CITY OF DOVER
BOARD OF ADJUSTMENT MINUTES
May 18, 2016

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, May 18, 2016 at 9:00 A.M. with Chairman Sheth presiding. Members present were Colonel Ericson, Mr. Senato, Chairman Sheth, Mr. Hufnal and Mr. Keller.

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

APPROVAL OF AGENDA

Colonel Ericson moved to approve the agenda as submitted, seconded by Mr. Keller and unanimously carried 5-0.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF APRIL 20, 2016

Mr. Senato moved to approve the meeting minutes of April 20, 2016 with any necessary corrections with the condition that the language reference be verified on the recording and verified if necessary, seconded by Mr. Hufnal and unanimously carried 4-0. Mr. Keller abstained.

OPENING REMARKS CONCERNING DEVELOPMENT APPLICATION

Mrs. Townshend, Director of Planning and Community Development stated that the meeting today will be conducted in accordance with the agenda. There are 2 agenda items: one deferred item under Old Business, and one new item 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 applications on this agenda was completed in accordance with code requirements. The meeting agenda was posted in accordance with Freedom of Information Act requirements.

NEW BUSINESS

Applicant #V-16-04

131 Nob Hill Road. Wayne S. Lipscomb has requested a variance from the requirements of Zoning Ordinance Article 4 §4.1 pertaining to required off-street parking in the R-8 (One-Family Residence Zone) as it relates to *Zoning Ordinance* Article 6 §3.2 stipulating how areas for parking are computed. The Tax Parcel is ED-05-77.07-06-97.00-000. The owner of record is Wayne S. Lipscomb.

Mrs. Townshend Exhibits for the record: Staff report and plans submitted by the applicant. Legal Notice was published in the Delaware State News-on May 8, 2016. The public was notified in

accordance with regulations.

Mrs. Townshend gave a brief overview of the application.

Responding to Colonel Ericson's question as to what point does the Office look to make sure there is a Certificate of Occupancy, Mrs. Townshend stated that with a residential structure before it is allowed to be occupied a Certificate of Occupancy is issued. The difference with this property is it was used as a model home. Typically, a Temporary Certificate of Occupancy is granted for the use of a model home, but she was not sure why this property did not have a Temporary Certificate of Occupancy. Upon reviewing the paperwork Planning approval was the only outstanding issue.

Responding to Colonel Ericson's question whether most builders are aware that a Certificate of Occupancy is a requirement before transferring, Mrs. Townshend stated yes, but again this property transitioned from the original builder to when the development was acquired and then to the current owner.

Mrs. Townshend stated that when a Temporary Certificate of Occupancy is issued the conditions are listed in order for it to become a Final Certificate of Occupancy. One of those items would be restoring the garage to a garage use.

Representative: Mr. Brandon Jones, Attorney.

Mr. Jones stated that everything listed in the report is what occurred. The company that built the house and used as a model transferred the property in 2011. Afterwards, the company went bankrupt. This is how some of the items fell through the cracks and there was no Certificate of Occupancy issued. Several years passed before Mrs. Lipscomb brought the property. In the contract for the purchase of the property there was mold remediation, repairs, etc. This was typical of buying a used house and there was nothing that alerted them that this was technically a new house.

Presentation
Color Photo of the stone facing property.

Mr. Jones stated that there are clearly two (2) off-street parking spaces and both of them cannot be in the front yard. The driveway seen in the photo is more than adequate for the two (2) off-street parking spaces. He has been ensured by Mrs. Lipscomb that there have been no complaints the entire time that she has owned the property and as far as he is aware the City has had no complaints. The only reason this has come to light is because the City was cleaning out records.

Mrs. Townshend stated that the office received a couple of phone calls and inquiries at the counter, but once the situation was explained people did not seem at all concerned. She could not say for sure, but the impression she received from the people that it was not going to affect their property directly.

Mr. Jones stated that this is a hardship that was not created by the current owner. This was an

innocently come-by, with a bankruptcy in the middle of it which probably contributed majorly to it falling through the cracks. To correct this as we refer to the photo would be a major and significant expense to someone who currently has a mortgage and other living expenses and cannot afford something of that nature. He stated that he brought a house that had a nice room that could be used for living space and had no clue that it was supposed to be a garage and it was required to be converted over for no reasonable purpose that he can think of and it would truly be a hardship for the current owner.

Responding to Colonel Ericson's question of the estimated cost to convert the garage, Mr. Jones stated that he did not know exactly, but it would be thousands of dollars and not hundreds of dollars.

Responding to Chairman Sheth's question whether during the settlement, title search, or title insurance is there a standard requirement, Mr. Jones stated that the standard of practice in the community at the present time when you deal with new construction you know that you get a Certificate of Occupancy and release of mechanics liens each time. However, when you buy an existing (used) house that is not new construction you do not inquire whether a Certificate of Occupancy has been issued.

Responding to Chairman Sheth's question whether the title insurance company was involved when something like this happens, Mr. Jones stated no, it is not part of what is insured. There is no insurance that covers the lack of a Certificate of Occupancy. This is universal throughout the community. Mr. Rodriguez stated that he agreed 100%.

Representative: Mrs. Wayne Lipscomb, Owner

Mrs. Wayne Lipscomb was sworn in by Mr. Rodriguez.

Mrs. Lipscomb agreed to adopt all the facts stated by Mr. Jones. She testified that she had read all of the material for the application and accept it as part of her testimony. She also read and accepts the report submitted by City Staff.

Chairman Sheth opened the public hearing.

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

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

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

Mr. Keller stated that any number of times he has seen new development taking place and it is not uncommon to have a model home with a driveway leading to what appears to be ultimately a garage or originally planned to be a garage, but it is in fact used as a model home sales office. He agreed with Mr. Jones that no doubt it would be very expensive to reconvert facing and interior of

that particular room back to a garage. He would like clarification that in fact that this was perhaps an oversight since through the normal Building process a plan submitted knowing that there is a requirement for the off-street parking of the two spaces and how it would progress with construction on an interim basis, he asked if it was occasionally temporary, Mrs. Townshend stated that normally for a model home a Temporary Certificate of Occupancy is granted. From the model home perspective, the garage is the logical place for the sales office. She was not aware of any other cases where they have had issues with that being converted back to the garage. Mr. Jones is correct that the bankruptcy caused it to fall through the cracks. Normally when the phase is finished the model home becomes occupied. In this case everything kind of died for a number of years. At that point the office also had turnover and the people that were involved was no longer with the city. This is certainly not the fault of the applicant and she is obviously directly affected.

Colonel Ericson stated that looking at the property and if he was going to be the second buyer he would assume that everything had been approved and would not have known that there was a required Certificate of Occupancy. When you look at the property with the brick on the front, two (2) doors, and windows it looks like a permanent structure. Mrs. Townshend agreed.

Colonel Ericson stated that he did not see any fault of the individual buyer to have to pay any sort amount of money to change it and it would be unreasonable.

Chairman Sheth stated that he agreed with Colonel Ericson. As he stated previously why this was not found during the second settlement or title search. He has no problem in this case and asked if the Board would be setting a precedent.

Mr. Rodriguez stated that the Board of Adjustment would not be setting a precedent because it is a different situation completely. The property changed hands from the original developer, went through bankruptcy and was then purchased. He did not think that any attorney would look at it and say that they had to get a check for a Certificate of Occupancy for this building. If you grant the Variance, when writing it up it could show as not being precedential.

Chairman Sheth gave an example of a similar situation on 348 North DuPont Highway when it was sold and refinanced seven (7) times. When he was ready to purchase the property there was an auction to lease and buy the property and it never cleared. No one wanted to review the title insurance, therefore he went to the previous insurance company regarding owners title insurance and not mortgage title insurance.

Mrs. Townshend stated that it has brought two (2) things to her attention that the city needs to tightened up, (1) how the city deals with model homes and be consistent, (2) more regular follow-up on expired Certificate of Occupancies and items that never made it to Certificate of Occupancy paperwork. This was a number of years between the paperwork on file and the information of the current owner.

Responding to Mrs. Townshend's question of the length of time the owner has owned the property, Mrs. Lipscomb stated since 2013.

Mrs. Townshend stated that this has identified a couple of areas where the city needs to tighten up

the process which will be done.

Responding to Mr. Hufnal's question whether if the variance is approved will a Certificate of Occupancy be issued so this issue does not come up again, Mrs. Townshend stated yes, it could be issued today.

Mr. Keller moved to approve application V-16-04 and grant the variance in order to permit the existing driveway within the front yard setback to be counted as sufficient for meeting the requirement for two (2) off-street parking spaces based principally on the evidence and testimony given today, as well as the documented information provided by the City Staff. The motion was seconded by Mr. Senato and unanimously carried 5-0.

Applicant #V-16-05

385 Saulsbury Road. Family Dental Associates c/o Christoper A. Nacrelli has requested a variance from the requirements of Article 6 §3.1 and §3.11 of the *Zoning Ordinance* for parking as related to the maximum allowed parking for the proposed use. Subject property is zoned C-PO (Commercial and Professional Office Zone) and subject to the COZ-1 (Corridor Overlay Zone). The Tax Parcel is ED-05-067.19-02-02.06-000. The owner of record is Christopher A. Nacrelli.

Mrs. Townshend Exhibits for the Record: Staff report and plans submitted by the applicant. Legal Notice was published in the Delaware State News - on May 8, 2016. The public was notified in accordance with regulations.

Chairman Sheth stated that the Board would continue the case in absence of the applicant.

Mrs. Townshend stated that the applicant is not present today. This is a variance similar to what has been considered in the past. The 25% over the minimum parking required for smaller parking lots. The smaller parking lots create a real challenge especially with medical offices where they have a lot of turnover and need parking. This sometimes leaves them under parked. This has been identified as one of the ordinances that the City will be working on to correct during this calendar year, but it has not yet been corrected. Typically, the Board has not heard cases without the applicant being present, but it would certainly be the option of the Board to do so. It has been noticed for public hearing.

Mr. Keller stated that in the past he has been one to note that the Board should take a pause with the absence of the applicant and/or a duly appointed representative where there is written authorization for representation in the owner's absence. He had questions that could not be answered due to the applicants' absence.

Colonel Ericson stated that no vote should be taken on the application without the applicant being present in all fairness.

Mr. Rodriguez stated that since it has been properly advertised the Board could hold the public hearing.

Chairman Sheth opened the public hearing.

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

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

Mrs. Townshend stated that there was a neighbor by the name of Gail Nemcic who called the office on May 11, 2016 around 10:00 A.M. She owns the property at 910 Walker Road adjacent to the subject property. She has no objection to the granting of the variance per se, but commented that the area of the proposed parking does periodically back up after heavy rains. There is a storm water drain of some sort there, as shown on the plans. She just wanted to register her concerns regarding that issue. Mr. Cook informed her that he would convey her concerns regarding that issue if she was not present for the public hearing. He also explained to her that the project would be reviewed by Kent Conservation District as part of the Administrative Site Plan process and that he would convey her concerns also to Kent Conservation District and the site engineer who would have a say over required site design with regard to storm water management.

Mr. Keller noted that the existing drain would be within one of the proposed new parking spaces. It may or may not have some comprising effect on that one parking space. In adequacy of the drain. Mrs. Townshend stated that it would be something that the engineer could answer.

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

Mr. Senato moved to table application V-16-05 until the next meeting because applicant was not present. The motion was seconded by Mr. Hufnal and unanimously carried 5-0.

Colonel Ericson commented that in the case V-16-05 that was just discussed in the Variance Recommendation it is stated that "While a variance request must demonstrate uniqueness and exceptional practical difficulty associated with a specific property, and for these reasons past decisions are not necessarily precedential," the Board goes out of their way to make sure that each decision made is based on a unique circumstance. For example, if a decision made in the past may or may not be set up a precedent and he thought this could open the Board up for legal actions later on if it was disapproved. He would like to see those word not used in the reports.

Mrs. Townshend stated that it states "not necessarily precedential" and Colonel Ericson stated "not necessarily" but maybe. Mrs. Townshend stated right. Colonel Ericson stated that he would like to keep that out of the wording. Mrs. Townshend stated okay.

Colonel Ericson stated that if the applicant comes up and states that this was done then it would have to be examined. Mrs. Townshend stated right. This one in particular there is a code issue that has been identified by the Board and Staff that is creating the problem.

Colonel Ericson stated that it needed to be explained during the meeting because he has no problem with it.

Mr. Keller stated that Table 1 was missing from the report V-16-05 on page 3 of 7.

Mrs. Townshend stated that she will make sure Table 1 is in the report at the next meeting.

Mr. Hufnal moved to adjourn the meeting, seconded by Mr. Senato and unanimously carried 5-0.

Meeting adjourned at 9:41 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary