

CITY OF DOVER
BOARD OF ADJUSTMENT MINUTES
February 18, 2026

A Regular/Hybrid Meeting of the City of Dover Board of Adjustment was held on Wednesday, February 18, 2026, at 9:00 A.M. in person in the City Council Chambers and using the phone/videoconferencing system Webex. Members present were Mr. Swalm, Acting Chairman Mr. Coburn, Ms. Brinkley, Mr. Wagner, and Mr. Senato (virtually).

Staff members present were City Solicitor Mr. Daniel Griffith, Mrs. Melson-Williams, Mrs. Savage-Purnell, and Mrs. Duca.

APPROVAL OF AGENDA

Ms. Brinkley moved for approval of the agenda as submitted. The motion was seconded by Mr. Senato and unanimously carried 5-0.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF December 17, 2025

The meeting minutes of December 17, 2025 are still being prepared. They will be considered for approval at the next meeting.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF JANUARY 21, 2026

Mr. Swalm moved for approval of the meeting minutes of January 21, 2026. The motion was seconded by Mr. Wagner and unanimously carried 5-0.

COMMUNICATIONS & REPORTS

Acting Chairman Coburn mentioned that the next Board of Adjustment meeting date is Wednesday, March 18, 2026 at 9AM if we have any applications. Are there any other items from Staff?

Mrs. Melson-Williams stated that Staff can confirm that you will have a meeting on the March 18, 2026 date; so, please mark that on your calendar. At that time, we will continue the discussion on the Rules of Procedure documents so be prepared for that. I have no other Communications and Reports for you this morning.

OLD BUSINESS

There are no items on Old Business.

NEW BUSINESS

Mrs. Melson-Williams read the Procedure Statement for New Business.

Mrs. Melson-Williams noted that the public notice for items on this agenda was completed in accordance with the code requirements and will be noted specifically for this item. The Meeting Agenda was posted on February 11, 2026, in accordance with the Freedom of Information Act requirements.

NEW BUSINESS**Application #V-26-02 Courtney Square at 429-449 S New Street - Fence Variance**

Property at 429-449 South New Street known as Courtney Square. A Request has been made for a Variance from the requirements of *Zoning Ordinance*, Article 5 §7.5 as associated with a proposed fence to allow an increase in the allowable fence height from 4 feet to 8 feet for a chain link fence in three segments along the South New Street property frontage. The property is zoned C-2A (Limited Central Commercial Zone) and partially subject to the SWPOZ (Source Water Protection Overlay Zone). The owner of record is Courtney Square Associates, LLC. Property Addresses: 429-449 South New Street, Dover DE. The Tax Parcel ID is ED-05-077.09-03-18.00-000.

Mrs. Melson-Williams gave a brief overview of the Application V-26-02 referencing the Staff Review Report and Recommendations.

The Summary Report for this Application, including the list of Exhibits labeled Exhibits A through D is entered for the record. The public notice for this Application was published in the Daily State News on February 6, 2026. The property owners within 200 feet of the subject site were notified by letter sent by the Planning Office in accordance with the established procedures for the public notice.

The property on South New Street is more commonly known as Courtney Square; its a little shopping center. It consists of several retail stores and service establishments. The property is zoned as C-2A. The Variance requested today deals with the provisions of the *Zoning Ordinance* Article 5 §7.5 regarding fence height. The *Zoning Ordinance* establishes an allowable fence height of 4 feet when located in front yard areas. The Applicant is seeking a Variance to allow an 8-foot chain link fence in that location. If we go to Exhibit B, it shows the location of this property. It is at the corner of South New Street and Water Street here in Downtown Dover. As noted, it is zoned C-2A. Our Report also includes excerpts from the Code regulations regarding fences. Where they are in the case of non-residential properties, it's a maximum of 4 feet in height in the front yard area, and that would be along the South New Street frontage of the property. Additionally, since this is a corner lot, there is a corner visibility area that occurs at the intersection of South New Street and Water Street, where fence height would be limited to 3 feet in that area. There's a triangle that is the corner visibility area that's measured 20 feet back from the intersection of the two right of way lines for those streets. With this Application, the Board of Adjustment will be considering this Variance for fence height. As per the *Zoning Ordinance*, there are a series of criteria known as the Exceptional Practical Difficulties test for Area Variances.

The Applicant as part of their submission answered these questions on these four criteria. They begin on page five and also are included in your packet as Exhibit D. For the character of the immediate vicinity in which the contained uses lie, as noted, this is a multi-tenant kind of strip shopping center. In the general vicinity, there is a dentist office and the Owens Manor and Queens Manor Apartment complex across the street. Further to the south is the offices of Bayhealth and also the State-owned Morris Correctional Facility property. In the broader area, the applicant also noted proximity to the Dover Police Department and the courthouse parking lot to the east and an auto repair facility, a block over at Governors and Water Street.

The applicant has noted that he needs to separate his parking from New Street, having noted some experiences of the parking lot being used more as a public park and tailgating all day in that location. The Staff response notes that the restriction regarding a 4 foot fence height, if that would be removed, it would not necessarily seriously affect neighboring properties. There are a variety of fence heights in the general area for properties. We also note that probably the tallest fence is associated with the Morris Correctional Institute property and it's likely related to its time as, a correctional institute and not a security fence.

Staff notes that the proposal for this 8-foot chain link fence is taller in height and would likely distract from the visual character in the area and that could potentially affect neighboring properties and uses.

The fourth criteria is if the restriction is not removed, how would that restriction create an unnecessary hardship or exceptional practical difficulty for the owner of the property to make normal improvements that are permitted under this *Zoning Ordinance*. Again, the applicant's response is that they are proposing an 8-foot chain link fence and hope to discourage people from parking on the property and passing items back and forth between it and New Street. They note that the fence would be in segments, and they feel that a shorter fence at 4 feet could be easily knocked over or not function. The Staff response to this criteria notes that while a variance, if it was not granted to allow for the 8-foot fence, it may pose a practical difficulty for the property owner, but we do not believe that it is characterized as exceptional. It's unclear if a shorter fence would discourage the issue that appears to be happening here regarding loitering. And certainly at the corner visibility area, the fence would be limited to only 3 feet in that area.

In the Summary Report, Staff in regarding this variance is recommending denial. We believe that the proposal for an 8-foot chain link fence would be out of character in the area and create a negative visual impact. There is also an existing utility pole in that general area, and we're concerned that the fence could obstruct access to that utility pole. We also note that corner visibility area, where the fence is limited to only 3 feet in height. We do note that an 8 foot fence could be placed on the property; however, it would have to meet the building setback and that would be a setback of 15 feet along South New Street.

That probably has limited feasibility for implementation because it would place the fence actually in that row of parking in that area and not along the property line. We do note that if the Board of Adjustment is inclined to approve the variance that perhaps some conditions could be considered. First of which, there should be an actual survey of the property. The initial Fence Permit did not include a property survey. We believe a survey would be needed because it is not clear where the exact property line is. The parking lot pavement kind of flows right into the sidewalk pavement.

Also, if a fence was to be installed, it must continue to meet that corner visibility limitation of the height at the 3 feet in that area. It also would limit the obstruction to the utility pole based on that 20-foot distance from the corner.

The other condition that the Board could consider is the style of the fence to create something that's more visually appealing rather than a chain link by using something like a black aluminum fence. And obviously any fence cannot impede the street frontage sidewalk. I will note that previously we had the series of Exhibits. Exhibit A being their application form; Exhibit B, the

zoning map/location map provided by Staff; Exhibit C is the Fence Permit application which included a letter, a series of photos, and a site map that was provided by the Applicant; and then Exhibit D was the Applicant responses to criteria.

Acting Chairman Coburn asked if there were any conflicts of interest. There was none.

Acting Chairman Coburn asked if there were any questions; there were none.

Representative: Mr. Phillip McGinnis, Courtney Square Associates LLC, Owner

Mr. Phillip McGinnis was sworn in by City Solicitor Mr. Griffith.

Presentation

Mr. McGinnis thanked everyone for this opportunity. He asked if he should hand out an email supporting the Application.

Mr. Griffith asked to wait until each Board member receive a copy before proceeding. He also mentioned for the purposes of the record to identify this email as Exhibit E.

Mr. McGinnis stated that Courtney Square Shopping Center has been there at that location since the late 1960's or early 1970's. There are three families involved. The property has evolved at that particular neighborhood into what amounts to be a public park. We have installed surveillance cameras because I say up in the corner of the intersection has been a gathering place for years. We have called the police, I don't know how many times for the amount of people that just park there and deal drugs. We watch them on camera; nothing we can do. In the last year or so we have had people that just back into space and park there all day long. In fact, there was one group of people that would park there and run across the street to Owens Manor with buckets, fill the buckets with water, and come back to my parking lot and wash and detail their cars. I go over and ask if you will please use the parks. One woman said to me this is public parking. He mentions that this is my parking lot. She sticks her feet out over the sidewalk and looks at me as like, what are you going to do? Which, what can I do? So, ok, I'm not playing this game. So, I'm thinking all the time about what I can do to chase these people out of here. They aren't really customers; they go and buy a beer or something like that at the liquor store or a piece of pizza or something. All my tenants call me and say these people are discouraging customers from coming to the stores. Because they are there all day and into the night as well. So, he thought a fence might be a good idea to separate New Street because they park on New Street as well. You have a group on New Street and those that back into my parking spaces. He put up signs that say 30-minute parking, no trespassing and no loitering. It does not do any good at all. We keep calling the police. It almost feels like we need a hotline directly to the Police Department. And it just gets to be too much. So, I'm watching these people on their tailgate, and if the limit is 4 feet, then that is nothing but a footrest.

Seriously, they just stick their feet out over the fence. And 6 feet was another suggestion and all you do is park there and hand out whatever you are doing over top of the fence. The 8 feet fence is more (I think) conducive to solving this problem. It is chain link, you can see through it.

Photo presentation

Mr. McGinnis asked to start putting the pictures up, please.

So, here's a picture on the scale. You can see all the cars backed into the parking spaces and parked along New Street. In the very center of the picture, you can see the building.

So, this lady here, she's got some packages of food. She had just come off the sidewalk and she's now getting into her car to leave, so she's had lunch here.

On this slide we see the signs and the parking lot. You see how the signs are bent because they back into them and just keep backing. It's almost a game for them, I think, to see if they could tear up my signs. One of the signs is broken and you can't quite see the stump where the signpost was. I also want you to please notice the bags of garbage tied to the signs and just to the left of the utility pole you see the beer bottle sitting there.

Mr. McGinnis asked Dawn if this was the utility pole in question. Dawn replied she did not believe so, there is one that is in the parking lot pavement.

Mr. McGinnis said okay, these poles are light poles that we pay the City for the lighting, and it sticks out over the parking lot. We called up years ago. My father passed away in 2009; I started managing the property not long after that. We called the City because the lights were burned out and we were told that nobody's paying for the streetlights and so they're not replacing. So, we got on the list to pay because we don't mind paying. And I don't know, a couple of years later, I drive through and the lights had burned out. So, I've got drug dealers just on the nearer side of the picture hanging out there at night, in the dark. And I said, you know, how about where the lights are, can we change them out? I was informed again that no one is paying for the lights, but we got the bill every month. And so, I get it, you know, there's a disconnect there. The point being those utility poles are sticking out with the lights, which I think are probably 4 feet or so over top of the sidewalk. So, I'm pretty sure there's no restriction of access to those lights and the lamps, even with the fence.

Next slide, sort of the same thing just shows more cars backed in.

Here is a close-up picture of the garbage bags. So, it's obvious that they at least put the garbage bags up. You can see in the gutter the trash that accumulates there. If the bags are full, and I guess they are leaving it up to me to pay to remove their garbage bags as well.

Next slide is more cars parked along the street/parking lot. They are not tenants or customers. There are people in the cars. I tried to take a picture of someone and they yelled at me. So, I gave that up. I did not see a reason to have a fight.

This is a sequence of fences because I noted it in the Staff comments that a fence would be contrary to the neighborhood appearance.

Next slide is a backstop. He does not know how tall it is, but he bets it is more than 8 feet. That is south of the property. There's a block then there are two little office buildings, Spencer Bazaar, the prison and then the intersection.

Next slide is the electrical area across the street from the ball field. He does not know how tall the fence is but it's quite a fence. I understand you have to keep people out of there. It is still a tall fence. I thought about that fence, he is not sure what you call it, but you can just hand things through the fence. If I do that kind of fence, it would certainly would be more decorative, but not effective at all.

Next slide, we're moving north a little bit. There's the fence for the prison for Morris Correctional. That was taken just a couple days ago.

Next slide, fence on State property. There's a little office just to the north of my property. And if I can align myself properly as I took all these pictures. Oh, that is a State fence for the State property. There's a State parking lot there.

Next slide is a fence across the street. This is the fence that is taller than 4 feet. I'm not sure just how tall it is, but there is some type of storm water management next to the apartments. By the way, I am the president of the Dover Housing Authority. When I found out that the people were stealing water from our outdoor spickets to wash their cars in my parking lot, I had to get locks for the spickets. Dover Housing Authority Staff did get notice of this Application. They called and said that it was not a bad idea because we have so many people that just hang out in the front yard of the Owens Manor property. We are trying to keep tenants only. We have these people that congregate there and then they run into the door (inside of the building) because it's slow to close. So, we're looking at a fence request as well. Four feet probably isn't going to get it.

Next slide is Keen Gas in the next block north of us; this property is lined with barb wire. So, our fence is not contrary to the appearance of the neighborhood.

Next slide was taken on Saturday morning. He asked if they could please note the gutter, sidewalks, and the bags of garbage. There has got to be a solution somehow to move these people off of my property. He did not have a problem getting a survey or having the property surveyed. He intends to put the fence along the line of those signs. I've always thought that the edge of the paving is the edge of the right-of-way on the sidewalk. I don't care. I'll do whatever you like. Certainly, it is not going to keep people from congregating on New Street because there are fewer places to park; so it will be fewer people for the contribution of my fifteen parking spaces or whatever is there. We are not going to close off the entrances. It's just to keep people from congregating there and passing back and forth to New Street to hopefully discourage them from hanging out there all day. I've even thought about closing off those parking spaces all together. It creates a different question because now there really is no parking for customers. And I'm not sure what it does to my parking code for the zoning, but I'm getting to be gamed to try just about anything before I've totally lost the property. And so, with that, I saw the conditions. I can't remember all of them off the top of my head, but the survey was one of them. This is a chain-link fence; you can see through it. So, it's not a visual obstruction, it won't go all the way to the corner. It'll probably go about halfway to that first parking space. The cars themselves park there on the corner all day long are more of a visual obstruction at the intersection than a chain-link fence. Because as you are driving, you are driving at the same height as parked cars. So, if you are trying to see what is happening on the right (referring to the slide) as the cars are blocking the area all the way down to New Street from being able to see. There is no other view from that intersection from the other three points that would be blocked. So again, I don't remember what the suggestions were presented by Staff. I am easy to

get along with, and I am happy to comply as long as I can find a solution to this particular problem. And so, I'm happy to take any questions that anybody has.

Acting Chairman Coburn asked the Board if they had any questions.

Ms. Brinkley said you mentioned that you have 30-minute parking signs. Mr. McGinnis replied yes. She asked why 30 minutes? Why not have less time to go in and access the businesses?

Mr. McGinnis replied in front of the stores there is a row of signs that have 15-minute parking. Ms. Brinkley said okay. Mr. McGinnis said we put in 30-minute parking for no particular reason and to give people more time just in case they are going to more than one business such as the liquor store, convenience store, or get a pizza. Ms. Brinkley mentioned that there's no visible security/human security there that could say like it is all 15-minute parking. I don't know how that works necessarily. Mr. McGinnis said that it's a small strip center as was noted. The small strip center is about 12,800 square feet. There's a convenience store, hair salon, liquor store, Palacino Pizza, Great Wall, and the rehab facility.

Mr. McGinnis said frankly, there is not enough revenue generated from that shopping center to hire full-time security to sit there and shoo people away. I mean that's thousand or so a week and that's \$4000 a month. We can't make the mortgage payment based on that.

Ms. Brinkley said believe me, I'm empathetic about what's happening there. Mr. McGinnis said thank you. Ms. Brinkley said I'm a customer. I like those wings over there. Mr. McGinnis said so you know first-hand.

Ms. Brinkley said I'm thinking about that chain link fence. I know you showed some chain link fences. I did take a ride over there. I think one or two of them are temporary fences and they actually say that. The chain link fences are temporary, and to me all the chain link fences sort of look temporary. It's not aesthetically comparable to what exists with your steel or aluminum fences that are up and around like those four-foot fences around the bank.

Mr. McGinnis mentioned that the construction sites have temporary fences and he purposefully did not show those because they are temporary. But the back stop at the ball field and the fence at Keen Gas are not temporary, they are permanent.

Ms. Brinkley mentioned that she does believe that. The chain link fence itself, and that's what you're proposing, takes away from the character of that neighborhood and it is a neighborhood. It would take away from that may be by just considering the steel or aluminum fences with brick. It all fits into the aesthetics of what's over at that prison area and what's in front or around the bank. And I know an 8-foot fence, which I did not see in your proposal, could not go totally around the entire perimeter where you want to put it. So, it would have to be along the curb. Mr. McGinnis replied on New Street.

Mr. McGinnis said as mentioned earlier, the aesthetic fences have about a 4-inch spread or 6-inch spread between the posts, and so we're not doing anything. They're just handing beer, liquor, drugs, whatever it is, right through it.

Ms. Brinkley asked, are there fences like that, that have smaller spaces between them? Mr. McGinnis replied I don't know the answer to that. I met the fence guy out there. I had a pre-application meeting. We didn't talk about different fences. We were sensitive to the fact that we don't want to block the vision. So, if you think the spindles on this thing are pretty much what we're talking about. And so, if I shorten it, then I create a vision block. With the chain link, you've got a small gauge wire, and you can easily see through that. So, you block and you stop people from passing things back and forth and you can still see through it. I certainly don't mind investigating, but I think any thinner space is going to create what we don't want to block the intersection.

Ms. Brinkley said, I understand where you are. With the chain link fence, were you considering a black chain link fence that would fit in and would be more pleasing and aesthetic to that area? Mr. McGinnis replied, I do not mind getting a coated fence. Ms. Brinkley said something that would be more fitting with that area. Mr. McGinnis, yes, I do not mind looking into a coated fence at all. Thank you very much.

Mr. Senato asked Mrs. Melson-Williams for information. One of the pictures that he looked at with the two garbage bags and the posts and the cars. What I need, just for verification in my mind, is you said there was a 15-foot setback. Now, would that setback be from the street where the poles and the garbage was sitting back from there into the parking lot? Could you clarify, please?

Mrs. Melson-Williams replied that Mr. Senato's question is about a 15-foot setback. That 15-foot setback is what we call the front yard setback on the property. It begins at the property line, which we're not quite sure where exactly that is, but if for discussion purposes it's that transition point between the concrete of the sidewalk and the pavement on the property. If you look at that as that front property line, then you would have to move 15 feet into the site; so, 15 feet towards the building. Once you are past that 15 feet, our code would allow the placement of an 8-foot fence. What that does on the property is, that fence, if you placed it at that 15-foot setback, it would be running through the middle of all of those parking spaces that face New Street.

Mr. Senato said okay right thank you.

Mr. McGinnis added if you put the 15-foot setback in place, then you do create a gathering place. Now it's on the other side of the fence, but now you have created a gathering place that we're hoping to avoid.

Mr. Senato said right. Several of the pictures that you took, or you also explained, will be in I believe the immediate area. When you're talking about the ballpark, south of Spencer's that's roughly more than 200 feet. So, you went to a wide variety of different types of fences.

Mr. Senato asked for clarification about the statement from Mr. McGinnis "you keep saying passing items through the fence and all." Would this type of chain link fence prevent any form of passing through? There seems to be a problem, one of several problems that you're mentioning of passing items through a fence, would this eliminate that problem?

Mr. McGinnis said in my opinion sir, it will eliminate everything except the little bags of dope. Because the little bags of dope can pass right through. It's like a 2 inch sort of an inch and a half diamond bag and we are finding pipes and syringes and little baggies and stuff like that in the gutter. So, it will stop them from passing beer bottles, liquor bottles and I guess the more legal devices. But in terms of dope dealing, then we're hoping that we will discourage people from hanging out there, which will cut down on that activity, but it remains to be seen.

Mr. Senato mentioned you will also have with this fence egress and regress regarding your customers and the couple of the tenants you say you have. So, with that fence up and with the two or three egresses where vehicles can drive in what would this fence do without gates? I'm not saying you need gates but you would still have a problem in my mind, I think because you still have two or three entryways. I know you have two entryways for customers into the parking lot.

Mr. McGinnis, responded thank you. You can see in the picture here that there are three access points on New Street and one on Water Street. We have designed the fences to be in three segments so as not to block access. We're not trying to keep people from getting into the shopping center. We need people to get into the shopping center. What we need is to stop the gathering as a park. There will be openings and a section of a fence.

Basically, it's from the edge of the parking space to the next edge of the parking space before the dip in the curb for the curb cut, and then we'll pick it up again on the other side of the first curb cut and run to the second, and then on the other side of the second to the third. Then after that it is the other guy's property where there is a fence.

Mr. Senato said that there are a few things in his mind regarding this variance whether it's approved or not. This Board has to deal with Exceptional Practical Difficulty of the area. The situation you're having, which is theoretically and if I can be corrected, is you have a major problem and I'm not sure you know if the fence is the thing to do for the elimination.

I know in the Report you mentioned a 4-foot fence. I can't be convinced that this fence would stop, and well it wouldn't stop the small items maybe up to an inch or an inch in a half, but it wouldn't because it would stop anything else. That's a problem regarding garbage and the like on the sidewalk, but still the parking would be there. If the fence is added, you're 15 feet in. It's a little bit of a difficult situation here. At this point, I'm not really it's proven that this is going to eliminate all the problem, which is basically probably not the Board of Adjustment's position. I mean, in my mind that this is further out of character for the Board's (realm) based on vandalism and everything else you are having. Thank you very much.

Mr. McGinnis said I am not sure if it's going to solve the problem either, but it's the best solution that we have at the moment. I cannot afford to hire a full-time security guard, and I cannot sit there all day. So, we're at the point where we have to try something and anything that cuts down on what's going on at that intersection now has got to help the City in general. This is only one point in the City that has problems. I have asked the police. I don't know how many times. It dates back to Hutch.

You know the police station is right around the corner, and so if they would drive through the parking lot on their way out to patrol and drive back through the parking lot on their way back to the police station. I never thought it was such a big burden to show a police presence, but right now the only police presence in that neighborhood is when you call them. And with the email that I gave you from Rajdeep Kaur who owns the liquor store and the convenience store, she has called the police just about every single day. She calls me to say I have got to call the police.

And I say, “yes” you have to call the police. You're there. You're watching it. I've been over there watching it. I watched the drug deals. So, at this point, the best option is here with a taller fence that I think sends a message. Will it solve the problem? I don't know. I just don't know. If there's a toolbox, this could be one tool in the toolbox that moves us all a little bit forward. And I think there was a question about how wide the market area is or the neighborhood is. We mail notices to property owners within 200 feet of the adjoining property. The neighborhood is much broader than that. The Courtney Square neighborhood is Governors Avenue down to probably Wyoming Avenue and up to Division Street and out to the railroad tracks. So, it's not like the neighborhood is constricted to properties within 200 feet of this property.

Mr. Wagner said before I ask Mr. McGinnis whether he agrees with the four conditions that the City has proposed, I think we'd better clarify this fence. In other words, one of the conditions is such as a black aluminum fence. I think Mr. McGinnis has agreed to put up a color or coated fence. That is a problem in the way that it is stated. What agreement do we have on the fence? Is it ok if he puts up a fence that's coated and colored? But I think that particular phrase needs clarification.

Mrs. Melson-Williams said so what Mr. Wagner is referring to is on page seven of the Report. The Planning Staff, in reviewing this Application, made suggestions of some conditions that you could consider if you were looking to grant some form of approval to the variance. These are certainly not the only options if you were looking to do something along those lines. But at this point, I would also note that you do need to conduct a public hearing. And it's entirely up to the Board on a decision “yes or no” on the variance or yes, with the following conditions and then you can identify what those conditions might be. So, that's my initial response there from a procedural standpoint.

Mr. Wagner asked, “what do we do?” If Mr. McGinnis proposes a chain-link fence that is coated in color. What does the rest of the Board think about that? That's a wide-open statement there and compliance could be difficult. I only present for the Committee that we should clarify and ask if it is acceptable that Mr. McGinnis put a chain-link color coated fence.

Acting Chair Coburn mentioned that it would be up to the Board to decide whether they want to approve that or not. But we still have to have the open public hearing first.

Ms. Brinkley mentioned okay, because I agree with Mr. Wagner too.

Acting Chairman Coburn asked if there were any other questions for Staff or Mr. McGinnis.

Mr. Wagner asked Mr. McGinnis if he agreed with the four conditions as they are outlined. Mr. McGinnis replied yes, if he could recite them. We've agreed to the coated fence and a survey. What are the other ones?

Mrs. Melson-Williams stated that the items that were identified as potential conditions if the Board was inclined to approve the variance are noted on page seven. The ones that Staff offered would be property surveys so that we know what's your property and that the fence would be specifically located on it. That the fence be required to begin a minimum of 20 feet from that, right-of-way at the intersection; and that's to address the corner visibility requirements and it'll also start past that last utility pole. So, that was the second suggested condition. The third focuses on the style of fence that would be more visually appealing. Staff have suggested a black aluminum fence, and you could also limit the height of the fence. So, the third condition is more about specifics for a fence. And the fourth one is that it could not impede the street frontage sidewalk. So, those were the four suggested conditions. As noted, you can certainly amend those or use those as a starting point for creating potential conditions for your action today.

Ms. Brinkley said I have a suggestion.

Mr. McGinnis said I think on the 20 feet in from the intersection, if I could taper something down because that leaves two parking spaces there, which I foresee problems with. And for the impeding of the sidewalk as I mentioned, we are not going to cover up the entrances. And so, a fence is designed to impede access. So, if the question is, can people get around the fence to the sidewalk at the automobile entrance that would certainly occur, otherwise I don't know what it means. We have conceded the coated fence and survey.

Ms. Brinkley commented that the coated fence be black so it would fit more in with the black fences in that area. Mr. McGinnis said if he can get black, he will get it. I'm not in the fence business, which I guess could go two ways too, right? I don't trade stolen property. I don't know if green is the limit for coating or if black is an option. But I hear what you're saying, and I will get black if I can. If I can't, I will notify you and explain.

Ms. Brinkley mentioned that she was thinking about the aesthetics of the entire area. All those fences are black. It's about getting as close and making it as more cohesive as possible with the entire area. Mr. McGinnis said he promised to get as close to black as he could get.

Mr. Swalm asked if the Board could make that a condition?

Acting Chairman Coburn stated when you make the motion you can make that a condition.

Acting Chairman Coburn asked the Board if they had any additional questions.

Mr. Senato mentioned that he was listening to what his colleagues were saying and I'm listening to Mr. McGinnis; and this is sort of an unusual case. First of all with the 15-foot setback, it is going to be putting that fence inside of that parking lot further towards the store and possibly a car length, number one. Number two, it's not going to entirely eliminate if at all, some or most of the problems that Mr. McGinnis is having. This is just my personal opinion. And secondly, we don't want to set a precedent here in this respect. I understand where my colleagues are going and they have some excellent thoughts and questions. I'm not in objection to that as an individual. But what I am thinking is we are dealing with if a Code variance is ok because he wants to put up an 8-foot fence instead of a 4-foot fence. But what bothers me the most is 95 % of the discussion is dealing with trash, crime, illegal parking, and the Police Department, etc. Which in

my mind, according to looking at Title 9, this is really not a responsibility that the Board should set a precedence for. Because if you set something up like this and approve, then who's to say that other areas within that locale that are probably having the same kind of problems to some extent. It may be a little different for the area. And then all of a sudden, we are coming up with these kind of situations. I don't see where there's an exceptional or a high Exceptional Practical Difficulty here. There is as far as Mr. McGinnis' situation with vandalism, the public, or whatever. And in my opinion, and over the years the Board has never dealt with that, and I think a precedent is going to be set. I'm not trying to convince anybody. This is just my personal thought, and I can be 100% wrong. So, we have to consider where we're going with this and what the future is going to bring if all of it is passed. I'm not saying there could be some concessions with it you know. You are allowed a 4-foot fence and, you know, different things like that Mrs. Melson-Williams graciously explained to us. So, I just in my mind I'm being very cautious. With that being said, I will stop it.

Mr. Swalm mentioned that these are just my thoughts on it as well. I agree with the first part about it kind of. The precedent thing where I know you said, you're not the only property owner that has talked about this and dealt with this. My concern might be, you know, if they see an 8-foot chain link fence around yours and then they say, he got one, let me go and try to get one. I also think, you know, like he was saying, we're talking a lot about things that aren't necessarily a Board issue and more so maybe a crime issue, that's not, like I said, dealt with by the Board of Adjustment. We don't and we can't really, I guess handle that. And then it is not an Exceptional Practical Difficulty. I just don't see it as being that and the reason I don't personally, is I just don't see the businesses there being affected enough by it. Maybe if you could show a revenue drop over a period of time because of this behavior. Or if maybe your tenants were leaving and maybe not leasing the spaces and you had some vacancies, and so you were having a revenue drop, you know, because of that. But I don't think you are seeing that right now. Correct me if I am wrong, but are all your shops leased currently? Mr. McGinnis replied all of his shops are leased. We have very low rents.

Mr. Swalm asked what the product of the rent was. Mr. McGinnis replied the product of the tenants ability to conduct business. I don't have the tenant's revenue report. I don't care, but I can sense when the rent is coming at the tenth of the month and not the first.

Mr. McGinnis asked Mrs. Duca to go back to the Presentation.

Mr. Swalm stated that his point being is he just does not see it being an Exceptional Practical Difficulty. And if you could show me that, I would be empathetic and I understand.

Mr. McGinnis asked Mr. Swalm if he saw the email from the tenant. Mr. Swalm replied, I did, but I'm surprised that only one tenant sent an email and not more than one. So, why is there only one tenant and not the others? Mr. McGinnis replied that I reached out to just the one because she's the one that complains the most. That's the only reason. I get the point that you are not in charge of crime. I'm standing here to say to you, who is in charge of crime? Who is in charge of allowing that to occur in the streets of the City of Dover? And I know it's not you, but it certainly isn't me. And I'm being vandalized. As I said, I don't know if the fence is actually going to solve the problem, but I'm going to take a shot and do something. You can't do nothing. If you are

going to tell me how it cannot be done, there's no solution coming. That is ridiculous. You mention that you go to the shopping center, but I don't know whether you feel safe going there or not. But I get calls from tenants that say we can't get people to come to the shopping center because of the people that are gathered outside in the parking lot. If the tenants are identifying the fact that they are losing customers, then they are losing revenue.

Mr. Swalm mentioned that I look at more of the practical results of it. And so, if they were losing customers, I would assume they would be out of business, right? Or, if it was that detrimental.

Mr. McGinnis said I'm sorry. I missed the point of that. You mean all of the tenants have to go out of business before you recognize there is a problem; that's a stretch sir.

Mr. Swalm said no, that's an assumption you just made based on what I said.

Mr. Wagner said what we are trying to determine is whether an 8-foot chain-link coated fence is applicable to City Code. I cannot address the problems that he is having.

Mr. Senato mentioned that he agreed with his colleague Mr. Wagner and in one sense, it dragged on longer than it should have. I think we have to deal strictly with the Code that Title 9 gives us. Again, we don't want to set a precedent here. That's just the point of information. Thank you.

Mr. McGinnis said thank you all very much.

Acting Chairman Coburn opened the public hearing.

Mrs. Melson-Williams stated that seeing that there's no one in the room, I'm going to start with the email that was provided to us to enter that into the record.

This is an email dated Monday, February 16, 2026 to the Applicant Mr. Phillip McGinnis from Rajdeep Kaur and it reads as follows. "I own two stores at Courtney Square Shopping Center, and our businesses are damaged by the number of people who park in our parking lot all day and just hang around. These people do little or no shopping with our tenants, but they take up parking spaces, and they gather in a manner which scares customers away. They set up lawn chairs as if they are in a park. In fact, they we're using the water spigots of the apartments across the street and wash their cars. They leave trash everywhere in the parking lot, and the gutter, and they tie up big garbage bags on the signs that say 30-minute parking, which they ignore. We are in favor of any activity which discourages this gathering of people." Thank you in advance, Rajdeep Kaur.

There are individuals that have joined us online.

Francine with the Credit Union, do you wish to make a comment as part of the public hearing on this variance request?

Francine Wilson at 401 South New Street, Dover, Delaware of Provident Federal Credit Union stated she agreed with Mr. McGinnis that something needs to be done.

Mrs. Melson-Williams asked do you have any additional comments?

Ms. Wilson said no, just that I agree with everything, he stated that you know, there are issues in this area. And if the fence is going to help deter some of the loitering, I would definitely be for it. As the Board may know, I did have to have a fence installed on our property for the same exact reasons. And it did really deter the loitering. That's all I have for the Board.

Mr. John Kelly at 22 North Prestwick Court in Dover, Delaware. I own 406 and 410 South Governors Avenue, which backs up to the Provident Federal Credit Union. I also until recently owned 319 West Water Street, which is right around the corner from the properties. Unfortunately, the pictures that Mr. McGinnis showed, do not give the gravity of the situation. In the spring, anytime the temperature is above 60 degrees, the amount of people that are out congregating in that area, numbers from 50 to 75 people. The property that I owned on Water Street is accessed by a fire lane that goes along Owens Manor Apartments. I have several pictures of people urinating and defecating as they walk up from drinking all day and then they go back behind the property that I owned and use the bushes back there, the trees back there to do their business. I can't believe that people actually go to the shopping center because there's no place to park. The fence is not trying to keep people from going back and forth. The fence is to try to keep people from congregating there. I mean, they just park and back their cars up towards New Street, pop open their hoods or their trunks and their decklids or whatever and they party. They pull out their card tables, play cards, drink, it's the park. I am surprised that something hasn't been done like this before. Something needs to be done. Thank you.

Mrs. Melson-Williams seeing that there are no other members in the room. There was no additional written correspondence that Planning Staff received prior to this meeting regarding this Application.

Acting Chairman Coburn closed the public hearing.

Acting Chairman Coburn asked if there were any additional questions from the Board?

Mr. Swalm questioned would the Board and Mr. McGinnis be open to a shorter fence? Because I am empathetic towards the situation as a business owner.

Mr. McGinnis mentioned that the question of a 4-foot fence mentioned very early becomes nothing but a footrest for the tailgating people that sit on the back of their SUV and Mini Vans. The 6-foot fence is not going to discourage people from passing things back and forth over top. And so, 8 feet became unreachable. Shorter takes me back to a solution that doesn't exist.

And as far as I know, the fence is in 2-foot heights. So, it's 4 feet, 6 feet, 8 feet, 10 feet, 12 feet, and I don't know, if I would go to 7 feet, but I think anything less than 7-feet doesn't work. I don't know if I could get 7-feet. Mr. Chair, are you aware of the fence heights. Acting Chairman Coburn stated that he was not aware of the fence heights.

Mr. McGinnis mentioned I could ask for 7 feet instead of 8 feet if that helps you any. But I don't know if I can get 7 feet; so, I can't agree to do 7 feet if I can't get it. But I can ask just like the

coating, I can't guarantee I can get black coating. I can merely promise you that I will do my level best to accommodate that.

Mr. Swalm mentioned I want to help solve the issue. I think it is an issue. I just want to help solve it, but I don't think this is the best way.

Mr. Senato made a motion to deny Variance Application V-26-02 for a fence height in the front yard. With all the testimony back and forth, considering this 8-foot fence would most definitely be out of character within the surrounding area. It would have a negative and visual impact along the storefront due to the 15-foot setback and the type of fence. And according to the pictures and information submitted it could obstruct access to the utility pole. The motion was seconded by Mr. Swalm.

Mrs. Melson-Williams asked if Staff can clarify. It is a motion to deny the Variance request to allow an 8-foot fence. In this case, a vote of yes would be you agree to deny the variance?

Ms. Brinkley asked for clarification. I'm so sorry. The vote "yes" is to deny the variance. Acting Chairman Coburn and Mrs. Melson-Williams replied yes (meaning correct).

Roll Call Vote

- Mr. Wagner – No, because I think the variance would be justified based on Mr. McGinnis' agreements. And the coated 8-foot fence (colored) is applicable. I think Ms. Brinkley is a customer of that shopping center, has a good idea of what's necessary and what isn't.
- Mr. Swalm - Yes, to deny. My reasons are, I don't think it fits the nature of the zone as a shopping center. I think a lot of the fences that we talked about were around gas facilities, correctional facilities, and places like that. Also for the character of the immediate vicinity and the contained uses, I don't think there's anything even close to that height near there. And whether the restriction upon the applicant's property was removed or would it seriously affect neighboring properties and uses. Not necessarily, but I do believe that 8 feet is too tall, and I don't believe that the chain link looks great for the area. And for whether the restriction is not removed the restriction would create unnecessary hardship. Like I said before, I don't believe there is an Exceptional Practical Difficulty here, and I don't think us not approving the Application would create an Exceptional Practical Difficulty for Mr. McGinnis.
- Ms. Brinkley - I'm voting no. I would like to approve this Variance with the exceptions that it is a coated fence. I agree with the 8-foot height. I disagree with the proposal to deny because we could include these recommendations by the Staff, but I would want to include those recommendations by the Staff. I believe it would meet by including these other recommendations by the Staff that would serve to meet the character of the immediate facility. It would fit in as long as that fencing was black and it was 8 feet. I agree with Mr. McGinnis on that.
- Mr. Senato - Yes, I vote for denial, I stated that my reasons in the motion.

- Acting Chairman Coburn – Yes, I vote to deny the Variance V-26-02. It does not result in undue hardship or Exceptional Practical Difficulty for the Applicant. I believe this is more of a police matter than it is a zoning or a Board matter.

There are three members in favor of the motion to deny and two members against the motion. Vote 3-2. With that vote, the Variance is denied.

Mr. McGinnis asked about the process to Appeal the decision.

City Solicitor Griffith stated that the Appeal to the Board of Adjustment is through the Superior Court in Kent County.

Public Comments Opportunity

Acting Chairman Coburn opened the meeting to the public giving an opportunity to make comments to the Board. He asked if there was anyone who wished to speak?

Mrs. Melson-Williams stated that there were no additional members in the room. I will note that we still have at least one attendee that has joined us virtually.

Mrs. Wilson stated she had no further comment. As stated previously, we are in disagreement with the decision that's been made.

Mrs. Melson-Williams said thank you for participating today. Mr. Chair, I see no other members of the public that are here to speak as part of a general public comment opportunity before the Board.

Mr. Wagner made a motion to adjourn the meeting. It was seconded by Mr. Swalm and unanimously carried 5-0.

The meeting was adjourned at 10:33 A.M.

Sincerely,
Maretta Savage-Purnell