CITY OF DOVER
BOARD OF ADJUSTMENT MINUTES
June 19, 2013

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, June 19, 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 Ms. Cornwell, Mrs. Purnell, Mrs. Harvey, and City Solicitor Rodriguez.

APPROVAL OF AGENDA

Mr. Senato moved to approve the agenda with the addition of Administrative Topic to be discussed as the last item, seconded by Mr. Hufnal and unanimously carried.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF May 15, 2013

Mr.Keller moved to approve the meeting minutes of May 15, 2013 with the necessary correction, seconded by Mr. Hufnal and unanimously carried 5-0.

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATIONS

Ms. Cornwell, Planner II, 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-13-08:

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.

Ms. Janelle Cornwell, Planner II, submitted the following items for the record: staff report, survey and written statements provided by the applicant. The legal notice was published in the Delaware State News on June 9, 2013, and that the public was notified in accordance with regulations.

Chairman Sheth recused himself from the application as the owners were former students.

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

Representative: Mr. John Link, Owner.

Mr. John Link, was sworn in by Mr. Rodriguez.

Mr. Link testified that the application is a request for variances to allow for the reduction and increase in the Bulk Standards regarding lot width, lot size, and side yard setback. The gray duplex is located across the street from Central Middle School. Previously the duplex was converted to a condo and tax records were separated. The property is legal non-conforming. Due to major medical issues within the family, it has required us to move and sell the property. It is very difficult to get a mortgage on that type of condo unit. We are requesting for a reclassification to a fee simple unit. There will be no changes to the property. A centerline had to be drawn and that was completed by Braun Engineering. It does not effect or change the neighborhood.

Responding to Colonel Ericson's question that the current variance is not for a fee simple lot; but it allows for it to be legal non-conforming; Mr. Link stated yes, it can only be changed if the homes are demolished. The house is 92 years old.

Responding to Colonel Ericson's question if the entire structure would be sold as one unit, Mr. Link stated they plan to sell one side. Mr. Holden will be keeping the other side.

Responding to Colonel Ericson's question of the hardship if the variances were not approved, Mr. Link stated that they would not be able to sell the house. No one lives in the house and in time, this could lead to neglect.

Responding to Colonel Ericson's question that in order to conform to the side yard setback a portion of the existing structure would have to be demolished, Mr. Link stated that the entire structure would have to be demolished. This would still be a problem as the parcel has less than 80 feet in width.

Responding to Mr. Hufnal's question if he was changing it from a single fee simple title to a double fee simple title in order to sell half, Mr. Link replied yes. He brought it as a half property and he did not have to obtain any financing.

Responding to Mr. Hufnal's question if the property was built prior to the *Zoning Ordinance*, Mr. Link replied yes.

Responding to Mr. Keller's question if it was a matter of complexity in the sale of half of the property or the potential lack of ability to obtain financing for a prospective purchaser, Mr. Link stated that it was a mixture of both. Due to the banking issues in the past years they are reluctant to approve mortgages on condo units. Currently there are two (2) different tax parcels and everything is separated except the property was not changed.

Responding to Mr. Keller's question regarding the information provided listed one tax parcel, Ms. Cornwell stated that on the Staff report only one tax parcel may have been listed, but on the legal notices and agenda both tax parcels were listed. The main parcel has one tax number, but each side of the house has its own tax parcel number for tax purposes. There are two (2) tax parcels for the property.

Responding to Colonel Ericson's question if the application was for 186 and 188 Pennsylvania Avenue, Ms. Cornwell replied yes.

Responding to Mr. Keller's question if it would constitute whether the fee simple title was still one entire parcel of 32.00-000 that would constitute a subdivision, Ms. Cornwell stated that there is .01 for 188 Pennsylvania Avenue. There is a separate tax parcel number for both buildings.

Responding to Mr. Keller's question if the requested variances apply to both units, Mr. Link replied yes.

Responding to Mr. Senato's question that the lot has two houses with no center line and there is an imaginary line between the lots to separate them, Mr. Link replied yes.

Responding to Mr. Hufnal's question that this would give a reduction in the lot width and size, and side yard setback, Mr. Link stated that there is no change in the side yard setback. They will remain the same. The only change is one lot will be 40 feet and the other lot will be 32 ½ feet instead of being combined together as 72 ½ feet.

Responding to Colonel Ericson's question regarding the lot size of 5,000 square feet, that it will be somewhat less on both sides, Mr. Link replied yes.

Responding to Mr. Keller's question that there was a request for a side yard setback of 4 feet on one lot and 8 feet on the other lot, Ms. Cornwell stated that it was recognizing the existing conditions.

Responding to Mr. Keller's question if there was a common masonry wall, Mr. Link replied yes, it is a duplex and there is a separate masonry wall that goes all the way up that separates the two units.

Responding to Mr. Hufnal's question if it was the firewall, Mr. Link replied yes.

Responding to Mr. Keller's question if he represented both parties, Mr. Link replied yes.

Vice Chairman Ericson declared the public hearing open.

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

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

Mr. Senato moved to approve application V-13-08 based on the testimony given that the variance be granted to allow for the dividing line of the two separate lots as related to by the applicant, seconded by Mr. Hufnal and the motion carried 4-0 with Chairman Sheth recused.

Administrative Topic

Chairman Sheth stated that there were recommendations and requests from the City Solicitor Rodriguez.

City Solicitor Rodriguez stated that there were questions brought to his attention regarding meeting in the Caucus Room prior to a hearing. It gives an appearance of the Board of Adjustment discussing cases before the public hearing. In his experience cases have never been discussed previously other than to say how many are on the calendar. A suggestion was made that the Board of Adjustment members meet in the Council Chambers before the meeting instead of the Caucus Room. If you meet in the Council Chambers you may be open for questions from the applicants. In the future the Board of Adjustment members will meet in the Caucus Room, but at no time would any of the applications be discussed. If any application discussion was needed it would take place in the Council Chambers. It is more convenient to meet in the Caucus Room due to different arrival times. In the past this routine has always been followed without legal questioning.

Chairman Sheth stated that he agreed with the recommendations and something should be done so that everyone is assured that they will continue the practices.

Mr. Hufnal stated that he felt more comfortable meeting in the Caucus Room rather than Council Chambers rather than being exposed to the public of whom the Board of Adjustment will be making decisions on at that time. If there is a perception that something is being done that is not legal than maybe the City Solicitor or a Staff member should be present.

Colonel Ericson stated that he has been doing this for ten (10) years and does not recall ever discussing individual cases in the Caucus Room. They have discussed Agenda changes and who will make the motions which has been strictly procedural. If there was a thought of a problem he believes that City Staff should put someone in there with them. If he is being accused of something then he will be the first person to offer his resignation.

Mr. Keller stated that if there was any inclination by anyone that there was some impropriety in the meeting prior to the actual conduction of business that perhaps it could be reaffirmed by virtue of a more formal motion today that upon the advice of counsel and in accordance with their training as well as being counseled upon the prohibition of ex parte discussions regarding any case work that they have been duly so advised as to the extremely important nature of not participating in private discussions prior to open sessions, etc. In his estimation it should go much further than that, but he could not contemplate what would go further than that to satisfy Mrs. Townshend. Advising Mrs. Townshend and the Planning Staff that they have been apprised of this and perhaps in some circumstance there are some questions as to whether or not that they acted inappropriately. They assured Staff that they have not in his estimation and will be guided accordingly.

Chairman Sheth agreed with Colonel Ericson and Mr. Hufnal regarding the length of time on the Board of Adjustment. He has been on the Board of Adjustment for twenty-one (21) years and has followed the appropriate procedures. He felt very comfortable in the Caucus Room rather than in Council Chambers where for example twenty-five people were not in favor of an application and

wanted to ask questions. It is not practical to meet in the Council Chambers because it can create an uncomfortable situation. He is very proud of the Board of Adjustment and they always act very independently.

Colonel Ericson stated that they were working at a disadvantage since Mrs. Townshend was not present to tell them what drove these opinions or problem. He recommended receiving a letter from Mrs. Townshend explaining why she thinks it is a problem. If they are being accused or have done something wrong he would like to be informed. He does not recall ever coming in when the Board of Adjustment meets prior, because she has joined them in the Caucus Room minutes before the meeting.

Ms. Cornwell stated that there are no accusations. She works with other boards and the Board of Adjustment is the only board that meets in a separate room prior to a meeting. The other boards go the meeting room or Council Chambers and chat prior to the meeting. The concern is the perception and not that you have done anything wrong, but you are meeting in a separate room. At one point the door was closed and this could have been noticed by someone else or an applicant, although nothing inappropriately was done, it was a concern.

Responding to Colonel Ericson's questions regarding who perceived it, Ms. Cornwell replied Staff and other people.

Responding to Colonel Ericson's questions regarding who did Staff consist of, Ms. Cornwell stated Mrs. Townshend and herself.

Responding to Colonel Ericson's questions regarding why she did not come into the room to ensure nothing was going on and wasn't that a part of her job, Ms. Cornwell stated her job is to set up the Council Chambers room and make sure applicants and board members are present. There are times they come into the room, but the
majority of the time they are busy taking care of other items. She reiterated that no one was being accused of any wrong doing. If an applicant was denied an application they could state that it was being discussed prior to the meeting.

Colonel Ericson stated that he would not say that they were meeting. They come in to pass time until the meeting is ready to begin.

Mr. Senato stated that he was the oldest member that has served on the Board of Adjustment other than the Chairman and he was proud to work with his colleagues. He was insulted and degraded in character being a member of the Board of Adjustment that they have been accused "which may be a strong word" and that the accusations had been made publicly (on record) at the meeting by Ms. Cornwell and Mrs. Townshend who was not present. He has served and continues to serve on many boards. If there was any fear of the Board of Adjustment members doing anything or talking in the Caucus Room because of whatever reasons, and based on Ms. Cornwell statement, she or any other person should have opened the door. If the perception at that point of the closing of the door at that particular time, something should have been done to have someone in the room. To be accused of possible wrong doing because of perception he is very angry because of the type of board and their reputation with the State.

Chairman Sheth stated that the Board of Adjustment members are doing their job, but perhaps Staff or the City Solicitor could be present in the room prior to the meeting to avoid this issue.

City Solicitor Rodriguez stated that it is strictly the perception of them being together. He did not recall the door being closed because they have always tried to keep it open for other people coming in. There are no accusations by Staff or anyone. As stated by Ms. Cornwell if an application is denied, and perhaps an applicant noticed everyone in the room before the meeting would be a perception, but this has never occurred. This is a wonderful board that has highly qualified personnel. This is probably the most difficult board in the City because you have to say no a lot. This board makes sure that the *Zoning Ordinance* is enforced. The Caucus room door can be kept open. Again, this is not an accusation. In today's world anything that is open people will take advantage of.

Colonel Ericson stated that he supported Mr. Senato in saying that all of them have worked their entire life to have integrity. They try to do things as honest and upfront as possible. If this is under question he would prefer not serving on the board, because his integrity and honesty is more important than $75 a month.

Ms. Cornwell stated that it is not a perception from Staff that thinks you are doing something wrong, it is the fact that you are meeting in a separate room that opens it up to others for the perception that you might be doing something wrong. She understood that they were not doing anything wrong.

Responding to Mr. Senato's question regarding when the door was closed; because he did not recall it ever occurring, Ms. Cornwell stated that the door may have never been intentionally closed. It could have been closed part of the way. This opens it up to the perception of applicants walking by and they think you are doing something that you should not be doing. Staff is trying to alleviate any concerns that may come forward.

Colonel Ericson stated that Staff emphasized the perception by putting it in an official business meeting. Everyone who reads the minutes will say that they have a problem with the board and the members.

Ms. Cornwell stated that she clearly said there are no issues with the board members. Staff recognized the potential for a perception from other applicants. Staff is trying to lessen the ability of anyone to say that there was something happening if an application was denied.

Responding to Colonel Ericson's question regarding if they could talk over the phone or computer, Ms. Cornwell stated that once there are three (3) people in a room you have a quorum.

Mr. Keller stated he was more incline to temper any concern about being accused of inappropriate action in the Caucus Room by meeting prior to the 9:00 a.m. start time. Having previous employment for thirty-eight years, dealing with public funds and public interest at heart they have always been cautioned as employees through the State of Delaware to be fully aware of avoiding any appearance of impropriety or conflict of interest. It is not uncommon for this to be raised in his judgment. The board members should only take it as such that there are prohibitions against ex parte meetings on any case as well as being cautioned about talking to the press per the

training session they attended years ago. He would like to hear some suggestions from Staff or Chair if they should avoid meeting prior and just show up at 8:59am and come to Council Chambers or are they restricted from even the gathering of the board members in another room.

Chairman Sheth stated that they could come into the Council Chambers 15 minutes prior to the meeting. Another suggestion would be to have Staff or City Solicitor in the room. He has heard rumors of what the board members are doing in another room and if they were discussing the application. There was an incident of a case where this happened and the applicant as well as a friend did not talk with him for 6 months because his application was denied. He and Mr. Senato attended training on how do you handle the Board of Adjustment in the State of Delaware. The City of Dover has one of the best Board of Adjustments due to board regulations.

Mr. Senato stated that when the perception began they should have been approached at that time prior to coming to this stage. He felt that the perception skipped a step. It could have been settled in a non-regulatory place or minutes.

Chairman Sheth stated that it was not expected to be put on the agenda. He made the decision to put it on the agenda because he felt it needed to be on the record. All members have expressed their feelings. He does not want to lose any board members, they all are doing great and provide great service.

Mr. Senato stated that he was in agreement with City Solicitor Rodriguez that they meet 10 minutes before the meeting and have Staff or City Solicitor Rodriguez present in the room.

Mr. Hufnal stated that he did not have a problem bringing up the perception today because after working with the courts for 13 years they deal with perception every day. It is common that cases cannot be discussed. The attorneys are in and out of their offices at all times. He was glad that it was brought up today and did not take offense because it is a necessary item that they should be concerned about for the future. The past is the past and they have to be concerned with the future as to how they perceive themselves to the public.

Chairman Sheth stated that there have been times he will meet in the room because he wants to understand the case for clarity before the meeting. Mrs. Townshend has a responsibility that she is not accused that the Board of Adjustment is doing something incorrectly behind closed doors.

Mr. Keller stated that he did not see a problem with them meeting for a cordial good morning. He wanted Staff to know that they are individually well aware of their responsibilities and duties to the City and the Board of Adjustment. He does not take offense. Appearance can often lead to a long drawn out battle whether something was right or wrong conducted behind closed doors. He feels more at ease meeting briefly in the Caucus Room rather than the Council Chambers in front of an audience. If there are any concerns about the meeting he would suggest that the door remain open at all times regardless of who is there.

Chairman Sheth stated that Mrs. Townshend asked City Solicitor Rodriquez to speak with the board about the perception. Mrs. Townshend will be informed of the discussion held today.

City Solicitor Rodriquez stated that he was honored to work with the board. The concern was the

appearance and no accusations.

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

Meeting adjourned at 9:53 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary