

Town of Dover Board of Adjustment

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

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- ↘ 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

JULY 14, 2004

CALL TO ORDER

Chairman Scarneo called the meeting to order at 7:33 PM.

ROLL CALL

PRESENT: Commissioner Bowles, Kline, Franco (Arrived at 7:49PM), Alternate I Michalski,
Alternate II Matias, Vice-Chairman Cook, Chairman Scarneo

ABSENT: Commissioner Corsetto and Mizzoni

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: June 9, 2004 Minutes

The approval of minutes will be done at the next meeting, August 11, 2004

RESOLUTIONS

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.

Commissioner Kline made a motion to approve the Resolution to Deny, seconded by Chairman Scarneo.

ROLL CALL: Ayes: Commissioner Kline, Chairman Scarneo
Nays: None

Mr. O'Malley, owner of Block 403, Lot 12, requested to speak regarding Case 03-04, which has already been closed. Attorney Senesky graciously explained to Mr. O'Malley that he could not discuss this matter as it was denied and that the decision could be appealed.

NEW BUSINESS:

Request for a one (1) year extension of variance for Plaza K Realty, Ltd. – Application No. 11-02, due to delays with NJDEP Permits. See letter dated June 21, 2004 from Brian D. Burns, Esq.

Mr. Brian Burns, Attorney for Plaza K Realty, stated that this was an application that was Board approved September 10, 2003. One item remains outstanding and those are approvals from the DEP. They were filed for in May of 2003 and are still awaiting word. We are requesting a one year extension. Mr. Hantson advised that the variance would expire if they do not have a building permit taken out within one year from a use variance; thus the need for the extension. He advised that the issue really is whether the request for extension is warranted. The property is located at the corner of Mr. Pleasant Avenue and Route 15, a commercial development in the IND/OP Zone.

A motion to grant the extension was made by Vice-Chairman Cook, seconded by Commissioner Bowles and followed with a Roll Call vote.

ROLL CALL: Ayes: Commissioner Bowles, Kline, Michalski, Matias, Vice-Chairman Cook, and Chairman Scarneo
Nays: None

The following matters will be addressed at the August 11, 2004 meeting.

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.

04-04- Town Square Industrial Center LLC; Block 603, Lot 1, also known as 22-40 Richboynton Road 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.

CASES

06-04- Dover Plaza, Inc. and R&L Parking Company, LLC; Block 1318, Lots 1 & 6, also known as 150 and 212-216 East McFarlan Street located in the C-2 and R-3A Zone. The application is a Preliminary and Final Major Site Plan and Use Variance to construct a 1,584 SF addition to an existing retail center with associated parking and other site improvements, with side yard setback, parking setback, bulk requirements, and any variances and waivers that may be required.

George Johnson, Attorney, was present for the applicant. Mr. Michael Spillane, 124 Morris Turnpike, Randolph, NJ, was sworn in. He was recognized as a professional engineer and planner. Mr. Spillane gave the Board an overview of the proposal. The application is for an addition, Page 3 of 7, of 1584 square feet, on the easterly side of the project. They are proposing a total of sixty-one

parking spaces for the combined uses of the shopping center and the diner. The majority of the property is in the commercial zone. The back half of the addition, added lot, is in the residential zone. It previously was used as a parking lot for a restaurant. It is not suitable for residential use. The proposal is to construct an addition to the east of the existing building which would contain either two units or one large one. Calculations have been based on retail use. The traffic pattern will remain the same. No left turn will be allowed. Mr. Spillane reviewed Mr. Hantson's report. A variance is required for insufficient side yard setback on the new addition. The setback requirement is ten feet and we have 5'.9" for the commercial zone. Mr. Spillane advised that when asking for a use variance they apply the conditions for the zone that they are looking to get in; which would be the C-2 zone. Dover Plaza Inc. owns all of the property. The adjacent property is owned by the Sperry family and is not available for purchase. The proposed addition would butt the driveway that serves the dwelling next door. The applicant is asking for 4.1 feet relief. He is also requesting insufficient side yard setback for the parking area. This is the parking in the front of the site along Route 46. It exists on a different lot and we are adding two more spaces on the other side. The parking area in the rear is also less than five feet from the side line; it is an existing space. Mr. Hantson advised that the ordinance requires a five foot setback to a parking area. The plan proposes fifteen additional parking spaces. The plan includes a proposed basement under the proposed addition which would be used for storage. The sidewalk will be removed or the spaces can be made deeper and put a driveway in. The four spaces in the back would be for employee parking. An adjustment to the spaces will be made so there will be no conflict with the sidewalk. The parking spaces adjacent to the entrance driveway, the first two spaces No. 42 & 43, can be removed. There will be an entrance on the west and an exit on the east. Commissioner Kline inquired as to how emergency vehicles would access the property. Vice-Chairman Cook suggested that the parking lot should be redesigned. Mr. Hantson stated that a standard twenty-four foot wide aisle is required to accommodate the ability for vehicles on either side of the aisle to be able to back out. If the aisle is made one way, there is nothing to make anyone in those spaces up against the diner to know that it is one way. The best planning way to do one way traffic is to force angle parking in the direction that you are going however, you need a lot of room for that. In order to accommodate that room you cannot accommodate the number of parking spaces that would be required on this site. Mr. Hantson advised that there are eight new spaces; they require fifty-four and they are showing sixty-one. Commissioner Kline asked if the parking plan is contingent upon the proposed addition, why don't we discuss the issue of the use variance first. She asked how much could be squeezed on a property and how much do we compromise. The existing building is about five thousand square feet. The uses that are permitted in this zone are extraordinarily limited. The application is for two tenancy spaces of retail use. If the building were designed smaller, it would eliminate a variance and it would also eliminate a number of parking spaces. Currently, the property was a parking lot, and it was sold. The parking on Mase Avenue is very congested and the residents were parking on the lot; therefore the owner fenced it in. Mr. Hantson asked what was unique about this addition that side yard setbacks could not be met.

Bharan Meththa, 238 W. Main St., Rockaway, NJ was sworn in. He has a degree in architecture from India and got his license in 1974. He has his own practice in Rockaway, has testified before other Boards, has been qualified as an expert and is licensed in the State of New Jersey. Mr. Meththa was recognized as a qualified expert. The proposed addition is forty-four feet wide and thirty-six feet deep. The existing building is right on the property line and what we are proposing is five to six feet from the property line. A wall of greens can be planted to provide a buffer. Mr. Meththa felt that by extending the shopping center, it would give a better appearance to the whole building. We can have a ten foot setback line, reduce the parking spaces, and make the stores smaller. Mr. Mehta was asked how much space was needed to comply with the ordinance. The answer is 4.1 feet. He was asked why he could not have two stores with twenty foot frontage. He was asked why they need a

variance. He stated that their proposed plan would provide additional parking. The parking spaces in the back would be designated for employee parking if the Board were to grant this variance. To recap, Mr. Hantson stated that Mr. Meththa's testimony with respect to why the variance is warranted is because it would be a nicer looking building and there may be some financial issues which the owner may testify to regarding it. Mr. Meththa added that it would give a nice back entrance and it would provide additional parking. The reason for the setback is financial and you (Mr. Meththa) would think the building would look better. Any change of use requires a minor site plan approval. It would be feasible to reduce the building size of the building by four feet. Commissioner Kline stated that the proposed addition does not show loading dock areas, it shows nothing. There are four spaces tucked up against the building, where do you load and unload? Chairman Scarneo stated that those types of small stores usually do not have loading areas; they usually deal with UPS type deliveries. Mr. Hantson stated that there are specific zoning requirements in the ordinance and a building this size would require one loading space for the entire building. Mr. Hantson said that there are other variances required that are parking setback related. The issue of the building variance can be treated separately. If the building is reduced, the need for one parking space is eliminated. Attorney Senesky asked Mr. Hantson if the Board should look favorably on an excessive amount of parking. Mr. Hantson advised that he believes the site is deficient in parking currently under the zoning so any additional parking that could be provided is a good thing. If you lose a few spaces to make the circulation safer, that might be a better trade-off. Commissioner Kline stated that the plan called for 11 compact spaces and Mr. Hantson stated that it also requires a variance. Our ordinance does not recognize compact spaces. Mr. Hantson has more of an issue with the safety associated with the site circulation than I do with some compact car spaces. Mr. Spillane stated that if the building is reduced, the applicant would require a 1/10th of a foot variance giving a side yard setback of 9.9 feet. Mr. Hantson also advised that parking spaces 17, 18, 36, & 37; is there any way that the site can be configured where those spaces become an exit aisle, straight through, out to Mase Avenue so you will not make a hard right or a hard left. Mr. Spillane stated that they will have to re-plan the circulation. Mr. Hantson explained that the use variance that you have before you is a question of whether or not this Board would grant a retail use for that portion of the site which is a fifty by one hundred foot area in the back corner that is now zoned residential. If you were inclined to grant it, it should be subject to ultimate site plan approval.

The meeting was opened to the public.

Adelade Del Valle, Mase Ave., came forward and voiced concern regarding traffic on Mase. She did not want the traffic to be increased on her street. She was not concerned with the addition to the building but stressed the concern for increased traffic.

Andre Nieves came forward and voiced concern regarding the parking on the site. He wants to make sure the site can accommodate the required parking. He stated that this is a bad design.

This portion of the meeting was closed to the public.

A motion to approve the application with a Use Variance to create retail space in a proposed addition and approve a Variance for a side yard setback of 9.9 feet, both of the variances to be contingent upon Site Plan approval. The site plan approval can involve potentially other dimensional variances with regard to setbacks for parking areas. Vice-Chairman Cook made the motion, seconded by Commissioner Franco and followed with a Roll Call vote.

ROLL CALL: Ayes: Commissioner Bowles, Kline, Franco, Michalski, Matias, Vice-Chairman Cook, Chairman Scarneo

Nays: None

The balance of this application is being carried to the September 8th meeting with no further notice being required of the applicant.

07-04- Fausto Ricart; Block 2105, Lot 17, also known as 163 Oram Drive located in the R-2 Zone. The application is a setback variance for an above ground pool and deck, and any variances and waivers that may be required.

Fausto Ricart was present and was sworn in. He stated that he has lived at this address for the past fourteen years and has improved this site. He lives there with his wife and two sons. He purchased a pool and installed it himself. He also decided to build a deck around the pool. He received a letter from the construction department advising that a permit was required. He stated he immediately came in to apply for the permit but was denied due to the fact that the deck was too close to the rear property line. He stated that there is a hill at the back property line and nothing will be built on that property. He was present to ask the Board for a variance for the rear yard setback. He presented photos, A1, 2, &3 of the yard and pool and deck. According to Mr. Hantson, the applicant applied for a permit after the fact. He was denied the building permit. He was given an electrical permit because we did not want anyone getting hurt; it was inspected to make sure there were no electrical issues, but we denied the building permit because it did not meet the setbacks for both the pool and the deck. A-4, survey of the property was entered for the record. It shows the dimensions of 6 foot, five inches to the pool and two foot, ten inches to the deck, are believed to be accurate. It is not drawn to scale. The easement runs parallel to the rear property line and is ten foot wide. Mr. Hantson stated that he has a survey, the previous property owner's survey, the easement goes along the whole block, there is a French drain in there. The survey does not show it. Mr. Hantson advised that the town was not aware that there was a pipe there. Last summer, during a period of heavy rain, there was an issue where a lot of the common property adjacent to the applicants, were getting water in the backyard. No one could figure out why. The drain, located along the base of the hill, ties into a catch basin at the end of the street. A French drain is a porous pipe that allows ground water to get into the pipe and discharges it away. A-5 is a picture of the pipe. There is an easement with a pipe. One of the footings for the deck is located above the pipe. The water flow has not been altered; however, it is the recommendation of the Town Engineer to remove the portion of the deck from the pool to the back property line. Mr. Hantson recommended a variance to allow the pool but to require the back portion of the deck, from the pool back, to be removed. Mr. Hantson stated that he does not have a deed of easement. The fact that there is an easement there, that we will be expected to maintain the pipe in the future, and it is an old clay pipe, if at some time that pipe fails and we have to replace it, what will we do? A-6, copy of previous owner's survey was submitted by Mr. Hantson. A-7 is a copy of the original subdivision showing the easement. Mr. Hantson advised that it is his professional opinion as a licensed engineer and the Town Engineer, to advise that it is not acceptable practice to construct a footing above a pipe. From a practical perspective, the back part of the deck to the back property line should be removed. Mrs. Ricart was sworn in. She stated that when the adjacent properties started to flood, the town told us that we were responsible. No one investigated about why this happened. My husband found the pipe. We were told we had to clean out the pipe. Mrs. Ricart stated that they provided the information to the town; they uncovered the pipe in the easement after researching in Morristown. Mr. Hantson advised that as soon as the town received this new information, the town immediately took an action to come in, look for the pipe, clean it out and deal with the situation. Commissioner Franco stated that it is unfortunate that the easement is there.

This portion of the meeting was opened to the Public. Seeing no hands, hearing no voices, this portion of the meeting was closed to the Public.

Attorney Senesky advised that there are two variances; one for the pool itself and the other for the deck. The motion that seems to be gathering steam is to approve the application for the setback deficiency to the pool and to deny it with regard to the decking; granting the decking but not with that portion of it from the back edge of the pool to the rear property line. A time limit was suggested that the Board grant them until the end of October to remove it.

A motion to approve the application for the decking with the exception of that portion of the decking that extends from the rear of the pool to the rear property line, to be removed by October 30, 2004, and to approve the application for the pool was made by Vice-Chairman Cook, seconded by Commissioner Bowles, and followed with a Roll Call vote.

ROLL CALL: Ayes: Commissioner Bowles, Kline, Franco, Michalski, Matias, Vice-Chairman Cook, and Chairman Scarneo
Nays: None

The application has been granted and the resolution will be ready for the next meeting.

Mr. Hantson advised that the applicant needs to come in and amend the construction permit to legitimize the deck and allow the removal.

A five minute break was taken at 10:13PM.
The meeting was called back to order at 10:22PM

ROLL CALL: Present: Commissioner Bowles, Kline, Franco, Michalski, Matias, Vice-Chairman Cook, and Chairman Scarneo
Absent: None

Still present is Board Attorney Kurt Senesky and Town Engineer Michael Hantson

08-04- Ivan and Carmen Monaco; Block 1102, Lot 32, also known as 52 Grant Street located in the R-2 Zone. The application is a building coverage variance for a two (2) story rear addition, and any variances and waivers that may be required.

Ivan Moncado owns the house with his sister Carmen Moncado. Their younger sister, Jennifer Moncado read a statement into the record, copies of which were given to the Board members. Photographs were marked, A-1 thru A-8. They requested approval for a two story addition to the rear property. The first level would be a large family/entertainment room and a laundry room. The second story would include two bedrooms and one bathroom. The proposed addition would increase the building coverage on the lot to 31.5 percent. The house, with the proposed addition, would meet all the bulk requirements except the building coverage limitations. The property has the required minimum of fifty feet at the street and exceeds the minimum lot requirement of 5,000 square feet by 1,200 square feet. The proposed addition will not be closer than thirty feet to the rear lot line. The front yard setback is fifteen feet. The lot coverage, including the house with the proposed addition, will only be 46.2 percent. On-site parking and off-street parking for approximately seven cars. Miss Moncado continued to read the statement regarding her mother and the reasons for the proposal. Currently, the house has three bedrooms. He wants to convert the two small bedrooms into one

large room for he and his wife, grandmother will get the existing master bedroom, and the two bedrooms in the addition will be for their children. The proposed addition will not create a negative impact on the neighborhood. (Comparisons to surrounding homes and lots were made.)

Mr. Hantson asked if there were any reason why a portion of the large garage to the rear couldn't be removed in exchange for the addition and would bring you down to the twenty-five percent lot coverage. The applicant stated it would be too costly to reconstruct the garage. On the right side of the house, Mr. Hantson stated that there are a number of down spouts that apparently discharge, and the way the property is graded, it discharges to the adjacent property to the right. Would you be amenable to taking those down spouts and putting them into a four inch underground pipe to be collected and discharged to the front instead of to the side of the house? The applicant agreed to make that change. The existing deck will be removed and replaced with the addition. A new deck will not be constructed. Mr. Moncado explained to the Board his need to take care of his mother who will be living with the family.

This portion of the meeting was opened to the Public.

Mr. James Slattery is the neighbor on the lower side of the Moncado residence. He advised that he has the problem of the water draining onto his property. The previous owner constructed a second story addition and the down spouts go out onto the sidewalk, not the street. He was advised that the proposed addition is 26'x18.5'. Mr. Hantson advised that the applicant will be required to address and rectify the problems caused by the down spouts. Mr. Hantson advised that they would be required to bring the drainage pipe to an acceptable point of discharge; and in a case like this, it would be the gutter. The down spouts on both sides of the property would be run to the gutter. He also voiced concern with the number of bedrooms. Mr. Hantson advised Mr. Slattery that with the number of bedrooms (4); the parking associated with it under the law, would be two spaces by law, but they have sufficient off-street parking for as many as seven cars.

This portion of the meeting was closed to the Public.

Vice-Chairman Cook asked if the applicant could supply architectural drawings in order to get site plan approval for the next meeting. Mr. Hantson suggested granting an approval subject to returning to the Board with architectural drawings set to the satisfaction of the Board and to also include rectification of the run-off problem.

Mr. Hantson advised the applicant that the drawings the Board is asking for should include elevation views, a simple floor plan, with particular attention to how the roof lines are going to connect into the existing house. The drainage issues must also be dealt with. The applicant will need to get an architect and because that may take some time, it would be better to carry to the September 8th meeting.

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

ROLL CALL: Ayes: Commissioner Bowles, Kline, Franco, Michalski, Matias, Vice-Chairman Cook, and Chairman Scarneo

Nays: None

09-04- Albert W. Ferrante; Block 408, Lot 3, also known as 25 Reservoir Ave. located in the R-1 Zone. The application is a Use Variance to construct two (2) bathrooms and a family room/hobby

room with associated heating and plumbing within an accessory structure, and any variances and waivers that may be required.

George Johnson, Attorney, was present for the applicant, Mr. Albert Ferrante. Mr. Ferrante was sworn in and he is the owner of the property. He was attracted to the property because he has several antique cars that can be garaged there. The property consists of a large red brick building which is the house itself, next to that is a smaller building,, and over the garage is a one hundred foot loft. It was once a commercial dairy but has not been used as such for more than thirty years. There is space that is not used; the downstairs has a home office and the upstairs is a recreation room. He wants to add a bathroom and it appears there was a bathroom in the loft and in the downstairs building. No kitchen or sleeping areas will be created. It is an accessory building and cannot be used for habitation. He wants to put in a Jacuzzi. Mr. Johnson advised that they previously talked about connecting the two buildings which would negate the need for a variance for an accessory building. You would need a variance for impervious coverage. Pictures A-1 thru A-3 were entered. Mr. Hantson stated that the front is from Reservoir, so the two story dwelling, No. 25, is the residence. You cannot go from the house to the other buildings without going outside. The upstairs would be a family room, as the applicant has six children and fourteen grandchildren.

Mr. Hantson stated that this is a Use Variance to allow the described habitable space to exist in an accessory structure that was once a commercial use. Prior to purchasing this property, it was a difficult sell because of what it could be used for other than trying to get a use variance to get it back to commercial. Mr. Hantson advised that a number of people previously spoke to him to use it for commercial uses. He stated that it would be difficult to go back. Mr. Ferrante was interested in the property purely for residential use. What is the appropriate adaptive use of this property short of ripping everything down and is this proposed residential use appropriate with the right restrictions that would prevent it from becoming a dwelling unit, which is what we do not want. As a Town Planner, this is a very difficult parcel to say, "What is an appropriate re-use for it other than something along the lines of what he is proposing?" Commissioner Matias asked if the garage was heated and if not, would he heat them. The three garages have a second floor over it, they will not be heated.

John Cramer, Realtor, was sworn in. He listed the property. He advised that this was a very difficult property to sell. Mr. Ferrante was the ideal person to purchase the property.

This portion of the meeting was opened to the Public.

John Rich is a neighbor. He is happy that Mr. Ferrante obtained the property. It is a very unusual property.

Christina Buck lives on Greenwood Avenue. She believes that what Mr. Ferrante is trying to do is very good. She expressed concern about what will happen if and when Mr. Ferrante moves. She wants to know how we will know that this will be what it is used for once the property changes hands. Not wanting to offend anyone, she said it should be torn down. She does not want to see heat or bathrooms in the accessory structure. She wants to see the bathrooms limited to just one. Mr. Ferrante advised that to use the facility in the house, you would have to go out of the building and walk approximately one hundred fifty feet. He wants to heat the family room. It is one tax lot. If all of the accessory buildings were torn down, the property could be subdivided. The tract is large enough to subdivide and meet lot area and lot width requirement.

This portion of the meeting was closed to the Public.

Commissioner Matias questioned the two bathrooms and was advised that there will be one full bath and one half-bath.

Mr. Hantson suggested that any resolution of approval be very specific with respect to the level of improvements that you are going to allow because he is concerned about what can be done in the future. He recommended specific wording to describe exactly what will be done. There will be no cooking facilities in the family room. Cooking facilities will not be allowed. The Jacuzzi will be installed downstairs. There will be a full bath, and a half bath.

Vice-Chairman Cook made a motion to approve the application with conditions as discussed, seconded by Commissioner Matias, and followed with a Roll Call vote.

ROLL CALL: Ayes: Commissioner Bowles, Kline, Franco, Michalski, Matias, Vice-Chairman Cook, and Chairman Scarneo
Nays: None

OLD BUSINESS: None

NEW BUSINESS: None

COMMENTS: None

DATES: Next Regular Meeting is August 11, 2004 at 7:30PM.

ADJOURNMENT A motion to adjourn was made by Vice-Chairman Cook with all in favor. The meeting adjourned at 11:42 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