

**CITY OF DOVER**  
**BOARD OF ADJUSTMENT MINUTES**  
**December 19, 2018**

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, December 19, 2018 at 9:00 A.M. with Chairman Sheth presiding. Members present were Chairman Sheth, Mr. Keller, Mr. Hufnal, and Mr. Senato. Colonel Ericson was absent.

Staff members present were Mr. Diaz, Mr. Swierczek, Mr. Hugg, Mrs. Harvey, City Solicitor Mr. Rodriguez and Mrs. Savage-Purnell.

**APPROVAL OF AGENDA**

*Mr. Keller moved to approve the amendment of the agenda order in light of the previous postponement a month ago and the withdraw of application V-18-11 per the applicant's request. The order of the agenda will be as follows: V-18-09, V-18-13, V-18-10, V-18-12, and V-18-08. The motion was seconded by Mr. Hufnal and unanimously carried 4-0. Colonel Ericson was absent.*

**APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF SEPTEMBER 19, 2018**

*Mr. Keller moved to approve the meeting minutes of September 19, 2018 as submitted. The motion was seconded by Mr. Hufnal and unanimously carried 4-0. Colonel Ericson was absent.*

**APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF NOVEMBER 21, 2018**

*Mr. Hufnal moved to approve the meeting minutes of November 21, 2018 as presented. The motion was seconded by Mr. Senato and unanimously carried 4-0. Colonel Ericson was absent.*

Mr. Hugg stated that for the benefit of the Board and any others interested the Board of Adjustment regular meeting will be held January 16, 2019 at 9:00am in Council Chambers. Included in the packets of the materials that were provided to you was a Schedule of Deadlines and Meetings of the Board of Adjustment for 2019.

**OPENING REMARKS CONCERNING APPLICATIONS**

Mr. Dave Hugg, Planning Director stated that the meeting today will be conducted in accordance with the motion of the amended Agenda. There are five (5) applications on the agenda under New Business. Each Application file will be read, and the floor will be opened for questions of the applicant by the Board and for public testimony. If the Board needs to consult the City Solicitor, they will recess to discuss legal matters. If the applicant must leave, they can contact the Planning Office at 736-7196 to learn of the Board's decision. A formal notice of the decision will be mailed to the applicants. Approved variances expire after one year if the approved project has not commenced.

All public notice for the new applications on this agenda was completed in accordance with Code requirements. The meeting agenda was posted in accordance with Freedom of Information Act requirements.

Chairman Sheth apologized for the cancellation of the November meeting due to a legal issue but stated that everything has been resolved.

**NEW BUSINESS**

**Applicant #V-18-09**

100, 250, 350, 400 & 550 Shrewsbury Court. Blue Hen Apartments, LLC has requested a variance from the requirements of the *Zoning Ordinance*, Article 5 §1.12 pertaining to the minimum setback of an accessory building in a residential zone such as RG-2 (General Residence Zone). Specifically, the applicant is seeking a variance for five newly built parking garages, with a setback of 4.85 ft. (4 ft. 10.2 inches) away from the property line. The minimum setback required for an accessory structure under the zoning is 5 ft. Subject property is zoned RG-2 (General Residence Zone). Tax Parcel is ED-05-077.00-01-01.00-000. The owner of record is Blue Hen APT, LLC. *AS AMENDED: The applicant has revised their request for the December 19, 2018 meeting and now seeks a setback of 4.7 feet (4 ft. 8.2 inches).*

Exhibits for the Record: Staff Report, zoning exhibit, and statement and plans submitted by the applicant. Legal Notice was published in the Delaware State News on December 9, 2018. The public was notified in accordance with regulations.

Mr. Swierczek gave a summary presentation of the Variance Application Request. As a note there was a typing error in the report that was sent stating there was a revised figure of 4 ft. 8.2 inches, but it is actually 4 ft. 8.4 inches. The altered figure is due to a new more detailed survey having been conducted. The new request should be the one the Board considers in its evaluation.

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

**Representative:** Mr. Doug Liberman, Vice President of Larson Engineering Group, Inc.

Mr. Liberman was sworn in by Mr. Rodriguez.

Mr. Liberman testified that when they initially started the development there was a 150 ft. strip that was first rezoned and separated off the Corporate Center. They later found that there were significant underground utilities that ran down along the property lines between the two (2) centers. That caused all the buildings from the apartments, parking lots and garages to shift closer to the Corporate Center. This put the garages that were showing in yellow and the five (5) that were mentioned by Mr. Swierczek right on the setback line. They thought that they would be able to do it and build in this area but during the construction process it ended up pushing them slightly over the setback line. As far as the nature of the neighborhood, there are grass islands and landscaping around all the garages that provides a buffer and decreases what would look like a decreased nonconformity that would exist out there. He mentioned as he referred to the picture in

the upper left-hand corner that was included in the packet noting that one of the garages is legal and the other garage was not legal. Just by looking at it you probably could not tell which one was legal and which one was not legal. They are requesting this minor adjustment to the standard.

Mr. Hufnal stated that he did not have any questions. He thought that Staff presentation was very thorough and he understood perfectly the reasoning.

Mr. Keller commented that with the photographs and the revised measurements which is extremely minor in nature that should resolve any future problems with the adjustment of the siding on the subject garage buildings.

*Chairman Sheth opened the public hearing.*

*Chairman Sheth closed the public hearing after seeing no one wishing to speak.*

*Chairman Sheth questioned if there was any additional correspondence for the record. There was no other correspondence.*

*Mr. Hufnal moved to approve variance application V-18-09 for the reasons stated by the applicant and of the very good presentation by Staff. The motion was seconded by Mr. Keller. The motion unanimously carried 4-0.*

**Applicant #V-18-13**

101 Ipswich Court. Blue Hen Apartments, LLC has requested a variance from the requirements of the *Zoning Ordinance*, Article 4 §4.3 pertaining to the minimum setback of a multiple dwelling unit structure in the RG-2 (General Residence Zone). Specifically, the applicant is seeking a variance for a currently under construction apartment building, with a setback of 29.8 ft. (29 ft. 10.2 inches) away from the property line. The minimum setback required for a multiple dwelling unit structure under the zoning is 30 ft. Subject property is zoned RG-2 (General Residence Zone). Tax Parcel is ED-05-077.00-01-01.00-000. The owner of record is Blue Hen APT, LLC.

Exhibits for the Record: Staff Report, zoning exhibit, and statement and plans submitted by the applicant. Legal Notice was published in the Delaware State News on December 9, 2018. The public was notified in accordance with regulations.

Mr. Swierczek gave a summary presentation of the Variance Application Request. As noted, the application cites two (2) slightly different figures for the variance request. The application form and map list a front yard setback of 29.8 feet, (variance of 0.2 feet) which translates to 29 feet 9.6 inches. The Criteria Response document requests a reduction of 2 ½ inches meaning the variance requested is to reduce the setback to 29 feet 9.5 inches. For this application, the Board should consider the greater reduction requested to allow for a front yard setback of 29 feet 9.5 inches.

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

**Representative:** Mr. Doug Liberman, Vice President of Larson Engineering Group, Inc.

Mr. Liberman was sworn in by Mr. Rodriguez.

Mr. Liberman testified that again it was a similar type situation. This was an infill development that was placed in the last grass open area space within the site. They sat the building right along the setback 30.1 feet off the right of way line. Things then slightly shifted with the construction of the building. It is only a small portion that falls within that setback (even still that is where the location is). If you look at the pictures that were provided it shows what was mentioned by Mr. Swierczek. There is a tree buffer with a wooden fence on the north side and is the site of East Dover Elementary School and the recreational fields along there. So that the buildings even though they are in the setback lines does not infringe on anything or change the character of the neighborhood.

Mr. Hufnal questioned if Mr. Liberman was an Engineer with the firm. Mr. Liberman replied yes sir.

Mr. Hufnal stated that he would hope in the future even though the foundations are within the setback lines that Mr. Liberman consider the siding that will be installed whether it be brick or any other siding so that he would not have to come back to the Board for a variance for a couple of inches. Mr. Liberman agreed.

*Chairman Sheth opened the public hearing.*

*Chairman Sheth closed the public hearing after seeing no one wishing to speak.*

*Chairman Sheth questioned if there was any additional correspondence for the record. There was no other correspondence.*

Mr. Keller asked for clarification if the dimension was 29 feet 9.5 inches. Mr. Swierczek replied correct. There were two slightly differently figures, one being 29 feet 9.6 inches and the other 29 feet 9.5 inches. The Board should consider the 29 feet 9.5 inches to be the target reduction.

*Mr. Hufnal moved to approve variance application V-18-13 for the reasons presented by the applicant and of the excellent presentation by Staff on the coverage of the variance needed. The motion was seconded by Mr. Senato. The motion unanimously carried 4-0.*

**Applicant #V-18-10**

1240 McKee Road. Michael Graham on behalf of PAM Dover (Post-Acute Medical Rehabilitation Hospital of Dover) has requested a variance from the requirements of the *Zoning Ordinance*, Article 5 §4.7 pertaining to the maximum size of permitted signs. Specifically, the applicant seeks to permit one (1) wall sign sized 118.31 SF, in lieu of the maximum 32 SF per sign permitted. Subject property is zoned IO (Institutional and Office Zone) and subject to the COZ-1 (Corridor Overlay Zone). Tax Parcel is ED05-067.00-01-33.00-000. The owner of record is PAM Dover DE IRF LP.

Exhibits for the Record: Staff Report, zoning exhibit, and statement and plans submitted by the applicant. Legal Notice was published in the Delaware State News on December 9, 2018. The public was notified in accordance with regulations.

Mr. Diaz gave a summary presentation of the Variance Application Request.

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

**Representative:** Mr. Phillip McGinnis, Agent from McGinnis Commercial Real Estate Company

Mr. McGinnis was sworn in by Mr. Rodriguez.

Mr. McGinnis testified that the applicant was present, and Mr. Matt Phillips from Phillips Sign was also present should the Board have any technical questions regarding the calculations used to develop the size of the letters. He had a great presentation, but he thinks Mr. Diaz hit all the points that he was going to hit. They have a project in the Corridor Overlay Zone that has been designated superior urban design. They have worked with Staff to get a sign that is readable from the road. McKee Road is a fairly high-speed limit road. It is a rehabilitation hospital that competes with other rehabilitation hospitals in the City, not necessarily in the neighborhood. The 32 square feet for one sign really does not present enough signage area for anyone passing as a motorist. They do have support of the neighbors. They have a Petition that they shared with the neighbors of what they were doing, and they signed the Petition.

Mr. Hufnal stated that in their Code they do not have any formula for the distance back from the road. He was aware that he was granted a greater distance than the 40-50 feet recommended. The formula in the USSC table was very helpful in his decision to determine the size of the letters needed. He would not have been able to determine the size of the letters without the USSC formula. As you go back from the road proportionally, you need a larger sign. If you had been closer to the road the standard may have been okay, but in moving back you need a larger sign to proportionally to be in line with where the building is located at 86 feet. Again, the formula was very helpful.

Mr. Keller stated as he added to Mr. Hufnal comments that he was very pleased to see the extent in which the applicant has gone with the matters of the sign, site safety, elimination of the sign and its potential effect on neighboring properties which has been downplayed by virtue largely of the setback. He also mentioned how the applicant has worked with the Planning Staff to bring about this representation. The site safety, effects of lighting, and matters regarding the revised sign, size, lettering, etc. looks very favorable upon the work that has been done in that regard.

*Chairman Sheth opened the public hearing.*

*Chairman Sheth closed the public hearing after seeing no one wishing to speak.*

*Chairman Sheth questioned if there was any additional correspondence for the record. There was no other correspondence.*

*Mr. Keller moved to approve variance application V-18-10 based upon applicant submission and testimony this morning and additionally the City's Report presented by Mr. Diaz which was commendable and covered the various areas to which the Board gives their attention. The motion was seconded by Mr. Hufnal. The motion unanimously carried 4-0.*

**Applicant #V-18-12**

1738 Forrest Avenue. Louise Warren on behalf of Dover Christian Church has requested a variance from the requirements of the *Zoning Ordinance*, Article 5 §4.7 pertaining to the maximum size of permitted signs. Specifically, the applicant seeks to permit one (1) monument sign sized 32 SF, in lieu of the maximum 12 SF permitted for such a sign based on the zoning. Subject property is zoned R-10 (One Family Residence Zone) and subject to the COZ-1 (Corridor Overlay Zone). Tax Parcel is ED05-075.00-01-04.00-000. The owner of record is Dover Christian Church Inc.

Exhibits for the Record: Staff Report, zoning exhibit, and statement and plans submitted by the applicant. Legal Notice was published in the Delaware State News on December 9, 2018. The public was notified in accordance with regulations.

Mr. Diaz gave a summary presentation of the Variance Application Request.

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

**Representative:** Ms. Eddie Louise Warren, Financial Secretary; Mr. Theodore Allen Henderson, Pastor of Dover Christian Church

Ms. Warren was sworn in by Mr. Rodriguez.

Ms. Warren testified that she did not have much to say because Mr. Diaz disclosed exactly what Dover Christian Church is looking and asking for. She noticed that she did not include a photo of the church itself. The church does sit quite a distance from Route 8. The 12 square foot sign would not be substantial enough so that it would be readable or for anyone to see.

Ms. Warren handed out two (2) photos to Board members for the record. She stated that the photos were the traffic flow and Dover High School.

Ms. Warren thanked the Board for their consideration.

Mr. Keller questioned whether the appropriate acquisitions from the Capital School District and/or Leander Lakes LLC cross easements have been obtained in order to provide for the entrance crossing lands of others to access the church site as he referred to Exhibit F. Mr. Diaz replied yes, the church has been built and is occupied under use. The property has a cross access easement to construct an entrance to cross the lands of the Capital School District so that the

church parking lot could be accessed. Those were all put in place before the building was constructed.

Mr. Keller mentioned as he referred to Exhibit E about the cross easements acquisitions from the Capital School District. In accordance with the Engineering Plan, there would have been something required of Leander Lakes LLC. He questioned if there was knowledge of whether they had been obtained. He asked Ms. Warren if she was familiar with what was necessary for the property access to the public street Dover High Drive. Ms. Warren replied that they had an easement that was approved, and it should be on file/record.

Mr. Henderson was sworn in by Mr. Rodriguez.

Mr. Keller mentioned that he was holding up Exhibit F which was a larger plan sheet, if you note the entrance exit driveway that comes out on Dover High Drive technically crosses lands of other people. It crosses the Capital School District and Exhibit E is included in the packet as previously mentioned regarding the cross easements. However, a triangle portion of land would be necessary also from Leander Lakes LLC. That ownership lies on the southerly border line of the church property. A part of the paved way would cross the Leander Lakes property as well. He asked Mr. Henderson if he was familiar with any transactions between Leander Lakes LLC and the church ownership.

Mr. Henderson testified that what he could speak to is that the church purchased the easement. He believes where they want to locate the sign (frontage road) is part of their property. The original property (building) that the property was sitting on was demolished. He does not see Leander Lakes property in the area at all anywhere as to where the church wants to place the sign.

Mr. Keller asked if there was any clarification from Planning Staff. Mr. Diaz replied that he wanted to emphasize once again that this was all worked out as part of the Planning Commission review of the project. Planning Staff did review the project to ensure that all the properties had easements in place for both the Dover High property and the Leander Lakes property. If they did not have the easements in place, they would not have been able to build the building. They would not have received Final approval for their Plan until those issues were worked out.

Mr. Keller mentioned that this in a sense does not have bearing on his review for the purpose of the variance request namely for the sign. However, he would suggest that a follow up reaffirmation with the Planning Commission activity would assure that there is in fact an allowable crossing for the entrance exit onto Dover High Drive.

Chairman Sheth asked Mr. Henderson if he understood Mr. Keller's question. Mr. Henderson replied he did. Chairman Sheth asked Mr. Keller to explain.

Mr. Henderson mentioned where the church wants to locate the sign is considerably far back from where the Leander Lakes property is located. Where the church wants to locate the sign sits clearly on the property that was demolished and the yard that is right off Forrest Avenue. The entrance getting onto the church property matter was taken care of early on before the church

was built. They do not want to put the sign anywhere near that area. They want to put the sign up where the church is currently located just a few feet from the property lines where the original house was located is where the sign will be located. It has nothing to do with the Leander Lakes property and our property. The sign will be well on the property that the church has (where the building is currently).

Ms. Warren mentioned to Mr. Keller that she wanted to make sure she understood him correctly that he was concerned as to whether the church has permission to do something from Leander Lakes as far as the easement. Leander Lakes sits more than 200 feet away from the church property. The apartments are way in the back. As you can see, the sign that they are trying to construct is right on Forrest Avenue as mentioned by Mr. Henderson. She does not think the sign will interfere and she did not think that was what Mr. Keller was saying. She thinks that Mr. Keller wants to make sure that there is nothing irregular or hindering regarding the easement between Dover Christian Church and Leander Lakes that needs to be addressed. She asked if this was what she was hearing? Mr. Keller replied yes. As he stated it really does not have really bearing on his approval for denial or approval of the sign itself. However, it was the Exhibit of the Plan prepared by Becker Morgan Group, (the engineering firm) that was included in their packet. He took note of the location and layout of the church property, parking and its entrance off Dover High Drive. But he did not see any provision whereby there was an appropriate easement for the crossing portion of the driveway to the church crossing the Leander Lakes property, so he was bringing it up to see if they could have some clarification. It may very well be a matter simply of a follow through with the church or Becker Morgan as to whether the appropriate measures have been taken to cross lands of other people mainly Leander Lakes LLC. Ms. Warren replied right. They will definitely look into it. Mr. Keller stated that Ms. Warren was absolutely correct in her understanding of his position. Mrs. Warren replied okay, thank you.

*Chairman Sheth opened the public hearing.*

*Chairman Sheth closed the public hearing after seeing no one wishing to speak.*

*Mr. Hufnal moved to approve variance application V-18-12 based upon the applicant testimony and additionally the Staff Report that covered everything very well. He agreed that in the position where this property is located and the County across the street, and the signs that are already in place, this sign is going to have little effect or impact on the them by approving this sign. The motion was seconded by Mr. Keller. The motion unanimously carried 4-0.*

**Applicant #V-18-08**

360 Nottingham Court. Claude and Gwen Pritchett have requested an area variance from the requirements of the *Zoning Ordinance*, Article 4 §4.41 pertaining to the minimum rear yard setback requirement in the R-8 (One Family Residence Zone). Specifically, the applicant proposes to reduce the required rear yard setback requirement of 30 ft. to 26.4 ft. The minimum setback requirement for the R-8 zone is 30 ft. Subject property is zoned R-8 (One Family Residence Zone). Tax Parcel is ED-05-085.12-04-26.00-000. The owners of record are Claude and Gwen Pritchett.



Exhibits for the Record: Staff Report, Zoning Exhibit, and statement and plans submitted by the applicant. Legal Notice was published in the Delaware State News on December 9, 2018. The public was notified in accordance with regulations.

Mrs. Harvey gave a summary presentation of the Variance Application Request.

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

**Representative:** Mr. Gregory Scott P.E., Scott Engineering Inc., Mrs. Gwen Pritchett, Owner

Mr. Scott was sworn in by Mr. Rodriguez.

Mr. Scott thanked Mrs. Harvey for a good presentation on the application. The applicant is seeking to build a 16x16 multi-purpose sunroom on the rear of the home simply to enhance the value of their property and to make it a practical useful addition to their home that they can use as part of their family needs as well as visiting family and guests, as well as their in-home business. They feel that the 16x16 size sunroom would be appropriate and does not infringe on any rear setbacks or cause any problems or visual aesthetics compromising the neighbors that live around them. The Pritchetts and the Builder are present today. Ms. Pritchett would like to speak today. She also has supporting letters from surrounding neighbors in favor of the variance application.

Chairman Sheth asked Mr. Scott if the applicant was looking for an Area Variance. Mr. Scott replied he was looking for a Variance to reduce it down to 25 feet.

Chairman Sheth mentioned that the application states that one bedroom was converted to office space. Mr. Scott replied that this addition will be a multi-purpose room that they will be able to use as part of their business as well as family use.

Chairman Sheth asked whether the 12x16 would satisfy the applicant. Mr. Scott replied no the 12x16 was looked at by the Architect. Based on what the applicant thought would be useful for their needs and the 12x16 would not work. They cannot expand it horizontally because of existing doors and windows that are currently there without making significant changes to the rear of the house. They need to go towards the rear of the house.

Chairman Sheth questioned the applicant regarding the multi-purpose room or converted a room into an office. Mr. Scott replied that it would be more than just an office. It would be space for them to utilize with family, grandkids, and to entertain guests. They had converted one bedroom into an office that they currently use. They only have one spare bedroom at the current time that is being utilized by their adult son.

Mrs. Pritchett was sworn in by Mr. Rodriguez.

Mrs. Pritchett testified that she had letters from some of the neighbors when this proposal came out and Mr. Lamb informed them of what would be forthcoming regarding the variance request.

Notifications were sent to various neighbors and three (3) or four (4) have given their responses in favor of the proposal. Another reason she and her husband wanted to build the extra room is because they are getting older and her husband is significantly older than she is. If in an event either of them became infirmed, they would rather not go to a nursing home. To have a hospital bed dragged upstairs would not be practical. They do not enough space downstairs to have another room (living area). There is a ½ bath downstairs and a full bath upstairs. We could conceivably put a shower or something downstairs in the future. In the event, either of them becomes infirmed they really have no place to put anyone. They do have a business; they are the owners and operator of D&J Transportation LLC that provides public carrier services to the Dover, Baltimore, and Philadelphia areas. They have a contract with the Capitol School District. They have six (6) employees. If they need to have a meeting at their home, they have already somewhat modified the inside of the home. Mr. Lamb knocked out a wall and they kind of made their living room a little bigger, but it's a family room. In order to have something more businesslike, they would need the extra space. Again, it depends on what the extra space could be used for. It could be used for the business in the future, hospital room, play area for the grandchildren, as well as extra space to breathe. She hoped that she answered all the questions. She asked the Board if they had any questions.

Mr. Hufnal asked the applicant whether the 12x16 room would be sufficient. This would be allowed under the current Code. Mrs. Pritchett replied no, the existing family room is about 16x16 and it is already a challenge to fit the existing furniture in the room. If it was a 12x16 that would limit them, and they would not be able to build because she would not be getting the space that she needs to make it useful and practical. Practical is the bottom line. Practical is what she was taught as a child if it is not practical then don't do it. They would really appreciate it if the variance was approved. They have been in their home for almost 30 years, paid their taxes, and done everything the right way, now they have a little money and would like to make things a little better. They would like to improve the value of their home because they are not going to last forever. When we sell the property, whenever that happens, their children will be able to reap the benefits. They are trying to pay it forward.

Mr. Keller questioned if the applicant could advise him of previous owners J.E. Winko and Ilene J. Winko. Mrs. Pritchett replied they were her parents. When she and her husband initially got the house, they were not in a financial position to get a loan. Her mother had received her inheritance that her father had put in a trust and their names were put on the deed in addition to their names.

Mr. Keller questioned if they were currently listed as co-owners. Mrs. Pritchett replied they are both deceased. The trust has been dissolved. Her mother died 5 years ago and her father shortly thereafter. Before her father died in January of 2015, he knew his time was limited and he made sure everything was closed out on his end. When her sister took over as the Executress and closed out the Estate, it would be done properly. Both she and her sisters have received part of their inheritance based on this. Her parents are no longer with them and the house is in her name and she believes she has paperwork at home stating this information. The mortgage loan has been paid off. There was a second loan on the house, and she thinks that has also been paid off, so the house belongs to them.

Mr. Hufnal asked in Staff testimony it was mentioned that the two requests for additions in 2007 and 2009 for properties located at 347 and 365 Mayberry Lane were done without a variance request. Mrs. Harvey replied yes, they were done without a variance request.

Chairman Sheth mentioned that roughly 20 years ago there was a case in the Mayfair area where they built a bedroom without variance approval and the Board asked for the bedroom to be demolished because it was not approved. There have been a number of cases in Mayfair that were never approved and in this case the home is used as a business office with six (6) employees and he is not sure of the City's requirement regarding that. Now a can of worms have been opened because the Board has found out that there are some people who may have built something without approval. There has been different issue in the past regarding additions without the correct approval. Sometimes the City finds out when someone is applying for a loan or title search to get the addition. A case to case establishes a precedent but then you might or might not have in the future.

Mr. Hugg reminded the Board that the issue before them is a variance for this particular construction. While all of the other discussion may be interesting and add to your understanding of the project, the request is for a variance to allow a 16x16 addition to the rear of the house and it does have the endorsement of the Planning Staff. He asked the applicant if she would submit the letters that she received for the record as he thinks this would be helpful to support the application. He thinks that any other matters that may relate to this property or other properties are informational only.

Mr. Hufnal stated that in this request for a 3.8 feet variance is excessive and to approve that the Board could really set a precedent in the future of cases before them. He did not think that they have every granted a variance with that magnitude at this point. He would personally be against granting the variance based on what others have done in that neighborhood. Other neighborhoods in the City could come in with that type of request and they would almost be obligated to approve. Again, he stated that 3.8 feet is quite excessive. If there was anything less than that he would be more inclined to approve it such as the reduction in the size of a house to a 14x16 square foot would only be 1.8 feet verses 3.6 feet. He is not inclined to approve that even though Staff has made the recommendation. It puts the Board in a very precarious situation in the future when the Board comes before these types of situations.

Chairman Sheth suggested to Mr. Scott if the applicant would reconsider to see if an adjustment can be made between Mr. Hufnal's comments and other neighbors who added an addition without a variance. Going forward the Board will ask Staff to follow up with anyone who builds without approval. There are also other requirements when someone operates a business out of their home.

Mr. Scott stated that the home business that the applicant is operating was approved and is licensed by the City of Dover and is a legal business. It is not like they have six employees working out of their home illegally.

Chairman Sheth replied that he was not asking if the business was illegal. He was stating that there are requirements. He just wants to make sure the criteria is being followed and at this time

the Board is not comfortable approving this variance.

Mr. Scott mentioned that they cannot control who violates the criteria or builds without a Permit, his applicant is coming through and trying to go through the right process to get a Permit for the addition. Every application that comes through is based on specific criteria for that location. In this particular case, it is on a corner lot and they have two street frontages to contend with which has very much limited them to the direction they can build. They are trying to do something that is beneficial and useful to them. Whether a 12x14 or 12x16 would work he could not answer that question. Mrs. Pritchett responded by shaking her head that this would not be a viable space for them.

Chairman Sheth stated that the Board was making a suggestion, not telling anyone what to do.

Mr. Keller stated that he thinks in this area of Mayfair one of the Exhibits projects a shadow effect of houses in the subdivision and a lot of them do look pretty close to lot lines. It appears as though Mayfair is a somewhat old subdivision in which case many of the lots were more narrow than perhaps more recent or other subdivisions. He stated that he had not been made aware of any improvements although there were several comments made within the packet of information that a number of additions have been put on places within Mayfair. He would run with the presumption that this was done with the established Code requirements or building setbacks lines on the record plan.

Mr. Keller asked Mr. Scott if he was familiar with the record plan of Mayfair. Mr. Scott replied yes.

Mr. Keller mentioned that absent the knowledge of having any of those improvements resulted from an inquiry of the Board of Adjustment for variances, he would presume they were done in accordance with Code or they are violations that were gone overseen. In reviewing this entire packet, it puzzled him somewhat with the size of the room being 16x16.

Mr. Keller asked for clarification that the applicant already had a 16x16 family room. Mrs. Pritchett replied yes.

Mr. Keller asked that the applicant would have a complete new open accessible 16x16 room. Mrs. Pritchett replied yes.

Mr. Keller mentioned that it is not the Board's position with respect to Mr. Hufnal comments to work back and forth in this kind of hearing to resolve your problem. He did not mean it to sound harsh, but it is not the Board's position. The general principal is the Board should not liberally grant variances because this process is established by certain criteria to review your specific application as well as any other. Most of the cited reasoning with the presentation seems to be general personal matters.

Mrs. Pritchett testified that her concerns was the age difference between she and her husband, and what if he had to go into a nursing home, she would not be able to afford the cost. If she can modify her home, she would have a place to accommodate him. She is trying to be practical

because she would not want to put her husband in a nursing home. With the existing rooms, they would not have a place to put a hospital bed.

Mr. Rodriguez commented that in accordance with the Chairman's comments and Mr. Hufnal's comments, Mayfair was plotted in accordance with the Zoning Code and this Board has never granted a variance for any development that has been plotted in accordance with the Zoning Code. We have turned down any number in the past. The problem is really that it is plotted in accordance with the Zoning Code and the Board used to have numerable applications for garages and things of that nature. It was the Board's thought that it should be kept in accordance with the Zoning Code and no variances should be granted. Mr. Chairman referred to one that was built in violation of the setbacks and the Board decided against it and they had to demolish the building.

Mr. Rodriguez stated that he was not speaking against the applicant. He was sure the applicant needs what they are asking for and all of that. It opens a precedent for all developments to ask for the same thing for property owners to do.

Mrs. Pritchett mentioned that the neighborhood is 40 years old. She has been here in the City for 40 years and things change, maybe it is time to revisit the whole thing since the Board is not going to approve the variance application. All they are trying to do is increase the value of the property and provide for their family needs.

Chairman Sheth suggested that the applicant could express her concerns and case regarding the Ordinance to City Council. The Board cannot change the Ordinance. He suggested to the applicant to think about reconsidering the size because she did a good job presenting the case.

Mr. Hugg mentioned that there is obviously a concern about the direction of this particular request. What he would remind the applicant that should the Board fail to approve the request today they are prohibited from coming back before the Board of Adjustment for at least a year. The applicant does have the opportunity, if they choose to do so, to ask the Board to table or postpone the consideration today while they look at whether or not there is some other 14x16 or 14x18 or options that might make sense rather than get a definitive answer today that may preclude you proceeding. He wanted the applicant to understand that the Board has the authority to say take a breather or look at it to see if there is an alternative. Maybe there is other information that maybe the applicant could derive and that would reserve at least the applicant's right to come back in another month or whenever the applicant is prepared to do so.

Mr. Keller commented that even in the eventuality of a denial today there would not be anything to preclude the applicant showing up a week from now with a request for a Building Permit if they did something within the regulation like a 12x16 or a 12x20. Mr. Hugg replied this is correct.

Mr. Keller commented that it does not delay the application for construction.

Mr. Hugg mentioned if the applicant came back and stated that they could accommodate a 12x16 it would not require a variance that would allow them to precede directly to getting a Building Permit. He suggested to the Board and the applicant that they take a little time to look at other

options that might be available including not asking for a variance.

Mr. Keller stated that in his estimation and the review of the packet and the intent of the applicant to utilize this space for various personal reasons, if the variance was to become a denial that such a denial could create an Exceptional Practical Difficulty. As the guidelines point out, an Exceptional Practical Difficulty would not be created in his estimation because the owner could still make normal improvements which are permitted in accordance with the provisions of the Code and Subdivision Regulations. It is a matter of sometimes we ask for what we might ultimately want to have but we have to give consideration to alternatives to that if there is a shadow perhaps cast on whether or not the ultimate could come about. In his estimation, there is some reliable basis for a denial of this application as currently pending.

Chairman Sheth agreed with Mr. Keller comments and also referred to Mr. Rodriguez statements.

Mr. Scott stated that they would come back before the Board once there was a clear decision by the applicant on other options and reasonable compromise.

Mr. Hufnal stated that it is difficult to approve a 3.6-foot variance when there could be other options available to reduce that variance to something the Board could accept. As you have seen today, the Board did approve two variances, but they were only inches. He suggested to the applicant to consider and keep in mind that 3.8 feet is an excessive amount.

*Chairman Sheth opened the public hearing.*

*Chairman Sheth closed the public hearing after seeing no one wishing to speak.*

*Chairman Sheth questioned if there was any additional correspondence for the record. There were four letters from neighbors.*

Mr. Rodriguez stated that the Board has never granted a variance for the divisions that have been plotted in accordance with the *Zoning Ordinance*. Mr. Hufnal brought up one point and on two occasions for deminimis violations; one was a garage which was inches over the line. To fortify what Mr. Keller stated regarding the reason that the applicant cannot prove Exceptional Practical Difficulties because it has been plotted in accordance with the Zoning Code and you really cannot come in and prove that.

Chairman Sheth also mentioned a property on Walker Road that was owned by Mike Harrington that had an issue and had to wait a year. He reiterated previous comments.

Mr. Keller commented that when considering difficulty and Exceptional Practical Difficulty the difficulty must be inherent in the land not personal to the owner. This is another thing which plays a very large part of a review in consideration for the examination of whether or not an Exceptional Practical Difficulty exists. He repeated that a large part of what he heard from the applicants is the need or desire for the addition are more largely personal matters with aging, hospitalization and play rooms as opposed to something inherent in the property. The previous

applications this morning was a foundation that was built to the setback point exactly and subsequently when the siding was put on and extended by an 1 ½; that was approved. When you are looking at raw land as we are in this case, he feels rather strongly that the first consideration ought to be what can I do to build within the existing setbacks in accordance with the existing regulations. He has not found that to necessarily be the case this morning.

Chairman Sheth agreed. He stated that a 30 feet distance is a lot and it would be better if the distance could be decreased to perhaps 25 feet. He mentioned a meeting years ago that was held in Lewes and it was strongly recommended that ordinance is passed with all understanding and variances should not be granted unless otherwise absolutely proven by space variance, area variance or financial hardship.

Chairman Sheth suggested to the Planners if they had any questions to please call Mr. Rodriguez and ask for help if there is an issue with an application like this.

*Mr. Keller in lieu of the applicant owners Claude and Gwen Pritchett and in light of the presentation this morning, testimony, review and discussion he moved to table application V-18-08 until the next initial meeting in 2019. The motion was seconded by Mr. Hufnal. The motion unanimously carried 4-0. Mr. Senato was absent.*

The meeting was adjourned by Mr. Hufnal and seconded by Mr. Keller at 10:55 A.M.

Sincerely,

Maretta Savage-Purnell  
Secretary