CITY OF DOVER
BOARD OF ADJUSTMENT MINUTES
July 17, 2013

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, July 17, 2013 at 9:00 A.M. with Chairman Sheth presiding. Members present were Mr. Senato, Mr. Hufnal, and Mr. Keller. Colonel Ericson was absent.

Staff members present were Mrs. Townshend, Ms. Cornwell, Mrs. Purnell, Mrs. Harvey, and City Solicitor Rodriguez.

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

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF June 19, 2013
Mr.Keller moved to approve the meeting minutes of June 19, 2013 with the necessary correction, seconded by Mr. Senato and unanimously carried 4-0. Colonel Ericson was absent.

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATIONS
Mrs. Townshend, Director of Planning and Community Development stated that the meeting will 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-13-09:
527 William Street: Roger Dale Casey, Jr. has requested a variance from the requirements of Article 5 §1.33 and 1.55 of the *Zoning Ordinance* pertaining to height of a fence within the front yard setback.

Subject property is zoned R-8 (One Family Residence Zone). The Tax Parcel is ED-05-067.20-01-52.00-000. The owner of record is Roger Dale Casey, Jr.

Ms. Janelle Cornwell, Planner II, submitted the following items for the record: staff report, photos, survey, emails, and the written statements provided by the applicant. The legal notice was published in the Delaware State News on July 7, 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: Mr. Roger Dale Casey, Jr., Owner.

Mr. Roger Dale Casey, Jr., was sworn in by Mr. Rodriguez.

Mr. Casey testified that the application is a request for variances to allow for a 6 foot fence to be located within the front yard setback along William Street. He bought the house in 2007. He noticed that there was a baseball field across the street after moving in and did not think that it would be an issue. Since living there for five (5) years he has had balls come into the yard hitting his cars. He has also parked on the street and that was also a problem. Later he built a carport and tree house for his daughter and he is still having problems with the balls. In 2008 he contacted the College regarding the fly balls to come up with a resolution for the problem; because the fence stops at the alley. He is requesting a fence to keep the balls and players from coming into his yard. He understood that the zoning issues would be from a visual standpoint coming out of the alley and turning into the alley. The only person that would have a problem with the height of the fence would be the baseball players. His neighbors on both sides and behind him had no problem with his request. He contacted Touch of Class Fencing and presented them with a drawing and they stated that they would order the material and apply for a permit. He is now stuck with $3000 worth of 6 foot material that he cannot use. He would like to know what could be modified on the drawings so that he is aware of what can be done and also to protect his child while playing outside in the tree house. There is a utility pole in the alley that sits 3 feet into the property line.

Chairman Sheth stated that there were similar incidents in the past. The owner put hedges near the street which required approval by the City.

Responding to Mr. Keller's question regarding the submitted photos if there was netting suspended from the poles, Mr. Casey stated that standing from the alley and William Street this was the corner of his property line near the sidewalk. There is a 10 foot gap between the fence and where the netting starts causing foul balls to come through and around the netting then bouncing into his yard. He has seen other cars hit that have parked in front of his house.

Mr. Casey stated that he contacted Dr. Johnston at Wesley College informing him of the situation and requesting them to purchase a fence to help protect his family and property. He was hoping that they could come up with some type of agreement regarding his fencing concerns around the baseball field. A Wesley financial board member came over to see if they could fit this into their budget and afterwards the Director of Athletics sent an email to the Planning Office.

Responding to Mr. Keller's question if the email he was referring to was the one the members had received from Michael Drass, Director of Athletics, Mr. Casey replied yes, he is the Head Football Coach.

Responding to Mr. Keller's question if someone from the College met with Mr. Casey, Mr. Casey replied yes.

Responding to Mr. Keller's question if there was any further discussion regarding screening, Mr. Casey stated that the person from Wesley College stated that it would be a good idea, but they were not sure of the costs of setting new posts.

Responding to Mr. Keller's question if the field was utilized when the College is not in session such as high school or little league, Mr. Casey stated yes, it is used by both for games and practices.

Responding to Mr. Senato's question if the main problem was foul balls, Mr. Casey replied yes.

Responding to Mr. Senato's question if there were other homes having problems with the foul balls, Mr. Casey stated most likely not. He is the only home that is not covered by the College's fence. The home directly beside him has the netting right at the property line, but it ends at his alley. The other houses are far enough way that they would not get the balls.

Responding to Mr. Keller's question regarding the College's appearance of having a 6 foot or 8 foot fence or higher in the vicinity and if that did not contain the foul balls how does Mr. Casey anticipate that a 6 foot fence would prevent balls from entering his property since the balls come in on a high fly ball, Mr. Casey stated the foul balls come in on a high fly ball and hit the street or bounce on a car and then come into his yard. If the college had the netting it would probably stop the foul balls. His main concern is a ball hitting his child if she was playing in the yard or tree house.

Responding to Mr. Senato's question if his child had been hit by a ball, Mr. Casey replied no. If she was hit by a ball traveling at that speed it would probably kill her. This has been expressed to the College. If the College is having a game he tries not to have anyone in his yard.

Responding to Mr. Senato's question if the owners of the ball park added higher netting would it be a solution, Mr. Casey stated that the netting needed to be added more towards his property along William Street. If they added one or two more posts and extend the bottom part of the netting to touch the top part of the 8 foot fence it should address the situation. This was also recommended by the person that came over from the College.

Responding to Mr. Senato's question if he had spoken to the City, Mr. Casey replied no, he was trying to resolve the issue with the College.

Mrs. Townshend stated that the reason the Planning Office received an email from Michael Drass, was because she contacted the College and asked if there was something they could do. The email was the response she received. The email does not address the issue. It was also the Planning Office's thought for the College to extend the netting. She will follow up with the College. She was concerned if the fence was going to solve the problem.

Mr. Senato suggested that the Board should wait before making a decision until there is a direct yes or no from the College as to how they plan to proceed.

Mr. Hufnal stated that the applicant is allowed to put up a 4 foot fence which is permitted in the zoning and this would be a difference of 2 feet from the requested variance. This is not that much of a difference as far as helping to keep the foul balls out. If the City could come to some type of agreement with Wesley College to extend their netting to cover that area, and then the applicant could still put up a 4 foot fence to keep the trash off his property. This would also eliminate it being a deterrent to the neighborhood of having a high fence.

Mrs. Townshend stated that the other option would be if it was 6 foot tall is to have it flush with the house.

Mr. Hufnal stated that this would be more conforming with the zoning and the applicant would not need to have a variance for the 4 foot fence. The 4 foot fence would look more appropriate.

Responding to Mr. Hufnal's question if Mr. Casey ever filed any claims when his car was damaged, Mr. Casey replied no.

Responding to Mr. Keller's question if the City was aware of any restrictions including zoning that would prevent Wesley College from increasing the screening, Mrs. Townshend replied no, because what is there is legal non-conforming.

Responding to Mr. Casey's question if Wesley College would be willing to do this on their own or would the City need to push for it to be done, Mrs. Townshend stated that she will need to explore it more and have more information before the next meeting since Dr. Johnston was out of town.

Mr. Keller stated that as he referred to the photos that one of his views on the increase height of fencing is that in the neighborhood there are no other neighboring properties with taller fences.

Responding to Mr. Keller's question if Mr. Casey was aware that 6 foot fencing was allowed on the side between the properties to the north, along West Street, and along the alley which did not require a variance, Mr. Casey stated yes, but he wanted to know where the 4 foot fence could be approved and located so that the contractor can begin working.

Responding to Mr. Casey's question as to where the 4 foot fence could be located, Mrs. Townshend stated that it could be discussed after the meeting. However, a 6 foot fence could be placed near the deck, property to the rear, and along the alley and up to the front yard setback. In front of any area that is flush with the house would be 4 feet or the fence could be pulled back.

Responding to Mr. Casey's question if the 4 foot fence could not go passed the front of the house, Mrs. Townshend stated that the 4 foot fence could go pass the front of the house, but not the 6 foot fence. A variance is not needed for a 4 foot fence.

Responding to Mr. Casey's question if he went to other neighbors that have also complained about the foul balls would it help, Mr. Sheth stated that the Board could not answer yes or no, but Mr. Casey had all the options.

Responding to Mr. Hufnal question if Mr. Casey had already been approved to put up a 6 foot fence in the back of the house near the deck and the rear, and across the alley, Mrs. Townshend stated that he has been told that it complies with the code, but no permit has been issued.

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 an email correspondence from Michael Drass, Director of Athletics that was given to all members.

Mr. Senato moved to table application V-13-09 decision by the Board to allow Mrs. Townshend to work with Wesley College with the possibility of adding more netting to the field to prevent foul balls from entering the neighboring yard, seconded by Mr. Hufnal and the motion was not carried with two (2) yes, two (2) no, Colonel Ericson was absent.

Mr. Keller stated that his dilemma with the motion is that there was no ending time frame involved with the motion to table. Mr. Casey has spent a number of years in his plight with Wesley College. He wondered if City Staff could bring about a quicker resolution. How long does the Board of Adjustment delay the decision for Wesley College to do anything? This could delay Mr. Casey putting up his fence in another fashion or relenting and putting up the 4 foot fence across the front.

Chairman Sheth stated that he agreed with Mr. Keller and the applicant has various options. The City has tried to negotiate for the applicant. There have been multiple cases similar to this in the past.

Responding to Mr. Senato's question if the applicant could legally put up a 4 foot fence, Mrs. Townshend replied yes.

Responding to Mr. Senato's question if the applicant could add another 3 feet of netting above the fence, Chairman Sheth stated that the applicant could discuss this with Mrs. Townshend.

Mr. Keller stated that Mrs. Townshend mentioned a good point that Wesley College's screening was not necessarily considered fencing.

Responding to Mr. Keller's question if Mr. Casey put up a 4 foot fence and similar netting or screening would the City deem it as fencing, Chairman Sheth stated that the applicant did not ask for a 6 foot fence with netting.

Mr. Senato stated that there is a certain amount of money invested in the hearing with the applicant and if the application is approved it would be setting a precedent with the 6 foot fence in the neighborhood. A variance is not needed for the 4 foot fence. If the application is disapproved it cannot be brought back for another year. He understood that Mrs. Townshend was working with Wesley College to get a solution. He would like to come up with a solution today because of the applicant's investment.

Chairman Sheth stated that a solution has been given and the Board's responsibility is the *Zoning Ordinance.*

Mrs. Townshend stated that they were trying to determine if the netting would be considered a fence. There was a Code Enforcement issue a year ago when someone was putting up something that was not considered a traditional fencing, but when we looked in the Zoning Ordinances,

fences are not defined. Therefore, in the absence of the definition in the *Zoning Ordinance* she needed to look at the dictionary definition. If the netting was considered a fence in terms of what is currently there it would not increase the nonconformity that already exists at Wesley College. She would need to look into the code interpretation on the other case and the dictionary definition. She could not conclusively say that it could be done.

Mr. Hufnal stated that a lot of options were discussed today and the applicant will need to decide which option is the best. The applicant's proposal is a 6 foot fence that is against the ordinance as written. It can only be a 4 foot fence. Mrs. Townshend can still continue to work with Wesley College to address the netting even if the 6 foot fence is denied.

Mr. Sheth stated that the applicant could also do netting if it is allowed.

Mr. Senato moved to deny application V-13-09 due to precedent and nonconformity within the neighborhood seconded by Mr. Keller and the motion unanimously carried 4-0. Colonel Ericson was absent.

Mr. Senato moved to adjourn the meeting, seconded by Mr. Hufnal and unanimously carried 4-0. Colonel Ericson was absent.

Meeting adjourned at 9:42 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary