CITY OF DOVER BOARD OF ADJUSTMENT
AGENDA
Wednesday, June 19, 2013 9:00 AM

City Hall Council Chambers
15 Loockerman Plaza, Dover, Delaware

ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES OF May 15, 2013 Meeting

NEW BUSINESS

Applicant #V-13-08:
186-188 Pennsylvania Ave. John & Dorothea Link and Bradley Holden have requested variances from the requirements of Article 4 §2 of the *Zoning Ordinance* pertaining to lot width, lot size, and side yard setback.

Subject property is zoned RG-1 (General Residence Zone). The Tax Parcels are ED-05-077.05-02-03.00-000 and ED-05-077.05-02-03.01-000. The owners of record are John & Dorothea Link and Bradley Holden.

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
May 15, 2013

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, May 15, 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, Ms. Cornwell, Mrs. Purnell, Mrs. Harvey, and City Solicitor Rodriguez.

APPROVAL OF AGENDA

Mr. Senato moved to approve the agenda as submitted, seconded by Colonel Ericson and unanimously carried.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF April 3, 2013

Mr.Hufnal moved to approve the meeting minutes of April 3, 2013 as submitted by Staff, seconded by Mr. Senato and unanimously carried 4-0 (Keller 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 as. 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 applications 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-13-05:

74 Laurel Drive, Gitterdone, LLC has requested 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 is Gitterdone, LLC.

Ms. Janelle Cornwell, Planner II, submitted the following items for the record: staff report, plans, presentation and written statements provided by the applicant. The legal notice was published in the Delaware State News on May 5, 2013, and that the public was notified in accordance with regulations.

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

Representatives: Mr. Phil McGinnis, McGinnis Commercial Real Estate Company; Representative on behalf of the owners of the property.

Mr. Phil McGinnis, Representative of the owners of the property, was sworn in by Mr. Rodriguez.

Mr. McGinnis gave a PowerPoint Presentation and testified that the application is a request for a variance to build within the floodplain. They had previously requested a variance from the 25 foot front yard setback, but decided not to pursue that particular variance request. Referring to the presentation, he stated that the topography map of the area referenced where the wetlands and highlands are located. The area that was outside on the eastern side of the boundary and everything else was inside the floodplain. The dash lines on the map represented the floodplain which is elevation nine (9) and represented most of the area. There are elevations 8, 7, and six (6) which is by the water. Elevations ten (10) and eleven (11) are outside the floodplain area.
He gave an overview of the high water mark of the river, wetlands, building restriction line at twenty-five feet, and the area where there will be no building.

Responding to Colonel Ericson's question regarding how far the floodplain goes and if it surrounds the entire house, Mr. McGinnis referred to the map presentation and pointed to the area in response to the question. Also responding, Mrs. Townshend stated that it was outlined in green over top of the dotted line and it is almost the entire lot. Referring to the exhibit that was in the packet and presentation everything south and west of the yellow dotted line is within the floodplain. The only portion outside the floodplain is the front and east side of the lot.

Responding to Colonel Ericson's question if the area was a floodplain area when the lot was purchased, Mr. McGinnis replied yes, everything in that subdivision is in the floodplain.

Responding to Mr. Keller's question regarding a house that was proposed back in 2005 and that it is not currently being proposed, Mr. McGinnis replied correct. He did not have information as to where the current house was going to be proposed, but it would be in the general vicinity. The variance request is for the lot.

Responding to Mr. Senato question as he referred to the square on the exhibit if it was the house proposed in 2005 or current, Mr. McGinnis stated that it was the one that was proposed previously.

Mr. Senato was concerned about the applicant building in the floodplain because they did not have an idea of where the house was going at the current time even if there were restrictions.

Mrs. Townshend stated that there are a number of other issues that would need to be addressed in addition to the floodplain. The buffer from the wetland would need to be maintained and the closest they could be to the wetland would be 30 feet if it is vegetated in a certain way. There would also be Code restrictions.

Mr. McGinnis stated that there was a building restriction line on the lot.

Responding to Mr. Senato's questioned if the house would be built where the proposed house was located on the map, Mr. McGinnis replied yes.

Mr. Hufnal stated that the proposal looked to be above the 7 or 8 foot floodplain zone.

Mr. McGinnis stated that the floodplain is a three (3) dimensional theory and the finished first floor of the house would need to be above any of the elevations in order to get flood insurance. The floodplain elevation for the house is nine (9).

Colonel Ericson was concerned if they would come back for other variance in the future regarding the other restrictions since they were not sure of the current location they are building the house.

Responding to Chairman Sheth's question if they planned to come back with any more variances in the future, Mr. McGinnis replied no. The setback variance was the only other variance contemplated, and they decided not to pursue it.

Mrs. Townshend stated that if variances were applied for in the future the Board of Adjustment would have information before them if a variance had been applied for or issued in the past. Part of the reason that the twenty-five foot setback was requested was to have the flexibility to bring it as close to the road and as far away from the lower elevations as possible. Upon further analysis it was determined that they did not need to encroach into the setback in order to place it.

Mr. McGinnis referring to the subdivision plan for a section of The Beeches that showed how the lots were created and part of the St. Jones lot is waterfront. It is zoned R-10. He gave an overview of the deed and the lot cost was $125,000.

Responding to Colonel Ericson's question if the purchaser was aware that the lot was in a flood-plain area and the building was not allowed there against code, Mr. McGinnis replied that the Higdon paid $125,000 for the lot in The Beeches subdivision that was recorded. After the subdivision was recorded the City Ordinance to not build in a flood plain was enforced. The Ordinance was created in order not to create new subdivisions in the floodplain. It was not created to disallow the building of houses on lots that had been previously created. Therefore, the floodplain issue came after Higdon purchased the lot.

Mrs. Townshend stated that it was not after the lot was purchased, but after the lot was created.

Responding to Colonel Ericson's question regarding clarification that when the Higdon's purchased the lot that they were aware it was in the floodplain and they could not build on it, Mr. McGinnis replied that Mr. Higdon did not understand that there was an Ordinance that prohibited building in the floodplain.

Responding to Colonel Ericson's question if the information was in the signed paperwork, Mr. McGinnis replied he did not know, because he was not there when the lot was purchased. The property was purchased as a private sale by phone from Edward Troise. In 2005 there were letters about building in the floodplain not being a problem because the lot had already been created. No variance or official exemption or letter was given.

Responding to Colonel Ericson's question if there was any case work in the Planning Office regarding the transaction, Chairman Sheth stated that a deed has to be approved before it is recorded. Also responding, Mrs. Townshend referring to the first page of the Staff Report stated that there were two (2) previous variance applications to the Board of Adjustment in 2001 and

2005 to allow for construction of a single family residence within the floodplain. They were unable to locate the Notices of Decisions; however, they could review the minutes to determine the actions. The previous Staff Reports recommended approval of the variances.

Mr. McGinnis stated that the floodplain issue is not about a piece of ground, it is an elevation. You are out of the floodplain when the first floor elevation is raised above elevation 9.

Colonel Ericson stated that it effects the neighbor once you put a large volume house in that location the water can't go there which in fact raises the height.

Referring to the pictures Mr. McGinnis pointed to the flood map, lot, and the street, and stated that the floodplain extends to the entire south end of the street. There is a memo regarding the purchase of flood insurance, if you are elevated outside of the floodplain, because there was a question if it could be purchased and it can. He also references other lots such as 86, 82, 81, 78, and 70 Laurel Drive. Seventy Laurel Drive was the subject lot and there is a house next door to the west that is closer to than twenty-five feet from the street. There is a storm drain between the subject lot and the lot next door that was put there for anticipation of storm drainage.

Responding to Colonel Ericson's question regarding if the water empties in the St. Jones River, Mr. McGinnis replied yes.

Colonel Ericson stated that if it floods then it cannot empty.

Responding to Mr. McGinnis's question if the St. Jones River had ever flooded, Mr. Senato replied yes and the topography of the shoreline has changed.

Responding to Mr. Senato question regarding how high the water would go on the 4, 5, and 6 elevations if there was a 5 or 6 foot flood surge, Mr. McGinnis replied he did not know the height of the river. He referred to a picture of the river taken from the bridge. He was not sure of the elevation.

Mr. Senato stated that this was very important.

Mr. McGinnis stated that it would have effected the other houses that were not in question. He referred to the presentation regarding 66 Laurel Drive that is further west in the floodplain. There is a drainage slope to the river between lots 40 and 50 Laurel Drive that is closer to the highway where the drainage is controlled. There is a sewer clean out near 74 Laurel Drive south of the river. The land is higher than the river and the shoreline cannot be seen.

Responding to Chairman Sheth's question regarding when the floodplain map was drawn by FEMA; Mrs. Townshend stated that the current flood plain boundary and maps are from 2003.

Responding to Chairman Sheth's question if it was after the plan was liquidated and grandfathered clause, Mrs. Townshend replied yes.
Responding to Colonel Ericson's question if it was determined to be in the flood plain prior to 2003, Mrs. Townshend stated that she was not sure what was on the prior maps.

Responding to Colonel Ericson's question if the other houses were built before it was determined a floodplain area; Mrs. Townshend stated that they were not prior to it being in the flood plain, but constructed prior to the prohibition of building in the floodplain. In terms of the evolution of the Ordinance and the time it was platted they would have all been buildable lots.

Responding to Colonel Ericson's question if the new code changes applied to 74 Laurel Drive; Mrs. Townshend replied yes.

Mr. McGinnis stated that Staff recommended approval of the application.

Mr. Hufnal stated that houses could be built in the floodplain, but not the wetlands and you are controlled by the height of how the house was built. The level of the house would remove you from being in the floodplain even if you are in the floodplain. The variances were granted based on the level of the house being out of the floodplain.

Chairman Sheth stated that this was the first time seeing the entire area in the floodplain, but otherwise they have approved others including Tom Burn's property, Baltray, and The Meadows.

Colonel Ericson stated that he remembers Baltray and it being small and used to prop up the building. The entire building was not in the floodplain. The effect on the other neighbors was insignificant.

Responding to Colonel Ericson's question if a full house was approved to be built in the flood-plain; Chairman Sheth replied the full house was not needed.

Mrs. Townshend stated that without going through prior versions of the *Zoning Ordinance* she could not give any specific date of when the restrictions on building in the floodplain were adopted. It could have been the 1990's. In 2010 an amendment to the *Zoning Ordinance* that effects construction in the floodplain was adopted. If the regulations had been in place and the floodplain was what it is today it would not have been allowed to be platted. The subdivision files can be reviewed to determine the restrictions that prohibit construction in the flood plain.
There were restrictions in the floodplain prior to building in the floodplain and at that point in time it was simply a matter of first floor elevation being above the base flood elevation.

Mr. McGinnis stated that it is a 2,400 square foot house with a driveway.

Responding to Mr. McGinnis's question regarding the building coverage percentage for the R-10 district; Ms. Cornwell replied 30%.

Mr. McGinnis stated that 30% of 1 acre lot would be 13,000 square feet of impervious coverage and a residential dwelling of 2,400 square feet and driveway is not close to that. The amount of water runoff that is being contemplated is not there.

Colonel Ericson stated that the problem it is not just the one lot. He would not have a problem approving a variance if the individual was not warned or the Code changed after the lot was purchased. He suggested doing research for facts before making a decision.

Mr. Senato stated that he was not concerned about the runoff, but with other items.

Responding to Mr. Keller's question if lot 10 was comprised partially of lot 8 and 11, Mr. McGinnis stated they are all of one lot and part of another.

Responding to Mr. Keller's question if ownership transfer had taken place between Higdon and his wife in 2005 to Gitterdone LLC; Mr. McGinnis stated that yes, it was part of a property settlement.

Chairman Sheth declared the public hearing open.

Ms. Claudette Dean of 66 Laurel Drive was sworn in by Mr. Rodriguez.

Ms. Dean stated that she owns the lot two (2) houses down from the subject property and has lived there since 1989 and can answer any questions.

Responding to Ms. Dean's question regarding the actual setbacks from the road and wetland at the current time; Mrs. Townshend stated that from the front property line (right-of-way) there is a twenty-five foot setback, thirty-five feet from the road, and a minimum of seventy-five feet for a residential lot from the floodplain, but it can be reduced to fifty or thirty feet if there is vegetation or a buffer.

Ms. Dean stated that according to the floodplain map of 2003, they were living there before it was declared. She has lived there through the hurricanes and the water that has come up, but there are solutions. All of the lots on the side of the river end up with water at some point mainly due to the runoff from DelDOT. All of the water is not from the river, however; the area is livable. They have flood insurance. Water has come over the banks, but not to the houses. If the dam breaks this would be a major issue and Dover would flood, but she is not sure if it would flood that area. At the current time there is no danger of flooding a house that is placed with the current setbacks. The lot does slope down and the water will come up. The lot has been cleaned for years by the City and her family. No water has come up over the low or high portion of the lot. If there is a full moon, Nor `easter, or high tides then the water will come up thirty feet over the regular river line. For the safety of the people buying the lot no one is against the variance if a house can be built on the higher level of the land.

Chairman Sheth stated that the City will make sure that the procedures and restrictions are followed.

Mr. Senato stated that he and his colleagues were well aware of the St. Jones River problems, situations, and the floodplains.

Mr. Tom Burns of 490 N. DuPont Highway representing the purchaser of the lot Gitterdone, LLC was sworn in by Mr. Rodriguez.

Mr. Burns stated that Gitterdone, LLC is the title holder of the lot and under contract. The purchaser of the lot is well aware that it is in the floodplain, the current restrictions that were put

in place by the provisions of the FEMA maps of 2003. He stated that he is aware of the City of Dover Ordinance to protect the interest of the public and the natural resources. Neither FEMA nor the State of Delaware has a requirement for not building in the floodplain. As a result, flood- plain insurance can be issued. The footprint shown on the survey includes the current recorded tax parcel section A-11. Referring to the parcel as it exists which includes all of A-10 and part of A-11 as shown on the current deed. The footprint of the house that was shown in the presentation was a 45'x30' which is 1440 square feet. The plan is to build a 2,000 foot Cape Cod which consists of 2/3 downstairs and 1/3 upstairs, two car garage and driveway down to the 25 foot yard setback which protrudes down into the 10, 9, and 8 on the floodplain lines. The client was considering applying for a relief from the 25 foot yard setback in order to build closer to the road to get away from the concern of the wetlands and river.

Mr. Burns stated that there is an Ordinance in the City of Dover whereas no lot owner can push water onto another lot. The property owner must retain all of their stormwater on their lot without interfering with other neighbors lots.

Mrs. Townshend stated that this is an Ordinance under the Kent Conservation District.

Mr. Burns stated that the St. Jones River is tidal. If you build above a floodplain, you cannot plot a lot in the floodplain. The development was laid out in the 1950's and a floodplain delineation did not exist at that time. He was not sure of when it was created, but it was revised in 2003.

Mr. Burns stated that he and the purchaser have been in contact with some of the neighbors and they would rather see something built on the lot instead of it being vacant and collecting trash. He wanted clarity and if successful the property will be transferred to a third party and that person is well aware of the ratifications.

Responding to Mr. Hufnal's question if he recalled coming before the Board of Adjustment previously with a similar situation asking for a variance to build on lots in this subdivision and if they needed flood insurance; Mr. Burns replied no, he has sold houses in the floodplain and they have flood insurance.

Responding to Mr. Senato's question if flood insurance was mandatory or an option for the homeowner; Mr. Burns replied it is mandatory. Flood Insurance has different zones and requirements.

Responding to Mr. Keller's question that the flood plain is three (3) dimensional and if this lot principally lies entirely within and regardless of the site specifics for the new house does the first livable floor have to be 9 feet above the existing grade; Mr. Burns stated that it has to be above the floodplain. The specific number would be determined by the height elevation. If the flood-plain is 9 feet then the finished first floor would have to be 1 foot above the base elevation and no mechanical system can be suspended in the crawl space. The only part that does not need to be above the floodplain is the floor of the garage. There are certain building requirements within the foundation for flooding.

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. Senato stated that he was not in objection, but had concerns that there are no house plans or tangible diagram of exactly where the house is going to be located. What precedent would be set if the variance was approved and you are not exactly sure where the house is going to be located; Mrs. Townshend stated that if the variance is granted there could be requirements that the house cannot go beyond or closer to the river than the 7 foot elevation or that it not be any closer than what was presented in the diagram. She stated that nearly all of the lot is located within the floodplain.

Responding to Mr. Senato's question if the wetlands, river, and the topography would be protected, Mrs. Townshend replied yes. Due to the location and for the erosion and sediment control they will need to use the silt fence that will keep the runoff from going down grade.

Chairman Sheth stated that they would need to meet all the restrictions that would be established by the City of Dover. The value of the lot becomes zero if it is denied.

Colonel Ericson moved to approve application V-13-05 based on the testimony given that the variance be granted with the provision that the residence to be constructed on the lot would be above the 7 foot elevation line as related to by the applicant, seconded by Mr. Hufnal and the motion carried 5-0

Applicant #V-13-06:
200 West Loockerman Street, Capitol Plaza, LLC has requested a variance from the requirements of Article 6 §3.4 of the *Zoning Ordinance* pertaining to the size of off-street parking spaces.

Subject property is zoned C-2 (Central Commercial Zone) and is subject to H (Historic District Zone). The Tax Parcel is ED-05-077.09-01-86.00-000. The owner of record is Capitol Plaza, LLC.

Mrs. Tracey Harvey, Planner I, submitted the following items for the record: Site Plan, staff report, and written statements provided by the applicant. The legal notice was published in the Delaware State News on May 5, 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.

Representatives: Mr. Henry Mast; Owner.

Mr. Henry Mast; owner of the property was sworn in by Mr. Rodriguez.
Mr. Mast stated that after the approval of the Site Plan of the Bayard Plaza located Downtown at 200-216 West Loockerman Street the Governor signed into law a bill that requires them to have recycling bins. Due to this requirement a parking space will be lost. One parking space needs to be eliminated to create a recycling facility for the apartments and pharmacy. The proposal is to allow for three compact car off-street parking spaces and use one full parking space for the recycling. It is required by the government and he is in agreement with Staff Recommendations.

Responding to Chairman Sheth's question regarding why it was not recognized during the Planning Commission approval; Mr. Mast replied that it was not a law at that time.

Responding to Colonel Ericson's question if 8 x 18 was the standard size for a compact car; Mrs. Townshend stated that research was done on compact parking stalls when the variance was done for Compass Pointe.

Responding to Colonel Ericson's question if there would be a sign restricting the area to compact cars only; Mr. Mast replied yes.

Responding to Mr. Keller's question if there was a governmental design standard for compact parking spaces; Mrs. Townshend replied no.

Responding to Mr. Keller's question regarding collection facilities if these were the trash bins that can be contained in one (1) devoted parking space; Mr. Mast replied yes.

Responding to Mr. Keller's question regarding the state mandate if no space was available for a recycling facility what would be the ratification of not being able to comply; Mr. Mast stated that it being a hypothetical question, he did not have an answer.

Responding to Mr. Keller's question if the project was funded by the State; Mr. Mast stated that it was a tax credit project that does not have direct state funds but rather federal funds.

Chairman Sheth declared the public hearing open.

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

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

Mr. Hufnal moved to approve application V-13-06 for an area variance in the reduction of the size of parking spaces to comply with the Governor's mandate on trash recycling provided that the applicant marks these three spaces clearly with signs to be used for compact cars only, seconded by Mr. Keller and the motion was carried unanimously 5-0.

Applicant #V-13-07

913 South DuPont Highway, Capitol One Diner has requested variances 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.

Subject property is zoned C-4 (Highway Commercial Zone). The Tax Parcel is ED-05-077.18-02-01.00-000. The owner of record is Tung Ching Lin.

Ms. Janelle Cornwell, Planner II, submitted the following items for the record: staff report, site plans, photos and written statements provided by the applicant. The legal notice was published in the Delaware State News on May 5, 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. Chairman Sheth stated that he previously owned the parcel; however, he no longer owns the parcel or has any financial investment in the property.

Representatives: Ms. Debbie Krueger of 715 Fairview Avenue; General Manager at Capital One Diner representing the owner.

Ms. Krueger; General Manager of the property was sworn in by Mr. Rodriguez.

Ms. Krueger stated that the restaurant has received numerous calls since mailing out the new flyers and coupons from neighbors in the area regarding they could not find the restaurant or see the sign. They are hindered by the right-of-way setback due to the curve in the road. The building and the cars in the parking lot also blocks the visibility of the existing sign. If the sign was moved three (3) feet within the right-of-way as recommended by staff it would still be behind a tree in the McDonald's front lawn area as well as two (2) power lines and light poles. Referring to the photo the height of the sign is restricted by the power lines overhead; therefore, the sign could not be raised. They would like to move the sign to the other side of the property. They are aware that the sign would be close to the other pylon sign. The land rises so they would not need to raise the height of the sign if it was moved to the other side. People would be able to see the sign from either direction well in advance, be able to pull in or make a U-turn to get into the parking lot. If a variance was granted to move the sign slightly further out into the parking lot on the same side of the street that is currently located it would be ineffective, a waste of money, and costly.

Chairman Sheth stated that he had both buildings built and he was not sure why the sign was changed.

Responding to Mr. Senato's question if they were requesting a taller sign; Ms. Krueger replied no, they would like to move the sign to the other side of the driveway.

Responding to Mr. Senato's question that the existing sign is currently located on the south side of the property closer to McDonalds and the applicant is asking that it be placed on the north side for more visibility; Ms. Krueger replied yes.

Mr. Keller referred to a photo from First State Signs that indicates looking north to the restaurant with a sign that has a car parked immediately in front of it and the entire sign is fully visible.

Mrs. Townshend and Ms. Krueger stated that it was the proposed location.

Ms. Krueger stated that when there is a truck parked in front of the sign on either side it blocks the sign.

Responding to Mr. Senato's question if there was a large vehicle parked in front of the sign it would cover half of the sign; Ms. Krueger replied yes. It is a distraction for people driving by looking for the sign. This problem was inherited from the previous owner.

Responding to Mr. Senato's question as to how the previous owner changed the sign and was there ever a sign there; Ms. Krueger stated that it was moved from the proposed location to where it is currently located.

Responding to Mr. Keller's question as he referred to page 3 of the photos submitted of the signs with dimensions and a road number or property number of 1, 2, and 3 he asked if the photo was a depiction of a proposed sign and location; Ms. Krueger replied yes.

Responding to Mr. Keller's question on another page if it was a photo of the existing signs; Ms. Krueger replied yes.

Responding to Mr. Keller's question as to how many signs are allowed on the property; Mrs. Townshend stated that they are allowed one (1) pylon sign and they would be relocating the one (1) pylon sign.

Responding to Mr. Keller's question if the sign was considered a pylon and not a monument; Mrs. Townshend stated it is considered a pylon sign. Also responding, Ms. Cornwell stated that it is based on the structure and the support system. They could actually have a monument sign and two (2) wall signs.

Responding to Mr. Keller's question as to how many signs are currently on the property; Ms. Cornwell stated that there is one (1) wall sign and the existing pylon sign.

Responding to Mr. Keller's question if there was clarity that the request is for the removal of one existing sign and the relocation of another sign; Mrs. Townshend and Ms. Cornwell stated that it was a relocation of a sign. Ms. Cornwell stated that it would be closer to the right-of-way and another existing pylon sign.

Responding to Colonel Ericson's question as he referred to the photos and staff recommendations if the proposed sign would block other signs; Ms. Cornwell replied no. The recommendation was based on the information provided in the report. At the current time the sign is less than 50 square feet and they are allowed 100 square feet based on a setback and they can raise it up to 30 feet. It was stated that there was an issue with the power lines, but they still have the ability to increase the height of the sign.

Responding to Colonel Ericson's question if the variance was limited and the sign was the same size of 50 square feet at approximately the same height would the applicant and staff be satisfied; Ms. Cornwell stated that this was the applicant's request.

Mrs. Townshend stated that Colonel Ericson was stating that if there was a condition put on the variance that it cannot exceed the current height then you would not have pylon signs blocking other pylon signs. As a condition of the variance, if it was kept at the current height in the exclusion zone it would not create a blockage. The restrictions go with the land. Also responding Ms. Krueger stated that she was in agreement with the approval.

Chairman Sheth declared the public hearing open.

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

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

Mr. Senato moved to approve application V-13-07 to move the existing sign to the new location with restrictions that the sign remain the existing height and sign area be maintained and not increased, the sign would not exceed 48 square feet in sign area at any time and would not be greater than 10 feet in height, seconded by Mr. Hufnal and the motion was carried 4-1. (Keller opposed).

Chairman Sheth asked if there were any questions.

Responding to Mr. Keller's question and concern of the denial of the variance to allow the sign to be within 50 feet of the other pylon signs as recommended by Staff, Mrs. Townshend stated that the motion would allow the sign to be moved to the proposed location but it could not increase in height or sign area. It would be within the 50 foot exclusion zone and 10 feet of the neighboring sign. The applicant testified that people could not see the sign and with the height limitations the blockage of the adjacent sign would not be an issue.

Responding to Mr. Keller's question as to what the distance is from the existing adjacent pylon sign to the proposed location sign, Ms. Cornwell stated that the application stated that it would be ten feet between the neighboring existing pylon sign on the north side of the property and the new location of this sign when they move it to the north side of the property it would be within 10 feet of each other and the new location of the sign would be 3 feet back from the right-of-way.

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

Meeting adjourned at 10:42 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary

City of Dover

Board of Adjustment

June 19, 2013

V-13-08

Location:	186-188 Pennsylvania Ave.
Applicants/Owners:	John & Dorothea Link and Bradley Holden
Tax Parcel:	ED-05-077.14-01-32.00-000
Application Date:	May 17, 2013
Present Zoning:	RG-1 (General Residence Zone)
Present Use:	Duplex
Proposed Use:	Duplex
Reviewed By:	Janelle M. Cornwell, AICP
Variance Type:	Area Variances
Variances Requested:	Allow for the reduction and increase in the Bulk Standards regarding lot width, lot size, and side yard setback.

Project Description:
The applicant is requesting variances from Article 4 §4.2 of the *Zoning Ordinance* pertaining to lot width, lot size, and side yard setback. The variances would allow for the property to be subdivided into two parcels of land.

	Permitted by Code	Request for 186	Request for 188
Lot width	80 ft.	40 ft.	32.50 ft.
Lot size	5,000 SF	4,831 SF	3,868 SF
Side yard setback	15 ft.	8 ft.	4 ft.

Adjacent Land Uses
The adjacent properties are residential and institutional uses. The properties to the north, south and west are zoned RG-1 (General Residence Zone) developed residential uses. The property to the east across Pennsylvania Avenue is zoned IO (Institutional/Office Zone), Central Middle School.

Code Citation
Section 4.2. [RG-1 zones].
Bulk and parking regulations for general residence zone (RG-1) [are as follows] (see also article 12, definitions; article 5, supplementary regulations; and article 6, off-street parking, driveways and loading facilities):

	One-Family Semi-Detached and Other Dwellings
Minimum required:	
Lot area per dwelling unit (sq. ft.)	5,000 SF
Lot width (ft.)	80 ft.
Side yard (ft.)	15 ft.

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

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

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

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

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

Applicant Responses:

The property is in the RG-1 zone, a general residence zone, which allows any use permitted in a one-family residence zone with restrictions on professional offices and studios. The approval of this variance will maintain the residential use of the property and remain in compliance with the requirements of the zone.

Staff Response:
The property is located within the RG-1 (General Residence Zone) zone and the use as a duplex is a legal non-conforming use. At the time of construction of the house the RG-1 Zoning District permitted duplexes or the house was built prior to zoning. Over time the RG-1 Zoning District was changed to allow only single family detached dwellings.

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

Applicant Responses:
The immediate vicinity of the property is residential, with the exception of the school on the opposite side of Pennsylvania Avenue. The approval of this variance will maintain the residential character of the neighborhood, and will not impact the uses within the neighborhood.

Staff Response:
The character of the properties located within the area is single family detached residences with Central Middle School across the street. A number of the parcels within the area appear to be legal non-conforming with regards to lot width. There are also several parcels of land at the other end of the block that appear to legal non-conforming with regards to lot width and lot size and setback.

The lot width and lot size is consistent with the other residential parcels that are in the area.

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

Applicant Responses:
Approval of the variance will not affect the neighboring properties and uses, as the use of the property will remain residential, in character with the neighborhood.

Staff Response:
The reduction in lot width, lot size and side yard setback would not negatively impact the neighborhood as the other uses are single family residences that have smaller lot width and lot size in the area. There would be no noticeable difference between the existing and proposed as there is no change to the building.

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 the variance application is not approved, unnecessary hardship and exceptional practical difficulty for the owner is likely, as the owner will not be able to sell the property. In time, this could lead to neglect and vacancy of the property, which would then cause harm to the surrounding neighborhood.

Staff Response:
Exceptional practical difficulty has been demonstrated as the lot as it currently exists does not meet the required side yard setback or lot width. The only way to comply with the side yard setback is to demolish a portion of the existing structure on both sides which would be an exceptional practical difficulty.

Variance Recommendation:
Staff recommends approval of the variances to allow for the reduction in the lot width, lot size, and side yard setback for reasons as follows:

- The applicant has demonstrated exceptional practical difficulty as the only way to meet the side yard setback is to demolish portions of the existing structures.
- The applicant has demonstrated exceptional practical difficulty as the site is currently legal non-conforming with regards to lot width and side yard setback.
- The parcels would be in keeping with the character of the neighborhood as a number of the parcels within the area have less than 80 feet and several on the block would be approximately the same lot width and lot size of the proposed lots.
- The granting of the variances would allow for a subdivision that would bring the use more into conformance with the *Zoning Ordinance* as there would be only one (1) dwelling per parcel.