

CITY OF DOVER
BOARD OF ADJUSTMENT MINUTES
April 16, 2025

A Regular/Hybrid Meeting of the City of Dover Board of Adjustment was held on Wednesday, April 16, 2025, at 9:00 A.M. in person in the City Council Chambers and using the phone/videoconferencing system Webex. Members present were Chairman Sheth, Mr. Wagner, Mr. Swalm, Mr. Coburn and Mr. Senato.

Staff members present were City Solicitor Mr. Rodriguez, Mrs. Melson-Williams, Mrs. Sharon Duca, Mrs. Savage-Purnell, and the new Planner II Chris Salzano.

Mrs. Melson-Williams introduced the new member of the Planning Staff as of Monday of this week, and that is Chris Salzano. Chris is a Planner II.

Chairman Sheth asked if the Board of Adjustment had other meetings in 2025. Mrs. Melson-Williams replied this is the first meeting in 2025.

APPROVAL OF AGENDA

Mr. Senato moved for approval of the agenda with the addition of having a brief discussion at the end of the meeting. The motion was seconded by Mr. Swalm and unanimously carried 5-0.

Chairman Sheth asked if there were any questions.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF AUGUST 14, 2024

The meeting minutes of August 14, 2024, were approved by Mr. Senato as submitted. The motion was seconded by Mr. Coburn and unanimously carried 5-0.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF NOVEMBER 20, 2024

The meeting minutes of November 20, 2024, were approved by Mr. Senato with the necessary corrections on page 14. The motion was seconded by Mr. Coburn and unanimously carried 5-0.

Chairman Sheth mentioned that after the meeting he would like to have a couple of minutes. He mentioned City Solicitor Mr. Rodriguez is resigning. At the current time, he is helping us until they fill the position.

COMMUNICATIONS & REPORTS

Mrs. Melson-Williams mentioned as previously noted that we have a new member of the Planning Staff. We are very excited that Chris joined us on Monday. He is just learning a lot about the City of Dover. There is a meeting reminder that the next regularly scheduled meeting for the Board of Adjustment is May 21, 2025, with a 9:00 am start time in the Council Chambers and with a virtual format. Currently, we have no Applications to bring before the Board in May. If we don't receive any Applications, we will not be having that meeting.

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

NEW BUSINESS**Application V-25-01**

Property at 2 Westover Drive. A Request has been made for a Variance from the requirements of *Zoning Ordinance*, Article 5 §1.114 as associated with a proposed above-ground swimming pool. The Variance Request seeks a reduction of the minimum setback from 15 feet to 12 feet from the side property line for the edge of the water containment portion of the swimming pool. The property is zoned RM-1 (Medium Density Residence Zone) and subject to the PND (Planned Neighborhood Design) as part of the Village of Westover PND. The owners of record are Jason and Page Bebout. Property Address: 2 Westover Drive, Dover DE. The Tax Parcel ID is ED-05-076.13-02-18.00-000.

Mrs. Melson-Williams gave a brief overview of the Application V-25-01 referencing the Staff Review Report and the attached Exhibits A-G.

Representatives: Mr. and Mrs. Jason Bebout, owners.

Mr. Jason Bebout was sworn in by City Solicitor Mr. Rodriguez.

Mr. Bebout stated that he resides at 2 Westover Drive. I am here because I am applying for a variance for a pool to be installed at my house. The variance is for adjusting the 15 feet setback to 12 feet to accommodate the pool as you can see in Exhibit G. The blue tarp is the blocking deck for the outside of the pool and the brown tarp would be the pool itself. The deck itself would be 10 feet from the fence instead of 15 feet. The pool itself would be 12 feet from the fence. There is a walkway underneath that is part of the house that if removed would accommodate the pool but removing it would be a hardship as it is connected to the back part of the patio.

Mrs. Melson-Williams stated that the Applicant is giving an opening statement for their request. Let me verify for the members that this is Application V-25-01. It is regarding the property as noted at 2 Westover Drive. It is a variance request related to the above ground swimming pool that is proposed. Specifically, the variance seeks a reduction as noted of the minimum setback from 15 feet to 12 feet from that side property line. In the image, the side property line is where you see that white vinyl fence. That distance is from the property line to the edge of the water portion of the pool. The *Zoning Ordinance* requires that it be 15 feet and as proposed here, it is proposed to be 12 feet. The property is zoned RM-1 (Medium Density Residential Zone) and we find this property within the Village of Westover Planned Neighborhood Design. So, it is within an existing neighborhood. This is a single family detached house. Its neighbors are similar. There are also duplexes and townhomes and actually an apartment complex within this overall community. The Planning Staff prepared the Staff Recommendation Report, and it includes a series of Exhibits that we have been looking at. Exhibits A-G for the record are entered. The Legal Notice was published in the Daily State News on Wednesday, April 2, 2025 and the property owners within 200 feet of the subject site were notified by letter by the Planning Office in accordance with your Public Notice requirements.

There is an existing single family detached house that has some walkway patio areas, and they are looking to add this above ground swimming pool. The Code section of the *Zoning Ordinance* related to swimming pools is found in Article 5 §1.114 and then specifically section 1.11 on swimming pools. A swimming pool is anything that holds more than 24 inches of water, and this above ground pool would do so. The safety requirements for the pool are going to be subject to the Building Code but the *Zoning Ordinance* includes requirements for placement; and that's where the applicant is seeking a Variance for this morning. It is located in a side yard, so placement is appropriate, but the setback is where they're seeking the Variance. It normally requires that the water portion of the pool be 15 feet away from that side property line. They are asking to be 12 feet. The other portions of the pool do meet the requirement that in this case the decking around the pool is greater than the required 5 feet from the property line. The Board of Adjustment must consider the Exceptional Practical Difficulty test when looking at an Area Variance. The Applicant and Staff have responded to those four key items related to the nature of the zone; the character of the area; whether the restriction was removed, how it would affect neighborhood properties; and also, if it was not removed, how it would affect this particular property individually. The Planning Staff have recommended approval of this Variance Request. You may want to hear a little bit more from the Applicant in their reasoning for seeking the Variance to be able to place the pool in this current location. As noted, I include the series of Exhibits that are attached to your Report.

Chairman Sheth mentioned that the Applicant needs to prove Exceptional Practical Difficulty and asked if anyone has any questions regarding this Application. He asked you to please clear your mind to ask about questions for Mrs. Melson-Williams; so, you are very clear before we question the Applicant.

Chairman Sheth asked if the swimming pool was 12 feet from the property line and not 15 feet. Is that correct? Mrs. Melson-Williams replied that it is correct. The water portion is 12 feet (from the property line) and that is what he's asking. It's a variance of 3 feet basically. The Code would require that the water be 15 feet from the property line; as proposed here, they are going to be 12 feet from that property line. Chairman Sheth asked so basically, they would like to have a reduction of 3 feet. If you have any questions for Mrs. Melson-Williams please ask them, then we can ask the Applicant to proceed with the Exceptional Practical Difficulty.

Mr. Bebout mentioned that he would have to remove the walkway that leads to the patio in the backyard. This would move the pool 3 feet closer to the house which would make it 4 feet from the house itself.

Chairman Sheth asked that the Exceptional Practical Difficulty is, if you can or cannot have the pool; is that right? Mr. Bebout replied yes. If I remove the walkway that puts the pool 4 feet from the house and that would be too close to the house itself. At least with the walkway between the pool and the house that gives me 7 feet to work with instead of being right next to the house for the pool. I would still be within 12 feet of the property line instead of the 15 feet.

Chairman Sheth stated that he sees the Applicant's argument. He asked the Applicant if he had choices? Mr. Bebout replied I don't have any choices as far as the pool itself.

Chairman Sheth and Mr. Swalm asked if the walkway could be reduced.

Mr. Swalm mentioned that he noticed that the walkway and that perhaps you could reduce the width or length of the walkway. Mr. Bebout replied the walkway is 3 feet.

Mr. Swalm asked what the reason is the Applicant did not want it close to the house. It is because of a water leak. Mr. Bebout replied, for the money that was spent on the walkway and the patio, he does not want it to go to waste just to install a pool. If he can accommodate the pool with the walkway, it would make things easier. He also mentioned the way the pool is built with the aluminum frame, its sturdiness, and a 30-year warranty.

Mr. Swalm mentioned that he was just concerned. He wasn't sure of the reasoning, or if the Applicant was concerned that something might happen with the pool if it's too close to the house; like damages, if you don't have enough room.

Mr. Bebout said to get from the fence to the backyard, that 3 feet walkway is the only way to get around. If you move the pool closer, I will have to rearrange how you get to the backyard from the side.

Chairman Sheth asked about the blue line (area listed 16ft x 32ft) on the Exhibit. Mr. Bebout said that the blue line is the number of feet, it is from the property line to the walkway.

Chairman Sheth asked about the white line. Mr. Bebout said it was something holding the tarp down.

Mr. Senato mentioned that he noticed the 4 feet walkway leading up to the red (line) and the air conditioning and condensing unit outside. You mentioned the 3 feet would put you 1 foot away from the condensing unit as a walkway if the Variance was not approved, is that right? Mr. Bebout said right.

Mr. Senato asked if it could be moved to another area. Mr. Bebout replied the air conditioning unit could not be moved to another area.

Mr. Senato mentioned that these pools can be put in the ground. It is not an intention; it is strictly the above pool. Is it going to stay that way? Mr. Bebout replied yes.

Mr. Senato mentioned the 3 feet variance from 15 feet to 12 feet which is the total 3 feet from the water area to the fence area. That's a 12-foot pool. Would it be hard to go from 12 foot to 9 foot in the water area? Instead of 12 foot wide, it could be 9 foot wide. Mr. Bebout replied they do not offer a 9-foot wide. The 12x20 or 12x24 is the smallest. The 12-foot width is the smallest width.

Mr. Senato mentioned that there is no other area in the yard that he can see that would accommodate the pool. The pool cannot be rearranged or anything like that.

Chairman Sheth mentioned with the Exceptional Practical Difficulty, it basically means you can or cannot have the approval of the Variance. No changes. Is that right? Mr. Bebout said right.

Mr. Senato asked if there were any changes, would that mean it could not be done on the lot because that is the only area? Mr. Bebout said it was right, because it is a C type back yard. One side of the yard faces the main street which is too close. The middle of the back is too narrow, so, the only other option would be the left side of the property line.

Mr. Senato asked if is that a 16x32 along with the frame. Mr. Bebout replied yes, with the frame.

Chairman Sheth asked the Applicant why the Applicant did not bring Mrs. Townshend. Mrs. Dawn Melson-Williams mentioned that Mrs. Townshend is part of The Rossi Group and the Rossi Group provides professional planning services under contract with the City's Planning Office. So, that firm did the initial draft of the Staff Review Report, which was then finalized by Planning Staff. The Applicant did not have any involvement with Mrs. Townshend other than I think, answering a question or two that she had when that firm was doing the initial review of the application. Chairman Sheth said thank you, Dawn.

Chairman Sheth asked if there were any additional questions? There were none.

Chairman Sheth opened the public hearing.

Chairman Sheth asked if there was anyone who would like to speak in favor of the project.

Mrs. Page Bebout was sworn in by City Solicitor Mr. Rodriguez.

Mrs. Bebout stated her name and address (2 Westover Drive) where she resides with Jason Bebout. I just wanted to say a couple of things. Just a few things, I noticed Jason forgot to mention. With the property, we do have of course, that vinyl fence that goes around the entire property. That is a lockable vinyl fence. Along with the condenser unit being there, that is cemented to the ground and cannot be moved at all. Worst case scenario, if it's like a public safety situation, we can lock that vinyl fence along with the fence that will be around the pool.

Chairman Sheth asked if she was in favor of the Application. She replied yes, I am in favor of the Application.

Chairman Sheth asked if there was anyone else who would like to speak in favor of the project. There was no one else wishing to speak.

Chairman Sheth asked if there was anyone who would like to speak against the project.

Chairman Sheth closed the public hearing after seeing no one else wishing to speak (online or in the meeting room).

Chairman Sheth asked if there was any correspondence. There was none.

Mr. Senato moved to approve Variance Application V-25-01 where the applicant is requesting a reduction of the minimum setback from 15 feet to 12 feet from the side property line for the edge of the water containment portion of the swimming pool. Mr. Senato stated that the swimming pool is consistent with the zoning and no other location on the lot could accommodate the required

setback, which is the hardship. The motion was seconded by Mr. Coburn unanimously carried 5-0.

Chairman Sheth mentioned as a reminder, that each case is individual whether they establish a precedent or not.

Chairman Sheth mentioned (announcement) that every time he tried to say step down, this is his 32nd year as Chair. Mr. Rodriguez used to go to the mayor and say KC Sheth will come and ask if he can resign. So please do not say no or sorry, and that we do not take your resignation. Now, Mr. Rodriguez did not tell us (that he is not seeking reappointment); it was published in the newspaper, but he did it. So, Mr. Rodriguez, I would like to request you not to resign. What do you think? So, Mr. Senato, you are the first one, and secondly Mr. Wagner (seniority) on the Board.

Chairman Sheth announced that Mr. Rodriguez is resigning from the Board of Adjustment as the City Solicitor.

Mr. Senato stated that it is a loss. Mr. Rodriguez, we do go back a long way. He was sorry that Mr. Rodriguez is considering resigning. He wished he would not, but he wished him the best, personally from him, and thanked him for his expertise.

Chairman Sheth asked Mr. Rodriguez how many years? Mr. Rodriguez replied 29 years.

Chairman Sheth mentioned Mr. Rodriguez has 29 years of experience with the Board of Adjustment and has required full knowledge, support, and history.

Mr. Rodriguez thanked Mr. Senato for the compliments. He has enjoyed working with all of you. He will certainly miss that. It has been an honor and privilege to represent the City. Thanks a lot.

Mr. Senato mentioned that Mr. Rodriguez will surely be missed.

They mentioned the five or six cases that were won in Superior Court. So, that's what I'm trying to say to help the City realize financially and that it is very important to have the right attorney.

Mr. Rodriguez mentioned again, thank you very much. He did not expect any compliments. He wished them luck in the future and appreciates the comments.

Chairman Sheth asked Mr. Rodriguez if he could let the Board of Adjustment know his last day.

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

The meeting was adjourned at 9:44 A.M.

Sincerely,
Maretta Savage-Purnell
Secretary