

CITY OF DOVER
BOARD OF ADJUSTMENT MINUTES
June 20, 2024

A Regular/Hybrid Meeting of the City of Dover Board of Adjustment was held on Thursday, June 20, 2024, due to the Juneteenth holiday at 9:00 A.M. in person in the City Council Chambers and using the phone/videoconferencing system Webex. Members present were Chairman Sheth, Mr. Keller, Mr. Wagner, and Mr. Senato. (Note: There is a vacant seat with one member not yet appointed.)

Staff members present were City Solicitor Mr. Rodriguez, Mrs. Melson-Williams, and Ms. Katherine Oehmke. Assistant City Manager Mrs. Sharon Duca observed the meeting.

APPROVAL OF AGENDA

Mr. Keller moved for approval of the agenda as presented, seconded by Mr. Senato, and the vote was unanimously carried 4-0.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF OCTOBER 18, 2023

Mr. Keller moved to approve the meeting minutes of October 18, 2023, with the necessary correction. The motion was seconded by Mr. Senato unanimously carried 4-0.

Chairman Sheth asked if there were any questions. There was none.

COMMUNICATIONS & REPORTS

Mrs. Melson-Williams mentioned the next regularly scheduled meeting for the Board of Adjustment is July 17, 2024, with a 9:00 am start time in the City Council Chambers and with a virtual format. The other items that I will note include that yesterday was the City's holiday for Juneteenth and then coming up there is the July 4th holiday. The City has also granted a special holiday for Friday, July 5th. Our offices will not be open that day.

Chairman Sheth mentioned that he wanted to let people know that we always meet the third Wednesday of the month but due to the Juneteenth holiday, we are meeting today.

Chairman Sheth mentioned that Mr. Keller has been a Board of Adjustment member for roughly 20 years is stepping down. Mr. Keller will not be seeking reappointment. His last meeting will be in July. The Board will be sad to see him go.

OPENING REMARKS CONCERNING APPLICATION

Mrs. Dawn Melson-Williams, Principal Planner stated that the meeting today will be conducted in accordance with the agenda. We are running a hybrid meeting, just so that you are aware of the In-person location here at City Council Chambers and then a virtual presentation of the meeting as well. There is one Variance application on the agenda under New Business. The Variance application file will be read, and the floor will be opened for questions of the applicant by the Board and for public testimony. The Board may consult with the City Solicitor 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 moved forward or commenced.

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

NEW BUSINESS

Application V-24-01

Legislative Hall Parking Garage Project - Legislative Hall Parking Garage Project proposes redevelopment of the property for construction of a three-story Parking Garage and other site improvements with portions of the existing surface parking lot and an office/credit union building to remain. The project has requested variances from the *Zoning Ordinance*, Article 5 Section 11.21 pertaining to development within the Flood Hazard Area (1% Annual Chance Flood/100-year floodplain). Variance Request 1 is to decrease the required reduction of the impervious surface area of the predevelopment conditions on the lot from 15% to 5% (Article 5 Section 11.211a). Variance Request 2 is to recognize that 48.7% of the lot is within the flood hazard area which is greater than 33% that allows Planning Commission consideration of reductions in impervious surfaces (Article 5 Section 11.211b). These Variance Requests would allow for some project development within the Flood Hazard Area. The 5.28 acre +/- property is zoned IO (Institutional and Office Zone) and is subject to H (Historic District Zone). The property is located at the southeast corner of Martin Luther King Jr. Boulevard South and East Avenue/E. Water Street. The owner of record is the State of Delaware - OMB: Division of Facilities Management. Property Address: 425 East Avenue and existing building addressed as 150 E. Water Street. Tax Parcel: ED-05-077.10-01-02.00-000.

Mrs. Melson-Williams gave a summary presentation along with the required criteria of the Application request for two variances from the requirements of Article 5 §11.21 of the *Zoning Ordinance* pertaining to development within the Flood Hazard Area (1% Annual Chance Flood/100-year floodplain). On the screen and included in the members' packet was the application form signed by the state representative of the state ownership entity. Moving into the packet, there is a series of Exhibits both prepared by Staff and also submitted by the Applicant. By reference Staff will enter Exhibits A-F. Included in that Staff will add Exhibit G which is a Revised Plan sheet that was provided to the Board of Adjustment members on their desks. With this application the legal notice was published in the Delaware State News now known as the Daily State News on June 2, 2024. The property owners within 200 feet of the subject site were notified by letter by the Planning Office. This is in accordance with the established procedures for public notice. With this project the Legislative Hall Parking Garage project (referring to the map on the second exhibit), we are dealing with the location at the corner of Martin Luther King Jr. South Boulevard and what is East Avenue or East Water Street. This is currently a surface parking lot area next to the Del-One Credit Union. The property is zoned IO (Institutional and Office Zone). It is also within the H (Historic District Zone). Currently, it is an existing parking lot and also on the property is that office/credit union building. The proposal is to add a parking garage structure basically where the surface parking lot is.

Today they have made request for two variances; and we try to be consistent in numbering them (Variance 1 and 2). Both of these variances are to allow for some project development within the flood hazard area, which is also in the floodplain. In the scenario of redevelopment, the Code requires that if you do have areas that are already in the floodplain that you reduce the amount of impervious surface which is the paved hard surface that rainwater can't get through. Currently the Code says that you have to reduce it by 15%. They are seeking to only reduce it by 5% based on the configuration of their project. The second variance request is to recognize that 48.7% approximately of the lot is within the flood hazard area. That number is greater than the 33% that allows the Planning Commission to consider reductions of that impervious surface requirement. The applicant notes what is currently at the site of that surface parking lot at the edge of the Capital Complex is surrounded by other State-owned properties including the Legislative Hall and office buildings like the Tatnall Building. To the east of the property at the eastern property edge is the St. Jones River which is what a floodplain is related to. If we go to the next exhibit, it is one of the images related to the floodplain. This is actually the FIRMette, which is a term used with FEMA as a way to present the floodplain information. What we're concerned about is the area that is shaded in blue and that is the 100-year floodplain. It's the eastern portion of the property and right now kind of clips a corner of the existing surface parking lot which was likely developed prior to the floodplain map looking the way it does to today. In order to develop on this site, there are additional review processes involving the Historic District Commission and Planning Commission. They have visited the Historic District Commission already to really focus on kind of the architecture and positioning of the building, but the Site Development Plan will be a future application. As a reminder, you have two variance requests today. One is to decrease the required reduction of impervious surface area and the other one is a recognition of the amount of flood hazard area that is on the property to allow for consideration of that reduction in impervious surface coverage.

Chairman Sheth asked the Board members if they had any questions or needed more understanding of the presentation from Mrs. Melson-Williams?

Chairman Sheth asked if this is the general location where they currently launch the fireworks. Mrs. Melson-Williams replied this is the general location where the fireworks program is launched but that's not something that would weigh into your consideration of this application today.

Chairman Sheth asked if any member has a conflict of interest. There were none.

Representative: Mr. Drew Boyce, Century Engineering and Mr. Daniel Ridgley, Studio JAED.

Mr. Boyce and Mr. Ridgley were both sworn in by City Solicitor Mr. Rodriguez.

Mr. Boyce stated that he is representing the State of Delaware. We are here to talk about two variances associated with the parking structure that is actually in support of a larger State effort to expand the Legislative Hall. As part of the Legislative Hall expansion, it is expanding into areas where we have existing parking. So, we already know that the Downtown area is already stressed for parking, especially during Legislative session.

So, a parking garage in the early charette process and in the early planning was derived as a solution for that parking problem. And so, different alternative locations were looked at and then finally we settled on the location that's in front of you now at Water Street and South Martin Luther King Jr. Boulevard. It is an existing 150 space surface parking lot, but we are planning on replacing that with a three-story parking structure that will have 338 parking spaces. So, that is to support not only the replacement of the parking spaces that are being impacted by the Legislative Hall expansion, but also to fulfill some of the parking gaps that exist now. Dawn did a great job explaining the nature of the projects. Specifically, we are here for two variances. The first one is Article 5 §11.21 A & B.

Based on the physical conditions, we are dealt the hand that we have, the property that we have, and the areas that we have. The actual floodplain that actually encroaches into the 150-space existing parking lot. The Code would ask for the redevelopment proposal that the impervious area impacts be reduced by 15%. We were only able to reduce those by 5% and still obtain the parking goal that was outlaid in the very beginning of the project.

In the second variance, it acknowledges that the bulk of the property, almost 47%, is within the floodplain. So, that is above the 33% which allows the Planning Commission and this Board to consider a reduction in that 15% requirement. That's where we are. Some of the things that we are doing to mitigate and help improve the situation are the impacts on the back side of the garage. And so, the back side of the garage has all the services. We have electric, we have bathrooms, and we have other facilities in the garage. So, it's not a public access but it is more of a utility access to be able to support the mechanical pieces of the garage. The plan is to provide pervious pavement back there since it's not going to be traveled on by the public. We can create a situation where we'll get some infiltration through that pavement.

In addition, in working with Dawn and her Staff, we also worked through the new Exhibit G, which wasn't included in the original application packet. We were able to relocate the access road to that service area. You can see on the graphic on the screen that the access piece is now fully located outside of the flood hazard zone. So, those are some mitigation measures that we have taken to help get closer to that 15%, but we still cannot obtain the 15% whereby we are here now asking for the variance.

Mr. Wagner mentioned that obviously people and various agencies determined this is a floodplain, were they wrong? Mr. Boyce replied that they were not wrong. According to FEMA that establishes the floodplain, this is the line that they have established for the floodplain. There is a process for a map amendment that we could go through that we outlined in the packet. A lot of times they get it right and sometimes they don't get it right. It's a little bit of a subjective process and they have a lot of floodplains to map. I am not saying that it's inaccurate, but they are not based on a full floodplain study. In most cases they are close. Mr. Wagner asked about the risk. Mr. Boyce replied that we outlined in the packet the impact of the adjacent properties.

We have the office; and we have the Credit Union there. We got the actual parking structure, which is up and out of the floodplain. So, the risk would be in that rare occurrence where we would get flooding up to that line. The parking area that's impervious would be impacted. On the graphic that you see in front of you, the line that we are talking about just skirts the proposed maintenance parking area behind the parking structure. Mr. Senato asked for the access to the

maintenance area, he presumes is around the two o'clock position behind the drive-thru of the Credit Union. Mr. Boyce replied that is correct.

Mr. Keller mentioned that he had a question regarding the plan preparation. While there are two separate inputs JAED and Century Engineering. In reviewing the plans and preparing the Exhibits, he noted that most of the review of the variance requests and the preparation by Mrs. Dawn Melson-Williams related to the subject area being 5.28 acres for the overall site, property and ownership.

One of the exhibits (F) is sheet number C107. Up in the data column in item #12, the project site breakdown relates to this parcel being 5.90 acres in area. There are variations with the proposed site numbers with the impervious open space, etc. But throughout the review of the variance request being made, we always have otherwise related to the site area as being 5.28 acres. We have a discrepancy of about 6 tenths of an acre. I don't know if this last page of the Exhibits and in that data column that 5.90 is something that we have to be concerned with or if it's just perhaps an error on that original preparation. We relate to percentages of the property and percentages are throughout this process in both variances. We have a discrepancy of six tenths of an acre somewhere. We have questions to be raised.

Chairman Sheth stated that it was a good question, but we cannot vote if we don't have all the truth in it. He asked Mr. Boyce if that made sense to him. Mr. Boyce replied yeah.

Chairman Sheth stated in the past, we had a half inch issue and we tabled it. I prefer not to table this application. If Dawn and the City Solicitor can help us in making the correction so that we can accept it.

Mr. Keller stated that I hope that Mr. Boyce has a reasonable explanation.

Chairman Sheth mentioned he was glad the question was raised because otherwise in the future, in case, the case goes down and they say we voted on the wrong presentation of the fact.

Chairman Sheth asked Mr. Boyce again if it makes sense to him. Mr. Boyce replied yes it does. My apologies for the inconsistency of the information. If I am reading the screen correctly, we are trying to get at least the County's assessment of the property area. According to their records, which should be what we have used and it should have been consistent across all of the documents.

Mr. Keller mentioned that there is a deed reference in each recommendation and case. Like I said, the difference in the areas gives us the total property. I didn't see or look at the deed.

Mr. Boyce mentioned that unfortunately, he did not have it right in front of him at the current time.

Mr. Keller mentioned that he was hoping there was a clerical error somewhere.

Mrs. Melson-Williams mentioned that Staff could weigh in a little bit here. It looks like the data column uses that 5.28 on the Cover Sheet and that Sheet C107 that you're referring to is the Fire

Marshal Plan, so it may just be an error on that sheet. The most recent Exhibit G that was provided, while there's not a data column on that, there is kind of the overall site breakdown. It's a little box on the lower right-hand side of that page.

It does give the overall as the 2.28 (5.28) acres. It is not unusual to have some slight discrepancies within the acreages, especially if there hasn't been a survey.

There may have been some adjustments to the adjacent right-of-way away, very likely. From the perspective of the two variance requests that you have, the Variance Request 1 is reducing the amount of impervious surface. So, that is not necessarily [an issue], it's an amount of itself. It's not an area of the land. The variance too is somewhat related to the area of the land because it uses what percentage of the lot is within the flood hazard area. The short answer is we're certainly greater than 33% no matter which overall lot area sizing you use. The 2.28 (5.28) or the 2.9 (5.9). I think that's something that certainly moving forward through the process that can be clarified in their future submissions. I think you're certainly able to act on this, this request today. If you look at the most recent revised Exhibit G that has the 2.28 (5.28) and kind of the breakdown of what's floodplain and what's not.

Mr. Boyce said it is 5.28. Mr. Keller mentioned that Mrs. Melson-Williams was referring to 2.8 and 2.9, but it is 5.9 and 5.28.

Chairman Sheth mentioned that he discussed with the City Solicitor Rodriguez. You recognize the question and the applicant is now aware of it. Mrs. Melson-Williams rectified the mistake, and according to the City Solicitor Rodriguez it can be worked out. So, if the legalities concerning this case go to the Superior Court, all people and those concerned about it are aware of the issue. According to City Solicitor Rodriguez, with the approval of the applicant and the legal approval by City Solicitor Rodriguez, it can be rectified. For your question, your satisfaction is concerned. What do we need to add more? It's a very, very valid question and in the past as we know what we did. The question is now, Dawn does this make sense as to what he just said?

Mrs. Melson-Williams replied that I am not sure if I totally followed you. But I think for the two variances that they are seeking, you can certainly still act on because with the first one that percentage is based on an impervious surface number not the total lot area. The second one is related to lot area. However, with the percentage you could certainly recognize that it's more than 33%. It may not quite be that 48.7 depending on the calculation that was done and which numbers were used. But I think the key thing with the Variance Request is that you recognize that the property is more than 33% of it is within the floodplain. I think that's clear no matter which number you use.

Chairman Sheth mentioned to Mr. Keller that City Solicitor Rodriguez suggested that it is good that he pointed it out, and that we recognize the problem, and everything is fine according to City Solicitor Rodriguez. If you have any pertaining questions, you may ask City Solicitor Rodriguez.

Mr. Keller stated that I was simply going to make a statement that I am inclined to agree 100% with Mrs. Melson-William's assessment just now of the impact on that property whether it is 5.9 or 5.28 acres in size. But nonetheless, since my real purpose in putting it out there is the

discrepancy is within the Plan Exhibit which was distributed. I usually look at these things pretty closely and through the years I take note of what may otherwise seem to be minor discrepancies and then address them appropriately. That was the purpose in my bringing it up, just the discrepancy in the two sheets data column figures. Throughout the preparation by Mrs. Melson-Williams, her preparation consistently referred to the 5.28-acre size of the property throughout. The discrepancy in the two areas within these Plan sheets does not in my mind appear to be of any consequence.

Chairman Sheth mentioned that he was really impressed of the Staff member's work. He mentioned that Mr. Keller will be missed. He asked Mr. Senato if he recalled the legal meeting they once attended, and it was mentioned that the City of Dover Board of Adjustment is not the easy one. If you try to avoid the legal lawsuit, go and learn from the City of Dover Board of Adjustment.

Chairman Sheth asked if there were any additional questions.

Chairman Sheth asked if anyone was from the State. Mr. Boyce replied no, Mr. Ridgely was representing the Architect Firm. We are the Owner's Representative's.

Chairman Sheth asked if the parking area would be public parking or restricted parking? Mr. Ridgely replied that there will be a combination of both. The building itself will include public parking as well as secured parking for the Staff at the Legislative Hall.

Mr. Senato asked if 250-300 parking spaces for public parking was correct? Mr. Boyce apologized that he did not have the breakdown. Mr. Boyce said it was 338 total spots.

Mr. Wagner asked if a flood study was required. Mrs. Melson-Williams replied there's not a requirement for a flood study. They are looking at the current effective maps that were issued by FEMA in regard to where the flood plain is currently located.

If they have significant better information and they think that the floodplain may be totally different on this property than what it is, they could certainly pursue a flood study, but it is not required. I think their thought is that there probably is a floodplain here and there's probably not that much of a difference as to where it is.

Chairman Sheth thank the Representatives for their presentation.

Chairman Sheth opened the public hearing.

Chairman Sheth asked if there was anyone else who would like to speak in favor of the project. There was no one else wishing to speak. He asked if there was anyone who would like to speak against the project and there was no one wishing to speak.

Chairman Sheth questioned if there was any additional correspondence or suggestions for the record. There was no additional (written) correspondence.

Mrs. Melson-Williams mentioned that as previously noted there have been no additional attendees that have joined us on the online version of this meeting to participate in your public hearing.

Chairman Sheth closed the public hearing after seeing no one else wishing to speak (online or in the meeting room).

Mr. Keller moved to approve Variance Request #1 for application V-24-01 to decrease the required reduction of the existing impervious surface area from 15% to 5%. I believe that the motion to approve is fully documented with the Exhibits presented and with the presentation by the Planning Staff Mrs. Dawn Melson-Williams which I think deserves a commendation on her part for the presentation, fully explained, well substantiated and well documented. I move to approve Variance #1. The motion was seconded by Mr. Senato and unanimously carried 4-0.

Mr. Keller moved to approve Variance Request #2 for application V-24-01 to recognize that 48.7% of the lot is within the flood hazard area which is greater than 33% that allows Planning Commission consideration of reductions in impervious surfaces. Again, I believe that the motion to approve is fully documented with the Exhibits presented with the presentation by the Planning Staff Mrs. Dawn Melson-Williams which I think deserves a commendation on her part for the presentation, fully explained, well substantiated and well documented along with Planning Staff support. The motion was seconded by Mr. Senato and unanimously carried 3-0. Mr. Wagner abstained.

Chairman Sheth asked if there were any questions.

Mr. Senato noted that the accommodations on the Presentation by Mrs. Melson-Williams was very clear, and he appreciated that.

Mr. Senato made a motion to adjourn the meeting. It was seconded by Mr. Keller and unanimously carried 4-0.

The meeting adjourned at 10:00 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary