CITY OF DOVER
BOARD OF ADJUSTMENT MINUTES
January 16, 2013

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, January 16, 2013 at 9:00 A.M. with Vice Chairman Col. Ericson presiding. Members present were Mr. Senato, Mr. Hufnal, and Mr. Keller. Mr. Sheth was absent.

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

APPROVAL OF AGENDA

Mr. Keller moved to approve the agenda with the necessary changes of the agenda format: To revise the agenda as follows: Discussion of meeting minutes format after the meeting, addition for approval of meeting minutes for September 19, 2012, and reverse the applicant presentation, V-13-01 to be first on the agenda, and V-12-15 to be second on the agenda, seconded by Mr. Hufnal and unanimously carried (Sheth absent).

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF November 14, 2012 and September 19, 2012

Approvals will be discussed after New Business.

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 amended. 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.

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

NEW BUSINESS

Applicant #V-13-01:

127 South DuPont Hwy., Lin Properties, LLC has requested variances from the requirements of Article 4 §4.15 of the *Zoning Ordinance* pertaining to the front yard and rear yard setbacks.

Subject property is zoned C-4 (Highway Commercial Zone). The Tax Parcel is ED-05-077.06-01-61.00-000. The owner of record is Lin Properties, LLC.

Ms. Janelle Cornwell, Planner II, submitted the following items for the record: staff report, written statements provided by the applicant, and site plan. The legal notice was published in the Delaware State News on January 6, 2013, and that the public was notified in accordance with regulations.

Representatives:

Mr. Kyle Burchard, of Harrison French and Associates, and Tim Glass, of Lane Engineering LLC, were sworn in by Mr. Rodriguez, to testify on behalf of Lin Properties LLC.

Mr. Burchard testified that there was an existing convenience store with gas pumps at the location and the proposal was to remove the store and gas pumps and replace with a design friendly, visual appealing 7-Eleven convenience store and fueling center. The adjustment to the site was in conformance with the Comprehensive Plan Design. Handouts of the presentation were distributed to the Board of Adjustment members. The proposed site plan displays the building closer to the intersection and providing landscaping near North DuPont Highway and Loockerman Street, moving the canopy to the rear of the building away from the roadways. Lin Properties LLC is requesting variances for the front yard and rear yard setbacks. There is a DelDOT right-of-way dedication required along the street frontage of North DuPont Highway. The store is coincident with the adjacent properties at the store front in its current location. This creates a variance situation on the front yard of approximately five (5) feet. Due to the requirement of 7-Eleven fuel to have separation between the building and the fuel canopy at sixty (60) feet for appropriate safety distance for allowing the movement of cars backing up from the convenience store, coming through the canopy sixty (60) foot dimension has been set forth across the country as the right measure to keep the customer safe and reduce the number of incidents. This would be the placement of the canopy into the rear yard setback approximately 15 ½ feet.

There is an existing cross access alley that runs behind the property from Loockerman Street. There is a curb cut at Loockerman Street that is thirty (30) feet wide and the property line is set back eight (8) feet from the edge of the entrance. The canopy which is set back two (2) feet from the property line is set back ten (10) feet from the travel way on the cross access easement.

Responding to Mr. Keller question regarding the width of the cross access easement; Mr. Burchard stated that it was variable and was not a specified width, but from the property line to the edge of the parking across from the alley it was thirty-two (32) feet.

Responding to Mr. Keller question if the alleyway was a private access with across easement or was it dedicated right-of-way as a City, Mrs. Townshend stated that it was not a public alley dedicated to the City.

Responding to Mr. Keller question regarding any limitations to the usage as a cross access easement, Mr. Burchard stated that it was a cross access easement and he did not have the details of the cross access easement for the benefit of the shopping center. He stated that he was not sure of the history of the existing gas station.

Responding to Mr. Keller question if the Board of Adjustment could contemplate any restrictions on the usage of the cross access easement with traffic coming and going more frequently with the gas pumps at the rear location or access problems in the future, Mrs. Townshend stated that some of the issues are yet to be determined in terms of going through the entrance plan approval process with DelDOT as to what access they will allow.

Responding to Mr. Senato question as to how could the Board of Adjustment make a decision if DelDOT had not reviewed the entrance plan, Mrs. Townshend stated that the information that was presented to the Board of Adjustment members is based on the discussion with DelDOT. The Board of Adjustment role is to determine whether the variance should be granted based on the legal criteria for a variance and state a municipal code for the one (1) foot at the rear and the 24.85 feet at the front. The Board of Adjustment are determining whether the variance request is consistent with the character of the zone and the area, whether there is an Exceptional Practical Difficulty that will give them few options other than to encroach into setbacks.

Mr. Senato stated that there were two (2) accesses into the building and the one on the south end will be removed and on the north end there will be an egress for automobiles. He wanted to know if there were any problems that may arise with DelDOT that they were not aware of because the application is still in discussion. Responding to Mr. Senato, Mrs. Townshend replied that the application needed a decision from the Board of Adjustment in order for the applicant to proceed with the Site Plan. The applicant cannot go to Planning Commission until there is a decision on the variance. There are always changes to the site following Planning Commission and sometimes based on the Planning Commission decision. In order to utilize a cross access easement for entrance the City will have to work with them through the site plan process to make sure all documentations are in place.

Responding to Mr. Hufnal question regarding the reason why the building was redistributed to the front and the gas pumps in the rear over what was originally there, Mr. Burchard stated because of the size of the store and in order to make it work financially for the development at that particular site. With all the setbacks the existing canopy is currently within the front yard setback and from a visual standpoint it functions better from the streetscape that is more in conformance with the goals of the Comprehensive Plan. The alignment of pumps makes better use of the space for the 7-Eleven fuel requirements or the safety separation between the canopy and the storefront.

Mr. Burchard stated that they have been working on minimizing the setbacks variances to be requested.

Responding to Mr. Keller question regarding what was the act of the dedication of the additional right-of-way by DelDOT or if was it a requirement of DelDOT in order to bring about the new right in and right out on Route 13, Mr. Burchard stated that there was a meeting held with DelDot to discuss any possible requirements that they saw with the entrance closing. Per their master plan there is a widening for Route 13 that will occur in the future.

Mr. Senato stated that it was a small alley and there will be one egress on DuPont Highway and the main traffic will come from East Loockerman Street going into the alley as a usage to get to the pumps. They alley is not very wide and there is another business with traffic.

Responding to Mr. Senato question regarding if the front of the building would face pumps and the rear of the building would face the street, Mr. Burchard replied yes. The elevation that is facing South DuPont Highway with windows and lightning landscaping in front that will try to give a community feel to the coverage. This will close once access that is closest to the

intersection that tends to reduce congestion. There will be an entrance off of Loockerman Street and DuPont Highway. There are no barriers stopping cars from coming into the area from Loockerman Street.

Responding to Mr. Senato question regarding if part of the canopy was encroaching, Mr. Burchard stated that the canopy structure was represented on the handout from the edge of canopy to the property line and the variance was requesting one (1) foot, but it was actually two (2) feet to the property line. There was some distance from the pumps to the property lines and there was another eight (8) feet near the effective through lane and cross access.

Responding to Mr. Senato question regarding if the canopy could be shrunk, Mr. Burchard stated that the rear yard setback was ten (10) feet minimum or equal to the height of the structure. The canopy was 17 ½ feet tall to the top, therefore; the effective setback was 17 ½ feet from the rear property line. The canopy with the set by 7-Eleven standards and to reduce the actual canopy width was not something that can be offered.

Responding to Mr. Hufnal question regarding if the sixty (60) foot distance between the pumps and the building was a 7-Eleven requirement, Mr. Burchard replied yes.

Responding to Mr. Hunfnal question regarding if putting what you want there would cause an Exceptional Practical Difficulty, Mr. Burchard replied yes, to maintain the safety for the customers; it would not be possible to make the development work on this site without the variance.

Responding to Mr. Hufnal question regarding the other building and pumps that they were very close to the front door of the building, Mr. Burchard stated that looking at the handout the white on the aerial with the front represents that configuration. The 7-Eleven convenience store was a primary function of the use that doesn't work because they want to have the canopy away from the building in order to function properly to keep the gas use separate, but still have access to the convenience store.

Responding to Colonel Ericson question regarding if a smaller 7-Eleven convenience store could be built and still meet the code requirements or use the existing store currently on site, Mr. Burchard stated that they needed a store of the proposed size, the building can only go so narrow before it effectively does not work with the interior layout of the store. There is some potential for the width of the building and keeping the same amount of total square footage to work with the program inside.

Responding to Mr. Keller question regarding if the information stated above was done would it make a difference with the locations of the pump stations and/or canopy to the extent of eliminating the need still for a variance for the rear yard setback from the canopy, Mr. Burchard stated not without additional front yard variance. They would be able to reduce the rear yard variance. With the option of eliminating a rear yard variance it would need to be evaluated and come before the Board of Adjustment for consideration of additional front yard variance. This could be amiable and something that could be looked at.

Responding to Mr. Keller question regarding if the landscape was a requirement of the developing plan, Mrs. Townshend stated they are required to plant trees on-site in accordance with the tree plantings requirements and they are also required to have an arterial street buffer at the front of the site. They can request a waiver from the Planning Commission to make the arterial street buffer narrower, but they will need to have ten (10) feet. At the current time the applicant is showing a setback of 24.85 feet. There is a potential to have a larger variance in the front yard to bring it to twenty (20) feet and a smaller variance at the rear of the site. This would give more room along the back edge.

Responding to Mr. Hufnal question if the setback of 24.85 feet could be twenty (20) feet instead, Mrs. Townshend stated from the City perspective in terms of code it would be a reasonable option and you would have less of a variance towards the rear. The total gross variance is the same.

Mr. Hufnal stated that it was not an access in the front and it would make sense to reduce it to the twenty (20) yard setback and bring the back in further so that it does not overlap into the cross easement access.

Mr. Burchard stated that they were not into the cross access at the rear. He suggested that it be moved forward 4.85 feet and this would reduce the amount of the rear variance requested.

Mr. Hufnal stated that they would be eliminating the access in the front which would be landscaped. The 4.85 feet would give more access to the pumps.

Mr. Burchard stated that with the 4.85 feet it would be almost fifteen (15) feet away from the travel way for the cross access easement.

Mr. Senato stated that this would be a better option because there could be problems in the alley with turning due to the width. If you had more footage going towards the front it would give larger vehicles more turning power.

Mr. Burchard stated that it was a variable option that would still work with the site requirements to reduce the rear yard variance and increase the front yard variance by the same amount.

Mr. Burchard further stated that they have talked about revamping the site, facelift, landscaping, conforming with the existing surrounding development, and keeping all mechanical equipment screened on top of the building. Having the canopy at the rear keeps the operation away from the public view, but makes it accessible to the customers with the access points that are being proposed. Shutting down the entrance closer to the intersection ultimately helps the traffic flow. The function of the canopy at the rear is set back far enough to allow for safe movement in and out on the alley side as well as movement on the store side. The concerns with DelDOT access off of Loockerman Street will be addressed. They will need to get the entrance permit approval prior to getting operation license at the site. DelDOT is gate keeping with making sure that all traffic issues are addressed appropriately through their detailed access permit review. They do not envision any surrounding utility issues with the site. They are preserving what is not an official cross access ability for the rest of the shopping center at the entrance to the north. They are blending in with the surrounding development and upgrading it to be more in-conformance

with the Comprehensive Plan. They are willing to work with the considerations about front and rear yard variance to the City satisfaction.
Responding to Mr. Keller question regarding the property to the immediate north if there were any contemplation of adverse impact with other users or cross access easement, Mr. Burchard stated that there is no explicit cross access easement alley that goes to the entrance. It just functions that way. They are not proposing any provision for anyone using that access.

Responding to Mr. Keller question regarding the absent of any formal cross access easement to the north that they do not contemplate any barrier construction or curbing, Mr. Burchard replied no, this was all open asphalt except for the tanks which is concrete surface. He stated that they are not changing the flow but taking out the potential conflict with the access near the entrance.

Responding to Mr. Senato question referring to the project description and if it was amended it would allow the building to be located twenty (20) feet from the right-of-way along South DuPont Highway instead of the 24.85 feet, Mr. Burchard replied correct.

Responding to Mr. Senato question referring to the project description and if it was amended the canopy would be located 5.85 feet from the rear property line instead of the one (1) foot, Mr. Burchard stated it would be 6.85 feet.

Mrs. Townshend asked if the number could be rounded to six (6) feet. She also stated that in regards to the waiver for arterial street buffer the City will still need ten (10) feet of landscaping.

Responding to Mr. Keller question regarding the clarification of the setback numbers (20 feet and 6 feet), if the applicant would be willing to accommodate the twenty (20) feet dimension as the requested setback from the new right-of-way dedication, and the six (6) feet would be from the rear property line, Mr. Burchard replied yes, the twenty (20) feet would be from the South DuPont Highway right- of-way dedication line and the six (6) feet would be from the rear property line to the edge of the canopy.

Mr. Keller commented that before the testimony was given he was not sure that the circumstances presented met the Exceptional Practical Difficulty standard, and that building configuration, pump locations and canopy, and other site elements could be reconfigured to meet the zoning requirements. Now it appears that even if the site were reconfigured, variances would be necessary. In keeping with the existing *Zoning* with the layout it is aesthetic pleasing in his mind with the presentation, building in the front, and pumps in the rear eliminates traffic congestion off of Route13 to access the pumps. If the plan is shown to be acceptable by DelDOT for the rights in and out at the north entry it would alleviate that problem in addition to the access way from East Loockerman Street. The presentation in meeting and staying in accordance with the existing *Zoning* and usage in the neighborhood, etc., provide for a very acceptable presentation.

Responding to Mr. Hufnal question regarding if the lot was legal non-conforming, Ms. Cornwell stated that it was currently and will be more so with the right- of-way dedication.

Vice Chairman Colonel Ericson declared the public hearing open.

Mr. Steve Richter, Representative of partners at Richter Associates & Land was sworn in by Mr. Rodriquez, to testify on behalf of the adjacent property owners.

Mr. Richter stated that they own the property to the north adjacent to the property line and hold cross access for the company. They are pleased to see that the site is being improved and going to look better with the new building. There were a few issues that the Board of Adjustment had already discussed they will elaborate on again. They felt that the canopy was located too close to the property line creating some unsafe conditions with the traffic flow on the access road. The access road serves all the businesses in the shopping center and a free flow between Loockerman Street and Division Street for numerous people who try to avoid using Route 13. The setback of one (1) foot was unsafe. As the applicant had mentioned in their presentation they wanted to have a fifty (50) foot separation between the pumps and building movability. There are some movability required on the access road of people wanting to turn into the pumps from the access road heading north or south. He stated that City Staff noted safety and traffic flow on the site. They suggested that the canopy be moved back and closer to the access road. The main entrance and exit to the 7-Eleven if you are not using the pumps is only twenty (20) feet from the access road that leads to East Loockerman Street. With the turning maneuver, backing up, and stacking; there could be a problem with other people waiting to get to the site. It has been noted several times that the access road is not a public right-of-way, but it is privately owned and used for parking next to the restaurant. The road is maintained, paved, cleared of snow, and trash. They do not have a cross access agreement with Lin Properties, but informally share some cross access. They had the same recommendations to move the pumps and canopy as far away from the access road as possible, make a potential reduction of the development on the site or reconfiguration of the site, possibly moving the pumps to the front of the building and move the building further to the rear. He stated that the channelize entrance is too close to Loockerman Street. The fuel tanks are very close to the corner property line which is typically located on the center of the property for safety reasons. They would like to maintain cross access between the two (2) locations. He stated that they are aware that the site is very tight and is a challenge, but better layout can be achieved. They are open to meeting with the owner. They have not had any input into the plans with the City or with the property owner, but they are open.

Responding to Mr. Keller question regarding clarification that the Richter Association is the underlined fee simple title holder to the cross easement alley way, Mr. Richter replied yes and they have a cross access agreement with the owners Dover Realty. The access road will be open for the next twenty (20) years.

Responding to Mr. Keller question regarding the property line between the two (2) ownerships that there is an informal easement or cross access, Mr. Richter replied yes, there is parking for the restaurant and hair salon.

Responding to Mr. Keller question regarding whether he had a cross access easement with the current owner, Mr. Richter replied no, but he thinks that it is something that needs to be done.

Responding to Mr. Keller question regarding whether the prior access easement runs with the land, Mr. Richter replied no.

Responding to Mr. Keller question regarding the modifications that have been discussed and

brought about regarding the setback side or front end rear, if this would ease his mind of the concern with the canopy in such close proximity as shown on the plans to the rear alley way, Mr. Richter stated it does, but they would like to maximize it. Five (5) feet is not a great deal when you are talking about service vehicles, Ford Escorts, or F150 pickups. There is still potential for issues for traffic waiting on the access road.

Mr. Senato stated that there were concerns that were brought up by Mr. Richter and upon looking at the plans he thought that there were areas that need to be ironed out regarding the safety of the egress from the alley of Loockerman Street and Burger King. What is best for the lot area, maybe a motion of postponement so that the other factors can be discussed and brought back to the Board of Adjustment.

Vice Chairman Colonel Ericson questioned if there was any additional correspondence for the record.

Mrs. Townshend stated that the Planning Office received a letter from Mrs. Mary Jane McGinnis, managing member of McGinnis Realty owner of the property across Route 13, entered for the record.

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

Mr. Senato stated that as the presentation was being made there were a lot of concerns, but those concerns may not affect the decision of the Board of Adjustment, as it may not be in their jurisdiction, but as the owners Mr. Richter brought up a lot of issues and he thought that there were a lot more answers that need to be discussed, complete plan, letters from owner prior to the meeting, and then come back to the Board of Adjustment.

Vice Chairman Colonel Ericson questioned if there was any additional thoughts.

Mr. Hufnal moved to approve application V-13-01 with certain conditions that the front setback be located within 20 feet of the right-of-way on South DuPont Highway that allows the movement of the pumps and the canopy six (6) feet from the rear property line as the difference between the 20 feet and 24.85 feet including the information based on the testimony given, Staff recommendation, and comments made in the Staff Report pertaining to the variance recommendation, seconded by Mr. Keller and the motion carried 3-1. (Senato denied and Sheth absent).

Applicant #V-12-15:
35 Loockerman Plaza, The City of Dover has requested variances from the requirements of Article 4 §4.15 of the *Zoning Ordinance* pertaining to the front yard setback.

Subject property is zoned IO (Institutional and Office Zone) and is subject to the SWPOZ (Source Water Protection Overlay Zone) Tier 3 Excellent Recharge Area and H (Historic District Zone). The Tax Parcel # is ED-05-077.05-04-55.00-000. The owner of record is City of Dover.

Mrs. Ann Marie Townshend, Director of Planning and Community Development & Recreation,

submitted the following items for the record: staff report, aerial photos, photos submitted by the applicant, as built plans submitted by the applicant and the final approved site plan that was submitted as a staff exhibit. The legal notice was published in the Delaware State News on January 6, 2013, and that the public was notified in accordance with regulations.

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

Representatives:

Mr. Patrick McGrory, Attorney, and Gregory Moore, Vice President of Becker Morgan Group Inc. were sworn in by Mr. Rodriguez, to testify on behalf of the applicant.

Mr. McGory testified that this application pertains to the new Dover Library that has been constructed. The project was a success, however; there was one issue that was discovered after construction was completed. The building footprint was shifted forward during construction so that it encroaches upon the required twenty (20) foot front yard setback 2.7 feet. The application is requesting a reduction in the front yard setback to accommodate the building current location. He stated Mr. Moore will also be presenting the application with a slide presentation. Copy of the slide presentation was handed out to the members. He stated that the Library and City Hall are located on the same parcel. He stated that the property is zoned Institutional and Office and is located within the Historic District. This application could have been approved by the Planning Commission as part of the Historic District Commission approval if they had received an application. However; this was not done and the building was not intended to be at its current location. The City was not aware that the mistake was made during construction. The City of Dover wanted to properly come before the Board of Adjustment to seek the required variance. Referencing the second slide he stated that it was a plan view of the existing condition showing the twenty (20) foot required setback. What is shown in red at the corner of the ellipse is the portion of the building that encroaches into the required setback. It is currently at 17.3 feet to the occupied usable space. There are architectural details that are not part of the variance. They are requesting to allow the building to be located 17.3 feet from the property line, rather than the twenty (20) feet as required.

Responding to Colonel Ericson question regarding who made the error, Mr. McGrory stated that they were trying to figure it out. The City was not aware as it happened during construction as there were many groups working at the same time. Not sure of what happened or who was at fault when this happened. The City was surprised when this came to light.

Mr. Moore referencing exhibit two (2) from the slide presentation the comparison of the buildings next door. The City Hall building is roughly 17.3 feet from the property line, the side of the City Hall building is fully in the building restriction line and the Post Office canopy that covers the entrance door is about 12.7 feet from the property line. Along Loockerman Street this building is reasonable in character with its neighbors. If you go down Kings Highway in the back, all of the buildings that surround the building including PNC Bank, Merrill Lynch, Richardson Robbins, and the DNREC (Department of Natural Resources Environmental Control) building are much closer to the right-of-way than the Dover Library. He stated that the Richard Robinson building was two (2) feet, PNC Bank is five (5) feet, and Merrill Lynch is

fifteen (15) feet. The pattern is repeated across the road as you cross Loockerman Street. In this neighborhood and community it is very ordinary that the building be closer to the street in keeping with the area other buildings and character. We are focused on the 17.3 feet to the entrance of the City Hall building and notice the 12.7 feet in red at the Post Office. The width of the right-of-way in this area is probably the largest and varies from 120 feet because of the landscape divider. This makes it feel like there are more spaces on the property. They feel that this is a contributing factor as to why this was not discovered because of the space. It goes as wide as 218 feet that consist of two (2) landscape and parking areas. As you cross State Street the widen area closes and it feels much narrow and closer which is part of the Historic District feel. The Historic District wants the buildings to address the streets. The most recent building built Bayard Hotel where you can see energy in the building as well as people going in and out and invite people into the building. This makes up a good fabric of the downtown area. By having the glass ellipse on the street allows people walking to see in the building making it an inviting area to come to the library. He stated that it does not want parking in the setbacks in front of the buildings, so that the building is pushed back so it feels suburban. The IO (Institutional and Office) *Zoning* was changed by the City after master plan evaluation categorizing many Institutional Offices like DNREC, City Hall, and Post Office in a new IO Zone that was created much later than the Historic projects. At one time a suburban sprawl occurred and now the renaissance has come back that good development is where the buildings address the streets and the parking is hidden. The City and the Downtown Dover Partnership is reinforcing that it is good development and makes good walking path along the streets and it makes the downtown vibrant and strong. The Historic District Regulations and Master Plan also states the same information. Therefore, the existing building placement is more consistent with these plans and guidelines than the requirements of the Institutional and Office Zone Referring to the remaining photo slides, it reinforces the wall of buildings as you go down Loockerman Street with the buildings addressing the streets. In the next slide you will see the architectural features that are pilasters and they are not the structure supporting it. The building is steel structure held up with a green roof on top. He used the old ACME property located on Governor's Avenue as an example of a building that is located back seventy (70) or eighty (80) feet, with multiple rows of parking in front of the building, that respected the setbacks, but you feel as if you don't want to walk into the building because it is far away. You want to drive to the building and then go inside. He stated that all of the dimensions were surveyed. Mr. Moore concluded the presentation.

Responding to Mr. Keller question regarding the pilasters being an architectural element instead of a structural element, Mrs. Townshend stated that they would not hold them to the building setback. They would be permitted to have a slight encroachment. The 2.7 feet is specifically the building and not the architectural elements.

Responding to Mr. Keller question regarding if the canopy of the Post Office was hard structure and similar element, Mrs. Townshend replied yes it would be a similar element as well as the entry to City Hall.

Responding to Mr. Keller question regarding who was at fault, Mr. McGrory stated that he was not sure who was responsible, the site engineers and architect were all a part of the design process in the beginning. When you are into construction you will take the design and put into the field different individuals working at different times and doing different things. When the

issue was discovered we do not have through this form the vehicle or tools to figure it out in order to say on public record who was at fault.

Responding to Mr. Keller question that there was a recognized mistake, Mr. McGrory replied yes.

Responding to Mr. Keller question regarding if there was any oversight firm that the City can return to file claims for add-ons if the variance is granted, Colonel Ericson stated that it is between the City and the Contractor, and is not part of the Board of Adjustment hearing. Also responding, Mr. McGrory replied that he was not sure of the cost.

Responding to Colonel Ericson question regarding an estimated cost to change the building now since it is in place to reconstruct to indicate what hardship it would cost if the application was denied, Mr. McGrory stated that it is a very sophisticated building and complex portion of the building with the curb glass, steel structure, pilasters, and green roof and he has no idea of what the cost would be, but would assume it would be quite significant and for what benefit because we are 2.7 feet into the encroachment. He did not think that you could remove 2.7 feet without significant redesign or reconstruction and shutting down part of the building including Loockerman Street to undertake the process. Also responding, Mr. Moore stated that there could be two (2) ways, first move the building back to where it was originally design to be. In his opinion this would be reconstructing the building at an estimated cost of $22 million. Second, you could sever the ellipse where the actual projection is problematic which would also be in the access of millions of dollars because the green roof is supported by steel structure, the second story space could be affected, the improvements that have been erected on Loockerman Street would all be included in that number just to cut off the seventy-six (76) square feet. You would then have a smaller building where the ellipse would be different. It is a very unique building with sunshades around the pilasters and very expensive and difficult to cut back to make it look like good.

Mr. Hufnal commented that modifying the structure is basically economically unfeasible to do such a request and eliminating that encroachment amount is very insufficient with the other buildings that you do not notice the space in between of the 120-218 feet across the area. The presentation clearly explains what happened.

Vice Chairman Colonel Ericson declared the public hearing open.

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

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

Mr. Keller moved to approve application V-12-15 City of Dover based upon testimony given by Council and Engineering Principal, additionally as it is provided in the staff report and staff recommendations for approval. The building as constructed will continue to be consistent with the surrounding area (downtown environment and the historic zone). The encroachment will be minimum in nature and visually almost non-existing, seconded by Mr. Hufnal and the motion

was carried unanimously 4-0. (Sheth absent).

Mr. Keller moved to go into Executive Session due to legal matters and format of minutes and agenda, seconded by Mr. Senato and unanimously carried 4-0 (Sheth absent).

First meeting adjourned at 10:47 A.M.

Vice Chairman Colonel Ericson reconvenes the Board of Adjustment meeting. He stated that two (2) items are being considered, the meeting minutes of September 19, 2012 and November 14, 2012.

Vice Chairman Colonel Ericson questioned if there were any discussions or motions.

Mr. Keller moved to approve the meeting minutes of November 14, 2012 as submitted by Staff, seconded by Mr. Senato and unanimously carried 3-0 (Sheth absent and Hufnal was absent at the November 14, 2012 meeting).

Mr. Keller moved that the approval action be tabled for the meeting minutes of September 19, 2012 until they are prepared in a summary minute format and redistributed to the Board of Adjustment members thereafter for consideration and approval at the next Board of Adjustment meeting, seconded by Mr. Senato and unanimously carried 4-0 (Sheth absent).

Mr. Senato moved to adjourn the meeting, seconded by Mr. Hufnal and unanimously carried 4-0(Sheth absent).

Meeting adjourned at 11:22 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary