REVISED

AGENDA
CITY OF DOVER BOARD OF ADJUSTMENT
WEDNESDAY – November 16, 2011 9:00 AM – CITY HALL

ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES OF October 26, 2011 MEETING

NEW BUSINESS

Applicant #V-11-13:
455 & 459 New Castle Avenue: The Dover Housing Authority has applied to the City of Dover Board of Adjustment requesting a variance from the requirements of Article 5 §1.52 of the *Zoning Ordinance* pertaining to porches.

Subject property is zoned RG-1 (General Residence Zone). The Tax Parcel ID # is ED05-077.10-01-22.00-000. The owner of record is Dover Housing Authority.

Other Business:

1. 2012 Meeting Schedule

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
OCTOBER 26, 2011

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, October 26, 2011 at 9:00 AM with Chairman Sheth presiding. Members present were Mr. Sheth, Mr. Keller, and Colonel Ericson. Mr. Senato and Mr. Hufnal were absent.

Staff members present were Mrs. Townshend, Ms. Cornwell, Ms. Metsch and Mr. Rodriguez. Also present were Mr. Darren Guido, Mr. Carl Krienen, Mr. Gregg Moore, and Mr. Allen Perry.

Mr. Sheth stated that he would like to adjust the agenda so that the New Business is heard first and then the Old Business heard second as the Old Business would take longer.

APPROVAL OF AGENDA

Colonel Ericson moved to approve the agenda as amended, seconded by Mr. Keller and the motion was unanimously carried 3-0 with Mr. Senato and Mr. Hufnal absent.

Mr. Keller stated that he has noted three (3) corrections necessary to the minutes of September 21, 2011. The first notation is located on Page #3, third paragraph from the bottom; change the word "on" to "one." The second correction is located on Page #16 under the bold print of "Representative: Mrs. Darlene Matthis speaking, drop down 5 paragraphs and change "Mr." to Mrs." The third correction is located on Page 21 at the very top of the page change the word "enforce" to "in force."

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF SEPTEMBER 21, 2011

Mr. Keller moved to approve the regular Board of Adjustment meeting minutes of September 21, 2011 as amended, seconded by Colonel Ericson and the motion was unanimously carried 3-0 with Mr. Senato and Mr. Hufnal absent.

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATIONS

Ms. Cornwell presented to the audience the policies and procedures that would be followed during these hearings.

NEW BUSINESS

Applicant #V-11-12:

211 Delaware Avenue: Central Middle School has applied to the City of Dover Board of Adjustment requesting a variance from the requirements of Article 5 §4.7 of the *Zoning Ordinance* pertaining to the number and size of signage.

Subject property is zoned IO (Institutional/Office Zone). The Tax Parcel ID # is ED05-068.17-03-66.00-000. The owner of record is The Dover Special School District.

Representative: Mr. Darren Guido, Principle of Central Middle School; and Mr. Carl Krienen, ABHA Architects.

Mr. Guido and Mr. Krienen were sworn in.

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

Ms. Cornwell further stated that legal notice was published in the Delaware State Newspaper on October 16, 2011 and the public was notified in accordance with the regulations.

Mr. Krienen stated that several years ago they completed the renovations to the addition to Central Middle School. At that time, we asked for a variance for specific building signage that was to be included with the building. The configuration of that signage had been approved by the Planning Commission even prior to that with our original design concept and then had the variance approved at a later date. Because of budgetary reasons, the signage package was not bid out until after the project had been completed and the variance had expired. Signage is one of the last things that go on the building and the budget became very tight at the end. The request today is to extend or reissue the variance that was previously approved.

Mr. Sheth questioned if there has been anything that has changed since the last approval? Responding to Mr. Sheth, Mr. Krienen stated that no, it is exactly the same.

Colonel Ericson questioned if the Planning Commission approved the sign? Responding to Colonel Ericson, Mr. Krienen stated that it was not the signage specifically. We presented elevations of the building that had the medallion sign and all the signage that is currently shown. They approved the design of the building and the signage was shown at that time. At that time, it was not specifically noted that the signage was larger than what had been determined. There was no specific note to indicate that they approved a larger sign, which is why we had to proceed with the variance procedure.

Mr. Keller questioned what the date was of the original approval? Responding to Mr. Keller, Ms. Cornwell stated that it was November of 2009.

Mr. Keller further questioned if it was the same medallion configuration? Responding to Mr. Keller, Mr. Krienen stated that yes it is.

Colonel Ericson asked if the applicant would state for the record why this is a hardship or Exception Practical Difficulty. Responding to Colonel Ericson, Mr. Krienen stated that if you pull back from the building where the arch in the cornice that goes over where the sign goes; the window configuration there has a brick band that has already been installed to accept this sign. If you are to look at it now, it looks blank or empty. The hardship would be that it looks unfinished and to the constituents of the district who are expecting it to be a completed project and to the district themselves and even the neighbors, it looks unfinished. It could eventually be a hardship for the district if it looks like they did not finish the project and did not spend the money as indicated that it could be construed as a hardship.

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 received for this application and there was none.

Colonel Ericson moved to approve Applicant #V-11-12 located at 211 Delaware Avenue: Central Middle School based upon testimony given today and the Staff Report, seconded by Mr. Keller and the motion was unanimously carried 3-0 with Mr. Senato and Mr. Hufnal absent.

OLD BUSINESS

Colonel Ericson moved to re-open Application V-11-11, seconded by Mr. Keller and the motion was unanimously carried 3-0 with Mr. Senato and Mr. Hufnal absent.

Mr. Sheth was absent for the last meeting in which this application was originally heard. After reading the minutes of that meeting and reviewing items in the record it was determined by the City Solicitor, Mr. Rodriguez that he would be able to participate in this meeting based on the knowledge of those minutes and the record.

Applicant #V-11-11:
591 S. DuPont Highway: Deanna Hynansky has applied to the City of Dover Board of Adjustment requesting a variance from the requirements of Article 4 §4.15 of the *Zoning Ordinance* pertaining to the side-yard setback.

Subject property is zoned C-4 (Highway Commercial Zone). The Tax Parcel ID #s are ED05-077.00-01-12.01-000 and ED05-077.00-01-12.05-000. The owner of record is Deanna Hynansky.

Representative: Mr. Gregg Moore, Becker Morgan Group, Inc.; and Mr. Allen Perry, Representing the Winner Group and President of Monchanin Group.

Mrs. Townshend stated that there were a couple of things that were asked of Staff to provide follow-up on from last month's meeting. Staff has included in your packet an addendum to the Staff report along with the initial Staff Report that had been issued for last month's meeting. Two exhibits have been provided by the applicant; the required drive aisle exhibit and the combined access easement exhibit. There is also a letter from the Delaware Department of Transportation as a follow-up from a meeting that was held with them indicating that the decision on the variance will not affect the ability to design a compliant entrance.

Mrs. Townshend further stated that the issues that were brought up were related specifically to Site Plan history which is addressed in the addendum report. Fire lane access, shared entrance, and site access has also all been addressed in the addendum to the Staff Report and the applicant's exhibits.

Colonel Ericson stated that as he recalled, there were two major issues; one was the cross access easement and if there was one in the former documentation through the process, and second is this Exceptional Practical Difficulty?

Mr. Sheth stated that he would like to discuss something that was done back in 1986. He owned property in the area then. The street between the dealership and the next property known as Public Safety Boulevard on the right side was owned by Wilmington Trust and the other side was owned by Hynansky. They came to him and he stated that if he sold his land to Wilmington Trust and Wilmington Trust sold their land to Hynansky, then they could all be together as at that time it was not a major individual dealership.

Mr. Keller stated that he does not think that they are limited to exclusively discuss these two issues; however, we spent a considerable amount of time on discussion regarding the possibility of the existence of a cross access easement between the lands of Mrs. Hynansky and lands of the United Electric Supply Company. He had taken note that it is specifically noted on a number of the exhibits presented as a cross access easement. Some of the discussion by the applicant's representative indicated that there is no such easement that led us into some extended discussion. He sees in the addendum to the Staff Report that City Staff did in fact further look into the possibility of the existence of such a cross access easement.

Mr. Keller further questioned Staff in their summation of findings it was noted that a Site Plan for United Electric, the neighbor to the north, does in fact show the shared access that includes a note that states "for cross access easements see Plan of Earl D. Smith, Inc. commercial entrance and drainage plan, Plans of Max Ombach Etal, revised through 6-23-86." Staff noted that "no record of this could be located in the Planning Office." Did you look elsewhere other than the Planning Office? Responding to Mr. Keller, Mrs. Townshend stated that Staff looked through the City records in terms of Planning Office files. If this is part of something that was a commercial entrance plan, that would likely not be on file with the Planning Office. Staff would have to do a FOIA request to the Department of Transportation to determine if they had it on their files and she is unsure how extensive we could do that as there would be costs incurred to do that. None of the documentation that we had on record in terms of the former Site Plans included any note of a cross access easement except for the 1986 plan for United Electric.

Colonel Ericson questioned that as he understands it, if we approve the variance, it will go to the Planning Commission and they will address this issue, is this correct? Responding to Colonel Ericson, Mrs. Townshend stated that what will happen is if a variance is granted and the Site Plan goes on to the Planning Commission, they will be required as a condition of the Site Plan to record a cross access easement with the neighboring property owner. This would be a requirement through the City Site Plan process and DelDOT through the entrance permit.

Colonel Ericson further questioned should we grant approval for this, should we amend it to state that approval would be based upon the Planning Commission addressing the cross access easement? Responding to Colonel Ericson, Mrs. Townshend stated that she would defer to Mr. Rodriguez as she believes this would be beyond the scope of the Board of Adjustment.

Mr. Rodriguez stated that he does not feel that they should go quite that far. The Planning Commission will make a decision in that regard.

Mr. Keller further stated that Staff noted on the exhibits for United Electric Supply Company they referenced Plat Book 61, Page 47. Has there been any initiative to check that plat? Responding to Mr. Keller, Mrs. Townshend stated that we do not do deed research. That would

be something the surveyor would do when the survey was prepared.

Mr. Moore stated that they did do deed research and there is no record of a formal easement in the Land Records for Kent County for that easement. We believe that it is an easement by prescription because it has been used for over twenty (20) years and prescription means use not of record on paper or at the courthouse.

Mrs. Townshend stated that from our experience with this and other Site Plans going back into the 80's, she believes that we have improved over time in terms of requiring recordation of whether it is an easement rather than just included as a note on the plan. In the past, there were likely times where things were not necessarily recorded that today we would record.

Mr. Keller stated that Mr. Smith is a registered Land Surveyor and he would presume that at the time of the preparation of the 1986 Site Plan, there would not have been reference without a cross access easement noted on the Plan. He is puzzled by the preparation of the exhibits distinctly noting in several instances the cross access easement depicted on those if in fact there was no agreement of a cross access easement in existence.

Mr. Keller further questioned as to the variance request from the side yard setback for the addition to the principle structure, there is no limitation as to the extension of the variance requested area. This area extends over 900 feet for the entire north property line boundary. It is noted that it is for a proposed addition to the principle structure. Is there any anticipated use or basis for your request for a variance throughout the entire northerly property line which extends past the Ford Service Center and all of the vacant land in the remaining triangular portion of the property to the east? Responding to Mr. Keller, Mr. Moore stated that they do not wish to get an exception or a variance to allow them to build continuously along that line. We are only requesting the variance to build in the location of our current building. We do not want the setback line to be changed to the full extent of that property line.

Mrs. Townshend stated that what she would recommend with regards to this question is if a variance is granted, that it be specific to this building addition. In the future, if they were to come back to this, the decision would be specific. She believes that the motion should be for only a portion and not the entire setback line.

Mr. Rodriguez stated that if you grant the variance, it would be specifically for this building as applied for. If they wanted it for anything else they would have to come back again. He does not feel that you would set a precedent by granting it for this particular building because their allegation is that they can only build on the north side and not on any other sides.

Mr. Moore stated that Hyundai has put in writing that they want more exposure to the road and that we need to make an expansion to meet their demands. There has been discussion that if they cannot achieve that goal on the site, they will depart and go elsewhere. They (Hyundai) do not own the property as they have a lease and have the right to depart. We hope that this does not happen and we can accommodate them. Responding to Mr. Moore, Mrs. Townshend stated that the letter from Hyundai has not been received and is not submitted as part of the record.

Mr. Keller stated that he has a letter in front of him from Hyundai Motor America signed by Mr. Douglas K. Jeffrey, Senior Manager Market Representation. Is this the letter in which you refer to? Responding to Mr. Keller, Mr. Moore stated that yes it is.

Mr. Moore presented a Power Point presentation at this time. The Power Point presentation was submitted into record. (See attached)

Mr. Moore read into the record the letter that was received from Hyundai "Letter dated September 20, 2011 from Hyundai Motor America. As part of the Hyundai Motor America, they recently launched a Dealership Image Program Initiative. HMA has established guidelines for our dealers pursuant to these efforts. HMA has recommended that Winner Hyundai of Dover expand to update the existing showroom on Route 13 in Dover. HMA (Hyundai Motor of America) has provided the Winner Group with specific architectural requirements which must be incorporated into their renovation design. One of the goals of this expansion is to achieve greater presence on Route 13 with branded identification. We have discussed several different design schemes and have been very clear to Winner that expansion to the front or rear of the building alone does not meet our guidelines."

Mr. Moore continued with the Power Point presentation at this time.

Mr. Keller stated back to the letter from Hyundai Motor America. One thing he notes, because there has been discussion at the last meeting regarding the number of alternatives for an expansion of the building, Paragraph #3 of Mr. Jeffrey's letter states that they have discussed several different designs schemes and have been very clear to Winner that expansion to the front or rear of the facility alone will not meet their guidelines. Hyundai Motor America has recommended that Winner Hyundai of Dover expand to update the existing showroom on Route 13 in Dover. That points out part of the discussion that was held last month that there appears to be alternatives. One of which was the concern noted in Staff's review of the application that there could in fact be an extension of the existing building to the north of 12 feet +/- and remain within the existing area not precluded by the building setback line. Some of your exhibits show the proposed building addition only on the northerly side of the building and do not show the proposed squaring up of the building. Is there a proposal to square up the building? Responding to Mr. Keller, Mr. Moore stated that yes they proposed that; however, it does not require a variance. Their intention was to only show those areas that needed a variance.

Mr. Keller further questioned in thinking forward from Staff's comments regarding being allowed to extend in any event northerly up to approximately twelve (12) +/- feet, was there any consideration given to the north to relieve them of a variance request and extend only minimally then to the south with expansion of the showroom and not to the extent that you previously depicted as the handicap ramps? Responding to Mr. Keller, Mr. Moore stated that expansion to the south does affect the handicap ramp and the ultimate fire lane so it is prohibited on that side of the building. Twelve (12) feet on the United Electric side to the north does not provide us enough functional space to expand the showroom so that they could get an extra car in there because it is very tight and does not provide the needed space.

Mr. Keller further questioned if they gave any consideration to going up maybe four (4) stories? Responding to Mr. Keller, Mr. Moore stated that this would present function problems for the

dealership and for its patrons in terms of handicap accessibility. They would need an elevator to allow for handicap accessibility and also would not be able to get the vehicles up into the second, third, and fourth stories of the building which would be very problematic. This would be a prohibitive cost and likely cause this building to not be useable for this purpose.

Colonel Ericson questioned that if in fact this variance was disapproved, what do you see as the outcome? Responding to Colonel Ericson, Mr. Moore stated that the outcome is that we run the risk of a smaller expansion not meeting the demands of the Hyundai Dealership and them searching for another parcel to achieve their full program. We would like to be able to accommodate them and keep them here in the City of Dover. The owners want to keep them on site with available parking with good access and visibility.

Colonel Ericson further questioned if they had any idea on what the economic impact would be that they presented to the community, how much money they take in for the City of Dover? Responding to Colonel Ericson, Mr. Moore stated that he would defer this question to Mr. Perry.

Mr. Perry stated that to answer the question asked earlier of Hyundai taking away the franchise, they will not take away the franchise; however, they make it very difficult for the franchisee. If you do not meet their design requirements among other requirements they have, they will not give you the new Hyundai vehicle that is coming out and they limit the amount of inventory you can get from them because you would not be a compliant dealer. The whole idea here is to bring this facility into compliance with Hyundai standards. As you are probably aware, Hyundai has grown significantly over the last ten (10) years where ten (10) years ago it was a fringe automobile dealer and is now a mainstream automobile dealership. They are trying to enhance their image as well as their facilities to meet the demands of now and in the future. Obviously, relocating to meet their demand is more expensive and there would be management issues because there would be two separate management teams.

Mr. Perry further stated as far as going out to the south, Mr. Moore has demonstrated that the ramp is not only a handicap accessible ramp it is also the only way that we get cars in and out of the showroom. If we extend the building twenty (20) feet and then extend the ramp out from there, we would be out into the drive aisle and the fire lane between the Ford Dealership and the Hyundai Dealership. We do not see this as a viable alternative. If we were to expand to the west out the front of the building, we would have the same issue because the main drive aisle coming in from the entrance, where we have talked about having a cross access easement, the main entrance to the entire dealership facility would be encumbered by the ramp if not the building itself by coming out twenty (20) feet in that direction.

Mr. Perry further stated that with regards to the comment of only going out twelve (12) feet, we do not get the utility that we need by going out twelve (12) feet. The cost difference of going out twelve (12) feet and twenty (20) feet as far as construction costs is negligible. The northern most wall would be the same length whether we go out twelve (12) feet or twenty (20) feet as that wall does not change in cost. By going out the extra eight (8) feet, we get a lot more utility for the construction cost that we are going to incur. If we cannot go out the twenty (20) feet, the owners have a decision to make. They have indicated that if they cannot go out the twenty (20) feet, they will start to look and see what their options are for another location.

Mr. Sheth stated that several years ago there were hardly any car dealerships on Route 13 today there are several located within close distance.

Mr. Keller stated that if the proposed addition does not go to the full extent that has been depicted, he does not understand why the suppliers of the automobiles would limit the possible capacity of that dealership to sell automobiles to their hearts content whereby both parties make money; the manufacturer as well as the retailer. Responding to Mr. Keller, Mr. Perry stated that this is not uncommon in the dealership world. This is the stick that the manufacturers use on the dealers. We have experienced this with other dealerships that Mrs. Hynansky owns up in Wilmington where we had to build a whole new dealership in order to accommodate the demands of the Audi manufacturer. The manufacturers dictate what they want you to do. In fact, the Saturn dealerships, that are now defunct, they had to come in every eight (8) years and do a major interior renovation in order to meet the demands of Saturn's identity. The way they "encourage" you to meet their standards is you become a compliant dealer and then you get preferential treatment as far as the number of cars that they can deliver to you. They have already stated that if we do not expand this facility, we would not be getting the new Hyundai premium model vehicle that is coming out.

Mr. Keller questioned if they were reading more into what the letter from Hyundai Motor America sent to them "recommending" that they upgrade this facility? Responding to Mr. Keller, Mr. Perry stated that they are requiring even though the letter states "recommend."

Mr. Keller further stated that Mr. Moore handed them a copy of a license agreement from United Electric. In the Power Point presentation he thought that you alluded to this agreement related to a cross access easement. Responding to Mr. Keller, Mr. Moore stated that this agreement is specifically for the parking and only for the parking. There was a verbal agreement regarding the parking area between United Electric and Winner Ford and that is why the maintenance of the area that was shown is clear to both parties that Winner Ford was using that area. There was nothing in writing and when the United Electric representative was here at the last meeting, they had an agreement drawn up so that there is now clarity. We believe that a similar document will be drawn up with regards to the cross access easement for the property coming in off of Route 13.

Mr. Perry stated that they had a meeting with United Electric last week and explained that after our meeting with DelDOT it was clear that DelDOT was going to require the cross access agreement. We felt that it was in the best interest of both parties for now and in the future. DelDOT is part of the planning process and will be requiring the cross access easement. We do not expect to have any objection from United Electric regarding this issue.

Mrs. Townshend stated in meeting with DelDOT, we talked about the fact that we can only compel an easement if we have an application. She threw out a scenario of what would happen if United Electric did not want to be a party to this. United Electric could not use the Winner side of the easement. They would need to come back to DelDOT for a new entrance at which point, DelDOT would state that they need to share the entrance that is already in existence. Ultimately, this is going to be the only option and will without any doubt, be confirmed through a cross access easement one way or another through the Site Plan process.

Mr. Perry stated that both owners have discussed the cross access easement and both owners are in full agreement that it makes sense for both parties.

Mr. Keller stated that this agreement has gone on for a considerable amount of time and is in conjunction with what they have as a Corridor Capacity Preservation Program through DelDOT. DelDOT requires abutting properties to have a combined entrance so as to limit the amount of accesses directly onto major corridors that would become another Kirkwood Highway in New Castle County if there were not such a program.

Mr. Perry stated that the cross access easement agreement that was discussed at DelDOT and contemplated by the two parties encompasses the area show in red on the map that was provided to the Board members. It will not extend all the way back.

Mr. Keller stated that the recommendation of Staff and some discussion as to some of the findings in considering the matter as to whether or not an Exceptional Practical Difficulty exists has to be inherent in the land not at the wish of personal views of an owner as to what his or her dislikes are for a particular fashion of what an addition may be. Mr. Albert from the Planning Staff went to great length to give consideration to whether or not in this particular case that an Exceptional Practical Difficulty existed. He is inclined to agree with the evidence submitted with the discussion as to there definitely being practical difficulties.

Mr. Keller further stated that he would agree with Staff's response regarding the nature of the zone of the area and that the proposal would not have a detrimental effect on the area. The area of immediate impact would not be detrimental to the immediate area given the uses up and down this corridor of similar properties; however, it is not imperative that any Exceptional Practical Difficulty must be demonstrated to gain the approval of a variance request. He is, after the presentation, not convinced that an Exceptional Practical Difficult stands before us. He believes that while not in necessarily the specific desire of Mrs. Hynansky or the Winner Groups request for expanding in a specific way of that building, it appears that some alternative or the proposal of a lesser degree, do in fact exist. He is encourage by at least a statement by the DelDOT Subdivision Engineer as to the willingness of the expectation that there would be a convincing cross access easement between this property and the property to the north.

Colonel Ericson stated that he agrees with everything Mr. Keller has stated; however, not the last statement regarding Exception Practical Difficulty. It would seem that Mr. Moore has done a good job showing why they cannot build in the other directions so the only way that they can expand would be to the north and in fact if they go to the north and do an addition that is not as wide and would not meet their requirements. What is in jeopardy here is the actual dealership itself as it would have a definite economic impact on them. By approving this request, it would not be contrary to public interest and seems to be in the spirit of the zoning laws that we have to try and encourage businesses to expand and grow as long as it does not cause a problem to the neighborhood. This seems to be a very justified use to request an expansion and will not cause a problem by going into the easement by giving them eight (8) more feet of building.

Colonel Ericson moved to approve Applicant #V-11-11 located a 591 S. DuPont Highway: Deanna Hynansky understanding that the cross access easement agreement will be addressed at the Planning Commission meeting during the Site Plan approval process and that the expansion

is limited to the principle structure and based upon the testimony provided today.

Mr. Keller stated that the would amend the motion to include that the variance request for the proposed expansion is limited to the existing building and not throughout the entire property line and to include the clarification that all presented testimony and exhibits presented during the course of the past two months presentation are included as a matter of record.

Colonel Ericson moved to agree to the amended motion as presented by Mr. Keller, seconded by Mr. Sheth and the motion was unanimously carried 3-0 with Mr. Senato and Mr. Hufnal absent.

Colonel Ericson moved to approve the motion as amended, seconded by Mr. Sheth and the motion was unanimously carried 3-0 with Mr. Senato and Mr. Hufnal absent.

Mr. Keller moved to adjourn the meeting, seconded by Colonel Ericson and the motion was unanimously carried 3-0 with Mr. Senato and Mr. Hufnal absent.

Meeting adjourned at 10:29 AM

Sincerely,

Diane Metsch
Secretary

City of Dover

Board of Adjustment

November 16, 2011

V-11-13

Location:	455 & 459 New Castle Avenue
Applicant:	Senate View Apartments by Dover Housing Authority
Owner:	Dover Housing Authority
Tax Parcel:	ED-05-077.10-01-22.00-000
Application Date:	October 14, 2011
Present Zoning:	RG-1 (General Residence Zone)
Present Use:	Multi-Family Residence
Reviewed By:	Janelle M. Cornwell, AICP
Variance Type:	Area Variance
Variance Requested:	Allow a porch to be 5'3" wider than the permitted 8' within the front yard setback and a porch to encroach into the front yard setback 10 inches more than the 6 feet permitted.

Project Description:
The applicant is requesting a variance from the *Zoning Ordinance* of Article 5, Section 1.52 Supplementary Regulations. Specifically, they are requesting a variance to allow a porch to be wider than eight (8) feet and to encroach into the front yard setback more than six (6) feet. The applicant is requesting a 5'3" increase in the width of the front porch for a 13'3" wide front porch and a 10 inch increase into the front yard setback.

Adjacent Land Uses
The adjacent properties are a mixture of residential and commercial uses. The properties to the north are zoned RG-1 (General Residence Zone) and C-4 (Highway Commercial

Zone). The properties to the west are zoned C-4 (Highway Commercial Zone). The properties to the south and across Water Street are zoned RG-1 (General Residence Zone) and IO (Institutional Office Zone). The properties to the east across the New Castle Avenue are zoned RG-1 (General Residence Zone).

Code Citation

Article 5 Section 1. - Supplementary regulations applying to residence zone.

Exceptions to yard requirements.

1.52 *Entries and porticos.* A roofed-over but unenclosed projection in the nature of an entry, portico or awning not more than eight feet wide and extending not more than six feet into the required front yard shall be exempt from the requirements of this section when the building otherwise complies with the regulations of this section. In computing the average setback, the presence of such entries and porticos shall be ignored.

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 zoned RG-1 General Residential. When originally constructed the required front yard setback was 25 ft. The required setback has since changes to 30 ft. Currently the existing building porches encroach in the required setback by 5' but do not meet the allowable width of 8'-0". Our proposed porch design would

encroach 6'-0" into the required setback and would exceed the allowable width per apartment unity by 5'-3".

Article 5 Section 1.5 Entries and Porticos states: "a roofed-over but unenclosed projection in the nature of an entry, portico or awning not more than eight feet wide and extending nor more than six feet into the required front yard shall be exempt from the requirements of this section when the building otherwise complies with the regulation of this section. In computing the average setback, the presence of such entries and porticos shall be ignored"

Staff Response:
The property is zoned residential and is surrounded by residential and commercial uses. The other apartments and single family residences within the area are all zoned RG-1 (General Residence Zone). The apartments are considered legal non-conforming as these two units are located within the front yard setback and use as multi-family uses are no longer permitted within the RG-1 Zoning District.

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

Applicant Responses:
Senate View is a subsidized housing development. The development was constructed in 1950's with subsequent renovations in the 1970's. Since then funding only for minor repairs has been made to the facility. Living units are dated and in need of various stages of repair. South of the site are recently rehabilitated/renovated apartments. North and east of the site are small single family homes and commercial buildings and the Kent County Family Court.

Staff Response:
The character of the vicinity is primarily multi-family residences with some single family residences and some commercial uses in the area. These apartments have been in existence since the 1950's, prior to zoning.

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

Applicant Responses:
Allowing the variance, would enhance aesthetics & curb appeal and provide a positive impact on the neighborhood and its tenants. Our proposed design will integrate this development with the design of adjacent apartments and residences. The addition also provides for conversion for handicap accessibility that is required on certain units in future renovations. Recent renovations and additions at the Capital Green facility are very similar to this proposed scope of work. A variance was granted for porch encroachment into the setback and for width of the porch at the Capital Green.

Staff Response:
The increase of the width of the porch would not seriously affect neighboring properties as the proposed porch would provide a more aesthetically pleasing architecture to the apartment units. It would be in keeping with the character of the other apartment complex in the area that also received a variance for encroachment into the setbacks.

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 restrictions not removed, it would make it very difficult to add architectural interest to the otherwise bland barracks-like façade. It is the Owner's desire to enhance the appearance of the building exterior by adding these elements.

   The proposed design adds proportion, balance and symmetry to the building by adding columns between the window and doors.

   Providing an 8' wide porch at each unit is not as desirable, because the porch column locations would be in conflict with existing windows and the porch would be undersized proportionally to the length of the unit.

   Staff Response:
   Porches are permitted within the residential zones. While a porch meeting the requirements of the Zoning Ordinance is possible it impacts the architecture of the building. The placement of the structural columns would be fall in front of the windows. The structural columns for the proposed 13'3" wide porch would fall in front of the wall.

   The exceptional practical difficulty comes from the difficulty to provide architectural elements without further encroachment into the front yard setback. As shown on the exhibit, labeled A-1, the existing building is located within the front yard setback and is considered legal non-conforming. The size (depth and width) of a porch is unlimited if not located within the setback.

Variance Recommendation:
Staff recommends approval of the porch area variance for reasons as follows:

- The applicant has demonstrated exceptional practical difficulty as the installation of a 6 ft. by 8 ft. porch would be difficult as the existing building encroaches into the front yard setback.

- The physical attributes of the building, including the placement of the structural columns in front of the windows, create an aesthetic difficulty for the apartment unit.
- The 6'10" by 13'3' porch would be in keeping with the scale of the building. A sign of 16 SF would look out of place and not in keeping with the design of the building.
- The porch would be in keeping with the character of the neighborhood as it would provide an additional architecture element to the building and neighborhood.
- A variance for the encroachment of ten (10) inches into the front yard setback would be needed if the width request is denied as the existing building encroaches into the front yard setback.

City of Dover,
Department of Planning and Inspections
P.O. Box 475, Dover, Delaware 19903
(302) 736-7010 Fax: (302) 736-4217
www.cityofdover.com

_____ Area Variance
_____ Use Variance
_____ Appeal
DB Pre-App Date 9/MC

Board of Adjustment Application

V-11-13

Application Information

Property Address: SENATE VIEW APARTMENTS NEWCASTLE/KENT AVENUES

Tax Parcel Number: 2-05-07710-01-2200-00

Owner Name: DOVER HOUSING AUTHORITY

Property Zoning: RG-1 GENERAL RESIDENTIAL

Variance (s) Requested: ARTICLE 5 SECTION 1.5Z

WIDTH OF PORCH ADDITION

ENCROACHMENT INTO FRONT YARD SET BACK 7'

*Provide eight (8) copies of any survey, drawings, photos, site plan, etc. that may help support your application, and your response to the criteria. The criteria for a use variance and appeal are on the back of the form.

V-11-13

Area Variance

An area variance shall be evaluated on the following criteria: **Please state how your request meets each of these four (4) criteria.**

1. The nature of the zone in which the property lies;
2. The character of the immediate vicinity and the contained uses therein;
3. Whether, if the restriction upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses; and
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 permitted uses under the provisions of the zoning ordinance.

Signature

I AMI SEBASTIAN HALLER do affirm that I am the property owner on which the variance is sought and that all the information provided in this application is accurate to the best of my knowledge and belief.

Signature | Title | Date 10/14/2011

Senate View Apartment Renovations – Units 455 & 459

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

The Property is zoned RG – General Residential. When originally constructed the required front yard setback was 25 ft. The required setback has since changed to 30 ft. Currently the existing building porches encroach in the required setback by 5' but do meet the allowable width of 8'-0". Our proposed porch design would encroach 6'-0" into the required setback and would exceed the allowable width per apartment unit by 5'-3".

Article 5 Section 1.5 Entries and Porticos states: *"A roofed-over but unenclosed projection in the nature of an entry, portico or awning not more than eight feet wide and extending not more than six feet into the required front yard shall be exempt from the requirements of this section when the building otherwise complies with the regulations of this section. In computing the average setback, the presence of such entries and porticos shall be ignored."*

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

Senate View is a subsidized housing development. The development was constructed in 1950's with subsequent renovations in the 1970's. Since then funding only for minor repairs has been made to the facilities. Living units are dated and in need of various stages of repair. South of the site are recently rehabilitated / renovated apartments. North and East of the site are small single family homes and commercial buildings and the Kent County Family Court.

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

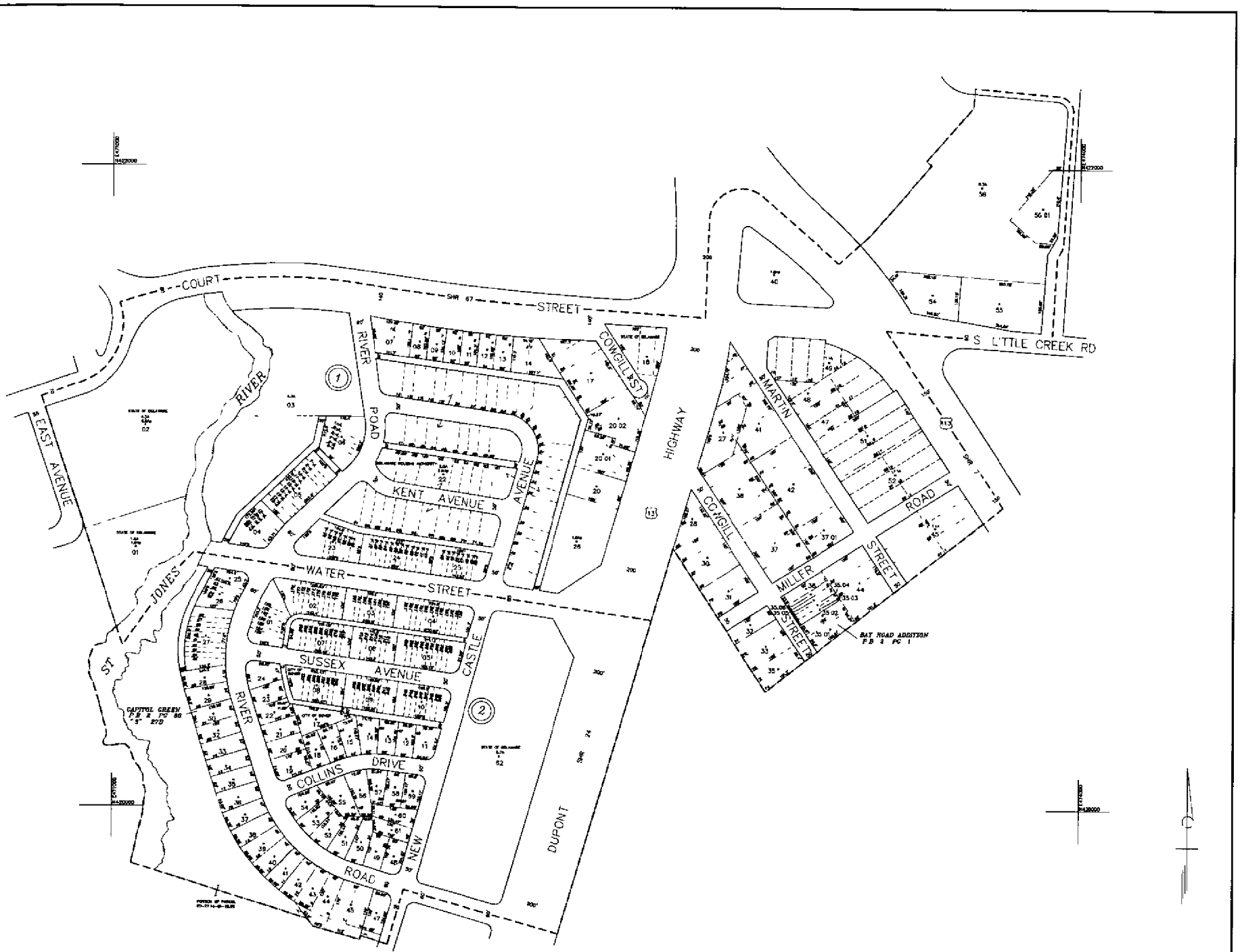
Allowing this variance, would enhance aesthetics & curb appeal and provide a positive impact on the neighborhood and its tenants. Our proposed design will integrate this development with the design of adjacent apartments and residences. The addition also provides for conversion for handicap accessibility that required on certain units in future renovations. Recent renovations and additions at the Capital Green facility are very similar to this proposed scope of work. A variance was granted for porch encroachment into the setback and for width of the porch at the Capital Green.

4. Whether, if the restriction is not removed, the restriction would create unnecessary hardship of exceptional practical difficulty for the owner in his efforts to make normal improvements in the character of threat use of the property that is permitted uses under the provisions of the zoning ordinance:

If the restriction is not removed, it would make it very difficult to add architectural interest to the otherwise bland barracks-like façade. It is the Owner's desire to enhance the appearance of the building exteriors by adding these elements.

The proposed design adds proportion, balance and symmetry to the building by adding columns between the window and doors.

Providing an 8' wide porch at each unit is not as desirable, because the porch column locations would be in conflict with existing windows and the porch would be undersized proportionally to the length of the unit.



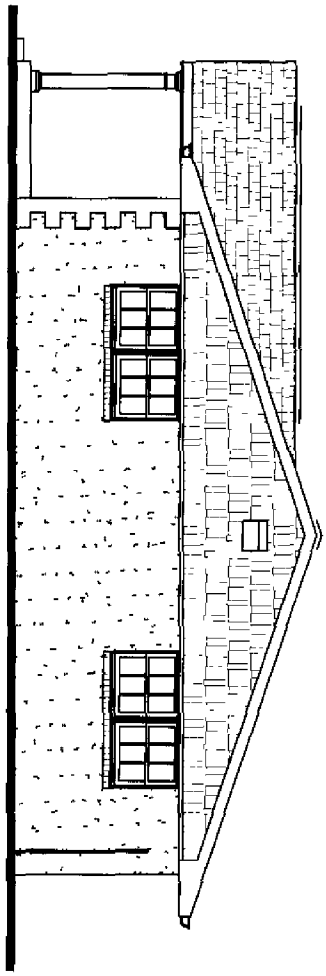
REAL PROPERTY TAX MAP
PREPARED FOR
KENT COUNTY, DELAWARE
BY
L. ROBERT KIMBALL ASSOCIATES, PA
DATE OF AERIAL

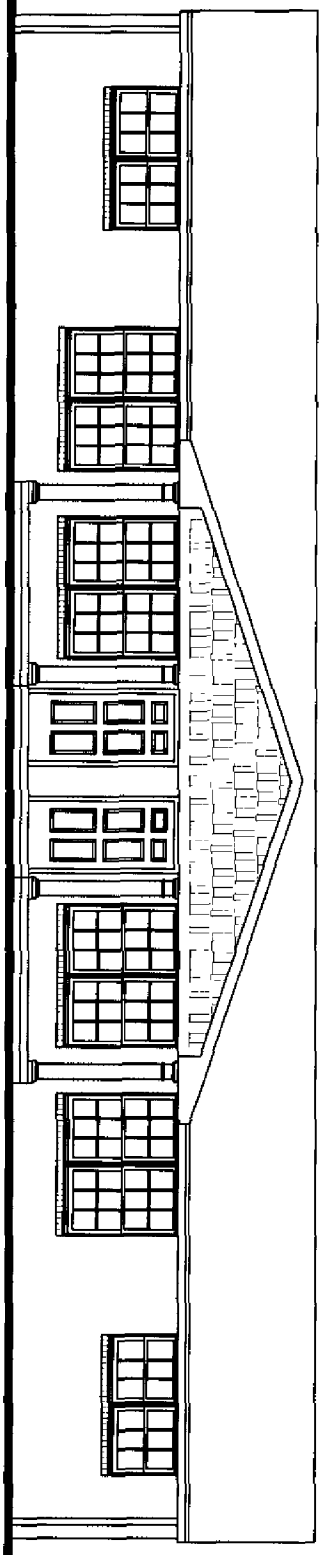
NOTE: This map is prepared for property location and assessment and is not for engineering use.

CITY OF DOVER
LD-05
KENT COUNTY, DELAWARE

77 10

NEW 26'-6" PORCH
13'-3" PORCH EACH UNIT





French + Ryan, Inc. Architecture Interior Design Site Planning GEORGETOWN DELAWARE	PROJECT NAME DHA SENATE VIEW - UNITS 455 & 459	PROJECT NO: 29035A4	DWG NO SK-2
	TITLE: PROPOSED 13'-3" PORCH FOR EACH UNIT	DATE 10-11-11	

CITY OF DOVER
BOARD OF ADJUSTMENT

Schedule of application deadlines and Board of Adjustment meeting dates for the year of 2012. The submittal procedures for the Board of Adjustment are outlined in *Zoning Ordinance*, Article 9, Section 3. Prior to application submission a pre-application meeting with Planning Staff is required.

MONTH	DEADLINE DATE	MEETING DATE
JANUARY	12/16/11	01/18/12
FEBRUARY	01/13/12	02/15/12
MARCH	02/10/12	03/21/12
APRIL	03/16/12	04/18/12
MAY	04/13/12	05/16/12
JUNE	05/18/12	06/20/12
JULY	06/15/12	07/18/12
AUGUST	07/13/12	08/15/12
SEPTEMBER	08/17/12	09/19/12
OCTOBER	09/14/12	10/17/12
NOVEMBER	10/12/12	11/21/12
DECEMBER	11/16/12	12/19/12
JANUARY	12/14/12	01/16/13

For Information Contact:

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