CITY OF DOVER
BOARD OF ADJUSTMENT MINUTES
January 13, 2016

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, January 13, 2016 at 9:00 A.M. with Vice Chairman Colonel Ericson presiding. Members present were Vice Chairman Colonel Ericson, Mr. Senato, Mr. Keller, and Mr. Hufnal. Mr. Sheth was absent.

Staff members present were Mrs. Townshend, Mrs. Purnell, Mr. Cook, Mr. Diaz, and City Solicitor Nick Rodriguez.

APPROVAL OF AGENDA

Mr.Hufnal moved to approve the agenda with the removal of Application V-16-01, seconded by Mr. Senato and unanimously carried 4-0.

Mrs. Townshend stated that a follow up mailing was sent to the parties that were notified of the application for awareness.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF DECEMBER 16, 2015

Mr. Keller moved to approve the meeting minutes of December 16, 2015 with the necessary corrections, seconded by Mr. Hufnal and unanimously carried 4-0.

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATION

Mrs. Townshend, Director of Planning and Community Development stated that the meeting would be conducted in accordance with the agenda. There is one item (new 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. If the Board needs to consult the City Solicitor they will adjourn 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 the agenda today was completed in accordance with code requirements. The meeting agenda was posted in accordance with Freedom of Information Act requirements.

NEW BUSINESS

Applicant #V-16-02

104 South New Street. James Dowd has requested a variance from the requirements of *Zoning Ordinance* Article 3 §2.1 pertaining to permitted dwelling unit types in the RG-1 zone, and *Zoning Ordinance* Article 7 §1.13 related to nonconforming buildings and uses, in order to reestablish the use of the structure as a two-family dwelling unit. Subject property is zoned RG-1 (General Residence Zone). The Tax Parcel is ED-05-067.14-01-70.01-000. The owners of record are James E. and Joann C. Dowd.

Mr. Diaz Exhibits for the record: Staff Report and plans submitted by the applicant, and a photo taken by the Code Enforcement Officer. The legal notice was published in the Delaware State News on January 3, 2016, and the public was notified in accordance with the regulations.

Mr. Eddie Diaz gave a brief overview of the application.

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

Representative: Mr. James Dowd, Owner

Mr. James Dowd was sworn in by Mr. Rodriguez.

Mr. Dowd testified that he purchased the property in 1990 and has been the owner for roughly 25 years. He purchased the property as a two-family home. Sometime prior to his purchasing the property it was split into two dwelling units. He stated that he knew that ignorance is not withstanding the law, but he was not familiar with the nonconforming use provisions. In the past two (2) weeks since filing the petition he has read over some of the City of Dover ordinances and articles which consist of over 1200 pages. He has been an abiding landlord in the City of Dover for 25 years. He has always complied with the annual inspection requirements and kept the City informed. In May 2014 the City scheduled an annual inspection and came to the property with a contractor who sometimes represents him. The inspector found some questionable foundation issues from the outside of the home. As a result of the findings he was forced to get an engineer (Scott Engineering) to go under the building for better photos. Once the engineer came from under the building he stated that due to the age of the building (nearly 100 years old) some of the piers used to hold the floor joist and beams under the house had deteriorated because they did not use footers in the past.

There was deterioration on the outside wall of the building that was noticeable. The other outside wall appeared to be bowing. Mr. Dowd was given a laundry list of items that needed to be corrected and asked that he find a contractor to correct these. It took him roughly two (2) months to find the first contractor that would crawl under the house. Due to the improved economy no one really wants to do this type of work. It also appeared that because of the property location people did not feel comfortable leaving their tools laying around. Two contractors walked off the site because they could not have their employees working in those conditions. Starting out as a young investor and owning the house for 25 years he has dealt with these conditions as well as worked with the City and House of Pride as this is low income housing to make things better. Once he found another contractor who could do the work, the contractor stated that he would only be available to do the work on weekends due to his full time job. This was an ongoing process, including the inspections, due to the work only being done on the weekends. He also agreed to do this to save money as he has to pay the contractor each time he comes out to do work. Mr. Dowd also wanted to do some of the work himself. Again, ignorance is no defense but the non-conformity issue never crossed his mind because the City was contacting him about inspections and vacant house permits on an ongoing basis. He then filed for two (2) vacant house permits because he no longer had tenants in the building. After doing that, he thought that he was good.

The contractor continues to do work and they noticed old drywall, light fixtures, switches and outlets that needed to be grounded or replaced. Therefore he started to do this work in addition to what was already being done. Most of the homes in the area are falling apart. He took upon himself and told his wife that this was a perfect opportunity to bring this home back to life. This slowed the process and he completely ripped the drywall out from downstairs where the foundation was being done and replaced it with new drywall which required a permit. He took out all of the kitchen cabinets and hardwood flooring. He replaced all of the flooring with two (2) layers of updated flooring. Afterwards he and his wife were getting anxious about finishing up this project and that is when he was contacted by the Planning Office that he would be receiving a letter to shut down his nonconforming use and he had to restore the home to a conforming use.

He spoke with the contractor and asked what did that mean, and the contractor replied that they still needed to finish the foundation work that was 99% complete. He asked the contractor the additional burden or cost. The contractor estimated $10,000, but keeping in mind that he had already spent $25,000 on a home that is literally worth only $25,000. He petitioned today that based on the work that has been accomplished, that the home has been restored to structural soundness, by his unawareness about the nonconforming use provisions of the *Zoning Ordinance*, and by his following other permitting and inspections rules, by his recent understanding of the ordinances, he would exceed the reasonable use of this property. He would not be able to maintain the property because it is not reasonable to continue to put more capital into the building that is already not worth the $25,000 already put in. He felt that he had to write-off a total loss of $25,000 and a year's worth of work due to his ignorance. Now the City does not want to issue him a nonconforming permit. At the end of the day it is a low income neighborhood, however; there are some good people out there, they are not all bad.

Mr. Dowd felt that he could provide the people valuable low income housing in a remodeled home in that neighborhood that is currently about 90% complete.

Vice Chairman Colonel Ericson asked if there were any questions.

Responding to Mr. Keller's question regarding the date of the photo of the house, Mrs. Townshend stated that the photo of the house was taken last week.

Responding to Mr. Keller's question if the house was currently divided for two (2) separate entries and two (2) separate living units, etc. as a multi-family property, Mr. Dowd stated yes.

Responding to Mr. Keller's question regarding the location of the second entry and if there was any pass through within the house for one family to another, Mr. Dowd stated no sir.

Responding to Mr. Keller's question whether each entry has its own bathroom and kitchen facility and if he paid the water bill, Mr. Dowd stated yes. There are also separate electrical panels and separate heating systems. The only thing that is not separated is the water. The Landlord pays the water bill and he pays the water bill for this property.

Mr. Dowd also noted that contrary to the staff report comment that electric service had been

disconnected, he stated that electric had been on in the building since it became vacant, because electricity was needed in order to have power to the tools to get the work completed.

Responding to Mr. Keller's question of the current status of the initial foundation problem, Mr. Dowd stated that it is about 95% complete. He shared photos of the work.

Responding to Mrs. Townshend question if there were copies of the photos that Staff could keep for the record, Mr. Dowd stated that Staff could keep the copy that was circulated.

Mr. Dowd gave a brief description of the photos and work completed. Once the upstairs was complete he asked the Planning Office on December 17, 2015 if it could be occupied since the foundation inspection had been approved.

Responding to Mr. Keller's question if it was on crawl space and not a full basement as he looked at the photos, Mr. Dowd stated yes. It was very difficult to get a contractor to work under the crawl space.

Responding to Mr. Senato's question whether the first photo was the crawl space, Mr. Dowd stated that it was the crawl space that showed all of the new floor joists and beams. At one point he got ahead of himself and had ten (10) of the footers inspected and then the inspector came back and stated that he needed to see the other three (3), the inspector needed for him to cut the floor out so that he could physically inspect the other three floor joists and beams. The floor was completed in early November, but in late November is when he had to cut the floor out in order to have the inspection done.

Responding to Mr. Senato's question for clarification whether there was a brand new floor installed and a space in the new floor had to be removed in order for the inspector to do an inspection and then redo the floor again, Mr. Dowd stated they were in the process of putting the floor back down.

Responding to Mr. Senato's question whether the crawl space at that time was completed, Mr. Dowd stated that minus three (3) piers that was added by the inspector. Once it was opened the inspector stated that those three piers needed to be added.

Responding to Mr. Senato's question whether there was access to the crawl space, Mr. Dowd stated the metal back door gave access to the crawl space. Mr. Dowd stated that he was not present and the inspector told the contractor and the contractor relayed the information to him once he arrived.

Vice Chairman Ericson stated that this was beyond the scope and does not apply. The Board is looking at the criteria of the code.

Mr. Senato stated that in his opinion he was also looking at the hardship.

Mrs. Townshend stated that if Mr. Senato wished to challenge the inspections technique by the inspector she would prefer that the inspector be present, because the insinuation from the

question is that the inspectors created a hardship condition and there may be very clear reasons why they made that request.

Mr. Dowd stated that he was not questioning the inspection. He was completely subservient to the inspector. He wanted to get the house completed. If it was going to cost him another $800 to replace the floor that he had to tear up, at that point it did not matter to him because he wanted to get it done. He wanted it fixed correctly. It took him a long time because he wanted to bring this home back to the right condition, not just what needed to be fixed, and at that point he was committed.

Responding to Mr. Keller's question whether the principal purpose of the condemnation in 2014 and the necessary repairs were in fact the foundation failure and footer requirements, Mr. Dowd stated yes.

Responding to Mr. Hufnal's question whether in 1998 when the property was used as a rental was it a double rental at that time, Mr. Dowd stated yes.

Responding to Mr. Hufnal's question whether the code changed in 2004, Mrs. Townshend stated that there were code changes in 2001, 2003, 2006, and 2015 all too some degree dealing with these issues. She could only speak first hand to those that occurred in 2006 and 2015. In 2006 the code was changed whereby previously multi-family dwellings, and conversions of single-family to multi-family dwellings were a Conditional Use in the General Residence Zone. The code was changed so that multi-family dwellings were only permitted in the RG-2 zone as a Conditional Use. Therefore; it would not be permitted at all in the other zones. In 2015, the ordinance changed so that multi-family dwellings are not permitted at all in one-family residence zones. This property falls in an "in-between area" because by definition a multiple dwelling consists of three or more units. This structure is two units, but it is not a one-family dwelling. It falls outside of the scope of what's permitted.

Mrs. Townshend stated that the Building Inspector is available to talk about the footing inspection if necessary. Vice Chairman Ericson stated that he did not see a need unless the other Board members needed him to speak.

Mr. Senato stated that he was not questioning the integrity of the inspector. His first thought was if it was an old floor that had to be repaired then that's one thing, but in his mind it was a hardship put on the owner with a new floor that he had to tear up based on the instructions of the inspector and then he had to pay more money to put it back. He was not questioning the error of the inspector.

Mrs. Townshend stated that she did not agree with Mr. Senato because typically the sequence of inspections you would get that inspection before you put down the flooring. She did not believe that anyone was necessarily in the wrong. Her concern was the way the question was asked which indicated that the request of the inspector to inspect the footings created a hardship. It really has more to do with the sequencing of inspections.

Responding to Vice Chairman Ericson's question why the RG-1 area was changed, Mrs.

Townshend stated that the RG-1 area was changed, but she was not sure which specific amendment happened in 2001and 2003, but prior to those amendments conversions of single family homes to multi-family homes was allowed. In the 2001-2003 timeframe it was changed to a Conditional Use. The regulations regarding student housing came into effect in 2001- 2003. All of this was the result of the concern that the downtown neighborhoods were eroding because of the carving up of old homes into apartments and the adverse effect it had on homeownership. If it is a multi-family structure it is not owner-occupied and some of the external effects were causing other owners to move out. When you look at over 20 years of that practice we can agree that it damaged the integrity of that community.

Responding to Vice Chairman Ericson's question whether the property owners are notified when changes are made to the *Zoning Ordinance*, and how does the information spread throughout the community, Mrs. Townshend stated that the text amendment to the *Zoning Ordinance* is posted as a legal ad in the Delaware State News, hearings at Planning Commission and City Council and on the published agenda. There is no direct mail to the property owners.

Responding to Vice Chairman Ericson's question whether the applicant was aware of the RG-1 zoning ordinance changes where the multi-family homes would be converted to single family homes, Mr. Dowd stated that he cannot say he was aware of specifics, but he was aware that the City no longer allows conversion of single family homes. This information was through word of mouth, not any information that he read. He knows that this is the target area to clean up, but again by word of mouth, nothing official. He read the 1,200 pages of the ordinances in part last night.

Responding to Mr. Hufnal's question when the applicant received the permit to do the work was he aware that if he did not have the work completed within a year that his nonconforming use would expire, Mr. Dowd stated no. He stated that he could have completed just the foundation work that forced him to go 13-14 months in about 90 days if he was aware. However; his focus was getting the home as close as he could back to the original interior.

Mr. Dowd stated that there were very few things that were identified during the initial inspection when the house was condemned. Some of the items were the questionable foundation, getting an engineering firm. Once he had the engineer firm (Scott Engineering) he gave him a listing of all the items identified. There was an electrical issue because they could not find the ground in a couple of the outlets. The electrical inspector suggested putting a GFCI outlet in the whole house to avoid looking for the ground connection. He then brought three (3) GFCI outlets at $50 each to install in the apartment. He replaced an outside dented door and paid someone to paint the upstairs. He was now thinking that someone would be able to move upstairs while he was working downstairs so that he could recoup some of the money that he had spent, but that never took place. He then spoke with the Planning Office around the 16th or 17th of December and asked if he could move someone in upstairs because the foundation was complete. At that point he learned that it was a nonconforming use and was told that it needed to be converted back to a single-family home.

Vice Chairman Ericson stated to the applicant that he was not the first person in that area to come before the Board requesting a variance. Most people who come forward did not want to

invest money. In the past the Board denied many variances because it was the long range intent of the city to clean up that area. The reason the applicant wanted the variance was because he was not informed of the change, if the variance is granted based upon that criteria every other property owner in the area would say the same thing. Once a precedent is established the Board would have to say yes no matter what and that would put them in a terrible position because of the code. Vice Chairman Ericson gave a brief overview of the code and asked if the applicant had any questions.

Mr. Dowd stated that ignorance is not a defense. He felt that as closely as he has worked with the city throughout the last 14 months on this project, it should have been brought to his attention sooner. He can only refer to the article regarding reasonable use of the property. If he had to invest more money converting the property back to a one-family dwelling, including furnace replacement, new ductwork, new electric, gas service, and more, this would be another $10,000. He has already invested $25,000. There is a remodeled house that has been for sale across the street for $40,000 but has not found a buyer. If he continued the remodeling project he would exceed the value of the home. He did not think that any investor or wise person that manages their money would intentionally go out and exceed the value of the home doing a project or converting it back. He understood what Vice Chairman Ericson had stated about the ordinance and other people coming forward later, but other people do not spend $25,000. The homes that are being mentioned are the homes that have been vacant, non-active, and no construction activity. He even put in new windows and vinyl siding. The first floor is going to be brand new. The other people are the absent landlords. He stated that he did not want to fall in the mix whereas everyone in the room thinks he is the absentee landlord because he is not. He did not know how it is explained to the person from New Jersey that comes down and is fighting the same case. He stated that he is different than most of the people that the Board is referring to.

Responding to Mr. Hufnal's question whether the applicant had known about the non-conforming use, would he have done the repairs that were necessary in order to get it back into living condition for the two family units, Mr. Dowd stated that it was exactly true and he could have easily done it within the 12 month window. He corrected additional items that he saw that needed to be repaired instead of just doing what he was asked to do to become legal again.

Responding to Mr. Senato's question whether there were two (2) separate entrances to the apartment and how long had the two separate entrances been in existence, Mr. Dowd stated that when he purchased the house it had the two separate entrances. He purchased the house in 1990.

Responding to Mr. Senato's question that during the time of the renovation was everyone including the city aware it was used as a two (2) family home, Mr. Dowd stated yes.

Responding to Mr. Senato's question whether during that time was any statement made that the non-conforming use for a two (2) family home in this area had to be a single family home, Mr. Dowd stated no.

Mrs. Townshend confirmed that it was the case after reviewing the permit applications that were submitted. It was not readily apparent from the permit applications that it was not a single family, but the zoning review of the building permit did not pick up on the fact that it was a two

(2) family dwelling and there was nothing stated in the permits themselves that informed him of the nonconforming use. This was certainly an error on the part of City Staff.

Responding to Mr. Keller's question on the definition and process for a vacant structure, is there any time limitation as to how long that property may remain vacant and undisturbed if the annual fee is paid, Mrs. Townshend stated no. If properties are not maintained and deteriorated then they will be taken forward as dangerous buildings to City Council and work towards demolition. There is no limit on how long a building can remain vacant.

Responding to Mr. Keller's question regarding the absence of the requirement of this applicant to bring about a remedy to the foundation problem and could this property have otherwise simply remained vacant and retained its non-conforming status, Mrs. Townshend stated no, a non-conforming use expires after one (1) year if it is not utilized. The fact that it was vacant for more than a year is what caused the expiration.

Responding to Mr. Keller's question whether he was correct in reading the city's report that at the time of the second Building Permit being issued for the work in September 2015 if the property was vacant at that time for the period to exceed one year, Mrs. Townshend stated yes.

Mr. Keller commented that it would have seemed that something with the history may have come to light at that time with the issuance of the second permit as to continuing to perhaps try to renovate the property to its previous condition, but if you did that it could not be a multi-family at that time.

Mrs. Townshend stated that when she reviewed the notes in the Building Permit it indicated that the Permit was for the repair of the foundation on a single family dwelling. It does appear that the city did not research the history of the property to determine that it was not a single family dwelling at the time. It could have and should have been picked up at that point in time.

Responding to Mr. Hufnal's question that it was not intentionally over looked as being a multi-family unit, Mrs. Townshend stated not to her knowledge. She thinks that it was an oversight. It points out an area where she needs to work with Staff to investigate more in this specific zone because of the changes in zoning over time.

Mr. Hufnal commented that if you look at some of the multi-family buildings you could get four (4) units in a single family foundation and he could see the point of that happening.

Responding to Vice Chairman Ericson's question whether the building was under construction the entire period even though it was on the weekends, Mr. Dowd stated yes, but nothing from the exterior. The interior work would not have been noticed readily from the outside.

Mr. Senato had concerns regarding how to proceed if the variance is passed. Would the Board be setting a precedent in the future, which in his mind would not be very good, but on the other hand he leans towards approval because there has been a hardship. No irregularities by the City, but just an overlooked situation.

Mr. Keller noted that most variance applications received are involved with Area Variance requests that pertain to matters of geometry, and this application is considered a Use Variance which has a higher standard to meet that the Board must consider in deliberations. This type of Use Variance request is one that is applied for where otherwise it would be a matter of a Rezoning. The RG-1 prohibits the multi-family use. If not for the matter of the series of permits and the loss of the nonconforming use, the applicant would likely be applying for a Rezoning. When the Board now considers the possibilities of approving the applicant's request to return the property to a nonconforming use they would still have to consider the various standards for a Use Variance. In order for the applicant to obtain that variance to return the property to a nonconforming use, the Board would have to find that the property cannot provide a reasonable return when used only for the permitted use. The applicant would have to justify that he could not realize a reasonable return on the property after his investment. This would be for a single-family dwelling sale or rental.

Responding to Mr. Keller's question of how the applicant could demonstrate that there would not be a reasonable return on the property after his investment, Mr. Dowd stated that he would have to contact a realtor to get a market value of the home and compare it to what he has invested. He reasonably thinks and believes that putting any more money into this property is going to exceed the market value of it. Homes in that neighborhood are not selling like they are in Sherwood or other communities around Dover. He does not believe the property would even sell. He did not like talking without having the background. Tenant and occupy rates are very low in that neighborhood as well as turnover. He estimates rental income at $5500 to $7000 a year. It would be roughly $800 a month for a rental of single family home that would consist of three bedrooms and 1 bath. There would be $200 in expenses from the $800 fee. If you put in $40,000 it would take lot of years just to break even.

Responding to Vice Chairman Ericson's clarification that it would not be economically feasible to invest more money into the property after all that has been spent, and if the applicant tried to sell the property, it would probably not sell and therefore remain vacant, Mr. Dowd affirmed that at that point an action of demolition or something would have to come up. When he spoke to Mrs. Townshend in December regarding the two (2) vacant lots next door to his property and three (3) lots across the street recently acquired by the City and planned for demolition, he thinks that revitalization is finally occurring in the neighborhood. A complete revitalization with a recreation center would drive the property value up and attract better tenants. He has owned the property so long and felt that he was blindsided and caught in the mix. He wants to do right and even asked if the city wanted to purchase the property. As an individual it is not reasonable to think that he would want to invest any more money in a property that does not increase in value, does not draw the right tenants, and has high turnover rate. Because he is so far into it now; he has come before the Board to petition to help him maintain the multi-family use.

Responding to Mr. Keller's question whether the applicant was allowed to proceed with the renovation, at what point did he expect completion of the requirements as permitted for the renovations; Mr. Dowd stated that the foundation could be done in three (3) weeks. He could have tenants in 90 days.

Mr. Dowd stated that a month ago there was an inspection completed of the last three (3) piers

and was told he could put the floors back together and move forward. "The inspector advised his contractor to insulate between all the new floor joists and close the floor for completion." He could probably leave the meeting today and go the property so that the permit could be closed out. He informed the contractor at that time to stop work until he was clear on how to move forward in remodeling this home if it was not cost effective.

Mr. Hufnal asked if the Board of Adjustment reinstated the nonconforming use, could the applicant have the work done and rented in 90 days, Mr. Dowd stated yes.

Mr. Keller stated that renting the property was dependent upon the economy and they could not guess if there was an available tenant, but within that period of time or less the applicant could have the permit approvals and construction complete and available for occupancy.

Mr. Dowd stated that he currently has a mechanical permit for a heating system. He needs to obtain a plumbing permit because the existing plumbing does not meet the current codes. He will also need to put the decking back on the floor joist.

Responding to Vice Chairman Ericson comment about the house being very old (100 years old) he would suspect that the applicant would anticipate a lot more repairs of this nature to keep up the home, Mr. Dowd stated that in 1990 when he purchased the property and an electrician found that some of the electric was already upgraded. There is new plumbing. With the foundation currently done, the only thing that is really required is normal upkeep. A roof is standard and good for 20 years, and the house has vinyl siding and windows. He has utilized city programs in the past and currently. He does not foresee any major difficulties with the home.

Vice Chairman Ericson opened the public hearing.

Mrs. Townshend was sworn in by Mr. Rodriguez.

Mrs. Townshend spoke as the Senior Code Enforcement Official. She stated that she did not feel it was appropriate to speak in her role as City Planner on this matter. One of her roles as Director of Planning and Community Development is the oversight of the code enforcement program. Code Enforcement is a big deal in this area. An issue the city continues to struggle with is the issue of existing rental units that are in marginal condition at best. The Downtown Development District, within which is where we are really focusing resources, is 84 percent rental. Certainly the goal is homeownership which was included in the Staff Report. The more information the Board of Adjustment has, the better the decision that can be made. She was not intending to speak in favor or against. In dealing with the rental units, especially in older houses, again many of them are marginal. The frequent approach of a landlord is to slap on some paint, bring the property to absolute minimum code standards, and the city does not get sustained compliance. Based on the pictures that the applicant shared and the extent of the foundation renovations this landlord does not appear to be doing that. As part of the overall strategy of bringing back the downtown, obviously homeownership is the focus, but improving the quality of rentals is also important. From a Code Enforcement standpoint and seeing what is going on here, and what is more frequently seen in terms of what needs to be repaired, these are more sustaining improvements. The repairs presented today by photo appear to be quality repairs. Quality repairs

are one of the challenges that we find in our Code Enforcement program.

Responding to Mr. Keller's question if the variance request for the return of the property to a nonconforming status was approved and the permit process for the renovations was accepted by the City within 90 days, but the property remained vacant for a lack of a rental, etc., is there anything that jeopardizes the property in returning once again to the present state of losing its nonconforming status, Mrs. Townshend stated that the variance is good for one year.

Mr. Keller commented that it would behoove the applicant to summarily bring closure to the reconstruction project and the acceptance by the city of the permitting and pursue a tenant wholeheartedly if in fact there was an approval for the variance requested today. He was inclined to think that there is uniqueness to the applicant's application. He follows legal notices every day in the newspaper and there is publication and proper notice of pending rezonings, and also publication in the newspaper about what has transpired within Council meetings regarding rezonings. He did not think that Mr. Dowd's circumstance is a condition within the neighborhood that presents itself to the Board of Adjustment on a routine basis. He stated the facts lean favorably towards an approval as opposed to a denial under use variance standards.

Mr. Keller asked how many properties within the immediate RG-1 zoning area were within full compliance and single-family use only, and how many were nonconforming properties. Mrs. Townshend stated that if you go south there is the AT & T property and there is a property fronting Queen Street with apartments. The block north of that is somewhat of a mix, many are single family but there are also many vacant properties. This is one of the most challenging stretches of roads in the city in terms of the challenges faced and the quality of housing stock. It is a crime hot spot and there are real challenges in the two block area of South New Street. The city is working in a lot of ways to get their hands around the problems. Mr. Dowd mentioned that the city has acquired two vacant properties on the west side of the street where his property is located, but they have also acquired two structures across the street that they are in the process of moving towards demolition. The Downtown Dover Partnership has purchased one vacant property on the west side of the street and is preparing to go to closing on a multi-family property on the east side of the street directly across from this. Again, that will all be demolished in conjunction with the city properties that are being demolished. There is quite a bit of effort through Restoring Central Dover, Police Department, Planning Office and Code Enforcement to really get a handle on the deterioration that they have seen in this neighborhood and start to turn it around.

Responding to Mr. Senato's concern of a repercussion after a decision is made, of particular cases and what it does in the future in the area itself regarding zoning changes, and asked if the variance was passed today, what impact would it have in the future for other owners that might hear this and come in front of the Board or bring this up again, Vice Chairman Ericson stated that if it is the intent of the Board to approve this variance, he thinks that it is critical that all three (3) Use Variance criteria are addressed in the motion to specify that this is a unique situation. This application is very different from past cases. He has been a very responsible owner, but it is very important in the motion to include everything in a Use Variance. Mr. Rodriquez stated that it sets a precedent, but enough can be put in the motion based on the testimony heard today to make it an exception so that it is not precedential.

Chairman closed the public hearing after seeing no one else wishing to speak.

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

Mr. Keller commented regarding the previous discussion and Mr. Senato's question whether this is hypothetical, and if someone was appearing before the Board for a request to convert to a multi-family or construct a multi-family usage within this zone knowing the current zoning and not the previous use in the past, he would say that there is no question that it would be denied, and that there appear to be unique overlapping circumstances with regard to the timing of this undertaking from a valid permit process and the subsequent delays regarding construction. There is a bit of uniqueness regarding this specific variance application that the Board would probably not give any thought to if otherwise it was a variance application simply appearing before the Board for a single family property that they would want to convert to a multi-family use property. That in his mind absent any other conditions would be a denial, therefore he is not fearful of any repercussions or precedent set by this case.

Vice Chairman Ericson stated that he doubted very seriously that we would see someone from this zoning area that would request to convert from single to multi-family. What the Board has seen in the past are cases where the property owner has spent very little money on the property, and testimony of prostitution, drugs, and other problems in the area. This is what we want to guard against versus an owner not turning the dwelling back into a single-family dwelling because he does not want to put the money into it, but the building is actually dangerous to the neighborhood. Ericson said then a person comes forward with the excuse that he was never told. This is what he fears. Unless the Board really makes a strong motion that this is an unusual case and vote on it, then we run the chance of having to prove nonsense.

Mr. Senato indicated that due to the legality of the issue and to prevent the potential for people coming forward for a similar variance, that Mr. Rodriguez craft language for the decision that summarizes the decision in the proper legal terms.

Mr. Rodriguez stated that he would write the decision for the approval by the Board based upon the facts heard today which seems to support that this is a unique case and not one that would set precedent.

Vice Chairman Ericson moved to approve variance V-16-02 based upon the testimony given whereas the applicant was not informed that within 1 ½ years of reconstruction that he would lose a nonconformity, and he has spent a considerable amount of money ($25,000) getting it back to code, and it would cost another $10,000 if he had to convert it to a single-family dwelling, and the house itself is probably only worth $40,000 or less, that it is not economically feasible for him to invest this money and the property would probably end up being vacant for a long period of time or demolished. Variance V-16-02 will reinstate the nonconforming use. The motion was seconded by Mr. Hufnal and unanimously carried 4-0.

Vice Chairman Ericson further stated that as far as Use Variance is concerned in this case the condition is particular to this property because the owner has been very responsible and has

spent a lot of money on the property, and the fact that this is reasonable use to the land, and it is not practical or economically feasible to return to a single-family dwelling. In his mind if the applicant was disapproved he would be deprived of all reasonable use of the land. Furthermore, by saying no, the property would be vacant or destroyed and that would be detrimental to public welfare. In his mind it would be best to approve this variance.

Mr. Hufnal stated that he agreed with Vice Chairman Ericson comments.

Vice Chairman Ericson and Mr. Hufnal wished the applicant good luck with his property.

Mr. Dowd thanked the city for hearing and approving his case.

Mr. Senato stated that this was an unusual application and he apologized for bringing up the inspector, as there was no intent of degrading the inspector. One positive thing that came out of this particular hearing which is definitely unique is the fact that it has opened up some minds including his. Mrs. Townshend was very correct in stating that Staff will look at how to prevent similar situations in the future. In the future he is sure that this will be avoided since Staff will be looking into the procedural process.

Vice Chairman stated that the next meeting will be February 17, 2016.

The meeting was adjourned by acclamation.

Meeting adjourned at 10:28 A.M.

Sincerely,
Maretta Savage-Purnell
Secretary