTICAL DIFFICULTY?
  - ARTICLE 5, SECTION 11.211 (c), PROHIBITS BUILDING IN THE FLOOD PLAIN
  - THE SUBJECT PROPERTY IS A RECORDED LOT
  - THE SIX NEIGHBORING PROPERTIES SIMILARLY LOCATED IN THE FLOOD PLAIN ARE IMPROVED
  - SEWER LATERAL HAS PREVIOUSLY BEEN INSTALLED
  - SUFFICIENT LOT AREA EXISTS TO SUPPORT A SINGLE FAMILY RESIDENTIAL IMPROVEMENT
  - THE FLOOD PLAIN IS THREE DIMENSIONAL AND IF FINISHED FIRST FLOOR IS ABOVE ELEVATION 9.0 FEET THEN THE IMPROVEMENT IS OUT OF THE FLOOD PLAIN

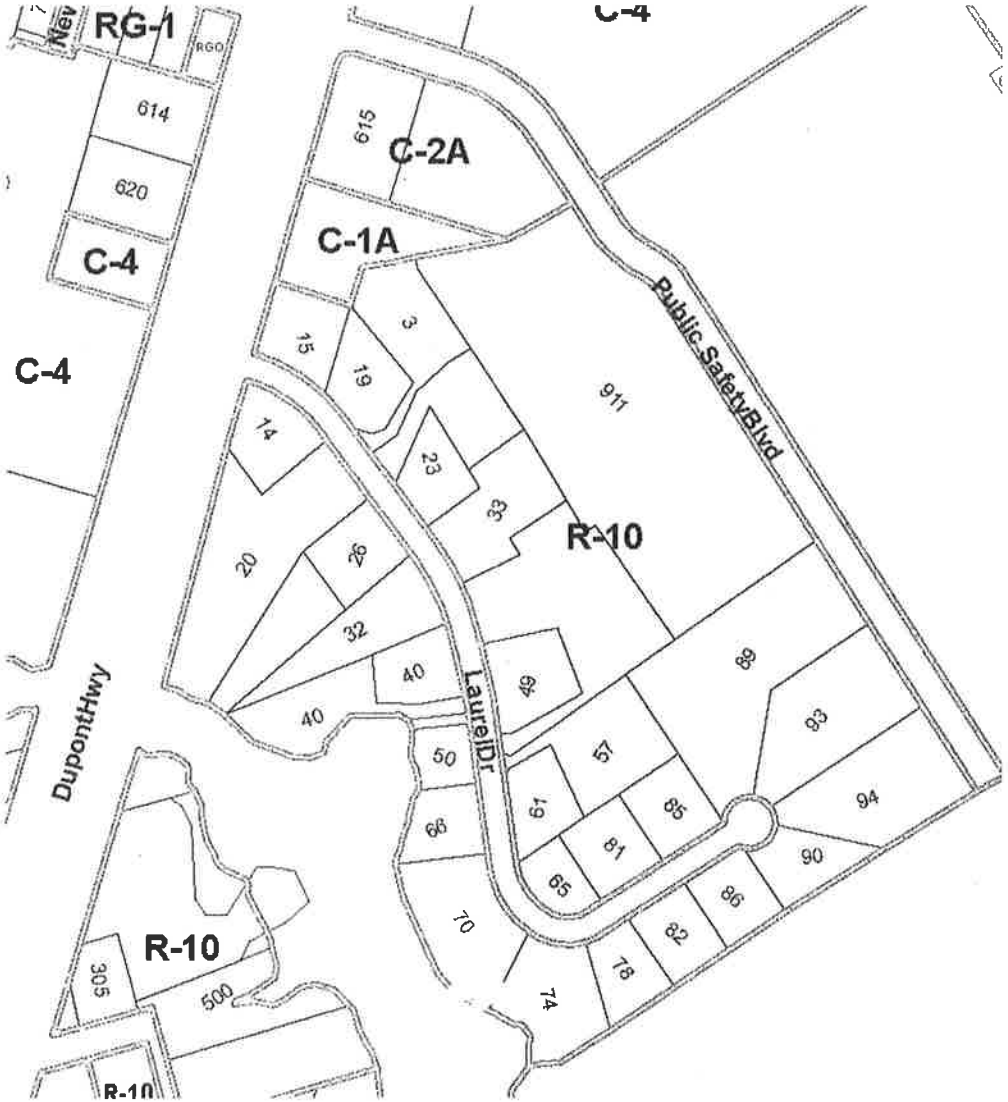
74 LAUREL DRIVE * FLOOD PLAIN PLOT



THE BEECHES PLAT RECORD



THE BEECHES ZONING MAP



THE BEECHES TAX MAP



HIGDON PURCHASE DEED

Accepted for Filing in:
Kent County
Doc# 20519
On: Jul 18,2005 at 02:57P

Tax Map No.: ED-05-077.14-01-32.00-000
Prepared By:
Parkowski, Guerke & Swayze, P.A.
P.O. Box 598
Dover, DE 19903

DEED

THIS DEED, Made this 13 day of ~~June~~ July A.D. 2005, by and between:

EDWARD J. TROISE, SR. and EVELYN TROISE, his wife, of 550 Pilottown Road, Lewes, DE 19958, hereinafter referred to as the "Grantor", Parties of the First Part,

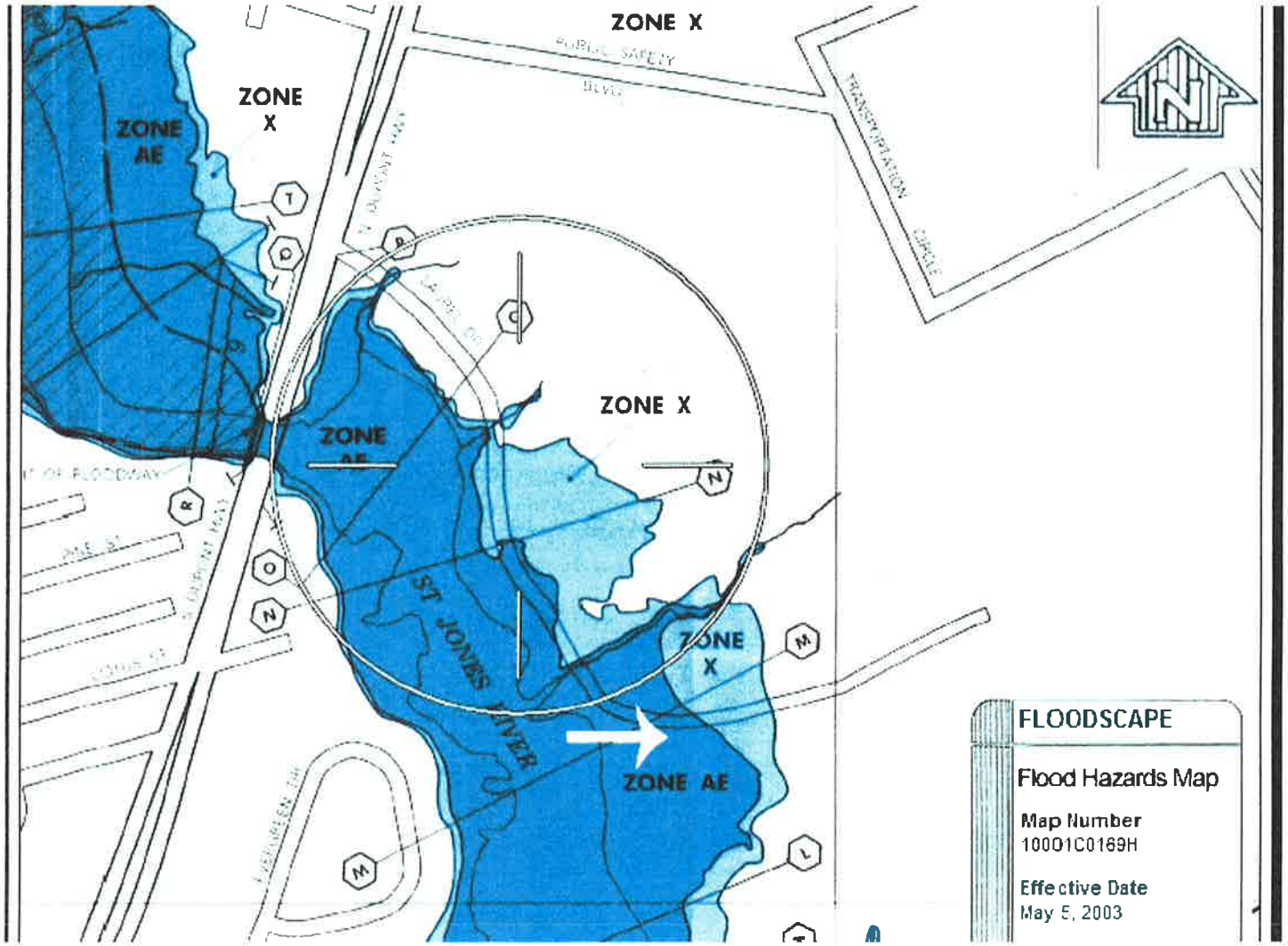
AND

JAMES A. HIGDON and THERESA A. HIGDON, his wife, of 49 Laurel Drive, Dover, DE 19901, hereinafter referred to as the "Grantees", Parties of the Second Part,

WITNESSETH, that the said Parties of the First Part for and in consideration of the sum of ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS ($125,000.00), lawful money of the United States of America, the receipt whereof being hereby acknowledged, hereby grant and convey unto the Parties of the Second Part, his heirs, executors, administrators and assigns, the hereinafter described land and premises as follows, to-wit:

ALL that certain lot, piece or parcel of land, situated in the City of Dover, Kent County, State of Delaware, lying on the southerly side of Laurel Drive, a short distance East of U.S. Route 13; being all of Lot A-10 as shown on a plan of The Beeches Subdivision, Section II, as recorded in Plot Book 16, Page 48, and being more particularly bounded and described in accordance with a recent survey by Robert L. Larimore, RLS, dated June 23, 2005, as follows, to-wit:

THE BEECHES FLOOD MAP



INSURANCE COMPANY FLOOD INSURANCE ADVICE

Phil McGinnis

From: Gina Seibert [gina@pfisterins.com]
Sent: Wednesday, March 27, 2013 12:59 PM
To: Phil McGinnis
Cc: 'Mel Warren'
Subject: FW: Flood Insurance

Hi Phil,

As per Flood Services I have found out the following:

There should not be a problem obtaining flood insurance in an AE Zone as long as:

1. The buyer doesn't have too many previous flood losses.
2. An elevation certificate must be done.
3. The community must participate in NFIP (which it does).

If all of those conditions are met, I am told that there would not be an issue getting a flood policy.

Having said this, we would need an elevation certificate in order to get a rate on what it may cost. I have seen 'pre-construction' Ecs and once the property is done, it would have to be amended to the 'final' EC.

If you have any other questions, feel free to contact me. Thanks!!

Gina Seibert
Pfister Insurance, Inc.
PO Box 756
Dover, DE 19903
Phone: 302-674-3100