CITY OF DOVER
BOARD OF ADJUSTMENT MINUTES
August 19, 2015

A Regular Meeting of the City of Dover Board of Adjustment was held on Wednesday, August 19, 2015 at 9:00 A.M. with Chairman Sheth presiding. Members present were Mr. Hufnal, Colonel Ericson, Mr. Keller, and Chairman Sheth. Mr. Senato was absent.

Staff members present were Mrs. Townshend, Mrs. Mullaney (Acting Secretary), Mr. Cook and City Solicitor Bill Pepper.

APPROVAL OF AGENDA

Mr. Hufnal moved to approve the agenda as amended to have a discussion regarding the Planning Commission Quarterly Workshop, seconded by Colonel Ericson and unanimously carried 4-0. Mr. Senato was absent.

APPROVAL OF THE REGULAR BOARD OF ADJUSTMENT MEETING MINUTES OF JULY 15, 2015

Mr. Hufnal moved to approve the meeting minutes of July 15, 2015 with the necessary corrections, seconded by Mr. Keller 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-15-11

200 North West Street. Mary Lou Bashore has requested a use variance from the requirements of Article 3 §19.2 of the *Zoning Ordinance* pertaining to the prohibition of residential uses in the M (Manufacturing) Zone. Subject property is zoned M (Manufacturing Zone). The Tax Parcel is ED05-076.08-01-09.00-000. The owners of record are John and Mary Lou Bashore. *At its meeting of January 15, 2014, the Board of Adjustment denied Use Variance V-13-14 to allow renovations and conversion to a multi-family building. In its motion, the Board allowed for the house to be restored to the non-conforming use as a single-family building. Because Building Permits expired and work did not progress, the Variance subsequently expired.*

Mrs. Ann Marie Townshend Exhibits for the record: Staff Report and plans submitted by the applicant. The legal notice was published in the Delaware State News on August 9, 2015, and the public was notified in accordance with the regulations.

Mrs. Ann Marie Townshend gave a brief overview of the application.

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

Representative: Mrs. Mary Lou Bashore, Owner.

Mrs. Bashore was sworn in by Mr. Pepper.

Mrs. Bashore stated that she was the owner of 200 North West Street. Her husband died on August 24th of 2014, and she has taken over to try to finish what he was trying to do; to restore the house that was vandalized repeatedly. She was not able to complete the restoration for financial reasons, so she found an investor who is with her today to buy the property, who plans to restore the property to a single family dwelling. They would like to obtain a variance to use it as a single family residence. If it was to remain manufacturing, it would be totally useless, and she would have to tear it down and continue to pay taxes on a vacant lot, because the lot isn't conforming to anything in manufacturing or even a small office.

There's not enough room for parking, for employees and things like that. That's why she is requesting the grant for the property and for approval of the variance so the house can be restored by Rodney, the prospective buyer. The plan is to restore the house so that a family can move there, as it had been used since about 1940 until the time of Mr. Bashore's death. Mrs. Bashore stated that the tenants moved out but the landlord was unaware at the time since they live outside of Dover. By the time it was discovered that the tenants had moved, the house had been vandalized and materials sold for scrap to the yard next door, as reported by the scrap yard owner. This occurred within a two week period. The vacation by the tenants was not discovered until Mr. Bashore attempted to collect rent.

Chairman Sheth asked if there were any questions.

Responding to Mr. Hufnal's question regarding the house being built in 1940; apparently this means that the construction has been there prior to the *Zoning Ordinance,* Mrs. Townshend stated yes.

Mr. Keller stated that at the previous Board of Adjustment meeting associated with this property, it was determined at that time to have been legal non-conforming. Is that correct as a single family residence? Mrs. Townshend concurred.

Responding to Mr. Keller's question whether it was correct that the property had been vacant since 2012, Mrs. Bashore stated yes.

Responding to Mr. Keller's question whether the house had been all that time without any

electric service, water service, etc., Mrs. Bashore stated no. Her husband had a new electric service put in there around 2014. What he was trying to do was come up with the money to get it restored and he wasn't well. It was taking him longer than it would somebody that was younger and had the resources that he didn't have, but he was working on it.

Responding to Mr. Hufnal's question whether with it being vandalized, what services were restored? You said he did the electric. Was that restored totally? Mrs. Bashore stated yes. There is electric there. She gets an electric bill every month. As far as she knew, there is still electric there. The place had all the trash that was inside taken out. The walls have been re-framed. There's a new front door on it, but the work was just done really slowly because of financial reasons.

Responding to Mr. Hufnal's question if he recalled from before, he thought all the plumbing pipes were taken out and so forth because it was totally vandalized. Mrs. Bashore stated yes, all the plumbing, all the copper pipes, everything was taken.

Responding to Mr. Hufnal's question whether any of it was restored? Mrs. Bashore stated no, not yet.

Responding to Chairman Sheth question regarding the Certificate of Occupancy, Mrs. Townshend stated that the property will require a Certificate of Occupancy if it is restored back to a residential use.

Mr. Keller asked whether there was evidence from building inspections subsequent to the last meeting wherein they were allowed to restore the structure to a single family use? Do we have any evidence of subsequent inspections or permits being issued? Mrs. Townshend referred to exhibit A, to a building permit issued on June 9th 2014. There was an extension granted in December 2014. There was one inspection associated with that permit that was on December 9th 2014, where the work performed to-date had been disapproved. There had been no inspections performed where the work had been accepted. At that point, the building permit was expiring. It was well beyond the year and it had not met the requirements of the *Zoning Ordinance*, that unless work is commenced and diligently pursued within one year of the date of granting the variance, such variance shall become null and void.

Mr. Keller stated that he thought there was some conflict in testimony, referring to Mrs. Bashore's statements regarding the electric service reinstallation and framing work.

Mrs. Bashore stated that she knew that in May of 2014, there was a new electrical box put in there, and she knew that she paid an electric bill. She was unaware of some details because her husband was the one handling the work. She restated that he passed away on August 24, 2014 in the middle of when he was working on it. He left a garage full with windows, doors, even a ventilation system that he built himself, and other building materials, but he never got to finish it. She then stated that her sons tried to take over, but they didn't have the money with all the other expenses after Mr. Bashore's death. She began a search for a buyer of the property to do what she couldn't afford to do and she was successful. Now they need a variance so that the investor can proceed with restoring the property. It's just a lot of circumstances that no one expected to

happen, even though he wasn't himself, he wasn't exactly ill but he died suddenly of abdominal aortic aneurysm.

Mrs. Townshend stated for the record that this building has gone to City Council, and has been declared by City Council as a dangerous building. City Council has allowed time for repair, but they were aware that no permit could be issued and no repairs could be made unless a variance was granted, so they've been given sufficient time to apply for the variance for this board to make the decision. If they are successful in getting the variance, there is time for the property to transfer and for the new owner to make the repairs.

Mr. Keller asked if a transfer of title had yet taken place and whether there was a prospective buyer. Mrs. Bashore stated that she has a contract and a deposit, but the buyer is not interested in buying it if a variance is not going to be granted to allow it to be used as a residential property. Mr. Keller stated that he understood.

Mrs. Bashore stated that if it's not a residential property, it has literally no use whatsoever; because it's not big enough for manufacturing use.

Responding to Mr. Hufnal's question if a variance is granted, is the new owner prepared and does the new owner have the funds to finish this within a year's time, because if not, we are going to be back to the same situation in another year. Mrs. Bashore stated that the buyer was present today. Mrs. Townshend clarified that they do not have a full year. They have a year for the variance, but if it's not completed by September, then the city would move forward with demolition.

Responding to Mr. Hufnal's question if the date was September 2015, Mrs. Townshend stated yes.

Chairman Sheth stated that the City had already said to "give them a chance." If the variance is granted, the City will extend the period but with a limit. If the limit cannot be met, the City will order the demolition of the building. Mr. Sheth stated it's a "catch-22" whereby unless the applicant gets the variance, then they don't have the ability to sell or improve the property.

Colonel Ericson stated that it seems there is not much choice on this matter. Having a residential use in that location bothers him now and when the case was first heard, but the fact is that the City Council has ruled to give them another chance, therefore give them time to get this done. The Board has approved this for a single family residence. It seems to me it's the most proper thing to do for it, so just vote for approval. Chairman Sheth stated that he could understand.

Responding to Mr. Keller's question whether he understood correctly that the timeframe remaining would be approximately a month. Mrs. Townshend stated it would expire in September 2015, and that she believed it's the end of September 2015 or possibly the end of October 2015. She did not have the dangerous building file, but City Council has set a date by which the repairs needed to be made or well underway or the City would move forward with demolition.

Responding to Mr. Keller's question to the applicant whether she had a contractor or a prospective owner present who may lend some input, Mrs. Bashore stated that her son was present, and introduced Rodney, the prospective buyer. He has the building permit application prepared and ready to submit soon if the variance is granted.

Mr. Keller stated that he may have questions for the gentlemen.

Responding to Mr. Hufnal's question if the board were to grant the variance, how quickly can you go to settlement, and have this settled and put in the new owner name so he can do the work? Mrs. Bashore stated that she has a contract and a deposit.

Responding to Mr. Hufnal's question of the timeline for settlement, Mrs. Bashore stated that a deposit has been received but the process cannot continue until there is a determination that the variance is granted. The contractor does not want to buy the house if he cannot get a variance.

Chairman Sheth stated that the City has already stated that they are allowed the variance and it is considering an extension. Whether the applicant has a contract or not it will be binding by City Hall's and City Council action. He stated that he feels that this variance will be the last time the applicant will need to appear before the Board.

Mrs. Townshend suggested to open the public hearing and the gentleman who is under contract can speak during the public hearing and perhaps answer questions. Mr. Keller concurred.

Responding to Mr. Keller's question regarding Mrs. Bashore's statement that the property had absolutely no value, there are certain allowable uses to which that property, even in its smaller size, could be put to use in a manufacturing zone. He was curious if it was ever contemplated to sell it as a manufacturing lot, for storage, or for assemblage to the adjoining property. Mrs. Bashore stated that it is too small to have storage there. It is too small to have anything for manufacturing; maybe a small office such an office would be very small. It is very, very limited as to what could be there and conform to M (Manufacturing) zone. She contacted Teal Construction and the recycling place (Terrapin) on the other side of the street and neither one of them had any interest whatsoever in obtaining that piece of property to add to theirs. The Recycling Company checked with the City of Dover and was told that the lot was not deep enough to be advantageous. That it needed to go farther back towards the railway tracks, in order to be able to give it access from Cecil Avenue or West Street.

She said they approached everybody in the area, even the church to see if it could be used as parking. They don't have any money.

Chairman Sheth asked if there were any additional questions for the applicant.

Chairman Sheth asked if there were any member that had a conflict of interest and there was none.

Chairman Sheth opened the public hearing.

Mr. Rodney Mackenzie of 725 Bacon Avenue, Dover, Delaware, 19901 was sworn in by Mr. Pepper.

Mr. Mackenzie stated his interest in purchasing Mrs. Bashore's property. Addressing the Board's concern about the timeline for closing if the variance was granted, he was anticipating closing in about 30 days or less. His concern is the small window of time to complete the renovation since there is much work to be done. After closing they could start work immediately. With the amount of work to be done and the short time span, he inquired if it would be possible to get more time to complete the renovation.

Mrs. Townshend stated the dangerous building date was set by City Council, so the action has been made. She stated that from a staff perspective, if a building permit has been issued and work is active and making progress, scheduling inspections, and passing inspections, the goal is to not demolish. The goal is to get compliance. If it's progressing diligently, we will not demolish. Work could be well underway by that date.

Chairman Sheth concurred that if work is proceeding the right way the building will not be demolished.

Mr. Keller questioned if there was any possibility that the buyer may proceed with some work in advance of settlement so that he would gain a month's time, Mr. Mackenzie stated no. He has to be sure not to lose additional funds.

Responding to Mr. Keller's question of the certainty of the time extension granted by City Council, Mrs. Townshend stated that she could have somebody bring over the file but she believed it was September or October.

Mr. Hufnal stated that the buyer is talking of settlement in 30 days, so that puts him at the end September. That doesn't give him much time.

Mrs. Townshend stated that the role of the Board of Adjustment in this case is not related to the time period set by City Council. It is to whether this meets the criteria for use variance and whether the residential use could be reestablished at the location.

Mrs. Townshend stated for the record that the staff recommendation indicates that the applicant has not demonstrated that adherence to the requirements of the ordinance deprives him of all reasonable use of the land. That is the key issue. If the Board of Adjustment grants the variance, it should be stated for the record whether members believe that condition for a use variance has been met.

Mr. Keller stated that the general purpose and intent of the ordinance is to prevent or prohibit residential use within the manufacturing zoning. His understanding is that previously, and perhaps today, the consideration before them is to allow and reestablish the residential use as a non-conforming use. They would not be creating a residential use within the manufacturing zone.

City Solicitor Pepper stated that it lost its status as a legal non-conforming use in 2012. He recalled the case of Joe Burden Sr.'s attempt to restore a non-conforming use that had lapsed because of disuse or discontinuance. The board denied that application.

Mrs. Townshend stated that it was an appeal, a different situation. City Solicitor Pepper agreed, but that the same principle held.

Mr. Pepper stated that if the board finds that the restrictions imposed by the Zoning Ordinance deprives the applicant of all reasonable value of the property, then a Use Variance can be granted. A Use Variance is a high standard.

Mr. Cook returned with the dangerous building case file folder. The date set by City Council was October 13, 2015.

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

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

Chairman Sheth asked City Solicitor Pepper his opinion regarding discussion.

Colonel Ericson moved to approve variance V-15-11, to allow the existing house owned by Mary Lou Bashore on 200 North West Street, to be restored to non-conforming use as a single-family building.

Colonel Ericson added, separate from the motion, his comment that all reasonable uses of the property appear to have been attempted if the neighboring property owners were not interested in purchasing it.

Chairman Sheth asked if there were any questions.

Mr. Keller asked for clarification of his understanding that this motion would re-institute what has been a lapse of use for a non-conforming residential use within the Manufacturing district. City Solicitor Pepper affirmed that it did.

Mr. Keller asked Mrs. Townshend for clarification should this motion be enacted, whether the status is still dependent upon the action of City Council for the duration of the term they have imposed upon the owner for proper activity towards the reconstruction effort.

Mrs. Townshend stated that once City Council acts on a dangerous building the case does not return to them. The applicant must continue with obtaining the permits and continuing diligently with the work and performing the work in a manner that passes the inspections. If such deadlines pass, then the city must move forward with proceeding towards demolition.

Mr. Keller posed a hypothetical question whether the City would anticipate City Council working with these owners as perhaps they have worked with others, should work be

progressing. His concern is regarding the short time-frame.

Mrs. Townshend clarified that staff continues to work with the owners. There are times where the city has to proceed with demolition when work has happened but inspections aren't scheduled, when work is not inspected and/or disapproved, or there are other code compliance issues. If things are proceeding diligently in a code-compliant manner staff tries to work with property owners.

Responding to Colonel Ericson question regarding the practicality of uses for the lot, and disinterest in purchase by adjacent property owners. Mrs. Townshend stated that it is a 5000 square-foot lot, which is a small lot even for residential. She stated that the information presented today that was not presented with the application was that the applicant had approached the other property owners and they have not indicated interest. That further constrains the ability to do something with it. With any commercial use there would be parking requirements. There's no doubt there are site constraints. The question is whether denial of the variance in the board's estimation takes away all reasonable use of the land?

Colonel Ericson stated that from what he heard today, he came to that conclusion.

Mrs. Townshend stated that regardless of the dangerous building case and all other issues discussed, the criteria for Use Variance relates to taking away all reasonable use of the land, that the variance granted is the minimum variance required, and that the condition is peculiar to the land and has not resulted in any building of a precedent in title. The question for the Board is whether the variance is the minimum possible and does denial of the variance negate all reasonable use of the land.

Mr. Keller stated that he still had some reservation about the reestablishment again of the nonconforming use and questioned the time period available to bring about some prosecution of work especially when three years have passed without adequate prosecution of work for rehabilitation to the property. We don’t truly ever know the motive of potential buyers in their responses or lack of interest in buying the property. He saw actions by the Board as an extension because the obligation is fully upon the present owner and prospective buyer to get underway with the rehabilitation of the property. If that does not happen then City Council will have to vote whatever they impose upon the property as a final solution.

Roll Call Vote

Mr. Keller stated yea on the approval of Variance V-15-11. Given the considerations of the staff report and in light of additional testimony this morning as well as the imposition by City Council of the necessity for prompt follow-through with the rehabilitation to the property.

Colonel Ericson voted yes, stating that all other reasonable uses of the property were attempted and that use as a single family residence was the only remaining possibility.

Mr. Hufnal voted yes and based on the comments made and the testimony and staff report.

Chairman Sheth voted yes, noting his belief that an empty or small lot does not generate much property tax revenue, adding that it is good to restore the property to be economically used.

Mrs. Mullaney stated that there were four (4) yea and zero (0) neigh, motion passed. Mr. Senato was absent.

Chairman Sheth stated that the motion passed and Variance granted. He wished good luck to Mr. Mackenzie.

Mrs. Townshend stated that from a building perspective she believed Tim Taraila had contacted Mr. Mackenzie. Mr. Mackenzie stated no. Mrs. Townshend stated that he might have talked to his business partner. At this point she thinks he needed to work with Building and Code Enforcement Staff.

Mr. Hufnal wished the buyer and seller good luck.

Mrs. Bashore and Mr. Mackenzie thanked him.

Discussion

The Board of Adjustment had discussion regarding different Signs in the area, Area Variance, parking, extensions of permits, Codes, and sign procedures that related to for example (Race Track, Modern Maturity, Golden Corral, Dover Family Dentistry, Eden Hill, Kirby and Holloway, The Café, Enterprise Business Park, and Frontline Ministries). The Board of Adjustment would like to discuss the following items during the Planning Commission Quarterly Workshop.

Mrs. Townshend stated the members of the Planning Commission because Mr. Hufnal was not familiar with the members.

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

Mr. Hufnal moved to adjourn the meeting, seconded by Mr. Keller and unanimously carried 4-0. Mr. Senato was absent.

Meeting adjourned at 10:11 A.M.

Sincerely,

Maretta Savage-Purnell
Secretary