

# *Town of Dover Board of Adjustment*

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

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- ↘ LuAnn Mizzoni
- ↘ Walt Michalski (Alternate I)
- ↘ Carlos Matias (Alternate II)
- ↘ Kurt Senesky - Board Attorney
- ↘ Michael Hantson - Town Engineer/Planner
- ↘ Regina Nee - Clerk/Secretary

## **REGULAR MEETING OF THE BOARD OF ADJUSTMENT**

**April 14, 2004**

### **CALL TO ORDER**

Chairman Scarneo called the meeting to order at 7:27 PM.

### **ROLL CALL**

**PRESENT:** Commissioner Corsetto, Franco, Bowles, Mizzoni, Kline, Alternate Michalski, Alternate II Matias, Vice Chairman Cook Chairman Scarneo

### **ABSENT:**

**ALSO PRESENT:** Board Attorney Kurt Senesky and filling in for Michael Hantson is his assistant William J. Isselin

**PLEDGE OF ALLEGIANCE:** was recited by all

ADEQUATE NOTICE OF MEETING was read by Clerk/Secretary Nee.

**APPEAL TIME** was read by Clerk/Secretary Nee.

**APPROVAL OF MINUTES:** March 10, 2004 Meeting

A motion to approve the minutes for March 10, 2004 was made by Vice Chairman Cook seconded by Commissioner Costello and followed with a Roll Call vote.

**ROLL CALL:** Ayes: Commissioner Corsetto, Franco, Bowles, Mizzoni, Kline, Michalski, Matias, Vice-Chairman Cook and Chairman Scarneo  
Noes: None

**RESOLUTION**      **None**

## CASES

**17-03-** Stanley Votruba; Block 1217, Lot 5, also known as 8 West Blackwell Street located in the C-1 Zone. The application is a Preliminary and Final Major Site Plan and Use Variance to construct a two (2) story, 2,280 square foot addition to the rear, for a laundromat use and two (2) additional dwelling units, and any other variances and waivers that may be required.

George Johnson was present for the applicant. Previous testimony has been given regarding this application. Tonight, testimony will be given by Architect William Golubinski and owner Stanley Votruba. Mr. Golubinski was sworn in, is a licensed architect and was recognized as a qualified expert in the field of architecture. Mr. Golubinski reviewed the current structure and discussed the proposed addition. He advised that the new apartments would be accessible from stairs that run up next to the building. Regarding the alleyway, a gate would be installed. Access to the Laundromat would be from Blackwell Street and through a second door accessible from the municipal parking lot. A-10 – Sheet S1 and A-11 – Sheet S2 were marked into evidence. A-10 shows two parking lots once occupied by two buildings. Masonry brick would be used on the first floor and a stucco finish above. Presently, there are walls near the property which previously were part of a building. Now the wall serves to enclose the courtyard, keeping the property separate from the parking area. There is no access to the courtyard from the parking lot. The windows on the next door building would be closed up with the new addition. People exiting the apartments in the event of a fire would exit out the front door or from the rear egress windows. An apartment with multiple bedrooms would be roughly eight hundred square feet. The current design is for a one bedroom apartment which allows for two units. Vice-Chairman Cook asked if the apartments would be accessible only from Blackwell Street and he was advised in the affirmative. If the front of the building had a fire or other problem, how would the people in the front apartments get out? The front apartment has windows in the front; the other apartment has windows in the courtyard. Once in the courtyard, if there is a fire in the front, they would exit through the alley way. With the proposed Unit C, there would be two means of egress that would lead to the same location, the courtyard. If the alley way was obstructed, how would the people get out? A report from Marty Reynolds indicated that there were no concerns. Commissioner Michalski voiced concerns regarding safety issues concerning means of egress if there was a fire. The Board was given a description of the building, room by room, indicating the location of the windows and where egress from them would be. Attorney Johnson stated that condition of approval could be that all applicable fire codes would be met. There is no on site parking, but there is parking near by. Commissioner Corsetto stated that the commercial use is not a permitted use for this neighborhood. What is the convincing argument that the Board should allow this particular use in this particular zone that prohibits its use; especially under a multi-family dwelling unit, which is also a prohibitive use? Attorney Johnson advised that the apartments are permitted uses, conditional uses, if you have parking on the same lot. There are many apartments on the second and third floors along Blackwell Street and the side streets. A change in the zoning ordinance prohibits apartments on the second and third floors unless there is parking on site. We all know that this is impossible and that is why there are stagnant buildings in this town. The town is losing tax and economic revenue because of this. This is a permitted use which requires a conditional use. Commissioner Kline stated that the Land Use Law requires a number of parking spaces on site. We have issues regarding proper egress, light and air issues, and you are adding two thousand square feet by building out to the lot lines. Chairman Scarneo suggested that the landlord could obtain parking permits for the tenants. Parking Lot G is not an overnight parking lot according to Mr. Johnson. Overnight parking is on Orchard Street. Mr. Johnson stated the two apartments already exist. The question is whether or not the applicant has met the burden of proof by providing for parking within reasonable vicinity

as opposed to being on the lot itself. Vice Chairman Cook asked if the Laundromat did not go through, would the applicant still be interested in the addition and he was advised, "Probably not." It was then suggested to concentrate first on the Laundromat.

Stanley Votruba was sworn in. He is the owner of the property since the eighties. Currently, there are two apartments upstairs and a commercial space downstairs which is the Daily Record. In the back, there have been various uses of the space. Problems exist because of the alley way; a door was installed, the alley was lit, the light broken. By putting in a gate we hope to eliminate these problems. Previously, Mr. Votruba had appeared before the Board to create a three story building to create a total of eight- one bedroom apartments that was approved. A copy of the Resolution, A-12, was entered. Mr. Votruba did not proceed with those plans due to the economics and the riots on Blackwell Street (1989). Today, we have a whole different venue. It is important to have the Laundromat as part of this application for economic reasons. He has put a substantial amount of money into this building over the years and now needs to create a business that will give him economic growth. He needs a high profit establishment to justify this economically. Mr. Votruba stated that in order to fully utilize the laundry service, it is important to have a combination of dry cleaning as well as wash and fold. We would also like to collect the dry cleaning, creating a door to door service. Dry cleaning would not be done on the premises. He envisions two to four employees. There would be someone present at all times. It will not be open twenty-four hours. He stated he feels that Dover could generate the revenue; he has tremendous hopes that he could keep the building and create a viable entity and also make money. Vice-Chairman Cook asked if any vehicles would be involved with the Laundromat, such as for pick-ups and deliveries. Mr. Votruba stated yes, but they would not be parked on site at night, and would use parking on Blackwell just like every other business. The basement will be utilized. Mr. Votruba quoted from a book written by Edwin Mills, a professor at Princeton University, a founder of urban economics. Commissioner Kline was concerned with the public parking to the rear of Mr. Votruba's property, stating there is no guarantee for future access for entrance to the laundromat. Future re-development of the town may compromise the plan as it is being proposed. Mr. Votruba stated that he is aware of this. Mr. Isselin asked whether parking was required when the Board approved by Resolution the application to add additional apartments in 1989. It was not. Mr. Johnson stated that this resolution may still be binding. An ordinance was adopted in the early nineties that gave life to variances. The alley would be used to gain access to the laundromat in the back. The Board questioned how access would be gained if any of the large equipment needed to be replaced and was advised that the alley way would be used. Attorney Senesky stated that the present 236.7J basically says that variances expire within twelve months if they are not acted on. He asked Mr. Johnson if their position was that the Variance from 1989 predates the provision of the ordinance. Mr. Johnson replied in the affirmative. Commissioner Mizzoni asked about handicap accessibility to the laundromat and was advised that the alley way had sufficient width for wheelchair access. Commissioner Kline asked if there was an elevator in the building; there is none. Vice Chairman Cook stated that he had a problem with the alley not having an entrance in the front and an entrance in the back. He also wondered about a push bar if there is an open gate. Vice-Chairman Cook stated that he likes the overall idea, but has reservations as to whether this location is the best place for this type of business at this location. Attorney Senesky advised the Board that they have to make a determination, if you are inclined to grant this application, that this property is particularly suitable. Attorney Senesky read the standard of proof that must be applied with regard to the apartment use. Mr. Johnson advised that they would go for permits; they would need six spaces, and Mr. Johnson stated that could be a condition of the resolution. Mr. Johnson also stated that renters living in town, close to transportation, usually have one car, if any. Mr. Johnson was asked if his client would go through with the residences if the laundromat were not approved.

He was also asked if he would eliminate the residences if the laundromat were approved. Mr. Votruba stated that the laundromat is the lynch man here. The rental of the apartments is his fallback to cover debt service should he have a down time in the business. His goal is to rent the apartments to his employees. Attorney Senesky stated that the Board must focus on the zoning issue. He asked if the applicant wanted a separate vote for both uses. Commissioner Kline asked if the use approval would continue in perpetuity. She was advised in the affirmative. Enforcement of the parking spaces would be handled just as the churches have handled the same situation.

This portion of the meeting was opened to the Public. Seeing no one coming forward, this portion of the meeting was closed to the Public.

Commissioner Kline stated that she had a problem with the parking situation for this application. She was not convinced there is a proper loading and unloading zone. Mr. Isselin stated that in the C-1 Zone, a variance would have to be granted for parking. Fire safety is also an issue that some members of the Board had issues with.

Commissioner Franco made a motion to move the application as proposed with the stipulation that the applicant must provide six parking spaces for the apartments, must be provided for all time for this variance to remain in effect, seconded by Vice-Chairman Cook and followed with a Roll Call vote. If the parking spaces are not provided, the variance would be vacated.

**ROLL CALL:** Ayes: Commissioner Franco, Mizzoni, Vice-Chairman Cook and  
Chairman Scarneo

Noes: Commissioner Corsetto, Bowles, Kline

Result: That is a vote of four to three which is a statutory denial of the application since the use variance requires five affirmative votes.

Attorney Johnson requested a five minute recess.

The meeting was reconvened at 9:27PM.

**ROLL CALL: Present:** Commissioner Corsetto, Bowles, Mizzoni, Kline, Alternate I  
Michalski, Alternate II Matias, Vice Chairman Cook, and Chairman  
Scarneo

**Absent:** Commissioner Franco

Still present is Board Attorney, Kurt Senesky, and Assistant to the Engineer, William Isselin.

**18-03-** Helena Kernier; Block 1711, Lot 10, also known as 306 South Morris Street located in the R-1S Zone. The application is a Use Variance and Minor Site Plan to convert a preexisting non-conforming three (3) family residential use to a four (4) family residential use, and any other variances and waivers that may be required. Carried to the April 14, 2004 meeting

Attorney Johnson advised that he has not heard from Helena Kernier for the last month.

A motion to dismiss without prejudice was made by Commissioner Kline, seconded by Commissioner Matias and followed with a Roll Call vote.

**ROLL CALL:** Ayes: Commissioner Corsetto, Bowles, Mizzoni, Kline, Vice-Chairman Cook, and Chairman Scarneo

Noes: None

**01-04-** Manuel & Luz Maria Gonzalez; Block 1211, Lot 3, also known as 45-47 East Blackwell Street located in the C-1 Zone. The application is a Use Variance and Minor Site Plan for the operation of rooming or boarding house with 12 single room occupancy units on the second floor, and any other variances and waivers that may be required.

This case will be carried to the May 12, 2004 meeting.

**02-04-** Jose and Josefina Gomez; Block 2013, Lot 8, also known as 29 Clark Street located in the R-3 Zone. The application is for approval to construct an 18 foot x 24 foot addition to an existing 12 foot x 24 foot detached garage requiring variances for excess building coverage, oversized accessory structure and insufficient setback, and any variances and waivers that may be required.

Attorney George Johnson was present for the applicant, Jose Gomez, who was sworn in. Mr. and Mrs. Gomez are the owners of this dwelling and have lived there for three years. They are proposing to add an addition to the existing garage. Presently, they have a one car garage to the rear of the property. The garage is accessed from Clark Street. They have four cars in the family. They propose to add an addition to the garage that would accommodate another car plus one in front which would result in all four cars being off the street. Variances are required. The garage will be used to store their cars and he would like a small work shop area. The present garage is 2.9 feet from the back of the property line and he would like to match it up. Vice Chairman Cook stated that this seems too big. The applicant stated that he would adjust the measurements per the Boards requirement. The proposed garage would be thirty by twenty-four feet for a total of 720 square feet. A six hundred square foot maximum was requested. Commissioner Kline asked if there were any water run-off issues. Mr. Isselin advised that the additional run-off could be handled by a seepage pit as a condition of the resolution. This is basically a standard procedure. A test pit would be done to determine the ability of the soil to absorb the water. An alternative would be to connect the run-off to a storm drain or catch basin nearby. An engineer could do a soil log and design a seepage pit based on the type of soil that is found. The existing garage is a masonry wall. The side and back walls would be kept; two walls will remain and be added to. Mr. Isselin asked if the existing driveway would be widened and he was advised that it would not be. Vice-Chairman Cook suggested a condition stating that the structure would be built not to exceed six hundred (600) square feet.

This portion of the meeting was opened to the Public. As no one came forward, this portion of the meeting was closed to the Public.

A motion to approve was made by Vice-Chairman Cook with the condition that the structure would not exceed six hundred square feet, all drainage issues will be addressed to the Engineering Department, seconded by Commissioner Bowles, and followed with a Roll Call vote.

**ROLL CALL:** Ayes: Commissioner Corsetto, Bowles, Mizzoni, Kline, Michalski, Vice-Chairman Cook and Chairman Scarneo

Noes: None

The Application has been granted.

**03-04-** Kevin Lewthwaite; Block 403, Lot 12, also known as Ann Street located in the R-1 Zone. The application is for approval to construct a four bedroom single family dwelling on a lot with insufficient lot width at the street line.

Note: Attorney Senesky faxed a memorandum to Mr. Johnson's office; he did not receive it. Attorney Senesky asked if he would like to review it. The first determination regarding this application is whether or not the conditions surrounding the property have changed or whether the new application is substantially different from the original. The previous application was the Arias application. The resolution of denial was reviewed by Attorney Johnson.

Kevin Lewthwaite was sworn in. Mr. Lewthwaite advised the Board that he reviewed the minutes and the resolution from the original application by Mr. Arias. Mr. Lewthwaite addressed the reasons of denial. He advised that the new design is in keeping with the style that exists in the neighborhood. The new plan shows reduced height retaining walls, the house was lowered by possibly two feet, and a retaining wall will be built on the other side of the proposed dwelling. Test holes have been done, no ledge rock was encountered within ten feet of grade; there is an accommodation here in order to sink the house into the ground which is what we propose to do. At the curb line the slope is only eight feet; when we build the retaining walls, the runoff will be greatly curbed. The terracing effect will help the adjacent property and a buffer line of shrubs will help the aesthetics and soak up some of the surface water. The southerly side of the proposed dwelling (A-1) would be 27 foot 6 inches. The foundation has been lowered into the ground. The design has been changed, being less massive. The size of the proposed dwelling is approximately twenty-eight hundred square feet, four bedrooms, and two and a half baths.

Vice-Chairman Cook summed it up as follows: the proposed dwelling would be four hundred square feet smaller, the façade has been softened, the position of the house has been moved forward, and the house itself is more in line with the houses previously built of late, and the house has been lowered and the southerly side of the house has been lowered by thirteen percent. The retaining walls have also been added to the plan. Mr. Hantson's report points out ten specific points to be addressed and the applicant has addressed them. Vice-Chairman Cook wanted to make sure that this application meets the requirements that this would be considered a new application. Attorney Senesky advised that the application should be reviewed liberally and favor the applicant. From a legal perspective, he stated that the application itself appears to be different enough. The determination must be made by the Board and you must evaluate the information. You should also hear from the public first. Commissioner Kline requested a legal brief from the applicant. Mr. Senesky advised that there are different things to look at in making a determination. The first step is to act on the difference which would not give an approval to the new application.

Commissioner Corsetto stated that with regard to the change in the roof line proposal, that affects the solar exposure to the down slope building on the left side of the property; you stated that you made the roof line to be less obtrusive and lower in inclination. He asked for an explanation. Mr. Lewthwaite advised that they have stepped the second floor back so that what you have now is a one story dwelling with a dormer.

Thomas Graham, a licensed engineer was sworn in. He gave his qualifications as a licensed engineer. He addressed the changes of the differences between the two dwellings. (A-2: 2 of 2

of application sheet.) The height of the southerly side of the new dwelling has been lowered by approximately thirteen percent. The fireplace has also been relocated into the rear of the house. The house has been designed so that no part of it extends, in any way, into the side yard setbacks, including overhangs. Vice Chairman Cook requested a brief description of the proposed retaining walls. Along the southerly property line, the retaining wall has been eliminated. A retaining wall will start in the front yard in the area of the hammerhead for the driveway and terminates at the building corner. The purpose of this retaining wall is to create a plateau to support the parking area and the main entry into the front of the house. A second retaining wall, which is no more than two feet tall, located in the back left rear corner of the proposed dwelling, starts beyond the limits of the existing dwelling. Because of the change in slope, the wall has been created. The driveway has been pitched to the north so that surface water will drain to the north and run to a proposed seepage pit. Testing was done at that site. The soil samples came back and it was determined that the soil was excellent for the seepage pit. The retaining wall on the southerly side of the house starts out at four feet and ends at ground level and is between the house and the line of evergreens. The evergreens are shown along the property line. Landscaping is purely subjective. Mr. Graham described the elevation along the southerly side of the building. The shrubs would be about four to five feet high. The proposed plan will save the existing oak tree. Commissioner Kline questioned the building coverage. In the prior application, the footprint of the house measured 2,092 square feet or fourteen and half percent of the entire lot area. The proposed house is 1,911 or twelve point eight percent of the entire lot area. It is about a ten percent reduction in the footprint of the house. The proposed lot coverage includes the dwelling, the sidewalk, and the driveway apron. That has been reduced from 3,198 square feet to 2,889 square feet which is about a ten percent decrease. Vice-Chairman Cook stated that he feels the applicant has made a very good attempt to show the differences between the two applications and at this point we should move to the public portion to that we can make a determination as to the difference of the applications.

This portion of the meeting was opened to the Public. The speakers were advised to address the question which is, "Is this application sufficiently different from the previous application?"

Mera Rogue, 267 Ann Street, was sworn in. She resides in the house on the southerly side of the new proposal. She believes that the size of the house is obtrusive in size. She believes the size change is very slight. The house sits far back into her rear yard and this causes a privacy issue. She does not feel the change is sufficient from her perspective.

John Cosentino, 266 Ann Street, was sworn in. His opinion is that the newly proposed dwelling still does not fit in with the terrain of this lot. A two story foot house is massive. He does not believe there is a significant difference between the two applications.

Christina Buck, 22 Greenwood Avenue, asked if they had the minutes of the previous meeting. The proposal is a difference of three hundred square foot and she does not feel that was significant. Attorney Senesky stated that since there are also other changes, they must all be taken into consideration. She feels the house is still too high. She does not feel the difference is significant. Visual aesthetics were a minor change.

Lawrence Lamb, 4 Edgewood Terrace, was sworn in. He lives above the proposed site. He believes there is little change between the size of the proposed dwelling and the previous proposal. His view will be obscured. He feels the house is out of place.

Ron Frister, 61 Linwood Avenue, was sworn in. Mr. Frister stated that the size of the home is the most important point. If the dwelling was a one story home it would be fine. A ten percent change from the very large original home is not sufficient enough.

Mr. Trembicki, 222 Ann Street, was sworn in. He does not feel the size of the house has been sufficiently reduced.

Christine Trembicki, 222 Ann Street, was sworn in. She does not feel a substantial change has been made.

Peter Cosentino, 7 Linwood Avenue, was sworn in. He does not feel three feet in height difference is significant. He does not feel a significant change has been made between the two applications.

This portion of the meeting was closed to the Public.

Mr. Johnson submitted the architectural plans (A-4). He stated that this shows a significant difference between the two plans. Vice Chairman Cook read the following: "The most important test for the purpose of this matter is whether there has occurred a substantial change in the second application or the conditions surrounding the property line entertained in the application. Mr. Lewthwaite addressed all eleven objections. He has addressed the issues and passed the test of the difference between the two applications. Per the Engineer's report, there have been changes made, but the final determination is for the Board to make. Attorney Johnson advised that the resolution was passed by the Board and the applicant has met every single concern. From a legal point of view, Attorney Senesky advised that there was substantial difference submitted with the second application.

A motion to accept this application as substantially different from the original application was made by Commissioner Bowles, seconded by Vice –Chairman Cook and followed with a Roll Call vote.

**ROLL CALL:** Ayes: Commissioner Corsetto, Bowles, Mizzoni, Michalski, Vice-Chairman Cook  
Noes: Commissioner Kline, and Chairman Scarneo

This application will be carried.

**OLD BUSINESS: None**

**NEW BUSINESS:** Commissioner Kline would like to attend a conference on April 30, 2004. The fee is \$30.00 to participate in the program. Secretary Nee advised that we may not have funds in the budget but will check into it.

**COMMENTS:**

**DATES:** Next Regular Meeting is May12, 2004 at 7:30PM.



**ADJOURNMENT** A motion to adjourn was made by Commissioner Corsetto with all present in favor. The meeting adjourned at 11:45PM.

**IF ANY MEMBER CANNOT ATTEND THE MEETING, PLEASE CALL CLERK/SECRETARY NEE AT 366-2200 Ext. 115.**

Respectfully submitted,

A handwritten signature in black ink that reads "Regina Nee". The signature is written in a cursive, flowing style.

Regina Nee  
Clerk/Secretary  
Board of Adjustment