

Town of Dover Board of Adjustment

- ↘ Michael Scarneo - **Chairman**
- ↘ **William Cook – Vice-Chairman**
- ↘ Cephas Bowles
- ↘ Robin Kline
- ↘ Joseph Corsetto
- ↘ Charles Franco

COUNTY OF MORRIS
37 NORTH SUSSEX STREET
P.O. BOX 798
DOVER, NEW JERSEY 07802-0798
Telephone: 973-366-2200 (Ext. 115)
Fax: 973-366-0039

- ↘ LuAnn Mizzoni
- ↘ Walt Michalski (Alternate I)
- ↘ Carlos Matias (Alternate II)
- ↘ Kurt Senesky - Board Attorney
- ↘ Michael Hantson - Town Engineer/Planner
- ↘ Regina Nee - Clerk/Secretary

REGULAR MEETING OF THE BOARD OF ADJUSTMENT

May 12, 2004

CALL TO ORDER

Chairman Scarneo called the meeting to order at 7:34 PM.

ROLL CALL

PRESENT: Commissioner Kline, Corsetto, Franco, Mizzoni, Alternate Michalski,
Vice-Chairman Cook, Chairman Scarneo

ABSENT: Commissioner Bowles and Alternate II Matias

ALSO PRESENT: Board Attorney Kurt Senesky and Town Engineer Michael Hantson

PLEDGE OF ALLEGIANCE: was recited by all

ADEQUATE NOTICE OF MEETING was read by Clerk/Secretary Nee.

APPEAL TIME was read by Clerk/Secretary Nee

APPROVAL OF MINUTES: April 14, 2004 Meeting

A motion to approve the minutes for April 14, 2004 was made by Vice-Chairman Cook, seconded by Commissioner Corsetto, and followed with a Roll Call vote.

ROLL CALL: Ayes: Commissioner Kline, Corsetto, Mizzoni, Michalski, and
Vice-Chairman Cook

Abstain: Commissioner Franco and Chairman Scarneo

Noes: None

RESOLUTION

17-03- Stanley Votruba; Block 1217, Lot 5, also known as 8 West Blackwell Street located in the C-1 Zone. The application is a Preliminary and Final Major Site Plan and Use Variance to construct a two (2) story, 2,280 square foot addition to the rear, for a laundromat use and two (2) additional dwelling units, and any other variances and waivers that may be required.

The Resolution will be voted on at the next meeting, June 9, 2004.

18-03- Helena Kernier; Block 1711, Lot 10, also known as 306 South Morris Street located in the R-1S Zone. The application is a Use Variance and Minor Site Plan to convert a preexisting non-conforming three (3) family residential use to a four (4) family residential use, and any other variances and waivers that may be required.

A motion to approve the Resolution of Dismissal without Prejudice was made by Vice-Chairman Cook, second by Commissioner Mizzoni, and followed with a Roll Call vote.

ROLL CALL: Ayes: Commissioner Corsetto, Mizzoni, Kline, Vice-Chairman Cook, and Chairman Scarneo

Noes: None

02-04- Jose and Josefina Gomez; Block 2013, Lot 8, also known as 29 Clark Street located in the R-3 Zone. The application is for approval to construct an 18 foot x 24 foot addition to an existing 12 foot x 24 foot detached garage requiring variances for excess building coverage, oversized accessory structure and insufficient setback, and any variances and waivers that may be required.

A motion to approve the Resolution with amendments and conditions was made by Vice-Chairman Cook, seconded by Commissioner Corsetto and followed with a Roll Call vote.

ROLL CALL: Ayes: Commissioner Corsetto, Mizzoni, Kline, Michalski, Vice-Chairman Cook, and Chairman Scarneo

Noes: None

CASES

01-04- Manuel & Luz Maria Gonzalez; Block 1211, Lot 3, also known as 45-47 East Blackwell Street located in the C-1 Zone. The application is a Use Variance and Minor Site Plan for the operation of rooming or boarding house with 12 single room occupancy units on the second floor, and any other variances and waivers that may be required.

This case was deemed incomplete and will be carried to the June 9, 2004 meeting.

A motion to carry the application was made by Vice-Chairman Cook, seconded by Commissioner Mizzoni and followed with a Roll Call vote.

ROLL CALL: Ayes: Commissioner Kline, Corsetto, Franco, Mizzoni, Michalski, Vice-Chairman Cook and Chairman Scarneo

Noes: None

04-04- Town Square Industrial Center LLC; Block 603, Lot 1, also known as 22-40 Richboynton Road Street located in the IND Zone. The application is a Use Variance and Minor Site Plan approval for retail sales of damaged goods in the Industrial Zone, and any variances and waivers that may be required.

A motion to carry this application to the June meeting was made by Commissioner Franco, seconded by Commissioner Kline and followed with a Roll Call vote. No further notice will be given.

ROLL CALL: Ayes: Commissioner Kline, Corsetto, Franco, Mizzoni, Michalski, and Chairman Scarneo
Noes: None

03-04- Kevin Lewthwaite; Block 403, Lot 12, also known as Ann Street located in the R-1 Zone. The application is for approval to construct a four bedroom single family dwelling on a lot with insufficient lot width at the street line.

Attorney Johnson was present for the applicant. Mr. Thomas Graham was sworn in. He is a licensed Civil Engineer, gave his qualifications and experience. Referencing Exhibit A-1, he reviewed the dimensions of the lot in question, the site improvements, the run-off and the proposed drywells. This proposal meets all of the bulk requirements of the zoning ordinance except one, which is the requirement of the seventy-five foot frontage. This lot only has a seventy-four feet front line. All the setbacks, impervious coverage, and lot area have been met. The lot is 14,888 square feet in size and is almost twice as large as what is required. The topography was reviewed by Mr. Graham. In general, this was not a difficult lot for the proposed dwelling. Three walls will be constructed on the property to create plateau areas on the property. These walls will have no impact to the existing adjoining properties. There are three proposed drywells. The drywells were designed for the twenty-five year storm which is standard engineering practice. Mr. Graham reviewed the drainage on the property, the grading of the land, and the proposed seepage pits.

This portion of the meeting was opened to the public.

Christine Trembicki, 222 Ann Street questioned the grade of the property. Lawrence Lamb, 4 Edgewood Terrace, lives above the proposed dwelling. He voiced concern regarding drainage and does not think the seepage pit will work.

Christina Buck, 22 Greenwood Avenue, asked the size of the driveway surface area and how surface water will drain. She asked the position of the proposed driveway and was advised that it is twelve feet from the northerly property line and is fifteen feet wide. She also asked where the snow is going to go. She also inquired about the guardrail.

A-2 Site Plan shows where the guardrail exists. Commissioner Kline asked where the existing storm water drain exists. She also wants to know the percent of grade from the driveway apron to the proposed structure? Mr. Graham reviewed the grading of the apron, the slope of the driveway, and over-all slope of the property and how the water would drain to the back. Mr. Hantson concurred with the applicant's expert.

John Consentino, 266 Ann Street, voiced concern about the amount of water run-off.

Larry Magliachetti asked how many seepage pits are required for this property. He was advised that three are proposed. He asked if seepage pits are the desirable choice and was advised that this is a desirable engineering practice. Mr. Hantson advised that when engineers design storm

drainage systems, they design based on the probability of a certain rainfall. Storm water collection systems are traditionally designed for the twenty-five year storm event. The difference between how much storage you would need between a twenty-five year storm event and a fifty year storm event may be approximately 15-20 percent more storage.

Christine Trembicki asked how many trees were going to be removed from the property and was advised that four trees within the building envelope would be removed.

Mel Rogue, 267 Ann Street, voiced concern with reference to run-off near her children's swing set.

This portion of the meeting was closed to the public.

Mr. William Byrne, Architect, from Byrne Design & Associates, was sworn in and gave his qualifications. Mr. Byrne discussed the new design (A-3) of the proposed dwelling. The major changes presented included a change in the height and the volume of the initial dwelling. The volume of the home, the area contained within the roof and the walls and the foundation, was approximately 63,000 cubic feet. The newly proposed dwelling has had the volume reduced to 41,000 cubic feet which is a reduction of about thirty-four percent. The square footage is about twenty seven hundred square feet. Mr. Byrne reviewed the design presented which is basically a cape style, which goes from a one story gutter line to a steeper pitch and extend back down to a one story facial line; and create a shed dormer. In his professional opinion, this dwelling would be generally consistent with the style of the homes in the neighborhood. Mr. Byrne stated that there would be no detriment to the zoning plan as a result of a variance. Vice-Chairman Cook asked if this dwelling were designed as a ranch, how much bigger would the foot-print be and he was told that the footprint would grow by approximately 1100 square feet, as a percentage, forty percent.

This portion of the meeting was opened to the public.

Christine Trembicki asked about the height of the dwelling on the left side and was advised it was about thirty-three feet.

Christina Buck, 22 Greenwood Avenue, wanted to know how they arrived at the decision that a cape cod would be best suited for this lot. She was advised that a cape cod designed for this lot would fit in with the rest of the neighborhood based on the consistent pattern of ranch homes and one and a half story dwellings.

Peter Consentino, 7 Linwood Avenue asked what the total height of the dwelling would be, from the lowest to the highest point. He was advised it was thirty-three feet, six inches, the maximum height.

This portion of the meeting was closed to the public.

Kevin Lewthwaite, 150 Ann Street, was sworn in. He has been building homes since 1986 and has built about ten in Dover. He has built several homes on Ann Street, 78, 152, and 76. Mr. Lewthwaite advised that he sent certified letters to the adjoining property owners; to Mr. Lawrence Lamb (A-4) and (A-5) to Mr. Victor Roque in December 2003 and received no response. In April, 2004, Mr. Lewthwaite sent out approximately forty letters to surrounding neighbors and received no response. Mr. Lewthwaite reviewed the steps he took to meet the requirements of the Board and to address the issues that the neighbors had regarding the previous application at this site. Mr. Lewthwaite feels this house fits into the neighborhood. Mr. Lewthwaite obtained the dimensions of the adjoining properties, did the calculations, and showed the comparisons.

Attorney Senesky advised that the letters sent by Mr. Lewthwaite to the adjoining property owners were to inquire from them if they would be willing to sell to him a piece of property to make his more conforming. He did not ask if they would be interested in purchasing the subject property at its fair market value. Mr. Lewthwaite advised that he did include the offer in his letter, Mr. Senesky stood corrected, and asked if a response was received. Mr. Lewthwaite advised that none was received.

Chairman Scarneo voiced concern regarding the need to build a house on every open lot. He wondered why this lot was not built on previously. Mr. Cook asked Mr. Lewthwaite if he saw any other design that could be placed on the lot. He advised that putting a ranch on this lot would end up being more detrimental to the area. Commissioner Kline asked if the applicant has tried to make the house less obtrusive, smaller, and if this is the final design. He advised that this house is proportionate to the neighborhood.

Chairman Scarneo advised that he was concerned with the impact this dwelling would have to the immediate neighbor. He stated that he does believe the applicant has done all that he could to make the changes; but believes it will have a negative impact. Commissioner Kline stated that the burden is on the applicant to show it would not be a detriment to the neighborhood. Attorney Senesky advised that the test is whether or not the relief can be granted without substantial detriment to the public good. The variance that is requested is a C Variance for one foot of road frontage. He does not require height variance, he does not require a lot and size variance, and it is a one foot variance at street level. A-7 was an exhibit of the size of property needed by Mr. Lewthwaite to make the lot conforming. Commissioner Kline was not comfortable with the water run-off issue.

This portion of the meeting was opened to the public.

Mr. & Mrs. Roque, 266 Ann Street, brought in exhibit O-1. She advised that this home should not go up on this lot. She read a prepared statement.

Christine Guy, 222 Ann Street, read from the Code of the Town of Dover, the Land Use Ordinance, and cited several aspects which she felt applied to this application. She submitted five pictures, Exhibit O-2 thru O-6, and described each picture. She is concerned with building for profit only and not looking at the future of Dover.

John A. Consentino, 266 Ann Street, lived in Dover for 62 years. He voiced concern regarding the ledge that runs through the area and excess water. Regarding this particular lot, he thinks this is a terrible, terrible lot. He hopes the right decision is made regarding this lot. Mr. Johnson spoke to Mr. Consentino regarding the variance his father received in 1977, the subdivision of the property, and the fact that his lot is fifty-eight feet wide. Commissioner Kline stated that they must deal with the facts of today and not what transpired twenty-five years ago.

Christina Buck, 22 Greenwood Avenue, spoke of the impact of the building on the immediate neighbor. She feels that this proposed dwelling is just too big at almost three times the size of the adjoining neighbor. She would like to see the character of the neighborhood unchanged.

Peter Consentino, 7 Linwood Avenue, feels that this situation is so difficult, feels the proposed dwelling is too close to the next door neighbor, he feels they will lose financially, and does not want to see that happen.

This portion of the meeting was closed to the Public.

Commissioner Franco moved for a ten minute recess. The meeting recessed at 10:08. The meeting commenced at 10:16:58PM.

ROLL CALL: Present: Commissioner Kline, Corsetto, Franco, Mizzoni, Michalski, Vice-Chairman Cook, and Chairman Scarneo
Still present is Board Attorney Kurt Senesky and Town Engineer, Mike Hantson

Vice-Chairman Cook stated the issue, the bottom line; is this property suitable for building. He suggested that the Board deal with this issue. Mr. Senesky reviewed, once again, the negative criteria. He advised that from all that has been said, the facts and arguments presented; if the Board denies this application, the courts will reverse us and if that happens, we may get something far worse. On those grounds, he feels the application should be granted.

Commissioner Corsetto stated that on the technical merits of the proposal, the applicant and support group did a tremendous job. He does not feel the application meets the subjectivity impact on the immediate community. More importantly, it does not meet the proportionality issue on the building proposal, the height of the building, the impact that it will have on the immediate neighbors, and that is a consideration. He feels that creates the hardship.

Commissioner Kline was impressed with the support from the neighborhood. She felt the applicant did a good job on scaling down the proposed dwelling but still has issues that are not answered. She questions whether this is really a lot that should be built on. She questioned the tax status on this property. She is concerned about the depth of the proposed dwelling.

Listening to the public, she cannot support the application. Commissioner Franco stated that this variance must be entertained based on the laws that exist now. A decision can not be based on a proposal. We are here to administer the law. The preservation of open space is the only thing I can think of that can be considered. From a fiduciary capacity, for one foot, the legal fees that will come from an appeal, because it will probably be over-turned, will be high and an expense to the Town. Vice-Chairman Cook advised that if our decision is overturned, it will have a long term effect. Under the law, whether we are happy or not, he is entitled to this application.

Chairman Scarneo feels that the lot does not meet current zoning and he believes that this application is posing a detriment to the neighbor.

Attorney Senesky advised, that when looking at the positive criteria, the applicant has demonstrated that he is unable to acquire any additional property on either side, he is unable to sell the land to the neighboring property owners, those are the classic proofs that can put him on an isolated lot case. He has carried his burden of proof in that regard, and he has demonstrated the positive criteria. Focusing on the negative criteria, you need to decide whether or not the application can be granted without substantial detriment to the public good, and without substantial detriment to the intent and purposes of the zone plan. He will say that what he is proposing to build here is within the requirements of the ordinance in terms of dimensional requirements. You have heard from the neighboring property owners that it does not fit. This is what you will have to focus on.

Commissioner Mizzoni is concerned about whether this house fits or not.

Chairman Scarneo agreed that the applicant presented a good case, but he does not feel the house fits properly on this lot.

Commissioner Kline stated that this lot seems to be smaller than the neighboring lots. She thinks that this would be destroying the character of the neighborhood and that is the detriment.

A motion to accept the application was made by Vice-Chairman Cook, seconded by Commissioner Michalski and followed with a Roll Call vote.

Mr. Hantson asked for clarification on the motion of approval. It should be specific in respect to the approval.

Vice-Chairman Cook amended the motion to approve the application based upon the latest set of plans presented by Mr. Lewthwaite, drawn up by Mr. Byrne, using the engineering drawings presented by Mr. Graham at tonight's meeting. (Mr. Hantson stated it should read: "Only with the development as presented tonight, with no other revisions.")

ROLL CALL: Ayes: Commissioner Michalski, Vice-Chairman Cook
Noes: Commissioner Kline, Corsetto, Franco, Mizzoni, Chairman Scarneo

OLD BUSINESS: None

NEW BUSINESS: None

COMMENTS: None

DATES: Next Regular Meeting is June 9, 2004 at 7:30PM.

ADJOURNMENT A motion to adjourn was made by Vice-Chairman Cook, seconded by Commissioner Mizzoni with all present in favor. The meeting adjourned at 10:43 PM.

IF ANY MEMBER CANNOT ATTEND THE MEETING, PLEASE CALL CLERK/SECRETARY NEE AT 366-2200 Ext. 115.

Respectfully submitted,



Regina Nee
Clerk/Secretary
Board of Adjustment