

CITY OF DOVER
BOARD OF ADJUSTMENT MINUTES
September 20, 2023

A Regular/Hybrid Meeting of the City of Dover Board of Adjustment was held on Wednesday, September 20, 2023, at 9:00 A.M. in person in the City Council Chambers and using the phone/videoconferencing system WebEx. Member's present were Chairman Sheth, Ms. Warren, Mr. Keller, and Mr. Senato. Colonel Ericson was absent.

Staff members present were Mrs. Mary Ellen Gray, Mr. Swierczek, City Solicitor Mr. Rodriguez, Mrs. Savage-Purnell, and Mrs. Melson-Williams.

APPROVAL OF AGENDA

Mr. Keller moved to approve the Revised Agenda to remove the agenda item Appeal #V-23-03. The Appeal #V-23-03 has been dismissed upon receipt of advice from Legal Counsel that the Board of Adjustment does not have Jurisdiction on the Appeal. There will be no consideration of this item and no Public Hearing on Appeal #V-23-03. The motion was seconded by Mr. Senato and unanimously carried 4-0. Colonel Ericson was absent.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF JULY 19, 2023

Mr. Keller moved to approve the meeting minutes of July 19, 2023, with the necessary corrections. The motion was seconded by Mr. Senato and unanimously carried 4-0. Colonel Ericson was absent.

COMMUNICATIONS & REPORTS

Mrs. Gray mentioned that the next Board of Adjustment regular meeting is scheduled for October 18, 2023, at 9:00am in the City Council Chambers and with a virtual format.

OPENING REMARKS CONCERNING APPLICATION

Mrs. Mary Ellen Gray, Planning Director stated that the meeting today will be conducted in accordance with the agenda. There is one Variance application on the agenda under New Business. The Appeal Application has been removed from consideration by the Board of Adjustment given that the Board of Adjustment has no jurisdiction on this Appeal. 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 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.

NEW BUSINESS**Application V-23-04**

101 North Queen Street (and 107 North Queen Street). A request has been made for a variance from the requirements of Article 3 §1.14(a)(v) of the *Zoning Ordinance*. The use of the subject properties is as a Place of Worship (Church), which is a conditionally allowed use in the RG-1 Zone (General Residence Zone). The Variance request is to increase in the maximum sum of all areas permitted to be covered by a principal building and accessory buildings from 20% to 56.89% in order to allow for a proposed building addition. Subject properties are zoned RG-1 (General Residence Zone). The Tax Parcel IDs are ED-05-076.08-03-37.00-000, and ED-05-076.08-03-38.00-000. The owner of record for both parcels is A.M.E. Church of Dover.

Mr. Swierczek gave a summary presentation along with the required criteria of the Application Request for a variance from the requirements of Article 3 §1.14 (a)(v) of the *Zoning Ordinance* pertaining to the increase in the maximum sum of all areas permitted to be covered by a principal building and accessory buildings from 20% to 56.89% in order to allow for a proposed building addition. The owner of record for both parcels is A.M.E. Church of Dover.

Mr. Swierczek stated that the Planning Staff does note that for any expansion of the place of worship use, we would advise that even though this is technically considered a nonconforming use that they would be required to go to the Planning Commission to get a Conditional Use approval to allow for the expansion of the facilities. On the screen right now, you are seeing the Site Plan that was submitted by the applicant and that is showing in the hatched outline the current structure of the church. To the top and left of that, you can see the outline of the building addition. Then to the even further top left of that you see a dark kind of squared-out item that is basically the ADA ramp to access the building addition.

Mr. Keller noted regarding the preparation of the reports, it was excellent. Mr. Keller asked for clarification, has there been a substantial enough discussion with the church regarding the subsequent requirements of the Conditional Use application, etc.? Mr. Swierczek replied I believe there has been. I think there were two meetings that we discussed this. One of the meetings was with the applicant and I believe the other was with Staff. We did discuss with the applicant about alternatives. They did show very much willingness to be as compliant as possible with the Code provisions. We did express to them that were they not able to do that, they would need to seek basically the bare minimum of a variance in order to proceed with that. They were very willing to do that as well. So, we were confident that what was submitted to us was the best that they could do to be compliant with the Code while also addressing their needs. Mr. Keller asked so we're comfortable then that they are advised that there are subsequent requirements if in fact there is an approval today on the variance itself. Mr. Swierczek replied correct, it was communicated to them that were the Board of Adjustment to approve their variance requests then they would still be required to go to the Planning Commission to seek Conditional Use approval.

Representative: Mr. Timothy M. Metzner, Associate/Sr. Landscape Architect with Davis, Bowen & Friedel, Inc. and Rev. Dr. Erika D. Crawford, Pastor of Mt. Zion AME Church.

Mr. Timothy M. Metzner and Rev. Dr. Erika D. Crawford were both sworn in by City Solicitor

Mr. Rodriguez.

Chairman Sheth asked if there were any questions or objections regarding Mr. Swierczek's presentation. Mr. Metzner replied no, Staff did an excellent job of the description which he appreciates.

Mr. Metzner stated that he was here on behalf of the applicant our client Mount Zion AME Church. As you know, with us here is the Reverend Dr. Erika Crawford the Pastor for the church. We are offering the following explanation in support of the application for the Area of Variance. Specifically, the nature of the variance request relates to Article 3§1.14(a)(v) of the *Zoning Ordinance* which states that the maximum area for Conditional Use in the RG-1 zone is 20%. As Staff stated, the property is unique as a legal nonconforming lot that was first developed in 1959 as a church prior to the City of Dover *Zoning Ordinance* being established in 1961. The existing building area is currently 44.72%. The proposed building addition would increase the footprint by 1,402 square feet, which is 12.17%. Therefore, the total building area for the site would be 56.89%. As stated, on the screen is our Site Plan and we are proposing to add these proposed buildings as you see. On that top left portion that also provides the additional ADA accessibility. It also isolates the entrance allowing for a more secure entrance as well; so, this is for the health, safety, and welfare of the users. The ramp on the left is proposed to be a wooden ramp so that it would not count toward the lot coverage. The proposed walkway is directly out to the sidewalk. The purpose behind this too is also to bring the ADA ramp closer to the street. The existing ramp was all the way to the right where the existing building ended. We are adding this building addition to provide additional classroom space, office space, a secured entrance to the building, and to provide the ADA accessibility closer to the road and the sidewalk. The following explanation describes how this application meets the four criteria for granting an Area Variance.

As Staff mentioned, in the Report is also our explanation and their responses to that. So, first is the nature of the zone in which the property lies. As stated the property is currently zoned RG-1 (General Residential). Places of worship are permitted use in the zone when conditionally approved by the Planning Commission. The building and the use were established on these parcels prior to the City of Dover *Zoning Ordinance* being established as stated in 1961. The use has not changed since it was established in 1959. It is currently and has been an active church since its construction.

Second is the character of the immediate vicinity and the contained uses therein. There are currently three active churches within one block of this parcel and five active churches within two blocks. Directly across from the intersection of Fulton Street and North Queen Street is Calvary Baptist Church which is also an active church as well. The current building and the proposed addition with the brick façade is consistent with the other buildings within the proximity within a block and even across the street. As Staff stated in their Report, the property is largely in keeping with the surrounding neighboring character as a place of worship, as the height of the structure, and the general characteristics. The proposed structure would be consistent with the existing as it would be a continued as the brick façade and the same roof pitch. All is consistent with the existing structure and consistent with the neighboring uses of the other churches.

Third is whether, if the restriction upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses. As stated, this building was constructed prior to the *Zoning Ordinance* being established and exceeded the building area coverage requirement prior to the Code. The adjacent and neighboring properties also exceed the maximum building area requirement of 20%. So, we're not setting a precedence by doing this. Therefore, this application does not set a precedent for future applications on the neighboring properties.

Four is 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 use under the provisions of the *Zoning Ordinance*. As a great thing, the church membership is improving, which benefits the community it serves; however, the current building footprint cannot continue to serve the needs of the members and requires additional space hence the additional classroom space and office. Not permitting the addition as proposed would have an impact on the day-to-day activities and function of the Church. The addition provides the needed Sunday School classroom space and additional office space. Should this application not be voted upon favorably, a second floor would not be an option. It is not feasible based on the existing structural components of the building. The extensive renovations required to the original building from a structural standpoint alone would be too costly for the age of the building and require a complete reconstruction. Also, the second floor of the building would also make the building out of character with the surrounding neighborhood. The adjacent buildings are single story, and this second floor would then make this building out of character. The addition as proposed adds safety elements such as moving the primary entrances to one end of the sanctuary. Currently, the sanctuary is accessed by two entrances: one at the very front by the roadway that's at the bottom left (on the Plan drawing) and then the other is currently separated into two separate portions of the building. From a safety standpoint, you kind of want to isolate the people entering and exiting the building to one location. This would also provide an increase in the security for the building. The existing ADA ramp is also on the side of the building farthest away from the road. The proposed addition also moves the ADA entrance and ramp closer to the street for easier access. Not allowing the addition would limit the church from improving their current condition and function and safety of the church. In conclusion, the *Zoning Ordinance* was established after this establishment was built and used as a place of worship subjecting this property to a decreased permitted building area. The amendment to the Code has created an exceptional practical difficulty, not created by the applicant, such that the property owner cannot make reasonable modifications to the property that are intended to improve functionality, safety, and access to the existing church. The variance, if authorized, will not alter the essential character of the neighborhood or district that is mixed use in nature. The proposed improvements will also improve safety for the patrons accessing the church. The variance, if authorized, represents the minimum variance that affords relief and represents the least modification possible to improve the church's function and safety. The variances, as requested, are shown on the Site Plan provided with this submission. At this point that finalizes my presentation. Rev. Dr. Erika Crawford agreed with the presentation.

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

Questions from the Board members.

Ms. Warren asked how long into the future do you see this lasting you? I know you don't have a crystal ball. Rev. Dr. Crawford stated in terms of usage, I would hope at least 20 to 30 years because of the ADA ramp. One of the impacts that it has right now is that we have to carry caskets into the church for a funeral and that's not practical for an older congregation. So, one of the things the ramp will do is to allow us to bring caskets into the congregation area. So, I would easily say 20 to 30 years given the growth of the church at this point.

Ms. Warren stated that I heard "safety" mentioned quite a bit, so can you explain. Mr. Metzner replied that right now the existing entrances are separated essentially into two separate portions of the building. So, there's this one and then the other main entrance into the sanctuary is down there at the bottom (referring to the plan drawing). So, you have two separate entrances to monitor. This edition pulls the entrances together essentially at the same location visually because the other existing entrance in the back was through the sanctuary, around the corner and into a hall. It's very difficult to monitor who enters and exits the building. Rev. Dr. Crawford replied that the current second entrance on what we call the garden side. The entrance is at the choir loft in the pulpit which is not practical if you're preaching the sermon while people are coming in through that side door. So, moving the door will allow us to visibly see who enters the sanctuary and not have them enter walking directly into the choir loft in the pulpit. Mr. Metzner mentioned and to see who's late at church (laughing).

Chairman Sheth replied that it is a requirement for the non-conforming use as well as the ADA rules and regulation. He asked if he was right, and Mr. Metzner replied that's correct.

Mr. Senato stated that he did not have any questions; it was an excellent presentation.

Mr. Keller stated that it is noted in the project description for this variance request "the variance request is to increase the maximum sum of all areas permitted to be covered by a principal building and accessory buildings from 20% to 56.89% in order to allow for a proposed building addition." I just wanted to reiterate and point out that those numbers seem to be kind of a drastic increase; however, the existing principal building coverage is 44.72%. So, this addition, I note is only a 12.17% increase in the coverage area. So, it's not as drastic as what might otherwise appear hearing that first number, which is a good thing. Mr. Metzner mentioned that the information was in the Staff Report, but I might be able to answer or clarify that a little bit. Is that the purpose I guess behind that 20% is what the Code is currently? So, as you stated, as it is today that the building is 44.72%. That would just be a clarification thing. Again, Staff will probably better explain that, but I think that's what it's for is just to say the code was going from 20% to 56%.

Mr. Keller stated that perhaps it's notable that the coverage is also a legal non-conforming matter. So, it's okay by virtue of the date of the inception of zoning. Davis, Bowen & Friedel, Inc's. formulation of the project involvement and projection was very well prepared. I appreciate that. Mr. Metzner replied thank you.

Chairman Sheth opened the public hearing.

Chairman Sheth asked that all in the audience that were in favor of the project to please raise their hand. Seventeen (17) individuals were in favor.

Chairman Sheth asked that all in the audience that were against the project to please raise their hand. There were none.

All the people in the audience were in favor of the project.

Chairman Sheth stated that since there was no one against the project in the audience he asked if they could please select one person who can represent all of you who can speak in favor of this project. Then we don't have to go again and again and take notes.

Mr. Reginald Maze was selected to speak on behalf of the audience. My address is 7 Freedom Drive, Dover Delaware in Bicentennial Village.

Mr. Reginald Maze was sworn in by City Solicitor Mr. Rodriguez.

Mr. Maze stated that he just wanted to bring up a point about what Ms. Warren said about safety and security considering the church. He stated that he was a Trustee at Mt. Zion and part of what I have to do is to ensure the safety and security of the parishioners.

I just want to emphasize that the church in general or all churches are under attack from outside sources. So, we are really concerned besides just expanding the building and the project about the security of everyone in the building in and out. So, in saying that, I just want to make sure that everyone understands that the churches in general across the nation are under attack. We want to make sure that the parishioners and the community at-large are safe and secure when they enter and exit the building. That's all I wish to add, thank you very much.

Chairman Sheth mentioned that he hopes the audience agrees with him and what he says. Everyone in the audience agreed. Chairman Sheth stated very good.

Chairman Sheth asked again since he did not see any hands against the project the first time he asked.

Mrs. Melson-Williams, the host stated that since we are presenting this meeting virtually there are two participants that have joined us virtually. I need to check to see if they need to speak regarding this public hearing. I have two attendees, Brian, do you wish to speak regarding variance application V-23-04. Brian replied no.

There is a Call-in User that has phoned into the meeting. Do you wish to speak on this application V-23-04 for the Mount Zion Church. Again, this is for a Call-in User do you wish to speak regarding this application? If you could answer. Again, I'll give another chance to the Call-in User #2. You have to unmute yourself and if you can answer if you wish to participate. Mr. Chairman I'm not seeing any interaction from Call-in User #2. That is all the attendees that are joining us virtually. The other members that are on the meeting virtually are our Staff Representatives. Chairman Sheth said thank you.

Chairman Sheth stated that he along with Mr. Rodriguez and Mr. Swierczek discussed why do we continue this virtual presentation. It was during the pandemic time. If people don't have time, if they are concerned to come and present themselves number one. Number two, we don't know what they are getting support from somebody else sitting next to them or whatever they do. We do not have anything to say. I want your ruling that as long as there is no pandemic thing, that we all get together which is allowed by government. I don't think this Board should continue the virtual hearing. Those who joined virtually said no and did not answer the question. They didn't bother to come here or didn't bother to answer the phone. It's my personal feeling and I wanted to see the feeling of the Board members that we should not continue virtual hearings. Because all the hard-working people that are concerned about it- against or in favor, they present themselves. We don't know who they are; when they call in by virtual and/or then don't show up anyway. My suggestion and recommendation are to let Mr. Rodriguez give the ruling on it. At the same time, I'm sure that Mrs. Gray and Mr. Swierczek as a staff member (have thoughts) about this discussion. Can I ask the question to the Board first?

Mrs. Gray stated that for the point of order perhaps we should first conclude the matter of the application first and go through the agenda and perhaps have this discussion after these agenda items have been concluded.

Chairman Sheth stated that he agreed with Mrs. Gray. I am not asking now but once we are ready, we're going to tell it. But at the same time, I gave you time to think about it.

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

Chairman Sheth questioned if there was any additional correspondence for the record. There was none.

Chairman Sheth asked if there were any questions or comments.

Mr. Keller moved to approve variance application V-23-04 Mount Zion AME Church based on what I consider the documentation presented, the testimony given, and the very good preparation by the consulting firm for the church as well as the detailed and exhaustive overview by the members of the Planning Office. The documentation is well presented and fully supports in my estimation the approval for this requested variance, I so move. The motion was seconded by Senato and unanimously carried 4-0. Colonel Ericson was absent.

Chairman Sheth stated that he really agreed with you and the Board. The Trustee of the Mount Zion AME Church, the presentation people, and Mr. Metzner did an excellent job and I appreciate the way you guys did it. So, congratulations that this Board is approving it.

Chairman Sheth stated that Application V-23-03 has been dismissed for the record.
(Appeal V-23-03)

S-23-06 College Road Apartments at Railroad Avenue/Grove Street – On June 20, 2023, the Planning Commission granted conditional approval of the Site Development Plan and Lot

Consolidation Plan for construction of two 6-story midrise apartment buildings with a total of 385 units consisting of studio, 1-bedroom, and 2-bedroom units. The ground level of each apartment building is parking and the other site improvements include six 7-car garage buildings, parking lots, landscaping, and recreation areas. The Project also includes street construction/improvements to Raymond Street and Railroad Avenue. A Lot Consolidation Plan will combine the four parcels located east of Railroad Avenue for a total of 31.08 acres of land. These properties are zoned RG-5 (General Residence Zone for Mid-Rise Apartments). The subject area is located north of, but not adjacent to College Road, and east of the Railroad corridor in the vicinity of Raymond Street, Railroad Avenue, and Grove Street. Property Owners: Patel College Properties, LLC and Patel Excess College Road, LLC. Tax Parcels: ED05-067.00-02-53.00-000, ED-05-067.00-02-54.00-000, ED-05-067.00-02-55.00- 000, and ED-05-067.00-02-56.00-000. Council District 4.

Mrs. Gray stated that the Appeal V-23-03 has been dismissed upon advice from Legal Counsel that the Board of Adjustment does not have jurisdiction on this Appeal. There will be no consideration of this item and no Public Hearing held on this Appeal V-23-03. This written determination will be provided to the Appellant.

Chairman Sheth would you like me to read, or Mr. Rodriguez would you like me to read the statement of facts into the record? City Solicitor Mr. Rodriguez replied that he did not think it was necessary.

Chairman Sheth continuing the discussion regarding the virtual hearing for the next meeting, I personally think those who have a public hearing should come personally. Because this ordering was or whatever was strictly for pandemic and because of the ruling that we didn't have any meeting in person and now we do have meetings.

So, I don't think we should have that virtual hearing.

City Solicitor Mr. Rodriguez stated that he really doesn't think it's necessary Mr. Chairman. I think you are right. Chairman Sheth thanked City Solicitor Mr. Rodriguez.

Chairman Sheth stated that he discussed this with the mayor; and of course, he discussed it with Mrs. Gray and Mr. Swierczek that there was some duration regarding the state ruling. So, could you please let us know.

Mrs. Gray stated that we would be happy to look into it. The State statute is a little thick. Mrs. Melson-Williams pulled it off the website yesterday and we just started looking at it. We would like the opportunity to review it to make sure that we are not in contravention of the State law to not offer the virtual option. Chairman Sheth said thank you.

Chairman Sheth asked the Board members, so what are your feelings.

Mr. Senato stated that I concur with you but most of the Zoom programs and non-meetings were because of the COVID situation. I can understand that, but we are far from that now. I think in the past prior to COVID when everyone did appear here, we received a lot of comments that

were both negative and positive. They were explained very clearly on either side of the opinions of the people that came in front of this Board. I believe that anytime we have this type of situation that it should be in person. The COVID situation to me is over. I don't know if we need a motion for that or just to check, but that's my opinion and I agree with you.

Chairman Sheth stated that we may not have motion right now because Mrs. Gray mentioned that she is going to find out. City Solicitor Mr. Rodriguez's opinion you heard already that he is in our favor of this suggestion.

Ms. Warren commented that she uses the Zoom virtually for the City of Lewes because I'm on a board that's called LBC. There are a lot of non-residents in Lewes DE, and we want our voices heard. We can't always get to the meetings. I see you guys there all the time. So, it's crucial for those of us at a distance. So, there could be people that are at a distance that are affected, and they can't make it to the meeting. So, I feel pretty strongly that if it may not be the same situation in Dover but it sure is in Lewes.

Chairman Sheth stated that the restriction here is only people can present are those who've been notified or 200-feet surrounding the location. It is not anyone. Ms. Warren said okay.

Chairman Sheth noted that I like to say whether I'm against or in favor, but I can't present myself because I'm not living (according to ordinance) in the area.

Ms. Warren stated that it was a good point, thank you.

Chairman Sheth stated that Mrs. Gray will let us know what is allowed or not allowed, then we will decide whether to do it or not.

Mr. Keller made a motion to adjourn the meeting. It was seconded by Mr. Senato at 9:58 A.M. and approved by consensus.

Sincerely,

Maretta Savage-Purnell
Secretary