CITY OF DOVER BOARD OF ADJUSTMENT
AGENDA
Wednesday, January 15, 2014 at 9:00 AM

City Hall Council Chambers
15 Loockerman Plaza, Dover, Delaware

ROLL CALL

APPROVAL OF AGENDA

1. Applicant V-14-01, property at 128 South Queen Street, has requested that consideration of this Appeal be deferred until the February 19, 2014 meeting.

APPROVAL OF MINUTES OF December 18, 2013 Meeting

OLD BUSINESS

Applicant #V-13-14:
200 North West Street: John Bashore has requested a use variance from the requirements of Article 3 §19.2 of the *Zoning Ordinance* pertaining to the prohibition of residential uses in the M (Manufacturing) Zone. Subject property is zoned M (Manufacturing Zone). The Tax Parcel is ED05-076.08-01-09.00-000. The owners of record are John and Mary Lou Bashore.

Applicant failed to appear as scheduled on December 18, 2013. Public hearing was held. The Board tabled the application.

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 applicant has requested that this item be deferred until the February 19, 2014 meeting.**

Applicant #V-14-02
554 East Loockerman Street, 222 North DuPont Highway. Hub Associates LLC and A & G Kramedas Associates have requested a variance from the requirements of Article 5 §4.7 of the *Zoning Ordinance* pertaining to the setback from the right-of-way and exclusion zone for a pylon sign. The subject property is zoned C-4 (Highway Commercial Zone). The Tax Parcels are ED-05-077.06-01-62.00-000, ED-05-077.06-01-63.00-000, ED-05-077.06-01-64.00-000, and ED-05-077.06-01-87.00-000. The owners of record are Hub Associates LLC and A & G Kramedas Associates.

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
December 18, 2013

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, December 18, 2013 at 9:00 A.M. with Chairman Sheth presiding. Members present were Mr. Senato, Mr. Hufnal, Colonel Ericson, and Mr. Keller.

Staff members present were Mrs. Townshend, Mrs. Purnell, Mrs. Harvey, City Solicitor Rodriguez and Mrs. Melson-Williams (portion of the meeting).

APPROVAL OF AGENDA

Mr. Hufnal moved to approve the agenda as submitted, seconded by Colonel Ericson and unanimously carried 5-0.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF NOVEMBER 20, 2013

Mr.Keller moved to approve the meeting minutes of November 20, 2013 with the necessary corrections, seconded by Mr. Senato and unanimously carried 5-0.

City Solicitor Rodriguez stated that applicant #V-13-05 listed under the Old Business is fine the way it is set up to be considered as a survey correction and a very minor correction in what the Board of Adjustment granted the last time. He did not see any problem not having another public hearing to do this and it can be considered under Old Business as part of the procedures.

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.

OLD BUSINESS

Applicant #V-13-05:

74 Laurel Drive, Gitterdone, LLC was granted 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.

Subject property is zoned R-10 (One Family Residence Zone). The Tax Parcel is ED-05-077.14-01-32.00-000. The owner of record at the time was Gitterdone, LLC. The ownership has changed as referenced in the memo dated December 18, 2013. The current owners are Thomas J. Bugbee and Sherrill L. Brekke.

The Board of Adjustment granted a variance permitting that the house be permitted to be constructed in the Flood Hazard Area, but requiring that it be placed at the 7-foot contour or

greater. A recent property survey shows different topography than the survey reviewed as a part of the variance application. Due to the changes in the topography and the difficulties with placing the house at the 7-foot contour, the applicant has requested that this specific condition be modified to allow placement of the house at the 6-foot contour or greater. The property has transferred and the owners of record are Thomas J. Bugbee and Sherrill L. Brekke.

Mrs. Townshend, Director of Planning and Community Development, submitted the following exhibits for the record two (2) survey drawings labeled one (1) and two (2) with two (2) being the most recent. The drawing shows the difference where the line falls from the older survey to the newer survey, a memo from the Planning Staff dated December 18, 2013, an email from Tom Burns to Mrs. Townshend, and an email correspondence between Mrs. Townshend and the City Solicitor, and the May 15, 2013 decision from the Board of Adjustment.

Mrs. Townshend stated if the Board of Adjustment had questions of the applicant they could ask Mr. Burns to come forward.

Representative: Mr. Tom Burns, Burns & Ellis Realty; Representative on behalf of the owners of the property.

Mr. Tom Burns was sworn in by Mr. Rodriguez.

Mr. Burns stated that the original applicant was Gitterdone LLC and the presentation was made by Mr. Phil McGinnis. Mr. Burns stated that he made comments as basic follow-ups. He stated that neither his clients nor he were the applicants at that time. In good faith everyone relied on the 2006 topographical survey that showed contour lines that were prepared by Robert Larrimore which is the subject exhibit one (1). The basis on which the variance was granted to the 7-foot contour line was based on that plan and because of the deed restrictions and the subdivision the rectangle shown was placed on the lot to show the house they wanted to construct.
It was approved and subsequently the purchaser went to closing and they are now the title holders. When they went to their builder he had a new survey completed. For some reason the lines were different. The land has not moved, but there was a more thorough engineer drawing plan where you can see if you overlay what was approved at the 7-foot contour line on exhibit two (2) that the lines are much more severe. It is an unusual lot within itself that includes wetlands and woodlands. There is also large City of Dover culvert that runs through what was an old lot line. You really could not figure out what was where until the actual survey line was done and stakes were put into place. When you went out to the lot due to the size of the lot and the 90 degree turn in the road you could finally make sense of what was there and he firmly believes (not being an expert in the survey business, but having seen enough of them) that the contour lines shown on the current survey are more accurate and depict the building area on the lot. Obviously what was granted in the past shuts down the opportunity to build. The basis of the discussion with the City Planning Office was they are already in the Flood Plain area and they are not trying to relocate the house in any substantial fashion, they simply want to build the house where they originally had plan to build it in the first place. If they are already in the Flood plain and there are requirements to build the finish floor of the house 1-foot above the Flood Plain to begin with. They are not differentiating anyway from that. The house will be engineered on the site with appropriate Flood Plain measures for the construction of the foundation. It will all be put in place under the current basis of the City code. The purpose of the approval of the 7-foot line in the past was to be able to

hold the building envelope relatively tight and that was a good plan, except now it makes everything useless again. If we were to move to the 6-foot line we would be able to put the house exactly where they want to put it. They would be able to build the house and still comply with the Flood Plain laws. He stated that a lot more detailed information was given about the lot in the previous application in May 2013 under the different owner's name.

Responding to Mr. Senato's question as he referred to the letter from the City Solicitor if picture #1 is the new Flood Plain or the old one and is item #1 the 7-foot, Mrs. Townshend stated that item #1 is the original survey that was shown and item #2 is the more accurate depiction of what the 7-foot contour is on the site.

Responding to Mr. Senato's question as he referred to previous concerns about granting a variance on information that is not adequate, he thought that there were problems last year and the applicant was supposed to come back, the previous owner that made the application is not the same person that is doing it today, Mr. Burns stated correct.

Mr. Senato stated that when the original house was going to be built it was going to be over the 6-foot Flood Plain; that would mean that you would need to be so many foot above the Flood Plain by using a form of a pylon or some form of waterproofing foundation is that correct? Responding to Mr. Senato, Mrs. Townshend stated yes.

Mr. Senato stated that on error the Board of Adjustment keep changing their decisions either through the applicant's fault or the Board of Adjustment. He feels strongly that something is wrong; particularly with the fact that this is the same problem with the two (2) different applications and two (2) different people that own the property at the time. He does not want to set any type of precedent.

Responding to Mr. Senato's question and statement as to what effect would this make in the neighborhood if there are other lots and someone else wishes to build then is the Board of Adjustment setting a precedent that they have to raise the Flood Plain, because Flood Plains are there for a reason and the Board of Adjustment is very adamant when it comes to them and building on them, Mrs. Townshend stated that in the time that she has been with the City of Dover this is the only time she remembers bringing something back under Old Business. There was a survey that the applicant had submitted with the original application. The current owners were the equitable owners at the time. They were party to the application, but the actual applicant needs to be the owner of record. That is why Mr. Burns and his clients were present at that point in time. She is less concerned about the precedent based on more accurate information. If they did not need a survey for the mortgage then they probably would not have found this. In terms of building in the Flood Plain she concurred that they do not want to allow it unless there is no other option. In this case there was really no way to build on an existing lot without a variance to allow building in the Flood Plain. That is the purpose of the Board of Adjustment when there truly is a situation that relates to the property that presents a hardship or Exceptional Practical Difficulty to normal improvements on the lot. We would not allow a lot to be created like that at this point. The issue is you have a lot that was platted before the current regulations and the variance allows that to be a buildable lot.

Colonel Ericson stated that whether it is 6-feet or 7-feet the house will still be constructed the same way. The first floor will be above the Flood Plain and the foundation will be larger. Mr. Burns stated correct.

Mr. Burns stated that the footprint of the house is not moving substantially on the lot. They are not trying to push all the way back to the 6-foot contour line. They are demonstrating that the 7-foot contour line when you consider what 1-foot is in the scheme of things. They are just trying to position the house where they had originally planned. They just need relief. Instead of trying to go just a little bit since the contour line is just down 1-foot which would be 6-foot.

Responding to Colonel Ericson's question whether if the Board of Adjustment had said no to the application, it would have made the lot unusable, City Solicitor Rodriguez stated that it was correct.

Responding to Colonel Ericson's question if the Board of Adjustment had said no and they could not use the lot then it would be beyond the authority of the Board of Adjustment, City Solicitor Rodriguez stated yes.

Colonel Ericson stated that they cannot declare a lot unusable and there really is no option.

City Solicitor Rodriguez stated the big question would have been is do you have a public hearing for this change or not. He thought it was not necessary because of the minor change based upon the survey. Mr. Burns has confirmed that today in his statement.

Mr. Senato stated that he thought it was the right decision.

Responding to Mr. Hufnal's question that if the Board of Adjustment approves it to go to the level of the flood level of 6-foot line instead of the 7-foot line would it raise the house higher than 1-foot or will it remain the same, Mrs. Townshend stated that regardless of where the house will be built on the lot the finish floor elevation needs to be 1-foot above the based flood elevation.

Responding to Mr. Hufnal's question that no matter what contour line it is on it still has to be 1-foot, Mrs. Townshend stated yes.

Mr. Keller stated that he appreciated Mr. Senato's remarks regarding concerns about this particular case being brought back to the Board of Adjustment. He stated that his only concern and he felt compelled to express it was if it complied with FOIA (Freedom of Information Act) and suitable publication. That having been said with the direction of counselor he is perfectly comfortable with proceeding as they are now with such legal direction. He stated that he had a couple of observations and questions for the applicant.

Responding to Mr. Keller's question if Compass Pointe Associates was represented at the meeting today, Mr. Burns stated no.

Mr. Keller summarized his understanding of the Staff memorandum submitted and the prior decision and the hearing date made on May 15, 2013. The testimony on May 15, 2013 indicated a plan to build a 2000-foot Cape Cod, 2-car garage and driveway down to the 25-foot yard setback

as quoted. The client was considering applying for a relief from the 25-foot yard setback in order to build it closer to the road and to get it from concerns of the wetlands and river. Nowhere did he recall any mention of a deed restriction. Mrs. Townshend also gave testimony that the setback was a 25-foot and that it was 35-foot from the road. The 25-foot setback is from the front property line, Mr. Burns stated correct.

Mr. Keller stated that he noted on the second plan submission that the house is located back 35-feet; Mr. Burns stated that there is a deed restriction for a 35-foot setback and the recorded deed restriction for Laurel Drive subdivision.

Responding to Mr. Keller's question if any evidence of the deed restriction had been submitted to the City or can Mrs.Townshend verify that, Mrs. Townshend stated that they do not have a copy of the deed restriction, but could certainly request it. It could be a condition of any change.

Mr. Keller stated that he would like to see it done. His reason for bringing it up is because if the proposed structure which appeared to be somewhat larger in any event than the initial proposal on the Robert Larrimore survey. If it was brought 10-feet closer to the roadway as previously stated the 25-foot setback line, he was wondering whether this entire episode today is somewhat of a moot point and you would still be within the 7-foot Flood Plain elevation that is depicted on plan #2 which is the most recent by Compass Pointe Associates. Perhaps some additional information by Compass Pointe or someone from the surveying firm could lend further clarification. As Mr. Burns stated he is not a registered surveyor and neither is he, but he is familiar with plans and elevations and taking elevations, etc. He knows that sometimes on a plan an elevation line depending on how thick it is drawn can represent one (1) to three (3) feet wide.
He is not 100% sure of the scale on the plan, but expressed today that he hopes they do not have another survey a couple of months from now with the development of a house that depicts a different elevation line. Where it may seem to be a small point to simply come back and relieve the builder of what appears to be a 6 or 8-foot line running through the back end of the proposed house, he could not help but to wonder whether or not the differing setback requirements added to the one that we are faced with today.

Mrs. Townshend stated that the 35-foot setback definitely adds to the issue.

Mr. Keller stated that otherwise they might have a remedy. That would be compliance with the initial grant of the variance. Mrs. Townshend concurred.

Responding to Mr. Senato's question whether at this point because of what was mentioned by Mr. Keller and other information and in his mind that we don't have to make a complete honest decision that we should defer this application until next month, Mrs. Townshend stated that it definitely sound like some additional information would be helpful and if it was deferred until next month the request would be that it is stated on the record the specific documentation, the deed restriction, perhaps having the surveyor present. Make it clear to the applicant what is needed in place before the next meeting.

Chairman Sheth stated that the motion could include conditions of information regarding the deed restrictions. He agrees that the information is needed from the applicant.

Responding to Chairman Sheth's question regarding the motion, City Solicitor Rodriguez stated that the motion to table for additional information from the applicant is what Mr. Senato wanted to do and that is fine.

Responding to Chairman Sheth's question of the information being requested from the deed restriction, Mr. Keller stated that upon his understanding from Mr. Burns is that the proposed structure location has been revised since the initial presentation to the Board of Adjustment which was then located at the 25-foot yard setback line or expressed as such by Mr. Burns. The same expression was given by Mrs. Townshend as to the requirement for a 25-foot setback not a 35-foot setback. He has no recollection of ever having heard a deed restriction imposed on this lot which differs from the announced 25-foot setback line. The structure is now placed further back which puts it into 6-foot flood elevation area (with the revised elevation lines). This should be clarified.

Mr. Burns stated that Mr. Jim Higdon the principal of Gitterdone LLC, had the original survey done by Robert Larimore in 2006 and had the rectangle placed on the survey which was the basis of what was used to the application that was made back in May. At the time not having any idea if they could get any relief at all the equitable owner who was under contract obviously for good reason wanted to determine if they had an existing sealed stamped engineering drawing and they felt that it was more than sufficient to make an application before they duplicated the cost, time and expense to reengineer the lot. They had not completed the design plan for their own home and upon the Board of Adjustment approval they immediately went to closing on the lot and with good faith their builder Brian Lessard takes the plan that they had planned to build which is a Cape Cod that is relatively consistent with the rectangle. They had no reason to go through the expense or effort prior to learning whether or not they could get a variance. Mr. Lessard then hired Compass Pointe Engineering to do the survey. Once it was laid out it was brought back to his attention.

Responding to Colonel Ericson's question if it was being driven back the fact that it is now a 35-foot setback or the drawings was wrong, Mr. Burns stated both. There is clearly a deed restriction that he can make available for a 35-foot setback from the property line on the lot which further restricts things. There is a majority requirement of all the lot owners in the neighborhood for relief of the deed restrictions to be able to set the house back. It is on a 90º curve on the road. Do they opt to go and knock on the doors of 50% of the neighbors to see if they can get relief from the deed restriction to push back the house as Mr. Keller is suggesting or do they come back to the Board of Adjustment not trying to relocate the house, but just try to build the house within the confines of the restriction? The basic argument would be that the house has to conform no matter what with the Flood Plain requirement for construction. This is a neighborhood that was platted back in the 1950's and every single lot has been built on and all of the structures exist. The odds of someone coming in and tearing down a house to start all over again then they would be grandfathered in with the existing footprints. It's not like they have a ½ dozen of these lots on Laurel Drive, this is the only lot. Conversations with some of the neighbors who are very anxious to see a scruffy unsightly lot that collects trash be fully developed. Therefore, when they are looking at building a house and make lemonade out of lemons. Whether they are at 7-feet or 6-feet as long as they are meeting the Flood Plain standards for construction, he does not see where the impact is that severe. If 7-feet are already violating the Flood Plain line what difference does 6-feet makes if they are still building the house substantially in the same location.

Responding to Colonel Ericson if there were any issues that could cause the house to end up in the 5-foot Flood Plain by re-deciding, Mr. Burns stated that he is looking at two (2) surveys and they are seven (7) years apart. He is not suggesting that either survey was inaccurate, but apparently the more current survey they have from Compass Pointe depicts the lot in much more detail than the survey they had from 2006. Most of the contour lines are fairly consistent except for one turn to the left that compromises the 7-foot line.

Responding to Colonel Ericson's question if the contour line to the left was the only compromising line, Mr. Burns stated that if you look at the drawing (the red is the 7-foot) that was approved. Referring to the 2006 drawing on the left side the 7-foot line clips the left hand corner of the house which could be adjusted. The neck prevents the house from being moved to the left. He stated that he has walked the lot since the surveying and there are stakes that identify it and it makes sense.

Responding to Mr. Hufnal's remark that moving it to the left or right would not matter because it is going to make it actually worse instead of better because the lines are going to be further up into the house, Mr. Burns concurred. Referring to the old drawing, the house would have been moved to the left if the neck did not exist.

Responding to Mr. Senato's question if there were any other vacant lots in the entire development for future homes to be built, Mrs. Townshend stated that she was not aware of any other vacant lots.

Responding to Mr. Senato's question if this was the last lot and that there is no more room for homes to be built on the water, Mr. Burns stated correct.

Mr. Senato stated that it is important to him that if there were two (2) or three (3) other lots on that river front and you are dealing with Flood Plains that are going to be built it is important. If this is the last lot and this is the only house then it is not a problem on the waterfront.

Chairman Sheth stated that under today's standards, this lot would not be created.

Mrs. Townshend stated that there may be other undeveloped lots in the Flood Plain in the City. It does not mean that you will not be dealing with this issue again. Each case is judged on its merits and each applicant needs to demonstrate that there is an Exceptional Practical Difficulty that would inhibit them from normal improvement of their property. Regardless if there is a vacant lot on the other side of the City or in this development there is no guarantee that the Board of Adjustment would not see another Flood Plain variance. It is a variance request because the Code was fixed so that you are not regularly building in Flood Plains without a variance.

Colonel Ericson stated that they were off topic because the Board of Adjustment had already approved a 7-foot level in May and now we are saying that we want one (1) more foot, does it make it a real problem because he does not see it as being a problem.

Responding to Colonel Ericson's question how the deed restriction affects 7-feet verses 6-feet, Chairman Sheth stated that the deed restriction does not affect anything else.

Mr. Keller stated that his primary concern was not whether it was moved back or forward three (3) or four (4) feet or if it went from a 7-foot to a 6-foot, but in light of the stated deed restrictions setback requirement as opposed to the 25-foot setback as a requirement. Mr. Burns could come tomorrow and elect to put the house back 50-feet which is really not the point. He wanted to clarify that what was testified to proposed in May 2013 as opposed to what is being brought forth today is somewhat different. This should be taken into account by the Board of Adjustment in its decision today, but in his opinion it is a relatively small matter in the change presented by Mr. Burns. He does not have concerns with the allowing the follow up request for the change, but would like to see clarification as to whether or not there is additionally a deed restriction. He has a portion of a deed from the previous case matter in May which was transferred from E.J. Troise Sr. to James A. and Teresa Higdon. He clarified that Robert L. Larimore survey was June 23, 2005, not 2006.

Responding to Colonel Ericson's question as to what bearing does the setback have on his variance request because he did not see any, Mr. Keller stated that there was a stated proposal in the Board of Adjustment testimony from the previous appearance in May wherein it was stated that the proposal was put in at the 25-foot line. Now there is an appearance for a slight shift, but the house is now being projected to be back 35-feet. There is a difference simply in the presentation and appearance over and above a matter of an elevation line.

Colonel Ericson stated that what is driving this is the change in surveys not the difference between the setbacks of 25 or 35 feet. Mr. Keller stated that it can be both because there is a change in the elevation line and the proposal. It is now being built closer to the road to move it back an additional 10-feet.

Responding to Colonel Ericson's question that if it is not 35-feet and the Board of Adjustment receives the deed then he would vote against it, Mr. Keller stated no.

Chairman Sheth stated that the applicant had no problem and Mr. Keller was satisfied. The Chair and Mr. Hufnal were stating that it could not be moved to the left, right, or front because Mr. Burns stated that it was 35-feet deed restriction.

Colonel Ericson moved to approve application V-13-05 requested variance to allow for the house to be constructed at the 6-foot contour elevation line or greater provided that the finish first floor elevation shall be at or above the based flood elevation based on the requirements of the City of Dover Code Chapter 50 and the requirements international residential code, the applicant must provide the Board of Adjustment a copy of the deed showing the setback restrictions of 35-feet. The motion was seconded by Mr. Keller and unanimously carried 5-0.

Mr. Burns stated that he would provide a copy of the deed.

NEW BUSINESS

Applicant #V-13-15:

43 Washington Street: Kathleen Davies has requested a variance from the requirements of Article 4 §4.1 of the *Zoning Ordinance* pertaining to the maximum lot coverage of 35 percent.

Subject property is zoned R-8 (One Family Residence Zone). The Tax Parcels is ED-05-068.17-01-64.00-000. The owner of record is Kathleen A. (O'Donnell) Davies.

Mrs. Tracey Harvey, Planner, submitted the following items for the record: staff report, property diagram, photos and applicant response to variance criteria. The legal notice was published in the Delaware State News on December 8, 2013, and the public was notified in accordance with regulations.

Mrs. Ann Marie Townshend stated that she was a property owner within 200-feet of the property owner and has had no review in the application. Mrs. Harvey will answer any questions.

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

Representative: Mr. Jerry Davies, Owner's Spouse.

Mr. Jerry Davies was sworn in by Mr. Rodriguez.

Mr. Davies stated that there were two (2) items of interest. The first is to increase the lot coverage on the property from 35% to allow for a 12x14 shed along the backside of the house and also to allow additional parking next to the shed roughly a 20 x 20 area. During discussion with the Planning Office he was informed that he may not be able to do macadam due to drainage. If the macadam is not acceptable he would be willing to possible put crusher run down. He needed additional parking because they host a lot of functions and family members visiting. Parking along Washington Street is limited due to the number of neighbors living on the left side and the neighbors living on the right side without garages. Majority of the parking is on-street and they have had issues. Residents are parking in front of mailboxes. They use their back lot for visitors to park. They once received a citation at one time for parking on the grass.

Responding to Chairman Sheth's question of the total lot coverage that included the parking, Mr. Davies stated 37.8%, without the parking he did not have the calculations.

Mrs. Townshend stated that typically even a gravel lot would be considered part of lot coverage. It would be within the purview of the Board of Adjustment to add that condition.

Mr. Davies stated that the driveway is at an angle. It angles down between Washington Street and Rodney Road. He would like to have it fixed for appearance and add additional parking.

Responding to Colonel Ericson's question as to the size of the additional parking; Mr. Davies stated that it is 25-feet wide and additional 20-feet long.

Responding to Colonel Ericson's question of whether he had a drawing, Mrs. Townshend stated that there was a site diagram in the packet.

Mr. Keller stated that a photo was submitted; Mr. Davies stated that he submitted the photo.

Responding to Mr. Keller's question whether the site photo showed an alley way, Mr. Davies stated that it was the alley way between Rodney Road and Washington Street and his house is in the middle. If you look at the left of the photograph a white line is painted where the shed is going to be placed and from there to the alley way is the proposed additional parking. The property line from our neighbors to the driveway is 25ft and 20ft to the alley way.

Responding to Mr. Keller's question if he had a citation in the past for parking on the grass, Mr. Davies stated his visitors were cited.

Mr. Davies stated that the alley way is very tight and the additional parking allows them to make a U-turn more easily.

Responding to Mr. Keller's question if the visitors were blocking the alley way, Mr. Davies stated no they were parked on the grass. Mrs. Townshend stated that parking on grass is prohibited and it a very common code violation.

Responding to Mr. Hufnal's question regarding the size of the garage (26 x 28) and if it was a four (4) car garage, Mr. Davies stated that it is a two car garage that is quite large (over size).

Colonel Ericson stated that the Staff report states that four (4) or five (5) vehicles could fit into the driveway, Mr. Davies stated yes in the driveway. A total of six cars could fit including the garage.

Colonel Ericson stated that they are looking at the common daily use.

Responding to Colonel Ericson's question of how often was the need, Mr. Davies stated quite often.

Responding to Mr. Keller's question regarding whether Mr. Davies was the person who sketched the shed location on the plan submitted, Mr. Davies stated yes.

Mr. Keller stated that it is not in concert with the scale on the plan otherwise it is misleading because the scale is showing approximately a three (3) or four (4) foot wide shed by eight (8) or ten (10) feet long. A 14ftx12ft would be a footprint of about three (3) times the small sketch of a rectangle shed. A 12ftx14ft shed is a pretty good size.

Responding to Mr. Senato's question as he referred to the left of the drawing and asked if it was the grass area that the applicant would like to cover and is the garage located on the drawing, Mr. Davies stated that the garage is located on the drawing.

Responding to Mr. Senato's question regarding the high volume of parking on holidays, Mr. Davies stated that it is throughout the year.

Responding to Mr. Senato's question if they would park at the end of the shed, Mr. Davies stated yes. Referring to the white line on the drawing is where the additional parking behind the shed.

Responding to Mr. Hufnal's question if there was public parking on Washington Street on both sides, Mr. Davies yes, but it is pretty crowded. There are four (4) college students that live on the left hand side of them. They do not use their driveway or garage, but off-street parking. The neighbors on the right have two (2) vehicles and they do not have a garage and they do off-street parking.

Responding to Colonel Ericson's question regarding the other three (3) block area that is walking distance and there is plenty of parking space. The applicant must show undue hardship or Exceptional Practical Difficulty in order to approve a variance. He did not see why the off-street parking was not sufficient, Mr. Davies stated that this is true, he was trying to make it more convenient.

Mr. Hufnal stated that college students would be gone when he had his holiday entertainment. Mr. Davies stated that it is not just holidays, but throughout the year. He agreed that the students are not there during the holidays.

Responding to Mr. Keller's question that it is cited in the Staff Report that a custom shed was built, but is not yet placed, Mr. Davies stated correct, it is has been built and paid for, but it is not on the lot.

Responding to Mr. Keller's question if the 12ftx14ft was a good number for the footprint that will ultimately take place for the shed, Mr. Davies stated that it is identical. They ordered a 14ftx12ft custom built shed and after it was brought in they learned of the current issues.

Responding to Mr. Hufnal's question if the City or applicant came up with the lot coverage of 37.8, Mr. Davies stated it was the City.

Mr. Hufnal questioned that preceding the 35% lot coverage regulation the applicant estimated that it needs an additional 2.8% to allow for the shed and patio, Mr. Davies stated yes.

Responding to Chairman Sheth as to the house size, Mr. Davies stated 2,300 S.F.

Mrs. Melson-Williams stated that the lot size is 9,000 S.F.

Mr. Keller stated as he referred to the code citation, bulk and parking regulations portion of the Staff Report within the zoning classification that the maximum permitted lot coverage is 35% and this is an R-8 zoned property. If you look at R-10 the larger lot size has smaller lot coverage percentage and R-7 has a smaller square footage lot size is afforded a larger lot coverage of 40%. Since this is a 9,000 S.F. lot he would think that the trend would be going down to smaller lot coverage. We are approaching a considerable amount of lot coverage. There is more than ample private parking space on the lot and public parking available. When Staff recommends with the various calculations that it approaches an amount in the excess of 35%, but not reaching 40% they still suggest that perhaps there should be simply a round up to allow an amount of lot coverage not to exceed 40%. He is not in agreement to round up that figure because it would afford an additional amount of square foot area that he cannot find himself to support given the circumstances, lot layout, and the amount of coverage that will obligated by the shed itself.

Responding to Mr. Keller's question of the distance from the garage door to the alley way, Mr. Davies stated 22ft.

Responding to Mr. Hufnal's question whether the drawing was from the garage door to the back of the alley, Mr. Davies stated yes, it is from his driveway to the alley way.

Responding to Mr. Keller's question as he referred to the photo if there was a flower pot at the garage, Mr. Davies stated yes. Mr. Keller asked if the distance from the flower pot to the alley way is only 22ft, Mr. Davies stated from the garage door to the alley way. Mr. Keller stated that it is approaching more on the 40ft distance as opposed to the 20ft distance. A typical parking lot dimension is approximately 10ftx20ft. Could the applicant put two (2) cars end-to-end between the alley way and the garage door, Mr. Davies stated yes.

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.

Mr. Keller moved to approve application V-13-15 requested variance part I to install a pre-built shed with a dimension of 12ft x 14ft and thereby increasing the overall lot coverage limited to exceed 35% and with regard to part 2 of the variance request to extend the driveway for additional parking be denied to not increase the lot coverage to 40%. The motion was seconded by Mr. Senato and unanimously carried 5-0.

Mr. Hufnal questioned if they were approving the increase in the lot coverage to 37.8%, Mr. Keller stated that the intent of the motion is to approve for the placement of the 12ft x 14ft shed only. It denies any further lot coverage.

Colonel Ericson stated that the Board of Adjustment should not get into the percentages because if they do the 12ft x 14ft and then within another month that it is .9% then the applicant would have to come back for a another variance. He suggested that it be left as requested to approve for the pre-built shed and not approve the additional parking.

Applicant #V-13-14:

200 North West Street: John Bashore has requested a use variance from the requirements of Article 3 §19.2 of the *Zoning Ordinance* pertaining to the prohibition of residential uses in the M (Manufacturing) Zone.

Subject property is zoned M (Manufacturing Zone). The Tax Parcel is ED05-076.08-01-09.00-000. The owners of record are John and Mary Lou Bashore.
Mrs. Ann Marie Townshend, Director, submitted the following items for the record: staff report, map exhibit, photos, and the applicant response to the variance criteria. The legal notice was published in the Delaware State News on December 8, 2013, and that the public was notified in accordance with regulations.

Mrs. Purnell contacted the applicant who indicated that they were not aware that they needed to attend the meeting. They would not be able to attend today, however there is a member of the public who received the public notice and has come to testify.

Chairman Sheth questioned if there was any member who had a conflict of interest.

Chairman Sheth declared the public hearing open.

Mr. Bob Edgell was sworn in by Mr. Rodriquez.

Mr. Bob Edgell, Owner of Teal Construction

Mr. Edgell stated that upon his understanding the subject property has become in disrepair. The house that is located on the corner has been vacated. At one time it was a rental property. The house has been vandalized. The property has lost the grandfather status to remain in the Manufacturing Zone. Everything on that side of the street is manufacturing and all the commercial properties keep their property in good condition as well as being good neighbors and this is not a good neighbor. He is requesting that the Board of Adjustment not reinstate the residential use. The property is not a place for a residential structure. He stated that his construction company starts to work at 4:00 a.m. that runs heavy equipment. There is also a recycling company across the street.

There being no one else 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.

Mr. Hufnal moved to table application V-13-14 because the applicant failed to appear until the January 15, 2014 meeting. The motion was seconded by Mr. Senato and unanimously carried 5-0.

Applicant #V-13-16:
506 through 516 Jefferic Boulevard: Michael J. Harrington, Sr. has requested a variance from the requirements of Article 6 §3 of the *Zoning Ordinance* pertaining to the minimum number of off-street parking spaces required.
Subject property is zoned C-4 (Highway Commercial Zone) and SWPOZ (Source Water Protection Overlay Zone) – Tier 3: Excellent Recharge Area. The Tax Parcels is ED-05-068.09-01-28.01-000. The owner of record is Harrington Properties, LLC.

Mrs. Tracey Harvey, Planner I, submitted the following items for the record: staff report, site diagram, and the applicant response to the variance criteria. The legal notice was published in the Delaware State News on December 8, 2013, and that the public was notified in accordance with regulations.

Representative: Mr. Norman Hutchins, Pastor of Frontline Ministries

Mr. Norman Hutchins was sworn in by Mr. Rodriguez

Mr. Hutchins stated that a variance was previously granted on for a community center which expired. He is requesting that the variance be extended. They were in the process of completing some major projects when they requested the variance that was approved and then came upon some unexpected issues required by the Fire Marshal. The Fire Marshal stated that sprinklers would be required on the entire left side of the shopping center. They have been in the process of raising money and getting proposals in order to move forward with the project.

Responding to Colonel Ericson's statement and question that he was unclear since they had approved the parking variance from 178 to 169 and wanted to know what had expired; Mrs. Townshend stated that the variance had expired. The applicant has a year from the time the variance is approved to make the changes.

Responding to Colonel Ericson's question that the parking spaces had not been done, Mrs. Townshend they had not made the renovations to put in the Banquet Hall and there was an area that was going to be striped, but this had not yet been done. The work associated with the variance did not commence within that year.

Responding to Mr. Hufnal's question if the variance was approved for 178 parking spaces, Chairman Sheth stated the variance was approved for 168 parking spaces.

Mrs. Townshend stated that the parking deficit became an issue with the construction of the Banquet Hall and the variance on the parking expired.

Responding to Mr. Hufnal's question if additional seats are added to the church in the future they will need to come back for another variance to increase the parking deficit, Mrs. Townshend stated yes.

Mr. Keller stated that as the original approval provided for the concurrence with the Fire Marshal office and the one way road that should be marked for the pathway between the parking spaces he was unclear about the south campus building regarding the one way traffic area. The added parking on the south side of the building provides an 18-foot drive isle and would only allow for one way traffic.

Mrs. Townshend stated that the south campus building is a separate property. Frontline Ministries owns that building and they lease the area in the shopping center. When Frontline Ministries first came into the shopping center there were other tenants.

Responding to Mr. Hufnal's question that the reasoning for the one way traffic requirement was because of the Fire Marshal, Mrs. Townshend concurred.

Mr. Keller stated that in the previous decision the word building was singular and should be plural, because there are numerous buildings on the south side.

Mr. Keller referring to the Staff Response section on page 7 of the Staff Report consideration item #2 that states that the site utilizes twelve (12) parking spaces located on the property to the south (the South Campus). Staff notes that the added parking provided on the southeast side of the building provides an 18-foot drive aisle and would only allow for one way traffic. The only

building mentioned is the south campus. Mrs. Townshend concurred.

Mr. Keller continuing to refer to Staff Response of the report stated that this parking would also need to be reviewed by the Fire Marshal to ensure life safety is being met. He would like a clear understanding of sketch C-1 and what 18-foot wide drive aisle and behind what building, Mrs. Townshend concurred. She also stated that for a drive aisle by code to accommodate the two way traffic would need to be 20 feet wide.

Mr. Hutchins stated that the signs that currently state one way come off of Jefferic Boulevard and goes south behind the buildings. The do not enter signs are already posted.

Responding to Mr. Rodriguez's question for clarification in the decision regarding the various buildings that the plural (s) be added to the word building, Mr. Keller stated yes.

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.

Mr. Keller moved to approve application V-13-16 for a requested variance thereby permitting a reduction in the number of off-street parking spaces from the required 178 to the requested 169 provided the applicant abides by the statement that the use of the Fellowship Hall and the Sanctuary would not be used at the same time and that the parking area by the buildings will need to be marked as one way as this area does not meet the code for two way traffic. Also, if the additional seats are added to the church in the future another variance would be needed to request the increase of required numbers of off-street parking spaces. The motion was seconded by Mr. Hufnal and the motion unanimously carried 5-0.

Applicant #V-13-16:
11 Roosevelt Avenue: Jerrie D. Sanstrom has requested a variance from the requirements of Article 5 §1.52 of the *Zoning Ordinance* pertaining to the projection of a porch into the front yard.

Subject property is zoned R-8 (One Family Residence Zone). The Tax Parcels is ED-05-077.17-05-60.00-000. The owner of record is Jerrie D. Sanstrom.

Mrs. Ann Marie Townshend, Director, submitted the following items for the record: staff report, site diagram, photos, drawings of the proposed deck and layout, and the applicant response to the variance criteria. The legal notice was published in the Delaware State News on December 8, 2013, and that the public was notified in accordance with regulations.

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

Representative: Ms. Jerrie D. Stanstrom, Owner.

Ms. Jerrie D. Stanstrom was sworn in by Mr. Rodriguez.

Ms. Stanstrom apologized for continuing work on the deck because she was informed by the contractor that no permit was needed to replace. The incomplete deck is replacing a broken brick entrance to the home. The deck got bigger and was extended out too far. She is requesting a variance of 3 feet by 2 inches out. She would have been in compliance with the rules and regulations, but DelDOT had 525 S.F. taken for the right-of-way on Roosevelt Avenue.

Mrs. Townshend stated that there was no real discussion of that issue in the Staff Report, but if you refer to exhibit one can tell that the right-of-way exhibited from when Roosevelt Avenue was straightened. She did not have any real detail other than the drawings.

Responding to Mr. Hufnal's question if she had owned the property prior to the straightening of the right-of-way by DelDOT, Ms. Stanstrom stated yes.

Responding to Colonel Ericson's question whether a variance would have been needed if there was no straightening of the right-of-way, Mrs. Townshend stated that it was not clear how much frontage was taken.

Mr. Keller addressing the exhibit which is depicted on portion of DelDOT plan sheet, as you face the house the area of acquisition by the State on the right side is 3.71 feet and it angles to a greater depth as you face the house on the left side of 8.43 feet. In the area of the original concrete sidewalk going towards the front door (middle of the property) is roughly 5-5 ½ feet deep.

Colonel Ericson stated that the applicant was requesting 3.1 feet and if the right-of-way had not been changed the applicant would have been in compliance and the applicant would not have needed a variance.

Mrs. Townshend stated that the setback is 25 feet and the one diagram in the exhibit shows the deck coming to 19 feet by 5 ½ inches, but the issue is the 3 ½ feet from the existing which is 22 feet by 2 inches. The existing encroachment is an existing condition where the applicant could replace or comply with. The applicant is looking to go 3 feet beyond that. With the additional 5 feet the applicant would be looking at a 6-inch projection which for an entry is typically not a problem.

Mr. Keller referring to Mrs. Townshend comments about the uncertainty as to the two (2) separate provisions of the code to which this would apply it is not truly a roofed-over area and it seemed if you overlook the portion of Article 5 §1.52 and any projection extending not more than 6 feet into the required front yard shall be exempt from the requirement and consideration, is this correct, Mrs. Townshend concurred and stated that this is where Ms. Cornwell had done the pre-application and her reading had related to the projection of 6 feet. The determination can be made to go 6 feet, but a zoning interpretation that strict construction of the code seems to indicate that it needs to be roofed-over. Common sense would tell you if a roofed-over projection can go 6 feet into the front yard why couldn't an open projection also be permitted.

Responding to Mr. Keller's question if the exhibit presented was done by the contractor or builder of what was to take place, but now has partially taken place, Ms. Sanstrom stated yes. She stated

that the work was stopped by the City Inspector.

Responding to Chairman Sheth's question if the contractor has a City of Dover Business License, Ms. Sanstrom stated she thought the contractor had a license and insurance pertaining to the information on the business card.

Mr. Keller stated that with the 6 foot projection and proposed exhibit it appears that it would be a maximum of 4 feet to which a variance would apply in addition to the front width of the decking.

Mrs. Townshend stated that the projection that is permitted to go 6 feet into the front yard is limited to 8 feet in width and the exhibit appears to be 11 feet in width.

Mr. Keller stated that it is noted as 14 feet so it would entail an additional 3 feet in width on either side of the door and the 3 ½ to 4 feet extension max if consideration was given to the approval of the requested variance.

Responding to Chairman Sheth's question whether it was illegal if the contractor did not have a permit, Mr. Ericson stated yes.

Mrs. Townshend stated that if a variance is approved then the City would issue the building permit and make sure there is a licensed contractor. On the permit it indicates the contractor TBD (to be determined).

Chairman Sheth informed the applicant to make sure the contractor is insured and licensed in case something happens to the home.

Responding to Mr. Keller's question whether the requested variance was approved would it entail if there are short comings in the method of construction as to what is already there and would it ensure that the new contractor had done the work correctly and per code, Mrs. Townshend stated yes.

Chairman Sheth stated that once a permit is issued an inspection would be done.

Ms. Sanstrom stated that the City Inspector who stopped by did inspect the work and said it look great, but a permit is required. She applied for the permit, but it was denied.

Mrs. Townshend stated that the section of the code that states a roofed-over but unenclosed projection not more than 8 feet wide and extend 6 feet into the front yard shall be exempt from the requirements.

Responding to Colonel Ericson whether you can determine the section that is not applicable, Mrs. Townshend stated that it was the section of the code that was being referenced. That section of the code does not seem to allow for something that is not roofed-over. *Entries and porticos* are roofed-over, but the code does not seem to address how to deal with open decks in the front. The open decks are only addressed in the rear. The code will need to be fixed so that an entry porch, deck or etc. does not have to be roofed-over and project into the front yard.

Mrs. Townshend stated that there is a 25 foot setback. When you factor in the porch there is a 22 foot setback and the applicant is requesting to go to 19 foot because 5 feet was dedicated as right-of-way from the applicant's property.

Chairman Sheth suggested that the applicant apply for a permit with a license contractor then the Board of Adjustment will discuss as a clean case.

Mrs. Townshend stated that after the public hearing, there will likely be a motion to table requesting that the Staff work with the applicant and make it very clear what the scope of the variance requested is and write a clearer recommendation.

Responding to Mr. Keller's question whether the partial construction already in place would not get into the dilemma whereby the City would compel the demolition of the removal of that in the interim, Mrs. Townshend stated no.

Responding to Mr. Keller's question whether this would entail the clarification and rewrite of the portion of the code to address the section of uncovered porches that might delay this issue and he did not want that to happen, Mrs. Townshend stated no, but they would write a clearer recommendation. There was more information brought forward today in terms of the right-of-way acquisition.

Mr. Keller stated that he would like to emphasize that there was a portion of the applicant's front yard that was diminished that brings about a legal non-conforming setback area in any event because of the depth and if it could be high expectation of remedy within another 30 days that he would be in concert with it as well.

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 to table application V-13-17 based upon the comments received during the meeting. Mr. Senato seconded the motion.

Mr. Keller stated that the motion should proceed consulting with Ms. Sanstrom to bring about a greater clarification and exactly what the variance would address.

Mr. Senato moved to amend the previous motion to hold another public hearing because of the change in additional information that might be forth coming that was not current today. The motion was seconded by Colonel Ericson and unanimously carried 5-0.

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

Meeting adjourned at 10:57 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary

City of Dover

Board of Adjustment

December 18, 2013

V-13-14

Location:	200 North West Street
Applicant/Owner:	John W. Bashore
Tax Parcel:	ED-05-076-08.01-09.00-000
Application Date:	November 8, 2013
Present Zoning:	M (Manufacturing)
Present Use:	Vacant Residential Structure
Reviewed By:	Ann Marie Townshend, AICP
Variance Type:	Use Variance
Variance Requested:	*Zoning Ordinance*, Article 3, Section 19 Manufacturing Zone, 19.2 Uses Prohibited, 19.22 Residences

Project Description:
The applicant is requesting a use variance from the *Zoning Ordinance* Article 3 §19 to allow the property to be used as a residence. The property currently includes a vacant residential structure. The structure has been vandalized and most of metal components, including electrical wiring and plumbing, have been stripped from the house by vandals.

Adjacent Land Uses
The property is located in a transitional area, with industrial and manufacturing uses on the west side of the street (immediately surrounding the subject property) and residential uses across the street to the east of the subject property. The subject property is surrounded on two sides by Teal Construction, and Terrapin Recycling is located south of the property across a street stub.

Code Citations – *Zoning Ordinance*

Article 3. District Regulations

Section 19. Manufacturing zone (M).

.

19.2 *Uses prohibited.* The following uses are specifically prohibited:

19.21 Residences.

Article 4. Zoning Bulk and Parking Regulations

Section 4.16

Bulk and parking regulations for industrial zones in M:

Minimum Lot Area	½ acre
Minimum Lot Width	100 feet
Minimum Lot Depth	150 feet
Front Yard	40 feet
Side Yard	20 feet
Rear Yard	20 feet

Review Standard for a Use Variance

The *Zoning Ordinance,* 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 is done.

2.12 *Use variance*. A variance shall be considered a use variance if it would permit a use of the subject property that would otherwise not be permitted on the subject property. In considering a request for a use variance, the board shall determine that the following criteria exist and document them in their findings of fact:

(a) 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 building, and have not resulted from any act of the applicant or any predecessor in title; and

(b) 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 for 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; and

(c) That the 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.

Review of Application

As a part of the application, the applicant was asked to summarize how the requested variance relates to the four criteria. The applicant's response is provided below, along with a staff assessment of the application in accordance with the required criteria.

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

   Applicant Responses:
   The square footage of this property is less than required for a property in a Manufacturing zone. Setback lines would prevent the building of a building adequate to support any type of business or manufacturing facility.

   Staff Response:
   The subject property does not meet the minimum lot size, lot width, or lot depth for the M (Manufacturing) zone. While the applicant did not submit a plot plan with precise dimensions of the lot, it is clear that the lot does not meet the dimensional and area requirements. Staff used the geographic information system to prepare and exhibit with approximate measurements, and it appears that the lot is approximately 54 feet by 103 feet, and approximately 5,550 square feet in area. This is significantly less than the half-acre (21,780 SF) minimum lot size. The lot size and dimensions would make it impossible to construct a building that meets the setback requirements for the M zone.

2. 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 for 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.

   Applicant Responses:
   The reasonable economic use of this parcel of property would be multifamily residential as there are like properties just across the street from the subject property and this would not impact the area in any way. This is the only use available for this parcel as property does not conform to any other and already has a footprint established for a residential use.

   Staff Response:
   The applicant must demonstrate that the use variance is necessary, as the provisions of the ordinance would deprive the applicant of **all reasonable use of such land or building,** and the variance granted must be the **minimum variance that would accomplish this purpose**. While it is likely infeasible to develop a viable manufacturing use on the subject site, the applicant has not demonstrated that the ordinance would deprive the applicant of all reasonable use of the land, and the request for a multi-family residential use is not the minimum variance that would accomplish the purpose. Other

uses, such as commercial or office uses, would be a lesser departure from the requirements of the ordinance than the requested residential use.

In addition to the manufacturing uses permitted in the zone, the M zone also permits research, design and development laboratories; wholesale storage and warehousing; building contractors yards; public utilities uses; and ministorage. While the property may not be able to accommodate a manufacturing use, the applicant has not demonstrated that any of the other uses permitted in the zone would be infeasible. While the property is small and does not comply with area and dimensional requirements of Article 4 of the *Zoning Ordinance*, an area variance for a use that is permitted in the zone would be the more appropriate variance.

3. The variance would 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.

Applicant Responses:
The granting of this variance will not adversely impact this area and will be in harmony with the general purpose and intent of the ordinance because there will be no change in the character of the property or the area. The lot being too small for manufacturing or business and the like residences already in the area would lend itself to being the most likely use of the property. There would be no injurious or detriment to public welfare or the surrounding neighborhood as there is a church on the opposite corner across the street and numerous multifamily residences straight across the street.

Staff Response:
The granting of the variance has the potential to adversely impact the neighboring manufacturing uses. Residences are expressly prohibited in the M zone as they are deemed incompatible with the uses permitted in the M zone. The neighboring property to the north and west has a chain link barbed wire fence and is an active industrial site.

The residential uses on the east side of North West Street are primarily one-family dwellings. The property immediately across the street at 207 North West Street is a multi-family residence, which is a legal non-conforming use in the RG-1 (General Residence) zone.

The Comprehensive Plan designates this property as Industrial in land use. The allowance of a new residential use would be contrary to the *Zoning Ordinance* and the Comprehensive Plan.

Variance Recommendation:
Staff notes that the standard for a use variance is different and more stringent than the standard for an area variance, as the applicant must demonstrate that the provisions of the ordinance would deprive the applicant of all reasonable use of the land. Additionally, the variance granted must be the minimum variance that would accomplish the purpose. Given these factors, staff recommends denial of the variance for reasons as follows:

- The applicant has not demonstrated that adherence to the requirements of the ordinance deprives him of all reasonable use of the land.
- The variance requested is not the minimum variance necessary to provide for reasonable use of the land.
    - Previously the house was a legal non-conforming one-family residence. The applicant wishes to develop the property as a multi-family residence.
    - Other use categories such as commercial or office use would be less of a departure from the requirements of the ordinance and more compatible with the neighboring industrial uses.
- The requested variance represents a radical departure from the requirements of the ordinance and could have adverse impacts on the neighboring industrial use, as there is the potential for residential neighbors to complain about the noise, hours of operation, and other incompatible characteristics of a neighboring industrial use. These issues of incompatibility represent the reason that residential uses are expressly prohibited in the zone.

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 applicant has requested that this item be deferred until the February 19, 2014 meeting.**

- **See letter of January 7, 2014 from David C. Zerbato, Esq. of Michael P. Morton, P.A. requesting the deferral.**

MICHAEL P. MORTON, P.A.
ATTORNEY AT LAW

1203 NORTH ORANGE STREET
WILMINGTON, DELAWARE 19801
Telephone: (302) 426-1313
Fax: (302) 426-1300
email: MPMPA@aol.com
Member DE & PA Bars

January 7, 2014

VIA FIRST CLASS MAIL
Division of Code Enforcement
Attn: Dawn Melson-Williams
15 Loockerman Plaza
Dover, DE 19901

RE: Appeal of Action – 128 S. Queen Street
Joseph Burden

Dear Ms. Melson:

We represent Mr. Joseph Burden. This letter is to request that the appeal he has filed regarding the determination that 128 S. Queen Street is illegally being used as a rooming house which is currently scheduled to be heard on January 15, 2014 at 9:00 a.m. be deferred until the next meeting date in February, 2014. Mr. Burden has just retained our office to represent him in this matter. Our office currently has a scheduling conflict with multiple trials and/or hearing already scheduled for that morning.

Further, I am currently in the process of evaluating and preparing the necessary documentation to present to the Board. However, I will need additional time to gather, review and prepare the necessary documents for this matter, and to be adequately prepared to present the appeal to the Board.

Therefore, I respectfully request that the appeal currently scheduled for January 15, 2014 be deferred to the next meeting to take place in February, 2014. Should you have any questions or concerns please do not hesitate to contact me.

Sincerely,

David C. Zerbato, Esq.
Michael P. Morton, P.A.

cc: Joseph Burden

City of Dover

Board of Adjustment

January 15, 2014

V-14-02

Location:	222 South DuPont Highway 554 East Loockerman Street
Applicant/Owner:	Hub Associates LLC/A&G Kramedas Associates
Tax Parcel:	ED-05-077.06-01-62.00-000 ED-05-077.06-01-63.00-000 (has been combined with lot 62.00) ED-05-077.06-01-64.00-000 (has been combined with lot 62.00) ED-05-077.06-01-87.00-000
Application Date:	December 13, 2013
Present Zoning:	C-4 (Highway Commercial Zone)
Present Use:	Commercial
Reviewed By:	Ann Marie Townshend, AICP
Variance Type:	Area Variance
Variance Requested:	Allow a pylon sign to encroach into the required setback and within the exclusion zone.

Project Description:
The applicant is requesting a variance from the *Zoning Ordinance* of Article 5, Section 4.7 Supplementary Regulations to allow a pylon sign to be located twenty five (25) feet from the right-of-way and to allow the pylon sign to be located twenty eight (28) feet from another pylon sign.

The signs at this location are subject to the Unified Comprehensive Signage Plan US-13-03. During review of the Unified Comprehensive Signage Plan, staff advised the applicant that the Planning Commission did not have authority to adjust the required setback and exclusion zone.

The pylon sign for which the variance is requested currently exists and would be reconstructed through the implementation of the Unified Comprehensive Signage Plan. According to the

Zoning Ordinance, Article 4 §4.10 Nonconforming Signs, nonconforming signage must be made to comply with the requirements of the Sign Regulations when there is a renovation more than 75 percent of the principal building's exterior. In this case, the hotel was demolished, and a new hotel is being constructed on the site.

Adjacent Land Uses

The adjacent properties are a mixture of commercial and residential uses. The properties along South DuPont Highway are zoned C-4 (Highway Commercial Zone). A portion of the subject site (not the location where the sign variance is requested) is zoned CPO (Commercial and Professional Office District). The properties to the west of the site on Bayard Avenue and to the northwest of the site on East Loockerman Street are residential and zoned R-10 (One Family Residence Zone). The proposed pylon sign for which the variance is requested would not be visible from the residential properties.

Code Citation

4.7 *Permitted signs.* Signs are permitted in all zones in accordance with the following table, which is a list of permitted sign types by use, proximity to residential uses and road classification.

Use	Road Type	Sign Type	Number Permitted	Max Size	Max Height	% of Wall	Setback (R.O.W.)	Exclusion Zone
Non-Residential Uses in Non-Residential Districts	Urban Principal Arterial	Pylon or*	1/frontage	100 S.F.	30'	N/A	15'	50'
		Pylon	1/frontage	150 S.F.	30'	N/A	31'*	50'
Applicant's Request ***The subject pylon sign is subject to the 31-foot setback because the sign area exceeds 150 feet.							25' (6' reduction)	28' (22' reduction)

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:
It is a highway commercial zone which was developed in the late 50's, early 60,s as a motel and restaurant site which we are re-developing as a mixed use hotel and retail site.

Staff Response:
The property is zoned commercial and is surrounded by commercial uses along the road frontage. There are residential uses to the rear of the property. The residential uses to the rear of the property do not impact signage for the site. Signage is determined based on road classification. The property is located on an Urban Principal Arterial. This road types allow for a pylon sign.

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

Applicant Responses:
To the south is a Jiffy Lube and retail center, to the north is an office complex, and across the highway is retail, restaurants and gas station.

Staff Response:
The character of the vicinity is commercial with residential uses to the rear of the property. The proposed sign is consistent with the immediate area and the uses in this area.

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

Applicant Responses:
No, we are using the existing footprint of the hotel sign which has been there for over 50 years and will not affect neighboring properties

Staff Response:
Removal of the restriction would not seriously affect neighboring properties and uses. There has been a pylon sign in this location for many years. Under the Unified

Comprehensive Signage Plan and with the requested variance, the sign would remain in this location but be improved in appearance. The location of the sign is currently in the exclusion zone from the neighboring pylon sign, and with the difference in the sign heights and setbacks, there is no conflict between the signs.

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:
   If restrictions are not removed, the sign would have to be farther back, higher and larger which would affect the neighborhood and the surrounding properties more and cause an exceptional practical difficulty to the owner in re-developing this property.

   Staff Response:
   If the restriction were not removed, an exceptional practical difficulty would be created for the applicant. The sign could not be moved further south on the property without conflicting with the access to South DuPont Highway. Moving the sign further to the west to meet the setback and exclusion zone would place the sign in a location where it could be obstructed by the existing building.

   During review of the Unified Comprehensive Signage Plan, the applicant indicated that the TGI Fridays sign cannot move or be combined with the subject pylon sign due to lease conditions with the tenant. As there is no change to the principal building on this property, the nonconformity of the TGI Fridays sign remains legal.

   The change in signage is related to redevelopment of the property. Given that developed areas on and surrounding the site (including access from South DuPont Highway and the existing building that remains) that are not being changed as a part of the redevelopment, some of the existing conditions in this case present an exceptional practical difficulty with meeting the sign setback and exclusion zone requirements of the Sign Regulations.

Variance Recommendation:
Staff recommends approval of the variance, as the applicant has demonstrated that the requirements of the variance criteria have been satisfied. Specifically:

- The variance requested is consistent with the character of the zone and the immediate vicinity.
- Relief from the setback and exclusion zone would not seriously affect neighboring properties.
- The applicant has demonstrated that exceptional practical difficulty exists with meeting the sign setback and exclusion zone requirements.