

**CITY OF DOVER**  
**BOARD OF ADJUSTMENT MINUTES**  
**January 23, 2019**

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, January 23, 2019 at 9:00 A.M. with Chairman Sheth presiding. Members present were Chairman Sheth, Mr. Keller, Mr. Hufnal, and Colonel Ericson. Mr. Senato was absent.

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

**APPROVAL OF AGENDA**

*Mr. Hufnal moved to approve the agenda as submitted. The motion was seconded by Colonel Ericson. Mr. Keller mentioned that Application V-18-08 was heard and tabled on December 19, 2018 and should be noted on the agenda. Mr. Hufnal moved to approve the amendment of the agenda to include the notation that Application V-18-08 was heard and tabled on December 19, 2018. The motion was seconded by Colonel Ericson and unanimously carried 4-0. Mr. Senato was absent.*

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

*Mr. Hufnal moved to approve the meeting minutes of December 19, 2018 with the necessary corrections. The motion was seconded by Mr. Keller and unanimously carried 4-0. Mr. Senato was absent.*

**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 is one (1) application on the agenda under Old Business and one new (1) application 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.

**COMMUNICATIONS & REPORTS**

Information from Planning Staff regarding elections and appointments for Board Leadership:

Mr. Diaz stated that the Board asked Staff to clarify the procedures for electing and appointing the leadership of the Board including the Chairman and Vice-Chairman and whether it was possible

to have a third member in charge of the meeting in case the Chairman and Vice-Chairman were absent on a given meeting day. Staff spent time consulting with the City Clerk's office and reviewing the enabling legislation for Board of Adjustment in the Delaware State Code. Staff found that each Board member is directly appointed by the Mayor. The Mayor also appoints the Chairman as Chairman so there is no election of the Chairman by the Board members. However, there is nothing in the enabling legislation that officially sets up a Vice Chairman position. The Board members do have the option of electing a Vice Chairman, if they so choose. The Board members also have the option of electing a third member to lead the meeting in the absence of the Chairman and Vice-Chairman, if they so choose. Finally, the members of the Board are free to resign from the Board of Adjustment at any time if they so choose with a letter to the Mayor stating their resignation. The Mayor does not technically have the authority to turn down a letter of resignation.

Mr. Diaz asked if there were any questions.

Chairman Sheth mentioned they would discuss the above information after the two applications have been heard.

**NEW BUSINESS**

**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 minimum rear yard setback requirement for the R-8 zone is 30 ft, and the applicant proposes to reduce the setback to 28 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. *This application was originally submitted for the November 21, 2018 meeting of the Board of Adjustment with a requested rear yard setback of 26.4 ft. The applicant requested in writing on January 7, 2019 that the withdrawal they submitted on January 2, 2019 be disregarded and the case be heard.*

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 January 13, 2019. The public was notified in accordance with regulations.

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

Mr. Diaz gave a summary presentation of the revised Variance Application Request. This application was heard and tabled on December 19, 2018.

Mr. Hufnal commented regarding the Memorandum noting the information listed under background for the requested revision needs a correction in the third paragraph from 2 inches to 2 feet.

*Mr. Keller moved to remove the tabled Application V-18-08 from the floor. The motion was seconded by Colonel Ericson unanimously carried 4-0. Mr. Senato was absent.*

**Representative:** Mr. Gregory Scott, President of Scott Engineering Inc.

Mr. Scott was sworn in by Mr. Rodriguez.

Mr. Scott testified that he would be representing the applicants who were not able to be present today due to a date change of the meeting. Working with the Architect, they felt that going down to the 12 feet that this would restrict them too much and it was just not working out to give the applicant the square footage that they needed. They felt that the Board seemed willing to consider a lesser variance. They felt that they could work with a reduction down to 2-foot or 28 foot for the rear setback. One of the inherent issues with this particular lot as mentioned earlier is that it is a corner lot. If you take the typical lot and look at the Record Plan for the subdivision around the cul-de-sac you will see that the properties around that cul-de-sac are much wider than this particular corner lot which gives the ability for people to build on the side of their houses. The side yard setbacks are 10 feet for all the Lots in the subdivision and if you were to take 10 feet off on each side you would be losing 20 feet. In this particular case, you are taking 10 foot on one side and 25 feet on the other side for a total of 35 feet. If you look at the Lots across the street (Mayfair Drive) they are 70-foot-wide lots and if you take 10 feet off each side, you would be left with 50-foot building on the open width. In this particular case Lot 82, you are going to lose 35 feet and now you are down to 47 feet. He mentioned this to show that this Lot is difficult, and it does not allow for any addition on the sides of the house that the other Lots would perhaps have. They are restricted to going to the rear yard to do any addition. They are trying to get an addition onto the property that is beneficial and useful for them moving forward for their business and their personal family life. The applicant is coming back to the Board asking for a reduction of 2 feet in the rear yard setback from 30 feet to 28 feet.

Chairman Sheth asked them about not having the three sides for addition, but only having two sides. Mr. Scott replied that there is only one side that they can put an addition, which is the rear of the house; there is no space available. The way the house is situated now if you were to have 10 feet on the street side instead of a 25-foot setback you would pick up 15 feet and they would certainly do the addition on that side of the house. Because of the street double frontage, it does not allow them to make the addition on the side of the house.

Chairman Sheth mentioned he had a discussion with Mr. Hugg and others to research how many cases have there been in the last 10 years similar to this one and if an amendment to the Ordinance could be made to reduce the footage from 30 feet to 25 feet. He wanted to know how it was derived to have it at 30 feet. Mr. Hugg replied that it is a very small number and is probably not what he would consider sufficient to address changing the Ordinance and he thinks this mechanism (variances) is in place to accommodate those unusual or incidental kinds of situations. If it were a common place issue, then Staff would come back with a recommendation to the Planning Commission to amend the text.

Chairman Sheth mentioned that upon his discussion with Mr. Rodriguez, this is the first application with this type of issue in a cul-de-sac that has requested a variance.

Mr. Keller mentioned that he seemed to recall that given the minutes of the December 19, 2018

Meeting he thinks it was stated that while comments were made about a number of additions within the Mayfair II subdivision made over the years that there is no evidence presented at that time at least that any of those were by virtue of variances having been granted to accommodate those improvements. Mr. Keller asked if this was correct? Chairman Sheth replied that there was a different case because the person did not obtain a Building Permit and built without permission.

Mr. Keller asked if that was the one that resulted in rehearing and then was a subject of demolition of that improvement. Chairman Sheth replied that he was a member at that time, but he recalls that it was a building constructed without a City Permit. Nothing was approved by the City and perhaps the building is still there because they could not secure the loan. During the title search, they found that the addition of the bedroom did not have a Permit.

Colonel Ericson mentioned that the question that comes to his mind is what the Zoning Code was when the addition was constructed. Did they have a 30-foot setback and was there a problem or did it change later? Chairman Sheth replied that whatever the case was they wanted approval in order to secure the loan, but it was a violation of the City Code and it was not for the City to decide but City Council.

Colonel Ericson mentioned that upon review of the minutes and Mr. Rodriguez comments that “the Board has never granted a variance for any development that has been plotted in accordance with the Zoning Code. It opens a precedent for all developments to ask for the same thing for property owners to do this.” Colonel Ericson mentioned that we could open up pandoras box and make things much worse. He asked once you approve it, how do you turn it down for future applications? Chairman Sheth replied that he asked Mr. Rodriguez what should be done in this case and if he had any suggestions. Mr. Rodriguez replied that in the past, there were a couple of cases that were de minimis. There was a garage built in violation of the Zoning Code that was granted. Based upon the testimony from Mr. Scott, he thinks this application is probably a de minimis grant that the Board could do if they decided to do that. The lot depth is also a factor. It was also stated that this is a corner lot with two roads one on each side. He thinks that this is a different situation.

Colonel Ericson asked if this application was unique? Mr. Rodriguez replied yes, correct.

Colonel Ericson mentioned that he also had a question that goes back to the uses for the room (guest room for sleeping, office space, meeting room, play room and family guests). He mentioned that he has a sunroom in his home, and it is 1 foot wider than what is being requested for this application. He has always been amazed in the amount of space in his sunroom. He is sure all of these functions will not be done at the same time. He asked Mr. Scott to explain why the applicant could not live with a 12x16 room. Mr. Scott replied that Colonel Ericson was actually right that all of the uses may not be done at the same time, but he thinks the applicant is looking ahead with Mr. Pritchett’s age and health that at some point in time he may need to be on the first floor. The applicant is trying to plan ahead and where their life is leading them. Sure 12 foot is a reasonable size, but it does not fit the needs of the applicant to have additional space once placing items in the room. Those things may occur along the way or in the future years, but he was not sure. He was certain that they may utilize it for a meeting from time to time with their

permitted business that they have, for grandchildren playing, and guests. The applicant did not feel that the 12-foot depth was going to give them what they needed square foot wise.

Colonel Ericson mentioned that his room was a 13x16 and have been able to accommodate up to 10 persons for a cocktail party with plenty of room including seating. He did not see where the Board has reached a point where there is an Exceptional Practical Difficulty for office space that is upstairs. Colonel Ericson asked if the office was going to be moved downstairs. Mr. Scott replied that he could not answer that question. He did not know exactly what the plans were and in what point of time this would be done, but he thinks that it is the applicant's intention to have the office downstairs.

Colonel Ericson asked if it was used as a playroom, how many grandchildren were anticipated? Chairman Sheth replied that at the last meeting there was an age difference between the husband and wife and some other things. Mr. Senato was present at the last meeting, but he is absent today.

Colonel Ericson mentioned that 12x16 is a fairly large room and certainly large enough for a bedroom and he does not see the Exceptional Practical Difficulty.

Mr. Keller mentioned that he made an expression of very much the same things. There was a photograph in the exhibits and a notation in the file by Mrs. Pritchett that the existing family room is a 16x16. The photo looks out to the rear yard and if an additional room was put on at 12 feet and fully in compliance with the building setbacks, etc. would it create a 28-foot x 16-foot room. Mr. Scott replied no, it would still be contiguous, but it would still have a wall in between those rooms. Mr. Keller asked if it would be double slider doors. Mr. Scott replied yes.

Mr. Keller mentioned that the square footage size with a double slider seemed to be somewhat of an extraordinarily large playroom, book storage, and occasional visitors' room. He asked if the corner lot was laid out in accordance with the Zoning and building restrictions lines that are laid out on the Record Plan. For the side on Mayberry Lane, the house is 29 ½ feet from the property line so there is room for expansion of an additional 4 ½ feet. He was thinking again that the applicant could have a 12 ½ x 20 foot on the same side where the room could be extended to the shed.

Mr. Keller stated that this leads into his basic point that he has not yet been sold on the matter of Exceptional Practical Difficulty which would preclude the owner from otherwise making normal improvements. He would think a 16x20, 12x20, or 12x16 room addition could certainly be deemed to be a normal improvement. He has a 12x16 foot den in his home which is a pretty sizeable room that accommodates a lot of activities and functions, etc. As spelled out by Mrs. Pritchett and as recorded in the December 19, 2019 Meeting Minutes that a number of the proposed possible functions entail a number, in his estimation, of personal desires. Quite frankly, for the 16x16 he did not see the evidence presented that it has a stronger necessity to necessarily be consider for the applicant's request.

Colonel Ericson asked if the room would have heating and cooling. Mr. Scott replied yes.

Colonel Ericson asked if there would be windows all around like most Florida rooms. Mr. Scott replied yes, to the extent that the Code would allow. They would have to consider the brace walls that is required by the Building Code. They plan to have as many windows and open space that is allowed.

Mr. Scott mentioned that the builder was present because he was not sure of the specifics of the windows, etc. but he was sure window treatment, can be installed that can resolve any concerns. He stated that he has a 25x25 sunroom and there are times it is still not enough room. He stated that he could not discredit the applicant's needs or requirements for the playroom or husband using the room as a bedroom, business, furniture, etc. They felt that with what they have and what they need this is what's being proposed. Whether it is an Exceptional Practical Difficulty or not, he could not say. To the applicant, they feel that it is an Exceptional Practical Difficulty. What the applicant is asking for is very minimal and as previously mentioned this is a very unique lot. There are not that many corner lots that have restrictions as this one does that someone could come back in and say that this was done for a certain person. If it does not meet the criteria, it doesn't meet the criteria.

Mr. Hufnal mentioned the notation regarding a letter sent in on January 2, 2019 withdrawing the application and then on January 7, 2019 they changed their mind regarding the withdraw. He asked what the reason for the change was. Mr. Scott replied that it was initially withdrawn because Mrs. Pritchett was frustrated and disgusted about the entire process and just wanted to forget about it after the Board of Adjustment meeting. After meeting with the Architect and looking at it, what she felt it was kind of left on the table that the Board may consider something less than that. He suggested that they did not have anything to lose to go back before the Board and ask; maybe we will get something. It may work out that you can get something close to what you want. Therefore, we asked that it be put back on the agenda after we spoke with the Pritchetts.

Mr. Hufnal stated that the applicant did listen to some of the Board's suggestions and made a request that was less than what they proposed before. In fact, he took calculations of that and their first submission was 12% of that back line and then with the revisions it came down to 6.6%; so they did make a concession from the original.

Mr. Keller asked Mr. Scott if he conducted a title search for this property. Mr. Scott replied no.

Mr. Keller asked Mr. Scott if he had seen or reviewed the deed for the property. Mr. Scott replied that he had, there were no deed restrictions noted. This is a standard note that is put on surveys that are performed for coverage so that they are aware that they have not done a title search. If there are easements or restrictions that are noted on the Record Plan or the Deed, then it will be noted on the Plan, but they did not find any.

Mr. Keller asked by virtue of what was just stated if Mr. Scott had reviewed Mayfair II Subdivision Record Plan. Mr. Scott replied yes.

Mr. Keller asked in the absence of Mrs. Pritchett, if Mr. Scott was aware of the extent of the business operation within the dwelling. Mr. Scott replied no, possibly Mr. Lamb would know

more about the business.

**Representative:** Mr. Terry Lamb, Contractor, Lamb Construction.

Mr. Terry Lamb was sworn in by Mr. Rodriguez.

Mr. Lamb testified that he has worked in the Pritchett's home a few times and they have a transportation company for hospital, school, etc. It is only office space to maintain records; people do not come there to work.

Mr. Keller stated that it was previously mentioned that they had six (6) employees and he did not know how many vehicles and part of the stated purpose in the addition was to accommodate meetings with their six (6) employees. Mr. Lamb replied he heard the same things. The employees often take the vehicles with them. There are not six (6) vehicles at the Site.

Mr. Keller mentioned that in the Exhibit presented there was a vehicle parked reading D&J Transportation LLC (Photo 3 on the left or north side of the house). He did not know how many vehicles or to the extent to which the business was conducted in that residence. This is what lead him into the questioning regarding the proposed uses as being what appears to be a more personal request for playroom, book storage, business meetings, etc.

Chariman Sheth stated that the above question regarding the vehicles was presented to Mrs. Pritchett at the last meeting and she stated that there were not that many vehicles.

Chairman Sheth asked Mr. Lamb if he had a City of Dover Business License. Mr. Lamb replied yes, absolutely.

Colonel Ericson mentioned that he was not at the last meeting and he was still bothered by the precedent. If the members of the Board or Mr. Rodriguez would like to say something in this regard, he would greatly appreciate it for guidance. Because he could just see them taking this case every time; they had to visit this to where they would say we did this in the past why not now. There is not a clear cut in his mind for an Exceptional Practical Difficulty. As much as we would like to give it to them and like for them to have it, but the Board tends to stay with the Code as written unless you prove strong reasons why it should be or that the property is so unique that it justifies violating the Code. He still did not feel comfortable.

Chairman Sheth stated that he agreed with Colonel Ericson because he was not present at the last meeting and he would like to know more.

Mr. Hugg mentioned that Colonel Ericson clearly raised a point. Any action by this Board sets a precedent because you are charged with the responsibility for interpreting unique situations that may or may not involve hardships or area issues or something that doesn't specifically meet the requirements of the Code otherwise there would be no reason for the Board of Adjustment to be in existence. Whatever you decide on any case potentially has the possibility that someone would say well you made this decision in this particular case. The counter to that is that as part of your consideration you are charged with making very specific findings. It is not "I would like to give

it to them or it sounds like a great idea,” you have a certain set of tests that has to be followed and while there may be a precedent each case that comes before the Board is really going to be unique. It may have some precedential value, but it does not necessarily determine that every case is exactly identical to this one. If it was it would perhaps be difficult to say no. It has already been determined that there have essentially been no cases like this that have come before the Board in recent history. He thinks the concern about something being a precedent, while he agreed it is important, he did not think it necessarily rises to the level of extreme concern.

Chairman Sheth stated that after the last meeting he asked Staff about any previous cases, history or incidents and not much was found. He then asked City Solicitor and he gave his opinion. He also asked the question regarding amending the Ordinance. As previously mentioned by Mr. Hugg, there are not enough cases for an amendment. Chairman Sheth also mentioned the age difference between the couple and the hardship. Therefore, the application was tabled at the last meeting so that they could think about it.

Colonel Ericson asked City Solicitor Rodriguez if he recommended that he recuse himself from voting since he did not attend the meeting on December 19, 2019. City Solicitor Rodriguez replied that Colonel Ericson had read the complete minutes and they would tell you everything that he needed to know; and he heard the testimony today given by Mr. Scott. City Solicitor Rodriguez did not think that it was necessary for Colonel Ericson to recuse himself.

Mr. Keller commented that he agreed with Mr. Hugg’s statements regarding precedent setting actions by the Board. He agreed that in essence the only reason the Board exists is to consider variations from accepted Planning and Zoning matters. At the same time each and every case is different. The Board is guided by the matters from a court case Kwik Check Realty Incorporated which establishes criteria which the Board shall give some evaluation too in all cases. It does not mandate that there is absolute adherence to each one of those four (4) conditions necessarily, but it does point out the major considerations which the Board must consider in evaluating each and every case.

Mr. Keller stated that he was yet to be persuaded from his position that there is not an Exceptional Practical Difficulty. He is still of the opinion that the request is driven by personal matters regarding the applicant’s proposed possible uses, everything from business meetings to children playing and storing books in the new room. The matter regarding Exceptional Practical Difficulty is somewhat qualified by the matter that in the Board’s evaluation as to whether or not the applicant would be denied otherwise building normal improvements to the property if such an application was denied. In closely looking at Mr. Scott’s Plan Sheet that was prepared, it seems that there were a couple of alternatives from a dimensional standpoint although he is not a registered engineer. There could very well be within the dimensions on the Plan space for a 12x20 or 12x16. In his estimation, those dimensions are normal improvements and fully within the setbacks and building restrictions qualifiers on the Record Plan. He is not finding a substantive enough rational for his affirmative vote for this application.

Chairman Sheth asked Mr. Scott how many total square feet would be added with the 2 feet difference. Mr. Scott replied roughly 32 feet.

Chairman Sheth asked how much it would cost to add 2 feet. Mr. Scott replied that it cost roughly \$100 per square foot,  $\$100 \times 32 = \$3200$ , so roughly \$3200.

Mr. Hufnal commented that the unusual circumstances of this Development and hearing all the testimonies previously as well as today, the applicant did make a lot of concessions in coming back with this application. The applicant reduced the request almost in half. Although he could not see an Exceptional Practical Difficulty in the situation, he does understand the uniqueness and why the request was made because there is no other place to go with this addition if they were to make one. Even though their wishes are there, the Exceptional Practical Difficulty may not be in their favor.

Mr. Keller moved to deny variance application V-18-08 as submitted based upon a complete review and previous re-review of the public hearing testimony by the applicant and professional witnesses associated with the proposed addition. He has not found it to be a case in his estimation that the applicant has adequately met the criteria for an Exceptional Practical Difficulty in this instance. He did not agree with the proposition that this expansion would improve and preserve the existing housing stock in the neighborhood. We are not developing the neighborhood, the Board had plaintiff attention with the applicant and the property. Also, the difficulties presented by the owner are not necessarily practical as opposed to wishful thinking and theoretical. They are more routine personal requests as opposed to “exceptional” ones. The motion was seconded by Colonel Ericson.

Roll Call Vote

- Mr. Hufnal – no to the denial
- Colonel Ericson – yes to the denial
- Mr. Keller – yes to the denial
- Chairman Sheth – remained absent
- Mr. Senato – was absent

Chairman Sheth stated variance request was denied.

**Applicant #V-18-11**

127, 129, 133 and 135 Roosevelt Avenue. David Miller on behalf of Miller Investments LLC has requested variances from the requirements of the *Zoning Ordinance*, Article 4 §4.3; Article 5 §1.13; and Article 6 §5.3. Specifically, the applicant seeks to exceed the maximum 60% lot coverage of RG-2 (General Residence Zone) and permit construction on 65.4% of the lot area. The applicant also seeks to permit construction of accessory buildings totaling 38% of the side and rear yard areas, where the maximum allowed accessory building area for these yards is 30%. Finally, the applicant seeks to allow parking of vehicles within 15 feet of a wall belonging to a multiple dwelling. Subject property is zoned RG-2 (General Residence Zone). Tax Parcels: ED-05-077.18-02-71.00-000, ED-05-077.18-02-72.00-000, and ED05-077.18-02-73.00-000. The owner of record is Miller Investments LLC. *This application was originally submitted for the December 19, 2018 meeting of the Board of Adjustment. Two of the requested variances have been reduced; the original requested maximum lot coverage was 76.7%, and the original requested maximum accessory building area for the side and rear yards was 56.1%.*

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 January 13, 2019. 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.*

Mrs. Melson-Williams noted that the applicant just provided members and staff with a handout packet which looks to include a series of pages: a Site Plan sheet, several renderings of the proposed concept building and the accessory structures are also presented in a series of color renderings.

**Representative:** Mr. Constantine F. Malmberg III, The Malmberg Firm LLC, Attorney at Law; Mr. David Miller, Owner.

Mr. Malmberg stated that the property is fairly unique in the City of Dover not just because of the relatively small size of the property but more importantly the area. The area is kind of hemmed in and to the right is the Mobile Home Park and across and down the street are Apartments. The Lot to the immediate left is zoned C-1 (Neighborhood Commercial Zone) and the Coastal Carwash is zoned C-4 (Highway Commercial Zone) and across the street is the Hertrich Car Dealership. Directly across the street from the proposed project is the Kent County Theater Guild or Patchwork Playhouse. The Theater seats 100 people. This all used to be single family residences years ago. This whole area is in transition and the question is what you do with a property like this that was single family residences and now it is a mix match of couple of single-family homes and two (2) small apartment buildings. There is currently ten (10) dwelling units within the four (4) buildings on these three (3) properties. They have also had a reputation as fostering a drug trade and some other crimes in the area. It is an area that needs some significant investments in the City of Dover. Mr. Miller would like to invest in this area and would like to make significant improvements to this project in area that needs it. This is part of the backdrop that the analysis should look to when deciding whether or not there is an Exceptional Practical Difficulty. According to the Kwik check case, basically its balancing between the harm of the neighbors and the harm or difficulty to the applicant in making use of the property. As mentioned by Mr. Diaz, this property went through a Rezoning by City Council late last year. The applicant was very forthright that the reason for the RG-2 (General Residence Zone) was because that zoning permits apartments. Neighbors showed up and were supportive of the application. He thinks for the reason that he just articulated which are some of the negatives that are currently in the neighborhood and the added significant improvement to the neighborhood. As he referred to the handout, he mentioned that there was an architectural rendering from the front of the building and the ground level parking is under the building. He did not know why there is a Code provision that says you have to be 15 feet away from a residential structure. He did not recall the issue coming up when the underground parking was done at the Wesley College dorms which has a significant number of spaces under a significantly more dense residential dwellings. There is underground parking at the new Courthouse although it is not residential. There is underground parking at the AG Office on Water

Street. It is just a practical matter and necessity for a more urban setting where we are becoming and should be. That picture as well as the other one depicts the covered parking. The covered parking drives a request from a 30 to 38 percent lot coverage. The City considers these like garages and perhaps that is the way it should be categorized. From his client's perspective, what is driving this decision is the desire to afford the apartment dwellers amenities that are not usually available and to make it a more competitive apartment. They think the new amenities will be nicer and retain the renters longer. More stable and better apartments are good for the neighborhood altogether. This is an area that needs significant investments. Mr. Miller is willing to invest \$2 million in the project to revitalize the area. The neighbors are supportive of the efforts. Again, it will be good for the neighborhood in a positive way and not a negative way. He was glad to do the recommended suggestion by Mr. Diaz regarding the covered parking. With the covered parking, the backs of the buildings face the neighboring properties which is Commercial and the Mobile Home Park. But still they are amenable to do plantings to break up the look of the wall all around to make it prettier. We think that this is a quantum benefit to the area. Again, there are no real negatives. It is a very unique area that requires a unique and thoughtful idea on what to do in transitioning into a more up-to-date use. The outside constraints drive a few of the requests. The requests for the lot coverage, which is the major one, is less than a 10% variance. It is 5.4 feet out of the 60% allotment. The other ones are fairly de minimis; he would suggest.

Mr. Keller asked if there were any written submissions from the neighboring properties as opposed to directly by the applicant. Mr. Diaz replied no, the office did not receive any letters directly from neighboring properties stating that they were in support or against.

Mr. Keller stated to Mr. Malmberg that he asked the question because he wanted to know if some neighboring properties were in support. Mr. Malmberg replied that at the Rezoning hearing, it was his understanding which was in Mr. Hare's District that he was supportive of the application. Several of the neighbors talked to Mr. Hare and likewise expressed their support. Again, this is third hand information from others. There have been no known opposition and there were supportive persons in the neighborhood.

Mr. Keller asked if the additional planting would also be on the north of the garage area along Evergreen Drive. Mr. Malmberg replied yes, it would be the primary focus. He thinks that there are already plantings along the Mobile Home Park side, but he would supplement that. He would do anything to breakup the walls. You only need roughly 4-5-foot-tall plantings to make a nicer look.

Colonel Ericson asked the square footage of apartments and what kind of clientele he is expecting. Mr. Malmberg replied that these are market rate apartments and the total square foot of the building is something he would need to ask the owner Mr. Miller.

Mr. David Miller was sworn in by Mr. Rodriguez.

Mr. Miller testified that the apartments will be two (2) bedrooms and (2) bathroom units. The gross square footage is roughly 1150 SF and each unit will be somewhere around 900 SF.

Mr. Hufnal asked if each apartment were allowed a certain amount of parking spaces. Mr. Miller replied that per Code they are allotted 2.25 covered and uncovered. He is trying to accomplish that each tenant has two (2) covered parking spaces in a garage-type facility.

Mr. Keller mentioned that he wanted to lend a word of caution that the garages as displayed on the Engineering Plan, particularly those to the left and right-hand side of the proposed apartment building or close to the property lines. There were instances where the footers were laid out, they were laid out in conformance with the required setbacks; however, the subsequent addition of siding, whether it be vinyl siding or brick facing, obligated some builders to legally come back in to request variances of additional inches. He hopes that when the layout is provided that it takes in to account whatever is ultimately going to be put on the siding of the structures. He is sure it will be.

Mr. Malmberg replied that the Mr. Diener, the Engineer was present, and you just put him on notice, so he was sure that he would account for the thickness of the siding.

Mr. Malmberg mentioned that they understand the concern and they will make sure it is addressed so that they are not back before the Board of Adjustment asking for a 1 ½ inch side yard setback variance.

Mr. Malmberg mentioned that this application still needs to go through the Site Plan process. It is more of a very detailed concept design at the current time.

Mr. Keller mentioned that once again on two or three separate occasions there were extremely minor requests for variances that seemed to be simply an oversight in the layout.

Mr. Malmberg mentioned that he would suggest that as the County does that a request for a variance within 10% should be something that could be administratively handled so you are not sitting around wasting your time on a 2-inch request. Mr. Keller replied that this has not happened yet.

Colonel Ericson asked about the parking under the building and if the requirements are being met. Mr. Malmberg replied that he was not sure he understood the question. The answer is no. The drives are way wider than the fire lanes that are 24 feet. They agree with the requirements.

Colonel Ericson asked about the negative effects if the back of the garage could have landscaping or some type of screening to block the back of the garage; do you propose that at all? Mr. Malmberg replied no they did not, they will do landscaping. He did not think that fencing would add anything, but landscaping would.

Colonel Ericson asked about Staff recommendations and asked if they could be explained. Mr. Diaz replied that Staff normally issues recommendations when they believe further information could come up during the hearing that could sway a recommendation in one way or another. In this case, we have cited the balancing test that the applicant has also explained. We believe that the applicant faces an Exceptional Practical Difficulty in terms of potentially not being able to

build their project if they need to further reduce the number of units on site in order to meet the Code. We do not have the numbers on that so to speak.

Mr. Keller mentioned that it is extremely rare that they are truly provided dollar figures as to what makes a project viable or not and a point of no return in that evaluation. He asked if Mr. Malmberg could generally state or discuss considerations made when evaluating as to whether he could proceed with a project viability. Mr. Malmberg replied that he has his own projects that he could probably answer to that. The original plan was for 21 units; the optimum which would be a nice return on the investment. There was discussion with Staff regarding something that would not hurt them, but still make sense. They came up with the 18 units and the significantly reduced request from 15.1% to a 5.4% variance request. They are at a level where it is a de minimis request. It is roughly a \$2 million project in an area that sort of needs it.

Mr. Keller noted to point out generally what transpires in the hearts and minds of builders and developers with regards to that as opposed to extending a backscreen porch or something on a property in these commercial instances.

Mr. Hufnal commented that the revised plan over the original concept makes a lot of sense and is within the variance line of what can and cannot be accepted. He thinks it is a tremendous improvement for that area which has been quite negative for the past several years. He thinks with a mix of businesses and what is currently there, it makes a good improvement.

*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.*

*Colonel Ericson moved to approve variance application V-18-11 which has three parts: to exceed the RG-2 zone's maximum lot coverage of 60% and allow lot coverage of 65.4; to allow accessory buildings to take up 38% of the side and rear yards, exceeding the typical limit of 30%, providing that they break up the sides of the building using landscaping and fences; and to allow parking within 15 feet of a wall belonging to a multi-family dwelling. This will be limited to any parking location partially underneath the building. This is also based upon the testimony given and the Staff Report. The motion was seconded by Mr. Keller. The motion unanimously carried 4-0.*

Mr. Hufnal questioned whether the parking under the building was subject to the Building and Fire Marshal restrictions. Mr. Diaz replied that is correct.

Information from Planning Staff regarding elections and appointments for Board leadership

Chairman Sheth mentioned that at the current time Colonel Ericson was the Vice Chairman. He asked if there was any objection. There was none.

Mr. Keller asked about Mr. Diaz comments regarding the formal format for the election of the Chairman and Vice Chairman. Mr. Diaz replied that the Mayor appoints a Board member as Chairman. For any other served leadership position, you would have an election.

Mr. Keller was curious about the title source for that move. He thought he had read at some point in the State Statue that the Board elects from within its Chair and Vice Chair. He was not aware of a mayoral appointment of a Chair.

Chairman Sheth mentioned that he spoke with Mayor Christiansen regarding the elections and having a third person in case the Chairman and Vice Chairman is absent.

Mr. Rodriguez mentioned that the Chairman is appointed by the Mayor.

Mr. Diaz mentioned that it was correct that the Chairman is appointed by the Mayor and it is also listed in the Statue.

Mr. Keller asked if the Statue could be cited. Mr. Diaz replied no, not off the top of his head.

Chairman Sheth stated that if they can have an election that does not raise a question in the future.

Colonel Ericson mentioned that it would help if there was a third person in case of the absence of the Chairman and Vice Chairman.

Chairman Sheth asked for suggestions.

*Mr. Keller moved to accept Mr. Hufnal as the Vice -Vice Chairman and the motion was seconded by Chairman Sheth.*

Mr. Hufnal mentioned that his term will expire this year.

Mr. Hufnal accepted the interim position of Vice-Vice Chairman in the absence of the Chairman and Vice Chairman.

Colonel Ericson suggested Mr. Keller if Mr. Hufnal was retiring this year.

Role in this order

- Chairman Sheth
- Vice Chairman Ericson
- Vice-Vice Chairman Hufnal
- Vice-Vice Chairman Keller

Mr. Diaz stated that the relevant Delaware Statue is Title 22, Chapter 3 and Sub-Chapter 2 for the Board of Adjustment and Section 3:22 Composition in terms of office. It states that members are appointed by the Mayor and confirmed by City Council including the Chairperson.

*Chairman moved to accept that Colonel Ericson continue as Vice Chairman. The motion was seconded by Mr. Hufnal. The motion was unanimously carried 4-0.*

*Vice Chairman Ericson moved to accept Mr. Hufnal as the third person as Vice Chairman in the absence of Chairman and Vice Chairman. The motion was seconded by Mr. Keller. The motion was unanimously carried 4-0.*

The meeting was adjourned by Mr. Keller and seconded by Mr. Hufnal at 10:43 A.M.

Sincerely,

Maretta Savage-Purnell  
Secretary