CITY OF DOVER
BOARD OF ADJUSTMENT
May 16, 2012

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, May 16, 2012 at 9:00 AM with Chairman Sheth presiding. Members present were Mr. Sheth, Mr. Keller, Mr. Hufnal and Mr. Senato. Colonel Ericson was absent.

Staff members present were Mrs. Townshend, Ms. Cornwell, Mrs. Purnell and Mr. Rodriguez. Also present at the meeting was Marti Stansbury.

APPROVAL OF AGENDA

Mr. Hufnal moved to approve the agenda with the necessary correction, seconded by Mr. Senato and the motion was unanimously carried 4-0 with Colonel Ericson absent.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF APRIL 18, 2012

Mr. Hufnal stated that regarding the minutes of April 18, 2012 he had one notation. Beginning on Page #6 the third paragraph, second sentence (available to be approved without going) should be corrected by inserting the word "through" after the word "going".

Mr. Keller stated the motion to adjourn the meeting stated it was approved by a vote of 5-0. This should be 4-0 with Mr. Senato absent. On page 6.

Mr. Keller moved to approve the regular Board of Adjustment meeting minutes of April 18, 2012 with the necessary corrections, seconded by Mr. Hufnal and the motion was unanimously carried 4-0 with Colonel Ericson absent.

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATIONS

Mrs. Townshend presented to the audience the policies and procedures that would be followed during these hearings.

NEW BUSINESS

Applicant #V-12-03:

421 Beuvale Lane, Marti Stansbury has requested a variance from the requirements of Article 4 §4.1 of the *Zoning Ordinance* pertaining to the rear yard setback for the R-8 Zone.

Subject property is zoned R-8 (One Family Residence Zone) and is subject to the SWPOZ – Tier 3 Excellent Recharge Area. The Tax Parcel ID # is ED05-076.03-04-53.00-000. The owner of record is Marti Stansbury.

Representative: Ms. Marti Stansbury

Ms. Stansbury was sworn in and submitted photos and letters of support from her neighbors into the record.

Ms. Cornwell provided an overview of the application and submitted for the record the Staff Report, Photos, and Letter.

Mrs. Townshend stated that the legal notice was published in the Delaware State Newspaper on May 6, 2012 and the public was notified in accordance with the regulations.

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

Ms. Stansbury stated that she would like to take her existing deck and remove the wood to make it composite wood so that it would be a maintenance free screened in porch the same size as the existing deck. The stairs going down into the back yard would be moved to the right side of the screened in porch so that it will remove some of the impact into the backyard. It would be within the character of the other neighbors who have a screened in porch as shown on the photos submitted. She had spoken to the other neighbors within two hundred (200) feet of her property and they did not have a problem with her proposal. There were two (2) neighbors who did not send a letter to her request. She stated that the two (2) neighbors directly behind her property intend to build the exact screened in porch she is proposing.

Ms. Stansbury stated that her house was built to the rear setback line with two (2) feet left over. Her neighbors have bump outs on their houses and were able to build a deck in the bump out area. She is the only neighbor within the two hundred (200) feet that would need a variance to build a screened-in porch. The other houses have plenty of back yard space.

Ms. Stansbury stated that last year she refinanced her home in order to build the screened in porch without realizing the setbacks. She did not realize it would be an issue. She would like to build a normal screened in porch with minimal change.

Ms. Stansbury stated that she met with Ms. Cornwell regarding building to the side of the house. She does not have any doors on either side of the exterior of the house. She would have to add a door to her bedroom or spare room which would be added expense. Guests would have to go through the bedroom in order to go onto the screened in porch if built on the side of the house. If she was to build on the front of the house it would not be in character with the other neighbors or neighborhood. She does not want to sit on the front porch and watch passing vehicles. She would like to have some privacy and enjoy the plantings in the back yard without being bothered by flying insects. Photos were enclosed with the application submission and additional photos were presented at the meeting. She felt that the proposal would be a normal improvement to the neighborhood and increase the value of her home and others. It would be in keeping with the character of the neighborhood.

Mr. Rodriguez stated that years ago an owner was in violation of a side yard setback. A variance application was filed and the Board denied the variance. The Board was taken to court and the building addition had to be removed by the owner. The staff report is accurate. Once a development is built in accordance with the Zoning Code it is enforced 100%. There have been a lot of applications over the years; however, none were granted. They were not granted because they had to be in accordance with the Zoning Code.

Mr. Keller stated that there was a survey prepared in 2008 by Gregory Scott as preview to the purchase of the lot in building of the home. Responding to Mr. Keller, Ms. Stansbury stated that she watched the home get built. She did not realize that it was built to the very back portion of the setback line.

Mr. Keller stated in regards to Mr. Rodriguez's comment, that this is a relatively new subdivision, roughly 4-6 years old. He noted that on the application, and he wanted to confirm with Staff, that the zoning is listed as RM-1; however, Staff indicated it as R-8. Mr. Keller asked if
R-8 was the applicable zoning? Responding to Mr. Keller, Mrs. Townshend replied that it was zoned RM-1 during the time of construction. When Stover left and it became an abandoned subdivision a number of property owners approached members of City Council. City Council brought forth a zoning map amendment to rezone the property to R-8 so that it would not be developed as multi-family or townhouses so it would remain a single family subdivision as originally platted.

Mr. Keller questioned whether it was currently R-8. Responding to Mr. Keller, Mrs. Townshend replied yes.

Mr. Sheth stated that the Board of Adjustment simply evaluates the Zoning Codes and makes sure they are enforced and review applications based on the Exceptional Practical Difficulty Criteria.

Mr. Hufnal questioned, if Ms. Stansbury was able to build in the subdivision that it would be encroaching the rear yard setback within ten (10) feet which is in violation of the R-8 zoning? Responding to Mr. Hufnal, Mrs. Townshend replied yes, this is the reason it has come before the Board of Adjustment. The encroachment of the open deck into the setback is permitted by code. It is the issue of enclosure that is not permitted.

Mr. Keller stated that if the application were approved he would have a concern with the established utility easement which extends across the rear of a number of properties and ending in a catch basin. That would make the improved property even closer to the drainage easement that is for necessary improvement, repair, or replacement. He stated that he would hope that there would not be anything such as a closer private improvement to compromise the utility easement. As to the Exceptional Practical Difficulty consideration in review of the submission, and Staff report he does not find this would deem an Exceptional Practical Difficulty.

Mr. Senato stated that upon looking at the entire plot plan it would set a precedent. Based on the photos a majority of the homes are close to the setback line.

Ms. Stansbury stated that the way the houses were built, her house is built different than the other houses. If you notice the house on the corner and the house directly behind her house to the right have two (2) rooms in the back and a deck in between. They could easily build on the deck between the rooms to build a screened in porch. The other houses are built to the setback line, but they already have existing decks and they have thirty (30) feet because they had bump outs added and they will not need a variance. The other houses have huge back yards and will not be affected. Her house is the only one that will be affected in the area. She stated that she did

not have the money at the time her house was being built to add a bump out.

Mr. Senato stated that looking at the map presented by Ms. Stansbury the houses on the corner and left of her house seem to be relatively in the same position. Responding to Mr. Senato, Ms. Stansbury replied that the lines were not actual property lines because the houses are further back at least ten (10) feet. The map is a GIS map she received from Kent County.

Mr. Senato stated that upon looking at the map, the blue square indicates that Ms. Stansbury house is further to the rear lot line than the house to the left or right. Responding to Mr. Senato, Ms. Stansbury replied that is correct.

Mr. Sheth questioned if maybe there was another location Ms. Stansbury could build upon? Responding to Mr. Sheth, Ms. Stansbury replied that she was given an option to build up. She was not sure why she was given the option to build up from the back. She just wants to keep it in character with the neighborhood since there are already houses with a screened in porch that did not have to go through the variance procedure because of where their houses were built. She understood the Board of Adjustment did not want to set precedence, but once the other neighbors build their screened in porch, her house will be even more in character of the neighborhood if the variance is granted.

Mr. Sheth stated that he understood. The Board of Adjustment has simple interpretation of the ordinance, with all fairness to the applicant and takes all information into consideration on how to approve without violating the City Ordinance.

Mr. Hufnal questioned Mr. Rodriguez if Ms. Stansbury was granted to build a screened in porch and if someone took issue because it was in violation and it ended up in a court case, would Ms. Stansbury have to remove the porch? Responding to Mr. Hufnal, Mr. Rodriguez replied that if the Board of Adjustment granted the approval of the screened in porch Ms. Stansbury would be okay. What he pointed out, in the Crossgates matter, was built before they applied for a variance. They applied for the variance afterwards and it was enforced because Crossgates was developed in accordance with the Zoning Code. Any building in the area had to comply with the Zoning Codes. It was difficult if not impossible to show Exceptional Practical Difficulty. It is important to keep the development in accordance with the Zoning Codes.

Mr. Hufnal stated that there are alternatives to this application regarding where it was originally built. There is ample space in other areas. He understands Ms. Stansbury's position; however according to the zoning regulations it does give Ms. Stansbury her options.

Mr. Sheth stated that if the variance was granted it could open a can of worms. There may be other cases like Crossgates that could come forward stating the Board was not fair. Court does not come into picture unless someone takes us to court.

Mr. Rodriguez stated that his duty is to give legal advice and not make a decision in this case or any particular case. He read the Staff's report which seems to be accurate as far as the legal part of the case is concerned. He needed to point out the Crossgates and the consistency of the Board of Adjustment since that decision was made.

Mr. Sheth stated that it was not an easy decision. Responding to Mr. Sheth, Mr. Rodriquez replied it was a very difficult decision.

Ms. Stansbury stated she wanted to clarify the option she was given to build on the side. She can encroach on the side fifteen (15) feet. This would incur additional expense. She would have to add a door and guests would have to walk through her bedroom or spare room to get to the side of the house. If she built on the front of the house she would be so out of character of the entire neighborhood. It would look ridiculous to build on the front of the house regardless if you had a good architect. Her house is not the type of house that was designed to build a front porch. She will then have upset neighbors because she has built on the front of the house. Whereas, a back screened in porch is a normal home improvement.

Mr. Keller stated that the prevailing concern is that presently everything is in conformity. By virtue of the engineered plans submitted with the packet there is available space within the building restrictions lines. If the Board of Adjustment proceeded and approved the variance, Ms. Stansbury would be the only property so granted within that neighborhood with an encroachment into the setback. Ms. Stansbury noted in her address to the Board of Adjustment that the other neighbors have adequate space to build. Being a new subdivision he presumed they gave consideration to the orientation of improvements within their lots to build closer to the front building restriction line, and provide more back yard allowing additional area in which to build to the rear building restriction line.

Mr. Keller stated that Ms. Stansbury elected to orient the new improvement on the site as it is today, by doing so has prevented plans for improvements.

Mr. Sheth opened a public hearing and after seeing no one wishing to speak closed the public hearing.

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

Mr. Senato moved to deny the variance for Application #V-12-03, located at 421 Beuvale Lane, as the applicant has not demonstrated any Exceptional Practical Difficulties, and additional consideration to Staff findings, seconded by Mr. Keller and the motion was unanimously carried 4-0 with Colonel Ericson absent.

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

Meeting adjourned at 9:36 AM

Sincerely,

Maretta Savage-Purnell
Secretary