



**CITY OF DOVER, DELAWARE
BOARD OF ADJUSTMENT MEETING
Wednesday, March 18, 2026 at 9:00 AM**

City Hall Council Chambers, 15 Lookerman Plaza, Dover, Delaware

AGENDA

IN-PERSON & VIRTUAL MEETING

This Board of Adjustment Meeting for March 18, 2026 will be held in City Hall, City Council Chambers. The public is welcome to attend in person. The Meeting will also be provided as a Virtual Meeting using Webex, an audio/video conferencing system as an electronic means of communication. See participation information below to join by phone or computer.

PUBLIC PARTICIPATION INFORMATION

To Attend City of Dover Board of Adjustment Meeting of March 18, 2026

Join by Phone: Dial +1-650-479-3208

Access Code: 253 870 72252

Password from Phones: 36837262

Join Online: <https://bit.ly/BOA03182026>

Webinar Number: 2538 707 2252

Webinar Password: DoverBOA

If you are new to WebEx, get the app now at <https://www.webex.com/> to be ready when the meeting starts. For problems accessing the meeting, please call the Planning Office at (302) 736-7196.

Written comments are accepted via mail to City of Dover – Board of Adjustment,
P.O. Box 475 Dover, DE 19903 and via email at CompPlan@dover.de.us.

WELCOME

ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES

1. Adoption of Minutes of December 17, 2025
2. Adoption of Minutes of February 18, 2026

COMMUNICATIONS & REPORTS

Meeting Reminder: The next Board of Adjustment Meeting date is Wednesday, April 15, 2026 at 9:00 AM.

OLD BUSINESS

3. Continued Discussion of Draft Rules of Procedure for Board of Adjustment

NEW BUSINESS

PUBLIC COMMENTS OPPORTUNITY

ADJOURN

Posted Agenda: March 10, 2026

THE AGENDA ITEMS AS LISTED MAY NOT BE CONSIDERED IN SEQUENCE. PURSUANT TO 29 DEL. C. §10004(e)(2), THIS AGENDA IS SUBJECT TO CHANGE TO INCLUDE THE ADDITION OR THE DELETION OF ITEMS, INCLUDING EXECUTIVE SESSIONS, WHICH ARISE AT THE TIME OF THE MEETING

**CITY OF DOVER
BOARD OF ADJUSTMENT MINUTES
December 17, 2025**

A Regular/Hybrid Meeting of the City of Dover Board of Adjustment was held on Wednesday, December 17, 2025, at 9:05 A.M. in person in the City Council Chambers and using the phone/videoconferencing system Webex. Members present were Mr. Swalm, Mr. Coburn, Ms. Brinkley, Mr. Wagner and Mr. Senato.

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

APPROVAL OF AGENDA

Mr. Coburn moved for approval of the agenda. The motion was seconded by Mr. Wagner and unanimously carried 5-0.

APPROVAL OF THE TRAINING SESSION MEETING MINUTES OF SEPTEMBER 17, 2025

Mr. Coburn moved for approval of the training session meeting minutes of September 17, 2025. The motion was seconded by Mr. Swalm and unanimously carried 5-0.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF OCTOBER 15, 2025

Ms. Brinkley moved for approval of the meeting minutes of October 15, 2025. The motion was seconded by Mr. Coburn and unanimously carried 5-0.

Vice Chairman Senato mentioned that the next Board of Adjustment Meeting is Wednesday, January 21, 2026, at 09:00A.M.

Vice Chairman Senato asked if there were any questions; there were none.

Mrs. Melson-Williams mentioned that we do have one application that has been filed at this point, so that will be scheduled for your January meeting. Vice Chairman, thank you very much for that notification.

Schedule of Deadlines

2026 Schedule of Deadlines and Meetings for Board of Adjustment-DRAFT

Mrs. Melson-Williams mentioned that included in your packet was the Schedule of Deadlines and Meeting Dates for calendar year 2026. It establishes a basically, second Friday for the filing deadline and then the meetings continue to be on the third Wednesday of each month. A filing deadline one month and then the meeting the subsequent month. So, these are the dates for 2026. If there's no questions about any of them, we will go ahead and finalize that and utilize that for discussions with applicants about submissions.

Vice Chairman asked if there were any questions regarding the Schedule of Deadlines.

Mr. Coburn made a motion to approve the Schedule of Deadlines and Meetings. The motion was seconded by Mr. Swalm and unanimously carried 5-0

COMMUNICATIONS & REPORTS

Mrs. Melson-Williams mentioned that I don't believe we have any other items for you.

ELECTION OF OFFICERS (Chair and Vice Chair)

Mrs. Melson-Williams stated that the Board of Adjustment has the opportunity to elect a Chair and we have done the common practice of also electing a Vice Chair for this Board. The *Delaware Code* outlines in Chapter 22 the makeup of the Board of Adjustment, how the appointment process works and opportunities for election or replacement of a Chair for the Board. So, today you have an opportunity to elect a Chair and a Vice Chair. I would note that the secretary position is typically filled by a member of City Staff that is part of the Department of Planning and Inspections.

So today, Mr. Vice Chair Senato, if there are no questions about the election process in general, it works by making motions and voting. You can certainly move forward with a nomination process for a position of Chair and Vice Chair.

Mr. Swalm made a motion to nominate Mr. Senato as the Chair to the Board; the motion was seconded by Mr. Coburn and unanimously carried 5-0.

Mr. Senato (elected Chair) mentioned that he wanted to thank the Board very much for their confidence that the important committee have stowed upon him. I'm looking forward to working with the City Solicitor, Staff and the members of the Board as Chairman. I feel honored and I thank you very much.

Ms. Brinkley made a motion to elect Mr. Coburn as the Vice Chair to the Board; the motion was seconded by Mr. Swalm and unanimously carried 5-0.

Elected Chair Senato said congratulations to Mr. Coburn. I look forward to working with you. I appreciate you very much. And I thank the Board members for the confidence that they have and for making their motions.

Mr. Coburn (elected Vice Chair) said thank you.

OLD BUSINESS

Continued Discussion of Draft Rules of Procedure for Board of Adjustment.

Mrs. Melson-Williams mentioned included in your package just so you would have as reference, we included from the *Dover Code of Ordinances*, Appendix B, which is the *Zoning Ordinance*. Article 9, which is entitled Board of Adjustment. So, there is some information there about powers and duties and your general procedures. So, that's a reference document to assist in your discussions today. Also included is from *Delaware Code* in Title 22 which deals with Municipalities, Sub Chapter 2, Board of Adjustment, and then there is information there. Again, talking about some of their roles and regulations that are established at the State level related to the Board of Adjustment.

The key item that we are going to move through today for discussion was the Draft Rules of Procedure document. We first got a glance at this back at your September training session. This was prepared by our City Solicitor, and we really didn't make any substantive changes at that initial meeting noting that we really needed to delve into it and take a closer look at it. The only thing I would note from that meeting is that previously there was some discussion of eliminating or altering the language of Item 6.5, which dealt with the number of votes needed for an action to be deemed approved or disapproved. I believe for that the provision there was to go ahead and just delete that entire section, which means we may also have to look at 6.6. So, Staff has quickly been through this. There are some things that I will just note in general. We need to make sure that we're referring to Title 22 where we would find the municipal version of this. Additionally, I would recommend that the document be gender neutral. So, references to Chairman of the Board, would just be referenced as Chair throughout the document.

There are probably some other things that we can certainly discuss of what's been your common practice. For the City of Dover Board of Adjustment, you have the authority for our local regulations here: area variances, use variances, and appeals of a particular type. There are no provisions for special exemptions. There are some responsibilities in the City's Zoning Ordinance related to non-conforming uses that give some tasks to the Board of Adjustment; so, we may need to capture some of that as well. That's what I have as an introduction. I don't know if the Solicitor wants to kind of try to walk you through this or has any other general comments on his behalf. Today, I think we will probably just go page by page and if there's questions or concerns to note them. I don't believe we would be in a position to formally totally adopt these today. I think that would be warranted at a future meeting once we've continued our due diligence in prepping the document.

City Solicitor thanked Mrs. Melson-Williams. I further endorse your comments to this point and I really appreciate you including in the packet materials both the *Delaware Code* and the provisions that apply and the provision of *Dover (Code of) Ordinances*. As the members of the Board might recall, the initial draft of this was just borrowed from the Sussex County Board of Adjustment and conformed just by changing the language to City of Dover Board of Adjustment. We anticipated when it was initially drafted that this Board would go through it and make your own decisions about how you would like meetings to be run. The power and authority you have is based upon the Dover Municipal Code and the Delaware State Code. So, one of the reasons why I am grateful for Mrs. Melson-Williams including those provisions today is because it certainly outlines a more thorough look through the Draft Rules of Procedure. There are a couple of provisions that I think are in a little bit of conflict with Delaware State or City of Dover provisions and we have to adjust those. I'll call our attention to those as we go through them. I would invite all of you to make your comments as well. Because of Mrs. Melson-Williams special expertise in these areas, I agree with the idea of kind of walking through these. I'm happy to provide my comments as we go in terms of how I anticipate these provisions applying in terms of the day-to-day conduct of the meetings. So, with that, I would open it up to any comments, and if nobody has any comments we can start walking through the Rules of Procedure.

Mr. Coburn asked, are these rules and procedures going to be notified or are they going to be placed in the city code where they have to go through Council for approval? Or these just internal rules or procedures for the Board?

City Solicitor, replied I don't anticipate these becoming Ordinances. I don't anticipate City Council voting on these. City Council will not have to vote and adopt these. These would just be our internal rules of procedure.

Mr. Coburn, Thank you. That makes much more sense.

City Solicitor asked if everyone has the Draft Rules of Procedures? Everyone had a copy of the Draft.

City Solicitor mentioned that he did not think there are any controversial or unclear definitions. The definition of "public business" and providing office for most of these are fairly basic and consistent with Dover Ordinances. Does anybody have any questions or comments concerning the definitions? A in terms of whether they are any of them are unclear or B whether there are any additional terms we need to define.

Chairman Senato: I was just wondering if we are going to go to each one, which probably might be a good idea because I'm sure some of the more members might have questions or concerns, because I will.

City Solicitor: My inclination was to at least address each one and explain what it means and then ask if there's any comments or proposed amendments. So, if there are no comments or proposed amendments on the definitions, we can go to the first rule.

Mrs. Melson-Williams: Should we include definitions of variance and appeal in this since you use those terms throughout it or should that preamble opening make some reference to the City's *Zoning Ordinance* and that would take care of it. I'm on the very on the first page where the definitions are. Because the terms, I think "variance" and "appeal" are used throughout the rest of this document. They are more clearly identified in the Code that's adopted, but there is no reference to the Code itself. Perhaps in that Rules of Procedure kind of preamble that's there, there will be some reference made to the *City Zoning Ordinance* and also to *Delaware Code*, if that's reasonable.

Chairman Senato: Okay, I want to get to the first page you're dealing with.

Mrs. Melson-Williams: I'm on the very first page of the document where there is an opening statement and then it goes into definitions. So, the question I have is do we need to add the definition of the term "variance" and the term "appeal"? If not, then there probably should be some reference to the *Delaware Code* and the *Zoning Ordinance* related to the Board of Adjustment.

City Solicitor: My comment on that would be I don't want to be duplicative of anything that's already in the *Delaware Code* or the Dover Municipal Code. I look at Section 2 of Article 9 of the Dover Municipal Code and area variance appears to be defined, use variance appears to be defined, but the actual terms "variance" or "appeal" are not defined either in the Municipal Code or in *Delaware Code*. So, I'd be ok with defining the terms of variance and appeal in this section but obviously you know it's up to the Board.

Chairman Senato: Any comments from the Board?

Ms. Brinkley: I agree that we should be fine with the variances and appeals.

City Solicitor: I don't think we need to vote on each individual proposed amendment as we go. I think so long as there's no objection then maybe at the end, we can vote on whether the amendments that which nobody had any objection be adopted.

Mr. Wagner: Where are we?

City Solicitor: We are in the definition section on page one. I'm looking under the Rules of Procedures for the Board of Adjustment. On the first page should be the heading "Definitions." Mrs. Melson-Williams related the concept of making designations gender neutral. We do have the term Chairman. I think the term Chairman is used in the Code and in both the Municipal Code and in the State Code, but it is. I think that's true; I'm not positive. But if the Board wants to consider changing the term Chairman to Chairperson, that maybe something you want to consider, but that's again up to the Board.

Chairman Senato: Well, politically correct.

Mr. Coburn: Yes, reading the Title 22, subchapter II- to Board of Adjustment Section 323 Rules; meetings; and administration on this, it does say Chairperson in that section. So, I think we should just be neutral. Ms. Brinkley agreed.

City Solicitor: Thank you. Any, any other ideas, comments, proposed amendments on definitions? Okay, we can proceed down to the next page which is:

Rule 1 - Duties

We know from what we just talked about that the term "Chairman" throughout the Rules will be changed to a "Chairperson." So, Rule 1.1 will be amended to that extent. Otherwise, it seems relatively non-controversial as it just outlines what the chairperson's role is. Any comments on Rule 1.1?

Rule 1.2 - Outlines the role of the Department of Planning and Inspections again might need to defer to Mrs. Melson-Williams here because I really did just change the Sussex County Board of Adjustment language to the City of Dover. I'm not sure if this provision outlines what the Department actually does and whether you think this might need some fixing?

Mrs. Melson-Williams: In regard to item 1.2 and the actions of the Department of Planning and Inspections, I think that in general it is there. I probably do want to double check on the keeping of records to see if there are any provisions, because I think the official keeper of the records is the City Clerk for the City. They have abilities to delegate; so I want to make sure we are ok with terminology. That would be my only thought.

City Solicitor: Okay, so we could delete the end of it, which says keep records of each such examination of other official action of the Board. You could just delete that portion of it. And just

keep them performing all duties required by law and these Rules of Procedure. Does that sound ok?

Mrs. Melson-Williams: We probably want to note because we do actually have the Office of the Board of Adjustment, which is the filing drawer too. And records can also be kept electronically. I'd want to touch base with them (City Clerk), I think regarding the statement about keeping records.

City Solicitor: Okay. Any other comments on section 1.2? There was none.

Good hearing none we'll move on to section 1.3, which I believe is consistent with the way we're operated, which is that the chairman is not available, then the Vice Chair. If the Chairperson's unavailable, the Vice Chairperson will preside over the meeting. If both the Chairperson and the Vice Chairperson are unavailable that leaves three members of the Board. The Board would elect one of the three. You'd have a quorum; you can elect one of the three to serve as the presenting officer. I think that's consistent with the way you practice. Any comments on 1.3? There was none.

Rule 2 -Order of Business; Conduct of Meetings

2.1

City Solicitor: This is just an outline of the agenda, and there's a couple things here that I think we spoke about before about changing. Again, this was taken from Sussex County, I don't think we do a Pledge of Allegiance so that it can be taken out. What I think we should include is public comment. The Freedom of Information Act and the Open Meetings Law requires that every public meeting includes an opportunity for public comment. So, I think what I would propose is to take out the Pledge of Allegiance and include public comment. Then I would defer to Mrs. Melson-Williams for any other changes based on how the agendas typically compare?

Mr. Wagner, question about eliminating the flag?

Chairman Senato: Any questions or comments on that?

Mr. Wagner: Somebody had to make that decision.

Chairman Senato: Well, what's the pleasure of the Board?

Mr. Coburn: I would like to see us keep the Pledge of Allegiance and actually start doing it.

Ms. Brinkley and Mr. Swalm: I don't have any objections to that.

Mr. Swalm: Will public comments go after new business before an adjournment?

City Solicitor: You can put it anywhere. I know for City Council, City Council has public comment before the official meeting actually starts. So, you can actually have a public meeting at the beginning or at the end.

Chairman Senato: Correct me if I'm wrong, but usually after the all of the presentations have been completed at that point it is opened up to public comments for those are in favor or against.

Mrs. Melson-Williams: There are two different things that we're talking about here. Public testimony regarding an Application that is before the Board is one type of hearing public comments. But what the City Solicitor Griffith is suggesting is just a general opportunity for public comments that wouldn't necessarily be associated with an Application before the Board. We have taken to adding it to our Boards and Commissions kind of later in the meeting, so it's not confused with Applications that maybe before the Board. So, it's an opportunity for just general comments for things that may fall under the provisions of the Board of Adjustment that are not specifically associated with an Application.

Chairman Senato: My thing is based on the Board as against the regular council meeting. They open up with general comments if I want to talk about stop sign or whatever. And then the Council proceeds with their meeting. With the Board of Adjustment, we're taking the Application to make a decision whether there's a hardship or not a hardship with that particular Applicant or Applicants that comes in front of the Board. I think that any public comments prior to could be dealing with the Applicant either in a negative or either in a disagreement or approval factor and possibly would say that the Board and putting thoughts in text of the Board itself. I'm saying that we should follow what we've been following. That is at the end of all the presentation by the applicants, the questions by the Board members regarding the applicant's petition, you then open it up as we have done for comments (those in favor of and those against).

City Solicitor: I think that makes sense for what we are talking about here. Public comment doesn't necessarily relate to one specific Application typically. It's usually, you know, a member the public would come up and say, you guys are granting too many Area Variances or you're denying too many Use Variances or something like that. Something unrelated to a specific Application, either a positive or negative comment about the word generally. The Board can either have those and you can move to change the order. One of the next items we are going to get to is you can change your agenda meeting by meeting. So, somebody can come in, one of the members of the Board can come in and say, you know, there's 40 members of the public here. Let's not keep them here for an hour and a half while we do other things, I move that we move public comment to the beginning or you could have it just the opposite.

We don't want to inconvenience the Applicant by having the Applicant(s) to sit through 2 hours of public comment. So, let's have the public comment after the Application. So, it's not set in stone where you want to put it on the agenda. You can always change it meeting by meeting; so it is purely your call.

Chairman Senato: Basically, it would be probably up to the Chair at the time. But I'm a little bit in disagreement with that. And the fact that even if you have four or five people making comments either for or against an application. I believe strongly that you could sway, I'm not saying it, but I think to keep it on an equal basis. If we keep it. after everything is said and, stay that way it keeps it straight forward.

City Solicitor: I think that's fine if that's the decision of the Board as well that certainly works and it's consistent with the Freedom of Information Act. The only thing I would say is it's not the

chairperson who would unilaterally decide to change the order. It would have to be if once the agenda is set, any change to the agenda would have to be by the majority vote.

Ms. Brinkley: Mr. Chair, just for clarity, are we saying that we would keep public comment and have it near the end of the meeting because it would be relevant only to whatever variance or whatever we seek to approve.

Chairman Senato: With the experience in all the years that I've been on the Board all the comments have been at the end. When everything has been presented, the members of the Board have asked a question from whatever, and then it was on the agenda, we now open it to public comments. If Dawn, correct me if I'm wrong, it would be those in favor or do you have any comments in favor of the Applicant. Sometimes, you know, they would come up and there would be none. And then are there anybody against the Applicant's petition? And you would have somebody come up. That's the way it's been.

Ms. Brinkley: I think that we should keep it near the end if we put it in and it should be listed that way, so that we remain focused on a task whenever we are seeking to approve a variance.

Chairman Senato: Any other comments on that?

Mrs. Melson-Williams: So, Mr. Chair, I just want to make sure we are making the distinction between the public testimony. Public comments/testimony regarding an application is one thing, and that typically has been the practice of the Board that you hear from the applicant and then you open the public hearing. That is where you hear public testimony for and against. What we're talking about here is a totally separate opportunity for public comments. These are general comments not tied to an application. I just want to make sure that you understand this clearly. This is not talking about the public hearing that's associated with an application that's before the Board.

Chairman Senato: This one is for the public comments prior to the meeting and would be non-related to the applicant that's being presented at that time.

Mrs. Melson-Williams: That is correct. This is a public comment opportunity. Staff suggest that it be placed at the end of the meeting and certainly on a case-by-case basis you could rearrange your agenda at any given meeting, but it would be clearly listed on the agenda. You'll find that on today's agenda. It's listed as Public Comments Opportunity. We can certainly add some additional language to the agenda so that it's clear that it is separate from any public hearing that would be scheduled with an application.

Chairman Senato: So, there's a chance. Basically, what it's saying is if somebody comes up with public comments. For example, Mr. John Doe comes up and is against the red light of East Lookerman Street and that could conceivably happen. I don't see the reverence that the Board of Adjustment agrees with the public comments. I could be in the wrong place, but that's just how I feel about it. I think the Board has to stick from beginning to end to the applicants interested what that applicant is here for not necessarily Lookerman Street. Correct me if I'm wrong.

Mrs. Melson-Williams: You are correct that public comments wouldn't necessarily be germane to the activities of the Board of Adjustment. The statement to open the public comment opportunity

would give guidance as to the types of public comments that should be presented to the Board of Adjustment. It would have to be associated with your activities and what falls under your power and duties. I think the example that Solicitor Griffith gave of, you know, the Board's been approving too many of this or too many of that would be a reasonable type of public comment that you could receive. But comments about other city operations, that would not be the proper venue before this Board.

Chairman Senato: So basically, deals primarily with the Public Information Act to give the citizens the chance before the Board to speak to their piece and all and then we can continue with the business of the Board, right?

Mrs. Melson-Williams: Yes, it's associated with the Freedom of Information Act and the ability for the public to comment during your proceedings.

Chairman Senato: Okay, I can agree with that. I can understand that. Maybe I misunderstood it at the beginning. I think the Board will go along with that. My comments are that we should go because of the public information.

Mr. Wagner: Do we need written clarification?

Chairman Senato: Well, the written clarification would be that when the solicitor adds it onto the Rules of Procedure. It would be explained in that paragraph, correct?

City Solicitor: It will be on the agenda. So, the only issue we're discussing now is where on the agenda. We are required to give public comments (opportunity). The only issue we're discussing now is, do we want to do it at the beginning of the meeting or want to do it at the end of the meeting?

Mr. Coburn: Yes, since I've been on this Board, we have always done it after New Business. Even on today's agenda, as Dawn was saying, Public Comments Opportunity comes after New Business. I think we should just keep it there unless like the City Solicitor stated we have 40 people and they want to make public comments. We can always at the beginning of the meeting make it an amendment or adjustment to the agenda.

Chairman Senato: Any other comments from the Board?

Mr. Swalm: I agree. I think it should go right after New Business. Unless like he said, there may be a situation where you have 20-30 people. At least we do have discretion to move it if needed, you know if that did occur.

2.2

City Solicitor: Now the first sentence really talks about what we what we just said, which is you can amend the order of business by an affirmative vote. So, you could move public comment around. You could take something off the agenda if you want by an affirmative vote of the Board. The second sentence I think we ought to delete is that the privilege of the floor may be granted to the public at any time by the presiding officer. That would be a change to the agenda. I believe that the Delaware Code requires that this type of thing be done by a majority vote of the

Board and not unilaterally by the presiding officer. So, my suggestion would be that we would take out that second sentence.

Chairman Senato: The suggestion is on 2.2 which is the privilege of the floor may be granted to the public at any time by the presiding officer.

Mr. Coburn: It should be removed because as stated it would require a vote by the Board.

City Solicitor: So, we will strike the second sentence on 2.2.

2.3

City Solicitor: This is also a provision in the Freedom of Information Act that's in the open meetings law that although we are required to provide public comment, it is not unlimited. So, somebody cannot come up and speak for an hour. The Board can make a determination that there has to be limits on the timeframe for public comment. At City Council that time limit is 3 minutes. What this provision does is if the Board looks out and there are 40 members of the public who are here, the Board can during its meeting set a reasonable time limit for each public comment.

The second part of this is that in lieu of public comment, individuals may submit written statements. I think that maybe a provision in the Freedom of Information Act, but it's certainly in compliance with the Americans with Disabilities Act. For those who for some reason cannot make the meeting and aren't unable to participate either by video or in person, they can provide comments in writing.

Are there any comments or proposed amendments on 2.3? Okay, moving down to 2.4.

2.4

City Solicitor: This provision just allows the Board in the event you can't get through the full agenda during a meeting; (it goes just too long); you have the right to make a motion and with a majority of the Board suspend either an individual presentation by an Applicant or appellant or to suspend the meeting and take it up at another meeting through a relatively routine provision. Any comments on 2.4?

Chairman Senato: Over the years, we have had meetings at over an hour. We have had meetings for over 2 hours 15 minutes. I don't think we have ever gone any longer. I'm just kind of thinking that they could go on longer but rarely. It's not going to go for 3 or 4 hours. We have never done that.

Mr. Swalm: I just have a question in theory. Let's say we did have a meeting, and it did go on for 2 ½ to 3 hours and then we did by majority vote choose to suspend it. And then we have another Application for the next month, would we handle the suspended business as well as the New Business on the next meeting as well? Then I guess my concern is, would that also cause the next meeting to run over? Do you know what I mean?

City Solicitor: Yes, I do. The second sentence here provides that if you do make that decision that you're going to suspend the meeting, you make every effort to choose at that time when the

remainder of that presentation will take place or when the remainder of that meeting will take place. So, if you say today is December 17th, we have to suspend this meeting and take it up again. It will be at the top of the agenda on the January 16th meeting. And then once the January 16th agenda comes out, whatever was not done today, we'll be put on top of that agenda.

City Solicitor: Okay, any other comments on 2.4?

Mrs. Melson-Williams: Suggested with a presentation, I don't know if we need to clarify. A presentation to me that sounds like it's a presentation on one application versus the meeting in general. Like stopping a meeting midpoint for any reason. I don't know if we need to make that distinction or not. We can make that change so that in the event that the presentation of a scheduled agenda item or the meeting itself takes longer than reason. The presentation and/or meeting may be suspended.

Mr. Coburn: Yes, I like the idea of changing that from presentation to presentation and/or meeting.

Ms. Brinkley: I agree.

City Solicitor: Okay. We'll make that change in the next draft.

2.5

City Solicitor: I think this just explains what we already do, which is that the solicitor places the speaker under oath, and we get the person's name. Actually, that's really it, just that the solicitor will place the speaker under oath. It's pretty non-controversial.

Chairman Senato: It's where testimony will be taken under oaths which shall be administered by the Solicitor or any other individual as maybe directed by the presenting officer.

City Solicitor: Right, if the solicitor is not available.

3.1 Meetings of the Board of Adjustment

City Solicitor: This allows the majority of the members to change meetings that we just voted on in the schedule. So, the schedule is set. You have the right to, by the majority, change the schedule so long as the change complies with the notice provisions of the Freedom of Information Act.

3.2 Makes it clear that when the meeting is scheduled, it has to be properly noticed and advertised. These are just provisions from the open meetings.

3.3 The notice provision is from the open meetings law title. The reference to that statute is Title 29 Chapter 100; that is the Freedom of Information Act which includes the open meetings.

Any questions on 3.3?

Mrs. Melson-Williams: I have to look at the special meeting. I don't know if there's anything in our Code or is there any references in Title 22 about special meetings? I didn't get through all of that.

City Solicitor: There are special meetings that are referenced in the Freedom of Information Act. Those are meetings that have to be scheduled with less than ten full days' notice. I think what this is referring to is we have monthly meetings; and if there's some reason that a member of the Board wants to have a meeting outside the schedule we just agreed on. If two members of the Board want to have a meeting; they still have to comply with the Freedom of Information Act. But this just refers to an off-schedule nonregular meeting.

3.4 This is a Freedom of Information Act requirement that all meetings are open to the public except for executive sessions.

Mr. Wagner: Do we have Executive Sessions?

City Solicitor: We have had them; they are under the Freedom of Information Act. We have to conduct all public business in the public at a public meeting. There are very limited circumstances under what you're permitted to go to in an executive session. If you know you're going to go into the executive session before the meeting, that needs to be included on the agenda. Most agendas usually have something at the bottom that says we may need to move to an executive session for matters that arise during the meeting. So, just by way of example, to discuss litigation. If the Board is being sued and/or anticipates being sued and wants to have a discussion about that lawsuit in Executive Session. For personnel matters, we move into Executive Session for things like that.

3.5 A requirement of the Freedom of Information Act is that we have our public meetings minutes being kept and what those minutes have to include.

Rule 4-Public Notice of Meetings

4.1 and 4.2

City Solicitor: I will defer to Dawn on 4.1. I don't really know how public notice works. I see on the agenda how this is given. Do we need any changes to 4.1 or 4.2? I know we comply with the Freedom of Information Act. I just don't know if any changes need to be made to reflect on how we actually do it.

Mrs. Melson-Williams: The public notice of the meeting itself was basically posting up the agenda. There is a public bulletin board here in City Hall. And we also post on the City's website.

The notice of hearing regarding individual applications is somewhat different in that it is a mailed notice that goes to property owners within 200 feet. That is what's referenced in the Code. The timeframe for that notice is ten (10) days, rather than 15. I don't know if that 15 is from something else that's provided that's in Delaware Code. So, I would have to take a look at that.

City Solicitor: How would you feel if we changed 5.1 and 5.2? Something to the effect of posting of the agenda and publication of the agenda shall be consistent with the Dover Municipal Code and the Delaware State Code.

Mrs. Melson-Williams: I think you could do that, so are you talking about Rule 4 or Rule 5?

City Solicitor: 5.1 and 5.2.

Rule 5 - Agenda

City Solicitor: I don't think we need to be more specific than what we already do.

Ms. Brinkley: I need some clarity regarding the agenda. I thought we were still on 4.2 Public Notice of Meetings. When it talks about notice of public hearing, the information that comes to the Board members is that a part of the agenda for the Board of Adjustment meetings?

Mrs. Melson-Williams: The Board members receive the agenda and then you also receive what we call your meeting packet, which has all the documents associated with the agenda items and the minutes, the application that's before you and all of its exhibits, attachments, that kind of thing. That information is posted on the city's website and would be available in the Planning Office if someone needed a paper copy. Our bulletin board is not that big. It can only handle the posting of the agenda. The applicant does get a copy of the Staff Report for their Application or the Summary Report, but I don't think that's what we're talking about here. The two things Rule 4 talks about is how we notice the meeting in general and then Rule 5 talks specifically about the agenda itself.

So, I think we need to cross reference what's in our Code, but it may be as simple as referencing those sections. We can take a look because the procedure when you're talking about notice of meetings regarding particular applications, there's notice that has to go to adjacent property owners and if you're within a certain distance of our boundary to the adjacent jurisdictions. There's some things that way. So, I think we probably need to take a closer look at that just to make sure we're covering or are consistent with what's established in the Code?

City Solicitor: Yeah, I think the idea here is not to put anything in our Rules which are inconsistent with what's in the Municipal Code either. It may be as simple as just a sentence or two saying the preparation of the agenda, posting the agenda, public notice of the meeting, all will be consistent with Delaware State Code and Dover Municipal Code.

Ms. Brinkley: I was thinking in terms of timing of when the Board would actually receive their packet.

Mrs. Melson-Williams: We strive to be basically like these. It's really seven days prior to the meeting; so, one week prior. We're at least giving you the Application. Sometimes, depending on preparation, we may not fully have the meeting packet ready to arrive at your house that same afternoon, but we try to get it to you the next day. We give you that alert of, "hey, here's the agenda." We're still finishing up the meeting packet for delivery. I don't think this section here talks about the delivery of all those items to the Board of Adjustment. It talks about the more generalized posting of the agenda in Rule 5.

City Solicitor: I think that's right, it's just that the agenda is available ten days before the meeting. So, it's available to the members of the Board on the city's website. This just says that the agenda will be sent to you seven days before and that's not the full packet; that's just the

agenda. We can work on those provisions to make sure that it's simpler and that we are consistent with the Delaware State Code and Municipal Law.

5.3

City Solicitor: This provision just says what we've already discussed, which is that although you have an agenda by the majority vote of the Board, you can amend the agenda by adding matters or taking matters off the agenda by majority vote. Are there any comments on that? There were none.

Question regarding 5.2

Mr. Wagner had a question regarding 5.2. He wanted to know how does the Board member add to the agenda and specifically what does that cover?

City Solicitor: It is very uncommon for a Board member to add or remove something from the agenda. The stakes to remove something from the agenda would be very high and you would not want to do that. So, it's very uncommon.

Chairman Senato: Basically, over the years, it's like what we did today. We added something to the agenda. But, like Mr. Griffith said, it's very uncommon.

Rule 6 – Attendance of Members of the Board of Adjustment at meetings; Quorums

6.1

City Solicitor: As members of the Board, you are required to attend meetings. If you cannot attend the meeting, you should notify the Chairman or Mrs. Melson-Williams or another Board member or Staff member in the Planning Office.

Chairman Senato: The Chairman, Vice Chair, Director of Planning and Inspections, Staff members and any other Board member, I think that should be crossed out because the ones that make up the agenda and all the paperwork and meetings, I think they should be the number one contact and then of course the respective position of the Chair and Vice Chair, which was done by Mrs. Melson-Williams. And then I think that probably is the protocol, I need your opinion on that.

Chairman Senato: Yeah, the thing I'm saying is any Board member, I'm being hypothetical at this point when I say you know you're calling me up and all a sudden, I get busy and I forget to call Dawn or something like that. I have so many things going on. You got a thought on that, is that I'm going to call Dawn, Sharon, and I'm going to call the Chair or the Vice Chair, maybe all three at one time and then a Board member. I'm just saying to eliminate the Board member(s). I think they should be notified by the Planning Office Staff.

City Solicitor: This provision only requires the absent board member to notify one not all.

Chairman Senato Well, I guess what I am saying is then as another Board of Adjustment member, I think should be checking up.

City Solicitor: That's fine. I don't have any issues with that.

Chairman Senato: What's the pleasure with the Board? The Board members did not have any issues.

City Solicitor: Alright, thank you. So, I will make that change.

6.2

City Solicitor: This is fairly uncontroversial. I think the presence of no less than three (3) members of the Board will constitute a quorum. That is the majority of the Board; a majority is a quorum.

6.3

If a quorum is not present. Whoever or whatever members do show up may adjourn the meeting. You cannot do business without a quorum.

Mr. Swalm: He suggested that the language "may" be changed to "shall". When a quorum is not present at any properly called meeting, the members of the Board of Adjustment present "shall" adjourn.

City Solicitor: I think you are right. I think this makes it seem as if they have the option. So, I think you are right. Unless anybody has any contrary opinions, we will change the word "may" to "shall."

6.4

City Solicitor: If no members of the Board are present, I think we should probably do the same thing that we just mentioned, which is any member of the Planning Office shall adjourn the meeting if nobody shows up.

6.5

City Solicitor: I think this is the one Mrs. Melson Williams referenced at the inception of the meeting where we talked about a couple of things really. We don't do special use exceptions and it says three affirmative votes shall be required to approve, that doesn't take into account that a meeting may be held with just three members where two affirmative votes would be sufficient. So, I think, I think my proposal would be to change the language to say something like a majority of the quorum is probably required to approve any variance. Failure to receive a majority to both in favor or against to approve the variance shall be deemed disapproval of the variance. Any comments on that?

Mr. Coburn: Yes, that was my comment on that when I read this. I was thinking the same thing. It should be majority since we cannot have (a meeting without) a quorum. I would totally agree that it should be changed.

City Solicitor: You know, I wonder if I'm looking at 6.6 now. I'm wondering if we combine 6.5 and 6.6 and just say any matter may be decided by the majority vote of the Board of Adjustment members.

Ms. Brinkley: I agree.

Rule 7 – Voting Procedure

City Solicitor: This describes how votes are done and require the presiding officer to call the roll or determine the vote in some other manner and announce the results. I think that is consistent with the current procedure.

7.2

City Solicitor: Just provides that a written record will be made with each person's vote. Does anybody have any questions on seven rule?

Mrs. Melson-Williams: Do we need to clarify that it would be the presiding officer requesting the call of the roll because they are not the physical person that usually does the roll call. It is normally the Secretary or Staff member that calls the roll.

City Solicitor: I think that makes sense. So, for clarification on 7.1, what it would say is on each motion only made and seconded the presiding officer shall request a call of the roll.

City Solicitor: Okay, any other comments or questions? There were none.

Rule 8 - Record Keeping

8.1 -

City Solicitor: There's just one provision. I will refer to Mrs. Melson-Williams whether or not this is consistent with the present practice and if it's not, we should make any amendments.

Mrs. Melson-Williams: So, this is keeping of the records. I would say this is present practice, but again, I think I want to confirm with the City Clerk's Office if there's any concerns with this language due to their role with FOIA (Freedom of Information Act) for the City.

City Solicitor: And so, we won't make any changes pending the results of that.

Rule 9 – Minutes of Board of Adjustment Meetings

9.1

City Solicitor: This relates to the keeping of the minutes of the Board of Adjustment meetings. This is pretty consistent with the open meetings law and Freedom of Information Act. And I believe it's consistent with other minutes that are already kept. And again, I will refer to Mrs. Melson-Williams about whether there's anything about Rule 9 in terms of how the minutes are kept that is inconsistent with the way we possibly do it. Maybe we could just do what we've done with Rule 8 concerning record keeping.

I defer to you to check to see whether this is consistent with the way we presently do it and if it works.

Mr. Swalm: I have a question regarding letter F under 9.1. It says the Minutes shall record what was done rather than what was said. It's from my understanding that currently, when I read over the minutes that are currently done, it does record what was said rather than what was done. I don't know if everybody else agrees. I think that it should record what was actually said, not just kind of a baseline summary of what was done during the meeting. That might just be me, but that's kind of my view on letter F under 9.1.

Mrs. Melson-Williams: I would somewhat echo that your Minutes are not direct transcription, but they're fairly close. We do make it so it's a little more readable because a lot of times we don't tend to talk in complete sentences or like me say the word "um" a lot. So, they are a little bit more on the what was said side than just what was done. Because if it was what was done, it would be really just be the motions. And we tend to, and since we've been keeping Minutes for the Board of Adjustment, had a much more detailed set of Minutes. It is not a direct word for word transcription.

City Solicitor: I think a middle ground might be rather than say, the minutes shall record what was said, we suggest that it will not be a verbatim transcript. Maybe what I could say is the minutes that shall record a description of what was said.

Mr. Coburn: I agree with basically what the attorney just said that it should be a summary said not a verbatim.

Ms. Brinkley: I agree.

Chairman Senato: So, my understanding is from some of the board members and the way the minutes were happening and being presented over the period of years is basically a summation of what was said rather than the opposite.

Mrs. Melson-Williams: It's a little bit more than a summation. If you look at the minutes that are in your packet, it will say that Mr. Coburn questioned and then kind of give the question and then how Staff responded or how the Applicant responded. So, there's a little cleanup, if you will, to announce who was making that statement. But for example, your minutes don't always include the full presentation that Staff gives when we initially describe and present the application to you. It's just more merely references the Review Report and that Staff summarized that. It is not a summary kind of and nor is it just an outline of your motions. It's somewhere between summary and verbatim.

Chairman Senato: So, basically it's pretty close to what we've been doing as far as minutes, right?

Mrs. Melson-Williams: Yes, I wouldn't anticipate any change of that. I think it just needs to be clear that they are not presenting verbatim for data when they are prepared.

Mr. Swalm: He agreed with Mrs. Melson-Williams, as long as there is no change.

Mr. Wagner: I think the way it is currently being done is outstanding. I find the factual presentation by the Staff is outstanding and I would not be in favor of change.

Ms. Brinkley: I agree with Mrs. Melson-Williams. I think if we could come up with a word that's maybe "outlined" or something or some terminology that could describe it in general. I've been okay with the meeting notes of everything that's been occurring. You know, maybe find a word we could use to describe it.

City Solicitor: The word that I proposed that may stretch between the summary of what was said and a transcript of what was said was a "description" of what was said.

Ms. Brinkley and Mr. Swalm: I would agree with that.

City Solicitor: Okay, so that will resolve Rule 9 concerning the minutes.

Rule 10 – Conduct

10.1

City Solicitor: This addresses the conduct of members of the Board during meetings. One of the important parts of the conduct is that the chairperson or presiding officer presides over who speaks and when, so that people are not interrupting each other. The Rule 10.1 requires that when one of the board members would like to say something and this is consistent with the practice in terms of what we've done it. Rather than blurt out a comment without being recognized, you address the presiding officer first and not proceed to speak until the presiding officer recognizes you. And it requires a presiding officer not to pick favorites of three people wanting to speak at the same time, but to recognize which member was the first to request to be heard.

10.2

City Solicitor: Makes it clear so that it doesn't become chaotic to have the Board members interrupting each other while you're trying to speak. But if one member of the Board is speaking, another member is not permitted to interrupt without the consent. So, if the Board member would like to speak while another member is speaking, the first Board member would request consent to interrupt. So, that request would go through the presiding officer, not to the person speaking.

10.3

City Solicitor: It provides that if one of the members of the Board does not proceed in that matter and is either interrupting or not asking for permission to speak from the presiding officer, the presiding officer shall call that member to order. And if that member is called to order, that member shall not proceed without the permission of the presiding officer.

Mr. Swalm: So, will we delete the line item in 10.3 stating that any Board member may, call the errant member to order.

City Solicitor: I missed that, thank you. Yeah, I think that makes sense. I don't think other Board members should be calling each other. That would be the presiding officer. That's a great catch. Does anybody else have any thoughts on that permission?

Chairman Senato: So, you're saying that particular page will be eliminated.

City Solicitor: Right, so the way we would read it now is (10.3) "If any member of the Board of Adjustment is speaking or otherwise transgresses the Rules of the Board of Adjustment, the presiding officer shall, call the errant member to order." Not the presiding officer "shall" or any member of the Board "may."

Mr. Coburn: Yeah, I agree that that should be removed.

Rule 11 – Change or Suspension of Rules

11.1

City Solicitor: So, these are your rules. This makes it clear that these are your rules that you're considering today, that you're adopting for yourselves. That means that these don't have to be set in stone once you vote on them and adopt them. So, if a member of the Board in six months after these rules were adopted, they decide that they're not working or one of the rules is not working well, their motion can be made to change the rules. If the majority of you agree, these rules can be changed at any time.

Rule 12 – Rules of Order

12.1

City Solicitor: It gives you discretion that you are not so strictly bound by these rules that you cannot either amend them or interpret them in a way that gives you the greatest chance of having a fair and efficient hearing procedure. So, it says things like strict adherence to these rules shall not be required, but the court may modify and digress from these rules for reasonable cause as the situation being demands. So, this also provides that if for some reason one of these rules is challenged in court and the court determines that, you know, let's say Rule 4.1 is unconstitutional, and therefore restricted. That doesn't mean that all the rules are restricted, it just means 4.1. Are there any comments? There were none.

Rule 13 – Standards of Conduct

City Solicitor: This is primarily for those attending and speaking members of the public and applicants in the audience. This is an effort to try to keep some form of order during the presentations. It might be a little bit controversial, this provision. When I looked at it, I thought there might be some first amendment concerns. You have the right to impose reasonable time, place, and manner restrictions on speech, but it's up to you to determine whether these are reasonable restrictions. Rule 13.1 requires that persons attending meetings observe appropriate dress standards and standards of conduct higher than made distract from proceedings shall not be permitted. I'll say in my experience that sometimes in court hearings at Superior Court or the federal court, there will be members of the public showing up with profanity on their shirts. The court at that point doesn't throw them out and does not require them to come back; it usually requires them to turn the shirt inside out so that part can't be seen.

This provision gives you the right that if somebody shows up and its attire that is some way going to distract you from the proceedings. It can't be just something you disagree with. It must be something that will distract from the proceedings. I used to represent the Atlantic City Police Department. I remember the public showed up with ACPD shirt that said Atlantic City Preterit Department and then they were removed. So, this allows you the discretion when someone brings attire that will disruptive proceedings to require that they observe appropriate dress standards.

13.2

City Solicitor: Allows “cause supporting sign” affixed to the clothing, but it cannot be larger than 3 inches by 5 inches. Offensive Signs, things like profanity or anything that will distract from the proceedings will not be permitted. No placards and nobody's permitted to bring in large signs to the Board meetings.

13.3

City Solicitor: It provides the City Manager to prescribe our policy. So, this one might want to strike. I don't think the City Manager can enact the policy.

Chairman Senato: Yeah, on 13.3, I have a note to take out completely. I don't know how the Board feels about it, but it seems, City Solicitor, that I kind of agree on that also.

Mr. Coburn: Yes, I agreed also.

Ms. Brinkley: I agree also.

Mr. Swalm: I'm in agreement. The only reason though I would keep that in there is just to maybe take some of the weight off us for the appropriate attire reasons; so may be for lack of better words, the responsibility wouldn't be on us. I guess placing the appropriate attire for our policy for people at meetings if you get what I mean.

Mr. Wagner: In a communication that takes place between the City and somebody who wants to state or talk about a variance, is this stuff explained to you (about attire)? Like this is what is expected of you when you address the Board.

Chairman Senato: No, I don't think when people come in here as Chair, we would look around and even as a security thought see if there's anything that is considered offensive, which would be the decision of the Chair through the recommendation of the Solicitor. I don't think that's a decision I should make, but at least I can bring it to the City Solicitor.

Mr. Wagner: I'm going too deep. I'm saying from Dawn's standpoint, is there any communication that takes place between the City and somebody who wants to make an appeal? Before we get to it, before it gets done, and we have to make a decision. Hey, your attire (shirt) has to be taken off. Are these people aware of what is expected? Well now, you can address this Board.

Mrs. Melson-Williams: We, in meeting with anyone filing an application would describe kind of how the Board of Adjustment meeting flows. We have not in the past had any discussions necessarily about what you can and cannot wear in the meeting. I would hope that there would be

some common sense that you're appearing before a professional Board and that you would be professional in your conduct in front of them. This section, this Rule 13, we may need to alter the title a little bit; so, it's clarifying that these standards are of conduct or are related to those appearing before the Board. There has not been in the past any prescribed attire necessarily for the Board. I think it's expected that you're acting in a professional capacity so your appearance should reflect that, but there's not been anything that says everyone must wear a tie.

Ms. Brinkley: I think that somehow the public should be notified these are public. It's the public that's going to be here; we're trying to notify the public. Maybe this isn't what we should be changing, but maybe people do have to sign in to make public comment, right? So maybe somewhere along the line, we should be notifying them of that so that we're not actually doing it personally.

Chairman Senato: Well, in some of the previous rules covered I think that we just covered it that the Solicitor can play a little more here. Then my feeling is that if the Chair sees something that's derogatory or improper, perhaps a decision at that time, you know, can be made. But I think putting that out as a rule specifically saying no for this, no to that or whatever makes suggestions, if I'm reading it correctly, I don't think it should be done. Whenever people are present at a meeting. I don't think that's a problem.

City Solicitor: I think it's important to note that what we're talking about is not offensive attire or inappropriate attire. In order to reach this standard, the attire has to disrupt or distract from the proceedings. So, if you're not happy with somebody wearing a tank top shirt coming in or shorts and sandals, they still have the first amendment right to do that. The only thing they don't have the right to do is disrupt or distract from the proceedings. So, I don't want them to get confused that we are regulating attire or dress standards. What we are regulating is conduct and that when speech sometimes crosses the line to conduct, that disrupts the proceedings, that's what these provisions refer to.

Ms. Brinkley: I received your comment.

Mr. Swalm: I think that we should probably keep this in there unless we're going to prescribe a complete, like default policy for like what type of attire is quote unquote "business" or something like that. Then I think we should just keep this in there for extreme cases.

Chairman Senato: My thought is we should just take it out to avoid any controversy.

City Solicitor: I will say that there's a provision in the open meetings law that allows the presiding officer of any open or public meeting to remove any disruptive individual or Board member. It's the Board's determination that there's already a provisioned State law that allows the presiding officer or the Board to remove members who become disruptive or distracting. Maybe it's safer not to dip our toes into the First Amendment here and just leave it to the State and to the General Assembly and maybe take out Rule 13 altogether.

Chairman Senato: Do you mean Rule 13, correct?

City Solicitor: I was actually referring to any provisions which regulate attire or conduct that is already regulated by Delaware Law. So, I think Rule 13 reports to address how both applicants and members of the public conduct themselves at meetings. What I suggest is that there's already an open meetings law that addresses how members of the public may conduct themselves at meetings and allows the presiding member to address that.

Chairman Senato: So, 13.3 to 13.6 you are suggesting taking out.

City Solicitor: I was actually thinking that maybe the entire Rule 13 might be unnecessary.

Chairman Senato: Right, ok. He asked for clarification if it was 13.1 through 13.6.

City Solicitor: Yes, 13.1 through 13.6. He asked if there were any questions.

Mr. Swalm and Chairman Senato agreed.

Rule 14 – Appeals and Applications to the Board of Adjustment

City Solicitor: I'm not exactly sure whether this is consistent with the way things are done right now. As I look at Rule 14.2, I don't believe that appeals and applications to the Board shall be accompanied by a survey or surveyor of the property. So, Rule 14.2 may need to be removed. Maybe I could defer to Mrs. Melson-Williams whether or not the procedures described in Rule 14 conform to what is present.

Mrs. Melson-Williams: I have noted, as you already said, that we do not require a recent survey. We certainly encourage that when someone is looking to do a variance related to a setback to have the best possible information about their requests. In general, I would suggest maybe for this section we need to emphasize variance applications perhaps separately from appeals because they are two different things. Because an appeal is a type of application. In the appeal, the procedures are kind of comingled in our Code which has some issues and it makes things a little complicated anyway. I think we'd have to kind of take a look at this a little closer for some of the procedure aspects of it. But there is procedurally forms that have to be submitted. They probably need to make sure that they are making reference to also any exhibits associated with it. They basically file their forms, their narrative which is the response to the criteria, and then any exhibits. And that has to be submitted with the Application. Certainly, there may be additional exhibits that are submitted during the course of the meeting or prior to the meeting after the packet is issued; so we probably want to address that clearly. I really think I'll have to go through this section specifically to make sure we are coinciding with what the procedure is outlined in the *Zoning Ordinance*. I did note here in 14.5 the issue of a variance request being increased or reduced by the Applicant. I think we need to look at that carefully because we have examples of that, where during a meeting you may allow for something less than what they were initially requesting and how that works. Oftentimes that isn't included in the Public Notice, so if you had this in your procedure, then you would likely have to go back out to re-notice if it is something lesser and certainly if something increased. I think that's something maybe warranted that you would not have to re-notice but it's lesser. That's a question I had there and then some of the detailing about how the decision is provided. I am going to take a look once you look at how that's sorted as well.

Ms. Brinkley. Yes, on 14.2 I have a note here for clarity on what is considered recent survey when it comes to a variance or appeal.

City Solicitor: I think our idea is to remove that because we don't presently request any survey. I think there's a suggestion that we simply take that provision out.

City Solicitor: And if I may, I apologize to the Board. I have a hard stop at 11:00 A.M. as I have a hearing at noon. I wonder if we can at some point add this issue to the agenda for our next meeting as well. We could finish this process at our next meeting on January 16, 2026 or if the Board doesn't need me for the remainder of this, I can certainly touch base with the chairperson or Mrs. Melson-Williams after the meeting and find out any changes by the Board.

Chairman Senato: We can do this again. It looks like at the last meeting, at least in my notes and all, I really don't have anything on the last ones from a personal standpoint. I don't know how any of the other members feel and if they have any in-depth comments or if they're acceptable from 14.1 through 14.3.

Mr. Coburn: It's my understanding Dawn that you will review all of 14 and you will have something at the next meeting that we will discuss.

Mrs. Melson-Williams: I think I need to look at it more closely. I only gave this a cursory read and I would say the same for the remainder of things here. I did have some notes for some of the rest of it. So if you want to, I think we've made good progress, and I think it is a good idea to have the Solicitor here. I think you've been stepping through this, and you know it's good. And I wasn't expecting to get this totally done today. Your next meeting is January 21st; the Solicitor mentioned the 16th.

Mrs. Melson-Williams confirmed that the third Wednesday in January is the 21st; so, that would be your meeting date. I think we can certainly continue at that point.

If you are willing to just kind of stop at this point, I think it was mentioned earlier to give some general acclamation or vote on the concepts that you put forth today and to date with the Rules of Procedures so that we could start to incorporate those, I think would be good. We could bring back a draft version to you.

Mr. Coburn: Yes, with that being said he would like to make a motion.

Chairman Senato: Mr. Coburn when we draw that motion, my reason for that meeting is why don't we vote in approval of what we covered today.

Mr. Coburn made a motion to approve what was discussed and reviewed today through Rule 13 and that the Board will suspend the review at Rule 14 and the remainder until the next meeting. The motion was seconded by Mr. Wagner and unanimously carried 5-0.

Chairman Senato asked if there were any questions. There were none.

Chairman Senato mentioned that he will be flying to Florida during the next meeting. Mr. Coburn will be the Acting Chair. He will email any suggestions or recommendations to Mrs. Melson-Williams and the City Solicitor. He would respectfully request (to delay) the final approval of the last pages. He will be attending virtually in February.

Mrs. Melson-Williams: So, what I would say even with what you've done today, we've got some wordsmithing and checking on some things. So, you're good for approval of your discussion up through Rule 13. We will try to get those items into the next draft. Even with the action in January to continue your review, I would not anticipate a formal review or a formal action to fully adopt the Rules of Procedure until all the comments and concerns have been addressed. I wouldn't see that happening at the January meeting. We would place this after the Application. We have one Application that's been filed at this point for that January meeting; so we will reorder the agenda.

Chairman Senato suggested placing the continued discussion on the March meeting agenda instead and hopefully everything will be ready for approval then but it might not be according to the Solicitor because of research.

City Solicitor: We could have the discussion in January but hold off on any approval.

Chairman Senato: The Board has agreed to hold off on final approval until the March meeting.

Public Comments Opportunity

Mrs. Melson-Williams stated that there were no additional members of the public that have joined us online or any members of the public wishing to speak.

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

The meeting was adjourned at 11:00 A.M.

Sincerely,
Maretta Savage-Purnell
Secretary

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

RULES OF PROCEDURE OF THE BOARD OF ADJUSTMENT OF CITY OF DOVER, DELAWARE

These rules shall govern the procedure of the Board of Adjustment of the City of Dover, Delaware.

Definitions

"Agenda" includes but is not limited to a general statement of the major issues expected to be discussed at a public meeting, as well as a statement of intent to hold an executive session and the specific ground or grounds therefor.

"City" means the City of Dover, Delaware, unless otherwise specified.

"Board of Adjustment" or **"Board"** means the Board of Adjustment of the City of Dover, Delaware.

"Meeting" means the formal or informal gathering of a quorum of the members of the Board of Adjustment for the purpose of discussion or taking action on public business.

"Chairman" means the Chairman of the Board of Adjustment.

"Presiding Officer" means the Chairman of the Board of Adjustment, or such other person who presides over the meetings of the Board of Adjustment, pursuant to the Rules of the Board of Adjustment.

"Public business" means any matter over which the Board of Adjustment has supervision, control, jurisdiction or advisory power.

Rule 1 - Duties

- 1.1 The Chairman shall preside at all meetings or hearings of the Board, decide all points of order or procedure, and perform all duties required by law or these Rules.
- 1.2 The Department of Planning and Inspections shall conduct, at the discretion of the Board, all official correspondence of the Board, send out all notices required by law and by these Rules of Procedure, keep records of each examination of other official action of the Board and perform all duties required by law and these Rules of Procedure.
- 1.3 In the absence of the Chairman, the presiding officer, with all powers and duties of the Chairman enumerated herein, shall be the Vice-Chairman as elected from its membership by a majority vote of all of the members of Board of Adjustment. In the absence of the Vice-Chairman, the presiding officer, with all powers and duties of the Chairman enumerated herein, shall be such other member of the Board of Adjustment as is elected by a majority vote of the members of Board of Adjustment present.

Rule 2 - Order of Business; Conduct of Meetings

- 2.1 The order of business at each regular meeting of the Board of Adjustment shall be as follows:
- Call to Order
 - Pledge of Allegiance
 - Roll Call
 - Approval Agenda
 - Approval of Minutes
 - Communications of Reports
 - Old Business
 - New Business
 - Adjournment

- 2.2 The order of business can be altered at any duly constituted meeting by an affirmative vote of a majority of the Board of Adjustment members present. The privilege of the floor may be granted to the public at any time by presiding officer.
- 2.3 During public hearings, the presiding officer may set reasonable time limits on public comments. An individual may submit a written statement in lieu of or in addition to verbal comments. The presiding officer may terminate or limit testimony which is irrelevant or unduly repetitive.
- 2.4 Every attempt will be made to complete all business scheduled. In the event that the presentation of a scheduled agenda item takes longer than reasonably anticipated, the presentation may be suspended by approval of majority of the Board of Adjustment members present. A motion to suspend a presentation should, to the extent possible, include the date and time at which the remainder of the presentation will be heard.
- 2.5 Testimony at public hearings shall be taken under oath which shall be administered by the Board's attorney or any other individual as may be directed by the presiding officer.

Rule 3 - Meetings of the Board of Adjustment

- 3.1 Regular meetings shall be held in City of Dover City Hall Council Chamber or such other location as designated by majority vote of all the members of the Board of Adjustment.
- 3.2 Regular meetings shall convene at 9:00 A.M. on those days when a meeting has been properly noticed and advertised.

- 3.3 Special meetings and executive sessions may be held as provided in Title 29, Chapter 100 of the Delaware Code. Special meetings may be called by the Chairman upon at least 48 hours' notice to each member. The Chairman shall call a special meeting within 10 days of receipt of a written request from any two members of the Board. Notice of a special meeting shall include an explanation as to why the notice required in Rule 4 could not be given.
- 3.4 Except for executive sessions, all meetings shall be open to the public.
- 3.5 Minutes of all meetings, including executive sessions, shall be kept and made available for public inspection and copying. At a minimum, the minutes shall include a record of attendance and a record, by individual members of the Board of Adjustment, of each vote taken and each action agreed upon.

Rule 4 - Public Notice of Meetings

- 4.1 Public notice of all meetings shall be posted on the public bulletin board located in City Hall and on the official City of Dover website.
- 4.2 Public notice, property posting and advertisement of meetings and public hearings shall comply with all applicable provisions of State law and City of Dover ordinances. In addition, notice of a public hearing shall be mailed to an appellant or applicant (or attorney or agent of the appellant or applicant) at least 15 days before the date of the hearing.

Rule 5 - Agenda

- 5.1 The agenda for Board of Adjustment meetings shall be available to members of the Board of Adjustment at least one week prior to the scheduled meeting.
- 5.2 The Director of the Department of Planning and Inspections shall be responsible for the preparation and contents of the agenda. Any member of the Board of Adjustment may place items on the agenda by contacting the Director of Planning and Inspections, either verbally or in writing, prior to the posting of the agenda. Any other person may

request to have items placed on the Board of Adjustment agenda by notifying the Director of Planning and Inspections, in writing; provided, however, that items requested to be placed on the agenda that are not, in the opinion of the Director or Planning and Inspections, of Board of Adjustment jurisdiction, or which do not meet requirements of notice or advertisement, will not be placed on the posted agenda. Those items that do not qualify as Board of Adjustment business will be responded to by the Director of Planning and Inspectiuons and copied to the members of the Board of Adjustment.

- 5.3 Items which arise at the time of the Board of Adjustment's meeting may be added to the agenda, and items may be deleted from the agenda, by a majority vote of all of the members of the Board of Adjustment present, subject to requirements of advertisement and other applicable provisions of state law and City of Dover ordinance.

Rule 6 - Attendance of Members of the Board of Adjustment at meetings; Quorums

- 6.1 No members of the Board of Adjustment shall be absent from scheduled meetings or from other official duties without cause. When

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unable to attend a scheduled meeting, a member of the Board of Adjustment shall be responsible for notifying one of the following: the Chairman, the Director of Planning and Inspections, another Board of Adjustment member, or a staff member of the Office of Planning and Inspections.

- 6.2 The presence of no less than three (3) members of the Board of Adjustment shall constitute a quorum.
- 6.3 When a quorum is not present at any properly called meeting, the members of the Board of Adjustment present may adjourn.
- 6.4 If no members of the Board of Adjustment are present, any staff member of the Office of Planning and Inspections may adjourn the meeting.
- 6.5 Three (3) affirmative votes shall be required to approve any special use exception or variance. Failure to receive three (3) affirmative votes shall be deemed to disapprove any matter.
- 6.6 Any other matter may be decided by majority vote of Board of Adjustment members present.

Rule 7 - Voting Procedure

- 7.1 On each motion duly made and seconded, the presiding officer shall call the roll or determine the vote in some other manner, and announce the results.
- 7.2 A written record shall be made of the vote by each member of the Board of Adjustment on each vote taken. Said record shall also reflect the number of "aye" votes, the number of "nay" votes and the number of "abstaining" votes.

Rule 8 - Record Keeping

- 8.1 A file shall be kept in the Office of Planning and Inspections of all Board of Adjustment meetings. The file shall include copies of meeting notices (including the time, date and place where they were posted), the agenda and the minutes of the meeting.

Rule 9 - Minutes of Board of Adjustment Meetings

- 9.1 Minutes shall be taken of each meeting of the Board of Adjustment, and shall reflect the following:
- a. Kind of meeting.
 - b. Date and place of meeting.
 - c. Name of the presiding officer.
 - d. Members of Board of Adjustment present.
 - e. Whether the minutes of the previous meeting were approved.
 - f. The proceedings of the Board of Adjustment, briefly and accurately stated. The minutes shall record what was done rather than what was said. However, a member of Board of Adjustment may request that a statement or written material be attached to the minutes and made a part thereof.
 - g. All motions voted upon and the results of said motions.
 - h. Names of members of Board of Adjustment making motions and those making secondary motions.
 - i. A record by individual members of Board of Adjustment, of each vote taken and action agreed upon.
 - j. Time of convention and adjournment.

- 9.2 Minutes shall be taken, prepared and presented by a staff member of the Office of Planning and Inspections and the Board's attorney in written form for approval as written or as amended. The minutes as approved shall be filed in the minute book of the Board of Adjustment. Copies of the approved minutes shall be made available to the general public, except as otherwise authorized by law.
- 9.3 Recordings will be made of all Board of Adjustment meetings at which City of Dover business is transacted. The recordings shall be under the custody of the Director of Planning and Inspections and shall be open to inspection and copying in accordance with applicable law regarding access to public records.

Rule 10 - Conduct During Meetings

- 10.1 When a member of Board of Adjustment desires to speak, that member shall address the presiding officer and shall not proceed until recognized and granted the privilege of the floor. The presiding officer shall recognize the member of Board of Adjustment who is the first to address the presiding officer.
- 10.2 No member of Board of Adjustment shall interrupt another in debate without the consent of the other. To obtain such consent, the member shall first address the presiding officer.
- 10.3 If any member of Board of Adjustment, in speaking or otherwise, transgresses the Rules of the Board of Adjustment, the presiding officer shall, or any member of Board of Adjustment may, call the errant member to order. When a member shall be called to order, that member shall not proceed without the permission of the presiding officer.

Rule 11 - Change or Suspension of Rules

Any rule of the Board of Adjustment may be changed or suspended by the approval of a majority of all of the members of the Board of Adjustment.

Rule 12 - Rules of Order

- 12.1 These rules have been adopted in order to provide an orderly procedure for matters coming before the Board. However, these rules shall be interpreted and applied so as to afford substantial justice and to promote a fair but efficient hearing procedure. Consequently, strict adherence to these rules shall not be required but the Board may modify and digress from these rules for reasonable cause as the situation may demand. In the event that any rule herein contradicts state law or City of Dover ordinance, such rule shall be construed in compliance with such statute or ordinance. In the event that any of the foregoing rules is declared illegal or unenforceable by any court of competent jurisdiction, the balance hereof shall remain in full force and effect.

Rule 13 - Standards of Conduct

- 13.1 Persons attending Board of Adjustment meetings shall observe appropriate dress standards and standards of conduct. Attire that may distract from the proceedings shall not be permitted.
- 13.2 Persons attending Board of Adjustment meetings may wear one (1) "cause supporting sign" affixed to their clothing. The size of such "sign" may not exceed three (3) inches by five (5) inches. Signs offensive to the members of the Board of Adjustment or to participants, and signs that may distract from the proceedings shall not be permitted. No placards shall be permitted at any meeting of the Board of Adjustment.

- 13.3 The City Manager for the City of Dover may, from time-to-time, prescribe by policy reasonable and appropriate attire and conduct for persons attending meetings of the Board of Adjustment.
- 13.4 Members of the news media shall conduct themselves in such a manner as to not be disruptive of the proceedings of the Board of Adjustment.
- 13.5 Persons attending Board of Adjustment meetings shall at all times conduct themselves in an orderly manner and follow the direction of the presiding officer.
- 13.6 No applause or other disruptive behavior shall be permitted. All cellular phones, pagers, and other electronic devices which emit noise shall be turned off or placed on silent mode for the duration of the meeting.

Rule 14 - Appeals and Applications to the Board of Adjustment

- 14.1 Appeals and applications to the Board, as permitted by state law and City of Dover ordinances, shall be on forms to be prepared by the Director of Planning and Inspections and approved by the Board of Adjustment, and shall be accompanied by the proper fee. Appeals and applications shall be signed by any person authorized by law to make such an appeal or application, or an agent or an attorney of such person.
- 14.2 All appeals and applications to the Board shall be accompanied by a recent survey, prepared and approved by a licensed surveyor, of the subject property, except when this requirement is waived by the Board or the Office of Planning and Inspections.
- 14.3 Appellants, Applicants, supporters, and members of the opposition are encouraged to submit their exhibits and other supporting materials prior to the hearing, if possible.

- 14.4 All communication and correspondence with the Board shall be submitted through the Office of Planning and Inspections. Telephone, email, verbal or written communication to individual Board members regarding a case is prohibited.
- 14.5 Appeals and applications shall not be amended after public notice of the public hearing has been made except that the size of any variance requested may be increased or reduced by an applicant prior to or at the public hearing provided, however, that the type of variance requested (side yard variance, front yard variance, etc.) has been included in the public notice.
- 14.6 During the presentation of an appeal or application to the Board, persons addressing the Board shall identify themselves by name and place or residence. No cross-examination of witnesses or applicants will be permitted. All questions for others should be directed to the Board and the Board may direct the question to the appropriate person. Nothing in this paragraph shall limit an attorney from directly questioning witnesses in support of the position the attorney is advocating.
- 14.7 The Board may continue a hearing or vote to leave the record open for the purpose of supplementing the record and may put limitations or conditions thereon.
- 14.8 Following a decision by the Board on an appeal or application, a copy of the written decision shall be sent to the appellant or applicant, or the agent or attorney for the appellant or applicant. Any oral discussion of or vote upon the application by the Board shall be deemed in the nature of preliminary deliberations to the rendering of a final written decision and only the written decision, as adopted by a majority of the Board, shall constitute a decision of the Board.
- 14.9 The Board may impose conditions with respect to the granting of an application or appeal pursuant to the City of Dover Municipal Code. Whenever such condition is imposed by the Board, the condition should be stated in the decision of the Board. Such decision shall remain valid

only as long as the condition or conditions upon which it was approved exist or the conditions imposed by the Board are adhered to.

Rule 15 — Order of Proceeding:

- 15.1 The order of presentation shall generally be as follows subject to modification by the Chairman for reasonable grounds.
- 15.2 The Board shall identify the application number, the general nature of the proceeding (appeal, variance, or special use exception), the name of the filing party, the description of the subject property, and shall state whether the Office of Planning and Inspections has received any correspondence pertaining to the application.
- 15.3 The Applicant/Appellant will be afforded the opportunity to present testimony and evidence supporting the application. The Applicant/Appellant may appear with or without legal counsel. The Applicant/Appellant shall be permitted to present witnesses and introduce exhibits, petitions, and other documents into the record.
- 15.4 Upon the conclusion of each witness' initial testimony, members of the Board, the Planning and Inspections Department, and the Board's attorney shall have an opportunity to ask questions of the Applicant/Appellant and its witnesses and counsel.
- 15.5 In the case of a variance or special use exception application, at the conclusion of the Applicant's witnesses and evidence, any person desiring to make a statement in support of the application shall be given an opportunity to do so. Each person desiring to make such a statement shall identify himself or herself by name and address and shall be sworn in prior to making a statement.
- 15.6 In the case of a variance or special use exception application, at the conclusion of the statements in favor of an application, any person

desiring to make a statement in opposition to the application shall be given an opportunity to do so. Each person desiring to make such a statement shall identify himself or herself by name and address and shall be sworn in prior to making a statement.

- 15.7 At the conclusion of all evidence and public statements, if applicable, the Applicant/Appellant shall be given a brief opportunity to submit additional testimony or evidence in the form of "rebuttal." The presiding officer may allow for brief "sur-rebuttal" testimony from the opposition provided that such testimony is limited to the scope of the testimony presented in the "rebuttal" and is not repetitive, redundant, or irrelevant.
- 15.8 All exhibits presented to the Board for its consideration shall be identified and marked appropriately. All such documents shall be retained by the Office of Planning and Inspections.
- 15.9 Hearsay evidence shall be permitted a Board hearing and the Board shall be entitled to hear and consider any probative evidence which, in the Board's opinion, is relevant and of sufficient credibility to be entitled to consideration.
- 15.10 The Board shall have the authority to set reasonable time limits on all parties and speakers appearing before it.
- 15.11 The presiding officer shall have authority to terminate or limit any testimony or questioning which is irrelevant or unduly repetitive or provocative.
- 15.12 Once all testimony and evidence has been presented, the public hearing shall be closed and no new testimony or evidence will be permitted unless the Board votes to leave the public record open.

Rule 16 - Delaware Freedom of Information Act

- 16.1 All procedures of the Board of Adjustment shall comply with the Delaware Freedom of Information Act, as contained in Title 29,

Chapter 1000 of the Delaware Code, as amended. To the extent that any provision herein shall conflict with the provisions of the Delaware Freedom of Information Act, the more restrictive provision shall apply.

Rule 17 - Delaware State Employees', Officers' and Officials' Code of Conduct

- 17.1 Members of the Board of Adjustment shall be subject to the Delaware State Employees', Officers' and Officials' Code of Conduct, as set forth in Title 29, Chapter 58, Subchapter I of the Delaware Code.

Rule 18 - Request for a Rehearing

- 18.1 A motion for a rehearing shall be made not later than 10 days after the filing of a decision in the office of the Board of Adjustment. The Board of Adjustment may rehear a matter for the following reasons:

- a. Mistake, inadvertent surprise or excusable neglect.
- b. Newly discovered evidence which by due diligence could not have been discovered at the time of the original hearing.
- c. Fraud, misrepresentation or other misconduct of an adverse party.

- 18.2 A motion for a rehearing shall state the grounds therefore and may be accompanied by applicable affidavits. The motion and affidavits shall be provided by mail to the opposing party of record, if any. The opposing party shall have 10 days after receipt of the motion to file a response thereto and attach applicable affidavits. The Board shall determine the motion upon the written application, any responses thereto, and accompanying affidavits, if any.

Rule 19 - Adoption and Effective Date

- 19.1 These rules shall become effective upon adoption by a majority vote of all of the members of the Board of Adjustment.

Original DRAFT September 2025

Adopted:
Effective Date: