



City of Dover  
Board of Adjustment

July 17, 2024  
V-24-03

Locations: (a) Property at 148 S. Bradford St., Dover, Delaware  
ED-05-077.09-02-25.00-000

(b) Property at 150 S. Bradford St., Dover, DE  
ED-05-077.09-02-27.00-000

Current Property Owners: (a) Russell and Dee Ann Widder

(b) CEI Properties, LLC

Present Zoning: C-2 (Central Commercial Zone)  
H (Historic District Zone)

Application Date: Appeal Received June 24, 2024  
Request for July 17, 2024 Meeting

Appeal Filed By: Friends of Old Dover

Appeal Requested: Appeal regarding the implementation of the *Zoning Ordinance*, Article 10 Section 3.2 as administered at the June 17, 2024, Planning Commission Meeting and the determination that the Appeals before the Planning Commission were not subject to a public hearing. This is associated with the Planning Commission's consideration of Applications HI-24-02 and HI-24-03 as Appeals to the Planning Commission of the Historic District Commission action of May 16, 2024, to deny the Architectural Review Certifications for the Demolition of two buildings at 148 S. Bradford Street and 150 S. Bradford Street.

**Request for Appeal**

Nate Attard of the Friends of Old Dover has filed an Appeal of a decision by the Principal Planner regarding the determination that the Appeals before the Planning Commission were not subject to a Public Hearing with Public Testimony.

### **Property Description**

The two subject properties are located on the west side of S. Bradford Street between Reed Street and Loockerman Street, slightly north of Minor Street Alley. Both are located within the City of Dover Historic District Zone as well as the Victorian Dover Historic District. These properties are zoned C-2 (Central Commercial).

### **Code Citations**

#### **Procedures**

The Board of Adjustment procedures for Appeals are outlined in the *Zoning Ordinance* and within *Delaware Code*. See the following code citations.

*Dover Code of Ordinances, Appendix B: Zoning, Article 9. Board of Adjustment:*  
Section 2. Powers and duties:

The board of adjustment shall have the powers and duties as specified in Delaware Code Annotated (22 Del. C. § 301 et seq.) and as articulated below:

*2.2 Appeal of administrative order, requirement, decision, or determination.* The board shall have the authority to hear and decide appeals where it is alleged there is any order, requirement, decision or determination made by an administrative official in the enforcement of the zoning ordinance. Appeals to the board may be made by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of an administrative officer.

*Zoning Ordinance, Article 9 §3* further outlines the procedures for both variances and appeals. Appeals are subject to a Public Hearing before the Board of Adjustment which must be noticed by publication in the newspaper and by mailed notice to property owners within 200 feet of the subject property.

The Appeal must be filed in writing on prescribed forms and is subject to a filing fee. It is noted that this fee may be returned to the applicant (*Zoning Ordinance, Article 9 §3.4*) under certain provisions:

Article 9 §3.4 The board of adjustment may, in its discretion, return to the applicant part or all of the fee paid by him in the event that his appeal under section 2.2 Appeal of administrative order, requirement, decision, or determination hereof is partially or wholly successful.

The Appeal (written application and submission items) as filed shall consist of the following per the *Zoning Ordinance, Article 9 §3.5*:

Article 9 §3.5 Each variance application or appeal shall fully set forth the circumstances of the case. Every variance application or appeal shall refer to the specific provision of the ordinance involved, and shall exactly set forth, as the case may be, the interpretation that is claimed, the details of the variance that is applied for and the grounds on which it is claimed that the same should be granted.

- **A copy of the Appeal as filed by the Appellant Friends of Old Dover, is attached as Exhibits 1A and 1B.**
  - **Exhibit 1A – Application to Board of Adjustment for Appeal.**
  - **Exhibit 1B – Letter on behalf of the Appellant (Friends of Old Dover) dated June 24, 2024, from Nate Attard.**

The provisions of *Delaware Code* (22 Del. C. § 301) also note a procedure for Appeals:

22 Del. C. §324 Appeals to board.

Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time as provided by the rules of the board by filing with the officer from whom the appeal is taken and with the board a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

### **Action by the Board of Adjustment**

It is the responsibility of the Board of Adjustment to hear and decide the Appeal where it has been alleged that the determination of the administrative official was in error. This Appeal is of a decision by the City Planner regarding the public hearing for the Appeal of HI-24-02 and HI-24-03 at the Planning Commission meeting of June 17, 2024.

It is related to the interpretation of the *Zoning Ordinance* pertaining to the procedures set forth in Article 10 Section 3:

**3.26 Procedures for an architectural review by the historic district commission and/or planning commission.**

- (A) *Architectural preapplication meeting.* Prior to action on any application for an architectural review certificate, the applicant shall meet in person with the city planner or his delegated representative. The purpose of such conference shall be to discuss the proposed construction or other action requiring the certificate in order to determine what information is useful in the determination of conformity with the provisions and intent of the historic district regulation as expressed in this article.
- (B) *Application and fee.* The application to the historic district commission for an architectural review certificate and related information shall be submitted to the city planner at least 30 days prior to the historic district commission meeting at which review is requested and shall be accompanied by a fee as provided for in Appendix F—Fees and Fines.
- (C) *Public hearing.* Prior to the review and action on an architectural review certification, the historic district commission shall hold a public hearing subject to the following public notification procedures:
  - (1) The applicant shall advertise the public hearing newspaper of general circulation at least 15 days prior thereto.
  - (2) The applicant shall notify, by mail, all property owners within 200 feet of the extreme limits of the subject property as their names appear on the municipal tax record at least 15 days prior thereto.
  - (3) The applicant shall post a notice outlining the date, time, place, and nature of the hearing in a conspicuous location on the property. Such notice shall be designed in accordance with standards set forth by the planning commission.
  - (4) The applicant shall provide the planning office with a copy of the notice, verification of newspaper publication, a date-stamped photo of the property posting, and post office mail receipts indicating date of mailing for all letters on or before the meeting date.
  - (5) Said notices shall state the date, time, and place of the hearings before the historic district commission, a brief description of the project and shall state that a copy of the application and plan is on file with the planning office for public review.
  - (6) If the planning commission is reviewing a project in accordance with other sections of this article, then the public hearing notice on those applications must also give notice of architectural review certification.

**Architectural Review Certification Procedures**

The procedures for Architectural Review Certification as related to the aspects of the *Zoning Ordinance* compliance are given in the *Zoning Ordinance*, Article 10 Section 3.23 and *Zoning Ordinance*, Article 10 Section 3.24.

**Exhibit 2A – *Zoning Ordinance* excerpt for Historic district commission and architectural review.**

# List of Exhibits

**Exhibit 1A – Application to Board of Adjustment for Appeal.**

**Exhibit 1B – Letter on behalf of the Appellant (Friends of Old Dover) dated June 24, 2024, from Nate Attard.**

**Exhibit 2A –*Zoning Ordinance* excerpt for Historic District Commission and Architectural Review.**



City of Dover, DE  
Department of Planning and Inspections  
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☐ Area Variance  
☐ Use Variance  
☒ Appeal  
☐ Pre-App Date

## Board of Adjustment Application

### Application Information

Property Address: N/A - Administrative Appeal  
Tax Parcel Number: N/A - Administrative Appeal  
Owner Name: N/A - Administrative Appeal  
Property Zoning: N/A - Administrative Appeal  
Variance (s) Requested: N/A - Administrative Appeal

\*Provide eight (8) copies of any survey, drawings, photos, site plan, etc. that may help support your application, and your response to the criteria. The criteria for a use variance and appeal are on the back of the form.

### Area Variance

An area variance shall be evaluated on the following criteria: **Please state how your request meets each of these four (4) criteria.**

1. The nature of the zone in which the property lies;
2. The character of the immediate vicinity and the contained uses therein;
3. Whether, if the restriction upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses; and
4. Whether, if the restriction is not removed, the restriction would create unnecessary hardship or exceptional practical difficulty for the owner in his efforts to make normal improvements in the character of that use of the property that is permitted uses under the provisions of the zoning ordinance.

### Signature

I Nathan Attard <sup>represent Friends of Old Dover in this appeal</sup> do affirm that I ~~am the property owner on which the~~  
~~variance is sought~~ and that all the information provided in this application is accurate to the best of  
my knowledge and belief.

Nathan Attard President, Friends of Old Dover 6/25/2024  
Signature Title Date



# THE HISTORICAL SOCIETY OF DOVER

## FRIENDS OF OLD DOVER

*A non-profit Organization preserving for future generations the historic and architectural heritage of Dover, Delaware*

June 24, 2024

City of Dover Board of Adjustment  
15 Loockerman Plaza  
Dover, DE 19901

Honorable Commissioners,

Under the provisions of City of Dover Code, Appendix B, Zoning, Title 9, Board of Adjustment, the Friends of Old Dover request to appeal the implementation of City of Dover Code, Appendix B Zoning, Article 10, Section 3, as administered at the meeting of the Planning Commission on June 17, 2024 with regards to agenda items HI-24-02 and HI-24-03, Demolition of 148-150 S. Bradford Street.

Per Delaware Code Title 22, Chapter 3, Subsection II, Item 325 (Stay of Proceedings), it is of the opinion of the Friends of Old Dover that this appeal stays all proceedings in furtherance of the action appealed from until a decision is made by the Board of Adjustment of the City of Dover, and that any application for demolition permits would be stayed pending the outcome of the appeal.

Justification:

The determination made by Ms. Dawn Melson-Williams, an administrative official of the City of Dover that the applications were not subject to a public hearing, and as applied by the Planning Commission Chair, is inconsistent with City Code. 20 persons of the Friends of Old Dover were in attendance prepared to speak on this application and were aggrieved by this decision.

Under City of Dover Code, Appendix B, Zoning, Title 10, Section 3.23, subparagraph D, an appeal of a decision of the Historic District Commission is considered an architectural review certification by the Planning Commission and must meet all the requirements set forth in subsection 3.23 and 3.26, to include conducting a public hearing.

Counter to the cited section of code, Ms. Melson-Williams, in the June 17 Planning Commission meeting advised the commission that this was not to be considered architectural review certification by the planning commission. Evidence of this statement can be found in the meeting recording at 2:06:00 to 2:09:00, where Ms. Melson-Williams stated that architectural review certification is only achieved by the Planning Commission when the application must be

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reviewed both by the Planning Commission and the Historic District Commission. Per City of Dover Code, Appendix B Zoning, Title 10, Section 3.23, subparagraph D, an appeal of a decision of the Historic District Commission is also considered an architectural review certification by the Planning Commission and the Planning Commission should have been advised that they were required to meet the same requirements as the Historic District Commission as set forth in subsections 3.23 and 3.26.

Further, this meeting of the Planning Commission is subject to Delaware Open Meeting Law, 29 Delaware Code §10004. This meeting did not provide the 20 members in attendance a meaningful opportunity to engage with the Planning Commission, in violation of the cited section of State code.

We look forward to being heard on this grievance.

Sincerely

A handwritten signature in black ink, reading "Nathan Attard". The signature is fluid and cursive, with the first name "Nathan" and last name "Attard" clearly distinguishable.

Nathan Attard  
President, Friends of Old Dover

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## Section 3. Historic district commission and architectural review.

### 3.1 *Historic district commission established.*

- 3.11 *Creation and purpose.* There shall be a historic district commission for the purpose of assisting the planning commission and city planner in reviewing applications for architectural review certifications as specified in subsection 3.2; and for making recommendations for designation of historic district zones; and for establishing guidelines for the preservation and conservation of historic district zones; and for advising other officials and departments in the City of Dover in matters concerning historic preservation; and for reviewing all proposed National Register nominations in the City of Dover; and for acting as a liaison on behalf of the City of Dover to individuals and organizations concerned with historic preservation; and for carrying out programs of historic preservation education in the City of Dover.
- 3.12 *Appointment.* The commission shall consist of five members nominated by the mayor and approved by the city council, who are residents of the City of Dover and who have demonstrated special interest, experience, or knowledge in history, architecture, or historic preservation. Two of the members, to the extent available, shall be professional members representing the professions of architecture, history, archaeology, planning, historic preservation or related disciplines. At least two members shall be residents of the district, and at least one shall represent the business within the district.
- 3.13 *Term.* The members of the commission shall serve for three-year staggered terms. Vacancies shall be filled within 60 days in accordance with subsection 3.12.
- 3.14 *Organization.* The commission shall meet at least four times per year in a place that is advertised in advance and open to the public and shall keep minutes of its meetings that are available to the public. All review decisions shall be made in public. The commission shall establish bylaws for its general procedure, which shall include a section addressing conflicts of interest. The commission shall produce an annual report of its activity that is kept on file for public review with the city planning office.

### 3.2 *Architectural review certification.*

- 3.21 *Effect of architectural review certificate.* No building permit or certificate of occupancy may be issued for any structure in the historic district until an architectural review certificate is issued as required under article 3, section 21, subsection 21.3 for the historic district.
- 3.22 *Architectural review certification by the city planner.*
- (A) An architectural review certificate for specific classes of building permits, including fences, signs, siding, window and door replacement, roofing, the addition or replacement of decorative features, minor demolition, residential additions, and other construction of a minor nature, may be issued by the city planner, after a review and determination that the proposed construction is in general accordance with the standards set forth in subsection 3.25.
  - (B) The city planner may refer any permit application for demolition or construction in the historic district for consultation with commission.
  - (C) All decisions of the city planner pursuant to this subsection shall be documented on the building permit. When the city planner grants a conditional approval under this section, all conditions of approval shall be set forth in writing on the building permit. In the event of a denial, the reasons for such denial shall be documented in a written notice of decision which shall identify all elements of the application found to be contrary to the provisions or intent of this section.

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- (D) An applicant may appeal the decision of the city planner to the historic district commission and such appeal shall be considered as an architectural review certification application to the historic district commission and shall meet all of the requirements set forth in subsection 3.23.

*3.23 Architectural review certification by the historic district commission.*

- (A) The historic district commission shall issue architectural review certificates for the construction or demolition of single-family and two-family homes, and nonresidential structures or additions involving a gross floor area of 3,000 square feet or less, after review of the proposed construction and after a determination that the construction is in general accordance with the standards set forth in subsection 3.25 below.
- (B) All applications to the historic district commission for architectural review certification shall be subject to the procedures set forth in subsection 3.26.
- (C) All decisions of the historic district commission pursuant to this subsection shall be formalized in a written notice of decision. When the commission grants a conditional approval under this subsection, all conditions of approval shall be set forth in writing in the notice of decision. In the event of a denial, the notice of decision shall state the reasons for denial and shall identify all elements of the application found to be contrary to the provisions or intent of this subsection.
- (D) An applicant may appeal the decision of the historic district commission to the planning commission, and such appeal shall be considered as an architectural review certification application to the planning commission and shall meet all of the requirements set forth in subsection 3.24 and subsection 3.26.

*3.24 Architectural review certification by the planning commission.*

- (A) The planning commission shall issue architectural review certificates referred or appealed to it, upon review of the recommendations of the historic district commission and upon a determination that the proposed construction is in accordance with the standards set forth in subsection 3.25.
- (B) All applications to the planning commission for architectural review certification shall be subject to the procedures set forth in subsection 3.26.
- (C) All decisions of the planning commission pursuant to this subsection shall be formalized in a written notice of decision. When the planning commission grants a conditional approval under this subsection, all conditions of approval shall be set forth in writing in the notice of decision. In the event of a denial, the notice of decision shall state the reasons for denial and shall identify all elements of the application found to be contrary to the provisions or intent of this subsection.

*3.25 Architectural review standards.*

- (A) An architectural review certificate may be issued if it is found that the architectural style, general design, height, bulk and setbacks, arrangement, location and materials and structures affecting the exterior appearance are generally in harmony with neighboring structures and complementary to the traditional architectural standards of the historic district as set forth in the historic district design guidelines and standards adopted by the planning commission and as set forth in the United States Secretary of the Interior's Standards for Rehabilitation.
- (B) The city planner, historic district commission or planning commission shall not consider normal maintenance and repair (see Definitions, article 12), interior arrangement, or building features not subject to public view.

*3.26 Procedures for an architectural review by the historic district commission and/or planning commission.*

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- (A) *Architectural preapplication meeting.* Prior to action on any application for an architectural review certificate, the applicant shall meet in person with the city planner or his delegated representative. The purpose of such conference shall be to discuss the proposed construction or other action requiring the certificate in order to determine what information is useful in the determination of conformity with the provisions and intent of the historic district regulation as expressed in this article.
- (B) *Application and fee.* The application to the historic district commission for an architectural review certificate and related information shall be submitted to the city planner at least 30 days prior to the historic district commission meeting at which review is requested and shall be accompanied by a fee as provided for in Appendix F—Fees and Fines.
- (C) *Public hearing.* Prior to the review and action on an architectural review certification, the historic district commission shall hold a public hearing subject to the following public notification procedures:
- (1) The applicant shall advertise the public hearing newspaper of general circulation at least 15 days prior thereto.
  - (2) The applicant shall notify, by mail, all property owners within 200 feet of the extreme limits of the subject property as their names appear on the municipal tax record at least 15 days prior thereto.
  - (3) The applicant shall post a notice outlining the date, time, place, and nature of the hearing in a conspicuous location on the property. Such notice shall be designed in accordance with standards set forth by the planning commission.
  - (4) The applicant shall provide the planning office with a copy of the notice, verification of newspaper publication, a date-stamped photo of the property posting, and post office mail receipts indicating date of mailing for all letters on or before the meeting date.
  - (5) Said notices shall state the date, time, and place of the hearings before the historic district commission, a brief description of the project and shall state that a copy of the application and plan is on file with the planning office for public review.
  - (6) If the planning commission is reviewing a project in accordance with other sections of this article, then the public hearing notice on those applications must also give notice of architectural review certification.
- (D) *Application information.* The applicant shall provide such information and documents listed below which will satisfactorily illustrate the proposed action as indicated in the architectural preapplication meeting required in subsection 3.26(A):
- (1) All plan elements required in subsection 2.5.
  - (2) Plans and specifications indicating existing and proposed development, including structures, architectural elevation drawings, trees and any other landscaping, existing and proposed, including the general design, location and orientation of structures in relation to curb line, right-of-way line and neighboring buildings, colors, and materials to be used on exterior surfaces, detailed plans for any signs, photographs of the existing site and neighboring buildings, and such other information as will enable the historic district commission or planning commission to determine conformity with the ordinance.
- (E) *City planner report.* For each application to the planning commission the city planner shall issue a report to the planning commission including comments from other agencies detailing how the application conforms to the requirements of the zoning ordinance and other provision of city and state codes. This report shall not be deemed to represent a comprehensive list of all city and

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state code requirements. The city planner shall transmit copies of the proposed site development plan and the city planner's report at least seven days prior to the date of the meeting at which approval of the site development plan is to be requested.

- (F) *Historic district commission action.* The historic district commission shall act to review and render a recommendation to approve any such application within 45 days of transmittal to the commission or within such additional time as may be consented to by the applicant. The recommendation of the historic district commission shall be forwarded to the planning commission and acted upon by the planning commission in conjunction with action on the associated site development plan. If a site development plan application is not filed in accordance with the provisions of subsection 2.4 of this article within one year of recommendation, the recommendation shall expire. The historic district commission may grant a one-year extension of its recommendation upon written request by the applicant. Such request shall be made in writing to the planning office at least thirty days prior to the expiration of the historic district commission's recommendation.
- (G) *Substantial amendments.* Substantial amendments to an application or an architectural review certificate shall be acted upon in the same manner as the original plan.
- (H) *Expiration of architectural review certification issued by the historic district commission.*
  - (1) Architectural review certification approval shall expire on the last day of the 12th month after the date of approval if construction of the work authorized or use permitted has not started or unless an extension of time is applied for by the applicant and granted by the historic district commission. Approval shall also expire if the construction of work authorized has stopped for a period of one year unless an extension of time is applied for and granted by the historic district commission.
  - (2) Request for extension of approval shall be made no later than 30 days prior to the final approval expiration date. Upon receipt of such request, the matter shall be considered at the next regularly scheduled meeting of the historic district commission.
  - (3) In considering a request for an extension of approval, the historic district commission shall consider, but not be limited to, the following:
    - (a) Whether the project has been delayed for reasons beyond the control of the applicant, excluding economic or financial reasons.
    - (b) Whether the applicant has made substantial progress toward obtaining final approvals.
    - (c) Whether there have been any significant changes in the surrounding neighborhood.
    - (d) Whether there has been any related amendments to the zoning map or text, or the comprehensive plan, or if any waivers or variances have been granted.
  - (4) Requests for extensions shall be submitted in writing to the planning office.
  - (5) Under no circumstances shall the historic district commission grant extensions beyond 24 months from the date of first approval.

### 3.3 *Historic district amendments.*

3.31 *Historic district commission review required.* Any motion or petition to amend, supplement, or repeal a historic district by the city council in accordance with section 5, Amendments, shall require a report by the historic district commission as set forth in article 3, subsection 21.4.

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3.32 *Review criteria for placing individual structures in a historic district.* The historic district commission may recommend that an individual structure or property be placed in an existing contiguous historic district or be placed in a historic district specifically created for the property or structure upon considering the following criteria and factors:

- (A) Significant value as part of the historical, cultural, artistic, social, ethnic or other heritage of the nation, state or community;
- (B) Association with an important person or event in national, state, or local history.
- (C) Representative of the distinguishing characteristics of an architectural type inherently valuable for the study of a period, style, craftsmanship, method of construction or use of indigenous material;
- (D) Notable work of a master builder, designer, architect, or artist whose individual genius has influenced an era;
- (E) The desire of the owner to have the property designated;
- (F) Increased potential of economic or community development.

3.33 *Review criteria for amendments or creation of new historic districts.* The historic district commission may recommend amendments to an existing historic district, recommend repeal of an existing historic district or recommend the creation of a new historic district upon considering the following criteria:

- (A) Any criteria listed in subsection 3.32.
- (B) Distinctive character or homogeneity of architectural design or dates of construction throughout the area.
- (C) Identifiable by clear and distinctive boundaries.
- (D) Repetition of distinguishing architectural or land use characteristics throughout the area.

3.34 *Public hearing required.* For all proposed amendments to the boundary of the historic district, the historic district commission shall hold a public hearing subject to the following public notification procedures:

- (A) The planning office shall advertise the public hearing in a newspaper of general circulation at least 15 days prior thereto.
- (B) The planning office shall notify, by mail, all directly affected property owners and all property owners within 200 feet of the extreme limits of the properties proposed for addition to or removal from the district as their names appear on the municipal tax record at least 15 days prior thereto.

### 3.4 *Demolition by neglect.*

3.41 *Responsibility of property owners.* Property owners of properties within the historic districts shall not allow their buildings to be demolished by neglect (see Definitions, article 12) by failing to provide ordinary maintenance or repair.

3.42 *Responsibility of the historic district commission.* The historic district commission shall monitor the condition of historic properties and existing buildings in the historic district to determine if they are being demolished by neglect by failing to provide ordinary maintenance and repair (see Definitions, article 12). In the event that the commission determines a demolition by neglect is occurring, it shall carry out the following:

- (A) Determine and set forth steps required to remedy the situations or defects.

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- (B) Direct the city planner to inform the property owners of its findings, determination, and recommended remedies.
  - (C) In the event that the property owners fail to commence work within the reasonable time allotted by the commission, the commission may direct the building inspector to begin proceedings under chapter 22, buildings, and building regulations, article XI, dangerous buildings, of the Code of Ordinances for the City of Dover to bring about the repair or demolition of the building.

3.43 *Responsibility of the city planner.* The city planner shall notify the historic district commission of buildings within the historic district that have been referred to him by the building inspector that meet the definition of dangerous buildings under the provisions of chapter 22 Buildings and Building Regulations, article XI Dangerous Buildings, of the Code of Ordinances for the City of Dover. In such cases the commission shall determine if the building is being demolished by neglect. Before referring a property to the commission for consideration as demolition by neglect, the city planner shall give written notice to the owner, occupant, mortgagee, lessee, agent, and all other persons having an interest in said building, as shown by the records of the recorder of deeds of the county, to appear before historic district commission at the time, date and location specified.

(Ord. No. 2011-14, 8-8-2011)