

CITY OF DOVER
BOARD OF ADJUSTMENT MINUTES
July 19, 2023

A Regular/Hybrid Meeting of the City of Dover Board of Adjustment was held on Wednesday, July 19, 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, Colonel Ericson, Mr. Keller, and Mr. Senato. Ms. Warren was absent.

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

APPROVAL OF AGENDA

Mr. Keller moved to approve the agenda as amended to accommodate the various recognitions. The motion was seconded by Mr. Senato and unanimously carried 4-0. Ms. Warren was absent.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF FEBRUARY 15, 2023

Mr. Keller moved to approve the meeting minutes of February 15, 2023. The motion was seconded by Mr. Senato and unanimously carried 4-0. Ms. Warren was absent.

Mrs. Gray offered the opening statement.

COMMUNICATIONS & REPORTS

Thank you for joining this meeting of the Board of Adjustment. This meeting is taking place both In Person in the City Council Chambers as the anchor location and virtually using the WebEx videoconferencing platform.

The login information to join the meeting Virtually has been added to the Agenda which is posted to the website at www.cityofdover.com under Meetings/Agendas on the home screen. If you are having any difficulty joining the meeting please call the Planning Office at 302-736-7196. For those of you logged into the meeting using your computer, please use the hand icon to raise your hand to be called upon to ask your question. If you are unable to use a microphone you can use the chat window to ask your questions and a staff person will read them into the record. If you are calling by phone you will be muted until the Secretary asks for comment from anyone who is calling into the meeting.

The next Board of Adjustment regular meeting is scheduled for August 16, 2023, at 9:00am in the City Council Chambers and with a virtual format.

SPECIAL RECOGNITION

Resolution honoring the service of Colonel Ericson to the Board of Adjustment.

Mrs. Gray read the Resolution on service of Colonel Ericson into the record. (See attachment)

(The following discussion occurred earlier in the meeting and is placed here with appropriate agenda item for clarity).

Chairman Sheth mentioned that he would like to request to the Board the opportunity to say goodbye as he (Colonel Ericson) has retired from the Board of Adjustment Committee. Mr. Hufnal served on the Board of Adjustment for 17 years. We also want to recognize Colonel Ericson for 19 years of service on the Board of Adjustment. Colonel Ericson could stay on board until a new member is appointed for a total of 5 members. He thanked them both Mr. Hufnal and Colonel Ericson for their outstanding services with the City of Dover.

Mr. Keller mentioned that with respect to the honoring of Colonel Ericson, the prepared resolution is very noteworthy. I wish Colonel Ericson my personal very best in the future. He also thanked him for his commendable service to the City of Dover Board of Adjustment.

Mr. Keller mentioned that he did express with Mr. Hufnal in our presence that we did read into the record a Resolution (for Mr. Hufnal's service). Mr. Hufnal is also a longtime friend and neighbor and served this City Board of Adjustment in an exceptional manner for many years.

Mr. Senato mentioned that it's been an honor and pleasure in serving with two distinguished members (Colonel Ericson and Mr. Hufnal). We have done a lot over the years; so, I'm honored and at the same time saddened.

Chairman Sheth mentioned that he has really enjoyed serving with Mr. Hufnal and Colonel Ericson.

Colonel Ericson thanked everyone and mentioned his number of years and commitment to the Board since October 2004 and working with the other members for a long period of time. He mentioned the professional atmosphere of working with everyone. Members did a thorough investigation of the issues related to the Applications. I know the staff does an excellent job of writing up their opinion on the cases and the very few times that we disagree with them it is because of information produced and that information that we didn't have before. Mr. Rodriguez, your legal advice has been very important to us; thank you. Chairman Sheth has shown leadership and he appreciates that; thank you.

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 application on the agenda under New Business. The 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 of requirements.

NEW BUSINESS**Applicant #V-23-02**

59 Sherwood Court. A request has been made for a variance from the requirements of Article 3 §1.15 (e)(i) of the *Zoning Ordinance* pertaining to the minimum lot area required for the keeping of chickens for domestic purposes. Specifically, to allow for a reduction in the minimum lot area required in order to allow for the keeping of chickens from 10,890 SF to 10,018 SF. Subject property is zoned R-8 (One-Family Residence Zone). The Tax Parcel is ED-05-076.20-01-24.00-000. The owner of record is Jason M. & Joanna L. Francis.

Mr. Swierczek gave a summary presentation of the Application Request for a variance from the requirements of Article 3 §1.15 (e)(i) of the *Zoning Ordinance* pertaining to the minimum lot area required for the keeping of chickens for domestic purposes. Specifically, to allow for a reduction in the minimum lot area required in order to allow for the keeping of chickens from 10,890 SF to 10,018 SF. Subject property is zoned R-8 (One-Family Residence Zone). The Tax Parcel is ED-05-076.20-01-24.00-000. The owner of record is Jason M. & Joanna L. Francis.

Mr. Swierczek stated that the square footage of the property was a little bit difficult to determine. There is no definitive record of it because it was developed prior to 1961. The records are not in our possession for the development of the property at that time. The information provided by Kent County/City of Dover Recorder of Deeds mentions 10,585 SF, but the request is for 10,018 SF. A letter from a neighboring resident at 49 Sherwood Court was submitted. That neighbor had expressed support for keeping chickens on that property. I will note that there was an item in submitting their exhibits. The letter was withheld based on our concerns of privacy and is in our possession. Planning Staff have received a series of communications. We were sort of scrambling to get that ready for you prior to the meeting. The packet was left for you on your desk. We did receive a letter of objection for the Area Variance request that was addressed to the Board of Adjustment. The Letter of Objection was received by Code Enforcement on Monday, July 17, 2023, and then relayed to Planning Staff to be the first item on the agenda. That one letter basically just went into discussions probably over their objections to the Area Variance being approved. However, that letter does state that they wish to be anonymous. They do not provide a name or an address, so we cannot verify whether it is indeed a neighbor. Yesterday evening, we received an e-mail from Jillian Watkins, a resident at 65 Sherwood Court. While speaking again objecting to the Variance Request Application that is before the Board today. It was emailed to Planning Staff on July 18, 2023. She submitted a long series of photos via email on July 18, 2023, to argue for impressions of other property and why she does not feel that the Area Variance should be approved. Lastly, on the morning of July 19, 2023, the Planning Staff received an email from Gary and Nancy Kennett of 70 Sherwood Court objecting to the Variance Request Application for 59 Sherwood Court. There were no details of why they objected to the Variance Request.

Mr. Swierczek mentioned that he would be happy to answer any questions that you may have for Planning Staff.

Chairman Sheth mentioned that he did depend on the Staff member's information that is provided to the Board. He asked if this variance was denied about 9 or 10 years ago.

Colonel Ericson mentioned that as he recalled it was brought up before and the Board approved it. It was a long time ago.

Colonel Ericson asked how often you have to resubmit once the variance is approved? Mr. Swierczek replied that once a variance is approved and as long as the conditions are maintained, and ownership has not changed, it can be maintained. The reason why this application came before us today I believe was because of a Code Enforcement case that was opened on it. A neighboring property had objections to the chickens being present there, which had prompted a Code Enforcement case which brought it to the attention of Planning Staff and before us here today.

Chairman Sheth asked about the keeping of animals for therapeutic purposes. Mr. Swierczek replied regarding his previous statement in which he mentioned that the *Zoning Ordinance* does not have any provisions on keeping animals for therapeutic reasons.

Colonel Ericson mentioned that he understood the objections with these letters was based on that they didn't think the neighbor should have chickens in the yard, but it's in the Code. So, it's not really up to us to look into this issue but only whether we should give a waiver for the amount of space there, is that correct? Mr. Swierczek replied based on my hurried assessment of the two later communications that were received this morning, yes you are right. They are objecting to the presence of chickens on the property in general. As you correctly stated Colonel Ericson, they are technically a permitted use in the zone just with the provisions of this square footage which this property does not meet.

Colonel Ericson asked Mr. Swierczek if he was aware that we had cases very similar to this if not the same case many years ago. Did you have a chance to read our conclusions? Mr. Swierczek replied, "I believe I heard a comment that it was perhaps 10 years ago." I was not aware of that earlier case. I do not believe it was for the same property, but I'm not familiar with that.

Mr. Keller mentioned that he would like to make a note of clarification. It is simply not a matter of allowing chickens to be on a property, but there are a number of restrictions in addition to simply allowing the chicken on the property. Under the *Zoning Ordinance*, Article 3 Section 1.15 Accessory Uses as it is noted with some of the information provided to the Board for consideration, the keeping of chicken for individual domestic purposes is subject to the following restrictions: keeping of chicken shall not be permitted on lot smaller than 10,890 square feet in lot area; no more than 5 chickens shall be permitted on a residential lot; chickens shall be registered with the Delaware Department of Agriculture; chicken shall be penned in a coop that shall at least 4 square feet per chicken; all chicken coops shall be located in the rear yard and shall be a minimum of 20 feet from side and rear property lines; any odor associated with the chickens shall not be discernable from property lines; keeping the roosters shall be prohibited; any lot with the chicken shall either comply with these requirements by June 1, 2016, or remove the chickens.

Mr. Keller stated regarding the existing lot size what exists today, he is somewhat amazed that we cannot find a document such as a Deed which would declare the square footage of the lot

described. Have you investigated any deed conveyance which would give a lot size?

Mr. Swierczek replied unfortunately this is something that we actually encounter quite a bit within the city. The city does not keep Deeds. If there is a Deed associated with the property that is not maintained by the City, rather it is the Kent County Recorder of Deeds. They maintain the Deeds.

With properties such as this, it was built from what we can see between 1954 and 1961. We don't have permits from that time, so we don't have Deeds on file. We wouldn't have floor plans. They just did not keep those records at that time. So, we don't have any of that information available.

Mr. Keller asked when you say we, do you mean your office? Mr. Swierczek replied the City. Mr. Keller mentioned the City is not responsible for the recordation of the deeds. Mr. Swierczek replied correct.

Mr. Keller mentioned that there is an organization, the Kent County Levy Court that has a Register of Wills and Recorder of deeds. Any Deed transfers is duly recorded with the Recorder of Deeds Office. You did not investigate as to whether or not there was a Deed.

Mr. Swierczek stated that he did not make that statement. What he said was that Kent County does record the Deeds. They have that information. We do not have copies of those Deeds. I said what we can best determine is that the area of the property is 10,585 square feet because that's what the information states per Kent County Levy Court on their website where they post the property information.

Mr. Keller mentioned that his experience has been that cited areas such as that sometimes do in fact differ from the actual recorded deed area cited. He asked Mr. Swierczek if he had investigated a Record Plan for this development. Is there a recorded Record Plan for the subdivision of Sherwood? Mr. Swierczek replied that there is a similar situation because of the age of the subdivision, we do not have anything like that on file with the City of Dover.

Mr. Keller asked Mr. Swierczek if he thought it behooves us in your investigated matters when there's a variance required to investigate such matters. Mr. Swierczek replied that again, he did not state that it was not investigated; I said it was investigated. The information is just not available to the City. We do not have that information. We investigated it. The information was not found because we do not have it.

Mr. Keller mentioned that he was disappointed to hear that there is not a more elaborate investigation into such matters as the deed for area or as to a Record Plan.

Representative: Council President Hare (assisting) the owner Mrs. Joanna L. Francis

Council President Hare and Mrs. Joanna L. Francis were sworn in by City Solicitor Mr. Rodriguez.

Mr. Keller stated that it was his understanding that you acquired your property in 2017, is that

correct? Mrs. Francis replied that was correct.

Mr. Keller asked the owner at what point was the chickens first placed on your property? Mrs. Francis replied in December 2022.

Mr. Keller asked so for approximately 6-7 months? Mrs. Francis replied that was correct.

Mr. Keller asked if there had been any initiative taken to comply with the various aspects of having chickens placed on your property, such as those enumerated under the City Code. Mrs. Francis replied that I believe that we meet the requirements, yes.

Mr. Keller asked if she had chicken coops? Mrs. Francis replied yes.

Mr. Keller asked if they were maintained. Mrs. Francis replied yes, they are penned in, and they have an enclosure on the top. They cannot get out. We meet the size requirements also.

Mr. Keller asked if it had been undertaken since the Code Enforcement Office noted that those requirements were not in fact accomplished. Mrs. Francis replied we have that; we meet the requirements. There were never any questions about any of that.

Council President Hare stated that just to follow up on Mr. Keller's question. All the requirements that were mentioned by Mr. Keller have been met. She registered the chickens and the sizes when she got them. The only question is the variance. The Kent County records informed her that the lot size was 10,500 square feet.

Chairman Sheth mentioned that we are discussing the same reason and Mr. Keller may need more time or information from Mr. Swierczek. We don't keep a copy of the deed and Mr. Swierczek did not get a chance to investigate or ask questions as you requested. According to Council President Hare, he mentioned that the Kent County informed the owner that the lot size was 10,500 square feet. He stated that information was submitted in the BOA Packet.

Mr. Swierczek stated for clarification the applicant did submit that document that we referenced from the Kent County Levy Court that references the property square footage being 10,585 square feet; that was included in the exhibits. That's why the Planning Staff believes that is the most accurate description of that, but we just went with the 10,018 square feet to be safe, I guess you could say. The applicant also submitted a copy of the Letter of Approval. I believe it is from the Department of Agriculture from the State of Delaware as well as the license to keep poultry. That was in the exhibit package as well.

Mr. Keller mentioned that he did recall seeing that letter, but it was not addressed to a particular party. The information provided that there has apparently been a registration with the Department of Agricultural. As he referred to Staff Response Item #3 under consideration "if the restriction upon the applicant's property were removed, such removal would seriously affect neighboring properties and uses." The Staff Response stated: "While the other provisions of the *Zoning Ordinance*, Article 3 Section 1.15 (e) appear to have been met, it is unclear as to whether these three provisions are also being met. There is no permit submission on file for the

construction of a coop on the property, and the Applicant has not submitted information attesting to any details of a coop.”

Mr. Keller asked is that your position when you submitted this information? Mr. Swierczek replied correct. Looking at those provisions that you pointed out earlier regarding the licensing and everything, we did not have anything on file for a coop. So, that's information that we do not possess.

Mr. Keller asked is that also a matter of Code Enforcement in their imposition of a violation? They probably did not have any such information either.

Mr. Swierczek replied that I'm not aware of. In the initial Code citation, which was provided in the package, I believe there's no reference to a coop, rather they are only referencing the square footage of the property. Because they did not make reference of that, I cannot attest to that.

Council President Hare stated that if it was not in the initial complaint, it must not have been a problem.

Mr. Keller mentioned that he was not sure he understood that statement from Council President Hare.

Council President Hare stated that if you are going to file a complaint, they said it was because the lot was too small. They didn't file a complaint to say that the lot was too small, and the coop doesn't meet its requirements or whatever else. They only filed one complaint. Everything else must be in compliance.

Mr. Keller mentioned perhaps it was overlooked or not noted in the information you are referring to.

Council President Hare asked are you're saying that Code Enforcement didn't do their job? Mr. Keller replied I'm not saying that.

Mrs. Francis mentioned that she would like to refer to you all to the letter that was included in the packet, please read it. Council President Hare stated that Mrs. Francis is giving permission to read the letter. It does not need to be private.

Mr. Swierczek and Chairman Sheth wanted to know if they were referring to the letter from the Doctor. Council President Hare replied yes.

Chairman Sheth was concerned about the responsibilities of confidentiality. Council President Hare replied that the owner is waiving it and the letter can be read into the record at today's meeting. Chairman Sheth consulted with City Solicitor Mr. Rodriguez, and he stated that it was okay to read the letter into the record. The letter from a licensed doctor in reference to a medical opinion was read into the record by Mr. Swierczek. The Board members will be given a copy of the letter per Chairman Sheth as evidence if they would like a copy.

Mr. Chairman asked Mr. Swierczek if the basic issue that is being discussed is the 405 square feet less than what is required. Mr. Swierczek replied correct, this Area Variance is not necessarily regarding the use, again that that is a permitted use in the zone. So, it would only be pertaining to the difference in square footage from what is existing to what the minimum is which is 10,890 square feet.

Chairman Sheth mentioned that the Board's issue is how the difference of 405 square feet is smaller than 10,890. We do not know how to judge. He asked City Solicitor Mr. Rodriguez if that was right.

Chairman Sheth asked the Board if they agreed that the basic issue was the Area Variance. If the property was 10,890 square feet would they have applied for a Variance for the chickens and would it have come before the Board of Adjustment? He asked City Solicitor Mr. Rodriguez if that was correct. City Solicitor Mr. Rodriguez replied that is correct.

Chairman Sheth stated that the Board now needs to decide the impact on the neighbors medically or allergies which he is not able to judge. He needs the help of the City Solicitor Mr. Rodriguez and the Board.

Colonel Ericson stated that he believed that the other issue is if removing this or not allowing it would cause a hardship. He would like to address that. Also, in the Staff Report it mentioned that maybe we could find an alternative to accomplish it may be giving another animal perhaps a dog or cat versus the chickens that would be more acceptable to the neighborhood, and it would still meet the therapeutic needs for the children.

Mrs. Francis mentioned that the chickens are not going to scratch or bite anyone. They haven't and they are a very friendly breed. If you approach them, they are going to want to get away from you. They are non-predatory animals. They are not aggressive at all. I have two neighbors right next door. One has written a letter in approval of keeping the chickens. The other one has never spoken to me or never addressed anything. I believe most of my neighbors didn't even know the chickens were there in my yard until something was submitted to them.

Chairman Sheth mentioned that we do not go into the personal issue. The question is the complaint and if there were any suggestions. He is not asking you to do anything. We are just asking as a good neighbor. If you have any suggestions is what Colonel Ericson mentioned.

Council President Hare said she's not sure what to say. The chickens don't make noise. They don't smell. The neighbor next door has written a letter saying how she enjoys watching them while sitting outside. The chickens are very important to Mrs. Francis's daughter who is here now if you want to hear from her. Because of the daughter's situation, there is no option to get rid of the chickens and get a dog, that is not an option.

Colonel Ericson asked why that was. The question is that you show a hardship and need to have the chickens for a certain and important need. A dog or cat comforts many people. I am unfamiliar with chickens, but could you explain why this would be a hardship for you.

Ms. Caillean Grace Francis was sworn in by City Solicitor Mr. Rodriguez.

Ms. Caillean Francis stated that she could not have a dog because her dad will not let her. He is allergic to dogs. Chicken means a lot to me because they are my friends, and I don't have a lot of friends. The chickens help my anxiety. I take care of them because I have nothing to do all day. I love them and it's my life goal to take care of livestock.

Chairman Sheth mentioned that Mrs. Francis was unaware of the neighbor complaint until now.

Colonel Ericson stated that one of the letters received has a picture of a house. Can you verify that this is your house. The reason I ask is because the person who wrote the letter did not identify themselves.

Mr. Swierczek apologized and stated that those photos were sent by the same sender of the second communication, Ms. Jillian Watkins.

Mr. Keller mentioned for clarification we have three letters now that have been submitted in opposition. Is that correct? Mr. Swierczek replied that is correct. I apologize that we could not do more to organize that because we got several of them this morning. In the packet, the first sheet will be the cover letter and the second sheet will be the letter that was sent in the mail, and we received it on Monday. The third paper is the e-mail we received from Ms. Watkins late yesterday and then immediately following that is a series of photos submitted by Ms. Watkins. The last sheet there is an e-mail that was sent by Mr. & Mrs. Kennett of 70 Sherwood Court. All the photos were sent by Ms. Watkins.

Mr. Keller stated that as is required of the Board for any issue requesting the granting of the variance, the Board is obligated to undertake (criteria) as you are aware. Four items basically centered around whether there is an Exceptional Practical Difficulty. One is the nature of the zone in which the property lies; the property is noted as residential. There is not an issue in my estimation. The zone is residential and that's not an issue and that's not disputed. Whether if the restriction upon the applicant's property were removed such removable would seriously affect neighboring properties and uses. The applicant's response was that the existence of the chickens does not burden or negatively affect neighboring properties. Naturally that's the applicant's judgment on that.

With the submission of objections, we really must question is that really the case. Property values, care, clean up, odor, and those types of issues that possibly develop with the presence of the foul chicken.

Colonel Ericson stated that there is nothing in the reports or testimony that states that the chickens smell. It seems to me that neighbors didn't really realize the chickens were there.

Mr. Keller stated with the submissions, and I only scanned these Colonel Ericson, I was not able to fully read all the objections. I scanned and noted a couple of comments within those letters. As he referenced # 3; he stated that we progress through the matter of whether or not the restriction

would create an unnecessary hardship or Exceptional Practical Difficulty for the owner. What is the Exceptional Practical Difficulty for the owner and her efforts to make normal improvements in the character of the use of the property that is a permitted use under the provision of the Ordinance. I'm wondering what normal improvements would the owner contemplate not being able to make any use of the property, otherwise that is a permitted use.

Council President Hare asked Mr. Keller if he could explain what he was asking because the owner was having trouble understanding what he was asking. Mr. Keller replied if the variance is denied the question arises as to whether or not the owner would be prohibited from making normal improvements in the character of the use of that property that is a permitted use. There are a number of permitted uses of the property under the residential zoning. If the application for a variance to allow the chickens is prohibited, then how would that restrict or prohibit other normal improvements that you may make to the property, tomorrow, next week or through the years.

Council President Hare asked Mr. Keller if he could give an example of what you're talking about or what other normal improvements you mean. Mr. Keller asked what are normal property improvements? Mr. Keller mentioned examples such as roofing, siding, addition to the porch, a screened-in porch, variation, and a walkway approach to the house.

Council President Hare mentioned with all respect Mr. Keller we are not here about improvements that could be done by any property owner in the City of Dover with a permit. We are here about a variance for a need for a special needs child. He's been around that neighborhood and talked to many of the neighbors including three families who did not even know the chickens were there. The lady next door wrote a letter saying she doesn't have a problem; she enjoys watching the chickens. Then at the last minute, you get two letters from somebody that has never said anything to Mrs. Francis, never said a word to her. So, the issue is the variance of the property not if they're going to build a new deck, or a new roof, add a porch or anything like that. They have to come back to Planning and get a permit to do those things which would be permitted in that use.

Chairman Sheth stated that he agreed with Council President Hare, but the problem is since somebody questioned it, this Board has the responsibility to respond to the complaint and if it is valid or not valid. We make sure Staff member and attorney request us and they make that decision. I understand that Mr. Keller if I have to define normal, I let the Staff member define the normal personable reason, because we always ask for their guidance, right? The other thing is, am I right that chickens are allowed? Anybody can raise chickens in Dover?

Colonel Ericson replied that it is permitted by Code. The key issue is if we would not allow this would it create an unnecessary hardship for them. They have laid the foundation for that position. Chairman Sheth stated that he agreed. He was just saying that it looks like the City allows chickens anyway. It looks like you fulfill whatever the law says are the requirements.

Colonel Ericson stated that in two of these letters their biggest complaint is they didn't think that any chicken(s) should be allowed on residential property. That is beyond our jurisdiction to rule on that. That's based upon the Code and the Code says you can. What the Board must look at is

will it cause hardship and if it is a reasonable request or if it is an unreasonable request to make the variance in this case.

Chairman Sheth stated that he agreed with Colonel Ericson that is the reason. That is what he was trying to explain to Council President Hare. This is the reason why we are raising this question because of the letter(s). Before you vote each person must justify their own consciousness as to why they are voting yes or no. Am I right? That is what we are doing. So, if you think you have enough information then it is okay.

Mr. Senato stated that he understood Mr. Chairman that the primary request here is the variance of square footage. The rules that we work by are, will it or will it not prevent hardship, etc. There have been several really defining letters in opposition to the chicken coops although they are legal within the City. Now the chickens, I presume are out there all year long in the cold and rain, winter, etc. I see animals out in the weather like dogs and cats or whatever and a lot of them die and I don't know about the stability of the chickens. I do know that as living in the neighborhood with other people the consideration should be taken with the number of comments that are here in front of me to keep harmony within the neighborhood. An alternative could be had because you are dealing with your child. The chickens are outside all the time in the cold weather, etc. Through proven university studies and other meetings that there are other animals that work better other than chickens such as dogs, cats, rabbits, birds, hamsters, and guinea pigs. I would hope that we could have an alternative in keeping in harmony with the neighborhood based on what I see here. I understand that we are dealing with square footage. There are also other alternatives and in my mind is there a hardship according to the Code.

Chairman Sheth stated that we strictly try to stick to the interpretation of the Ordinance and each member is doing that. The question is what are the choices that you have. Because we have no control over the Ordinance, we are strictly making the interpretation of the Ordinance. When we are not sure, that is why we ask the advice of Staff members and the attorney so that we are not violating any legal or permit issue as previously mentioned. The applicant needs to understand what we are asking. If the applicant understands what you are saying, then I don't have a problem.

Mr. Senato asked the applicant if she understood his comments about alternatives. Mrs. Francis replied she did not believe so.

Colonel Ericson noted they have shown a very strong connection of the daughter to the chickens. I have had animals my entire life (cats and dogs) and he understands. To ask them to go from chickens to another animal is asking a lot; so, we should take that into consideration.

Ms. Caillean Francis (daughter) stated that she takes care of their bedding. I do it every day. I do it in the morning. I make sure that it is all clean and that we don't have a problem. I'm willing to wear heavy clothing or clothing that will keep me warm during the winter months. I know I have to take care of them, and I want to take care of them.

Mr. Senato stated that I will just stick to the square footage. I have an autistic grandchild, that's why I am very interested in this. This does not prejudice me at all. I believe that this child as well

as my grandson, they need certain things. I am not in disapproval of that. I am confused with all of the figures of the square footage. Can we openly make a decision since there are so many different variations of the square footage and whether or not it is a hardship?

Mr. Keller mentioned that approximately 5 years ago in a matter December 19, 2018, our City Solicitor Mr. Rodriguez he mentioned as he read from records of the minutes of that meeting “Mr. Rodriguez commented that in accordance with the Chairman 's comments and Mr. Hufnal’s comments Mayfair a platted subdivision in the City of Dover.” My comment is to the best of my knowledge Sherwood is platted subdivision in the City of Dover. Plotted in accordance with the Zoning Code, Planning Commission approval, etc. This Board has never granted a variance for any development that has been plotted in accordance with the Zoning Code. We have turned down any number in the past. The problem is really that it is plotted in accordance with the Zoning Code and the Board used to have numerable applications for garages and things of that nature. The Board thought that it should be kept in accordance with the Zoning Code no variances should be granted. Mr. Chairman referred to one that was built in violation of the setbacks and the Board decided against it and they had to demolish the building. Mr. Rodriguez stated that he was not speaking against the applicant. He was sure the applicant needed what they were asking for and all of that. It opens a precedent for all the developments to ask for the same thing for the property owners to do. I was a member of the Board in 2018 and still am, but not sure for how long. To the best of my knowledge, Mr. Rodriguez is absolutely correct that we've never granted a variance for a platted subdivision parcel within the City of Dover especially with noting the history of the progress of submitting an application, going through the planning review process, approval of Planning Commission, and ultimately the Mayor and Council for all the Code provisions. The primary question seems to revolve around not the area of the existing property and the difference. I think that it is Colonel Ericson that I agree with that we cannot determine exactly what square footage because we have not found for certain a deed area or a plotted lot area by virtue of a Record Plan of the subdivision. Invariably, we go back to the question as to whether or not a denial of the variance application would create an Exceptional Practical Difficulty for the owner to make normal improvements. The addition which is a permitted one in accordance with the provisions of the Code and subdivision (Sherwood) restrictions.

Chairman Sheth mentioned that the only choice different is that the Board has turned down a variance for Walker Road at Mike Harrington’s property. They came for a variance after one year of approval by the Planning Commission and then they wanted a variance to build something on the Lot. They were informed that it was just approved by the Planning Commission a year or two ago. They applied to the City about the development and it’s barely a violation of the area variance. But now in this case they're not building anything, the child or one of the family members has an issue and that is why they want to have chickens. I agree with you and that is the reason for the questions. He mentioned the square footage and the differences. The Board has to decide if we are working on an Area Variance regarding raising the chickens.

Council President Hare mentioned that a question was asked by the Board what would happen or the affect it would have if the variance was not granted. Ms. Caillean Francis replied that it would be very tragic for me and I'm definitely not happy about my chickens. I take care of them every day and pick up their waste. It would start my career in working with animals. Since they

are therapeutic, it would help me find a job. It would help me find a job with animals because I have had trouble finding a job because I would always cry because I would not be able to keep the job because I would have too much anxiety. So, working with animals would be really helpful.

Chairman Sheth stated that young lady I assure you this Board is not to come on as opposed. The Board will try to cooperate as much as it can to satisfy their requirement as long as they're not violating any rules and regulations.

Colonel Ericson asked Mr. Rodriguez about a legal point that was mentioned by Mr. Keller of a case that was done many years ago. He wanted to know if it had any relevance on what is being done today. City Solicitor Mr. Rodriguez replied that did not pertain to an Area of Variance. The restrictions on that type of variance are very strict. This is not that type of variance. This is an Area Variance; so, those restrictions would not apply to this application.

Colonel Ericson asked so we should make a decision on this. City Solicitor Mr. Rodriguez replied yes. He pointed out that Staff indicated that it is a very small area of variance. In legal terms you could call it dominus's. It's not very much that they are asking for. Of course, you had prior use there for long period of time. Those restrictions that Mr. Keller referred to are absolutely accurate, but they do not apply to this case.

Mr. Senato mentioned that he just wanted to comment on the young lady as she was answering the questions and understanding; she did a good job. I appreciate her integrity and honesty in answering the questions of the Board. Thank you everybody.

Council President Hare mentioned that there were roughly 8 properties whereas he knocked on the doors in the neighborhood and spoke to the people. Two neighbors were not even aware of the chickens and one neighbor next door wrote a letter. He thinks two letters were sent in. One of the neighbors did not have a problem with the chickens being on the property.

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

Chairman Sheth opened the public hearing.

Online caller: My name is Ms. Jillian Watkins and I live at 65 Sherwood Court right next door to the applicant. I sent in the pictures and letter via email. I want to follow up on the email because I don't think it was read. My parents bought my house a year before I was born. I grew up in that house. I bought it from my mother about 16-17 years ago. I love my neighborhood. I love my town and I am a business owner. My mother was a business owner as well as my grandparents who owned a shoe store Downtown for over 40 years. We are Dover natives. The state of the house and what they have done to that house in the last few years they have owned it, it is just a disgrace. Now they want to add chickens, but they didn't even check before they got the chickens. Now they want to add chaos to their home. I'm sorry. If you saw the house and the yard you would understand if you look at the pictures. I do sympathize when they say about their daughter when they say she's autistic and you know the chickens help her. They do have multiple

cats. They have dogs. I know they definitely have one dog. I would think if it was that much of an issue that they were so concerned about the therapy aspect of the chickens, then they would have checked with the city before even placing the chickens and/or the coop in their backyard. Now you know it looks like if it's denied, you're ripping it from out of the hands of the child. That's not really a fair valid statement honestly. Like I said, they do have cats. They have animals. I'm not sure how or why the chickens had to come into play as far as the therapeutic aspect of it. I will say that someone, I don't know if it was my neighbor or the man standing next to the applicant as I'm not sure who that is, but he said that I've never talked to them and we never acknowledged them. When they first moved in, I was very nice to them. They homeschooled their children and I homeschooled for a couple of years. I gave them so many of my home schoolbooks and everything. I let her in my house. I showed her my furniture one day that I had just got and where I got it from. So, I'm sorry, she can't say that I've never talked to her and was never nice to her. It's just that I started to lose some type of neighborly feeling and if they care about the house or the neighborhood as the house started to go down let's say. I try to take care of my home. I'm a divorced mother of 4. I know I guess I was able to put a new roof on and do my double driveway and siding. I'm not asking them to be able to do all of that. I just want them to take care of their home and their property. The backyard looks I mean if you can just throw anything in think of anything and everything to throw in a backyard, that's what their backyard is and now there are chickens. If you look at the pictures you will see. I love my home and like I've said I have lived here almost my whole life. It's just very sad what they have done to the property. Of course, me and my neighbors all worry about property values and curb appeal. Now you know with the chickens it's not adding, it's taking away from what already exists. A lot has been taken away from that home from what it used to look like. As I said I do sympathize with the therapeutic part of it, but I think the daughter is 19 or 20 and they do have other animals. I love my City and I have been a homeowner since the age of 18. I am a business owner and care about my neighborhood and my street staying a certain way. A lot of my neighbors have done a great job keeping the street in the neighborhood up and I'd like to see the same from them.

Chairman Sheth asked if she was in favor or against the variance application. Ms. Watkins replied she was in opposition to the chickens.

Mr. Swierczek reiterated to the Board that Ms. Watkins submitted the email and photos that were included in your packet this morning. That is the same person.

Chairman Sheth mentioned that the letter was read and discussed by the Board. I really appreciate your help, okay.

Ms. Watkins, yes, thank you so much. Thank you. I appreciate it, thank you for your time and have a great day.

Chairman Sheth, thank you for participating.

Chairman Sheth asked if there were any other callers online. Mr. Swierczek replied that the only other caller online was the owner Mr. Jason Francis. Other than that, I do not believe we have any other members of the public wishing to speak on this application online.

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.

Colonel Ericson moved to approve variance application V-23-02 based upon the Staff Reports and the testimony given. The motion was seconded by Mr. Senato. The motion unanimously carried 3-1. Mr. Keller voted unfavorably.

Chairman Sheth asked if there were any questions or comments.

Mr. Chairman and fellow board members we've heard a lot this morning.

Mr. Keller stated that this issue in my estimation comes down to the matter regarding whether or not if this Area Variance was approved whether or not there is a creation of unnecessary hardship or Exceptional Practical Difficulty for the owner in various aspects, one which is to make normal improvements in the character of that use of the property that is a permitted use under the provisions of the *Zoning Ordinance*. Under the provisions of the current *Zoning Ordinance*, any number of things could be done to the property which are permitted uses. I remain unconvinced that there is an Exceptional Practical Difficulty. The burden of proof in these matter rests with the owner and the applicant. The applicant has the burden of proof before the Board in the matters submitted to the Board. Within my estimation, it's the failure of showing an Exceptional Practical Difficulty as well as with the noted community objection by at least 3 submissions to the Board. Approval of this variance not only just opens up the matter of the allowance of chickens or not, but it opens up the pathway to other matters which could be brought to recorded subdivisions which I think would be in detriment to the Planning Commission's activities and approvals, etc. With regard to those various matters, I'm expressing opposition to approval of that variance request.

Mr. Senato mentioned that there was a lot of good information and input in this hearing this morning. The key issue in my mind of course is one whether there is a hardship or not. The request was for the square footage to be allowed. It's evident in my mind that the chickens and the coop have already been approved. It doesn't make a difference when, but they are in legal compliance according to the Planning Commission. So based on that information, that's my feeling why I feel they should be given the square footage variance approval because everything is in operation with both the families and the chickens at the current time.

Roll Call Vote

Mr. Keller – no – For the reasons I've stated in my summary statement previously on my estimation of the matters regarding the Exceptional Practical Difficulty as well as matters regarding the granting of variances within the recorded subdivision plat and the extension of that into problems which could pursue forever in a day for a variance request. I'm in opposition to the approval of this request and hereby vote no.

Colonel Ericson – yes

Mr. Senato – yes – reason stated above.

Chairman Sheth - yes

The meeting was adjourned by Colonel Ericson and seconded by Mr. Senato at 11:03 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary